

TOWN OF PINETOP-LAKESIDE

ORDINANCE NO. 11-350

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, AMENDING THE TOWN TAX CODE BY INCREASING THE PRIVILEGE TAX (“SALES TAX”) RATE FROM 2.5% TO 2.9% TO PROVIDE FUNDING TO PURCHASE WOODLAND LAKE PARK; CREATING A SEPARATE TOWN FUND ACCOUNT CALLED THE “WLP ACQUISITION FUND;” PROVIDING FOR SEVERABILITY AND DESIGNATING AN EFFECTIVE DATE.

WHEREAS, the Town has long expressed its resolve to secure the 583-acre Woodland Lake Park tract, hereinafter referred to as "Park," dating back to its Townsite Act application to the U.S. Forest Service in 1986, to commissioning the Tejido Group's 2007 development of the Woodland Lake Park Tract Master Plan, hereinafter referred to as "Master Plan" that outlines a range of potential acquisition options; and

WHEREAS, the Town commissioned the Woodland Lake Park Acquisition Task Force, hereinafter referred to as "Task Force" in 2007 to implement the Master Plan and develop and evaluate various acquisition options; and

WHEREAS, the Task Force recommended that the Town engage the Trust for Public Lands, hereinafter referred to as "Trust" to assist in this effort, including development of a feasibility study addressing financial options for consideration, and conducting an independent survey of citizens in December 2008, that found a high level of support for raising the Town’s sales tax to acquire the Park; and

WHEREAS, the Task Force used the Trust’s feasibility study to develop a funding strategy for the acquisition of the Park that entailed a combination of extending the Town's restaurant and bar tax, and raising the sales tax, as a strategy to service bond debt that best reflects equitable sharing of the costs among all users of the Park; and

WHEREAS, the Task Force recognizes the acquisition of the 40-acre Big Springs Environmental Study Area, hereinafter referred to as “Big Springs” by the Blue Ridge Unified School District, hereinafter referred to as "School District" under the Education Land Grant Act as a priority, needing first to resolve the conflict with Public Law 105-344 proscribing that only the Town can purchase the Park without further specific authorization by Congress; and all parties shall continue to work with the Congressional delegation to resolve said conflict; and

WHEREAS, the Master Plan envisioned mixed-use development within the 100-acre Walnut Creek Node portion of the Park which was subsequently supported by citizens attending several town halls; and

WHEREAS, the Town has received funding and is currently in the process of contracting with the U.S. Forest Service to complete a National Environmental Policy Act environmental assessment for the conveyance of the Park; and

WHEREAS, the Town Council, by unanimous action on November 18, 2010, charged the Task Force and initiative petition leaders to work together to craft an Ordinance to further the effort to secure the Park by purchasing it from the federal government; and

WHEREAS, the Town Council desires to act upon its prior-expressed commitment to the long-term acquisition of the Park for recreation, public enjoyment, and open space, with the exception of the 100-acre Walnut Creek Node, by enacting this ordinance increasing the privilege tax rate (the "sales tax") by 0.4% from 2.5% to 2.9%; and

WHEREAS, the Mayor and Town Council wish to set up a separate dedicated fund called the "Special Park Acquisition Fund" to hold funds for the purchase of Woodland Lake Park; and

WHEREAS, the Town Council will review, evaluate and assess the continuing feasibility of the additional tax imposed by this Ordinance at least once every ten years.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, as follows:

Section 1. The Town shall increase the Town sales tax by four-tenths of one percent (0.4%) beginning July 1, 2013. This sales tax increase shall be held in a separate dedicated account for the acquisition of the 583-acre Park parcel known as Woodland Lake Park paying for any financing necessary for acquiring the Park; for acquiring access to the Park; and for paying any other expenses reasonably related to the acquisition of the Park.

Section 2. Section 8A-405(a) of the Town tax code is amended to read:

Sec. 8A-405. Advertising.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of "local advertising" by billboards, direct mail, radio, television, or by any other means. However, commission and fees retained by an advertising agency shall not be includable in gross income from "local advertising". All delivery or disseminating of information directly to the public or any portion thereof for a consideration shall be considered "Local Advertising," except the following:

(1) the advertising of a product or service which is sold or provided both within and without the State by more than one "commonly designated business entity" within the State, and in which the advertisement names either no "commonly designated business entity" within the State or more than one "commonly designated business entity". "Commonly Designated Business Entity" means any person selling or providing any product or service to its customers under a common business name or style, even though there may be more than one legal entity conducting business functions using the same or substantially the same business name or style by virtue of a franchise, license, or similar agreement.

