Payson
Legal Department

303 North Beeline Highway
Payson, Arizona 85541
Phone 928-474-5242
Fax 928-474-8472

MEMORANDUM

Date: July 31, 2014

To: Mayor and Council Members

From: Tim Wright, Town Attorney

Re: Systematic Town Code Review – Title IX, CHAPTER 90: ANIMALS (Ordinance 854 and Resolution 2793)

This is part 10 of the Systematic Town Code Review. Chapter 90 (Animals) has been reviewed and one substantive change is being recommended – the addition of a definition of the term "Leash" and the inclusion of electronic leashes and training devices, in addition to leashes under the definition of "At Large." See amendments to Section 90.04 below. All other recommended changes are non substantive changes such as renumbering, grammatical, cleanup, 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 and the Deputy Town Manager over Public Safety. Such changes are noted in this memo by - insertions double underline and deletions ~~strikeout~~. Ordinance 854 and Resolution 2793 show a clean copy of what the code will look like if the amendments are adopted and do not show the specific insertions and deletions.

CHAPTER 90: ANIMALS

Section 90.02 PURPOSE AND SCOPE – The last sentence is extraneous and editorial in nature and has been deleted.

§ 90.02 PURPOSE AND SCOPE.

The purpose of this chapter is to promote the public health, safety and general welfare of the citizens of the town by providing a clear policy and efficient and effective enforcement procedure for the care, maintenance and control of animals within the town. The keeping of all animals within the town shall be subject to the Payson Unified Development Code with respect to zoning and all land uses. ~~It is not the purpose of this chapter to serve as an inappropriate tool in neighborhood disputes which do not concern animal control issues as defined herein.~~

§ 90.03 AUTHORITY TO ENFORCE – Chapter 90 is enforced by members of the police department, both sworn officers and other non sworn employees such as an animal control officer. This section is greatly simplified to reflect this.

§ 90.03 AUTHORITY TO ENFORCE.

This Chapter shall be enforced by the Police Department.

~~Animal control officers designated by the Chief of Police or appointed by the Council, as authorized by A.R.S. § 9-499.04, shall be the enforcement officials for this chapter. These officials, together with certified law enforcement officers, shall have the authority to act on behalf of the town in investigating complaints, impounding animals, issuing citations and taking other lawful actions as required to enforce the provisions of this chapter. It shall be a violation of this chapter to interfere with any animal control officer or other law enforcement officer in the performance of the officer's duties.~~

§ 90.04 DEFINITIONS – The definition of 'At Large' has been substantively amended to include electronic leashes and similar devices. A definition of 'Leash' has been added. The reference to 'soils, defiles, or defecates' under Public Nuisance Animal has been removed because Town Code Section 90.21 already requires an owner to clean up after his/her dog. All other changes are non substantive. Subsection (1) of Public Nuisance Animal has been removed because people whose animals are in violation of Section 130.20(C)(9) can be cited under that Section.

§ 90.04 DEFINITIONS. *(note – any definitions unchanged are not shown)*

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

AT LARGE. Being neither confined by an enclosure nor physically restrained by a leash or other means of restraint (which may include an electronic leash or training device).

IMPOUND. The act of taking or receiving into custody ~~by the Animal Control Officer~~ any dog or other animal for the purpose of confinement in accordance with the provisions of this chapter.

LEASH. A chain, strap, etc. for the control, restraint, or leading of a dog.

POUND. Any establishment authorized by the town for the confinement, maintenance, safekeeping and control of dogs and other animals that come into the custody of an ~~the~~ animal control officer and/or a sworn ~~licensed law enforcement~~ police officer ~~of the town~~ in the performance of their official duties.

PUBLIC NUISANCE ANIMAL. Any animal that unreasonably annoys or endangers the life or health of persons or domestic animals, or which disturbs the peace

and quiet of any person. The term PUBLIC NUISANCE ANIMAL shall include, but not be limited to the following:

(1) Reserved. ~~Any animal in violation of § 130.20(C)(9).~~

(2) Any animal that is found running at large.

(3) Any animal that damages~~, soils, defiles or defecates on any~~ property other than that of its owner.

(4) Any animal that causes fouling of the air by noxious or offensive odors and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.

(5) Any animal in heat that is not confined so as to prevent attraction or contact with other animals.

(6) Any animal that, without provocation, molests, attacks or otherwise interferes with the freedom of movement of persons in a public right-of-way.

(7) Any animal that chases motor vehicles, bicycles, or other vehicles in a public right-of-way.

(8) Any animal that attacks domestic animals.

VETERINARIAN. Unless otherwise indicated, means any veterinarian licensed to practice in the State of Arizona ~~this state~~ or any veterinarian employed in this state by a governmental agency.

