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MEMORANDUM

Date: February 6, 2014

To: Mayor and Council Members

From: Tim Wright, Town Attorney **TW**

Re: Systematic Town Code Review – Title V, CHAPTER 51: GARBAGE AND TRASH
REMOVAL (Ordinance 844)

This is part 8 of the Systematic Town Code Review.¹ Chapter 51 has not been amended in over 20 years. Two substantive changes are being recommended – (1) the removal of 51.03 (Red Trash Cans). Evidently at some point in the past, the Town provided trash cans for visitors and transients to deposit trash into. (2) A new section being recommended to address the dumping of animal carcasses. See new 51.03. The recommended changes for this section have been reviewed by the Town Manager, the Assistant Town Manager, and the Deputy Town Manager over Public Safety. (insertions are noted with a double underline and deletions are noted by ~~strikeout~~)

CHAPTER 51: GARBAGE AND TRASH REMOVAL

Section 51.01 GARBAGE AND TRASH REMOVAL – Subsection (A) has been deleted as it does not add anything to the Code. It merely repeats that violating the Code is unlawful. Subsection (D) has also been deleted. The conduct prohibited by this section is already prohibited by A.R.S. 13-1603 (Criminal Littering) and/or the Town's Unified Development Code.

¹ Chapter 50: Water, is not being reviewed at this point. Following the Council's conclusion of the Development Impact Fee process, the impact fee portion of Chapter 50 will need to be rewritten. Also, following the completion of the CC Cragin pipeline, the conservation portion of Chapter 50 will need to be reexamined.

51.01 HAULING REFUSE.

~~(A) It is unlawful for any person to haul or cause to be hauled any refuse on or along any public street, avenue or alley in the town in violation of any of the provisions of this chapter.~~

(A) It is unlawful for any commercial entity ~~person~~ to haul or cause to be hauled on or along any public street in the town any garbage, unless the garbage is contained in strong, watertight vehicles or vehicles with watertight receptacles, constructed to prevent any such garbage from falling, leaking or spilling and to prevent any odor from escaping.

(B) It is unlawful for any person to haul or cause to be hauled on or along any public street in the town any garbage, refuse, or other materials for disposal unless the garbage is secured to prevent any such garbage from falling, leaking or spilling onto the ground.

(C) Any person hauling garbage, refuse, or other materials for disposal along the streets of the town shall immediately replace in the conveyance used for hauling, any refuse that falls upon the street.

~~(D) It is unlawful for any person to place or cause to be placed any refuse upon any public or private property within the town except as specifically permitted in this chapter.~~

Section 51.02 TRASH AND DEBRIS REMOVAL – This Section has non substantive grammatical and stylistic changes.

51.02 TRASH AND DEBRIS REMOVAL.

(A) Any person or entity that occupies or uses any ~~residential property or commercial property within the town~~ shall be responsible for all trash, refuse, garbage or debris generated from the ~~person's or entity's occupancy of the real property~~ and shall have the duty to properly contain the trash, refuse, garbage or debris and to cause it to be ~~removed so as to be~~ disposed of at a duly operated landfill or transfer facility.

(B) No person or entity shall ~~be permitted to~~ dispose of trash, refuse, garbage, or and debris by depositing it into a container commercial bin owned, rented or provided to another person or entity ~~from a commercial refuse hauler~~ without the ~~written~~ consent of such other person the renter or provider of the commercial bin.

Section 51.03 EXEMPTIONS; RED TRASH CARTS – The Town has not provided 'red trash carts' for a number of years. If the Town decided to provide such carts in the future, signage on the carts allowing dumping (pursuant to 51.02(B)) could be used to allow visitors the use of such carts. Because of this, Section 51.03 is unnecessary and is being deleted.

~~51.03 EXEMPTIONS; RED TRASH CARTS.~~

~~—(A) Those persons who are not residents of the town are exempt from the provisions of this section to the extent that the town provides “Red Trash Carts” for the depositing of visitors’ and transients’ trash and litter, and to the extent that trash and debris are placed within a “Red Trash Cart.”~~

~~—(B) Residents and part-time residents of the town are prohibited from depositing their trash and debris into the “Red Trash Carts” provided by the town.~~

Potential new section 51.03 DUMPING OF ANIMAL CARCASSES – During elk hunting season, elk carcasses or portions thereof have been dumped on private property in some of the more forested areas of Town. Although this conduct may be prohibited under state law, the applicable statute requires the prosecutor to show that the property owner did not give permission for the dumping. For absentee property owners, this creates issues. Additionally, even if a property owner does provide permission, the mere dumping of the carcass itself creates health hazards including stench/fly and the attraction of predator animals (bears and mountain lions).

51.03 DUMPING OF ANIMAL CARCASSES.

A. No person shall dump, deposit, or leave any animal carcass on any land not located within the National Forest.

B. No person shall dump, deposit, or leave any animal carcass on National Forest land within 500 feet of non National Forest land.

Section 51.99 PENALTY – Subsection A is duplicative. By definition, unless otherwise stated, all violations of the Town Code are misdemeanors punishable as provided in Section 10.99. Subsection B provides for a minimum fine. The minimum fine provision has been retained in a new subsection with simplified language.

~~51.99 PENALTY.~~

~~—(A) Any person or entity that violates § 51.02(B), deposits refuse by laying it alongside a commercial bin, dumps refuse upon the ground or violates any other provision of this chapter shall be punished as provided in § 10.99.~~

~~—(B) Any person or entity that is found guilty or pleads no contest to a violation of this chapter shall be fined a minimum amount of \$50, which may neither be suspended nor forgiven.~~

51.04 MINIMUM FINE.

Any violation of this Chapter shall be subject to a minimum fine of \$50.00.