

Chapter 21 - McDOWELL SONORAN PRESERVE^[1]

Footnotes:

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Editor's note—Section 2 of Ord. No. 1837, adopted June 15, 1987, repealed Ord. No. 753, adopted Sept. 18, 1973, from which former Ch. 21 was derived, with the exception of § 21-226, which derived from Ord. No. 566, adopted Feb. 16, 1970. Formerly Ch. 21, Personnel, contained §§ 21-1—21-18, 21-31, 21-32, 21-41—21-54, 21-71—21-74, 21-86—21-91, 21-106—21-111, 21-126—21-134, 21-146—21-153, 21-166—21-174, 21-186—21-195, 21-211—21-214, 21-226—21-231 and 21-246—21-250. New provisions pertaining to human resource management were enacted by § 1 of Ord. No. 1837 and codified as a new Ch. 14. Subsequently, § 1 of Ord. No. 3321, adopted May 23, 2000, enacted provisions for a new chapter 21, §§ 21-1—21-23, to read as herein set out.

ARTICLE I. - IN GENERAL

Sec. 21-1. - Scope.

- (a) The provisions of this chapter shall apply exclusively to the McDowell Sonoran Preserve, which shall be referred to in this chapter as the preserve. Preserve as used in this chapter, unless the context otherwise requires, means real property designated by the Scottsdale City Council as the McDowell Sonoran Preserve.
- (b) In the event of a conflict between the provisions of this chapter and any provision of this Code, the provisions of this chapter shall control.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-2. - Purpose of the preserve.

- (a) The purpose of the McDowell Sonoran Preserve is to establish in perpetuity a preserve of Sonoran desert and mountains to maintain scenic views, as a habitat for wildlife and desert plants; to protect archaeological and historical resources and sites, while providing appropriate public access for educational purposes; and to provide passive outdoor recreational opportunities for residents and visitors.
- (b) The preserve will be left in as pristine a state as possible to maintain for this and future generations, in perpetuity, a nearby natural desert refuge from the rigors of urban life.
- (c) The 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 passive recreational activities.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-3. - Management objectives.

The management objectives for the preserve are consistent with the purpose of the preserve and will guide the development and establishment of rules, regulations, strategies, policies, a master plan and administrative guidelines for the preserve. The management objectives are to:

- (1) Preserve the local plants, wildlife and natural resources to maintain the biological diversity and long-term sustainability of the area's ecology.
- (2) Maintain scenic views to preserve the aesthetic values of the area for all to enjoy and for its contribution to the quality of life of the community.
- (3) Protect historical and archaeological resources, such as petroglyph sites.
- (4) Provide a superior opportunity for people to experience and enjoy the magnificent Sonoran desert and mountains.
- (5) Provide a variety of opportunities for passive outdoor recreation, such as hiking, wildlife viewing, mountain bicycling, horseback riding and rock climbing.
- (6) Support tourism in the community by providing public outdoor educational opportunities for visitors.
- (7) Provide opportunities for education and research on the Sonoran desert and mountains.
- (8) Provide enough access areas of sufficient size and with adequate amenities for appropriate public access.
- (9) Develop a non-paved public trail system for hiking, mountain biking, bicycling and horseback riding and link these trails, where appropriate, with other city and regional trails.
- (10) Restore habitat in degraded areas of the preserve to its undisturbed condition, including diverse plant species and natural ecological processes.

(Ord. No. 3321, § 1, 5-23-00)

ARTICLE II. - McDOWELL SONORAN PRESERVE COMMISSION

Sec. 21-4. - Established.

- (a) The McDowell Sonoran Preserve Commission is hereby established.
- (b) The provisions of article V, chapter 2 of this Code shall apply to the McDowell Sonoran Preserve Commission.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-5. - Membership.

The McDowell Sonoran Preserve Commission shall be composed of seven (7) citizens appointed by the city council, including citizens with specific skills and experience to carry out the tasks the commission is charged to carry out.

(Ord. No. 3321, § 1, 5-23-00; Ord. No. 3976, § 1, 10-4-11)

Sec. 21-6. - Procedures; establishment of rules and regulations; etc.

The McDowell Sonoran Preserve Commission shall:

- (1) Establish rules, regulations and procedures that shall govern its affairs, including provision for such officers, in addition to the chairman and vice-chairman, as may be deemed reasonably necessary for the effective and efficient operation of the commission. The commission shall

determine the time and manner of election for such officers as well as the term of office and powers and duties of each respective officer.

- (2) Establish the time, place and manner of notice of all regular and special meetings.
- (3) Establish the manner of adoption, amendment and repeal of rules and regulations of the commission.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-7. - Purpose; powers and duties.

