

## **ORDINANCE NO. 2025-10**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF SNOWFLAKE, NAVAJO COUNTY, ARIZONA, AMENDING THE TOWN OF SNOWFLAKE TOWN CODE, BY ADDING CHAPTER 9, *ENFORCEMENT PROCEDURES FOR VIOLATIONS OF TOWN CODE*, TO TITLE 1, *ADMINISTRATION*, ESTABLISHING AN ADMINISTRATIVE ENFORCEMENT PROCESS FOR CIVIL CODE VIOLATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.**

**WHEREAS**, the Mayor and Council desire to establish an informal, efficient, and inexpensive process for the adjudication of civil Town Ordinance [Code] violations, based upon an administrative hearing model;

**WHEREAS**, Arizona Revised Statutes, Title 9. Chapter 4, Article 8, Section 9-500.21, provides expressed authority for a town to establish administrative procedures for adjudication of civil violations of town ordinances; and

**WHEREAS**, the administrative procedure established by this Ordinance is an alternative to, but does not abrogate, the initiation of civil or criminal violations in the magistrate court, or the provisions relating thereto, pursuant to Title 1, Chapter 7, of the Snowflake Town Code.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SNOWFLAKE, NAVAJO COUNTY, ARIZONA AS FOLLOWS:**

**Section 1. General.** The Town of Snowflake Town Code, Title 1, *Administration*, is hereby amended by adding Chapter 9, *Enforcement Procedures for Violations of Town Code*, to read as follows:

### **1-9-1 Definitions**

As used within this Chapter, capitalized terms shall have the following meaning:

- A. Abatement means any action the Town may take on public or private property and any adjacent property as may be necessary to remove or alleviate a nuisance, including but not limited to demolition, removal, repair, boarding and securing or replacement of property.
- B. Alleged Violator means any person or individual, whether as principal, owner, occupant, agent, tenant, employee or otherwise, or an enterprise, whether a sole proprietorship, partnership, corporation or other legal entity that is alleged to have violated any provision of the Code and/or Planning & Zoning Ordinance as amended that is subject to enforcement pursuant to this Ordinance.

- C. Authorized Official means the following Town employees authorized to enforce the Town Code and Planning & Zoning Ordinance, and file complaints with the Administrative Hearing Officer.
- i. Town Manager or designee
  - ii. Town Attorney or designee
  - iii. Town Marshal or designee
  - iv. Director of Community Development or designee
  - v. Director of Public Works/Engineer or designee
  - vi. Building Official or Inspector or designee
  - vii. Code Enforcement Officer
- D. Civil Penalties mean any order to remediate a violation, a fine imposed by the Hearing Officer or an Order to Abate.
- E. Code Enforcement Officer means a Town employee authorized pursuant to the Town Code, the Community Development Director, Zoning Administrator, or Town Manager to file a Complaint and enforce the Town Code unless otherwise specified in the Town Code or Planning & Zoning Ordinance.
- F. Complaint means a formal notification of a civil violation of any Town Code or Planning & Zoning Ordinance filed with the Hearing Officer.
- G. Compliance Date means the date by which a property must meet the requirements of the Town Code and/or Planning & Zoning Ordinance as set forth by the Hearing Officer, Code Enforcement Officer or Authorized Official.
- H. Compliance Order means an order that directs the defendant to comply with provisions of the Town Code or Planning & Zoning Ordinance which includes corrective action.
- I. Default means not showing up for a hearing or failing to either admit or deny responsibility for a violation in a timely manner as may be determined by the Hearing Officer.
- J. Defendant means the same as alleged violator.
- K. Hearing means the meeting with the Hearing Officer at which time the Defendant and the Town present their cases regarding the Notice of Hearing.
- L. Hearing Officer [or Administrative Hearing Officer] means an individual appointed by the Town Council to hear and adjudicate alleged violations of any Town Code and/or Planning & Zoning Ordinance provision through the Administrative Hearing Procedures.
- M. Judgment means the decision of the Hearing Officer in cases related to violations of the Town of Snowflake Town Code and/or Planning & Zoning Ordinance as Amended.
- N. Notice of Hearing means the notice provided to the alleged violator setting the date for the hearing in front of the Administrative Hearing Officer. This is as the same meaning as Complaint.
- O. Owner means any person(s) including a legal entity having the right of legal title, or the beneficial interest, in a property or any portion thereof, as that interest is recorded by any governmental entity.
- P. Pre-hearing Discovery means documents, witnesses or other evidence related to a case, and which shall be exchanged between the parties prior to the Hearing.

