

**ORDINANCE NUMBER 2020-05**

**AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA AMENDING CHAPTER 5, BUILDING AND CONSTRUCTION, SECTION 5-10-9, HILLSIDE SAFETY IMPROVEMENT MEASURES AND PROCESS; REPLACING THE HILLSIDE SAFETY MANUAL AND INSTEAD ADOPTING HILLSIDE SAFETY IMPROVEMENT MEASURES AND PROCESSES DIRECTLY INTO CHAPTER 5, SECTION 5-10-9.**

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA:**

**Section 1.** Chapter 2, Article 2-5-6, Hillside Building Committee, is hereby amended (with deletions shown as ~~strikethroughs~~ and additions shown in **bold type**):

Section 2-5-6      Hillside Building Committee

- A. The Hillside Building Committee (Committee) is hereby established. The Committee shall review applications for building permits in a Hillside Development Area, as defined under the Town's Zoning Ordinance.
- B. The Committee shall consist of three (3) rotating members of the Planning Commission and two citizen members. The citizen members shall be appointed by the Mayor and confirmed by the Town Council. The citizen members must be Town residents but may not be members of the Planning Commission or Town staff.
- C. The term of citizen members shall be two (2) years. The first appointees shall serve individual terms of one year and two years. The rotating terms of the members of the Planning Commission shall coincide with their terms of office; however, such members shall serve on the Committee for staggered intervals as established by the Chair of the Planning Commission.
- D. At the start of each rotation cycle, the Committee members shall select the Hillside Committee Chair, who shall serve until the start of a new rotation cycle.

If a Planning Commission member in active service on the Committee is absent from any meeting of the Committee, a substitute from the Commission may serve. This substitute member shall be considered a member of the Committee for voting and quorum purposes. Three Committee members shall constitute a quorum.

In addition to the review of applications for development within lands designated as "Hillside Development Areas" pursuant to the provisions of Article 22 of the Zoning Ordinance of the Town of Paradise Valley, otherwise referred to as the "Hillside Development Regulations," the Hillside Building Committee shall, in conjunction with the Town Engineer, coordinate the Hillside Safety Improvement Measures and Process to the extent required by Section 5-10-9 of the Town Code ~~and the Hillside Safety Improvement Measures and Process Manual~~. As part of

the Hillside Safety Improvements and Process, all applications for development or building and construction within Hillside Development Areas are required to submit a pre-application to the Town Engineer with the forms and submittals required by the Town Engineer as needed to determine the need for all such applications to comply with certain requirements pursuant to the Hillside Development Regulations and the Hillside Safety Improvement Measures and Process Manual.

**Section 2.** Chapter 5, Building and Construction, Section 5-10-9 is hereby amended (with deletions shown as ~~strikethroughs~~ and additions shown in **bold type**):

## **CHAPTER 5 BUILDING AND CONSTRUCTION**

Section 5-10-9 Hillside Safety Improvement Measures and Process

~~That a certain document, known as the Hillside Safety Improvement Measures and Process Manual, Town of Paradise Valley (three copies of which are on file in the office of the Town Clerk of Paradise Valley, Arizona and also available to the public online at the Town of Paradise Valley website) is adopted as a part of this chapter as if fully set forth in this section.~~

### **A. Purpose**

- 1. The Hillside Safety Improvement Measures and Process provides guidance for compliance with specific town regulations applicable to building and construction on all land within the “Hillside Development Area,” as such is designated and defined pursuant to Section 2202 of Article 22 of the Zoning Ordinance of the Town of Paradise Valley, that is, the “Hillside Development Regulations.” This manual does not modify or change any requirements or approval processes required pursuant to the Hillside Development Regulations, but it does supplement the Hillside Development Regulations with specific requirements related to building and construction activities within the Hillside Development Area to ensure construction plans and construction activities on properties within the Hillside Development Area are conducted in a manner that improves safety.**
- 2. In furtherance of this purpose, the Town Engineer may require a Safety Improvement Plan (“SIP”) (as defined in the subsection E.1, Requirements) to reduce the negative impacts of construction activities in the Hillside Development Area on the surrounding neighborhoods by mitigating potential civil engineering infrastructure failure; subsurface or hillside seismic refraction damage that may result in future landslides; falling Boulders; subsurface or surface erosion; subsurface water erosion created by seismic cracks or fissures; noise; and/or dust.**
- 3. A Construction Staging Plan (“CSP,” as defined below) is required for all construction activities in Hillside Development Areas.**

**B. Safety Measures and Review Process.** The Safety Measures and Review Process (as defined herein) consists of a Safety Improvement Plan. The Safety Improvement Plan shall be reviewed prior to Combined Hillside Building Committee Review or Formal Hillside Building Committee Review (as such are defined in the Hillside Development Regulations). The Town may hire outside firms or technical advisors to assist with the Safety Improvement Plan review or may require third party inspections. Unless waived by the Town Manager, the costs associated with such reviews and inspections shall be borne by the applicant.

