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## MEMORANDUM

Date: September 4, 2014

To: Mayor and Council Members

From: Tim Wright, Town Attorney *TW*

Re: Systematic Town Code Review – Title IX, CHAPTER 91: NUISANCES (Ordinance 856/Resolution 2796)

This is part 11 of the Systematic Town Code Review. Chapter 91 (Nuisances) has been reviewed and all recommended changes are non-substantive such as renumbering, grammatical, removal as duplicative of state law, etc. Sections for which no changes are recommended are not referenced or included in this Memo. The recommended changes have been reviewed by the Town Manager, the Assistant Town Manager, the Deputy Town Manager (Public Safety), the Building Official, and the Zoning Administrator. Insertions are noted with a double underline and deletions are noted by ~~strikeout~~.

The Title to Sections 91.01 through 91.07 has been amended from “Removal of Litter” to “General” to better describe such Sections.

Section 91.01 DEFINITIONS – the definitions of “Aircraft” and “Park” have been simplified.

### §91.01 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

**AIRCRAFT.** Any contrivance ~~now known or hereafter invented~~, used or designed for navigation or for flight in the air, ~~and includes, but is not limited to,~~ helicopters and lighter-than-air dirigibles and balloons.

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

Section 91.03 LITTERING PROHIBITED – All of the subsections of 91.03 except Subsection D are prohibited by State Law and therefore are duplicative. See A.R.S. 13-1603. This Section has been renamed and all subsections except D have been repealed. Subsection D has been rewritten for clarity and conciseness.

§ 91.03 SECURING LOADS REQUIRED. LITTERING PROHIBITED.

~~(A) — Litter in public places. No person shall throw or deposit litter in or upon any street, sidewalk or other public place within the town except in public receptacles, or in authorized private receptacles for collection.~~

~~———— (B) — Depositing litter in gutters. No person shall sweep into or deposit in any gutter, street or other public place within the town the accumulation of litter from any public or private sidewalk or driveway or any building or lot. Persons owning or occupying property or places of business shall keep the sidewalk and parkway in front of their premises free of litter.~~

~~———— (C) — Litter thrown from vehicles. No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the town, or upon private property.~~

~~(D) — Littering from trucks. No person shall drive or move any truck or other vehicle within the town unless the vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place. No person shall drive or move any truck or other vehicle carrying garbage, litter, refuse and/or rubbish within the town unless the garbage, litter, refuse and/or rubbish is completely and securely covered by a tarpaulin, canvas or other cover.~~

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.

~~(E) — Littering in parks. No person shall throw or deposit litter in any park within the town except in public receptacles and in such manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or public place. Where public receptacles are not provided, all litter shall be carried away from the park by the person responsible for its presence and properly disposed of.~~

~~———— (F) — Dropping litter from aircraft. No person in any aircraft shall throw out, drop or deposit within the town any litter, handbill or any other object.~~

~~———— (G) — Deposit of litter on occupied private property. No person shall throw or deposit litter on any occupied private property within the town, whether owned by that~~

~~person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any street, sidewalk or other public place or upon any private property.~~

~~(H) Vacant lots. No person shall throw or deposit litter on any open or vacant private property within the town whether owned by that person or not.~~

Section 91.04 DEPOSTING OF HANDBILLS - The language in Subsection A has been simplified.

§ 91.04 DEPOSITING OF HANDBILLS.

(A) Deposit of commercial handbills on public property. No person shall throw or deposit any ~~commercial or non-commercial~~ handbill ~~in or upon~~ any sidewalk, street or other public place within the town, nor shall any person hand out or distribute ~~or sell~~ any commercial handbill in any public place, but nothing in this section shall be deemed to prohibit any person from handing out or distributing ~~on any sidewalk, street or other place within the town, without charge to the receiver thereof,~~ any non-commercial handbill to any person willing to accept it.

(B) Handbills; commercial and non-commercial.

(1) No person shall throw or deposit any commercial or non-commercial handbill in or upon any vehicle, but it is not unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof, a non-commercial handbill to any occupant of a vehicle who is willing to accept it.

(2) No person shall throw or deposit any commercial or non-commercial handbill in or upon any private premises which are known, or should be known to the person to be temporarily or continuously uninhabited or vacant.

