

ORDINANCE NUMBER 2018-05

AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA, AMENDING CHAPTER 10 OFFENSES, BY ADDING A NEW ARTICLE 10-13, UNRULY GATHERINGS

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

Section 1. The Town of Paradise Valley's Code is hereby amended by adding a new Article 10-13, Unruly Gatherings, to Chapter 10, OFFENSES, as follows, showing text to be added in **bold** and deleting the text shown by ~~strikeout~~.

CHAPTER 10 OFFENSES

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ARTICLE 10-13 UNRULY GATHERINGS

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Article 10-13 UNRULY GATHERINGS

Section 10-13-1 Purpose

The Town Council of Paradise Valley finds and determines that unruly gatherings held on private property may constitute a nuisance which is a threat to the peace, health, safety and welfare of the general public. Police officers have been required to make repeated responses to unruly parties, gatherings or events to abate the nuisance and to disperse uncooperative or unruly participants and to restore the public peace and welfare. Such repeat calls deplete the manpower and resources of the police department and can leave other areas of the Town with compromised levels of police protection so as to create a significant threat to the safety of both citizens and police officers alike.

The purpose of this article is to deter behavior associated with unruly gatherings and allow the Town to obtain reimbursement for expenses related to responses to unruly gatherings which have been determined to be a threat to the peace, health, safety, or welfare of the general public.

10-13-2 Definitions

In the Article, unless the context otherwise requires, the following terms or phrases are defined as follows:

- 1. “Increased Response” means the response of two or more uniformed officers to the scene of an Unruly Gathering in which eleven (11) or more persons are present and where it becomes necessary to restore the public peace, health, safety and/or general welfare.**
- 2. “Juvenile” means a minor under the age of eighteen (18) years.**
- 3. “Minor” means any person under the age of twenty-one (21) years.**
- 4. “Owner” means any owner, as well as any agent of an owner such as a landlord, acting on behalf of the owner, who controls or otherwise regulates the occupancy or use of the property.**
- 5. “Premises” means any property that is the site of an Unruly Gathering. For residential properties, Premises can mean the dwelling unit, units or other common areas where the unruly gathering occurs.**
- 6. “Police Service Fee” means the fee to reimburse the cost of services provided by the Police Department in response to the Unruly Gathering. The Police Service Fee is more fully defined in §10-13-7(C).**
- 7. “Responsible Person” means any person in attendance at an Unruly Gathering including any Owner, occupant, tenant, or tenant's guest or any sponsor, host or organizer of a social activity or special occasion constituting the Unruly Gathering, even if such person is not in attendance. If such a person is a Juvenile, the term "Responsible Person" includes, in addition to**

the Juvenile, the Juvenile's parents or guardians. Responsible Person does not include Owners or persons in charge of Premises where an Unruly Gathering takes place if the persons in attendance obtained use of the Premises through illegal entry or trespassing. A person need not be present at the time of the party, gathering or event to be deemed responsible.

8. "Special Security Assignment" means the police services provided during any call-in response to complaints or other information regarding unruly gatherings.
9. "Unruly Gathering" means a gathering of five (5) or more persons on any private property, including property used to conduct business, in a manner which causes a disturbance of the quiet enjoyment of private or public property by any person or persons and also includes one of the following: excessive noise, impeding traffic, obstruction of public streets by crowds or vehicles, use or possession of illegal drugs, drinking in public areas, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and/or littering.
10. "Unruly Gathering Notice (Notice)" means be a document identifying the Premises as the site of an Unruly Gathering in which a citation was issued and advising the Owner, occupants, guests or other persons entering the Premises that any future Unruly Gathering upon the Premises shall have additional consequences.

Section 10-13-3 Unruly Gathering

- A. When any police officer responds to any Unruly Gathering and that police officer determines that there is a disturbance to the quiet enjoyment of public or private property, the police officer may issue a citation for Unruly Gathering. Said violation is a class 1 misdemeanor.
- B. A police officer may abate an Unruly Gathering by reasonable means including, but not limited to, citation or arrest of violators under applicable ordinances or state statutes, and dispersing any remaining gathered participants. Any participant not a tenant on a lease document who fails to disperse may be deemed a Responsible Person and cited for Unruly Gathering.
- C. The police officer or other police employees shall provide an Unruly Gathering Notice to the Responsible Person(s) and/or Owner in any of the following manners:
 1. By personal service of any Responsible Person(s) being cited at the Unruly Gathering; or,

