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MEMORANDUM

Date: October 16, 2014

To: Mayor and Council Members

From: Tim Wright, Town Attorney

Re: Systematic Town Code Review – Title XIII, CHAPTER 130: NUISANCES (Ordinance 859/Resolution 2804)

This is part 14 of the Systematic Town Code Review. Chapter 130 (General Offenses) has been reviewed and numerous changes recommended. This Chapter contains the code provisions that the average citizen is most likely to encounter. Many of the sections are redundant of State law and are therefore recommended for removal. The most significant substantive addition addresses the use of portable toilets. See new Section 130.02. The recommended changes have been reviewed by the Town Manager, the Assistant Town Manager, the Deputy Town Manager (Public Safety), and the Zoning Administrator. The major changes to each section (if any) are summarized prior to each section. Insertions are noted with a double underline and deletions are noted by ~~strikeout~~.

Section 130.01 – The majority of this section is duplicative of A.R.S. 13-1602 (Criminal Damage) and is therefore recommended to be repealed. It is recommended that Subsection (C) relating to Roads and Bridges be retained.

130.01 DAMAGE TO ROADS AND BRIDGES ~~PROPERTY~~.

~~(A) It is unlawful for any person to damage in any manner or attempt to damage or tamper with any pipe lines, water hydrants, street lamps or lights, or the fixtures and appliances belonging thereto upon any of the poles or other objects for use in connection with the lighting of the streets of the town or any water pipes, hydrants, or any appliances pertaining to the water or sewer works, or any other property of any and every character belonging to the town.~~

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~~(B) It is unlawful for any person to deface, walk, ride or drive upon or over any sidewalk or street crossing composed of or containing cement, during the construction thereof, or before the same is thrown open to public use.~~

~~(C)~~ It is unlawful for any person~~, firm or corporation~~ to recklessly damage ~~in any manner~~ any road~~, street~~ or bridge ~~in the town limits by using the same, by heavy vehicles, malicious destruction or by any act that will result in damage to any road, street or bridge~~.

~~(D) It is unlawful to break or destroy any window, door or part of any dwelling owned or occupied by another, or to break or sever from any premises owned or occupied by another any gate, fence, railing, tree, brush or vine or any property whatsoever, or to deface, mutilate or injure the same.~~

Section 130.02 – This section is duplicative of A.R.S. 13-1603 (Littering) and is therefore recommended for removal. This section is being replaced by a provision addressing the use of Portable Toilets (porta potties, porta johns, jay johns, etc.)

~~§ 130.02 LITTERING.~~

~~It is unlawful for any person to throw or deposit any litter in or upon any street, alley, public grounds, school grounds or church grounds.~~

§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 130.03 – No changes recommended.

§ 130.03 REGULATION OF LIBRARY USE.

(A) Definitions. For the purpose of this section the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

(1) LIBRARY CARD. Card or plate issued by a library facility for purposes of identifying the person to whom the LIBRARY CARD was issued, as authorized to borrow library material(s), subject to all limitations and conditions imposed on borrowing by the library facility issuing the card.

(2) LIBRARY FACILITY. Any town library, other public library or any library of a public museum, historical institution, organization or society.

(3) LIBRARY MATERIAL. Any book, plate, picture, photograph, engraving, painting, sculpture, statue, artifact, drawing, map, newspaper, pamphlet, magazine, manuscript, document, coin, model, apparatus or other work of literature or art or mechanics, objects of curiosity, letter, microfilm, sound recording, audiovisual material, magnetic or other tape, electronic data processing record or other documentary, written or printed material regardless of physical form or characteristics, or any part thereof, belonging to, or on loan to, or otherwise in the custody of, a library facility.

(4) LIBRARY THEFT. A person commits LIBRARY THEFT by doing any of the following acts:

(a) Intentionally removes any library material from the premises of a library facility without authority to do so.

(b) Intentionally conceals any library material upon his or her person or among his or her belongings and removes library material beyond the last point in the premises of the library facility at which library material may be borrowed in accordance with procedures established by the library facility for the borrowing of library material.

(c) With the intent to deceive, borrows or attempts to borrow, any library material from a library facility by use of a library card issued to another, or use of a library card knowing that it is revoked, canceled or expired, or use of a library card knowing that it is falsely made, counterfeit or materially altered.

(d) Fails to return overdue library material within 30 days of notice of such failure from the library.

