

Ordinance No. 889

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, ADOPTING BY REFERENCE A DOCUMENT ENTITLED "AMENDMENTS TO CHAPTER 12 – FLOODPLAIN MANAGEMENT" (DECLARED BY RESOLUTION NO. 2182 TO BE A PUBLIC RECORD), WHICH AMENDS CHAPTER 12 "FLOODPLAIN MANAGEMENT" OF THE TOWN CODE; PROVIDING THAT ALL OTHER CHAPTERS, ARTICLES, SECTIONS, AND SUBSECTIONS OF THE TOWN CODE NOT HEREIN REPEALED, REPLACED OR AMENDED SHALL REMAIN IN FULL FORCE AND EFFECT; PROVIDING THAT, IF ANY PROVISION IN THIS ORDINANCE IS HELD INVALID BY A COURT OF COMPETENT JURISDICTION, THE REMAINING PROVISIONS SHALL NOT BE AFFECTED BUT SHALL CONTINUE IN FULL FORCE AND EFFECT; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, the U.S. Congress established the National Flood Insurance Program (NFIP) in 1968 in an effort to mitigate future flood damage nationwide and provide property owners with flood insurance protection at reasonable rates; and

WHEREAS, an essential component of the NFIP is for local communities to adopt and administer floodplain management measures which meet minimum NFIP standards so that residents and property owners may be eligible for flood insurance, federally-insured loans, and federal disaster relief [Code of Federal Regulations (CFR) Title 44, Chapter I, Parts 59-77]; and

WHEREAS, the Arizona Department of Water Resources (ADWR) plays an important role under the NFIP by (among other things) serving as a link between the Federal Emergency Management Agency (FEMA) and local communities, and by assisting local communities in developing floodplain management regulations; and

WHEREAS, Arizona Revised Statutes (ARS) §§48-3601 through 48-3627 require Arizona communities to enact and enforce floodplain management regulations which include: (a) minimum regulatory standards, (b) public hearing requirements for enacting or amending the regulations, and (c) requirements for issuing variances; and

WHEREAS, in accordance with its role and these statutes, ADWR has developed (and updated from time to time) a model floodplain management ordinance that meets minimum NFIP standards; and

WHEREAS, ADWR has recently updated its Floodplain Management Model Ordinance for Non-Colorado River Communities (Model Ordinance) as of June 2020; and

WHEREAS, the Town now proposes to amend Chapter 12 to bring it more in-line with the Model Ordinance; and

WHEREAS, ARS §48-3609(F) requires any floodplain management regulations (including, presumably, any amendments) to be adopted after a public hearing (notice of said hearing to be (a) published, and (b) mailed to the ADWR Director at least 30 days before the hearing), and to be mailed to ADWR and Yavapai County within five (5) days after adoption; and

WHEREAS, the Town Council hereby determines that these floodplain management regulations are consistent with the health, safety and welfare needs of the community; and

WHEREAS, ARS §9-802 provides for adoption by reference of lengthy documents which are “public records”; and

WHEREAS, ARS §9-803 requires penalty clauses in such public records to be set forth in full in the adopting ordinance; and

WHEREAS, the document “AMENDMENTS TO CHAPTER 12 – FLOODPLAIN MANAGEMENT” has been declared by Resolution No. 2182 to be a “public record”;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA, AS FOLLOWS:

SECTION ONE. That that certain document known as “AMENDMENTS TO CHAPTER 12 – FLOODPLAIN MANAGEMENT”, declared to be a public record by Resolution No. 2182 (and available for public inspection in the Office of the Town Clerk, 7501 East Skoog Blvd., Prescott Valley, Arizona, 86314), be hereby referred to, adopted and made a part hereof as if fully set forth herein.

SECTION TWO. That the following penalty clause in Subsection (C) of Section 12-03-070 “Statutory Exceptions” in Article 12-03 “GENERAL PROVISIONS” in Chapter 12 “FLOODPLAIN MANAGEMENT” of the Town Code is hereby amended as follows:

12-03-070 Statutory Exceptions.

...

- C. In accordance with ARS §48-3613(D)(as amended), In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a Person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or Obstruction of a Watercourse has the right to commence,

maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any Person from violating or continuing to violate this Chapter or regulations adopted pursuant to ARS Title 48, Chapter 21, Article 1 (as amended)~~this Chapter~~. If a Person is found to be in violation of this Chapter, the court shall require the violator to either comply with this Chapter or remove the Obstruction and restore the Watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the Violation (including reasonable costs and attorney fees).

