



AGENDA

**PRESCOTT CITY COUNCIL
STUDY SESSION
Tuesday, September 13, 2016
1:00 PM**

**Council Chambers
201 South Cortez Street
Prescott, Arizona 86303
(928) 777-1100**

The following Agenda will be considered by the Prescott City Council at its **Study Session Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending this meeting through the use of a technological device.

◆ **CALL TO ORDER**

◆ **ROLL CALL**

MAYOR AND CITY COUNCIL

Mayor Oberg

Mayor Pro Tem Lamerson

Councilman Blair

Councilman Lazzell

Councilwoman Orr

Councilman Sischka

Councilwoman Wilcox

I. DISCUSSION ITEMS

- A. Discussion of draft ordinance for regulation of structured sober living homes
- B. Presentation and discussion of draft ordinance authorizing Code Enforcement to cite for all City ordinance infractions
- C. Requests for information re September 13, 2016, Voting Meeting agenda items

II. ADJOURNMENT

EXECUTIVE SESSION

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (i) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (ii) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (iii) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));
- (iv) Discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. §38-431.03(A)(4));
- (v) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));
- (vi) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6));
- (vii) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

Confidentiality

Arizona statute precludes any person receiving executive session information from disclosing that information except as allowed by law. A.R.S. §38-431.03(F). Each violation of this statute is subject to a civil penalty not to exceed \$500, plus court costs and attorneys' fees. This penalty is assessed against the person who violates this statute or who knowingly aids, agrees to aid or attempts to aid another person in violating this article. The city is precluded from expending any public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced for violation of the statute unless City Council takes a legal action at a properly noticed open meeting to approve of such expenditures prior to incurring any such obligation or indebtedness. A.R.S. §38-431.07(A)(B).

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on _____ at _____ m. in accordance with the statement filed by the Prescott City Council with the City Clerk.

Dana R. DeLong, CMC, City Clerk

MEETING DATE/TYPES: STUDY SESSION 9-13-16

DEPARTMENT: Legal

AGENDA ITEM: Discussion of draft ordinance for regulation of structured sober living homes

Approved By:		Date:
City Attorney:	Jon Paladini	09/06/2016
City Manager:	Craig McConnell	09/07/2016

Item Summary

The City Attorney will present the structured sober living home draft ordinance for Council discussion and direction.

Recommended Action: For presentation and Council discussion/direction.

MEETING DATE/TYPES: STUDY SESSION 9-13-16

DEPARTMENT: Legal

AGENDA ITEM: Presentation and discussion of draft ordinance authorizing Code Enforcement to cite for all City ordinance infractions

Approved By:

Date:

City Attorney: Jon Paladini	09/06/2016
City Manager: Craig McConnell	09/07/2016

Item Summary

Ordinance No. 4995-1533 would amend Prescott City Code Title I (Administrative), Chapter 1-3 (Penalties), by revising Section 1-3-1. Ordinance No. 4995-1533 would also insert a new Chapter 1-14 (Code Enforcement).

The revision to Section 1-3-1 would clarify that, except as otherwise set forth in the Code, any violation of the City Code is charged as a Class 1 misdemeanor. This classification would not apply where the Code specifically sets out a violation to be a lower charge (e.g., a Class 2 misdemeanor, petty offense, or civil violation).

The revision also clarifies the *mens rea* (mental state) required of someone before he/she could be convicted of a criminal violation of the City Code – i.e., that the person must intentionally, knowingly, or recklessly violate the Code. This second change is to make the Prescott City Code consistent with new state law that went into effect in August 2016.

The second revision to Section 1-3-1 would allow for any violation of the City Code to be charged as a civil violation of the Code. Currently, unless the Code provides that a violation of the Code is a civil violation, the only citations allowed are criminal citations. This change provides flexibility to enforce violations of the City Code.

The third change to Section 1-3-1 declares that a violation of City Code is a public nuisance, which may be abated by a cause of action filed in Superior Court. Again, this would provide another tool to enforce violations of the City Code.

The addition of Chapter 1-14 formally acknowledges City Code Enforcement's authority to issue civil citations for any violation of the City Code. Currently, Code Enforcement is limited to issuing citations only for violations of the Property Maintenance section of the City Code.

Adoption of Ordinance No. 4995-1533 would authorize Code Enforcement to issue civil

Agenda Item: Draft ordinance authorizing Code Enforcement to cite for all City ordinance infractions

citations for any violation of the Code, but only after providing the alleged offender 30 days to cure the violation.

Chapter 1-14 also sets forth the due process requirements for prosecution of a civil code violation in the Prescott Municipal Court.

This Ordinance would become effective thirty (30) days following adoption by the City Council.

