

**ORDINANCE NO. 06-25**

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE BY CREATING A NEW CHAPTER 20, SAGUARO CACTUS PRESERVATION.

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council") adopted Ordinance No. 93-22 on November 18, 1993, which adopted the Zoning Ordinance for the Town of Fountain Hills (the "Zoning Ordinance"); and

WHEREAS, the Town desires to amend the Zoning Ordinance to adopt regulations relating to saguaro cactus preservation; and

WHEREAS, in accordance with the Zoning Ordinance and pursuant to ARIZ. REV. STAT. § 9-462.04, public hearings regarding this ordinance were advertised in the November 15, 2006 edition of the Fountain Hills Times; and

WHEREAS, public hearings were held by the Fountain Hills Planning and Zoning Commission on November 30, 2006, and by the Town Council on December 21, 2006.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS as follows:

SECTION 1. That the Zoning Ordinance is hereby amended to create a new Chapter 20, Saguaro Cactus Preservation, to read as follows:

**CHAPTER 20**

**SAGUARO CACTUS PRESERVATION**

**Article 20-1 - Generally**

**Sections:**

- |                       |                       |
|-----------------------|-----------------------|
| <b>Section 20-1-1</b> | <b>Purpose.</b>       |
| <b>Section 20-1-2</b> | <b>Applicability.</b> |
| <b>Section 20-1-3</b> | <b>Definitions.</b>   |
| <b>Section 20-1-1</b> | <b>Purpose.</b>       |

The purpose of this Chapter is to preserve and protect saguaro cacti within the corporate limits of the Town for the following reasons:

- A. Saguaro cacti within the Town are a unique natural resource promoting tourism and contributing to the aesthetic well being of the community.
- B. Saguaro cacti are an integral part of the Sonoran Desert, contributing to high property values, high quality of life and a unique lifestyle that the community enjoys.
- C. Saguaro cacti are important in providing habitat and protection for desert wildlife.
- D. Saguaro cacti are drought tolerant, require little maintenance and use less water than other types of landscape plants.
- E. A saguaro cactus is slow growing and cannot always be successfully relocated. Certain specimen plants, because of their form, age or location, cannot be replaced by a plant of like character.

**Section 20-1-2 Applicability.**

The provisions of this Chapter shall apply to all development on property in the Town of Fountain Hills after December 21, 2006, that in any way threatens saguaro cacti protected by this Chapter or protected by an existing Saguaro Cactus Program or Saguaro Cactus Permit.

**Section 20-1-3 Definitions.**

As used in this Chapter, the terms set forth below shall have the meanings defined herein, unless the context clearly indicates otherwise:

**Destroy:** To kill or cause the death of a Protected Saguaro Cactus by any means.

**Mutilate:** To deface, maim, damage or disfigure a Protected Saguaro Cactus by shooting, chopping, pushing over, burning, cutting or any other means.

**Saguaro Cactus Permit:** A permit issued by the Town pursuant to the provisions of this Chapter for the purpose of removing from the premises, relocating on the premises or destroying a Protected Saguaro Cactus.

**Saguaro Cactus Program:** A development plan specifying the proposed treatment of Protected Saguaro Cactus for which a Saguaro Cactus Permit is required.

**Protected Saguaro Cactus:** A saguaro cactus that is at least three feet or greater in height.

**Relocate:** To transplant a Protected Saguaro Cactus to another location on the premises.

**Remove:** To transport a Protected Saguaro Cactus from the premises on which it is growing.

**Unsalvageable Saguaro Cactus:** A saguaro cactus that cannot be successfully relocated due to either of the following:

- A. Deteriorated health from disease, infestation or natural cases.
- B. Physical constraints related to location, orientation or general condition which obstructs and/or prevents the application of approved relocation techniques.