**C. Construction Staging Plan Requirement and Review Process.** The Construction Staging Plan shall be required and reviewed no later than the beginning of the building permit application process. The applicant may wish to submit sooner in the review process, which is deemed acceptable by the Town.

**D. Definitions.** In this ordinance the following terms shall be defined:

1. “Applicant” - refers to an applicant, a property owner, an owner/builder, architect, developer, engineer or contractor.
2. “Boulders” - A detached rock fragment that has, as its least dimension, a diameter of 36 inches, or any existing boulder as determined by the analysis of a registered geologist.
3. “Construction Staging Plan” (or “CSP”) - a plan required under subsection G that addresses the potential impacts of the anticipated construction on the site and which includes construction entrances and exits, material staging and storage, circulation for construction vehicles and equipment on-site and off-site, parking plans for construction vehicles and equipment, any special temporary traffic control plans for heavy equipment or cranes, aerial deliveries, trash storage and removal, temporary fencing, location of toilet facilities, and other items identified by Town based on circumstances of the property or surrounding area.
4. “Drainageways”, “Watercourse” or “Hillside Washes” - A natural watercourse at least two feet deep from the top of bank and measuring at least five feet wide at the top of bank in accordance with the Storm Drainage Design Manual.
5. “Loose Fill” - A deposit of soil, rock, or other materials placed by man.
6. “Raw Spill Slope” - An area created by causing or allowing earth or other material to fall, flow or run down a slope, thereby altering its natural appearance and topography.
7. “Registered Professional Engineer” - A registered professional engineer including, but not limited to, a geotechnical engineer, civil engineer, or structural engineer, consistent with the registration requirements of Title 32 of the Arizona Revised Statutes.
8. “Safety Improvement Plan” (or “SIP”) – As defined in subsection E.1.

9. **“Subsurface or Seismic Damage”** - Knowledge of subsurface or seismic damage that may result in future landslides/rockslides or that may have resulted from adjacent or previous development and should be verified and noted through a seismic refraction survey.
10. **“Technical Advisory Board”** (or **“TAB”**) - a group consisting of the Town Engineer, the Town Building Official, and the Hillside Development Administrator.

**E. REQUIREMENTS FOR A SAFETY IMPROVEMENT PLAN**

1. **Purpose:** The Hillside Safety Improvement Plan (or **“SIP”**) is intended to improve safety at the property and in the surrounding area via technical review of various items, including the need to address the impacts of Boulders, Loose Fill; Raw Spill Slopes; potential Subsurface or Seismic Damage; necessary Drainageways, Watercourses or Hillside Washes. The SIP formalizes unwritten practices and is intended to reduce the negative impacts of construction activities on the surrounding neighborhoods by implementing safety standards that mitigate potential: civil engineering infrastructure failure, Subsurface or Seismic Damage that may result in landslides, falling Boulders, subsurface or surface erosion, subsurface water erosion created by seismic cracks or fissures, noise, and dust as applicable.
2. **Process:** A Pre-application conference to review the Safety Improvement Plan Checklist will occur with the Town Engineer. The final approved SIP will be submitted to the Town Engineer, and the final approved SIP will be maintained by the Town and kept as a permanent record to ensure consistent administration.
3. **Content:** On Hillside exterior remodels, additions or new construction, and projects not eligible for Hillside Chairman review, the Town Engineer may, as applicable, require a Safety Improvement Plan that includes, but is not limited to, the following:
  - a. **Geotechnical Report** – The Applicant shall submit a geotechnical report authored by a Registered Professional Engineer that evaluates the area within two hundred feet (200’) of the building pad up to the property line and the entire driveway to the access road.
    - (1) This geotechnical report shall include:
      - i. Seismic refraction survey;
      - ii. Groundwater occurrences;
      - iii. Slope stability report; and,
      - iv. Boulder survey, if necessary and as required;
    - (2) These sub-reports shall address the following:
      - i. Indicate and evaluate the location of subterranean fractured or unstable rocks and fissures;
      - ii. Indicate and evaluate loose or unstable Fill;
      - iii. Indicate and evaluate risk of Boulder movement, if necessary;

- iv. Identify recent geologic events in area, such as (but not limited to) rock slides, mudslides, and earthquakes, and address potential impacts and results to the site;
- v. Identify presence of groundwater; and
- vi. Other conditions that create hazards to person or property in the vicinity of the building site.

