

ORDINANCE NO. O2026.XX

AN ORDINANCE OF THE CITY OF TEMPE, ARIZONA ADDRESSING PUBLIC HEALTH SAFETY AND WELFARE BY AMENDING TEMPE CITY CODE, CHAPTER SIXTEEN, ARTICLE FIVE BY ADDING NEW REQUIREMENTS FOR SECURITY PLANS

WHEREAS, under the Arizona Constitution, a city with a population of more than 3,500 people is entitled to establish a charter for its government and that a charter city is granted autonomy over matters of local interest; and

WHEREAS, the voters of the City of Tempe established the Tempe City Charter in 1964 that vests policymaking in the Tempe City Council; and

WHEREAS, the City Council finds it necessary to amend the City Code to add protections against drink spiking and related behaviors; and

WHEREAS, the City Council finds that it is in the best interest of the City to provide incentives for establishment operators through the security plan requirements; and

WHEREAS, the City Council finds that it is vital to the effectiveness of the efforts to combat drink spiking for victims and witnesses of drink spiking to be able to promptly report incidents of drink spiking to peace officers or other persons of authority. Therefore, to the extent permitted by law, it is the Council’s desire that no victim or witness to a drink spiking incident shall be prosecuted for an offense necessarily revealed by virtue of the report of the drink spiking incident;

WHEREAS, the City Council finds that enactment of this ordinance is in the health, safety, and welfare of the citizens and residents of the City of Tempe.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 26, Article V, Tempe City Code, is hereby amended by modifying Section 26-70 and adding a new Section 26-71 as set forth in Exhibit A hereto (with additions in ALLCAPS and deletions in strikethrough text).

Section 2. If any section, subsection, sentence clause, phrase, or portion of this ordinance or any part of the code adopted herein 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. All ordinances and parts of ordinances in conflict with the provisions of the Code adopted herein are hereby repealed.

Section 4. The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Tempe City Code.

Section 5. The various City officers and employees are hereby authorized and directed to perform all acts necessary to give effect to this ordinance.

Section 6. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2026.

Corey D. Woods, Mayor

ATTEST:

Kara A. DeArrastia, City Clerk

APPROVED AS TO FORM:

Eric C. Anderson, City Attorney

EXHIBIT A to Ordinance O2026.xx Related to Drink Spiking and Security Plans

Sec. 26-70. Security plans.

- (a) *Definitions.*
- (1) *Amusement* means an indoor or outdoor recreational use such as indoor miniature golf, ice rink, rock climbing, bowling or similar recreational or amusement activity.
 - (2) *Entertainment* means an indoor or outdoor presentation of, or participation in live singing, dancing, musical instrumentation, dramatic, prosaic or poetic activities or similar activities.
 - (3) *Hotel and/or motel* means a building that contains more than five (5) boarding rooms.
 - (4) For the purposes of this section, a *multi-unit dwelling* means one (1) structure having: five (5) or more dwelling units with seven (7) or more floors and the structure has balconies.
 - (5) **DRINK SPIKING SHALL MEAN ANY ACT OR ATTEMPTED ACT OF UNLAWFULLY ADMINISTERING INTOXICATING LIQUORS, NARCOTIC DRUG OR DANGEROUS DRUG AS DEFINED IN SECTIONS 13-1205 AND 13-3401 OF THE ARIZONA REVISED STATUTES.**
- (b) *Purpose.* The purpose of this section is to promote the health, safety, and welfare of the citizens, visitors, businesses and the community by requiring certain types of property uses within the City to file, follow, and keep current a security plan.
- (c) *Uses requiring security plans.* A security plan shall be required upon the commencement, assumption, or continuation of any of the following uses:
- (1) Bars, cocktail lounges, taverns, dance clubs, nightclubs and similar businesses; **AND ANY OTHER ESTABLISHMENT HOLDING A SERIES 3, SERIES 6, SERIES 7, SERIES 11 OR SERIES 12 LIQUOR LICENSE THAT SERVES ALCOHOL AFTER 10:00 P.M. ON WEEKDAYS OR AFTER 12:00 A.M. ON WEEKENDS;**
 - (2) Adult-oriented businesses;
 - (3) Recreational or amusement business, both indoor and outdoor activities, including pool halls and video arcades with a liquor license;
 - (4) Entertainment as a primary use of the business, or as an accessory use to a business with a liquor license and a planned primary use for the sale or service of spirituous liquor;
 - (5) Hotels and motels;
 - (6) Tobacco retail or smoking establishments with onsite consumption;
 - (7) Medical marijuana dispensary, marijuana establishment, marijuana testing facility, or cultivation facility;
 - (8) Upon a determination by the Chief of Police, based on documented calls for service, reported crimes, complaints, or any other factual information that demonstrates a disregard for public safety. Upon a determination made pursuant to this subsection, the property owner or designee of the use subject to the determination shall submit a complete security plan application within ten (10) days of the receipt of the determination in accordance with subsection (e) of this section. Failure to submit a security plan application within ten (10) days shall be a violation of this article and punishable as set forth in Section 1-7;
 - (9) Multi-unit dwellings as defined in subsection (a) and shelters; or

