Payson
Legal Department

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MEMORANDUM

Date: November 3, 2014

To: Mayor and Council Members

From: Tim Wright, Town Attorney

Re: Systematic Town Code Review – Title XIII, CHAPTER 130: GENERAL OFFENSES (Ordinance 859/Resolution 2804) ***SUPPLEMENTAL MEMO***

The second Public Hearing on Ordinance 859 and Resolution 2804 is set for November 6, 2014. Between the date of the First Public Hearing in October and the November 6, 2014 Public Hearing, it was brought to my attention than an additional amendment re service of complaints for the failure to return library materials was needed. In accordance with this, Ordinance 859A and Resolution 2804A have been prepared. The only difference between 859/2804 and 859A/2804A is the amendment to Section 130.03(C) explained below.

Section 130.03(C) – Penalties; enforcement procedure – If a Library patron fails to return Library materials, the Library takes various steps to get the items returned. This could include email, phone calls, letters, etc. If all of these steps fail, the Town Code provides for a complaint to be filed in the Payson Magistrate Court. This proposed amendment would allow such complaints to be mailed to the patron at the last address provided by the patron. This would save the expense of personal service and/or certified mail.

Section 130.03(C) Penalties; enforcement procedure.

(1) Penalties. Any person who pleads responsible, or who is found to be responsible by the Payson Magistrate Court of a violation of this section shall be guilty of a civil offense and shall be subject to the following:

(a) A minimum fine in the amount of $25 for each charge.

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Timothy M. Wright, Town Attorney, Ext. 286, twright@paysonaz.gov
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Lana Dever, Office Clerk III, Victims' Rights Coordinator, Ext. 377, ldever@paysonaz.gov

(b) If the library material is returned in the same condition as when removed from the library, fees and charges as may be set by the Council from time to time.

(c) If the library material is not returned in the same condition as when removed from the library, replacement value of the library material and fees and charges as set forth in division (b) above.

(2) Commencement of proceedings. An action under this section shall be commenced by the issuance of a complaint by the library, filed in the Payson Magistrate Court. Service of the complaint shall be completed by personal service or mailing a copy of the complaint via first class US Mail to the last address provided by the person to the Payson Library. ~~in accordance with A.R.S. § 28-1593 under the Procedure for Adjudication of Civil Traffic Violations, A.R.S. § 28-1591, et seq.~~

(3) Rules of procedure. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall govern the proceedings under this section, except as modified by, or where inconsistent with, the provisions of this section.

ORDINANCE NO. 859A

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF PAYSON, ARIZONA, AMENDING PAYSON TOWN CODE CHAPTER 130: GENERAL OFFENSES AND ADOPTING SUCH AMENDMENTS BY REFERENCE.

WHEREAS, Chapter 130 of the Town Code contains provisions relating to General Offenses; and

WHEREAS, Chapter 130 has been reviewed as part of the overall code review process; and

WHEREAS, the Town desires to amend Chapter 130 in accordance with such review; and

WHEREAS, it is the desire of the Mayor and Town Council to amend Chapter 130 of the Payson Town Code by reference pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND TOWN COUNCIL, ORDAIN AS FOLLOWS:

Section 1. The amendments to Chapter 130 (General Offenses) of the Payson Town Code set forth in Resolution 2804A were declared to be a public record by Resolution 2804A, and the amendments to Chapter 130 are referred to and adopted by reference as though set forth in this Ordinance.

Section 2. At least three copies of the amendments to Chapter 130 adopted by reference by this Ordinance shall be filed in the Office of the Town Clerk and shall be kept available for public use and inspection.

Section 3. Section 130.99 (Penalty) Payson Town Code Chapter 130 is amended, and as amended shall read as follows:

§ 130.99 PENALTY.

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

(B) Any person who violates a provision of this chapter that is a civil violation is subject to a civil penalty not to exceed $300 and any penalty assessments pursuant to A.R.S. §§ 12-116.01 and 12-116.02.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of November, 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

RESOLUTION NO. 2804A

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF PAYSON, ARIZONA, AMENDING PAYSON TOWN CODE CHAPTER 130: GENERAL OFFENSES AND DECLARING SUCH AMENDMENTS 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 Town Code, Chapter 130: General Offenses; and

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

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

Section 1. Section 130.01 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

130.01 DAMAGE TO ROADS AND BRIDGES.
It is unlawful for any person to recklessly damage any road or bridge.

Section 2. Section 130.02 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§130.02 Portable Toilets

(A) It is unlawful for a person to allow a portable toilet (often referred to as a porta potty or porta john) to remain on a parcel of land for more than 21 days in a twelve month period except as provided in subsection (B)

(B) Subsection (A) shall not apply if:

(1) The portable toilet is allowed pursuant to a Town issued Temporary Use Permit or Conditional Use Permit.