The McDowell Sonoran Preserve Commission, with the assistance of city staff, shall be responsible for making recommendations to the city council on the following matters:

- (1) Developing a preservation strategy for an integrated mountain and desert open space system to guide and prioritize public actions, which recognizes existing development pressures and identifies the most important land for public purposes.
- (2) Developing a realistic funding plan for the envisioned preserve and Sonoran Desert Preservation Program, including an estimate of the level of funding needed, recommended funding sources, the potential timing/availability of funding and the actions necessary to implement the funding plan.
- (3) Serving as the citizen's oversight committee for the implementation of preserve land acquisitions that use funds from the voter-approved privilege and use tax increase.
- (4) Developing an educational/promotional program implementing a comprehensive and integrated mountain and desert open space system and gaining public support from various sources.
- (5) Preparing a conceptual master plan for a comprehensive integrated mountain and desert open space system and a management plan for any public lands and/or public access areas.
- (6) Developing a detailed action plan for preserving the open space system that defines a series of steps or specific actions that need to be taken, when actions are needed, the public process leading up to any recommended actions, and who will take the action.
- (7) Responding to other requests of the city council relating to the preserve and issues relating to the preserve.
- (8) Reporting to the city council on a quarterly basis on its progress regarding the tasks identified in this subsection and on any other specific requests of the city council relating to the preserve and issues relating to the preserve.

(Ord. No. 3321, § 1, 5-23-00; Ord. No. 3976, § 1, 10-4-11)

Secs. 21-8—21-10. - Reserved.

ARTICLE III. - GENERAL RULES

Sec. 21-11. - Definitions.

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

Access area means that area within the preserve that is utilized for parking vehicles, interpretive displays, information, and minor amenities such as restrooms. Major trailheads will be located at the access areas in the preserve.

Commission means the McDowell Sonoran Preserve Commission.

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 of areas open or closed to the public.

Passive recreation activities means non-motorized recreational activities such as hiking, wildlife viewing, mountain bicycling, horseback riding and rock climbing.

Person means a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

Preserve director means the city manager, or the city manager's designee.

Spirituous liquor, includes alcohol, brandy, whiskey, 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 of alcohol by volume.

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

Trailhead means an area which has been designated and posted as a trail access point for the preserve.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-12. - General rules for use.

- (a) All persons using the preserve shall comply with all federal and state laws, and county and city ordinances, rules and regulations.
- (b) All persons using the preserve shall comply with the following, except as may be specifically authorized by a permit or permits issued as provided in this section, or in sections 21-22 or 21-23 of this chapter:
 - (1) No person shall possess a deadly weapon, or an air rifle, air pistol or slingshot in the preserve, or a firearm in any developed or improved area, as defined in A.R.S. § 13-3108, except as otherwise permitted by law.
 - (2) No motorized vehicles shall be allowed in the preserve, except in designated parking areas. 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 the preserve.
 - (3) No camping shall be permitted in the preserve.
 - (4) No person shall discharge a firearm, air rifle, air pistol, or slingshot in the preserve, except as otherwise permitted by law.
 - (5) No fires are allowed in the preserve, except as otherwise provided in this chapter. Cooking with charcoal or camp stoves may be allowed, however, but only in designated areas. The fire department, in cooperation with the preserve director, may institute more restrictive policies if required by emergency or other conditions.
 - (6) 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.

- (7) No person shall use any preserve facility, or any area in the preserve which has been declared "closed" and which has been so designated and posted by the city,
- (8) No person shall remain in the preserve after the hours established for public use by this chapter.
- (9) The sale of food, beverages or other merchandise is prohibited.
- (10) No person shall possess or shoot a bow and arrow in the preserve, except as permitted by the Arizona Game and Fish Department hunting rules and in locations designated for that purpose. All persons engaging in such lawful hunting shall have a valid and current Arizona hunting license in their possession.
- (11) No smoking shall be permitted in the preserve.
- (12) No person shall possess or consume any spirituous liquor, including beer, in or from an open container, in the preserve, except that beer in an open container may be consumed or possessed pursuant to a permit issued by the preserve director, as provided in section 21-23, below.
- (13) No person shall remove, deface, damage, disturb or excavate any materials from or in the preserve, or any historical, prehistorical, archaeological, paleontological, or geologic site or feature situated within the preserve, including, but not limited to, plants, rocks, any other earth material, historical or other archaeological resources, such as petroglyphs and dead and/or decaying plant materials.
- (14) No person shall deface, damage or inscribe a message, slogan, sign or symbol upon any natural feature in the preserve, including the ground itself, using any material, including paint or markers of any kind.
- (15) No person shall destroy, dig up, mutilate, collect, cut, harvest or remove any live or dead tree or plant material in or from the preserve.
- (16) No person shall dig, remove or excavate any sand, gravel, rocks or soil from within the preserve.
- (17) No person shall knowingly, intentionally or recklessly litter, or throw, toss or otherwise propel, or break any glass, ceramic or breakable container in the preserve.
- (18) No person shall feed, threaten, harass, disturb or collect wildlife in the preserve.
- (19) No person shall remove any wildlife from the preserve, or release, abandon, place, bury or otherwise dispose of any animal, carcass or remains of an animal in the preserve.
- (20) No person shall erect any temporary structures, including tents, tarps and canopies, in the preserve.
- (21) No person shall undertake mechanical repair or maintenance of any vehicle in the preserve, including but not limited to automobile oil changes and engine tune-ups, except in the case of any emergency when the vehicle is inoperable. No washing or waxing of vehicles shall be permitted in the preserve.
- (22) Gas powered model aircraft and incendiary model rockets are prohibited in the preserve.
- (23) Possession or use of fireworks in the preserve is prohibited.
- (24) No person shall collect firewood in the preserve.
- (25) No person shall tether, launch or land a hot air balloon in the preserve, except in the case of emergency.
- (26) No glass, ceramic or breakable plastic food or beverage containers are permitted in the preserve, except within a motor vehicle in a designated parking area.