(3) No person shall throw, deposit or distribute any commercial or non-commercial handbill upon any private premises, if requested by anyone thereon not to do so, or if there is placed on the premises in a conspicuous position near the entrance thereof, a sign bearing the words "No Trespassing," "No Peddlers or Agents," "No Advertisement," or any similar notice, indicating in any manner that the occupants of the premises do not desire to be molested or have their right of privacy disturbed, or to have any handbill left upon the premises.

(4) No person shall throw, deposit or distribute any commercial or non-commercial handbill in or upon private premises which are inhabited unless the handbill is so placed or deposited as to secure or prevent the handbill from being blown or drifted about the premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations. The provisions of this section shall not apply to the distribution of mail by the United States nor of newspapers as defined by this chapter.

(5) No person shall throw, deposit or distribute any commercial handbill in or upon private premises which are inhabited except upon the acceptance thereof, or the express consent therefore, by an occupant of the premises.

Section 91.22 REMOVAL – the reference to the “Town Marshall” has been changed to “Police Department.” Other grammatical changes are made and the reference to A.R.S. Title 28 is updated.

§ 91.22 REMOVAL.

The Police Department ~~Town Marshal~~ is hereby authorized to cause the removal, storage and disposition of abandoned vehicles on public or private property ~~within the corporate limits of the town~~ in accordance with A.R.S. Title 28, Chapter 11 3, ~~Article 5~~.

Section 91.39 AUTHORITY AND INSPECTIONS – The reference to the Community Development Director is changed generically to the Town. The specific person performing the act can be administratively designated. Additionally, the language requiring an inspection upon receipt of any complaint is removed.

§ 91.39 AUTHORITY AND INSPECTIONS.

(A) Authority. The Town ~~Community Development Director, or designee~~, is authorized ~~and upon receipt of a complaint from any person is directed~~ 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.

(B) Inspections generally. An inspector may expand the scope of any inspection on the original complaint to include other violations noted during inspection of the subject property.

(C) Inspections of unscreened exterior areas. Unscreened exterior areas may be inspected at any time with or without the involvement of the owner, occupant or designated agent in accordance with legal requirements.

(D) Inspections of screened exterior areas. Screened exterior areas shall be inspected only during the normal business hours of the town unless otherwise arranged, 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.

(E) Exemptions.

(1) Exemption pursuant to license. Exempted from the operation of this chapter is any person or entity who is duly licensed to store dismantled or inoperable motor vehicles or parts where such activity is permitted or allowed under the applicable zoning code of the town for that particular property.

(2) Remote acreage exemption. Exempted from the operations of this subchapter is large, remote acreage greater than two acres, not accessible by a public

street, unimproved road, private street or driveway and in a natural state evidenced by native vegetation and undisturbed soils; or acreage impossible to service with large machinery due to its terrain. This exemption is not operable or available when actual and probable danger exists.

Section 91.40 NOTICE OF VIOLATION AND REQUEST FOR VOLUNTARY COMPLIANCE – Community Development Director is again changed to a generic “Town” and other small grammatical changes are made.

§ 91.40 NOTICE OF VIOLATION AND REQUEST FOR VOLUNTARY COMPLIANCE.

(A) Except in cases of immediate hazards, the Town ~~Community Development Director or designee~~ 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.

(B) Reasonable written notice to the owner and occupant, lessee or designated agent shall be given 30 days before the day set for compliance, and shall include a ~~the~~ legal description of the property and the cost of such removal or abatement of the violations to the town if the owner, occupant or lessee does not comply. The notice shall be either personally served or mailed to the owner and to the occupant or lessee at the last known address by certified mail, or the address to which the tax bill for the property was last mailed. The town may record the notice in the office of the Gila County Recorder. If the notice is recorded and compliance with the notice is subsequently satisfied, the town shall record a release of the notice.

Section 91.41 APPEAL TO TOWN COUNCIL – This entire section has been removed. It is unclear why there was an ‘appeal to Town Council’ when the primary enforcement remedy was filing a complaint in the Magistrate Court. As currently written, it is conceivable that the Council and the Magistrate could arrive at differing conclusions regarding a potential violation.

