

PROPOSED AMENDMENT TO TEMPE CITY CODE*

RELATED TO PRESERVES

ORDINANCE NO. O2017.__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 23, ARTICLE V, TEMPE CITY CODE, RELATING TO PRESERVES, BY AMENDING SECTION ---, RELATING TO -----; BY AMENDING SECTION ---, RELATING TO -----

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 23, Article V, of the Tempe City Code is hereby amended to read as follows:

ARTICLE V. - PRESERVES

DIVISION 1. - GENERALLY

Sec. 23-100. - Scope.

- (a) The provisions of this article shall apply exclusively to the properties designated by the City Council as a preserve, each and all of which shall be referred to in this article as a preserve.
- (b) If there is a conflict between the provisions of this article and any other provision of this Code pertaining to parks, the provisions of this article shall prevail.

Sec. 23-101. - Purpose.

- (a) The purpose of a preserve is to establish a preserve of desert land as a habitat for desert vegetation, wildlife and natural resources; and to protect archaeological, paleontological and historical resources and sites, while providing appropriate public access.
- (b) A preserve will be left in as pristine a state as possible to maintain for this and future generations a nearby natural desert refuge from the rigors of urban life.
- (c) A preserve will not contain traditional facilities or improvements associated with a public park, but may contain facilities or improvements that the City determines are necessary or appropriate to support its activities.

Sec. 23-102. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Amendments to existing City Code are denoted by ~~strikeouts~~ and ALLCAPS.

*Any future amendments would be by Ordinance of City Council.

PROPOSED AMENDMENT TO TEMPE CITY CODE*

RELATED TO PRESERVES

Designated and posted means identified by appropriate signs; or by established physical barriers, including, but not limited to posts, branches or rocks; or by other means reasonably calculated to give notice to the public.

Preserve means any real property designated by the City Council as a preserve.

Spirituos liquor means alcohol, brandy, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half percent (>½%) of alcohol by volume or as defined by A.R.S. § 4-101, as it may be amended from time to time.

Trail means an area or areas of a preserve that have been designated and posted as trails, including historical trails if designated and posted.

Trailhead means areas which have been designated and posted as trail access points for a preserve.

DIVISION 2. - PRESERVE RULES AND REGULATIONS

Sec. 23-110. - Rules for use; criminal penalty.

- (a) All persons using a preserve shall comply with the following, except as may be specifically authorized by a permit or permits issued as provided in Section 23-112 of this article:
- (1) No person shall trespass upon or be upon the grounds without the express written permission of the official designated by the Community Services Director, between SUNSET AND SUNRISE ~~the hours of 10:00 p.m. and 6:00 a.m.~~, unless otherwise posted;
 - (2) No person shall possess or consume ILLEGAL DRUGS OR spirituous liquors in a preserve;
 - (3) No motorized vehicles shall be allowed in a preserve when the motor is operating, EXCEPT FOR AUTHORIZED CITY VEHICLES. This provision shall not be construed, however, to prevent the use and operation of a motorized wheelchair by a person who ordinarily uses such equipment, when the person is engaged in activities otherwise permitted in a preserve;
 - (4) No camping, AS DEFINED IN SECTION 23-90 OF THIS CHAPTER, shall be permitted in a preserve ~~as defined in Section 23-90 of this chapter~~;
 - (5) No person shall remove, deface, damage, disturb or excavate any materials from or in a preserve, or any historical, prehistorical, archaeological, paleontological, or geologic site or feature situated within a preserve, including, but not limited to, plants, rocks, any other earth material, historical or other archaeological resources, such as petroglyphs and dead or decaying plant materials;
 - (6) No person shall deface, damage or inscribe a message, slogan, sign or symbol upon any natural feature in a preserve, including the ground itself, using any material, including paint or markers of any kind;
 - (7) No person shall destroy, dig up, mutilate, collect, cut, harvest or remove any live or dead tree or plant material in or from a preserve; and
 - (8) No person shall dig, remove or excavate any sand, gravel, rocks or soil from within a preserve.
- (b) Any person or persons guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and punishable as set forth in Section 1-7 of this Code.

*Amendments to existing City Code are denoted by ~~strikeouts~~ and ALLCAPS.

*Any future amendments would be by Ordinance of City Council.

PROPOSED AMENDMENT TO TEMPE CITY CODE*

RELATED TO PRESERVES

Sec. 23-111. - Rules for use; civil penalty.