- Q. Rules of Procedure mean those procedures as outlined under this Chapter to adjudicate violations of the Town Code or Planning & Zoning Ordinance.

### **1-9-2 General Provisions**

- A. Election of Remedies. Violations of this Code and/or Planning and Zoning Ordinance of the Town may be filed under the civil enforcement procedures below or by any means stated including Section 1-4-1 of this Code. For the purpose of enforcement of the Town Code, violations of any adopted building code will be considered violations of the Town Code as well, and as appropriate, simultaneous enforcement action may be taken by any Authorized Official. A person shall not be charged with both a civil and criminal offense for the same violation on the same date.
- B. Use of Administrative Hearing Officer. Authorized Officials as defined herein shall follow the Rule of Procedures as outlined under this Chapter when submitting a Complaint for alleged violation(s) to the Administrative Hearing Officer.

### **1-9-3 Owner's Responsibility for Violations by Tenants and/or Occupants, Habitual Offender Property**

- A. Owner Responsibility. It is the owner's responsibility to provide sufficient control, oversight, monitoring, and management of their property to prevent violations of Code and/or the Planning & Zoning Ordinance and to take all measures necessary to abate or eliminate public nuisances.
- B. Violations by Tenants. No owner of property shall permit any tenant(s) or occupant(s) of said property to commit a violation of the Code and/or Planning & Zoning Ordinance.
- C. Pre-Enforcement Notice. An owner shall be deemed to have permitted the tenant(s) and/or occupant(s) to commit a violation if the owner, or their representative, fails to take action to prevent the tenant(s) and/or occupant(s) from committing violations of this Chapter after notice has been provided. Such notice shall be in writing and contain the following:
1. The name of the tenant, if available, the property address and/or location and a description of the violation or violations;
  2. A statement that outlines the owner's responsibility and requirement to take all legal remedies available to cause the tenant(s) or occupant(s) to abate the violation and prevent any further occupant violations of the Town Code and/or Planning & Zoning Ordinance.
- D. Habitual Offender Property. Any property which receives three (3) notices of violation and/or orders of compliance for the same or different violations within a twenty-four (24) month period shall be designated as a habitual offender property. The owners of habitual offender properties may be charged with a Class 1 misdemeanor for violations of this Chapter. For purposes of calculating the twenty-four (24) month period under this subsection, the dates of the commission of the offenses shall be used. Any person found guilty of a Class 1 misdemeanor under this subsection shall be punished by a fine of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars

(\$2,500), exclusive of penalty assessments prescribed by law or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment, as provided by law.

- E. Termination of Habitual Offender Property Designation. The habitual offender property classification may be removed from the property by the Town upon a determination of all of the following:
1. Verification by Town Officials that all deficiencies have been corrected.
  2. Payment of all penalties and costs arising from enforcement.
  3. Satisfaction of any abatement/remediation agreement terms, as may be applicable.
  4. The passage of twenty-four (24) months without further violation when combined with a change of circumstances to warrant reconsideration including a change of ownership, property management, a specific plan of action to prevent future violations at the property, and/or evidence of appropriate steps through the judicial system to terminate the tenancy of any tenant who engaged in repeated violations of Code.