VETERINARY HOSPITAL. Any establishment operated by a veterinarian licensed to practice in the State of Arizona ~~this state~~ that provides clinical facilities and houses animals or birds for dental, medical or surgical treatment. A veterinary hospital may have adjacent to it or in conjunction with it or as an integral part of it pens, stalls, cages or kennels for quarantine, observation or boarding ~~hoarding~~.

Section 90.15 POTENTIALLY DANGEROUS ANIMALS, DANGEROUS, AND VICIOUS ANIMALS – Subsection (C)(4) requires vicious animals to be "caged or muzzled and restrained . . . on a chain." A maximum chain length is added.

§ 90.15 POTENTIALLY DANGEROUS, DANGEROUS, AND VICIOUS ANIMALS.

(A) Potentially dangerous animal. The owner of a potentially dangerous animal shall do all of the following:

(1) While on the owner's property, secure the potentially dangerous animal;

(2) Place a sign in a conspicuous place at each entrance to the owner's property reading "Beware of Animal" or "Beware of Dog." The lettering of such sign shall be at least two inches in height and width;

(3) Vaccinate and license the potentially dangerous animal;

(4) Restrain the potentially dangerous animal on a leash that is no more that six feet in length when not on the owner's property; and

(5) Notify the Animal Control Officer within 72 hours if the potentially dangerous animal is sold, transferred, permanently removed from the town, or deceased.

(B) Dangerous animal. The owner of a dangerous animal shall do all of the following:

(1) While on the owner's property, keep the dangerous animal in a secure enclosure;

(2) Place a sign in a conspicuous place at each entrance to the owner's property reading "Beware Dangerous Animal" or "Beware Dangerous Dog." The lettering of such sign shall be at least two inches in height and width;

(3) Vaccinate, license, and microchip the dangerous animal;

(4) Assure that the dangerous animal is restrained by an adult on a leash that is no more than six feet in length when not on the owner's property; and

(5) At least 72 hours prior to the sale, transfer, or permanent removal from the town of the dangerous animal notify the Animal Control Officer of such sale, transfer or permanent removal; or if the dangerous animal dies, notify the Animal Control Officer within 72 hours of such death.

(C) Vicious animal. The owner of a vicious animal shall do all of the following:

(1) While on the owner's property, secure the dangerous animal in a secure enclosure. Such secure enclosure shall have self-latching gates and remain locked at all times;

(2) Place signs in a conspicuous place at each entrance to the owner's property and at least every 30 feet along the secure enclosure reading "Beware Vicious Animal" or "Beware Vicious Dog." The lettering of such sign shall be at least two inches in height and width;

(3) Vaccinate, license, and microchip the vicious animal;

(4) Assure that the vicious animal is caged or muzzled and restrained ~~by an adult~~ on a chain not more than six feet in length and having a minimum tensile strength of 300 pounds by an adult when not on the owner's property; and

(5) At least 72 hours prior to the sale, transfer, or permanent removal from the town of the vicious animal notify the Animal Control Officer of such sale, transfer or permanent removal. Such notice shall include the name, address, and phone number of the adult taking responsibility for possession of the vicious animal; or if the vicious animal dies, notify the Animal Control Officer within 72 hours of such death.

Section 90.20 DOGS AT LARGE – Unnecessary language is eliminated.

§ 90.20 DOGS AT LARGE.

(A) It is unlawful for any owner or person in charge of any dog to permit or allow the dog to be at large ~~within the corporate limits of the town,~~ upon any public street, highway or public place, or upon private property not owned or lawfully controlled by the owner or person in charge of the dog.

(B) Division (A) above shall not apply to the following instances:

(1) While the dog is being exhibited at an American Kennel Club approved show, public school sponsored or park sponsored event.

(2) While the dog is a service dog actively engaged in servicing the disabled.

(3) While the dog is within designated off-leash areas (dog parks).

(C) In a rabies quarantine area, no dogs shall be permitted at large, other than service dogs servicing the disabled.

(D) The provisions of this section shall not apply to dogs owned or controlled by government law enforcement agencies nor to any dog located upon any Rural Trail leading to the National Forest designated in the Payson Area Trails System, so long as the dog is under the immediate control and supervision of the owner or custodian, whether by oral command or otherwise.

Section 90.21 CONTROL OF DOGS – An 'owner liability' provision is added as subsection (F). This provision was previously in Section 90.60(A).

§ 90.21 CONTROL OF DOGS.

(A) No owner or person in charge of any dog shall permit the dog to bite or cause injury to any livestock, domestic animal, or person engaged in a lawful activity.