- (a) All persons using a preserve shall comply with the following, except as may be specifically authorized by a permit or permits issued as provided in Section 23-112 of this article:
- (1) No person shall park any automobile, truck, motorcycle, motor scooter, motorized play vehicle or motorized skateboard as defined in Sections 19-1(b)(6) and (7) of this Code, or other motor vehicle upon the grounds of a preserve except within specifically designated parking areas during preserve hours, WITH THE EXCEPTION OF AUTHORIZED CITY VEHICLES;
 - (2) No person shall commit any act in a preserve so as to endanger the health and safety of themselves or other preserve users;
 - (3) No person shall use any portion of a preserve for golfing purposes, WITH THE EXCEPTION OF DISC GOLF, IN IDENTIFIED AREAS;
 - (4) No person shall use any portion of a preserve for archery, firearm or other projectile producing devices;
 - (5) No person shall use any water source at a preserve for swimming or bathing, animal swimming or bathing, washing clothes, cleaning fish or other unsanitary activities, except at places designated for such activities;
 - (6) USE OF ROLLING, NONMOTORIZED VEHICLES, INCLUDING BICYCLES, ROLLER SKATES, AND IN-LINE SKATES, IS PROHIBITED WHERE POSTED ~~No person shall operate skateboards, roller skates, in-line skates, bicycles or any rolling (nonmotorized) vehicles in a preserve;~~
 - (7) No person shall use any sound amplification equipment in a preserve;
 - (8) No fires or cooking are allowed in a preserve;
 - (9) No person shall damage or wastefully or improperly use any city-owned improvements in a preserve.
 - (10) All preserve users must remain on designated and posted trails to prevent damage to the land and all other areas shall be considered "off limits" for any use;
 - (11) No person shall use any preserve facility, or any area in a preserve which has been declared "closed" and which has been so designated and posted by the City;
 - (12) The sale of food, beverages or other merchandise is prohibited;
 - (13) No person shall feed, threaten, harass, disturb or collect wildlife in a preserve;
 - (14) No person shall remove any wildlife from a preserve, or release, abandon, place, bury or otherwise dispose of any animal, carcass or remains of an animal in a preserve;
 - (15) Possession or use of fireworks in a preserve is prohibited;
 - (16) No person shall tether, launch or land a hot air balloon in a preserve, except in the case of emergency;
 - (17) Dogs are restricted to trailheads and designated trails, except dogs being used by city police personnel or other law enforcement officers in the course of their official duties;
 - (18) Dogs must be secured on a leash of not more than six (6) feet at all times while in a preserve. The owner or custodian of a dog is responsible for the acts and conduct of the dog at all times when the dog is in a preserve;

*Amendments to existing City Code are denoted by ~~strikeouts~~ and ALLCAPS.

*Any future amendments would be by Ordinance of City Council.

PROPOSED AMENDMENT TO TEMPE CITY CODE*

RELATED TO PRESERVES

- (19) The owner or person in custody of a dog shall immediately pick up all dog droppings (fecal matter), place them in a closed or sealed container and deposit them into a trash receptacle or remove them from a preserve. The owner or person in custody of a dog must have in their possession a waste container for pick up purposes;
 - (20) NO SMOKING SHALL BE PERMITTED IN THE PRESERVE ~~No person shall ride a horse or other animal upon the grounds of a preserve except horses being used by city police personnel or other law enforcement officers in the course of their official duties;~~
 - (21) No person shall throw, deposit or place any commercial or non-commercial handbill in or upon any attended or unattended vehicle parked or located in a preserve, or upon any structure within a preserve;
 - (22) NO PERSON SHALL ERECT ANY TEMPORARY STRUCTURES, INCLUDING TENTS, TARPS AND CANOPIES, IN THE PRESERVE ~~No person shall have a glass beverage container in a preserve;~~ and
 - (23) GAS POWERED OFF-ROAD VEHICLES, REMOTE CONTROL CARS, MODEL AIRCRAFT, AND INCENDIARY MODEL ROCKETS ARE PROHIBITED IN THE PRESERVE ~~No person shall knowingly, intentionally or recklessly litter, or throw, toss or otherwise propel any glass object or container in a preserve;~~
 - (24) NO GROCERY CARTS, DOLLIES, HAND TRUCKS, PLATFORM TRUCKS, OR WAGONS ARE ALLOWED IN THE PRESERVE; AND
 - (25) NO PERSON SHALL COLLECT FIREWOOD IN THE PRESERVE.
- (b) All violations under this section are civil and shall be enforced as specified in DIVISION 3 OF THIS ARTICLE ~~Sections 1-7 through 1-11 of this Code.~~

Sec. 23-112. - Permits; exceptions.

- (a) The provisions of Sections 23-110 and 23-111 shall not apply to persons or groups which have been issued a permit by the Community Services Director, or designee, to engage in such activities. Also the provisions shall not apply to city police personnel or other law enforcement officers, Fire Medical Rescue Department personnel and other city employees in the course of their official duty; or others authorized by the City to perform inspection, repair or maintenance work, persons providing emergency, search and rescue, medical services or others on preserve related business when authorized by the Community Services Director.
- (b) Any permit issued pursuant to this section must be in the possession of at least one (1) person using a preserve and must be shown upon request.

Sec. 23-113. - Authority to establish additional rules and regulations.

- (a) The Community Services Director shall have the authority to make such additional rules and regulations as are necessary to manage, use, preserve and govern a preserve and the activities that are the subject of this article and shall do so with the assistance of the Parks, Recreation, and Golf, AND DOUBLE BUTTE CEMETERY Advisory Board and, when appropriate, the Historic Preservation Commission. Copies of such rules and regulations shall also be maintained on file in the office of the Community Services Director and at such preserve facilities, as applicable, to which the resolutions and rules and regulations apply.
- (b) IN ORDER TO BETTER PRESERVE THE NATURAL DESERT ENVIRONMENT OR OTHER UNIQUE CHARACTERISTIC OF A PRESERVE, THE CITY COUNCIL MAY ADOPT A MANAGEMENT PLAN FOR A PRESERVE OR PARTS OF A PRESERVE.