(2) the advertising of a facility or of a service or activity in which neither the facility nor a business site carrying on such service or activity is located within the State.

(3) the advertising of a product which may only be purchased from an out-of-State supplier.

(4) political advertising for United States Presidential and Vice Presidential candidates only.

(5) advertising by means of product purchase coupons redeemable at any retail establishment carrying such product but not product coupons redeemable only at a single commonly designated business entity.

(6) advertising transportation services where a substantial portion of the transportation activity of the business entity advertised involves interstate or foreign carriage.

Section 3. Section 8A-410(a) of the Town tax code is amended to read:

Sec. 8A-410. Amusements, exhibitions, and similar activities.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the Town or takes place entirely within the Town, which includes the following type or nature of businesses:

(1) operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.

(2) health spas, fitness centers, dance studios, or other persons who charge for the use of premises for sports, athletic, other health-related activities or instruction, whether on a per-event use, or for long-term usage, such as membership fees.

Section 4. Section 8A-415(a) of the Town tax code is amended to read:

Sec. 8A-415. Construction contracting: construction contractors.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business upon every construction contractor engaging or continuing in the business activity of construction contracting within the Town.

Section 5. Section 8A-416(a) of the Town tax code is amended to read:

Sec. 8A-416. Construction contracting: speculative builders.

(a) The tax shall be equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in business as a speculative builder within the Town.

Section 6. Section 8A-417(a) of the Town tax code is amended to read:

Sec. 8A-417. Construction contracting: owner-builders who are not speculative builders.

(a) At the expiration of twenty-four (24) months after improvement to the property is substantially complete, the tax liability for an owner-builder who is not a speculative builder shall be at an amount equal to 2.9% of:

(1) the gross income from the activity of construction contracting upon the real property in question which was realized by those construction contractors to whom the owner-builder provided written declaration that they were not responsible for the taxes as prescribed in Subsection 8A-415(c)(2); and

(2) the purchase of tangible personal property for incorporation into any improvement to real property, computed on the sales price.

Section 7. Section 8A-425(a) of the Town tax code is amended to read:

Sec. 8A-425. Job printing.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

Section 8. Section 8A-427(a) of the Town tax code is amended to read:

Sec. 8A-427. Manufactured buildings.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the Town. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.

Section 9. Section 8A-430(a) of the Town tax code is amended to read:

Sec. 8A-430. Timbering and other extraction.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the following businesses:

(1) felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.

(2) extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

Section 10. Section 8A-435(a) of the Town tax code is amended to read:

Sec. 8A-435. Publishing and periodicals distribution.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business activity of:

(1) publication of newspapers, magazines, or other periodicals when published within the Town, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 8A-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.

(2) distribution or delivery within the Town of newspapers, magazines, or other periodicals not published within the Town, measured by the gross income derived from subscriptions.

Section 11. Section 8A-444 of the Town tax code is amended to read:

Sec. 8A-444. Hotels.

The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

(a) Person.

(b) Exclusions. The tax imposed by this Section shall not include:

(1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail, or detention facility.

(2) Gross proceeds of sales or gross income that is properly included in another business activity under this Article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

(3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person not subject to tax under this Article.

(4) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 8A-410 or Section 8A-475 due to an exclusion, exemption or deduction.

(5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 8A-445 or Section 8A-450 as rental, leasing or licensing for use of real or tangible personal property.

(6) Income from providing telephone, fax or Internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 8A-470 as telecommunication services.

Section 12. Section 8A-445(a) of the Town tax code is amended to read:

Sec. 8A-445. Rental, leasing, and licensing for use of real property.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of leasing or renting real property located within the Town for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the Town for a consideration including any improvements, rights, or interest in such property; provided further that:

(1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.

(2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.

(3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 8A-470.

Section 13. Section 8A-450(a) of the Town tax code is amended to read:

Sec. 8A-450. Rental, leasing, and licensing for use of tangible personal property.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the Town as provided by Regulation.