**b. Stabilization and Mitigation Plan**

- (1) A Registered Professional Engineer shall provide an engineering design to stabilize the site and mitigate those items identified above, including rock fall, or based upon construction activity (e.g. the plan can illustrate buffer zones and rock catching devices, pinning, netting, etc.).
- (2) The Town Engineer may require the Applicant to procure an approved third party inspector (e.g. geotechnical engineer) to inspect recommendations in all approved geotech reports and evaluate the stabilization and mitigation plan. Inspection reports shall be provided to the Town.

**c. Blasting Plan & Permit**

- (1) If blasting is proposed, all blasting requirements identified in Article 5-10-4 of the Town Code must be fulfilled and complied with;
- (2) The Town and/or a third-party inspector must be present at the time of the blast; and
- (3) The property owner must provide an umbrella insurance policy or other form of insurance acceptable to the Town Attorney before blasting.

**d. Grading and Drainage Plan**

- (1) Provide hydrologic study, grading and drainage plan for the property assuming a 100-year storm event per the Storm Drainage Design Manual.
- (2) Town and/or third-party inspector to review grading and drainage construction is consistent with plan.

- e. Seismic Refraction Survey - Unless waived by the Town Manager or designee, all proposed cuts shall require a seismic refraction survey performed by a registered geologist or registered geotechnical engineer. If the geological report, geotechnical report, or seismic refraction survey indicates fractured or unstable rock, the proposed location of the building site (or appurtenances) shall be changed to a stable location unless unstable condition(s) can be mitigated by an engineered design that creates a stable location and complies with the provisions of this Article and the Hillside Development Regulations in the Zoning Ordinance. The geological report and results of the seismic refraction survey shall be submitted to the Town.**

4. When deemed necessary, the Town Engineer may hire an outside firm to assist with or review an application, including the Safety Improvement Plan, and may require Applicant to pay for and provide a third-party report or inspection.
5. The Town Engineer may require inspection(s) by a third-party as deemed necessary. Any fees associated with outside review shall be paid by the Applicant at the Town Engineer's discretion.

#### **F. HILLSIDE INSURANCE REQUIREMENTS**

All Hillside development, including demolition, not eligible for a Hillside Chair review shall require the Applicant to provide a continuous project specific liability insurance policy for the duration of construction (from issuance of the first permit to Certificate of Occupancy/Completion) with a minimum limit of \$2 million per occurrence and \$5 million aggregate, and the Town must be named as an additional insured. Based on the potential impacts identified in the SIP and the Town's technical review of the SIP, the Town may, at its discretion, reduce the minimum limits of required insurance for projects with minimal complexity or anticipated impacts or increase the required insurance for projects with numerous complexities or impacts. Appropriate dollar values for insurance shall be the responsibility of the Applicant for the project. Insurance certificates must be provided to Town annually.

#### **G. CONSTRUCTION STAGING PLAN**

1. The Construction Staging Plan must be provided to the Town no later than at the time of the Building Permit process. An engineering seal is not required. All Town Hillside construction projects and activities will submit a Construction Staging Plan. When deemed necessary, the Town Engineer may hire an outside firm to assist with or review an application, including the Construction Staging Plan. The following elements will be required by the Town in a Construction Staging Plan:
2. **Construction Staging Plan Checklist:**
  - a. Location of construction entrances and exits;
  - b. Location of equipment and material staging and storage;
  - c. Onsite circulation for construction vehicles and equipment (plan includes on-site and off-site deliveries, employee parking, turn-arounds, etc.) on public and private roads and on private driveways, as applicable;
  - d. Parking plan for construction vehicles and equipment. Parking plans considerations may include (but are not limited to) no parking within five feet of driveways or mailboxes, parking on only one side of street. Hillside parking must be on the uphill side of a hillside road, as tonnage weight of vehicles and equipment can undermine hillside roads. If an alternate location other than uphill side parking is identified, it must be approved by the Town Engineer;
  - e. Special temporary traffic control plan as necessary (e.g. for crane);
  - f. Conveyance of neighborhood traffic, including emergency vehicles;
  - g. Location and plan regarding any aerial deliveries, as applicable;



**3. Staff Reviews Concept Plan Submittal**

- a. Staff reviews the Concept Plan in accordance with the regulations and prepares the packet for HBC Concept Plan Review.
- b. If the Applicant submits the SIP at this stage, staff conducts steps according to the Safety Improvement Plan Review Box.

**4. HBC Concept Plan Review Meeting**

- a. Notice of the HBC Concept Plan Review meeting is given. Notice is sent by Applicant to neighbors within 1,500 feet by mail with affidavit of mailing. Staff give notice to all those on “Notify Me”.
- b. HBC reviews the Concept Plan in accordance with regulations and provides the Applicant with input and direction.
- c. After the HBC Concept Plan Review meeting, the Applicant submits the Formal Plan Review and Safety Improvement Plan. The Town Engineer reviews the SIP requirements.