- (10) Any structure or development with five (5) or more dwelling units where documented calls for service, reported crimes, complaints, or other factual information, has occurred demonstrating a disregard for public safety. This determination shall be made by the Police Department.
- (d) *Exemptions.* THE CHIEF OF POLICE MAY GRANT EXEMPTIONS FROM ANY OR ALL OF THE REQUIREMENTS OF THIS ARTICLE TO:
- 1) Businesses with a Series 6 or 7 liquor license and having a primary use other than entertainment or the sale, service, or consumption of spirituous liquor, ~~are exempt from this requirement,~~ unless deemed necessary per Section (c)(8) of this Code;
 - 2) BUSINESSES WHOSE NORMAL OPERATIONS ARE SUCH THAT REQUIRING CERTAIN ELEMENTS OF A SECURITY PLAN IS NOT NECESSARY TO FULFILL THE INTENT OF THIS ARTICLE. IN APPLYING THIS EXEMPTION, THE CHIEF OF POLICE MAY CONSIDER THE FLOOR PLAN AND LAYOUT OF THE BUSINESS, THE HOURS OF OPERATION, THE METHOD AND MANNER OF SERVING ALCOHOL AND FOOD, AND ANY OTHER RELEVANT FACTORS.
- (e) *Security plan submittal.* Every applicant requiring a security plan shall furnish to the Police Department designee a complete application signed by the owner or the statutory agent of the use with the following information:
- (1) Plan of operation, program plan and hours;
 - (2) Site/building information;
 - (3) Safety conditions;
 - (4) On-site parking, ingress and egress, vehicular and pedestrian traffic control;
 - (5) Staffing and operations;
 - (6) Conditions of plan;
 - (7) On-site contact person(s)/manager(s);
 - (8) Any and all responsible parties for business operations;
 - (9) Floor plan and evacuation routes; ~~and~~
 - (10) SECURITY AND OTHER MEASURES TO PROTECT POTENTIAL VICTIMS FROM DRINK SPIKING AS APPLICABLE THROUGH SECTION 26-71 OF THIS CODE; AND
 - (11) Any other reasonable information the Police Department deems necessary for review and approval of the security plan.
- (f) Upon request of the Police Department, any business with a use requiring a security plan pursuant to Section 26-70(c) shall immediately furnish any of the information and/or supporting documentation required by Section 26-70(e) to the Police Department.
- (g) *Security plan review and approval time frames.*
- (1) Administrative time frame; unless the security plan has already been approved. Within fifteen (15) days after receiving a security plan application under this article, the Police Department designee will determine whether the application is administratively complete, and notify the applicant or their agent;
 - (2) Substantive review time frame. Within forty-five (45) days after the notice of administrative completion, the Police Department will complete a substantive review of the security plan application;
 - (3) Overall time frame. Within ninety (90) days, subject to any authorized extensions, after receiving a complete security plan application pursuant to this article, the Police Department designee will approve or deny the security plan; and