(5) PREMISES OF A LIBRARY FACILITY. The interior of a building, structure or other enclosure in which a library facility is located and in which the library facility keeps, displays and makes available for inspection or borrowing library material, but for purposes of this section such premises do not include the exterior appurtenances to the building, structure or enclosure nor the land on which the building, structure or other enclosure is located.

(B) Prohibitions. It is unlawful for any person to commit a library theft, as defined in this section, or to maliciously cut, tear, deface, break or injure any library material.

(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 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.

OFFENSES AGAINST PUBLIC PEACE AND SAFETY

Section 130.15 – No changes recommended.

§ 130.15 SEARCHLIGHTS.

It is unlawful for any person to operate within the town any incandescent or arc-type searchlight, beacon light or similar lighting device designed to and capable of projecting a beam of light into the sky for a distance in excess of one-half mile unless permission is obtained from the Council. The provisions of this section shall not apply to emergency searchlights or beacons operated pursuant to public authority.

Section 130.16 – "Traffic signs" such as stop signs, speed limit signs, etc., is added to the list of prohibitted placed to place a sign or banner. Also, a provision is added clarifying that Town Staff, acting in their official capacity is exempt from this provision.

§ 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 130.17 – Recommended changes include: (1) clarifying in subsection (D) that a person cannot be charged with a violation unless they have been warned or the property is posted; (2) removing repetitive language in subsection (H); (3) increasing the presumptive time in subsection (I); and adding subsection (J) with explicitly allows the Council to temporarily waive all or portions of this section.

§ 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 ~~arrested for~~ 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~~, unless the property upon which any vehicle, camper or recreational vehicle is parked is conspicuously posted as provided in division (D) of this section, or unless the property owner, manager, renter, lessee or agent thereof specifically requests that the vehicle, camper or recreational vehicle be removed within the 24-hour period~~.

(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 ~~two~~ 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 130.18 – This section was amended in the last several years and no changes are recommended.

§ 130.18 DISCHARGE OF AIR, GAS, SPRING, OR ELECTRIC GUNS.

(A) It is unlawful for any person to fire or discharge any air, gas-operated, electric, or spring operated gun, commonly referred to as BB guns, pellet guns, airsoft guns, paintball guns, or similar instruments.

(B) The prohibitions of this section shall not apply:

(1) On private grounds or premises if

(a) Such gun is fired or discharged in a manner not likely to endanger any persons or property,

(b) Any projectile fired or discharged does not leave such grounds or premises, and

(c) A person in lawful possession of the grounds or premises allows the gun to be fired or discharged.

(2) When public or private grounds or premises are utilized for the purpose of an organized meet or shooting match involving the use of such weapons and such meet or shooting match has been authorized by the owner or controller of such premises and written permission for same obtained from the Chief of Police.

(3) If done by a government agent in the furtherance of his or her duties.

(C) The provisions of this section shall not apply to any instrument defined as a firearm under state law.

Section 130.19 – This section is duplicative of the State Law 'blue stake' requirements in A.R.S. 40-360.21 and is therefore recommended for repeal.

§ 130.19 RESERVED. ~~BLUE STAKE REQUIREMENTS.~~

~~Every owner, employee, contractor, owner-builder or self-employed person, entity or corporation shall comply with each and every requirement, standard and provision of A.R.S. Title 40, § 40-360.21 through § 40-360.45 and any amendment, deletions or additions to the state law hereafter adopted.~~

Section 130.20 – This section was completely rewritten in 2010 and is not recommended for any changes.

§ 130.20 NOISE.

(A) General prohibition.

(1) Unreasonably loud, disturbing, and unnecessary noise is prohibited.

(2) Noise that is detrimental to the life or health of any individual is prohibited.

(3) Noise that disturbs the public peace and welfare is prohibited.

(B) Factors to be considered. In determining whether noise is in violation of division (A), all relevant factors may be considered, including, but not limited to the following:

(1) The sensitivities of an ordinary person;
(2) Time of day;
(3) Duration of the noise;
(4) Intensity of the noise;
(5) Frequency of the noise;
(6) Type of the noise;
(7) Nature of the noise;
(8) Other ambient noise;
(9) Zoning district from which the noise emanates;
(10) Adjacent land uses;
(11) Current and historic noise levels and land uses in the area of the noise and surrounding areas;
(12) The public benefit, if any, from the noise.

