

RESOLUTION NO: 3215

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, ADOPTING AMENDMENTS TO TOWN CODE CHAPTER 92, TITLE IX OF THE TOWN OF PAYSON CODE OF ORDINANCES: FIRE ADAPTIVE COMMUNITY PLAN AND DECLARING SUCH AMENDMENTS TO BE A PUBLIC RECORD.

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, the Town of Payson (the "Town") is concerned about dry conditions, low humidity, increased windy conditions, high temperatures, and the increased chance of wildland fires; and

WHEREAS, the Town wishes to lessen the potential spread of wildland fires and to increase defensible space for fire suppression personnel to operate during a fire; and

WHEREAS, the Town intends to mitigate the risk to life and structures from wildland fires and mitigate structure fires from spreading to wildland fires; and

WHEREAS, the Town Council desires to enact this ordinance in the interest of the health, safety, and welfare of the Town.

NOW, THEREFORE, THE MAYOR AND COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEARBY RESOLVE AS FOLLOWS:

Section 1. Chapter 92: Fire Adaptive Community Plan of the Payson Town Code is adopted, as adopted shall read as set forth in Exhibit A attached, and such adoption is declared to be a public record.

PASSED AND ADOPTED BY THE MAYOR AND PAYSON TOWN COUNCIL this ____ day of _____, 2020, by the following vote:

AYES ____ NOES ____ ABSTENTIONS ____ ABSENT

Thomas P. Morrissey, Mayor

ATTEST:

Tracie Bailey, Town Clerk

APPROVED AS TO FORM:

Pierce Coleman, PLLC, Town Attorney

EXHIBIT A
TO RESOLUTION 3215
(FIRE ADAPTIVE COMMUNITY PLAN)

CHAPTER 92: FIRE ADAPTIVE COMMUNITY PLAN

Statutory Authorization, Findings of Fact, Purpose and Scope, Definitions

§ 92.01 STATUTORY AUTHORIZATION

The Legislature of the State of Arizona has, in A.R.S. § 9-499, enabled the town to adopt regulations in conformance with A.R.S. § 9-499, designed to promote the public health and safety.

This chapter is enacted pursuant to applicable provisions of A.R.S § 9-499, the authorities granted to cities and towns by the Arizona State Constitution, the International Fire Code, and other applicable state law.

§ 92.02 FINDINGS OF FACT.

The accumulation of combustible vegetation, dead, dying or diseased trees, green waste, rubbish, and other combustible materials within the Town, is hereby found to create a fire hazard and is potentially injurious to the health, safety, and welfare of the public.

Therefore, the presence of such combustible vegetation, dead, dying or diseased trees, green waste, rubbish, and other materials on parcels as hereinafter defined is hereby declared to constitute a public nuisance, which may be abated in accordance with the provisions of this chapter and A.R.S. § 9-499. Nothing in this chapter shall replace or conflict with the authority of the Town of Payson Zoning Administrator to eradicate noxious weeds under other provisions of this code or applicable sections of the A.R.S. Title 3; Agriculture § R3-4-245 “Noxious Weeds”.

For purposes of this code, combustible vegetation does not include single specimens of trees, fire-resistant ornamental shrubbery, and other fire-resistant planting materials, native, or cultivated ground covers, which the Fire Chief determines do not form a means of rapidly transmitting fire from native or landscape plants to any improvement or other vegetation.

§ 92.03 PURPOSE AND SCOPE.

- (A) *Purpose.* The purpose of this chapter is to promote the health, safety and welfare of the citizens of the Town, and to protect the Town against the spread of wildland fires by requiring a minimum standard for the exterior condition of buildings and real property and a defensible space requirement for property exteriors.
- (B) *Scope.* This chapter shall apply to all buildings, structures and lands within the town without regard to the use, date of construction, or alteration, and is based upon the authority granted by A.R.S. § 9-499.

§ 92.04 DEFINITIONS

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

COMBUSTIBLE VEGETATION. Material that in its natural state will readily ignite, burn, or transmit fire from native or landscape plants to any structure or other vegetation. Combustible vegetation includes dry grass, brush, weeds, tree trunks, branches, litter or other flammable vegetation that creates a fire hazard.