(B) No owner or person in charge of any dog shall permit the dog to cause damage to the property of another.

(C) No owner or person in charge of any dog shall allow the dog to soil, defile or defecate on the grounds of any public street, highway, public place or upon any private property other than that owned or lawfully controlled by the owner or person in charge of the dog, unless otherwise permitted or unless such person immediately removes and disposes of all feces deposited by the dog by the following method:

(1) Collection of the feces by appropriate implement and placement in a paper or plastic bag or other container.

(2) Removal of the bag or container to the property of the dog owner or person in charge of the dog and disposition thereafter in a manner as otherwise may be permitted by law.

(D) Injury or damage to property in violation of this section shall be the responsibility of the owner or custodian of the dog at the time the injuries or damages were inflicted.

(E) The provisions of this section shall not apply to dogs owned or controlled by government law enforcement agencies.

(F) Injury to any person or animal or damage to any property by an animal while at large or under the owner's control shall be the full responsibility of the animal owner or person responsible for the animal when the damages are inflicted.

Section 90.22 ADEQUATE CARE – The language subsections (A) and (C) are simplified. Subsection (E) is eliminated as it merely references state law.

§ 90.22 ADEQUATE CARE.

(A) ~~It shall be unlawful for the~~ The owner or custodian of any animal shall ~~to refuse or fail to~~ provide ~~the animal with~~ sufficient wholesome and nutritious food, potable water, veterinary care when needed to prevent suffering, humane care and treatment, and protection from the elements. ~~or to unnecessarily expose any animal in hot, stormy, cold or inclement weather.~~

(B) Within an area, the greater part of which is utilized for residential, business or commercial purposes, and zoned as such, manure and droppings shall be removed from pens, yards, cages and other enclosures daily, and placed in fly-proof and insect-proof containers for disposal in an approved manner that will maintain the premises nuisance-free. Owners or keepers of animals shall not allow the animals to defecate on the residential or commercial property of another.

(C) No owner or custodian ~~of a animal~~ shall willfully abandon an ~~the~~ animal on any street, road, highway or public place, or on private property of another when not in the care of another person.

(D) Animals kept in violation of this section may be taken into custody and impounded by the Animal Control Officer or such other law enforcement officer as authorized herein.

~~(E) A violation of this section may be cited either as a civil violation or, in the event that the violation falls within the provisions of A.R.S. § 13-2910 ("Cruelty to animals or poultry; interference with working or service animal; classification; definitions"), may be cited as a criminal offense as a Class 1 misdemeanor or as a Class 6 felony, as mandated under said statute.~~

Section 90.23 IMPOUNDMENT – Technical, non substantive changes are made.

§ 90.23 IMPOUNDMENT.

(A) Reasons for impoundment. In addition to any other remedies provided in this chapter, a police department representative ~~an Animal Control Officer or authorized law enforcement officer~~ may seize, impound and confine to an animal shelter or hospital, subject to legal authority to enter upon the premises, any of the following animals:

(1) Any dog over four months of age without a valid license tag.

(2) Any animal at large.

(3) Any animal constituting a public nuisance as defined in § 90.04 or considered a danger to the public.

(4) Any animal that is in violation of any quarantine or confinement order of the Chief of Police.

(5) Any unattended animal that is ill, injured or otherwise in need of care.

(6) Any animal that is reasonably believed to have been abused or neglected.

(7) Any animal that is reasonably suspected of having rabies.

(8) Any animal that is charged with being potentially dangerous, or where an Animal Control Officer or other law enforcement officer determines that there is a threat to public health and safety.

(9) Any animal that a court of competent jurisdiction has ordered impounded or destroyed.

(10) Any animal that is considered unattended or abandoned, as in situations where the owner is deceased, has been absent for an extended period of time leaving the animal without proper care, has been incarcerated leaving no one to care for the animal, or has been evicted from the owner's place of residence.

(11) Any stray dog or ~~other~~ stray animal.

(B) Citation in lieu of impoundment. An Animal Control Officer or other law enforcement officer may also, in lieu of impoundment, issue a citation of violation to the owner of the animal.

(C) Notice of impounding. Upon the impounding of any animal, the Animal Control Officer or other law enforcement officer shall give notice to the animal's owner or custodian of the impounding as soon as is reasonably possible without interfering with the officer's investigation of the incident leading to the impoundment, if the owner is known or can be ascertained by reasonable investigation.

(D) Redemption of impounded animal.

(1) Any animal may be redeemed by the lawful owner or custodian of the animal upon providing proof of legal right to possession of the animal and upon the payment of an impound fee, plus a daily fee to defray part of the cost of maintenance of the animal. Fees may be reduced in cases of hardship or other unusual circumstances.

