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### MEMORANDUM

Date: November 6, 2014

To: Mayor and Council Members

From: Tim Wright, Town Attorney

Re: Systematic Town Code Review – Title IX, CHAPTER 94: STREETS AND SIDEWALKS (Ordinance 860 /Resolution 2809)

This is part 15 of the Systematic Town Code Review. Chapter 94 (Streets and Sidewalks) has been reviewed and numerous changes recommended. LaRon Garrett, Assistant Town Manager, greatly assisted with the recommended changes. Numerous provisions of this Chapter have been rewritten for clarity and readability. The only substantive change being recommended is in Section 94.05(B). This section has been amended such that Utility Companies continue to be exempt from the bond requirements, but are now subject to inspections by the Town (see deletion of “94.05” which was a misprint and should have been “94.06”). Insertions are noted with a double underline and deletions are noted by ~~strikeout~~.

#### CHAPTER 94: STREETS AND SIDEWALKS

##### § 94.01 PERMIT REQUIRED.

~~It is unlawful for any person to cut, open or remove any pavement on any street, sidewalk, alley or public place within the corporate limits of the town without first obtaining a permit from the town for that purpose, except in cases of emergency, and in cases of emergency, the procedures hereinafter set forth shall be followed. It shall also be unlawful for any person to place, construct or install any improvement or make any change to an existing place, structure or facility, including but not limited to culverts, head walls, drainage structures, ditches, flat work for driveways or sidewalks, walls, fences, grading, landscaping (including but not limited to plants, shrubs, trees and structural landscaping components) within the limits of any dedicated~~

~~right-of-way, easement for public ingress or egress or of any public place within the corporate boundaries of the town without first obtaining a permit therefor from the town for such purpose.~~

(A) It is unlawful for any person to cut, remove or damage any street, sidewalk, drainage conveyance, or other public improvement without first obtaining a permit from the town, except in cases of emergency.

(B) It is unlawful for any person to place, construct or install any improvement or make any change to an existing place, structure or facility, including but not limited to culverts, head walls, drainage structures, ditches, flat work for driveways or sidewalks, walls, fences, grading, or landscaping within any Town right-of-way, easement for public ingress or egress or of any public place without first obtaining a permit from the town.

#### § 94.02 APPLICATION FOR PERMIT.

~~Any person who cuts, opens or removes pavement of any street, sidewalk, alley or public place or who places, constructs or installs any structure or change for which a permit is required by § 94.01 shall first make application to the Public Works Department for a permit to do such work, which application shall state, among other things, the location of the proposed cut, construction, installation or change. A separate application shall be made for each place whereat it is proposed to cut the pavement of a street, sidewalk, alley or public place or for which construction or changes as identified herein to areas of dedicated right-of-way, easements or other public places are proposed to be made. A multiple item permit may be issued for items which fall within dedicated right-of-way but outside of any pavement and shoulder section of any roadway. All applications for such permits shall be accompanied by a \$25 permit fee, except as otherwise provided pursuant to § 94.06, and except for those applications for a permit for landscaping or the installation of landscaping components. The permit fee shall be refunded to the applicant if the permit is refused. If a pavement cut is to be performed, the permittee shall be either a utility company pursuant to § 94.06 or a Licensed Arizona Contractor with the appropriate license to work within public right-of-way. Upon receipt of the application and permit fee, the Public Works Department shall issue a permit therefor, after approval by the proper town departments, as provided in § 94.03. If such approval, or any part thereof, is not made, such permit shall be denied.~~

(A) All applicants for permits as may be required by this Chapter shall provide (1) the location of the proposed cut, construction, installation or change, (2) a certificate of insurance listing the Town as an additional insured, and (3) any other information as may be required by the Town.

(B) A separate application shall be made for each place where a pavement cut of a street, sidewalk, alley or public place is to be made or for which construction or changes to areas of dedicated right-of-way, easements or other public places are proposed to be made. The Town may waive the requirement for separate applications if the cuts, construction, and/or changes are part of a unified plan.

(C) All applications shall be accompanied by a permit fee established by the Council

(D) If the application is for a pavement cut, the applicant shall be either a utility company as defined in Section 94.05 or a Licensed Arizona Contractor with the appropriate license to work within public right-of-way.