(C) Specific acts prohibited. The following are declared to be loud, disturbing and unnecessary noises and noise in violation of this section. This enumeration shall not be deemed to be exclusive:

(1) (a) Gatherings and entertainment. Noise from an establishment or gathering during restricted hours that is plainly audible 300 feet or more from the edge of the property and disturbs the slumber, peace, or quiet of any person.

(b) For the purposes of this division, the following definitions shall apply:

1. ESTABLISHMENT. A restaurant, bar, hotel, dance studio or hall, auditorium, amphitheater, show, store, any place of public amusement, entertainment, accommodation, or any other similar gathering.

2. RESTRICTED HOURS.

A. Friday, Saturday, and holidays, 11:00 p.m. - 7:00 a.m. the following morning;

B. Sunday through Thursday, 10:00 p.m. - 7:00 a.m. the following morning;

C. During the annual August Rodeo, 12:00 midnight - 7:00 a.m. the following morning;

D. For events at the Payson Multi Event Center, 11:00 p.m. - 7:00 a.m. the following morning.

(2) Stereos, instruments, and amplified music. Sound from stereos, musical instruments, and other amplified music between the hours of 11:00 p.m. and 7:00 a.m. in such a manner or with such volume as to annoy or disturb the quiet, comfort or repose of a person in a residential dwelling.

(3) Loudspeakers or amplifiers on vehicles. Use of mechanical loudspeakers or amplifiers on a motor vehicle for advertising or other purposes. This division shall not apply to (i) vehicles that participate in a parade or procession permitted by the Police Chief and (ii) ice cream vendors playing traditional instrumental music between the hours of 8:00 a.m. and 8:00 p.m.

(4) Exhaust discharge. Operation of a motor vehicle, a motorized play vehicle, or any other internal combustion engine which is not at all times equipped with a muffler upon the exhaust. Such muffler shall be in good working order and in constant operation to prevent excessive or unusual noise. A cut-out, by-pass, or similar muffler elimination appliance shall not be used.

(5) Vehicle use. Use of any motor vehicle so out of repair, so loaded, or in such a manner as to create loud and unnecessary grating, grinding, rattling, or other noise.

(6) Squealing tires. Squealing a motor vehicle's tires while accelerating.

(7) Exhaust braking. Use of any mechanical exhaust device designed to aid in the braking or deceleration of any motor vehicle which results in excessive, loud, unusual or explosive noise from such vehicle, otherwise known as engine-braking or a Jake brake.

(8) Outdoor construction/repair. Operation of equipment or performing any outside construction or repair work on buildings, structures or projects, operating any pile driver, power shovel, pneumatic hammer, derrick, power hoist, concrete truck or any other construction type device or any other device, equipment or vehicle utilized for the purposes of outdoor construction or repair except within the time periods specified in this division.

(a) Start/stop times. From June 1 to September 1, inclusive, all construction or repair work shall not begin prior to 5:00 a.m. and must stop by 10:00 p.m. From September 2 to May 31, inclusive, all construction or repair work shall not begin prior to 6:00 a.m. and must stop by 10:00 p.m.

(b) Weekends and holidays. Notwithstanding anything to the contrary herein, construction, repair, industrial and manufacturing work shall not begin prior to 6:00 a.m. and must stop by 10:00 p.m. on Saturday, Sunday or a state or federal holiday.

(9) Animals. Keeping any animal or fowl in a manner which causes (i) loud, frequent, raucous, or long continued noise that disturbs the comfort and repose of any person in the vicinity; or (ii) repeated howling, barking, whining, or other utterances that disturb the peace and quiet of any person or deprive any person or persons of the quiet and peaceful enjoyment of their property.

(10) Non-emergency signaling devices. Sounding an amplified signal from any bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes from any place for more than ten consecutive seconds in any hourly

period. The reasonable sounding of such devices by houses of worship and ice cream trucks is exempt from the provisions of this division.

(11) Yelling, shouting, and similar activities. Yelling, shouting, hooting, whistling, or singing in residential areas between the hours of 11:00 p.m. and 7:00 a.m.

(12) Noise sensitive areas. Creating excessive noise on any street adjacent to a school, place of worship, or court while the same is in session, or adjacent to a hospital, when such noise unreasonably interferes with the working or session thereof; provided that signs must be displayed in such streets indicating that the same is a school, place of worship, court or hospital.

