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MEMORANDUM

Date: October 3, 2013

To: Mayor and Council Members

From: Tim Wright, Town Attorney

Re: Systematic Town Code Review – Title III, Section 31.01-31.27: TOWN OFFICIALS (Ordinance 840)

This is part 4 of the Systematic Town Code Review. The changes recommended below are for Title III, Sections 31.01-31.27: Town Officials. (insertions are noted with a double underline and deletions are noted by ~~strikeout~~)

Section 31.01 OFFICERS ENUMERATED – This section is amended to reflect the current hiring, discipline, and termination provisions in the Personnel Manual for Town employees.

31.01 OFFICERS ENUMERATED

(A) The Town's officers shall be the Town Manager, Town Clerk, Town Marshal/Police Chief, Town Engineer, Town Attorney, and Town Magistrate.

~~(A) The town's officers shall be the Town Manager, Town Clerk, Town Attorney, Town Engineer and the Town Marshal/Police Chief. Upon the selection and appointment of the Town Manager or Town Attorney by the Council, the first 12 months of employment shall be probationary and subject to termination by the Council, unless otherwise provided for in a contract between the Council and such officer. Upon the expiration of the 12-month probationary period, such officer shall only be removed for cause upon a majority vote of the full membership of the Council, or a total of four votes.~~

(B) The Town Council shall select and appoint the Town Manager and Town Attorney. Unless otherwise provided for in a contract between the Town Manager and/or Town Attorney and the Town, any discipline or termination of the Town Manager and/or Town Attorney shall be conducted in accordance with the Town's Personnel Manual.

~~(B) All officers other than the Town Manager and Town Attorney shall be selected and appointed by the Town Manager subject to ratification of the Town Council. Such officers other than the Town Manager and Town Attorney may be removed for cause by the Town Manager, subject to rights of review by the Personnel Board and the Town Council, as provided in the Town of Payson Personnel Rules and Procedure Manual.~~

(C) All officers other than the Town Manager and Town Attorney shall be selected by the Town Manager and approved by the Town Council. Any discipline or termination of an officer shall be conducted in accordance with the Town's Personnel Manual.

Section 31.02 TREASURER AND COLLECTION OF TAXES – The Town does not have a 'Treasurer,' nor does the Town directly collect its own taxes. Therefore this section is not necessary and may be eliminated.

31.02 ~~TREASURER AND COLLECTION OF TAXES.~~ Reserved.

~~The Chief Fiscal Officer shall act as Treasurer and as Collector of Taxes.~~

Section 31.04 BOND – In lieu of obtaining a bond from each individual officer, the Town has liability insurance. Therefore this section is not necessary and may be eliminated.

31.04 ~~BOND~~ Reserved.

~~The Council may require each officer or department head of the town to give bond for the due discharge of his or her duties in such sums and with such security as it may direct and approve as determined by resolution. The town shall pay the costs of the bond.~~

Section 31.05 VACANCIES; HOLDING MORE THAN ONE OFFICE – The first sentence of this Section is redundant of 31.01. The second sentence is unnecessary because it is the responsibility of the Manager to assure all functions are validly performed. Therefore this section is not necessary and may be eliminated.

31.05 ~~VACANCIES; HOLDING MORE THAN ONE OFFICE.~~ Reserved.

~~The offices of Town Manager and Town Attorney shall be filled by appointment by the Council. At the discretion of the Council, the functions of a Town Official may be validly performed and discharged by a deputy or another Town Official, or an otherwise~~

~~qualified individual not holding office but employed in accordance with § 31.01 of this chapter.~~

Section 31.07 INDEMNIFICATION OF OFFICERS – The amendments to this Section are stylistic to allow for readability and conformity to the remainder of the Code.