#### § 94.03 PERMIT PROVISIONS.

~~Each permit issued by the town pursuant to §§ 94.01 and 94.02 shall provide that the person to whom such permit is issued shall save and hold the town, its officers, agents and employees harmless from any claim for injury or damages resulting from the performance or maintenance of such work for which the permit is issued and shall, during the progress of such work, place and maintain proper barriers and lights for the protection of the public in the use of streets, sidewalks, alleys, rights-of-way, easements or public places. The permit shall further provide that the permittee shall perform the work in conformity of the Uniform Standard Specifications for Public Works Construction and the Uniform Details for Public Works Construction, sponsored and distributed by the Maricopa Association of Governments. All excavations within streets, sidewalks, easements for ingress or egress, alleys or public places shall be repaired in conformance with such specifications, or shall be returned to the same condition of the area being excavated as existed prior to the excavation. In any event, the permittee shall perform the work in the area of the excavation in such manner as to result in a compaction ratio in the excavated or repaired area at least equal to that of the area immediately surrounding the excavated site. Backfill material shall, for each excavation, be the same as specified by the controlling utility company, but in any event shall conform to the following requirements: for bedding and shading material (to a maximum of 1 foot above the pipe) shall be either 3/4 inch aggregate base course material compacted to at least 95% of the maximum dry density or flowable backfill slurry in the following proportions: 2,600 pounds of 3/8 inch minus aggregate, 800 pounds sand, 94 pounds cement and 11 gallons of water. This slurry is a standard 1-sack mix. If quantities less than 1 cubic yard are mixed, the above proportions shall be adhered to. The backfill from 1 foot above the pipe to the pavement subgrade shall be the above flowable backfill slurry. The driving surface of any street which has been excavated shall be repaired with a minimum of 2 inches of compacted hot mix asphalt, or the hot mix asphalt thickness shall match the thickness of the adjacent asphalt, whichever is greater, and the surface shall match the existing grades of the surrounding driving surface. Any street cut that is not parallel to the centerline of the pavement shall also have a "T" top with a minimum of 12 inch shoulders. All street cut repairs shall also conform to the Town of Payson Street Pavement & Surface Replacement Detail, latest revision. Prior to the issuance of a permit, all permittees shall notify Blue Stake in accordance with A.R.S. §§ 40-360.22 and § 40-360.23 of their intention to excavate, together with the date and site of each excavation. The permits issued to such permittees shall require and be subject to the limitation that street excavations commence only on Mondays through Fridays, inclusive; however, such excavations may continue uninterrupted through the entire period allowed by the permit. A permit for excavation within a street shall not be issued for any period in excess of three consecutive days unless, in the opinion of the Public Works Department, exceptional circumstances exist which merit a longer period. All pavement cuts shall be repaired in accordance with this chapter within ten working days from the date the cut was made. The permittee shall be responsible for maintaining the cut in an acceptable~~

~~condition until it is repaired. For permits dealing with items other than excavations within the driving surface or shoulder of a street, a permit may be issued for a period of time up to six months.~~

(A) Each permit issued by the town pursuant to this Chapter shall provide that the permittee shall (1) save and hold the town, its officers, agents and employees harmless from any claim for injury or damages resulting from the performance or maintenance of the work for which the permit is issued and (2) during the progress of such work, place and maintain proper barriers and lights to ensure public safety.

(B) Each permit shall require the permittee to perform the work in conformity of the Uniform Standard Specifications for Public Works Construction and the Uniform Details for Public Works Construction, sponsored and distributed by the Maricopa Association of Governments as amended by the Town ("MAG Standards").

(C) All excavations shall be repaired in accordance with MAG Standards, or shall be returned to the same condition of the area being excavated as it existed prior to the excavation. All excavations shall be have a compaction ratio in the excavated or repaired area at least equal to that of the area immediately surrounding the excavated site. Backfill material shall be the same as specified by the controlling utility company, but in any event shall conform to the following requirements: for bedding and shading material (to a maximum of 1 foot above the pipe) shall be either 3/4 inch aggregate base course material compacted to at least 95% of the maximum dry density or flowable backfill slurry. The backfill from 1 foot above the pipe to the pavement subgrade shall be the above flowable backfill slurry. The flowable slurry mix shall consist of 1 sack cement to 1 cubic yard of aggregate.