**Article 20-2 - Saguaro Cactus Program**

**Sections:**

- Section 20-2-1            Criteria.**
- Section 20-2-2            Required Submittals.**
- Section 20-2-3            Compliance.**

**Section 20-2-1            Criteria.**

Protected Saguaro Cactus shall not be destroyed, mutilated or removed from the premises or relocated on the premises except in accordance with an approved Saguaro Cactus Program after the issuance of a Saguaro Cactus Permit. The Planning and Zoning Administrator or designee shall review Saguaro Cactus Programs presented as part of the Saguaro Cactus Permit application and may approve, conditionally approve, or deny an application based upon compliance with and in consideration of the criteria contained herein. No Saguaro Cactus Program shall be approved until it has been demonstrated that the following criteria have been met:

- A. The proposed Saguaro Cactus Program shall (1) provide reasonable saguaro cactus salvage, protection, storage and (2) ensure consistency with the existing neighborhood character.
- B. The Saguaro Cactus Program should minimize the number of salvageable saguaro cacti that would be removed due to proposed construction on the site.
- C. A Protected Saguaro Cactus inventory shall provide a clear, comprehensive listing of saguaro cacti and their condition to allow for site planning and determination of plant salvageability.

**Section 20-2-2            Required Submittals.**

A Saguaro Cactus Program shall, at a minimum, consist of the information set forth in this Subsection. Additional information may also be required by the Planning and Zoning Administrator or his designee in order to ensure that the purpose of this Chapter is fulfilled.

- A. Saguaro cactus inventory containing:
  - 1. Site plan at a minimum scale of 1"=100' showing the location of all saguaro cactus within the proposed construction boundaries and within fifty (50) feet of the construction limits.
  - 2. List of the height, general condition and salvage status of all saguaro cacti to be relocated within the proposed construction boundaries.
- B. Protected Saguaro Cactus relocation methodology, including the proposed location of all saguaro cacti to be relocated within the proposed construction boundaries.
- C. Location of the temporary nursery where saguaro cactus are to be stored during construction.

**Section 20-2-3 Compliance.**

Failure to comply with the requirements of the approved Saguaro Cactus Program shall cause immediate suspension of all development activity on the site that is the subject of the Saguaro Cactus Program. Development shall not resume until the party responsible for failing to comply with the Saguaro Cactus Program has corrected the condition that caused such failure, including, but not limited to, replacing removed or damaged saguaro cacti and providing for maintenance of such new cacti for a period of three years following planting. Prior to the issuance of any permits for construction on or development of the property on which a violation occurred, the property owner shall enter into an agreement with a landscape installation and maintenance service and the Town to ensure replacement and three years maintenance of the replacement saguaro cactus, to provide disbursement of the sum of money for the purposes of replacement and to pay administrative costs. The sum of money paid to the Town in excess of the amounts specified in the agreement shall be refunded.

**Article 20-3 - Saguaro Cactus Permit**

**Sections:**

- Section 20-3-1 Permit Required.**
- Section 20-3-2 Written Permits; Validity.**
- Section 20-3-3 Permit Application, Form and Content; Action.**
- Section 20-3-4 Modification of Permit Approval.**
- Section 20-3-5 Term of Permit Approval.**
- Section 20-3-6 Plants to be Tagged; Requirements.**
- Section 20-3-7 Compliance with Approved Permit; Revocation.**
- Section 20-3-8 Inspections.**
- Section 20-3-10 Penalties.**

**Section 20-3-1 Permit Required.**

No person shall destroy, mutilate, remove from the premises, or relocate to another place on the premises a Protected Saguaro Cactus existing within the Town without first obtaining a Saguaro Cactus Permit from the Town according to the terms of this Chapter.

**Section 20-3-2 Written Permits; Validity.**

- A. The written permits required by this Chapter shall be issued by the Planning and Zoning Administrator or designee and subject to the provisions of this Chapter. No permit shall be valid unless signed by the Planning and Zoning Administrator or designated representative.
- B. The provisions of this Chapter are not intended to replace, modify or circumvent the requirements of any State, Federal or local agency.