- (27) Dogs are restricted to access areas and designated trails, except dogs assisting in official search and rescue activities or dogs assisting physically challenged individuals.
 - (28) Dogs must be secured on a leash at all times while in the 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 the preserve.
 - (29) 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 the preserve. The owner or person in custody of a dog must carry/have in their possession a waste container for pick up purposes.
 - (30) No person shall operate any sound amplification system in the preserve. A "sound amplification system" as used in this subsection means any device, instrument or system, whether electrical or mechanical or otherwise, for amplifying sound or for producing or reproducing sound, including, but not limited to any radio stereo, musical instrument, phonograph, or sound or musical recorder or player.
 - (31) 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 the preserve, or upon any structure within the preserve trailhead, access or parking areas.
 - (32) All motor vehicles operated in the preserve trailhead/access/parking areas must have current legal registration, display number plates for the current registration year and be operated only by properly licensed drivers.
- (c) The provisions of this section shall not apply to persons or groups which have been issued a permit by the preserve director, as provided in sections 21-22 and 21-23, below, to engage in such activities. Also, the provisions shall not apply to: city police personnel or other law enforcement officers, fire department personnel and other city employees, in the course of their official duties; or others authorized by the city to perform inspection, repair or maintenance work, persons providing emergency, search and rescue, medical or veterinary services; vendors or others on preserve related business, when authorized by the preserve director.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-13. - Preserve hours; use.

Hours for public use of the preserve, including access areas, parking areas, trailheads and trails, shall be from sunrise to sunset, as determined by the United States Weather Service, unless authorized by permit issued by the city, or as otherwise provided by the preserve director.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-14. - Penalties.

- (a) A violation of any of the provisions of subsection (b)(1) through (b)(3) of section 21-12 above shall be punishable as Class 1 misdemeanors are punishable under state law.
- (b) A violation of any of the provisions of subsection (b)(4) through (b)(25) of section 21-12 above shall be punishable as Class 2 misdemeanors are punishable under state law.
- (c) A violation of any of the provisions of subsection (b)(26) through (b)(31) of section 21-12 above shall be punishable as Class 3 misdemeanors are punishable under state law.
- (d) A violation of subsection (b)(32) of section 21-12 above shall constitute a civil offense, which shall be punishable by a civil sanction in the amount of two hundred fifty dollars (\$250.00).

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-15. - Enforcement.

- (a) The Code Enforcement Division of the Citizen and Neighborhood Resource Center may enforce Article III (General rules) of this Chapter;
- (b) Enforcement and Citation procedures outlined in the Scottsdale Revised Code Chapter 18, Article III shall apply to enforcement conducted pursuant to section 21-15;
- (c) Additionally, the City may bring civil actions for injunctive relief in Superior Court to seek remedy for any violations of this Chapter.

(Ord. No. 3426, § 1, 2-19-02)

Sec. 21-16. - Restitution.

In addition to any sanction or penalty provided in sections 21-14 and 21-15 of this article, any violator shall be liable for all costs which may be associated with the city's bringing the property into compliance with this chapter. The court shall impose restitution as part of its final judgment.

(Ord. No. 3426, § 2, 2-19-02)

Secs. 21-17—21-20. - Reserved.

ARTICLE IV. - RULES, REGULATIONS, PERMITS AND FEES

Sec. 21-21. - Rules and regulations.

The preserve director shall have the authority to make such rules and regulations as are necessary to manage, use, preserve and govern the preserve and the activities that are the subject of this chapter and shall do so with the assistance of the commission. Copies of such rules and regulations shall also be maintained on file in the office of the preserve director and at such preserve facilities, as applicable, to which the resolutions and rules and regulations apply.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-22. - Permits and procedures for special uses of the preserve.