(D) The driving surface of any street which has been excavated shall be repaired with a minimum of 2 inches of compacted hot mix asphalt, or the hot mix asphalt thickness shall match the thickness of the adjacent asphalt, whichever is greater, and the surface shall match the existing grades of the surrounding driving surface. Any street cut shall have a "T" top with a minimum of 12 inch shoulders.

(E) All street cut repairs shall conform to the Town of Payson Street Pavement & Surface Replacement Detail, latest revision.

(F) All permittees shall notify Blue Stake in accordance with A.R.S. §§40-360.22 and 40-360.23 of their intention to excavate, together with the date and site of each excavation.

(G) Street excavations may be commenced only on Mondays through Fridays, inclusive. However, such excavations may continue uninterrupted through the entire period allowed by the permit.

(H) All pavement cuts shall be repaired within ten working days from the date the cut was made.

(I) Permittees shall be responsible for maintaining the pavement cut in an acceptable condition until repaired.

(J) Permits allowing construction or work, other than excavations within the driving surface or shoulder of a street, may be issued for a period of time up to six months.

#### § 94.04 BOND REQUIRED; PROVISIONS.

(A) Bond required. It shall be unlawful for any person to cut, open or remove any pavement on any street, sidewalk, alley or other public place ~~within the corporate limits of the town~~ without providing a bond or cash deposit in the amount of ~~Such bond or cash deposit shall accompany the permit application. The amount of such bond or cash deposit shall be \$2,000, unless it is determined by the Town Public Works Department that the work is estimated to be performed can reasonably be anticipated to cost more than \$2,000. In such event, the bond or cash deposit will be established at in the amount estimated by the Town. such higher amounts as are determined by the Public Works Department to reasonably cover the costs of all the proposed work.~~

(B) Bond provisions. Each bond or cash deposit provided pursuant to this Section by a person ~~applying for a permit to cut, open or remove any pavement on any sidewalk, alley or other public place within the corporate boundaries of the town~~ shall guarantee faithful performance of the cutting, opening and removing, and subsequent repairs to, the pavement ~~in conformity with the provisions of this chapter.~~

#### § 94.05 PROVISIONS FOR UTILITY COMPANIES.

(A) ~~Solely for~~ For the purposes of this chapter, a Utility Company UTILITY COMPANY shall be defined as a provider of services such as piped propane, electric, cable TV, sewer, water, or wired phone services that is commonly owned or regulated by a governmental entity. ~~any of the following companies: Arizona Public Service Company, Energy West, Cablevision, Qwest Communications, Northern Gila County Sanitary District and the Town Water Department, or any of the successors thereof.~~

(B) The provisions of §§ 94.04 ~~and 94.05~~ shall not apply to any Utility Company, ~~as defined in division (A) of this section.~~ Such Utility Companies shall, ~~however, agree,~~ as a condition of ~~this~~ the issuance of a permit pursuant to this chapter, agree that any work which is not completed by such Utility Company in conformance with the standards set forth in § 94.03 may and will be corrected by the town, and such utility company shall be liable to the town for the cost of such corrections, ~~as set forth in § 94.06.~~

(C) A utility company may hire a Licensed Arizona Contractor to perform the work but the permittee shall be the utility company. Upon receipt of an application from a Utility Company, ~~as defined in division (A) of this section,~~ the Town shall issue a permit ~~therefor~~ if the proposed work does not conflict with this Code or any other ordinance or regulation of the town.

§ 94.06 INSPECTIONS.

(A) The ~~Town Public Works Director, or his designee,~~ shall be notified at least 24 hours prior to ~~placing~~ any backfill or pavement to allow for inspections. Any backfill or pavement placed without the approval of the ~~Town Public Works Director~~ is subject to removal at the permittee's expense.