Section 14. Section 8A-455(a) of the Town tax code is amended to read:

Sec. 8A-455. Restaurants and Bars.

(a) The tax rate shall be at an amount equal to 4.9% of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.

Section 15. Section 8A-460(a) and (d) of the Town tax code is amended to read:

Sec. 8A-460. Retail sales: measure of tax; burden of proof; exclusions.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail.

(d) Notwithstanding the provisions of subsection (a) above, when the gross income from the sale of a single item of tangible personal property exceeds five thousand dollars (\$5,000), the 2.9% tax rate shall apply to the to the first \$5,000. Above \$5,000, the measure of tax shall be at a rate of 1.9%.

Section 16. Section 8A-470(a) of the Town tax code is amended to read:

Sec. 8A-470. Telecommunication services.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this Town.

(1) Telecommunication services shall include:

(A) two-way voice, sound, and/or video communication over a communications channel.

(B) one-way voice, sound, and/or video transmission or relay over a communications channel.

(C) facsimile transmissions.

(D) providing relay or repeater service.

(E) providing computer interface services over a communications channel.

(F) time-sharing activities with a computer accomplished through the use of a communications channel.

Section 17. Section 8A-475 of the Town tax code is amended to read:

Sec. 8A-475. Transporting for hire.

The tax rate shall be at an amount equal 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this Town to another point within the State:

(a) Transporting of persons or property by railroad; provided, however, that the tax imposed by this subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this State if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this State to a point outside this State or from a point outside this State to a point in this State. For purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.

(b) transporting of oil or natural or artificial gas through pipe or conduit.

(c) transporting of property by aircraft.

(d) transporting of persons or property by motor vehicle, including towing and the operation of private car lines, as such are defined in Article VII, Chapter 14, Title 42 , Arizona Revised Statutes; provided, however, that the tax imposed by this subsection shall not apply to:

(1) gross income subject to the tax imposed by Article IV, Chapter 16, Title 28, Arizona Revised Statutes.

(2) gross income derived from the operation of a governmentally adopted and controlled program to provide urban mass transportation.

(3) (Reserved)

(4) (Reserved)

(e) (Reserved)

(f) Deductions or exemptions. The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:

(1) income that is specifically included as the gross income of a business activity upon which another Section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.

(2) income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business.

(g) The tax imposed by this Section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

Section 18. Section 8A-480(a) of the Town tax code is amended to read:

Sec. 8A-480. Utility services.

(a) The tax rate shall be at an amount equal to 2.9% of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water to:

(1) consumers or ratepayers who reside within the Town.

(2) (Reserved)

Section 19. The remaining sections of the Town Tax Code not expressly amended by this Ordinance shall remain in full force and effect.

Section 20. The Town Finance Director shall create a separate dedicated fund known as the "WLP Acquisition Fund" into which the Town shall deposit all of the tax collections from the additional 0.4% privilege tax rate increase being created by this Ordinance along with the net proceeds from the sale or development of the portion of the Park known as the "Walnut Creek Node," encompassing 100 acres or less.

Section 21. The Town Council will review, evaluate, and assess the continuing feasibility of the additional tax imposed by this Ordinance at least once every ten years.

Section 22. Any person found guilty of violating any provision of these amendments to the Town Tax Code shall be guilty of a class one misdemeanor. Each day that a violation continues shall be a separate offense punishable as herein above described.

Section 23. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 24. The provisions of this ordinance shall become effective on March 7, 2011.

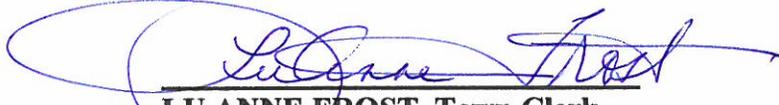
PASSED AND ADOPTED by the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, this 3rd day of February 2011 by a vote of 4 ayes and 2 nays.

TOWN OF PINETOP-LAKESIDE



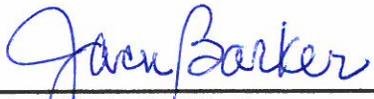
LUKE S. SMITH, Mayor

ATTEST:



LU ANNE FROST, Town Clerk

APPROVED AS TO FORM:



JACK BARKER, Town Attorney