DEAD, DYING OR DISEASED TREES. Pest or pathogen infested trees, abandoned or neglected groves, or other trees that are in a dying condition or are no longer living.

DEFENSIBLE SPACE. A space either natural or manufactured where material capable of allowing a fire to spread has been treated, cleared or modified to slow the rate and intensity of a fire and to provide a space for fire suppression activities to occur.

FIRE ACCESS ROADWAY. A required roadway, highway or driveway which allows fire apparatus to position for fire suppression activities within 150 feet of the most remote point of an improvement as defined in the Town adoption of the International Fire Code.

FIRE CHIEF. The Town Fire Chief or his/her authorized representative.

FUEL MODIFICATION. A manufactured treatment of native, natural and cultivated vegetation and other combustibles conforming to standards set by the Fire Chief and adopted by the Town.

GREEN WASTE. Includes, but is not limited to, organic material such as yard trimmings, plant waste, untreated wood wastes, paper products, natural fiber products, mulch and compost.

HAZARD TREES. Trees deemed a hazard by the Fire Chief, which pose a risk of increased fire danger, physical fall risk to people or improvements, or a significant risk to forest health or the watershed.

IMPROVEMENT. Any building or structure, permanent or temporary, erected for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind located in the incorporated area of the Town of Payson subject to this chapter. May include power transmission lines, water treatment and conveyance systems, communication towers and transmitters, or other critical infrastructure for the Town of Payson or communities subject to this chapter. For purposes of this chapter, the term "improvement" shall not include decks, sheds, gazebos, freestanding open-sided shade structures, and similar accessory structures less than 200 square feet, 30 feet or more from a dwelling, and fences more than 5 feet from a dwelling.

NOXIOUS WEED. Any species of plant that is, or is liable to be troublesome, aggressive, intrusive, detrimental, or destructive to agriculture, silviculture, or important native species, and difficult to control or eradicate, as defined in the Arizona Agricultural Code.

PARCEL. Any contiguous quantity of land in the possession of, owned by, or recorded as the property of, the same person (or entity) and which is located in the Town or communities subject to this chapter.

RESPONSIBLE PARTY. Includes, but is not limited to, any person, firm, foundation, partnership or corporation owning, renting, leasing, or otherwise controlling any parcel located within the Town or communities subject to this chapter.

RUBBISH. Non-putrescible solid wastes consisting of both combustible and non-combustible wastes, such as paper, wrappings, cigarettes, cardboard, metal cans, yard clippings, leaves, metal, wood, glass bedding, crockery and similar materials.

General Provisions

§ 92.10 ENFORCEMENT RESPONSIBILITY/APPLICABILITY.

The Fire Chief or his/her designee shall administer and enforce the provisions of this chapter.

- (A) The Fire Chief shall develop fuel management standards for application of this chapter to be adopted by the Town of Payson. These standards shall be in accordance with recognized National Fire Protection Association (NFPA) “Firewise” standards, national standards for a Fire Adaptive Community, as well as local fire behavior and fire modeling data relating to the Wildland Urban Interface.
- (B) This chapter shall be applicable to all property incorporated within the Town of Payson, Gila County, Arizona.

§ 92.11 AUTHORITY AND INSPECTIONS.

- (A) *Authority.* The Fire Chief or his/her designee is authorized to inspect property to determine compliance with this chapter upon invitation or with the concurrence of the owner, occupant, or designated agent, or when ordered by a court when probable cause exists to believe that conditions may be detrimental to health, safety or welfare of the public.
 - (1) *Inspections of unscreened exterior areas.* Unscreened exterior areas may be inspected at any time with or without the involvement of the owner, occupant or designated agent in accordance with legal requirements but should be accomplished during the normal business hours of the town.
 - (2) *Inspections of screened exterior areas.* Screened exterior areas shall be inspected only during the normal business hours of the town unless otherwise arranged, upon invitation or with the concurrence of the owner, occupant, or designated agent, or when ordered by a court when probable cause exists to believe that conditions may be detrimental to health, safety or welfare of the public.