- (4) The time frames provided for in this section are suspended if a security plan application has been determined to be administratively incomplete or a supplemental request has been made during the substantive review period until the applicant corrects any deficiencies or responds to a supplemental request for information. In no event shall an application remain incomplete in excess of sixty (60) days.
- (h) *Duration and renewal.*
- (1) A security plan approved by the Police Department shall be subject to annual review at the discretion of the Police Department and is subject to revision by the Police Department if:
- a. There is a material change in circumstances; or
 - b. Upon a written request from the property owner or agent; or
 - c. It is deemed necessary by the Police Department for the protection of the health, safety, or welfare of the community; OR
 - d. THE USER SEEKS RECERTIFICATION OF COMPLIANCE WITH SECTION 26-71.
- (i) *Non-acceptance and denial.*
- (1) The Police Department designee shall not accept a security plan submittal if the application is incomplete.
- (2) The Police Department designee shall deny approval of a security plan application if:
- a. All requirements for the security plan have not been completed; or
 - b. The applicant is a corporation or other entity not qualified or licensed to transact business in Arizona; or
 - c. False or misleading information was given or submitted in support of a security plan, or the applicant failed or refused to make full disclosure of all required information; or
 - d. The applicant is delinquent in payment to the City of any taxes, fees, fines, or penalties imposed upon the applicant, or arising out of any other business activity owned or operated by the applicant that is subject to licensing by the City.
- (j) *Information update.* All businesses required to have a security plan shall give written notice to the Police Department designee of any material changes in information submitted in connection with an application or approved security plan. This information must be provided to the Police Department designee within thirty (30) days of any such change.
- (k) *Mandatory reporting.* Any business or person regulated by this article shall immediately report to the Tempe Police Department any act that occurs or was reported to have occurred on its property located within the City which includes any of the following:
- (1) In which bodily injuries are sustained by any person and the injuries would be obvious to a reasonable person; or,
 - (2) Of sufficient intensity as to require the intervention of a peace officer to restore normal order; or,
 - (3) In which a weapon is brandished, displayed or used; or,
 - (4) Any sexual offense defined under A.R.S. Title 13, Chapter 14; OR
 - (5) ANY ACT OR ATTEMPTED ACT OF DRINK SPIKING.
- (l) *Violations.*
- (1) It is a violation to operate a business with a use listed under 26-70(c) without an approved security plan.

- (2) Failure to comply with the terms and conditions of an approved security plan constitutes a violation. Two (2) or more violations within a one (1) year period constitutes grounds for revocation.
 - (3) Submitting false or misleading information in support of a security plan constitutes a violation.
 - (4) Any action or inaction in violation of this section that places an individual or individuals in imminent danger constitutes a violation and is grounds for immediate revocation.
 - (5) A licensee or an employee or contractor of the licensee failing to follow a clear and direct lawful order from a law enforcement office or a fire code official constitutes a violation.
 - (6) Failure to comply with mandatory reporting incidents as required under this article constitutes a violation.
 - (7) The Police Department designee shall be responsible for initiating any revocation proceedings.
 - (8) Any violation of this article is a Class 1 misdemeanor,
- (m) *Penalties.* No person shall operate or allow the operation of a use, which requires a security plan, in the absence of such required security plan or in a manner which violates a security plan required by this article. Any violation of this article may result in a fine, revocation of security plan, liability for emergency response and criminal charges, as set forth in this article. Each individual day of operation in violation of this article shall be a separate violation. All remedies prescribed by this article shall be cumulative and supplemental and the use of one (1) or more remedies by the City shall not bar the use of any other remedy for enforcing this article.
- (n) *Liability for emergency responses.* Any use or person regulated by this article shall be liable for the reasonable costs of any emergency response that is required as a result of a breach of the security plan or of this article.
- (1) The expenses of an emergency response are a charge against the person or entity liable for those expenses. The charge constitutes a debt of that person or entity, and may be collected by the City and any emergency responder that incurred expenses while undertaking the emergency response. The liability imposed under this article is in addition to and not in limitation of any other liability that may be imposed. An insurance policy may exclude coverage for liability for expenses of an emergency response under this article but an insurance exclusion does not waive or alter the liability to the City or other providers of the emergency response.
 - (2) For purposes of this section, "expenses of an emergency response" shall mean reasonable costs directly incurred by the City or other emergency responders that make an appropriate emergency response to an incident. "Reasonable costs" shall mean all costs of providing police, fire fighting, rescue, transport and emergency medical services at the scene of an incident including the salaries of the persons who respond to the incident. "Emergency response" shall mean a response by one (1) or more public safety agencies necessary to prevent a public safety incident or to restore order during such an incident.
 - (3) The City does not hereby waive its right to seek reimbursement for actual costs exceeding the fine imposed in subsection (m) through other legal remedies or procedures.
- (o) In addition to the other penalties and liabilities imposed in this article, in the event of an emergency response that occurs on a premises located within the City that results from or is related to a violation of a security plan or of this article, a fine not to exceed five thousand dollars (\$5,000.00) per incident shall be imposed for each incident.
- (p) *Appeal.* The appeal procedure is as follows:
- (1) If an applicant for security plan is dissatisfied with any decision under this article, the applicant may administratively appeal the decision to the Chief of Police or designee, within five (5) days of receipt of the decision. The Chief of Police or designee shall render a decision within five (5) working days of receipt of request for review;