(2) If the animal to be redeemed is a dog which is not properly licensed by the town or is not in full compliance with all vaccination and licensing requirements set forth in this chapter, the lawful owner or custodian of the dog must pay the current requisite licensing fee ~~to the Humane Society~~ before the dog can be redeemed, and must provide proof to the town of proper vaccination within 15 days following redemption of the dog.

(E) Disposition of animals.

(1) Any animal not redeemed by its lawful owner or custodian within 72 hours after notice of impoundment, or where the owner or custodian is unknown and unable to be ascertained after reasonable investigation within 72 hours after the first day of impoundment, shall become the property of the Humane Society and may be placed for adoption in a suitable home or destroyed only by the use of one of the following methods:

(a) Sodium pentobarbital or a derivative of sodium pentobarbital.

(b) Nitrogen gas.

(c) T-61 euthanasia solution or its generic equivalent.

(2) If an animal is destroyed by means specified above, it shall be done by a licensed veterinarian or in accordance with procedures established by the state veterinarian pursuant to A.R.S. § 3-1213.

(3) A dog or cat that is at least six months of age shall not be released for adoption unless the dog or cat has been first surgically spayed or neutered, or unless the adopting owner agrees to have the animal spayed or neutered within 30 days from the date of adoption. In the case of dogs or cats that have not reached the age of six months, the adopting owner shall agree to have the animal spayed or neutered within 30 days from the date that the animal reaches six months of age. The Humane Society may require proof of the completion of the surgery.

(4) Upon redemption or adoption, any medical expenses or other costs and expenses incurred by the Humane Society shall be reimbursed to the Humane Society, and, in addition thereto, any medical expenses or other costs and expenses incurred by the town shall be reimbursed to the town, all through the redemption or adoption fee.

(5) Any animal abandoned by its owner in the custody of another or on public property or private property other than the animal's owner may be delivered to the Humane Society, at which time a reasonable attempt shall be made to determine and notify the owner of the animal's impoundment. In the event the Humane Society is unable to ascertain the animal's owner, or in the event that the owner is ascertained but fails to redeem the animal within 72 hours from notice of the impoundment, the animal may be disposed of in accordance with division (E)(1) of this section.

Section 90.24 RABIES CONTROL; QUARANTINE AND DESTRUCTION – Non substantive changes made.

§ 90.24 RABIES CONTROL; QUARANTINE AND DESTRUCTION.

(A) Quarantine of unvaccinated dog or cat. Any unvaccinated dog or cat that bites any person shall be confined and quarantined ~~in a county pound or in the Humane Society, or upon request of and at the expense of the owner, at a veterinary hospital~~ for a period of not less than ten days. The quarantine period shall start on the day of the bite incident. If the day of the bite is not known, the quarantine period shall start on the first day of impoundment.

(B) Quarantine of properly vaccinated dog or cat. A dog or cat properly vaccinated ~~pursuant to this chapter~~ that bites any person may be confined and quarantined at the home of the owner or wherever the dog or cat is harbored and maintained with the consent of and in a manner prescribed by the Animal Control Officer. The Animal Control Officer shall have the right to enter upon the owner's premises to inspect the animal premises and cage for compliance with the quarantine procedure as described herein, and may remove the animal to the Humane Society or other appropriate location at any time when the Animal Control Officer determines that quarantine and confinement precautions taken by the owner are insufficient to protect the health, safety and welfare of the citizens of the town and surrounding areas.

(C) Quarantine of other domestic animals. Any domestic animal, other than a dog, cat, a caged or pet rodent or rabbit, that bites any person shall be confined and quarantined in a county pound or the Humane Society, or, upon the request and at the expense of the owner, at a veterinary hospital, for a period of not less than 14 days. Livestock shall be confined and quarantined for the 14-day period in a manner regulated by the Arizona Department of Agriculture.

(D) Wild animals. With the exception of a wild rodent or rabbit, any wild animal that bites any person or directly exposes any person to its saliva, may be killed and submitted to the Animal Control Officer or other law enforcement official for transport to an appropriate diagnostic laboratory. A wild rodent or rabbit may be submitted for laboratory testing if the animal has bitten a person and either the animal's health or behavior indicates that the animal may have rabies or the bite occurred in an area that contains a rabies epizootic, as determined by local, county or state authorities.

(E) Report of bite. Whenever an animal bites any person, the incident shall be reported to the Animal Control Officer immediately by any person having knowledge thereof. It is unlawful for any person, other than the Animal Control Officer or other law enforcement officer in an emergency warranting such destruction, to destroy or dispose of any dog or other animal which has bitten any person or animal within a period of not less than ten days after such biting.