(2) The portable toilet is being stored by a business that leases or sells portable toilets and the business is otherwise in compliance with all Town Zoning requirements.

(3) There is an active building permit on the parcel and a portable toilet is required for the building permit.

(4) The Town Building Official, after a determination that such portable

toilet is needed in response to a plumbing failure on the parcel, authorizes the portable toilet.

(5) The Town Council authorizes the use of the portable toilet(s).

Section 3. Section 130.16 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.16 SIGNS AND BANNERS.

(A) It is unlawful for any person to place any banner or sign upon any streetlight pole, traffic signal pole, traffic sign, or utility pole within the town without first obtaining authorization from the Council.

(B) This section shall not apply to Town Staff acting in their official capacity.

Section 4. Section 130.17 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.17 CAMPING OR SLEEPING IN CERTAIN PLACES.

(A) It is unlawful for any person to set up, use or maintain any temporary structure, tent, bag, vehicle, camper or any other thing for the purpose of camping, lodging, sleeping, cooking or establishing a temporary place of rest, unless exempted by the following divisions.

(B) It is unlawful for any person to sleep in or upon any public building, alley, sidewalk, public way or other public place or facility.

(C) It is unlawful for any property owner, manager, renter, lessee, or agent thereof to knowingly permit any person to violate this section.

(D) No person shall be charged with a violation of any provision in this section unless the person continues to engage in such conduct after warning by any police officer, the property owner, manager, renter, lessee, or agent thereof, or unless the property is conspicuously posted, warning of the provisions of divisions (A) and (B) of this section, and designating a violation thereof as a misdemeanor.

(E) This section shall not apply to the ordinary and permitted uses of improved residential lots subject to and in conformity with the zoning ordinance of the town, nor shall this section be interpreted to limit the use of lots by the owners thereof for any lawful purpose.

(F) This section shall not apply to campgrounds or similar businesses duly licensed by the town.

(G) This section shall not be construed to limit the normal activities or designated uses of the public parks of the town.

(H) This section shall not apply to the parking of any vehicle, camper or recreational vehicle for a period of less than 24 hours with the consent, express or implied, of the property owner, manager, renter, lessee or agent thereof.

(I) Unless otherwise permitted under division (H) of this section, the parking of any vehicle, tent, camper, recreational vehicle or other similar device in any location for more than six hours, when not upon one's own real property, shall be prima facie evidence of intent to violate this section.

(J) The Council may temporarily waive some or all of the provisions of this Section.

Section 5. Section 130.19 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.19 RESERVED.

Section 6. Section 130.21 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.21 RESERVED.

Section 7. Section 130.22 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.22 RESERVED.

Section 8. Section 130.29 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.29 EXPLOSIVES.

It is unlawful for any person within the limits of the town to blast, store or use powder or other explosives without a permit from the Fire Department.

Section 9. Section 130.30 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.30 INHUMANE TRAPS.

(A) It is declared to be a public nuisance and it is unlawful for any person, firm or corporation to place, set or maintain any snare or trap in the town other than common mouse traps used indoors, gopher traps placed underground and "humane" traps which detain an animal or bird without inflicting injury upon it. Unlawful traps may be seized by the Police Department and destroyed. Notice of intention to destroy such devices must be sent by registered mail to the last known address of the person from whom seized if known and posted in three conspicuous places in the town. The trap shall be held for 30 days after posting and mailing, and if no action is commenced to recover possession of the trap, it shall be destroyed.

(B) All "humane" traps shall be plainly identified with the name and address of the owner and shall be inspected daily.

Section 10. Section 130.32 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.32 UNLAWFUL URINATION OR DEFECATION.

It is unlawful to urinate or defecate while in public or while the person is open to view by the general public, unless the activity is being conducted within the confines of an area or building designated for that specific purpose. For purpose of this section, the term "public" includes any area, inside or outside, public or private, wherein the general public is admitted to pass.

Section 11. Section 130.36 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.36 RESERVED.

Section 12. Section 130.37 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.37 RESERVED.

Section 13. Section 130.38 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.38 ROADWAY PROTECTION.

(A) For the purposes of this section:

(1) SUBDIVISION CONSTRUCTION TRAFFIC means the operation on town roads of all trucks, trailers, tractors, backhoes, graders and any other equipment or machinery used to construct infrastructure as detailed on the final improvement plans of a subdivision.

(2) BUILDING CONSTRUCTION TRAFFIC means the operation on town roads of all trucks, trailers, tractors, backhoes, graders and any other equipment or machinery used to construct any building or structure for which a building permit is required.

(B) Prior to the commencement of any subdivision construction traffic, the developer of a subdivision shall obtain from the ~~Public Works Engineer~~ Town or designee an ingress/egress plan (to include street names) for all subdivision construction traffic. All subdivision construction traffic must enter and leave the subdivision in accordance with the ingress/egress plan.