**Section 20-3-3 Permit Application; Form and Content; Action.**

- A. The Planning and Zoning Administrator or designee shall prescribe and provide an application form for use by applicants for permits as required by this Chapter. The application shall show all such information and details required to document the nature and extent of the permit request.
- B. In no event shall a Saguaro Cactus Permit be issued unless a Saguaro Cactus Program, prepared in accordance with the requirements of this Chapter, is presented with the application.
- C. An application for a permit that includes the proposed destruction of one or more saguaro cacti shall be accompanied by a written statement from an arborist or similarly qualified professional that each saguaro cactus to be removed is not likely to survive due to disease or other life-ending condition.
- D. A Saguaro Cactus Permit may be obtained by the property owner of record or by another party acting as agent upon presentation of written authorization by the property owner of record.
- E. Applications may be approved, approved conditionally or denied. Where the Planning and Zoning Administrator or designee determines that the application is in conformance with the provisions of this Chapter, a permit shall be issued with such conditions attached as necessary to ensure that the Saguaro Cactus Program is successfully accomplished. Where it is determined that the application is not in conformance with the provisions of this Chapter, the application shall be denied. Action taken on applications may be appealed to the Board of Adjustment according to procedures set forth elsewhere in this Ordinance.

**Section 20-3-4 Modification of Permit Approval.**

It shall be unlawful to modify, alter or amend an approved Saguaro Cactus Permit or the accompanying Saguaro Cactus Program without reapplication according to the provisions of this Chapter.

**Section 20-3-5 Term of Permit Approval.**

A. Every permit issued by the Town under the provisions of this Chapter shall expire and become null and void if (1) the work authorized under the provisions of this Chapter is not commenced within 90 days from the date of issuance, unless otherwise specified as a condition of the permit approval or (2) the work authorized under the provisions of this Chapter is commenced and subsequently suspended or abandoned for a period of 90 consecutive days. Before such work can be recommenced, a new permit shall be obtained pursuant to the provisions of this Chapter.

B. Work shall be completed within the time period specified on the Saguaro Cactus Permit. The Planning and Zoning Administrator or designee shall have the authority to grant one 90 day extension of the time limit for completion of the work upon written request of the applicant. Failure to comply with the time limitation without an extension authorized by the Planning and Zoning Administrator shall require application for a new permit pursuant to the provisions of this Chapter.

**Section 20-3-6 Plants to be Tagged; Requirements.**

A. All saguaro cacti scheduled to remain in place or authorized for destruction or relocation by the approved Saguaro Cactus Permit must be tagged and numbered prior to permit submittal. Tags shall be color coded according to the following schedule so that the status of each plant may be easily identified. Cacti slated for destruction shall be tagged with blue plastic tape; cacti proposed for relocation shall be tagged with red plastic tape; and cacti proposed to remain in place shall be tagged with white plastic tape.

B. Tags required by this Chapter shall be affixed in a visible location on the cactus. Once affixed, the tags shall not be removed until the cacti are removed, relocated or destroyed in compliance with the Saguaro Cactus Permit and a final inspection has been made.

**Section 20-3-7 Compliance with Approved Permit; Revocation.**

All work authorized by a permit issued in conformance with the terms of this Chapter shall be completed as authorized. Failure to comply with the conditions of permit approval or the approved Saguaro Cactus Program shall constitute a violation of the Saguaro Cactus Permit and may be punishable by permit revocation and/or citation under the authority of this Chapter.

**Section 20-3-8 Inspections.**

All aspects of the work performed as a result of a Saguaro Cactus Permit issued under the provisions of this Chapter shall be subject to inspection by the Town.

**Section 20-3-10 Penalties.**

- A. A person found to be in violation of this Chapter shall be guilty of a class one misdemeanor, which upon conviction may be punishable by a base fine not exceeding \$2,500, or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment. Each day this violation continues shall constitute a separate offense.
  