**1-9-4 Administrative Hearing Officer Scope**

- A. Qualifications. The Hearing Officer shall be qualified by experience and/or training in zoning and building issues, and familiar with the Town ordinances on zoning procedures, civil enforcement procedures and ordinances, order of abatements, court proceedings and documentation, and any staff policies adopted for zoning enforcement.
- B. Appointment. The Hearing Officer shall be appointed by Town Council with recommendations provided from the Town Manager. A secondary Hearing Officer may also be appointed in the event the primary Hearing Officer cannot serve or is unavailable to conduct hearings on a designated hearing date. The Council may also select additional Hearing Officers on an as needed basis.
- C. Classification. The Hearing Officer(s) shall be independent contractors and shall not be employees of the Town or a member of any Town Board or Commission.
- D. Term. The term of the Hearing Officer shall be for two (2) years, renewable at the option of the Council. The Town Manager or designee may provide recommended feedback to Council for consideration to assist Council during the review process no later than ninety (90) days from the next renewal date.
- E. Annual Review. The Council may conduct an annual review of the Hearing Officer(s).
- F. Removal. The Council, with factual recommendations from the Town Manager or designee, has the authority to remove a Hearing Officer, by majority vote for neglect of duty, inefficiency, or misconduct in office.
- G. Scope of Authority. The Hearing Officer(s) shall have all of the powers and authorities of law pursuant to A.R.S. § 9-500.21, to hear, decide and resolve Complaints from Authorized Officials alleging violations of Town Code and Planning & Zoning Ordinance provisions as adopted by Town Council, as amended.
- H. Conduct of Hearings. The Rules of Procedures shall apply in all cases involving the adjudication of civil violations which may be brought before the Hearing

Officer and are adopted pursuant to the authority granted to the Town of Snowflake pursuant to A.R.S 9-500.21.

- I. Civil Designation. A violation of the Town Code or Planning and Zoning Ordinance may be designated as a civil offense by an Authorized Official filed under the civil enforcement procedures/rules of procedures of this Chapter and are declared to be civil offenses.
- J. Option of Remedies. An action before the Hearing Officer does not preclude the Town Council, Town Manager, Town Attorney, Prosecuting Attorney, Director of Community Development, Code Enforcement Officer, Other Authorized Officials, other person(s), a private individual or other entity that is specially damaged by a civil violation from pursuing other remedies provided by law, including but not limited to injunction, mandamus, abatement or any other appropriate action or proceeding to prevent or abate the violation.
- K. Orders and Imposition of Penalties. The Hearing Officer is authorized to impose civil penalties for violations up to the maximum amount specified in A.R.S. § 9-240 for code or ordinance violations for each day a violation exists; order abatement of the violation pursuant to A.R.S. § 9-499; order compliance notices; modify judgments; authorize liens to be recorded; and take such other actions necessary to hear and determine violations classified as civil offenses.

**1-9-5 Civil Hearing Procedures, Commencement of Action**

- A. Commencing Action. Authorized Officials, as defined under this Chapter are hereby authorized to file Complaints with the Administrative Hearing Officer using either the uniform Arizona Traffic Ticket and Complaint form, or one substantially similar, or a Notice of Hearing.
- B. Factual Basis. Complaints shall contain:
  - 1. The name and address of the defendant(s),
  - 2. A legal description and/or the address of the site that is in violation,
  - 3. A statement of fact or facts constituting the specific violation which shall cite to this ordinance as well as the particular subsection of the Town Code or Planning & Zoning Ordinance provision applicable to the alleged violation.
- C. Designation of Offense. Each subsection of the ordinance cited in the complaint or notice of hearing shall be deemed a separate offense.
- D. Notice to Alleged Violator. The Complaint or Notice of Hearing shall set forth the following:
  - 1. Date and time of appearance,
  - 2. Location of hearing,
  - 3. Date and time of alleged violation(s),
  - 4. Direct the defendant to appear in front of the hearing officer,
  - 5. State that if the defendant fails to appear, the Hearing Officer will enter a default judgment against the defendant in favor of the State, and impose sanctions not to exceed two thousand five hundred dollars (\$2500) for each alleged violation.
  - 6. Defendant rights and appeals.
- E. Service. The Complaint or Notice of Hearing shall be served by the Code Enforcement Officer or Authorized Official on the defendant at least thirty (30) days prior to the appearance date. The Code Enforcement Officer or Authorized