31.07 INDEMNIFICATION OF OFFICERS

The ~~town, by and through its Common~~ Council, or other designated independent decision maker selected by the ~~Common~~ Council in the event of conflicts, shall have the right to indemnify the Town's officers, ~~directors,~~ employees, elected officials and agents ~~of the town~~ who are named as a party or who are threatened to be named ~~a party~~ in any pending or completed action or suit ~~or proceeding~~, whether civil, criminal, administrative, or investigative, in accordance with the standards and guidelines set forth in A.R.S. Title 10, Chapter 8, Article 5, as amended. ~~A.R.S. Title 10, Chapter 8, Article 5 is hereby incorporated into this code by reference, and shall be the embodiment of the procedures and standards for the indemnification rights created herein.~~

Section 31.20 TOWN MANAGER – The amendment to this Section incorporates numerous non substantive changes including:

(1) eliminating subsection (A); the office of Manager is created by 31.20.
(2) eliminating duplicative language in (1) re authority of the Council over the Attorney.
(3) allowing the Manager under (2) to send a designee to Council Meetings as may be necessary or appropriate. Under 33.05, the Manager designates staff advisors for each board, commission, and committee meetings.
(4) allowing the Manager under (3) to receive inquiries from the public as she deems appropriate.
(5) eliminating (10) as this is covered by the Personnel Manual.
(6) eliminating (11) as the Manager has independent authority over all employees and a specific reference to one specific employee is unnecessary.

31.20 TOWN MANAGER.

~~(A) The office of Town Manager is hereby created.~~
~~(B)~~ The responsibilities of the Town Manager shall be as follows:
(~~1~~A) The Town Manager shall be responsible for directing and coordinating all municipal administrative activities. The Town Manager shall exercise independent judgment in determining the course and extensiveness of assignments and in developing recommendations to the Council. The Town Manager shall exercise all administrative authority over all town officers and employees, except for the Town Attorney and his/her staff~~, administrative authority over whom shall be exercised by the Mayor and Council~~.

(~~2~~B) The Town Manager or his/her designee shall attend all meetings of the Council~~, and boards, commissions and committees as necessary~~.

(~~3~~C) The Town Manager shall receive inquiries from the public ~~by letter, phone or in person~~ and shall furnish information or direct the inquiry to the proper source within town management for answer.

(~~4~~D) The Town Manager shall plan, coordinate and review the preparation of the municipal budget, shall review the budget periodically to compare revenues and expenditures and shall perform related budget and fiscal work.

(~~5~~E) The Town Manager shall study departmental organization and procedures, conferring with department heads and administrative personnel on assignments, policy interpretations and related work.

(~~6~~F) The Town Manager shall conduct research and procedural or administrative studies and prepare reports embodying recommended solutions and courses of action. The Town Manager initiates appropriate courses of action for greater administrative effectiveness.

(~~7~~G) The Town Manager shall supervises preparation of material for public reporting.

(~~8~~H) The Town Manager shall negotiates contracts and other legal agreements, signs purchase orders, agreements, contracts and related documents as authorized for the town.

(~~9~~I) The Town Manager shall represents the town at meetings, organizations, clubs and the like, and may speak on behalf of the town at these meetings as requested.

~~(10) Except as provided in division (B)(1) above, the Town Manager is the personnel administrator, with those duties described in the Personnel Rules and Regulations adopted by resolution of the Council.~~

~~(11) One or more Town Business License Clerk(s) shall be appointed by the Town Manager or the Manager's designee and such appointment(s) may be changed by the Manager from time to time.~~

Section 31.21 TOWN CLERK. There are three changes in this section (1) subsection (C) is redrafted to reflect current practice; (2) subsection (G) is eliminated as the Clerk does not issue all licenses; and (3) subsection (I) is eliminated as duplicative of 31.01.

31.21 TOWN CLERK.

(A) *Records*. The Clerk shall keep a true and correct record of all business transacted by the Council and any other records that either pertain to the business of the town or that the Council directs. The Clerk shall number, plainly label and file separately in a suitable cabinet all resolutions, ordinances, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders and other documents of whatever nature.

(B) *Public inspection of records.* The Clerk shall keep convenient for public inspection all public records and public documents under the Clerk's control, as provided by state statute.