- B. A Saguaro Cactus Permit shall not be issued after a violation resulting in destruction, removal or relocation of a saguaro cactus has been discovered until such time as (1) a program for restoration of the site shall be approved by the Planning and Zoning Administrator or designee based on the expected health, height and density of saguaro cacti within the vegetation community in which the violation occurred and (2) the property has been fully restored with healthy saguaro cactus.
  
- C. The Town Manager or designee may waive the restoration requirement in subsection B above when it will further the purpose of this Chapter and be in the best interest of the community, and when it is demonstrated that development of the property is imminent as determined by the following criteria:
  - 1. A development proposal is submitted for approval by the Planning and Zoning Commission within ten days of the notice of violation; and
  - 2. The proposed development is consistent with the Town of Fountain Hills General Plan; and
  - 3. The zoning of the property is consistent with the proposed development; and
  - 4. Infrastructure improvements are in place that can support the proposed development.
    - a. If a waiver is granted, \$2,500 per saguaro cactus shall be paid to the Town for the purpose of replacing and maintaining saguaro cacti.
    - b. Determination of the total sum of money to be paid to the Town pursuant to this Section shall be determined by the Planning and Zoning Administrator and shall be based upon the height, density and condition of saguaro cacti that existed on the property prior to violation, or upon inspection of the remains of saguaro cacti or other physical evidence as may be available.
    - c. The sum of money required by this Subsection shall be used to replace removed or damaged saguaro cacti whose retention is required by a Saguaro Cactus Program and to maintain such replacement cacti for a period of three years. Additionally, up to ten percent of the total amount

payable may be retained by the Town to cover its costs for replacing the saguaro cactus and enforcing this Chapter.

- D. Prior to issuance of any permits for construction on or development of the property, the property owner shall enter into an agreement with a landscape installation and maintenance service and the Town to ensure replacement and three years maintenance of the replacement saguaro cacti.

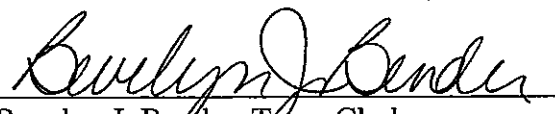
SECTION 2. That if any provision or any portion of any provision of this Ordinance is for any reason held to be unconstitutional or otherwise unenforceable by a court of competent jurisdiction, such provision or portion thereof shall be deemed separate, distinct and independent of the remaining provisions of this Ordinance and shall be severed therefrom without affecting the validity of the remaining portions of this Ordinance.

**PASSED AND ADOPTED** by the Mayor and Council of the Town of Fountain Hills, December 21, 2006.

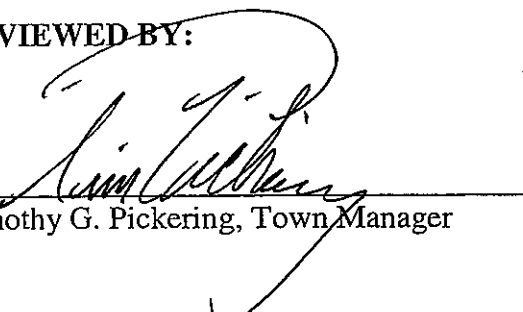
**FOR THE TOWN OF FOUNTAIN HILLS:**

  
\_\_\_\_\_  
W. J. Nichols, Mayor

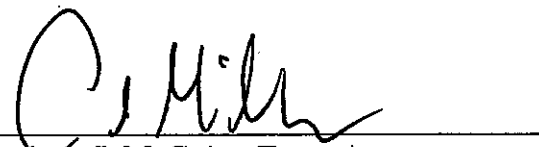
**ATTESTED TO:**

  
\_\_\_\_\_  
Bevelyn J. Bender, Town Clerk

**REVIEWED BY:**

  
\_\_\_\_\_  
Timothy G. Pickering, Town Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Andrew J. McGuire, Town Attorney