§ 92.12 PROHIBITIONS/ FUEL MODIFICATION REQUIREMENTS.

- (A) *Fuel modification for Improvements.* The responsible party shall maintain, on a parcel, or on any adjacent sidewalks, parking areas, or streets, within one hundred (100) feet of the exterior perimeter of any improvement thereon, fuel modification meeting the adopted standard of the Fire Chief. However, the Fire Chief may authorize a distance less than 100 feet, but not less than 30 feet. Where the distance from the improvement to the property line of the parcel on which the improvement is located is less than the required clearance distance, the responsible party shall only be required to provide fuel modification to the property line.
- (B) *Fuel modification for vacant parcels.* The responsible party shall maintain a fuel mitigation plan approved by the Fire Chief or maintain fuel modification meeting the adopted fuel modification standard within thirty (30) feet of the property line. The Fire Chief may require a distance greater than thirty (30) feet when it is determined that the greater distance is necessary to protect property or the health, safety, and welfare of the public or first responders.
- (C) *Fuel modification along Fire Access Roadways.* The responsible party shall maintain fuel modification within ten (10) feet of each side of the improved width and thirteen (13) feet, six (6) inches clear height above fire access roadways. The Fire Chief may require, after providing written notice to the responsible party, a distance greater than ten (10) feet when it is determined that the greater distance is necessary to protect property or the health, safety, and welfare of the public, or for the protection of emergency responders.
- (D) *Additional Fuel modification.* Notwithstanding the provisions of subsections (a), (b), and (c) of this section, if the Fire Chief determines that a greater distance is necessary to protect property or the health, safety and welfare of the public or first responders, the Fire Chief may require a responsible party to provide additional fuel modification.
- (E) *Removal of hazard trees.* The Fire Chief may designate hazard trees and require the responsible party to remove them within a reasonable amount of time based on the hazard presented.
- (F) *Fuel Modification.* The Fire Chief may designate parcels where fuel modification is required for the health and welfare of community residents as well as for the health of the forest and watershed.
- (G) *Combustible Vegetation.* For purposes of this section, combustible vegetation does not include single specimens of trees, fire-resistant ornamental shrubbery, and other fire-resistant planting materials or cultivated ground covers, which the Fire Chief determines do not form a means of rapidly transmitting fire from native or landscape plants to any improvement or other vegetation.
- (H) *Grading.* The provisions of this chapter shall not be construed to authorize grading which does not comply with Title XV of the Town of Payson Code of Ordinances regarding grading, clearing and watercourses.

§ 92.13 REMOVAL OF MATERIALS FOR FUEL MODIFICATION.

The following are approved methods for the removal of materials for fuel modification:

- (A) The removal of materials for fuel modification shall be done using methods such as mowing, cutting, grazing and trimming that leave the plant root structure intact to stabilize the soil and prevent erosion. Removed trees shall have the stumps cut no higher than eight (8) inches above the ground, however, abated orchards may have the stumps removed. The height of weeds and annual grasses shall not exceed a height of four (4) inches. Chipping of trees or vegetation that is done on site may be allowed to remain so long it is dispersed over an area not to exceed four (4) inches in depth. If the Fire Chief determines that difficult terrain, danger of erosion, or other unusual circumstances make strict compliance with this section undesirable or impractical, enforcement thereof may be suspended and reasonable alternative measures shall be provided.
- (B) Areas where prohibited materials are removed may be re-planted with single specimens of trees, fire-resistant ornamental shrubbery, and other fire-resistant planting materials or cultivated ground covers, approved by the Fire Chief, which do not form a means of rapidly transmitting fire from native or landscape plants to any improvement or other vegetation. Re-planting may be required for erosion control.
- (C) The removal of materials for fuel modification shall be carried out in conformance with all federal, state and local environmental laws and regulations including, but not limited to, the Endangered Species Act and the Town of Payson Code of Ordinances regarding grading, tree removal, clearing and watercourses.