Official shall first attempt personal service of the Complaint or Notice of Hearing through hand-delivery, with the notice signed by the owner, defendant, tenant-occupant, person in control of the property or their authorized representative with their promise to appear within thirty (30) days of the issuance of the Complaint or Notice of Hearing. If the owner of record, defendant, tenant-occupant, person in control of the property or their authorized representative refuses to sign, this should be noted on the Complaint or Notice of Hearing and the Service shall be deemed completed.

- F. **Personal Service Not Required.** If the Code Enforcement Officer or Authorized Official is unable to personally serve the notice, then pursuant to A.R.S. § 9-500.21 service can be completed:
  - 1. In the same manner prescribed for alternative methods of service by the Arizona Rules of Civil Procedure, or
  - 2. By certified or registered mail, return receipt requested. Service is complete on filing the receipt with the Administrative Hearing Officer.
- G. **Filing with Hearing Officer.** The Complaint or Notice of Hearing shall be filed with the Hearing Officer within ten (10) days of the time issued.
- H. **Evidence.** Authorized Officials shall provide all relevant evidence and case files to the Administrative Hearing Officer at least twenty-one (21) days prior to the scheduled hearing date.
- I. **Inspection.** Authorized Officials shall conduct an inspection at least one (1) day prior to the hearing date to determine if compliance has been obtained before the hearing. Any interference with the inspection or refusal for admission onto the property shall not preclude the Authorized Official from proceeding with enforcement and hearing.

**1-9-6 Civil Hearing Procedures, Appearance and Entry of Plea**

- A. The defendant may admit or deny responsibility by appearing in person at the time and date set to appear and entering a plea, or by mailing to the Code Enforcement Officer or Authorized Official a short statement signed by the defendant or their counsel admitting or denying the allegations of the Complaint or Notice of Hearing, which must be received by the Town of Snowflake by 5:00 PM on the business day prior to the date set for appearance and plea.
  - 1. Upon admission of responsibility, and if there is no agreement in writing between the parties to waive the hearing for determination of penalty and date of remediation of the violation, the hearing shall be held at the same time and place set for appearance in the Complaint or Notice of Hearing. At this hearing, the Defendant and the Code Enforcement Officer or Authorized Official shall be given an opportunity to state their position on the amount of the penalty and date of remediation to be imposed by the Hearing Officer.
  - 2. The hearing determination of penalty and remediation date may be waived if agreed to by the parties involved. Upon agreement to waive said hearing, the Hearing Officer shall impose action to correct the violation. The Defendant shall be notified by first class mail of the penalty and remediation date.
  - 3. If the Defendant does not enter a plea, Defendant shall appear at the place, date and time set in the Complaint or Notice of Hearing. Failure of the

Defendant to appear shall be considered a Default Judgement as set forth herein.

**1-9-7 Civil Hearing Procedures, Amending the Complaint or Notice of Hearing**

- A. Amendment Prior to Final Decision. The Hearing Officer may permit a Complaint or Notice of Hearing to be amended at any time before the final decision if no additional or different violation is charged and if substantial rights of the Defendant are not thereby prejudiced.
- B. Amendment to Conform to Evidence. The Complaint or Notice of Hearing may be amended to conform to the evidence alleged at the hearing if no additional or different violation is/are charged and if substantial rights of the Defendant are not thereby prejudiced.
- C. If/When Amended, Original Notice or Hearing Date to Be Used. All amendments to a Complaint or Notice of Hearing shall date back to the date the Complaint or Notice of Hearing was first issued.