*Amendments to existing City Code are denoted by ~~strikeouts~~ and ALLCAPS.

*Any future amendments would be by Ordinance of City Council.

PROPOSED AMENDMENT TO TEMPE CITY CODE*

RELATED TO PRESERVES

- (c) THE PUBLIC WORKS DIRECTOR AND COMMUNITY SERVICES DIRECTOR, IN CONSULTATION WITH THE PARKS, RECREATION, GOLF, AND DOUBLE BUTTE CEMETERY ADVISORY BOARD AND APPROPRIATE CITY DEPARTMENT DIRECTORS, MAY DEVELOP MANAGEMENT PLANS FOR REVIEW AND ADOPTION BY THE CITY COUNCIL.
- (d) The provisions of a management plan adopted by the City Council shall be enforced as provided in Division 3 of this Article.

DIVISION 3. - ADMINISTRATION AND ENFORCEMENT

SEC. 23-121. - COMMENCEMENT OF CIVIL ACTION, CITATION, CONTENTS.

ALL VIOLATIONS UNDER THIS ARTICLE ARE CIVIL UNLESS OTHERWISE SPECIFIED, AND SHALL BE COMMENCED BY DELIVERING A CITATION TO THE PERSON RESPONSIBLE FOR THE VIOLATION.

SEC. 23-122. - CIVIL FINES AND PENALTIES IMPOSED.

- (A) THE CIVIL FINE/PENALTY FOR VIOLATING ANY PROVISION OF THIS ARTICLE, UNLESS OTHERWISE SPECIFIED, SHALL BE NOT LESS THAN ONE HUNDRED DOLLARS (\$100.00) NOR MORE THAN ONE THOUSAND DOLLARS (\$1,000.00).
- (B) IN ADDITION TO THE AMOUNT OF THE FINE IMPOSED UNDER SUBSECTION (A) ABOVE, THERE IS IMPOSED A DEFAULT PENALTY IN THE AMOUNT OF FIFTY DOLLARS (\$50.00) SHOULD THE DEFENDANT FAIL TO APPEAR AND ANSWER FOR A VIOLATION OF THIS ARTICLE WITHIN THE TIME PERIOD STATED ON THE CITATION OR FAILS TO APPEAR AT THE TIME AND PLACE SET BY THE COURT FOR A MATTER ARISING UNDER THIS ARTICLE.
- (C) THE COURT MAY ENFORCE COLLECTION OF DELINQUENT FINES AND FEES AS MAY BE PROVIDED BY LAW. ANY JUDGMENT FOR CIVIL SANCTION PURSUANT TO THIS CODE MAY BE COLLECTED AS ANY OTHER CIVIL JUDGMENT.

SEC. 23-123. - EACH DAY SEPARATE VIOLATIONS.

EACH DAY THAT A VIOLATION OF THIS ARTICLE IS PERMITTED TO CONTINUE OR OCCUR BY THE DEFENDANT SHALL CONSTITUTE A SEPARATE OFFENSE SUBJECT TO SEPARATE CITATION PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

SEC. 23-124. - HABITUAL OFFENDER.

A PERSON WHO COMMITS A VIOLATION OF THIS ARTICLE AFTER HAVING PREVIOUSLY BEEN FOUND RESPONSIBLE BY THE COURT ON THREE (3) SEPARATE OCCASIONS FOR COMMITTING A CIVIL VIOLATION OF THIS ARTICLE WITHIN A TWENTY-FOUR (24) MONTH PERIOD, WHETHER BY ADMISSION, BY PAYMENT OF THE FINE, BY DEFAULT, OR BY JUDGMENT AFTER HEARING, SHALL BE CHARGED WITH A CRIMINAL MISDEMEANOR PURSUANT TO THE GENERAL PENALTIES PROVISION OF SECTION 1-7. THE TEMPE CITY PROSECUTOR IS AUTHORIZED TO FILE A CRIMINAL MISDEMEANOR COMPLAINT IN THE TEMPE MUNICIPAL COURT AGAINST HABITUAL OFFENDERS WHO VIOLATE THIS SECTION. IN APPLYING THE TWENTY-FOUR (24) MONTH PROVISION, THE DATES OF THE COMMISSION OF THE OFFENSE SHALL BE THE DETERMINING FACTOR, IRRESPECTIVE OF THE SEQUENCE IN WHICH THE OFFENSES WERE COMMITTED.

*Amendments to existing City Code are denoted by ~~strikeouts~~ and ALLCAPS.

*Any future amendments would be by Ordinance of City Council.

PROPOSED AMENDMENT TO TEMPE CITY CODE*

RELATED TO PRESERVES

Section 2. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption or at any later date specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ___ day of _____, 2017.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney

*Amendments to existing City Code are denoted by ~~strikeouts~~ and ALLCAPS.

*Any future amendments would be by Ordinance of City Council.