§ 91.41 ~~RESERVED. APPEAL TO TOWN COUNCIL.~~

~~Upon receipt of the notice as described in § 91.40 above, the owner, occupant, lessee, or designated agent shall have the right of appeal to the Council which must be in writing and filed with the Community Development Director within 30 days from the receipt of the notice described above; and the owner, occupant, lessee, or designated agent shall have the right to appear before the Council at a time and date set for an appellate hearing and may at that time appeal the notice and the anticipated assessment.~~

Section 91.43 EMERGENCY ABATEMENT – The appeal to the Council has again been removed.

§ 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. ~~A notice of appeal from the costs of abatement may be filed within 30 days of such abatement with the Community Development Director. The Council shall hear such appeals as provided for above.~~

Section 91.44 ASSESSMENTS – It is clarified that this section may be used for any correction/abatement done under Chapter 91, the provisions of the Unified Development Code, or any other code adopted by the Town.

§ 91.44 ASSESSMENTS.

(A) Assessment of cost of town correction. When the town has caused at Town expense ~~effected~~ the removal of a the condition in violation of this subchapter, the Town's Unified Development Code, or any other code adopted by the Town ~~or has paid for its removal~~, 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. ~~Any assessment recorded after July 15, 1996 is prior and superior to all other liens, obligations, mortgages or other encumbrances, except liens for general taxes.~~ 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 its 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.

(C) Imposition of assessment.

(1) Assessments that are imposed under this section run against the property until paid and are due and payable in equal annual installments as follows:

(a) Assessments less than \$500 shall be paid within one year after the assessment is recorded.

(b) Assessments less than \$1,000 shall be paid within two years after the assessment is recorded.

(c) Assessments less than \$5,000 shall be paid within three years after the assessment is recorded.

(d) Assessments less than \$10,000 shall be paid within six years after the assessment is recorded.

(e) Assessments greater than \$10,000 shall be paid within ten years after the assessment is recorded.

(2) An assessment that is past due accrues interest at the rate prescribed by A.R.S. § 44-1201.

(3) A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for these purposes, and any number of assessments on the same lot or tract of land may be enforced in the same action.

Section 91.46 VIOLATIONS – Subsection B is unnecessary and is therefore removed.

§ 91.46 VIOLATIONS.

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

~~(B) Environmental nuisance. The violation of any provision of this chapter shall constitute a public environmental nuisance.~~

~~(B)~~(C) 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 91.99 PENALTY – Extraneous language has been removed.

§ 91.99 PENALTY.

(A) Anyone who violates any of the provisions of this chapter for which no specific penalty is otherwise provided shall be subject to the provisions of § 10.99.

(B) (1) The conviction of any person for a violation of §§ 91.01 to 91.07 shall not relieve the person from the responsibility to correct such violation, nor prevent the enforcement, correction or removal thereof in any manner authorized by law.

(2) Every day that a nuisance in violation of §§ 91.01 to 91.07 is permitted to exist or caused to continue to exist shall be deemed a separate violation.

(C) Anyone who violates any of the provisions of §§ 91.35 through 91.46 shall be subject to the following:

(1) Daily civil sanction. Any owner, occupant, lessee, property manager, designated agent or other person having lawful control over a structure or parcel of land who causes, permits, facilitates or aids or abets any violation ~~of any provision~~ of this chapter or who fails to perform any act or duty required by this chapter ~~in addition to any other liens or penalties~~ is subject to a minimum civil sanction of not less than \$25 per violation, and a maximum civil sanction of \$100 per violation of this code. Each day any violation of any provision of this chapter exists shall constitute a separate violation.

(2) Penalties. In addition to the penalties set forth in subsection division (A) above, any person, firm, corporation or other entity that places any rubbish, trash, filth, garbage, refuse or debris upon any private or public property not owned or under the control of that person, firm, corporation or other entity, is guilty of a class 1 misdemeanor, ~~punishable by a fine in the amount of \$2,000 or incarceration in a jail for a period of six months, or by both such fine and incarceration.~~ In addition to any fine or penalty ~~which may be imposed for a violation of this chapter~~, any person, firm, corporation or other entity ~~who is found guilty of violating this chapter~~ shall be liable for all costs which may be assessed pursuant to this chapter for removing, abating or enjoining the placement of the rubbish, trash, filth, garbage, refuse or debris.