(F) Destruction of animal by consent.

(1) The Animal Control Officer or other law enforcement officer, county pound or town humane shelter may destroy any animal confined and quarantined pursuant to this section prior to the termination of the minimum confinement period for laboratory examination for rabies if the following conditions exist:

(a) The animal shows clear clinical signs of rabies.

(b) The animal's owner consents to its destruction.

(2) The owner of the animal shall be responsible for the cost of such destruction and shall reimburse either the Humane Society or town therefor, whichever entity incurs the expense. In the event that the owner fails to so reimburse the proper entity as herein provided, that failure shall be deemed a violation of this chapter and shall be subject to enforcement under the terms hereof.

(G) Destruction of animal by court order.

(1) A duly licensed veterinarian shall destroy a vicious animal upon an order of a justice of the peace or ~~a city or~~ town magistrate. A justice of the peace or ~~city or~~ town magistrate may issue such an order after notice to the owner, if the owner is known or can be located, and if the owner is located, after a hearing.

(2) The owner of the animal shall be responsible for the cost of destruction. In the event that either the Humane Society or town incurs any expense in connection with the destruction of an animal pursuant to court order, the owner of the animal shall reimburse the proper entity for the expense. In the event that the owner fails

to so reimburse the proper entity as herein provided, failure shall be deemed a violation of this chapter and shall be subject to enforcement under the terms hereof.

(H) Delivery or pick-up of animal for impoundment and quarantine. The owner of any dog or other animal that has bitten a person may voluntarily deliver the dog or other animal to the Animal Control Officer at the Humane Society for the mandated quarantine period. The owner of the dog or other animal shall be responsible for the cost of maintenance, vaccination, licensing and any other costs as may be incurred during the quarantine period of the dog or other animal. In addition, should the owner of the dog or other animal fail to voluntarily deliver the dog or other animal and it becomes necessary for the Animal Control Officer to pick up the dog or other animal for quarantine, the owner thereof shall, in addition to any quarantine expenses, be responsible for the cost of picking up the dog or other animal.

(I) Disposition of animal following quarantine. Upon the failure of the owner of any quarantined dog or other animal to obtain release of the dog or other animal, the animal shall become the property of the Humane Society for disposition as provided in this section. Failure shall include failing to pay all charges and costs of quarantine on the tenth day of the quarantine period, including compliance with all licensing provisions herein by paying a current license fee ~~to the Humane Society~~ if the dog is not currently licensed as required herein, as well as providing proof of compliance with all vaccination provisions herein within 15 days following the animal's release from the Humane Society.

Section 90.35 LICENSE REQUIRED; PROOF

§ 90.35 LICENSE REQUIRED; PROOF.

(A) License required. No person shall own, keep or harbor any dog over the age of four months within the town unless the dog is licensed ~~as provided in this chapter~~.

(B) Change of ownership. Whenever ownership of a dog is changed, the new owner must secure a new license in the new owner's name from the town ~~in compliance with these licensing and vaccination provisions~~.

(C) Proof of license for dogs and kennels.

(1) Proof of license for dogs. Upon payment and acceptance of the license fee for a dog, the town licensing authority shall issue a durable license tag, stamped with the year of issuance, an identification number for the dog for which the license has been obtained, and the number of year(s) for which the license is valid. Each dog for which the owner is required to obtain a license must wear a valid license tag attached to a collar~~, as defined in § 90.04,~~ at all times when the animal is off the premises of its owner.

(2) Proof of license for dog kennels. Upon payment and acceptance of the dog kennel license fee, the town licensing authority shall issue a form of "Kennel License" for posting purposes, indicating the year of issuance, an identification number

for the kennel, location and owner of the kennel, and the expiration date of the license within one year from its issuance. The "Kennel License" shall be publicly posted by the kennel owner on the kennel premises at all times.

(D) Notation of dangerous or vicious animal. If a dog is a dangerous animal or a vicious animal, the license records for such dog shall include such designation.

Section 90.36 APPLICATION; FEE – Subsection is redrafted for clarity.

§ 90.36 APPLICATION; FEE.

(A) Application. Application for a dog license shall be made by the owner on a form to be provided by the town within (i) ten days after acquiring any dog over four months of age, ~~or~~ (ii) within ten days after a dog becomes four months of age, or (iii) within ten days of the ~~; provided that any~~ owner moving to the town ~~for the purpose of establishing residence or becoming a resident as a result of any annexation, and otherwise required to obtain a license, shall have until ten days after moving or annexation to obtain such a license~~.

(B) License fee for dogs. A license fee shall be paid at the time of making application. License fees shall be set by the Council from time to time.

