RESOLUTION NO. 2796

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF PAYSON, ARIZONA, AMENDING CHAPTER 91: NUISANCES OF THE PAYSON TOWN CODE AND DECLARING SUCH AMENDMENT TO BE A PUBLIC RECORD.

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution 1536; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance 588; and

WHEREAS, it is the intention of the Town of Payson to amend various provisions of Chapter 91: Nuisances of the Payson Town Code; and

WHEREAS, such amendments may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, RESOLVE AS FOLLOWS:

Section 1. The Title to Sections 91.01 through 91.07 is amended from "Removal of Litter" to "General."

Section 2. The definitions of "Aircraft" and "Park" set forth in Chapter 91: Nuisances, Section 91.01 of the Payson Town Code are amended, declared to be a public record, and shall read as follows:

§91.01 DEFINITIONS.

AIRCRAFT. Any contrivance used or designed for navigation or for flight in the air.

PARK. A park, playground, recreation center or any other public area owned by the town and devoted to public recreation.

Section 3. Chapter 91: Nuisances, Section 91.03 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.03 SECURING LOADS REQUIRED.

No person shall drive a vehicle unless any load in or on the vehicle is secured to prevent any part of the load from being deposited upon any street or other public place.

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Section 4. Chapter 91: Nuisances, Section 91.04(A) of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.04 DEPOSITING OF HANDBILLS.

(A) Deposit of commercial handbills on public property. No person shall throw or deposit any handbill on any sidewalk, street or other public place within the town, nor shall any person hand out or distribute any commercial handbill in any public place, but nothing in this section shall be deemed to prohibit any person from handing out or distributing any non-commercial handbill to any person willing to accept it.

Section 5. Chapter 91: Nuisances, Section 91.22 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.22 REMOVAL.

The Police Department is authorized to cause the removal, storage and disposition of abandoned vehicles on public or private property in accordance with A.R.S. Title 28, Chapter 11.

Section 6. Chapter 91: Nuisances, Section 91.39(A) of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.39 AUTHORITY AND INSPECTIONS.

(A) Authority. The Town is authorized to make inspections of property to determine compliance with this chapter upon invitation or with the concurrence of the owner, occupant, or designated agent, or when ordered by a court when probably cause exists to believe that conditions may be detrimental to health, safety or welfare.

Section 7. Chapter 91: Nuisances, Section 91.40(A) of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.40 NOTICE OF VIOLATION AND REQUEST FOR VOLUNTARY COMPLIANCE.

(A) Except in cases of immediate hazards, the Town shall provide reasonable written notice to the owner and occupant, lessee or designated agent in an attempt to obtain voluntary compliance with the provisions of this subchapter.

Section 8. Chapter 91: Nuisances, Section 91.41 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.41 RESERVED.

Section 9. Chapter 91: Nuisances, Section 91.43 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.43 EMERGENCY ABATEMENT.

If a situation presents an immediate hazard to public health or safety, the town may personally serve an order directing the owner, occupant, lessee or designated agent to take such action as is appropriate to correct or abate the situation. If the owner, occupant, lessee or designated agent fails to correct the violation within 24 hours, or the town is unable to locate such person within 24 hours, the town may act to correct or abate the situation. Costs of abatement shall be an assessment upon the lot or tract of land as provided below.

Section 10. Chapter 91: Nuisances, Section 91.44(A) and (B) of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.44 ASSESSMENTS.

(A) Assessment of cost of town correction. When the town has caused at Town expense the removal of a condition in violation of this subchapter, the Town's Unified Development Code, or any other code adopted by the Town, the actual cost thereof, plus 5% for associated legal expenses in connection therewith shall be charged to the owner of such property as an assessment upon the lot or lots and tract or tracts of land from which such violation is removed.

(B) Recording assessment. The town shall record the assessment in the office of the Gila County Recorder, including the date and amount of the assessment, the legal description of the property and the town as the one imposing the assessment. The priority of the recorded assessment shall be as set forth in State Law. A sale of the property to satisfy an assessment obtained under the provision of this section shall be made upon judgment of foreclosure and order of sale. The town shall have the right to bring an action to enforce the assessment in the Superior Court of Gila County at any time after the recording of the assessment, but failure to enforce the assessment by such action shall not affect is validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein and the regularity of all proceedings prior to the recording thereof.

Section 11. Chapter 91: Nuisances, Section 91.46 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 91.46 VIOLATIONS.

(A) Cumulative remedies. The remedies herein are cumulative and the town may proceed under one or more such remedies.

(B) Presumption of lawful control over property. The owner of record, as recorded in the Gila County Recorder's Office, of the property upon which a violation of this chapter exists shall be presumed to be a person having lawful control over the subject structure or parcel of land. If more than one person shall be recorded as the owner of the property, said persons shall be jointly and severally presumed to be persons having lawful control over the subject structure or parcel of land. This presumption shall not prevent

enforcement of the provisions of this chapter against any person specified in § 91.99(C)(1).

Section 12. If any portion of this Resolution is held to be invalid or unconstitutional such decision shall not affect the validity of the remaining portions of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this _____ day of September, 2014, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
Kenny J. Evans, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Timothy M. Wright, Town Attorney