§ 92.14 NOTICE OF VIOLATION AND REQUEST FOR VOLUNTARY COMPLIANCE.

- (A) Except in cases of immediate hazards, the Town shall provide reasonable written notice to the owner and occupant, lessee or designated agent in an attempt to obtain voluntary compliance with the provisions of this subchapter.
- (B) Reasonable written notice to the owner and occupant, lessee or designated agent shall be given thirty (30) days prior to the day set for compliance, and shall include the legal description of the property and the cost of such removal or abatement of the violations to the Town if the owner, occupant or lessee does not comply. The notice shall be either personally served or mailed to the owner and to the occupant or lessee at the last known address by certified mail, or the address to which the tax bill for the property was last mailed.

§ 92.15 APPEALS

- (A) The responsible party, upon being notified of a violation of this chapter, may appeal the notice and/or the assessment by written request to the Fire Chief before the date of

compliance. If the Fire Chief does not satisfy the appeal, the Town Council may hear the appeal by being placed on the agenda for a regularly scheduled Town Council Meeting. Abatement shall be stayed pending final resolution of any appeal properly taken pursuant to the provisions of this subchapter unless removal or abatement was ordered by a court.

§ 92.16 FAILURE TO ABATE VIOLATION; TOWN CORRECTION.

Upon the failure, neglect or refusal of any owner, occupant, lessee or designated agent so notified to abate a violation of this subchapter located upon his property within thirty (30) days after receipt of the written notice provided for above, or within thirty (30) days after the date of return of such notice, in the event the same is returned to the Post Office because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner, occupant, lessee or designated agent, the Town may, at the expense of such owner, occupant, lessee or designated agent, remove or cause the removal of the condition in violation of this subchapter. The provisions of this section shall be stayed pending the final resolution of any appeal properly taken pursuant to the provisions of this subchapter.

§ 92.17 EMERGENCY ABATEMENT.

If a situation presents an immediate hazard to public health or safety, the Town may personally serve an order directing the owner, occupant, lessee or designated agent to take such action as is appropriate to correct or abate the situation. If the owner, occupant, lessee or designated agent fails to correct the violation within 24 hours, or the Town is unable to locate such person within 24 hours, the Town may act to correct or abate the situation. Costs of abatement shall be an assessment upon the lot or tract of land as provided below.

§ 92.18 ASSESSMENTS.

- (A) *Assessment of cost of Town correction.* When the Town has caused, at Town expense, the removal of the condition in violation of this subchapter, the Town's Unified Development Code, or any other code adopted by the Town, the actual cost thereof, plus 5% for associated expenses in connection therewith shall be charged to the owner of such property as an assessment upon the lot or lots and tract or tracts of land from which such violation is removed.
- (B) *Recording assessment.* The Town shall record the assessment in the office of the Gila County Recorder, including the date and amount of the assessment, the legal description of the property and the Town as the one imposing the assessment. The priority of the recorded assessment shall be as set forth in state law. A sale of the property to satisfy an assessment obtained under the provision of this section shall be made upon judgment of foreclosure and order of sale. The Town shall have the right to bring an action to enforce the assessment in the Superior Court of Gila County at any time after the recording of the assessment, but failure to enforce the assessment by such action shall not affect its

validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein and the regularity of all proceedings prior to the recording thereof. If compliance with the notice is subsequently satisfied, the Town shall record a release of the notice.

(C) *Imposition of assessment.*

(1) Assessments that are imposed under this section run against the property until paid, and are due and payable in equal annual installments as follows:

- (a) Assessments less than \$500 shall be paid within one year after the assessment is recorded.
 - (b) Assessments of \$500 or more but less than \$1000 shall be paid within two years after the assessment is recorded.
 - (c) Assessments of \$1,000 or more but less than \$5,000 shall be paid within three years after the assessment is recorded.
 - (d) Assessments of \$5,000 or more but less than \$10,000 shall be paid within six years after the assessment is recorded.
 - (e) Assessments of \$10,000 or more shall be paid within ten years after the assessment is recorded.
- (2) An assessment that is past due accrues interest at the rate prescribed by A.R.S. § 44-1201.
- (3) A prior assessment for the purposes provided in this section shall not be a bar to a subsequent assessment or assessments for these purposes, and any number of assessments on the same lot or tract of land may be enforced in the same action.