**1-9-8 Civil Hearing Procedures, Voluntary Dismissal, Default, Setting Aside Default, Default by the Town**

- A. Voluntary Dismissal. The Code Enforcement Officer or Authorized Official may request in writing that the Hearing Officer dismiss a Complaint or Notice of Hearing based on successful resolution of the violations. All such requests shall be filed prior to the hearing for testimony and presentation of evidence.
- B. Notice of Dismissal. If a Complaint or Notice of Hearing is dismissed, the hearing will not be held. The Hearing Officer will notify the defendant and the Town that the Complaint or Notice of Hearing has been dismissed and that the hearing has been cancelled.
- C. Re-filing of Charges. A Complaint or Notice of Hearing that has been dismissed by the Hearing Officer without prejudice may be re-filed with the Hearing Officer at a later date as a new violation.

**1-9-9 Civil Hearing Procedures, Notice of Counsel, Town Representation, Trial, Continuance**

- A. Defendant Right to Counsel. The Complaint or Notice of Hearing shall contain written notice that the Defendant has the right to be represented by Counsel or by another Designated Representative. The Defendant must notify the Code Enforcement Officer or Authorized Official in writing at least fifteen (15) days prior to the hearing date for testimony and presentation of evidence of the defendant's election to be represented by Counsel or by another Designated Representative. Otherwise, the Hearing Officer shall cause a postponement of these proceedings upon the request of Code Enforcement Officer or Authorized Official in order for the Town to obtain/arrange Counsel.
- B. Town Right to Counsel. If the Defendant is represented by Counsel, then the Town may be represented by Counsel.
- C. Evidence. The defendant may present evidence directly or through counsel.
- D. No Right to Jury Trial. The defendant will not have a right to a jury trial.
- E. Continuances. The Hearing Officer may, upon motion of any Party or on their own motion, continue the hearing to the next hearing date or another specified hearing date if it appears the interests of justice require continuation. If the Defendant and the Code Enforcement Officer or Authorized Official agree in

writing to continue a hearing, that hearing shall be continued to the next hearing date.

**1-9-10 Civil Hearing Procedures, Procedures, Discovery, Rules of Evidence, Subpoenas, Questioning of Witnesses**

- A. Discovery. No pre-hearing discovery shall be permitted absent extraordinary circumstances.
- B. Disclosure. Immediately prior to the hearing, both parties shall present to the Hearing Officer a list of witnesses, prepared exhibits and written or recorded statements, and any other evidence Parties intend to use during the hearing. The Hearing Officer will allow the opposing parties to review all evidence. Failure to comply with this rule may result, at the Hearing Officer's discretion, in the granting of a recess to permit the parties to review all evidence.
- C. No Formal Rules of Evidence. All civil hearings under this Chapter shall be informal, except that testimony shall be given under oath or affirmation. The Arizona Rules of Evidence shall not apply except for any rules or statutes relating to privileged communications. At the hearing, the Hearing Officer may prohibit the introduction of any evidence deemed irrelevant, incomplete, repetitive or otherwise inappropriate, or other make orders as necessary or appropriate to fairly and efficiently decide the case at hand.
- D. Record. Documentary evidence may be received in the form of copies or by incorporation by reference.
- E. Judicial Notice. The Hearing Officer may take note of judicially cognizable facts and may take note of general, technical or scientific facts.
- F. Subpoenas. Either Party may request the Hearing Officer to issue subpoenas for the attendance of a witness and/or production of documents pursuant to A.R.S. § 12-2212. The subpoena shall state the title of the action and command each person to whom it is directed to give testimony at the place and time listed on the subpoena.
- G. Service of Subpoenas. A subpoena may be served by a Law Enforcement Officer or by any other person who is not a Party and is not less than eighteen (18) years of age. At the time of service, witness fees for one (1) day plus mileage shall be paid to the witness pursuant to A.R.S. § 12-303 which shall be paid by the requesting Party.
- H. Examination of Witnesses. The Hearing Officer may on their own motion, call and examine witnesses, including the Code Enforcement Officer or Authorized Officials, other Town witnesses, the Defendant, Defendant's Counsel or Designated Representative.