2. By posting of the Notice on the door of the Premises of the Unruly Gathering; or,
 3. By mailing the Notice to the Owner, at the address shown on the Maricopa County property tax assessment records. Such notification shall be made by certified mail; with the return receipt serving as evidence of service.
- D. Any Responsible Person(s) receiving a citation for an Unruly Gathering requiring Increased Response shall be assessed a Police Service Fee for Special Security Assignments relating to the Unruly Gathering as provided §10-13-7(C). In the event of more than one person is identified as a Responsible Person, any and all Responsible Persons shall be jointly and severally responsible for the entire Police Service Fee.
- E. Upon request, the Owner must provide the names of any and all occupants listed on the leasing documents at any location where the Police Department responds to an Unruly Gathering.
- F. On a first offense, an Owner who was present at the Unruly Gathering and who made contact with the responding officers at the scene may apply retroactively for a special event permit under Article 8-8 of the Town Code of Paradise Valley by the close of business on the next business day. A special event permit may or may not be granted by the Town Manager retroactively.

Section 10-13-4 Subsequent Unruly Gathering

- A. Consistent Premises - If, after receiving an Unruly Gathering Notice as provided in §10-13-3(C), a second or subsequent police response or responses is/are necessary to the same Premises for an Unruly Gathering within ninety (90) days of the first response, such response(s) shall be deemed a second response and subject to the higher fines and the Police Service Fee as provided in §10-13-7(C). If, after written notice of the violation as provided in §10-13-3(C), a third response is necessary to the same Premises for an Unruly Gathering within one hundred twenty (120) days of the second response, such response shall be deemed a third response and subject to the highest fines and the Police Service Fee as provided in §10-13-7(C).
- B. Consistent Responsible Person - If, after receiving an Unruly Gathering Notice as provided in §10-13-3(C), a second or subsequent police response or responses is necessary to any Premises involving the same Responsible Person for an Unruly Gathering within ninety (90) days of the first response, such response shall be deemed a second response and subject to the higher fines and the Police Service Fee as provided in §10-13-7(C). If, after written notice of the violation as provided in §10-13-3(C), a third response is

necessary to any Premises involving the Same Responsible Person for an Unruly Gathering within one hundred twenty (120) days of the second response, such response shall be deemed a third response and subject to the highest fines and the Police Service Fee as provided in §10-13-7(C).

- C. Once a Premises is initially posted as a result of an Unruly Gathering and the conduct causing the gathering to be unruly has ceased, a resumption of unruly behavior on the Premises resulting in another police response shall constitute a new and separate, yet cumulative, Unruly Gathering for purposes of this section.

Section 10-13-5 Posting of unruly gathering; removal of notice prohibited; right to contest posting

- A. **Contents of Notice.** The Premises at which the Unruly Gathering occurs shall be posted with a Notice stating:

1. That an Unruly Gathering has occurred at the Premises;
2. The date of the Unruly Gathering;
3. That any subsequent Unruly Gathering on the same Premises resulting in a citation, and subsequent conviction thereof, within a ninety (90) day period (or within one hundred and twenty days (120) of a second Unruly Gathering, as defined herein, with or without Increased Response, and within one hundred eighty days (180) of a third Unruly Gathering, as defined herein, with or without an Increased Response) shall result in the Responsible Person(s) liability for the penalties provided in this ordinance;
4. The right to contest the posting, as provided in subsection (4)(d) of this section; and,
5. Contact information at the police department.

- B. **Posting Requirements.** Premises shall be posted with an Unruly Gathering Notice as provided in this section each time an Unruly Gathering occurs. The Owner, occupant or tenant of the Premises, if present, shall be advised as to the location in which such Notice is posted in order to achieve both the security of the Notice and its prominent display. The Unruly Gathering Notice shall be posted in a place visible upon inspection by a police officer during the prescribed period. In the event that the Premises are already posted at the time of a subsequent posting, the ninety (90) day period from the date of the existing posting shall be extended an additional one hundred and twenty (120) days from the date of the subsequent posting.