(C) Vicious animal surcharge. If a dog is a vicious animal, an annual surcharge shall be added to the license fees in an amount set by the Council from time to time.

Section 90.37 PROOF OF VACCINATION – The second sentence is not currently followed when animals are vaccinated and is therefore eliminated.

§ 90.37 PROOF OF VACCINATION.

Before a license is issued for any dog, the owner must present a vaccination certificate signed by a veterinarian, stating the owner's name and address, and giving the dog's description, date of vaccination, and type, manufacturer and serial number of the vaccine used and date the next vaccination is due. ~~A duplicate of each rabies vaccination certificate issued shall be transmitted to the town enforcement agent on or before the tenth day of the month following the month during which the dog was vaccinated. No dog shall be licensed unless it is vaccinated in accordance with the provisions of this section and the regulations promulgated hereunder.~~

Section 90.38 LICENSING PERIOD – Unnecessary language is eliminated.

§ 90.38 LICENSING PERIOD.

A license may be issued by the town for a period to run concurrently with the dog's current rabies vaccination.~~, for a period of one, two or three years, but in no event~~

~~shall the licensing period exceed the period of time for revaccination as designated by the state veterinarian. Depending upon the length of the current rabies vaccination for the animal, whether it be a one, two, or three-year vaccination, the~~ The owner of the animal may choose to purchase a license for only one year, for two years or for three years so long as the license period chosen does not exceed the period of time for revaccination as designated by the state veterinarian.

Section 90.40 LICENSE FEE FOR DOG KENNEL - A grammatical error is corrected in Subsection (B) and the Council annually sets all fees, so Subsection (C) is eliminated.

§ 90.40 LICENSE FEE FOR DOG KENNEL.

(A) A dog kennel license fee shall be paid at the time of making application. The application must conform with all provisions of this chapter as well as all zoning and land use rules, regulations, codes and ordinances of the town. License fees shall be determined by the Council from time to time as necessary and may be amended by resolution.

(B) License fees for dog kennels shall be issued ~~up~~on an annual basis, with a new license being required each year to assure compliance with all town rules, regulations, codes and ordinances.

~~(C) Upon implementation of this chapter, a one-year dog kennel license shall be in the amount of $75.~~

Section 90.41 EXEMPTION FROM LICENSE FEE – Non substantive changes made.

§ 90.41 EXEMPTION FROM LICENSE FEE.

License fees shall not be required for service dogs ~~as defined in § 90.04,~~ or dogs belonging to a nonresident of the town and kept within the boundaries of the town for not longer than 30 days, provided that all dogs of nonresidents shall~~, at the time of entry into the town,~~ be properly vaccinated against rabies and~~, while kept within the town,~~ meet all other requirements of this chapter. Any owner claiming any of these exemptions has the burden of proving to the satisfaction of the town licensing authority that the dog in question is entitled to the exemption.

Section 90.55 DEFINITIONS (re Potbellied Pigs) – Technical clean up only.

§ 90.55 DEFINITIONS.

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

POTBELLIED PIG. ~~Refers only to registered~~ Registered purebred miniature Vietnamese potbellied pigs or other similar registered purebred miniature potbellied pigs which shall not exceed 100 pounds in weight.

REGISTERED. Registration by the North American Potbellied Pig Association.

Section 90.56 LICENSES AND TAGS – Non substantive, grammatical changes.

§ 90.56 LICENSES AND TAGS.

(A) (1) An applicant ~~for a town license~~ for a ~~purebred~~ potbellied pig license shall provide, at the time of licensing application, proof of ownership, including registry papers identifying the animal as a ~~purebred miniature~~ potbellied pig, and a completed form, as provided by the town, verifying by the applicant that the location for the keeping of the potbellied pig is not encumbered or restricted through private agreement or deed restriction from the keeping of swine.

(2) No ~~Any~~ applicant shall provide ~~providing~~ incomplete, false or fraudulent information in order to obtain a town potbellied pig license~~ shall be in violation of this chapter~~.

(3) At the time of application for a license an~~, and depending upon the gender of the purebred miniature potbellied pig,~~ applicant shall ~~must~~ further provide evidence of the spaying or neutering of the ~~purebred miniature~~ potbellied pig.

(B) Licensing and vaccination of potbellied pigs shall be in accordance with §§ 90.35 through 90.41 as applicable, and shall be subject to all ~~such~~ other ~~local,~~ county and state laws, rules and codes ~~dealing with rabies vaccination of potbellied pigs~~.