(C) *Agendas* ~~*reports*~~. The Clerk shall prepare all Council Agendas and gather all materials supporting such Agendas. ~~collect from town officers and employees for the~~

~~agenda reports and Council Decision Requests prepared in such manner and to include such information as may be directed by the Council.~~

(D) *Minutes*. The Clerk shall prepare or cause to be prepared all minutes of Council proceedings and ensure their correctness and accuracy.

(E) *Ordinances, resolutions, budgets and notices.* The Clerk shall process, record, file, publish and, when required by statute, post all ordinances, resolutions, budgets and notices that may be passed by the Council.

(F) *Election official.* The Clerk shall be the town election official and perform those duties required by state statute.

~~(G) *Licenses.* The Clerk shall issue or cause to be issued all licenses that may be prescribed by state statute, this code, or the Town Council.~~

(~~H~~G) *Administrative duties*. The Clerk shall perform those administrative responsibilities and duties as directed by the Manager ~~that are conferred upon the Clerk by the Council~~ in addition to those specified in this code.

~~(I) The Town Clerk shall be appointed by and report to the Town Manager.~~

Section 31.22 TOWN MARSHAL. The duplicative language regarding who appoints the Town Marshal is removed. It is also clarified that because the Marshall/Police Chief reports to the Manager, it is the Manager who directs the Chief.

31.22 TOWN MARSHAL.

The Marshal shall be the Chief of Police. He or she shall perform such duties as may be required by law and as the Manager ~~Council~~ may deem necessary. ~~The Chief of Police shall be appointed by and report to the Town Manager.~~

Section 31.23 TOWN ENGINEER. The duplicative language regarding who appoints the Town Engineer is removed. It is also clarified that because the Engineer reports to the Manager, it is the Manager who directs the Engineer.

31.23 TOWN ENGINEER.

The Engineer shall have charge of the town streets and shall perform such duties as may be required by law and such other duties ~~and the Council or Town~~ as the Manger may deem necessary. ~~The Engineer shall be appointed by and report to the Town Manager.~~

Section 31.24 TOWN ATTORNEY. The Section (currently one long paragraph) is broken down into its subparts. Additionally, language is added to clarify that the Attorney represents the Council, officials, and employees in their official capacity.

31.24 TOWN ATTORNEY.

~~The Attorney shall act as the legal counselor and advisor of the Council and other officials and employees and, as such, shall give his or her opinion in writing when requested. He or she shall draft all deeds, contracts, conveyances, ordinances, resolutions and other legal instruments when required by the Council. He or she shall approve as to form, in writing, all drafts of contracts and all official or other bonds before final approval or acceptance thereof by the Council. He or she shall return, within ten days, all ordinances and resolutions submitted to him for consideration by the Council, with his or her approval or disapproval as to form noted thereon, together with his or her reasons therefor. He or she shall prosecute and defend all suits, actions or causes where the town is a party and shall report to the Council, when required, the condition of any suit or action to which the town is a party.~~

(A) The Attorney shall act as the legal advisor to the Council and other officials and employees acting in their official capacities and shall give his/her opinion in writing when requested.

(B) The Attorney shall draft deeds, contracts, conveyances, ordinances, resolutions and other legal instruments when required.

(C) The Attorney shall approve as to form, in writing, all contracts and all official or other bonds before final approval or acceptance thereof by the Council.

(D) The Attorney shall be responsible for the prosecution and defense of all suits, or actions where the town is a party and shall report to the Council, when required, the condition of any such suit or action.

Section 31.25 TOWN MAGISTRATE. Subsection (B) has been added to clarify that the Magistrate term must be at least 24 months. This minimum term is a requirement under state law to ensure that the Magistrate is independent of political forces.

31.25 TOWN MAGISTRATE.

(A) The Town Magistrate shall be the presiding officer of the Magistrate's Court and shall be appointed ~~selected~~ by the Council and shall perform those functions necessary to the maintenance of a Magistrate's Court as provided by state statute.