**1-9-11 Civil Hearing Procedures, Order of Procedures, Record, Ruling of the Hearing Officer**

- A. Order of Proceedings. The order of proceedings shall be as follows:
  - 1. Testimony of the Code Enforcement Officer, Authorized officer, and any other Town witnesses.
  - 2. Testimony of the Defendant, Defendant's Counsel, Designated Representative and any other witness of the Defendant.
  - 3. Testimony of the Town's rebuttal witnesses, if any.
  - 4. Testimony of the Defendant's rebuttal witnesses, if any.



5. Any argument of the Code Enforcement Officer, Authorized Officials under subsection 7-7-1A.5, the Defendant, Defendant's Counsel, or Designated Representative, as permitted by the Hearing Officer.

6. Ruling by the Hearing Officer.


- B. **Witnesses.** All witnesses called to testify on behalf of the Town shall be required to testify prior to the Defendant, Defendant's Counsel or Designated Representative being required to testify, unless the parties otherwise consent.
- C. **Rebuttal.** A witness that has already testified may be called in rebuttal to testify to an issue raised by the defense.
- D. **Recordings.** The Town will record the proceedings digitally or by audio tape, although no technical malfunction or other error in recording shall be grounds to invalidate the decision. A recording of the hearing will be made and maintained by the Hearing Officer pursuant to State record retention requirements.
- E. **Copies.** Copies of recordings may be available for the cost of reproduction. Typed transcript of the hearing may be made if requested. Any party requesting copies of typed transcripts will be required to pay costs as per standard rates established by the Town.
- F. **Entry of Decision and Order.** If the Defendant, after the hearing, is found responsible for the civil violation, the Hearing Officer shall enter a decision for the Town, any remediation of any violations, compliance order dates and impose civil penalties adopted by Council through resolution.
- G. **Notice of Decision.** The Hearing Officer, Code Enforcement Officer or Authorized Official shall deliver or mail, to all parties, a copy of the decision together with written notice of right to appeal within ten (10) calendar days from the date the decision is signed by the Hearing Officer.
- H. **Fines.** Any fines noted in the Hearing Officer's Final Order shall be due within ten (10) calendar days following the date of service of the decision. If a decision to appeal is received from the Defendant, the payment of fines is suspended pending the outcome of the appeal. If the Hearing Officer's final decision regarding the fine is upheld or if the fine is reduced but not eliminated, the balance of the fine is due within ten (10) calendar days upon the date the appeal is final.
- I. **Collection.** Any unpaid fines may be collected by a collection agency with the Defendant being responsible for any fees charged by the collection agency as compensation for its services.
- J. **Recording.** The final decision of the Hearing Officer ("Final Decision") may be filed with the Navajo County Recorder's Office upon the expiration of the time for filing an appeal and upon determination that the Defendant did not file an appeal. If the Defendant appeals the Final Decision and the Final Decision is upheld in whole or in part by the appellate process, the Final Decision as modified by the appellate process shall be filed with the Navajo County Recorder's Office upon the exhaustion of all appellate remedies.
- K. **Judicial Review.** Following the decision and imposition of civil penalties and after the hearing, the Hearing Officer shall advise the Defendant of the Defendant's

right to a review of the Hearing Officer's Final Decision pursuant to A.R.S. § 12-124.

**Section 2. Providing for Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference are hereby repealed.

**Section 3. Providing for Severability.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the 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.

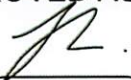
**PASSED, ADOPTED AND APPROVED BY A MAJORITY VOTE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF SNOWFLAKE, NAVAJO COUNTY, ARIZONA, THIS THIS 2<sup>nd</sup> DAY OF September, 2025**

  
Byron Lewis, Mayor

ATTEST:

  
Katie Melser, Town Clerk

APPROVED AS TO FORM:

  
Robert Wingo, Town Attorney  
Pierce Coleman, PLLC

I, KATIE MELSER, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. 2025-10 ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF SNOWFLAKE ON THE 2<sup>nd</sup> DAY OF September, 2025 WAS POSTED IN THREE PLACES ON THE 8<sup>th</sup> DAY OF September, 2025

  
Katie Melser, Town Clerk