(13) Residential refuse collection. Residential refuse collection prior to 6:00 a.m. or after 10:00 p.m.

(D) Exemptions. The following acts shall be exempt from the provisions of this section:

(1) All town governmental activities and operations, including private contractors engaged in such activities.

(2) Emergency repair of public utilities, including private contractors engaged in such activities.

(3) Town sponsored events.

(4) Emergency vehicles (whether public or private) and sounds used to alert persons to the existence of an emergency.

(5) Alarm activations as defined in Chapter 98.

(6) Temporary exemptions approved by the Council for activities including but not limited to special events, concerts, parades, festivals, sporting contests, and other activities. Prior to approving any exemption, the Council shall consider the potential disruption versus the public benefit of any such exemption.

(E) Persons responsible. A person causing, playing, directing, controlling or permitting any noise in violation of this section shall be liable for such noise.

(F) Enforcement.

(1) The Police Chief shall have primary responsibility for the enforcement of this section.

(2) Nothing in this section shall prevent the Police Chief from obtaining voluntary compliance by way of warning, notice, or education.

(3) If a person's conduct would otherwise violate this section and consists of (a) speech or communication and (b) a gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious issues, the person must be ordered to, and have opportunity to, move, disperse, or otherwise remedy the violation prior to an arrest or citation being issued.

(G) Penalties.

(1) Except as provided in division (2) below, a violation of this section is a class one misdemeanor.

(2) A violation of division (C)(4) (if the vehicle is a motorized play vehicle), division (C)(7), or division (C)(9) is a civil violation.

(3) (a) Any person who pleads responsible or who is found responsible of violating division (C)(9) shall be subject to the following:

1. A minimum fine in the amount of $50 for the first offense within any 12-month period.

2. A minimum fine in the amount of $150 for the second offense within any 12-month period.

3. A minimum fine in the amount of $300 for the third and all subsequent offenses within any 12-month period.

(b) Alternatively, or in addition to, the above described fines, the magistrate court may order that arrangements be made to abate the violation including, but not limited to, muzzling the animal, requiring a bark collar, the owner's voluntary removal of the animal, or court-ordered removal of the animal.

Section 130.21 – The substance of this section is covered in the Town's Zoning Ordinance (Unified Development Code). It is therefore duplicative and recommended for repeal.

§ 130.21 RESERVED. ~~OFFENSIVE BUSINESS.~~

~~It is unlawful for any person to establish or maintain any slaughterhouse or make a practice of slaughtering cattle, hogs, sheep or any other kind of animal, or establish or maintain any soap factory, render tallow, or pursue, maintain or carry on any other business or occupation offensive to the senses or prejudicial to the public health within the limits of the town.~~

Section 130.22 – The State Law provisions prohibiting prostitution are more encompassing. Additionally, municipalities may enact prostitution ordinances only if they are 'at least as stringent' as the State law. There is a very good argument that Section 130.22 is not at least as stringent and therefore is preempted. Historically, any prostitution matters within the Town have been prosecuted under State Law. Because of these factors, repeal is recommended.

§ 130.22 RESERVED. ~~PROSTITUTION.~~

~~It is unlawful for any person to practice prostitution or to solicit any person to visit or patronize a prostitute or place of prostitution.~~

Sections 130.23 through 130.28 – No changes recommended.

§ 130.23 OFFENSIVE PREMISES.

It is unlawful for any person to suffer, or permit any premises belonging to or occupied by him, or any cellar, privy, vault, pool, sewer or private drain therein to become nauseous, foul or offensive to the senses or prejudicial to the public health or comfort.

§ 130.24 WATER FLOW ON STREETS.

It is unlawful for any person to willfully or negligently permit or cause the escape or flow of water in such quantity as to cause flooding, or to impede vehicular or pedestrian traffic, to create a hazardous condition to traffic, or to cause damage to the public streets of the town.

§ 130.25 PRODUCTS INTENTIONALLY MISUSED FOR OBTAINING A HIGH, HALLUCINOGENIC, PSYCHOACTIVE, PSYCHOTROPIC, OR MIND ALTERING EFFECT; PROHIBITION OF SALE OR POSSESSION FOR SALE.

(A) It is unlawful for any person to possess for sale, offer for sale, or sell any product that is not intended or labeled for human consumption, knowing or having reason to know that the purchasers and/or end users of such product commonly intentionally misuse such product.