- C. Removal of notice prohibited.** The Owner of the posted Premises shall be responsible for ensuring that the Unruly Gathering Notice is not removed, defaced, or concealed. The removal, defacement, or concealment of a posted Notice is a civil infraction carrying a mandatory penalty of a minimum of two hundred fifty dollars (\$250.00) in addition to any other penalties which may be imposed under this section.
- D. Right to contest posting.**
- 1.** An Owner, occupant, or tenant of the posted Premises may contest the posting of the Notice by filing a written petition for a civil hearing in the Town Municipal Court requesting that the court determine whether justification existed for posting of the notice under the provisions of this section. The petition must be filed within ten (10) days after the posting of the Notice or, if the Notice is given by mail, within fifteen (15) days after the postage date of the mailing of the Notice, and not thereafter. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the written petition and shall notify both the petitioner and the Town Attorney of the hearing date. In order to avoid the possibility of conflicting rulings, if more than one (1) petition is filed under this subsection relating to a single posting, for example by multiple lawful occupants of the posted Premises, the court shall set only one (1) hearing and shall consolidate the petitions and notify all petitioners of the hearing date and time. At the hearing, the Town has the burden of proving, by a preponderance of evidence, that the posting of the Notice was justified pursuant to the provisions of this section.
 - 2.** An Owner of a posted Premises, at any time after the posting or the mailing of the Notice, may petition the Town Municipal Court for an order directing the removal of the Notice on the grounds that the Owner has taken reasonable and necessary actions to prevent the occurrence of a subsequent Unruly Gathering at the posted location. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the petition and shall notify both the petitioner and the Town Attorney of the hearing date. At the hearing, the petitioner has the burden of proving, by a preponderance of evidence, that the petitioner has taken reasonable and necessary actions to prevent the occurrence of a subsequent Unruly Gathering. This petition process is not available to an Owner who was present at the Unruly Gathering and engaged in conduct causing the gathering to be unruly.

Section 10-13-6 Billing

The Chief of Police, or any person designated by the Chief of Police, shall cause appropriate billings for the Police Service Fee to be made to the Responsible

Person(s). Billings shall include the name and address of the Responsible Person, the date, time and location of the Unruly Gathering for which a Police Service Fee is imposed, and shall identify the services provided, any loss or damage and such other information as may be relevant.

A. The amount of such Police Service Fees charged shall be deemed a joint and several debt to the Town of any and all Responsible Persons, whether they received the benefit of such Special Security Assignment services or not. If the Responsible Person(s) for the Unruly Gathering is a Juvenile, then the parents or guardians of that Juvenile will also be jointly and severally liable for the costs incurred for police services. Any person owing money due for the Police Service Fee shall be liable in an action brought in the name of the Town for recovery of such amount, including reasonable attorney fees.

B. If a Responsible Person is the person who owns the property where an Unruly Gathering takes place, the Owner will not be charged the Police Service Fee unless:

- 1. the Owner was present at or had knowledge of the Unruly Gathering and took no reasonable action to prevent the unruly gathering or unlawful gathering; or**
- 2. the Owner had been sent a notice from the Town that an Unruly Gathering had taken place on the Premises, and a subsequent unruly gathering occurs within the prescribed time of the mailing of such notice to the owner; or**
- 3. the Owner/landlord fails to provide the names of the occupants listed on the leasing documents where the Unruly Gathering occurs.**

The Town reserves all rights and remedies at its disposal to collect the Police Service Fee.

Section 10-13-7

Penalties

A. For Responsible Person(s). If the Responsible Person is convicted of an Unruly Gathering, the penalty shall be a minimum mandatory fine of one thousand dollars (\$1000.00) or up to the maximum associated with a class one misdemeanor. Additionally, if the Responsible Person for an Unruly Gathering has previously been convicted for an Unruly Gathering, regardless of the location of the prior violation, the penalty shall be a minimum mandatory fine of two thousand dollars (\$2,000.00) for a second conviction, and a minimum mandatory fine of two thousand five hundred dollars (\$2,500.00) for a third or subsequent violation.

B. For Premises. If the Owner of a Premises is convicted of an Unruly Gathering, the penalty for conviction of an Unruly Gathering shall be a minimum mandatory fine of one thousand dollars (\$1000.00) for a first violation, a minimum mandatory fine of two thousand dollars (\$2,000.00) for

a second violation, and minimum mandatory fine of two thousand five hundred dollars (\$2,500.00) for a third or subsequent violation.

C. Police Service Fee. The Police Service Fee shall be an amount equal to the actual costs (essentially a reimbursement) of the law enforcement response to an Unruly Gathering, including:

1. the salaries, and associated benefits of the responding law enforcement officers corresponding to the amount of time actually spent in responding to and remaining at the Unruly Gathering; and,
2. the salaries, and associated benefits of any dispatcher or other police personnel involved with the response for the amount of time actually spent in responding to Unruly Gathering; and
3. any actual costs of any medical treatment to injured officers and/or the costs of repairing any damage to town equipment or property; and
4. the associated overhead costs including, but not limited to, vehicle and equipment used; with such overhead costs to be set annually within the first 60 days of the new fiscal year and available for inspection.

Section 10-13-8 Enforcement

The Police Department is authorized to enforce the provisions of this section regardless of whether enforcement is initiated by a complaint from a member of the public or detection by the Police Department without any such complaint. Peace officers shall enforce the provisions of this section using their sound discretion and the consideration of the totality of the circumstances, including but not limited to the use of the Premises (e.g. residential, commercial, etc.).

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the Town Code adopted herein by reference 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 3. 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 March 2018.

Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew M. Miller, Town Attorney