(C) ~~It is unlawful for any~~ No person shall ~~to~~ counterfeit or attempt to counterfeit an official license tag or remove the tag from any potbellied pig ~~for the purpose of willful and malicious mischief, or to place a license tag upon a potbellied pig, unless the tag was issued to that potbellied pig~~.

(D) Whenever the ownership of a potbellied pig has changed, the new owner must secure a transfer of license. A fee shall be charged to transfer any license.

(E) The Animal Control Officer shall apprehend and impound any potbellied pig found without a current valid license tag.

Section 90.59 BITING; QURANTINE – Non substantive, grammatical changes.

§ 90.59 BITING; QUARANTINE.

(A) Whenever a potbellied pig bites any person, the incident shall immediately be reported to the Animal Control Officer ~~for the town~~ by any person having direct knowledge of the incident.

(B) Any unlicensed potbellied pig that bites any person shall be quarantined and impounded or, at the request of and at the expense of the owner, placed in a veterinary hospital for a period of not less than 14 days. The owner of an unlicensed potbellied pig

that has bitten a person may voluntarily deliver the potbellied pig to the enforcement agent at the pound, otherwise, there shall be an assessment against the owner if the Animal Control Officer must pick up the potbellied pig. If the potbellied pig is impounded in the pound for observation as a result of a bite incident, there shall be a per day charge for board.

(C) Any licensed potbellied pig ~~properly licensed pursuant to this subchapter~~ that bites any person may be fined and quarantined at the home of the owner or wherever the potbellied pig is harbored and maintained with the written consent of and in a manner prescribed by the Animal Control Officer. The potbellied pig shall not be moved or relocated unless the Animal Control Officer is so notified. The time for quarantine under this section shall be 14 days.

(D) At the completion of the quarantine or impoundment period as set forth in divisions (B) and (C) of this section, and prior to the release of the potbellied pig, the potbellied pig shall be examined by a licensed veterinarian and released only if the veterinarian determines that the potbellied pig does not exhibit signs of rabies infection or any other dangerous, contagious and infectious disease.

(E) If it is determined that the potbellied pig is infected with rabies or other dangerous, contagious and infectious disease, it shall be the duty of the Arizona Livestock Board officials to destroy the potbellied pig. Following such action, or if the potbellied pig dies during the period of quarantine or impoundment, its head shall be sent to the State Department of Health Services or appropriate diagnostic laboratory for examination.

Section 90.60 OWNER LIABILITY – Subsection (A) has been moved to 90.21(F). Subsections (B) and (C) have been renumbered and have technical, non substantive changes.

§ 90.60 OWNER LIABILITY.

~~(A) Injury to any person or animal or damage to any property by an animal while at large or under the owner's control shall be the full responsibility of the animal owner or person responsible for the animal when damages were inflicted.~~

(A)~~(B)~~ The owner of a potbellied pig which bites a person who is in or on a public place or lawfully in or on a private place, including the property of the owner of the animal, is liable for damages suffered by the person bitten, regardless of the former viciousness of the animal or the owner's previous knowledge of its viciousness.

(B)~~(C)~~ It is unlawful for an owner to keep ~~or harbor, within the town,~~ any potbellied pig which squeals or makes other aggravating noises which unreasonably disturb the peace and quiet of the neighborhood.

Subsection 90.63 ENFORCEMENT – This Section in unnecessary. Enforcement by definition would be under the provisions of the same Chapter.

~~§ 90.63 ENFORCEMENT.~~

~~Enforcement of this subchapter dealing with potbellied pigs shall be pursuant to §§ 90.75 through 90.82.~~

Section 90.75 WAIVER FOR INDIGENTS through 90.82 APPEAL. Section 90.75 has been simplified. Section 90.76 states that the Rules of Procedure in Traffic Cases apply. Therefore Sections 90.77 through 90.82 (the provisions of which are covered in the Rules of Procedure in Traffic Cases) are duplicative and potentially contradictory.

§ 90.75 WAIVER FOR INDIGENTS.

(A) The minimum fines, sanctions and costs imposed herein may be reduced, waived or suspended in the discretion of the magistrate court upon a determination that the defendant is indigent. ~~Prior to determining that a person is indigent for purposes of this subchapter, the magistrate court shall require a sworn statement from the defendant seeking a waiver of minimum fines, sanctions and costs, which statement shall include, at minimum, the following information:~~

~~(1) All income received by the defendant from any source on a monthly basis.~~

~~(2) The defendant's monthly expenses.~~

~~(3) A list of assets owned by the defendant, including the estimated fair market value.~~

~~(4) A list of debts owed by the defendant.~~

(B) In the event that the magistrate court determines a defendant to be indigent and thereby waives or suspends the minimum fines, sanctions and costs imposed herein, alternative arrangements shall be made to abate the violation, including, but not limited to, effective restraint of the animal by muzzling, bark collar, the owner's voluntary removal of the animal, or court ordered removal of the animal.