(B) For the purposes of this section:

(1) INTENTIONAL MISUSE OF A PRODUCT means the consumption, ingestion, smoking, or other introduction of a product into the human body for the purpose of obtaining a high, hallucinogenic, psychoactive, psychotropic, or other mind altering effect.

(2) If an employee of the federal, state, county, or local government, acting in his/her official capacity, provides a person with information documenting the common intentional misuse of a product, such person shall be deemed to know or have reason to know of the common intentional misuse of the product.

§ 130.26 DANGEROUS CONSTRUCTIONS.

It is unlawful for any person to maintain or allow any signs, billboards, awnings and other similar structures over or near streets, sidewalks, public grounds or places frequented by the public, so situated or constructed as to endanger the public safety.

§ 130.27 INJURIOUS MATERIAL ON STREETS.

It is unlawful for any person, either willfully and maliciously or carelessly and negligently to drop, throw, place or scatter upon any street, alley, sidewalk or public place in the town any nails, tacks, broken glass, glass bottles or any instrument or thing whatsoever of such nature as to be capable of injuring person or property.

§ 130.28 COVERING OF EXCAVATIONS REQUIRED.

(A) It is unlawful for any person to make any excavation or dig any hole, drain or ditch in any highway or thoroughfare in the town without providing a sufficient light at night and a temporary fence or suitable obstruction around or in front of the excavation during the day.

(B) It is unlawful for any person to maintain a well, cellar, pit or other excavation of more than two feet in depth on any unenclosed lot, without substantial curbing, covering or protection.

Section 130.29 – The reference 'fireworks' is eliminated because fireworks are now specifically addressed by Section 130.39. Currently it is the Fire Department which issues permits related to explosives, so the reference to the "Chief of Police" is changed to the "Fire Department."

§ 130.29 EXPLOSIVES.

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

Section 130.30 – The requirement that 'humane' traps be used under a permit issued by the Town is removed. If such traps are permissible, a permit appears unwarranted.

§ 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) ~~"Humane" traps shall be used under permit issued by the town upon payment of a fee of $1.~~

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

Section 130.31 – No recommended changes.

§ 130.31 LOITERING.

It is unlawful for any person, other than the owner, manager or his authorized representative, to interfere individually or collectively with free enjoyment of a property by the owners thereof; or interfere with the conduct of any lawful business by obstructing entrance to a business or by obstructing free passage of persons or merchandise or commodities within a place of business, or by obstructing service rendered by a business to its customers.

Section 130.32 – Non substantive changes are recommended.

§ 130.32 UNLAWFUL URINATION OR DEFECATION.

It is unlawful to urinate or defecate ~~Any person who urinates or defecates~~ 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~~, in guilty of a Class One misdemeanor~~. 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.

Sections 130.33 through 130.35 – No changes recommended.

§ 130.33 CURFEW FOR MINORS.

(A) It is unlawful for any person under 18 years of age to idle or loiter upon the streets or public places of the town between the hours of 12:00 midnight and 6:00 a.m. unless the person is accompanied by a parent, guardian or some person of lawful age having legal custody of that person. It is unlawful for any parent, guardian or other adult person having the care and custody of a person to encourage or allow that person to idle or loiter upon the streets or public places between the hours of 12:00 midnight and 6:00 a.m. unless accompanied by a parent or guardian.

(B) This section does not apply to a minor who is:

(1) Accompanied by a parent, guardian, or custodian;

(2) Accompanied by an adult specified by a parent, guardian, or custodian;

(3) Carrying out an errand or other lawful activity as directed by a parent, guardian, or custodian;

(4) Occupying the sidewalk of the place where the minor resides, or the sidewalk of a place where the minor has permission from his or her parent or guardian to be, or the sidewalk of a next-door neighbor not communicating an objection to a police officer; or

(5) Participating in, going to, or returning from:

(a) Lawful employment;

(b) A lawful athletic, educational, entertainment, religious, or social event; or

(c) Interstate travel.

§ 130.34 OBSTRUCTION OF STREETS.

It is unlawful for any person to obstruct any public street or alley, sidewalk or park or other public grounds within the town by committing any act of, or doing anything which is injurious to the health, or indecent or offensive to the senses, or to do in or upon any streets, alleys, sidewalks, parks or other public grounds, any act or thing which is an obstruction or interference to the free use of property or with any business lawfully conducted by anyone, in or upon, or facing or fronting on any streets, alleys, sidewalks, parks or other public grounds in the town.