§ 92.19 VIOLATIONS.

- (A) *Cumulative remedies.* The remedies herein are cumulative and the Town may proceed under one or more such remedies.
- (B) *Presumption of lawful control over property.* The owner of record, as recorded in the Gila County Recorder's Office, of the property upon which a violation of this chapter exists shall be presumed to be a person having lawful control over the subject structure or parcel of land. If more than one person is recorded as owner or partial owner of the property, said persons shall be jointly and severally presumed to be persons having lawful control over the subject structure or parcel of land. This presumption shall not prevent enforcement of the provisions of this chapter against any person specified in § 92.90 (C)(1).

§ 92.20 JURISDICTION OF PROCEEDINGS.

Jurisdiction of all proceedings to enforce the provisions of this chapter shall be in magistrate court, except as otherwise provided herein.

§ 92.21 PENALTY.

- (A) Anyone who violates any of the provisions of this chapter for which no specific penalty is otherwise provided shall be subject to the provisions of the Payson Arizona Code of Ordinances Chapter 10, §10.99.
- (B) The conviction of any person for a violation of § 92.12 to § 92.14 shall not relieve the person from the responsibility to correct such violation, nor prevent the enforcement, correction or removal thereof in any manner authorized by law.
 - (1) Every day that a nuisance in violation of § 92.12 to § 92.14 is permitted to exist or caused to continue to exist shall be deemed a separate violation.
- (C) Anyone who violates any of the provisions of § 92.12 through § 92.14 shall be subject to the following:
 - (1) *Daily civil sanction.* Any owner, occupant, lessee, property manager, designated agent or other person having lawful control over a structure or parcel of land who causes, permits, facilitates or aids or abets any violation of this chapter or who fails to perform any act or duty required by this chapter is subject to a minimum civil sanction of not less than \$25 per violation, and a maximum civil sanction of \$100 per violation of this code. Each day any violation of any provision of this chapter exists shall constitute a separate violation.
 - (2) *Penalties.* In addition to the penalties set forth in division (A) above, any person, firm, corporation or other entity that places any rubbish, trash, filth, garbage, refuse or debris upon any private or public property not owned or under the control of that person, firm, corporation or other entity, is guilty of a class 1 misdemeanor. In addition to any fine or penalty any person, firm, corporation or other entity shall be liable for all costs which may be assessed pursuant to this chapter for removing, abating or enjoining the placement of the rubbish, trash, filth, garbage, refuse or debris. Penalties will be deferred for one year from the effective date.
- (D) Any person who recklessly places or causes to be placed; any rubbish, trash, filth or debris on any property not owned or under the control of that person:
 - (1) Is guilty of a class 1 misdemeanor or a civil violation unless that person immediately removes or causes to be removed the rubbish, trash, filth or debris from that property. One hundred percent of any assessed fine or civil penalty shall be deposited in the general fund of the Town of Payson. The Town of Payson shall use fifty percent of the fine or civil penalty collected for purposes of illegal dumping cleanup.

- (2) In addition to any fine or penalty imposed for a violation of this section, is liable for all costs that may be assessed pursuant to this section for removing, abating or enjoining the rubbish, trash, filth, or debris and for all the costs incurred by the owner, lessee, occupant or lienholder of the property in the removal of, and disposal of the rubbish, trash, filth or debris.
 - (3) If required to remove any rubbish, trash, filth or debris pursuant to this section, the responsible party shall provide the Town of Payson a receipt from a disposal facility or other documentation evidencing lawful disposal of the rubbish, trash, filth, or debris.
- (E) Any person who places or causes to be placed any rubbish, trash, filth or debris on any property more than forty acres in size and is not owned or under the control of that person, retains the ownership of the rubbish, trash, filth or debris until that person lawfully disposes of the rubbish, trash, filth, or debris.