(B) Upon completion of the work, the ~~Town Public Works Director~~ will perform a final inspection ~~and the permit will expire.~~

(C) The ~~Town Public Works Director~~ will inspect the project site periodically (at least quarterly) to ~~ascertain if inspect~~ the work site ~~where the permitted work was~~ is being performed and ~~shall ascertain~~ whether such work is in there was compliance with the standards set forth in § 94.03, and with all other requirements of law and of this Code. If the ~~Town Public Works Director or designee~~ finds that such standards have not been complied with, the ~~Town Public Works Director~~ shall, within ten days of the inspection, forward to the permittee a list of all specifications and requirements not complied with. The permittee shall ~~then~~ have ten working days to correct the problems. If the permittee does not correct the problems within ten working days, the town may ~~will~~ make the corrections. The cost of such corrections shall be paid to the town from such bond or cash deposit, unless the costs of correction exceed the amount of such bond or cash deposit, in which case, the ~~Town Public Works Director~~ shall so notify the permittee, who shall pay any such amounts in addition to the posted bond or cash deposit within 30 days of such notice. In the case of a permittee operating as a utility company under § 94.05, which has not repaired the noted deficiencies within ten working days, a list of all specifications not complied with shall be sent to such permittee, together with an invoice for the cost to the town ~~for the cost of corrections to be made by the town,~~ which invoice shall be paid by said permittee within 30 days of the date of such invoice.

(D) Upon the Town's final approval of a project, ~~This final inspection will start~~ the two year warranty period shall begin.

§ 94.07 WARRANTIES.

(A) The permittee shall warranty all materials and workmanship used in conjunction with any street cut and repair for a period of two years.

(B) The ~~Town Public Works Director~~ shall inspect the street repairs within ten working days of the end of the warranty period. If all work still appears to have been constructed in compliance with the standards set forth in § 94.03, the remainder of any bond or cash deposit shall be returned to the permittee. If the ~~Town Public Works Director or his designee~~ finds that such standards have not been complied with, the ~~Town Public Works Director~~ shall, within ten days of the inspection, forward to the permittee a list of all specifications and requirements not complied with. The permittee shall then have ten working days to correct the problems. If the permittee does not correct the problems within ten working days, the town will make the corrections. The cost of such corrections shall be paid to the town from such bond or cash deposit, unless the costs of correction exceed the amount of such bond or cash deposit remaining,

in which case, the ~~Town Public Works Director~~ shall so notify the permittee, who shall pay any such amounts in addition to the posted bond or cash deposit within 30 days of such notice.

§ 94.08 EMERGENCIES.

In the event of a bonafide emergency, as determined in the discretion of the town, a person may perform work for which a permit is otherwise required by this chapter, without first making application for such permit. However, the person performing the work shall apply for a permit for the work performed and post any required bonds within 48 hours of performing the work. All other provisions of this chapter shall nevertheless apply to work performed on such an emergency basis. In the event that the town determines that a bonafide emergency did not exist, then in addition to any other penalty provided herein, a \$50 penalty for failure to obtain a permit may be assessed.

§ 94.99 PENALTY.

(A) Each violation of ~~any provision in this chapter~~ may be punishable as a class one misdemeanor as provided in Section 10.99. ~~shall be a class one misdemeanor, punishable by a fine of \$2,500 or by imprisonment in the Gila County Jail for a period of six months, or by both such fine and imprisonment. Each day of each such violation of any provision in this chapter shall constitute a separate offense.~~

(B) Each violation of ~~any provision in this chapter~~ may ~~shall~~ be subject to a civil penalty not to exceed the sum of \$1,000.

(C) Any violation of ~~any provision in this chapter~~ may be enforced by the town pursuant to subsection (A) above, as a criminal offense or pursuant to subsection (B) above, as a civil penalty, or through any combination thereof in the sole discretion of the town and without election among remedies.

(D) In addition to any other penalty, the ~~Town Public Works Director~~ may ~~shall have the discretion to~~ withhold any permit applied for by any person, ~~firm or entity~~ pursuant to this chapter when such person, ~~firm or entity~~ has not fully complied with all provisions of this chapter prior to the application for such permit, including those provisions relating to payment of the cost of correction.

(E) Each day of a violation of this chapter shall constitute a separate offense.