§ 130.35 OBSTRUCTION OF VIEW.

It is unlawful for any person to maintain or allow any tree, hedge, billboard or other obstructions which prevent persons driving vehicles on public streets, alleys or

highways from obtaining a clear view of traffic when approaching an intersection or pedestrian crosswalk.

Section 130.36 – This section is recommended for repeal.

§ 130.36 RESERVED. ~~SPITTING.~~

~~It is unlawful for any person to spit upon any of the public sidewalks or crosswalks in the town or upon any public path, by-way or highway, or in or on any public ground or park in the town, or upon the floor or interior of any public building in the town.~~

Section 130.37 – This section is duplicative of A.R.S. 13-2907.01 and is therefore recommended for repeal.

§ 130.37 RESERVED. ~~FALSE REPORTS TO POLICE OR FIRE DEPARTMENT.~~

~~It is unlawful for any person willfully to make to the Police Department or Fire Department of the town any false, fraudulent, misleading or unfounded report or statement, or willfully to misrepresent any fact for the purpose of interfering with the operation of the police department or fire department or with the intention of misleading any police officer or firefighter.~~

Sections 130.38 – References to the "Public Works Engineer" have been changed to a generic "Town."

§ 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 ~~Public Works Engineer~~ 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 ~~Public Works Engineer~~ Town.

130.39 – No changes are recommended.

§ 130.39 FIREWORKS.

(A) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

(1) CONSUMER FIREWORK. Those fireworks defined by A.R.S. § 36-1601.

(2) DISPLAY FIREWORK. Those fireworks defined by A.R.S. § 36-1601.

(3) FIREWORKS. Any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, that is a "consumer firework," "display firework" or "permissible consumer fireworks" as defined by A.R.S. § 36-1601.

(4) NOVELTY ITEMS. Federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow worms, snakes, toy smoke devices, non-ignition sparklers, and certain toys as defined in A.R.S. § 36-1601.

(5) PERMISSIBLE CONSUMER FIREWORKS. Those fireworks, as defined by A.R.S. § 36-1601, that maybe sold within the town even where their use has been prohibited.

(6) SUPERVISED PUBLIC DISPLAY. A monitored performance of display fireworks open to the public, not sponsored by the town, and authorized by permit of the Fire Chief.

(7) TOWN-SPONSORED DISPLAY. A performance of display fireworks open to the public and paid for, in whole or in part, by the town.

(B) Prohibitions.

(1) The use, discharge or ignition of fireworks within the town is prohibited except as provided in this section.

(2) Conducting a supervised public display of fireworks in violation of division (D) is prohibited.

(C) Exceptions. Nothing in this section shall be construed to prohibit or regulate any of the following:

(1) The use, discharge or ignition of novelty items;

(2) Town-sponsored displays.

(D) Supervised public displays.

(1) The Fire Chief may grant a permit for conducting a supervised public display of fireworks. Conditions that are necessary to protect the health and safety of the community shall be included in such permit.

(2) Every such supervised public display of fireworks shall be of such character, and so located, discharged or fired only after proper inspection, and in a manner that does not endanger persons, animals or property.

(3) The Fire Chief has the authority to reject or revoke a permit for a supervised public display during times of high fire danger.

(E) Sale of fireworks.

(1) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person who is under 16 years of age.

(2) No person shall sell or permit or authorize the sale of permissible consumer fireworks in conflict with state law.

(3) No person shall sell permissible consumer fireworks without first obtaining an inspection from the Fire Chief for compliance with the International Fire Code as adopted by the town.

(a) Following such inspection, the Fire Chief shall issue a permit if the sales site is in compliance.

(b) No roadside sales shall be permitted.

(F) Posting of signs by persons engaged in the sale of fireworks.

(1) Prior to the sale of permissible consumer fireworks, every person engaged in such sales shall prominently display signs indicating the following:

(a) The use of fireworks within the town, except novelty items as defined by this section, is prohibited.

(b) Consumer fireworks authorized for sale under state law may not be sold to persons under the age of 16.

(2) Signs required under this division shall be placed at each cash register and in each area where fireworks are displayed for sale.

(3) The Fire Chief shall develop an administrative policy concerning the size and color of the required signs and shall develop a model sign. The administrative policy and model sign shall be posted on the town's website and filed with the Clerk's office.