SECTION THREE. That the following penalty clause in Section 12-03-080 “Unlawful Acts” in Article 12-03 “GENERAL PROVISIONS” in Chapter 12 “FLOODPLAIN MANAGEMENT” of the Town Code is hereby renamed and amended as follows:

12-03-080 ~~Unlawful Acts.~~Violations.

- A. It is unlawful for a person to engage in any Development or to divert, retard or obstruct the flow of waters in a Watercourse if it creates a hazard to life or property without securing the written authorization required by ARS §48-3613 (as amended). Where the Watercourse is a delineated Floodplain, it is unlawful to engage in any Development affecting the flow of waters without securing written authorization required by ARS §48-3613 (as amended).
- B. ~~Any person found guilty of violating~~who violates any provision of this Chapter ~~shall be~~is guilty of a class 42 misdemeanor. ~~Each day that a violation continues shall be a separate offense punishable as hereinabove described.~~
- C. A person who violates any provision of this Chapter may be assessed a civil penalty not to exceed the fine chargeable for a class 2 misdemeanor or, by agreement with the person in violation, a non-monetary penalty that serves the purposes of the Town. Each day the violation continues constitutes a separate violation.
- D. A person who without written authorization damages or interferes with a facility that is owned, operated, or otherwise under the jurisdiction of the Town is liable for both of the following:
 - 1. Any actual damages to persons or property that is caused by the damage or interference.
 - 2. Payment of costs to the Town for remediating the damage or interference.

SECTION FOUR. That the following penalty clause in Section 12-03-090 “Declaration of Public Nuisance” in Article 12-03 “GENERAL PROVISIONS” in Chapter 12 “FLOODPLAIN MANAGEMENT” of the Town Code is hereby amended as follows:

12-03-090 Declaration of Public Nuisance.

All Development located or maintained within any ~~Area of Special Flood Hazard~~ SFHA after May 29, 1982, in violation of this Chapter and without written authorization from the Floodplain Board, is a public nuisance per se and may be abated, prevented or restrained by action of ~~this political subdivision~~ the Town.

SECTION FIVE. That the following penalty clause is adopted by reference in Section 12-03-100 “Abatement of Violations” in Article 12-03 “GENERAL PROVISIONS” in Chapter 12 “FLOODPLAIN MANAGEMENT” of the Town Code:

12-03-100 Abatement of Violations.

Within sixty (60) days of discovery of a Violation of this Chapter, the Floodplain Administrator shall submit a report to the Floodplain Board which shall include all information available to the Floodplain Administrator which is pertinent to said Violation. Within thirty (30) days of receipt of this report, the Floodplain Board shall:

...

- C Order the owner of the property upon which the Violation exists to provide whatever additional information may be required for the Floodplain Board’s determination. Such information must be provided to the Floodplain Administrator within 60 days of such order and the Floodplain Administrator shall submit an amended report to the Floodplain Board within 30 days after the information is provided. At the next regularly-scheduled public meeting that is no sooner than one (1) week after receiving the report, the Floodplain Board shall either order the abatement of said Violation or they shall grant a Variance in accordance with the provisions of Article 12-06 herein (as amended); or

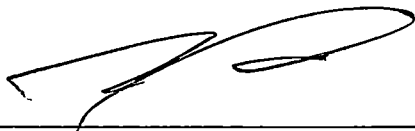
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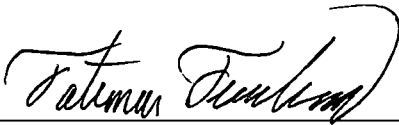
SECTION SIX. That all other Chapters, Articles, Sections, and Subsections of the Town Code not herein repealed, replaced, or amended shall remain in full force and effect.

SECTION SEVEN. That, if any provision in this Ordinance is held invalid by a court of competent jurisdiction, the remaining provisions shall not be affected but shall continue in full force and effect.

SECTION EIGHT. That this Ordinance shall be effective 30 days after its passage and approval according to law.

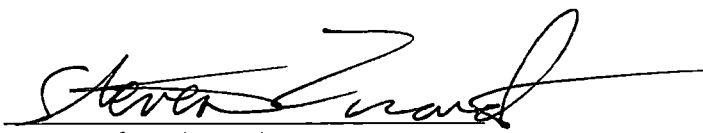
PASSED AND APPROVED by the Mayor and Common Council of the Town of Prescott Valley, Arizona, this 13th day of May, 2021.



Kell Palguta, Mayor

Fatima Fernandez, Town Clerk

APPROVED AS TO FORM:


FOR _____
Ivan Legler, Town Attorney