- (2) If an applicant is dissatisfied with the decision of the Chief of Police, they may file an appeal in writing with the City Clerk to be heard by a hearing officer. Any appeal shall be filed within ten (10) days of receipt of the decision of the Chief of Police, setting forth the reasons why the decision should not be implemented;
- (3) The hearing officer shall consider all facts relating to the issuance of the violation and fine and the reasons therefore and may uphold the penalty imposed, eliminate the penalty, or modify it. The hearing officer shall render their decision within ten (10) days of submission;
- (4) The costs of the administrative hearing may be assessed to the responsible party in addition to any other fines and penalties in the event that the violation is upheld; and
- (5) If an applicant is dissatisfied with the review by the hearing officer, they may file an appeal in writing with the City Clerk to be heard by the City Council. Any appeal shall be filed within ten (10) days of receipt of the decision of the hearing officer, setting forth the reasons why the decision should not be implemented. The decision of the City Council shall constitute the final decision.

Sec. 26-71. SPECIAL SECURITY MEASURES FOR DRINK SPIKING.

(a) **ADDITIONAL SECURITY PLAN CONSIDERATIONS FOR CERTAIN USES.** FOR THOSE USES DESIGNATED IN SECTION 26-70(c)(1), THE SECURITY PLAN SHALL GIVE CONSIDERATION TO THE FEASIBILITY AND DESIRABILITY OF SECURITY MEASURES DESIGNED TO PREVENT DRINK SPIKING. MEASURES TO BE CONSIDERED INCLUDE:

- 1) OFFERING A LID OR REMOVABLE COVER OF ANY SIZE THAT ATTACHES TO THE RIM OF A BEVERAGE CONTAINER THAT THE ESTABLISHMENT SERVES TO ITS CUSTOMERS;
- 2) OFFERING DURING REGULAR BUSINESS HOURS THE SALE OR DISTRIBUTION AT NO MORE THAN 120% OF COST COMMERCIALY AVAILABLE DRUG TESTING MEASURES OR KITS SUCH AS STRIPS, STICKERS, OR OTHER DEVICES DESIGNED TO DETECT NARCOTIC OR DANGEROUS DRUGS AS DEFINED IN SECTIONS 13-1205 AND 13-3401 OF THE ARIZONA REVISED STATUTES;
- 3) OTHER MEASURES SUCH AS SECURITY CAMERAS, SIGNAGE, EDUCATION AND TRAINING DESIGNED TO PROMOTE AWARENESS AND PREVENTION OF DRINK SPIKING.

(c) **CERTIFIED DRINK SPIKING PREVENTION PROGRAMS.** THE CONSIDERATIONS SET FORTH IN SUBSECTION **A(2)** SHALL BE MANDATORY. THE CHIEF OF POLICE OR DESIGNEE SHALL OFFER TO ALL USES SUBJECT TO A SECURITY PLAN REQUIREMENT UNDER THIS ARTICLE THE OPPORTUNITY TO IMPLEMENT AND MAINTAIN A CERTIFIED DRINK SPIKING PREVENTION PROGRAM AS PART OF ITS SECURITY PLAN. CERTIFIED PLANS SHALL INCLUDE ALL OF THE FOLLOWING:

- 1) MAINTAINING AN INVENTORY AND OFFERING FREE OF CHARGE TO ANY CUSTOMER A GLASS OR CONTAINER OF SUITABLE SIZE THAT INCLUDES A LID OR OTHER REMOVABLE COVER THAT ATTACHES TO THE RIM OF THE GLASS OR CONTAINER;
- 2) MAINTAINING AN INVENTORY AND OFFERING TO CUSTOMERS FREE OF CHARGE DRUG TESTING MEASURES OR KITS SUCH AS STRIPS, STICKERS, OR OTHER DEVICES DESIGNED TO DETECT THE FOLLOWING SUBSTANCES: FLUNITRAZEPAM (ROHYPNOL OR ROOFIES), ALPRAZOLAM (XANAX), DIAZEPAM (VALIUM), DIAZEPAM (DIASAT), TEMAZEPAM (RESTORIL), OXAZEPAM (SERAX), LORAZEPAM (ATIVAN), ETIZOLAM, TRIAZOLAM (HALCION), NITRAZEPAM (MOGADON®), KETAMINE, NORKETAMINE AND ANY OTHER NARCOTIC OR DANGEROUS DRUG FOR WHICH THE CHIEF OF POLICE HAS DETERMINED IS POTENTIALLY USED IN DRINK SPIKING AND THAT THERE IS AN EFFECTIVE TESTING METHOD COMMERCIALY AVAILABLE TO SUCH ESTABLISHMENTS;
- 3) MAINTAINING A PROGRAM TO ASSURE THAT TESTING MEASURES OR KITS OFFERED TO CUSTOMERS HAVE NOT EXCEEDED THEIR EXPIRATION DATE AND ARE OTHERWISE MAINTAINED AND STORED IN A MANNER CONSISTENT WITH MANUFACTURER RECOMMENDATIONS;

4) POSTING IN PROMINENT AND CONSPICUOUS LOCATIONS APPROVED IN THE SECURITY PLAN A SIGN THAT CONVEYS THE FOLLOWING MESSAGE OR A SUBSTANTIALLY SIMILAR MESSAGE APPROVED BY THE CHIEF OF POLICE OR DESIGNEE:

[INSERT SIGNAGE HERE]

5) ANY ADDITIONAL REQUIREMENTS REASONABLY DETERMINED BY THE CHIEF OF POLICE OR DESIGNEE TO PROMOTE DRINK SPIKING PREVENTION.

(d) **INCENTIVES FOR CERTIFIED PROGRAMS.** ANY ESTABLISHMENT WHICH DEVELOPS AND MAINTAINS A CERTIFIED DRINK SPIKING PREVENTION PROGRAM SHALL BE ENTITLED TO RECEIVE AN ANNUAL REBATE EQUAL TO TWENTY-FIVE PERCENT (25%) OF ANY TAX PAID BY SUCH ESTABLISHMENT PURSUANT TO CHAPTER 4, SECTION 4-4 OF THIS CODE. THE CHIEF OF POLICE OR DESIGNEE SHALL TRANSMIT NOTICE OF CERTIFICATION OR RECERTIFICATION TO THE FINANCIAL SERVICES DEPARTMENT FOR EACH ESTABLISHMENT. THE FINANCIAL SERVICES DEPARTMENT SHALL ISSUE A REBATE TO THE ESTABLISHMENT LICENSEE WITHIN SIXTY (60) DAYS THEREAFTER.

(e) **POLICE DEPARTMENT SUPPORT OF SECURITY PLANS.** IN ORDER TO SUPPORT THE PURPOSES OF DRINK SPIKING PREVENTION AND ENFORCEMENT, THE CHIEF OF POLICE SHALL MAKE REASONABLE EFFORTS TO PROVIDE READILY AVAILABLE AND PROPERLY MAINTAINED TESTING MEASURES AS SET FORTH IN SUBSECTION (c)(2) AT EACH POLICE SUBSTATION AND POLICE HEADQUARTERS BUILDING.

(f) **RELEASE OF LIABILITY.** THE PROVISIONS IN THIS SECTION RELATED TO DRINK SPIKING PREVENTION ARE NOT INTENDED TO CREATE A LIABILITY FOR ESTABLISHMENTS PARTICIPATING IN THE PROGRAM AND NO ESTABLISHMENT SHALL BE HELD LEGALLY LIABLE FOR ANY DEFECTIVE TEST, INACCURATE RESULT, FALSE NEGATIVE OR POSITIVE, OR OTHERWISE INCUR LIABILITY AS A RESULT OF ADDING DRINK SPIKING PREVENTION MEASURES TO THE SECURITY PLAN FOR SUCH ESTABLISHMENT.