Attachments

1. Draft Ordinance No. 4995-1533

Recommended Action: For presentation and Council discussion.

ORDINANCE NO. 4995-1533

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AFFECTING PRESCOTT CITY CODE TITLE I (ADMINISTRATIVE) BY AMENDING CHAPTER 1-3 (PENALTY), SECTION 1-3-1 (GENERAL PENALTY; MISDEMEANORS; CIVIL VIOLATIONS; CONTINUING VIOLATIONS) AND CREATING A NEW CHAPTER 1-14 (CODE ENFORCEMENT).

RECITALS:

WHEREAS, The City of Prescott suffers from numerous violations of its City Code and Land Development Code; and

WHEREAS, the current enforcement system leads to lengthy delays and inefficiencies in resolving those violations; and

WHEREAS, to maintain and serve the public health, safety, and beauty of the City of Prescott, the City finds it necessary to modernize its system for enforcement of code violations.

ENACTMENTS:

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

SECTION 1. THAT Title I (Administrative), Chapter 1-3, Section 1-3-1 (General Penalty; Misdemeanors, Civil Violations, Continuing Violations) is amended as follows:

Section 1-3-1(A) is deleted in its entirety and the following is inserted in lieu thereof:

Except as otherwise expressly provided in this Code, whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance shall be a Class 1 misdemeanor and punished as Class 1 misdemeanors under state law. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense. Unless contrary to or inconsistent with the manifest intent of the council or the context of the specific code or ordinance provision being enforced, a misdemeanor charge under this subsection shall require the unlawful act or failure to act was done in a manner which the evidence shows to have been "intentionally," "knowingly," or "recklessly," as defined in the Arizona Revised Statutes, Title 13, Chapter 1.

Section 1-3-1(C) is deleted in its entirety and the following is inserted in lieu thereof:

In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this Code or any ordinance shall be deemed a public nuisance and may be, by the city, abated as provided by law and each day that such condition continues shall be regarded as a new and separate offense.

Section 1-3-1 is amended by adding a new Paragraph (F) as follows:

Violations of any provision of the City Charter, this Code or of any proscription, requirement or duty set forth in any ordinance are hereby declared to be civil code infractions which may be adjudicated and enforced by the City Court using the procedures set forth in Chapter 1-14 of this Code, as an additional enforcement alternative to other remedies provided in this section or remedies and procedures provided for specifically in this Code or any city ordinance. Use of the civil code infraction alternative is not mandatory and shall be at the discretion of the city official undertaking enforcement action on an alleged violation of this Code or other ordinances.

SECTION 2. THAT Title I (Administrative) is amended by adding Chapter 1-14 (Code Enforcement) as follows:

1-14-1 Declaration of Purpose. The city council finds that the enforcement of the Prescott City Code and Prescott Land Development Code throughout the city is an important public service. Code enforcement is vital to protection of the public's health, safety and quality of life. The council recognizes that enforcement depends upon clear and precise regulations that can be effectively applied in administrative enforcement hearings and judicial proceedings. The council further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain code compliance. Judicial remedies are traditional remedies to enforce laws by filing criminal and civil actions in a court of law. Administrative remedies are designed to provide fair and efficient methods of enforcing the provisions of the municipal code without the required expense and consumption of time that judicial actions may require. Failure to comply with an administrative code enforcement action may require the city attorney to file a judicial action to compel compliance.

1-14-2 General Enforcement Authority. All city enforcement officials shall have the authority and powers necessary to gain compliance with the provisions of the City of Prescott Municipal Code and applicable state codes for which they are responsible. These powers include the power to issue notices of violation and field citations, inspect public and private property and use whatever judicial and administrative remedies are available under the municipal code or applicable state codes.

1-14-3 Code Enforcement Officer. The City Manager shall have the authority to appoint Code Enforcement Officers. The City Manager may also designate existing employees to serve as Code Enforcement Officers. Code Enforcement Officers will work under the Supervision of the Chief of Police or the Chief's designee.

1-14-4 Enforcement Responsibility. Code Enforcement Officers shall have a duty to enforce provisions of this Code, except where enforcement is specifically limited to other enforcement agencies, or except where the City Manager limits the enforcement authority in the appointment.

1-14-5 Citations—Authority of Code Enforcement Officers. When any Code Enforcement Officer has reasonable cause to believe that the person to be issued the citation has violated a provision of this code, the Code Enforcement Officer may issue a civil citation in a form similar to the uniform Arizona Traffic Ticket and Complaint Form and shall cite the particular subsection of this code applicable to the alleged violation. Each subsection of this code cited in the complaint shall be deemed a separate offense. The citation shall contain the date and time of the alleged violation and shall direct the defendant to appear before the City Court at a specified time to enter a plea either admitting or denying the complaint. The citation will state that if the defendant fails to appear before the City Court on the date and time specified therein, a default judgment will be entered against the defendant and a civil sanction will be imposed.