(G) Enforcement. A police officer or the Town Attorney may issue criminal complaints to enforce this section.

(H) Liability for emergency responses related to the use of fireworks; definitions.

(1) A person who uses, discharges or ignites permissible consumer fireworks, fireworks or anything designed or intended to rise into the air and explode or to detonate in the air or to fly above the ground, is liable for the expenses of any emergency response required by such use, discharge or ignition. The fact that a person is convicted for a violation(s) of this section is prima facie evidence of liability under this division.

(2) The expenses of an emergency response are a charge against the person liable for those expenses pursuant to division (1) above.

(a) The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses.

(b) The person's liability for the expense of an emergency response shall not exceed $100,000 for a single incident.

(c) The liability imposed under this division is in addition to and not in limitation of any other liability that may be imposed.

(3) For the purposes of this division:

(a) EXPENSES OF AN EMERGENCY RESPONSE means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

(b) REASONABLE COSTS include the costs of providing police, firefighting, rescue and emergency medical services at the scene of an incident, and the salaries of the persons who respond to the incident.

OFFENSES AGAINST JUSTICE AND ADMINISTRATION

Section 130.50 – This section is duplicative of A.R.S. 13-2505 and is therefore recommended for repeal.

§ 130.50 RESERVED. ~~FURNISHING PRISONERS WITH CONTRABAND.~~

~~It is unlawful for any person to furnish or attempt to furnish or take into jail or to deliver or attempt to deliver to any prisoner therein confined, or in the custody of any officer, any weapon, tool, intoxicating liquors, drug or other article without the consent of the officer in charge.~~

Section 130.51 – A large portion of this section is duplicative of A.R.S. 13-2910(A). It has been rewritten to include only the portions not included in State Law.

§ 130.51 INTERFERING WITH OR HARASSING POLICE ANIMALS ~~DOGS~~.

(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.

~~(A) While a police service dog (K-9 Dog) is being caged, kenneled, transported, exhibited, exercised or engaged in discharging or attempting to discharge any lawful duty or function, it is unlawful to and no person shall do either of the following:~~

~~(1) Intentionally, knowingly or recklessly kill, injure, strike, interfere with, arouse, harass or bait, or attempt to recklessly kill, injure, strike, interfere with, arouse, harass or bait a police service dog (K-9 Dog).~~

~~(2) Cause or direct any animal to attack or otherwise interfere with or harass the police service dog (K-9 Dog).~~

~~(B) A police officer may destroy any animal attacking a police service dog (K-9 Dog) if no lesser means are reasonably available to prevent injury to the police service dog (K-9 Dog).~~

~~(C) A POLICE SERVICE DOG as used in this section shall mean any dog which is member of any police department K-9 unit.~~

~~(D) Any violation of this section shall be punished as a class one misdemeanor in accordance with the laws of the State of Arizona.~~

OFFENSES INVOLVING ALCOHOL AND TOXIC SUBSTANCES

Section 130.76 – Subsections (A) through (C) of this section are duplicative of State Law and are therefore recommended for repeal. Subsection (D) is retained and the Section is retitled "Home Detention."

§ 130.76 HOME DETENTION. ~~ALCOHOL RELATED OFFENSES.~~

~~(A) It is unlawful and prohibited for any person to consume spiritous liquor in any public place, thoroughfare or gathering except and unless one of the following exceptions applies. Exceptions shall include only the following:~~

~~(1) Any premises or extension thereof directly under the control or supervision of an Arizona retail liquor licensee and specifically covered by the licensee's license.~~

~~(2) Any event exempted by a formal resolution duly passed and adopted by the Council in advance of an event which shall clearly define the event's time limits and locations or boundaries.~~

~~(3) Any event or occasion wherein a land owner, lessee or lessor of private property has given permission or sponsored an event or occasion wherein spirituous liquor is provided or consumed on the private property.~~

~~(B) It is unlawful and prohibited for any person 18 years of age or older to recklessly or intentionally furnish spiritous liquor to any person under the legal age for consumption of spiritous liquor as has been determined by the A.R.S. § 4-101(16) and as amended.~~

~~(C) For the purposes of this section, SPIRITOUS LIQUOR shall mean and be defined as is set forth by the A.R.S. § 4-101(29) and as amended.~~

~~(D)~~ Any person found guilty of a misdemeanor ~~the~~ offense of driving under the influence, pursuant to Title 28 ~~A.R.S. § 28-1381 as amended~~, 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~~1~~) A prisoner must meet all of the following eligibility requirements for the program:

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

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

(3~~c~~) 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~~d~~) 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~~2~~) A prisoner is required to comply with all of the following provisions for the duration of the prisoner's participation in the program:

(1~~a~~) 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~~b~~) 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~~c~~) 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~~d~~) 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~~e~~) The prisoner may be required to participate in community service work programs on the weekends.