- (a) The preserve director, with such assistance of the commission as may be necessary and appropriate, is authorized to determine what activities may be allowed in the preserve, subject to obtaining a permit issued by the preserve director. The activities for which a permit may be issued may include some activities that would otherwise be prohibited by this chapter, when in the reasonable judgment of the preserve director, the activities serve or further a legitimate public, civic or educational purpose, and they are not inconsistent with the purpose of the preserve or preserve management objectives, as set forth in this chapter.
- (b) Examples of such activities, for illustrative purposes only, might include: scientific research, including collecting any specimens such as plants, rocks, wildlife or artifacts; non-fee educational activities or outdoor classes not conducted by the city; educational activities or outdoor classes, not conducted by the city, with fees charged to participants; camping (special use permit only), erecting temporary

- structures, including tents, tarps and canopies, ground fires, using a loud speaker, or public address system or amplifier, selling food, beverages or other merchandise, off-trail use and other uses of the preserve when it is closed to the public or involves using an area of the preserve posted as closed.
- (c) The preserve director shall establish administrative procedures and criteria for permits to insure that a fair and equitable process will be used to review and issue or deny permits. The preserve director may establish fees for permits in the preserve.
 - (d) All permits shall require that the permit holder and those using the facility pursuant to the permit comply with the provisions of this chapter, such other rules and regulations promulgated by the preserve director, and any other special conditions. All permits shall be in writing and be kept on the person of the permit holder when using the preserve pursuant to it.
 - (e) As a condition of the permit, the permit holder shall comply with any insurance and indemnification requirements determined by the risk manager of the city to be reasonably necessary, given the nature of the activity and other circumstances.
 - (f) To the maximum extent allowed by law, the permit holder shall agree to defend the city for, from and against all demands, claims, losses, damages and expenses that are attributable to bodily injury, personal injury, accident, illness, death or impairment, damage, destruction or loss of use of property (the city's or the property of others) arising or resulting from the permit holder's use of the preserve. The permit holder shall obtain, maintain and evidence insurance, as reasonably determined by the risk manager of the city, for the duration of the permit period. The required insurance certificates and documentation, including coverages and limits shall name the city as additional insured and the permit holder's coverage shall be designated as primary.
 - (g) The preserve director or any City of Scottsdale police officer may revoke a permit for a violation of its terms or any violation of rules, regulations, ordinances or state statutes by the permit holder, or any person using the facility pursuant to the permit. In the event of revocation under this provision, the permit holder shall cease the permitted activities immediately. A permit holder who has a permit revoked pursuant to this subsection shall not be entitled to a refund of any fees paid.

(Ord. No. 3321, § 1, 5-23-00)

Sec. 21-23. - Beer permits.

- (a) The preserve, except such areas as may be otherwise designated and posted, shall be considered a public recreation area for purposes of Title 4 of the Arizona Revised Statutes, relating to alcoholic beverages.
- (b) No person or members of a group or organization shall consume beer from an open container, or possess an open container of beer, in the preserve without first having obtained a permit pursuant to this section. Beer means any beverage obtained by the alcoholic fermentation, infusion or decoction of barley, malt, hops, or other ingredients not drinkable, or any combination of them.
- (c) A condition of any permit shall be that the person or member of a group subject to the permit shall comply with all state liquor laws. The person to whom the beer permit has been issued must be present for the permit to be valid and the permit must be displayed at the request of any preserve employee or police officer. A permit is invalid in any preserve areas where the consumption or possession of beer is prohibited by the city.
- (d) Application for a beer permit shall contain the applicant's name, address, telephone number, date of birth and age and the number of persons to which the permit will apply. The applicant shall show proof of age in one of the following forms: (i) an unexpired driver's license issued by any of the United States or Canada, provided such license includes a picture of the licensee; (ii) a nonoperating identification license issued by the State of Arizona; (iii) an armed forces identification card; or (iv) a valid unexpired passport. When applying for a permit by phone or other means, the only acceptable form of identification is an unexpired driver's license issued by any state or a nonoperating

identification license issued by the State of Arizona. The applicant must provide the number and any additional license information to the reservation agent.

- (e) An application for a beer permit shall be accompanied by a fee of five dollars (\$5.00). Upon the satisfaction of the terms and conditions of this section, the city shall issue a permit, which shall be valid for one day only, which shall be shown on the permit.
- (f) The beer permit shall be revocable by the preserve director for any violation of this article, any provision of the state liquor laws, or any other condition of the permit. Any person who has had a permit revoked by the city shall not be entitled to apply for another such permit until the expiration of sixty (60) days from the date such revocation occurred.

(Ord. No. 3321, § 1, 5-23-00)