(C) No subdivision construction traffic or building construction traffic shall damage any of the town's existing roadways. The developer of a subdivision or the person holding the building permit shall be responsible to repair such damage.

(D) If subdivision construction traffic does cause damage to the town's existing roadways, the town shall not accept the public improvements of the subdivision until such damage has been repaired to the satisfaction of the Town.

(E) If building construction traffic does cause damage to the town's existing roadways, the town shall not grant a certificate of occupancy for the building or structure benefitting from the building construction traffic until such damage has been repaired to the satisfaction of the Town.

Section 14. Section 130.50 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.50 RESERVED.

Section 15. Section 130.51 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.51 INTERFERING WITH OR HARASSING POLICE ANIMALS.

(A) It is unlawful for any person to intentionally or knowingly harass, bait, or interfere with a Police Animal.

(B) For the purposes of this section, Police Animal shall have the same meaning as "Working Animal" as defined in A.R.S. 13-2910.

Section 16. Section 130.76 of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

§ 130.76 HOME DETENTION.

Any person found guilty of a misdemeanor offense of driving under the influence, pursuant to Title 28, may, in the discretion of the court, be eligible for home detention in lieu of jail confinement, pursuant to A.R.S. § 9-499.07(M), provided all provisions of this section are met with regard to individual eligibility and compliance.

(A) A prisoner must meet all of the following eligibility requirements for the program:

(1) The prisoner is found by the town not to constitute a risk to either himself or other members of the community.

(2) The prisoner does not have a past history of violent behavior.

(3) If the prisoner is sentenced under A.R.S. § 28-1382(B), the prisoner first serves a minimum of 24 consecutive hours in jail.

(4) If the prisoner is sentenced under A.R.S. § 28-1382(D), the prisoner first serves a minimum of 15 consecutive days in jail.

(B) A prisoner is required to comply with all of the following provisions

for the duration of the prisoner's participation in the program:

(1) The prisoner shall remain on electronic monitoring in the prisoner's home and, if consecutive hours are ordered, shall remain at home during the hours ordered.

(2) The prisoner shall pay the full cost of the home detention, as determined by the Gila County Probation Home Detention Office, and $30 per month while on electronic monitoring.

(3) The prisoner shall be employed within Gila County, subject to review by the town; alternatively, community service work may be substituted, or if it is determined that the prisoner is incapable of performing community service or being employed, the town or the court may exempt the prisoner from this provision.

(4) Provided the prisoner is employed, if the prisoner is terminated or does not come to work, the employer shall notify the town and the court.

(5) The prisoner may be required to participate in community service work programs on the weekends.

(6) The prisoner may be allowed to be away from home detention for special purposes including church attendance, medical appointments or funerals.

(7) The prisoner shall be tested daily for the use of alcoholic beverages by submitting to an intoxilizer test at a location designated by the court.

(8) The prisoner shall participate in an alcohol or drug program as designated by the court.

(9) The prisoner may be prohibited from associating with individuals as determined by the court that may be detrimental to the prisoner's successful participation in the program.

(10) The prisoner shall comply with all other provisions of the sentence imposed.

(C) The court may terminate the prisoner's participation in the home detention program and require the prisoner to complete the remaining term of the jail sentence by jail confinement if any of the following apply:

(1) The prisoner fails to comply with any provision of division (D)(2) of this section.

(2) At any other time the court deems necessary.

(3) At any other time the town deems necessary.

(4) At any other time when this program is not in effect.

(D) Pursuant to A.R.S. § 9-499.07(O), electronic monitoring may not be substituted with some other form of home detention; also, nothing in this section shall be deemed to waive the minimum jail confinement requirements under A.R.S. § 28-1382.

Section 17. Sections 130.77 and 130.78 of the Payson Town Code are repealed.

Section 18. Section 130.03(C) of the Payson Town Code is amended, declared to be a public record, and shall read as follows:

130.03(C) Penalties; enforcement procedure.

(1) Penalties. Any person who pleads responsible, or who is found to be responsible by the Payson Magistrate Court of a violation of this section shall be guilty of a

civil offense and shall be subject to the following:

(a) A minimum fine in the amount of $25 for each charge.

(b) If the library material is returned in the same condition as when removed from the library, fees and charges as may be set by the Council from time to time.

(c) If the library material is not returned in the same condition as when removed from the library, replacement value of the library material and fees and charges as set forth in division (b) above.

(2) Commencement of proceedings. An action under this section shall be commenced by the issuance of a complaint by the library, filed in the Payson Magistrate Court. Service of the complaint shall be completed by personal service or mailing a copy of the complaint via first class US Mail to the last address provided by the person to the Payson Library.

(3) Rules of procedure. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall govern the proceedings under this section, except as modified by, or where inconsistent with, the provisions of this section.

Section 19. 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 PAYSON TOWN COUNCIL this _____ day of November, 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