**5. Applicant Submits Formal Plan**

- a. Applicant submits material required for the Formal Plan Review per the Hillside Development Regulations.
- b. If not already submitted, the Applicant must submit the Safety Improvement Plan at this stage. Once submitted, staff follows the steps in the Safety Improvement Plan Review Protocol below.
- c. Town Engineer reiterates to the Applicant that the Construction Staging Plan (CSP) is required as part of the building permit application process (but the Applicant may choose to submit CSP prior to building permit application submission).

**6. Safety Improvement Plan Review Protocol**

- a. Applicant submits 2 copies and a digital version of the Registered Professional Engineer sealed reports comprising the SIP to the Town Engineer.
- b. The Town (using members of the Technical Advisory Board and a third-party engineer if deemed appropriate) reviews the Safety Improvement Plan in accordance with Article 5 of the Town Code and cross references it as applicable to the Hillside Development Regulations.
- c. Applicant sends a notice of the Safety Improvement Plan availability to neighbors within 1,500 feet of the subject property and provides an affidavit of mailing. Town staff sends notice to “Notify Me” list. Copy of the SIP available at the Town Engineer’s office:
  - (1) The notice shall identify: 1) that a copy of the SIP is available for review at the Town; 2) that comments regarding the proposed SIP must be submitted to the Town within forty-five (45) calendar days from the

notice mailing date; and 3) that any comments regarding the SIP must be sealed by a Registered Professional Engineer.

- d. At expiration of the forty-five (45) days from the notice mailing date, the Town aggregates comments from neighbors' engineers, comments from Technical Advisory Board, and comments from any Town-hired Registered Professional Engineer(s) and directs the Applicant to address the comments and, if applicable, return a newly sealed SIP.
- e. When the newly sealed SIP is returned, the Technical Advisory Board, in conjunction with any Town-hired Registered Professional Engineer(s), reviews and determines whether the updated Safety Improvement Plan adequately address all concerns.
- f. If concerns are not adequately addressed, the Town returns the SIP to the Applicant. This redline process can continue until the Technical Advisory Board is satisfied.
  - (1) If the Applicant feels it is unreasonable and a violation of due process, they may elect to file in a court of law
- g. The Town Engineer and/or Technical Advisory Board, in his or their sole discretion, may choose to require the Applicant to address additional concerns, delete elements or maintain the SIP in the presented form (e.g. ignore the sealed engineer comments of neighbor(s) and approve the Applicant's submitted SIP).
  - (1) If the Applicant feels it is unreasonable, they can file a court action.
  - (2) If the neighbor(s) feel the Safety Improvement Plan is unsatisfactory, they can file an action or pursue private cause of action against the Applicant, if applicable.
  - (3) All lawsuits against the Town will likely be tendered to the Applicant and/or Applicant's engineer.
- h. The Town Engineer and/or Technical Advisory Board also reserve the right to add or delete checklist requirements based upon new information made available during the review process.
- i. When the Town Engineer and/or Technical Advisory Board are satisfied, the Applicant's Registered Professional Engineer sealed reports comprising the SIP and the Formal Hillside Plans are forwarded to the HBC as part of Formal Plan Review. SIP reports are public records that remain the responsibility of the Applicant and have the seal of the Applicant's engineer who would be liable for any failure of the SIP.
- j. Town signs/stamps SIP reports where appropriate.

## **7. HBC Formal Plan Review**

- a. Notice of the HBC Formal Plan Meeting is given. The Applicant sends notice to neighbors within 1500 feet by mail with affidavit of mailing. Staff provide notice to all those on "Notify Me".
- b. HBC reviews the Formal Plan in accordance with the code and takes action on the application (e.g. approve, approve with stipulations, deny, or continue).
- c. Once the HBC approves the Formal Plan, the Applicant submits plans for building permit.

**8. Building Permit Process**

- a. Town Engineer and Building Official review elements of Construction Staging Plan with the Applicant and establish requirements to be met as a condition of issuing and maintaining the building permit.**
- b. Normal building permit process is followed.**
- c. Town and/or third-party inspector verify that construction site is consistent with the CSP.**

**Section 4.** Any person found guilty of violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$2,500, or imprisonment not to exceed six months, or by both said fine and imprisonment. Each day a violation continues shall be a separate offense punishable as described. A violation of the provisions of this Code or amendments thereto may constitute a civil offense, and any person who is served with a citation charging such violation and who admits, or is found responsible for such offense shall be liable to pay to the Town a civil sanction in an amount not to exceed seven hundred fifty dollars. Each day that a violation continues shall be a separate offense punishable as described.

**Section 5.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**Section 6.** This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise Valley, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Jerry Bien-Willner, Mayor

SIGNED AND ATTESTED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2020.

ATTEST:

\_\_\_\_\_  
Duncan Miller, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew M. Miller, Town Attorney