1-14-6 Notice to Cure. Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, a code enforcement officer may issue a civil citation to the person who has committed the violation. A code enforcement officer is not required to provide the person with a reasonable time period to correct a violation prior to issuing a citation and may immediately issue a citation if a repeat violation is found or if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible.

1-14-7 Service of Citation. The citation shall be served by delivering a copy to the defendant as follows:

(a) The citation may be signed by the defendant with his/her promise to appear on the date and time specified on the citation.

(b) If the defendant is unavailable at the time the citation is issued or refuses to sign the citation, service may be accomplished and will be deemed proper and complete by any of the following:

(1) Upon the resident/occupant of the premises where the violation occurred by posting a copy of the citation on or about an entrance to the dwelling unit; or

(2) By hand delivering a copy of the citation to the owner of record or resident/occupant.

(3) By certified or registered mail, return receipt requested. Service by mail is deemed complete upon deposit in the U.S. mail.

(4) In the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure.

1-14-7 Appearance; Payment by Mail.

1. The defendant shall appear in person before the City Court on the date and time specified in the citation and shall either admit or deny the allegations contained in the citation. Or, the defendant may proceed as provided in subsection (B)2 of this section. If the defendant admits the allegations, the City Court shall immediately enter judgment against the defendant and shall impose the appropriate sanction. If the defendant denies the allegations contained in the citation, the City Court shall set a date for a hearing of the matter.

2. The defendant may admit the allegations in the citation and pay the default amount indicated by mailing the citation together with a check or money order made payable to the City of Prescott to the City Court. If payment is not received by the appearance date indicated on the citation, a default judgment will be entered.

3. Any defendant appearing before the City Court and denying the allegations as provided in subsection (B)1 of this section shall be deemed to have waived any objection to service of the citation, unless such objection is affirmatively raised by the defendant at the time of the first appearance in relation to the citation.

4. At the conclusion of the hearing, if the City Court finds the defendant to be in violation of any provision in this chapter, the City Court shall issue sanctions in accordance with subsection 1-3-2 of this chapter.

1-14-8 Default Judgment; Collection of Judgments.

1. In the event of a default, the City Court shall assess a default sanction in the amount of two hundred fifty dollars (\$250.00) unless such default judgment is set aside under Rule 23 of the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases.

2. The City Court may waive all or part of the default fee if the City Court expressly finds that payment thereof would cause a significant financial hardship for the defendant.

3. No judgment may be entered against a fictitiously identified defendant unless the citation is amended to reveal the true identity of the defendant who receives the citation.

4. The City may enforce collection of delinquent sanctions, fees and penalties as provided by law. Any judgment or civil sanction pursuant to this section may be collected as any other civil judgment, and if rendered against the owner of the real property in violation, shall constitute a lien against that property.

1-14-10 Rules of Procedure.

1. The Arizona Rules of Procedure in Civil Traffic and Civil Boating Violation Cases shall govern hearings, appeals, default by defendant and rules of evidence in all actions to hear and determine civil offenses except as modified by or inconsistent with the provisions of this code.
2. All hearings pursuant to this section shall be electronically recorded.

1-14-11 Nonexclusive Remedies.

1. The remedies herein are cumulative and nonexclusive. In the event a defendant fails to comply with any civil enforcement action commenced under this section, the City may file a criminal charge against the defendant where allowed by City Code. Notwithstanding the foregoing, a civil enforcement action shall not be a prerequisite to the filing of a criminal charge, and a police officer, city attorney, or other authorized City employee may elect to file criminal charges at any time, request injunctive relief, or pursue such other relief as may be available. Use of the civil code infraction alternative is not mandatory and shall be at the discretion of the City official undertaking enforcement action on an alleged violation of this Code or other ordinances.
2. Nothing contained in this section shall be construed to preclude the judge or hearing officer from, in addition to imposing civil sanctions, ordering the abatement of any violation pursuant to Arizona Revised Statutes section 9-499 and related city code provisions.

SECTION 2. THAT the Mayor and staff are authorized to take any action necessary to enact this Ordinance.

PASSED and ADOPTED by the Mayor and Council of the City of Prescott, Arizona, on this _____ day of _____, 2016.

HARRY B. OBERG, Mayor

ATTEST:

APPROVED AS TO FORM:

DANA R. DeLONG, City Clerk

JON M. PALADINI, City Attorney

DRAFT