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

(7~~g~~) 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~~h~~) The prisoner shall participate in an alcohol or drug program as designated by the court.

(9~~i~~) 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~~j~~) The prisoner shall comply with all other provisions of the sentence imposed.

(C3) 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:

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

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

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

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

(D4) 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.

Sections 130.77 and 130.78 are duplicative of State Law and recommended for repeal. 130.77 is addressed by A.R.S. 13-3403 and 130.78 is addressed by A.R.S. 13-3404.01. It is interesting to note that the Town passed 130.78 (addressing precursor chemicals) in early 2005 and the State followed the Town and other municipalities' lead in this area and passed the State statute in late 2005.

~~§ 130.77 TOXIC INHALANTS.~~

~~(A) It is unlawful and prohibited for any person to breathe or inhale the fumes and vapors of any toxic substance for the sole purpose of altering the mental or physical state of the inhaler.~~

~~(B) For the purposes of this section, a TOXIC SUBSTANCE shall be defined as any liquid or vapor which results from the evaporation of any substance which, singularly or in combination with other substances, constitute a toxic poison to a human if consumed. Any product or chemical which is commercially manufactured and which contains a warning label from the manufacturer prohibiting the inhalation of the fumes or vapors of the product, or which cautions against the ingestion or direct contact with the product, shall be considered a toxic substance.~~

~~(C) Any person discovered to be under the influence caused by the inhalation of a toxic substance shall be guilty of a Class One Misdemeanor and shall be punishable according to the maximum penalties described for Class One Misdemeanors per the Arizona Revised Statutes.~~

~~§ 130.78 SALE OF PRODUCTS CONTAINING PSEUDOEPHEDRINE.~~

~~(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.~~

~~PSEUDOEPHEDRINE PRODUCT. Any product containing ephedrine or pseudoephedrine and includes any compound, mixture or preparation that contains any detectable quantity of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine or their salts, optical isomers or salts of optical isomers. Product packaging that lists ephedrine, pseudoephedrine, norpseudoephedrine or phenylpropanolamine as an active ingredient shall constitute prima facie evidence that the product is a pseudoephedrine product.~~

~~RETAIL ESTABLISHMENT. Any place of business that offers any pseudoephedrine product for sale at retail.~~

~~(B) The operator of a retail establishment shall keep all pseudoephedrine products in a manner that is inaccessible to customers without the assistance of the operator or any employee of the retail establishment.~~

~~(C) A person making a retail sale of pseudoephedrine product shall require a government-issued photo identification from the purchaser and shall record the purchaser's name, address, quantity of pseudoephedrine product purchased, transaction date, and the initials of the seller.~~

~~(D) The information required to be obtained by division (C) shall be retained by the retail establishment for a period of 90 days, and will be considered a confidential document that shall only be available to the operator of the retail establishment and to Arizona POST certified peace officers when such information is necessary in the performance of their duties.~~

Section 130.99(C) is unnecessary with the repeal of 130.76(A)-(C).

§ 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.

~~(C) Any person who violates or attempts to violate any of the provisions of § 130.76 shall be guilty of a Class 1 misdemeanor and upon conviction shall be punished by a fine not to exceed $2,500, by imprisonment not to exceed six months, or both; except that any person convicted under § 130.76(B) shall receive the mandatory minimum penalty of serving 48 hours consecutively in the county jail, without work release or credit for any prior time served in jail. Any town magistrate who accepts a guilty plea for a violation of § 130.76(B) or who, after trial, finds a person guilty of a violation of § 130.76(B), shall require the convicted person to serve the 48-hour mandatory minimum sentence, together with any other fines, jail time, probation, community service or other lawful sentence that the court deems just and proper. The prescribed 48-hour jail time may be neither suspended, waived nor exempted by the sentencing court for any violation of § 130.76(B).~~