(B) The Town Magistrate shall be appointed for a term of not less than 24 months.

Sections 31.26 CHIEF FISCAL OFFICER and 31.27 COORDINATOR OF EMERGENCY SERVICES. Neither of these positions are referenced in State Statute municipal officers. Currently the Town does not have an employee hired specifically to fill either of these positions. All of the responsibilities listed in the Code are being done by various personnel in the Finance, Police, and Fire Departments. Specifically with reference to the Emergency Coordinator, Don Engler as the Deputy Town Manager over Public Safety fills this role. It is recommended that

both of these 'officers' be removed from the Code. These positions are more appropriately dealt with at the administrative level.

~~31.26 CHIEF FISCAL OFFICER~~

~~The responsibilities of the Chief Fiscal Officer shall be as follows:~~
~~(A) *Budget.* The Chief Fiscal Officer shall prepare the budget for each fiscal year including projected revenues and proposed expenditures. The budget shall be submitted to the Town Manager and the Town Council for review and shall be revised as directed.~~
~~(B) *Budget administration.* Periodically, the Chief Fiscal Officer shall submit to the Town Manager and the Town Council a comparison of actual revenues and expenditures to the related budget. Recommendations shall be made by the Chief Fiscal Officer to the Town Manager and the Town Council concerning appropriate budget policies.~~

~~(C) *The uniform expenditure reporting system.* The Chief Fiscal Officer shall be responsible for compliance with the uniform expenditure reporting system as outlined in A.R.S. § 41-1279.07.~~

~~(D) *Budget adoption compliance.* The Chief Fiscal Officer shall be responsible for compliance with federal, state and local budget adoption laws.~~

~~(E) *Purchase orders.*~~

~~(F) *Accounting principles and financial statements.* The Chief Fiscal Officer shall be responsible for compliance with generally accepted accounting principles and preparation of financial statements in accordance with the National Council on Governmental Accounting.~~

~~(G) *Other duties as Chief Fiscal Officer.* The Chief Fiscal Officer shall receive and safely keep all monies that shall come to the town and pay out the same when authorized by the Council. He shall keep a separate record and account of each different fund provided by the Council, apportion the monies received among the different funds as prescribed by the Council, and keep a complete set of books showing every transaction of the town, the state of each fund, from what source the money in each fund was derived and for what purpose expended.~~

~~(H) *Administrative duties.* The Chief Fiscal Officer shall perform those administrative responsibilities and duties that are conferred upon him by the Town Manager in addition to those specified in this code.~~

~~(I) *Duties as Treasurer.* The Chief Fiscal Officer shall hold the office of Town Treasurer and perform the functions thereof.~~

~~(J) The Chief Fiscal Officer shall be appointed by and report to the Town Manger.~~

~~31.27 COORDINATOR OF EMERGENCY SERVICES.~~

~~(A) The office of the Coordinator of Emergency Services is hereby created. The Coordinator shall be appointed and serve at the will of the Council. An assistant coordinator may be appointed if necessary.~~

~~(B) The duties of the Coordinator of Emergency Services shall include the following:~~
~~(1) The recommendation for adoption by the Council of an emergency services plan.~~
~~(2) The maintenance of necessary liaison between the Council and the emergency services organization and other emergency services organizations within the county and state.~~
~~(3) The control and direction of the training of the emergency services organizations.~~
~~(4) Such other duties as prescribed by law or by regulation adopted by the Mayor and Council.~~

~~(C) The emergency services organization of the town shall consist of the officers and employees of the town designated by regulation as well as all volunteer emergency service workers. The functions and duties of the organization shall be distributed between such divisions and services as shall be prescribed by regulation of the Council.~~
~~(D) It is unlawful for any person to willfully obstruct, hinder or delay any member of the emergency services organization in carrying out his duties under this section. It is unlawful for any person to wear, carry or display any emblem, insignia or other means of identification as a member of the emergency services organization of the town unless so authorized by the proper officials.~~