§ 90.76 RULES OF PROCEDURE.

The Arizona Rules of Procedure in Civil Traffic Violation cases shall govern the proceedings under this chapter, except as modified by, or where inconsistent with, the provisions of this chapter~~, and except where a criminal violation is cited, in which case the Arizona Rules of Criminal Procedure shall govern~~.

~~§ 90.77 COMMENCEMENT OF PROCEEDINGS.~~

~~(A) An action to hear and determine a civil or criminal offense shall be commenced by the issuance of a citation by the Animal Control Officer or other law enforcement officer. Service of the citation shall be completed in accordance with the Arizona Rules of Criminal Procedure. Civil and criminal misdemeanor citations shall be filed in the magistrate court. Criminal felony citations shall be filed in a court of competent jurisdiction.~~

~~(B) The state need not appear through counsel at the trial of a civil citation hereunder except in cases where the defendant is represented by an attorney. The state will appear through counsel in all appropriate proceedings involving violation of state criminal statutes.~~

~~§ 90.78 ADMISSION OF RESPONSIBILITY OR GUILT.~~

~~(A) The defendant may admit responsibility or guilt by appearing in person before the court, at the time and date set forth on the citation, and shall at such appearance tender to the court as the pecuniary sanction for the violation, the minimum fine as set forth in this chapter for a first, second or third and subsequent violation of this chapter; or, if charged with a criminal offense under "vicious dog" or "cruelty to animals" may enter a guilty plea and the matter shall then proceed according to the Arizona Rules of Criminal Procedure.~~

~~(B) In addition to the mandated minimum pecuniary sanction for a violation of this chapter, or in addition to any fine imposed on a criminal charge, the court shall, in its discretion, make such other orders as are necessary to abate the violation(s) of this chapter or of the applicable state criminal statute, as the case may be, including, but not necessarily limited to, effective restraint of the animal by muzzling, bark collar, the owner's voluntary removal of the animal, or court-ordered removal of the animal.~~

~~(C) In the case of a criminal charge, the defendant shall also pay, in addition to any pecuniary sanction, the amount of any booking and/or incarceration costs incurred, in accordance with town rules, regulations and ordinances.~~

~~§ 90.79 DENIAL OF RESPONSIBILITY OR NOT GUILTY PLEA.~~

~~(A) Denial of responsibility. The defendant may deny responsibility of violation of this chapter by appearing in person and entering a plea of not responsible. The court shall thereupon schedule the matter for trial within 60 days after the defendant's initial appearance and denial of responsibility, except where either party shall request a pretrial hearing, the court shall schedule such pretrial hearing within 30 days after the defendant's initial appearance.~~

~~(B) Entry of not guilty plea under state criminal statutes. The defendant may enter a plea of not guilty to violation of the "vicious dog" or "cruelty to animals" state criminal statutes and the matter shall then proceed according to the Arizona Rules of Criminal Procedure.~~

~~§ 90.80 RULES OF EVIDENCE.~~

~~(A) Civil enforcement. The Arizona Rules of Evidence shall not apply in civil enforcement proceedings for violation of this chapter. Any evidence offered in civil enforcement proceedings may be admitted subject to a determination by the magistrate that the offered evidence is relevant and material and has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provisions relating to privileged communications.~~

~~(B) Criminal enforcement. Criminal enforcement proceedings for enforcement of state criminal statues shall be governed by the Arizona Rules of Criminal Procedure and therefore are subject to the Arizona Rules of Evidence.~~

~~§ 90.81 FAILURE OF DEFENDANT TO APPEAR AT PROCEEDINGS.~~

~~(A) If the defendant fails to appear as provided herein in a civil enforcement proceeding, the allegations of the civil citation shall be deemed admitted, and the magistrate court shall enter judgment for the state and impose the minimum civil fine as mandated herein for a first violation, second violation or third and subsequent violation within any 12-month period.~~

~~(B) If the defendant fails to appear in a criminal enforcement proceeding, as mandated under the Arizona Rules of Criminal Procedure, the magistrate court may issue a warrant for the defendant's arrest. In addition, the defendant may be subject to an additional criminal charge of "Failure to Appear."~~

~~§ 90.82 APPEAL.~~

~~(A) Appeal from an order entered by the magistrate court in civil enforcement proceedings shall be governed by the Rules of Procedure in Civil Traffic Violation Cases.~~

~~(B) Appeal from an order entered by the magistrate court in criminal enforcement proceedings shall be governed by the Arizona Rules of Criminal Procedure.~~