

TUSAYAN TOWN COUNCIL MEETING

PURSUANT TO A.R.S. § 38-431.02 & §38-431.03

Wednesday, March 23, 2011 @ 6:00 P.M.
Best Western Squire Inn, Zuni Conference Room
74 State Route 64, Tusayan Arizona

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Tusayan Town Council and to the general public that the Tusayan Town council will hold a meeting open to the public at 6:00 p.m. on Wednesday, March 23, 2011 at the Best Western Squire Inn. If authorized by a majority vote of the Tusayan Town Council, an executive session may be held immediately after the vote and will not be open to the public. The Council may vote to go into executive session pursuant to A.R.S. § 38-431.03.A.3 for legal advice concerning any matter on the agenda, including those items set forth in the consent and regular agenda sections. The Town Council may change, in its discussion, the order in which any agenda items are discussed during the course of the meeting.

Persons with a disability may request a reasonable accommodation by contacting Greg Bryan (928) 638-8401 as soon as possible.

REGULAR TOWN COUNCIL MEETING AGENDA

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. ROLL CALL

**MAYOR BRYAN
VICE MAYOR MANIACI
COUNCILMEMBER RUETER**

**COUNCILMEMBER MONTOYA
COUNCILMEMBER BLASI**

** One or two Council Members may attend by telephone*

3. CALL TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA

Members of the public may address the Council on items not on the printed agenda. The Council may not discuss, consider or act upon any matter raised during public comment. Comments will be limited to three minutes per person.

Members of the audience who wish to speak to the Council on an item listed as Public Hearing should complete a Request to Speak Card and turn it into the Town Clerk. Speakers will be limited to three minutes each.

4. CEREMONIAL AND INFORMATIONAL MATTERS

**Introduction of new Town Manager and new Town Clerk
Presentation from GCNP – Vicki Stinson/Maureen Oltrogge – Greenway Trail
Monthly Report from Sheriff's Office
Monthly Report from Judge Bill Sutton**

5. CONSENT AGENDA

ITEMS ON THE CONSENT AGENDA ARE ROUTINE IN NATURE AND WILL BE ACTED

ON WITH ONE MOTION AND ONE VOTE. PUBLIC HEARING ITEMS ARE DESIGNATED WITH AN ASTERISK (*). MEMBERS OF THE COUNCIL OR STAFF MAY ASK THE MAYOR TO REMOVE ANY ITEM FROM THE CONSENT AGENDA TO BE DISCUSSED AND ACTED UPON SEPARATELY.

Consideration and possible approval of March 2, 2011 Meeting Minutes

Consideration and possible approval of March 9, 2011 Special Meeting Minutes

Consideration and possible approval of March 18, 2011 Special Meeting Minutes

Consideration and possible approval of Administrative/Treasurer's Report
Acceptance of the Finance Report
Approval of the Payment of Bills

6. COMMITTEE REPORTS

Ad Hoc Housing Committee – discussion and possible action regarding proposal from NACOG to conduct a Housing Study.

7. PUBLIC HEARINGS

No Public Hearings are scheduled.

8. ITEMS FOR ACTION

The Department of Interior's Proposal to extend the withdrawal of Federal Public Lands adjacent to the Grand Canyon National Park from uranium mining – discussion and possible adopting of a resolution.

B. Appointments to the Ad Hoc Housing Committee – review of applications and appointment of members.

C. Conducting of a Housing Study in Partnership with Northern Arizona Council of Governments (NACOG) – discussion and possible action.

D. Approval of Contract for a lease with Baystone Financial for the financing of the Town's Modular Office Building, Engineering and Site Plan preparation -- update, discussion, and possible action.

Approval of site plan for modular to be used as Town Hall on leased site at the South Grand Canyon Airport – discussion and possible action.

Ordinance No 2011-03-23-01, removing Local Option LL, the tax on jet fuel, provided in the Town Tax Code; Providing penalties for the violation thereof; providing for severability; and designating an effective date – discussion and possible action.

Amendment to the Town fee schedule to adopt a substantially reduced fee for certain applications filed by schools, community organizations and other non-profit groups – discussion and possible action.

9. ITEMS FOR DISCUSSION

- A. Conducting a Branding Study with the Chamber and Visitors Bureau –**
update and discussion.

Town Website – update and discussion.

Town Manager's Report

- i. Council Members' Training Workshop update.
- ii. Update on Proposition 203.

Update on current land use, zoning and permits – Planning and Zoning
Commission will meet at 6 p.m. on Thursday, March 24.

Set Agenda and Action Items for Next Meeting

10. MOTION TO ADJOURN INTO EXECUTIVE SESSION for the following purposes:

The Council may wish to go into Executive Session pursuant to A.R.S. Section A.R.S. 38-431.03.A.3 and A.4 for discussion and consultation with the Town Attorney in order to receive legal advice and to give directions concerning the negotiations of contracts (in the case of Item A, B, and C below) concerning:

The negotiation of a development agreement with the StiloGroup
Acquisition of water system by Town and Town position on matters that are the subject of ACC Docket # W-02350A-10-0163.

Following the Executive Session, the Town Council may (in open session) take action on the items discussed in Executive Session.

11. ADJOURNMENT OF REGULAR COUNCIL MEETING

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the General Store in

Tusayan Arizona on this 21st day of March the Agenda of the Tusayan Town Council Date of Meeting, March 23, 2011 in accordance with the statement filed by the Tusayan Town Council.

Posted at _____ AM/PM this 21th day of March, 2011.

posting the agenda

Signature of person

RESOLUTION _____

A RESOLUTION OF THE TUSAYAN TOWN COUNCIL
SUPPORTING AND URGING SECRETARY OF INTERIOR
SALAZAR'S PROPOSAL TO WITHDRAW APPROXIMATELY ONE
MILLION ACRES OF FEDERAL LANDS SURROUNDING GRAND
CANYON NATIONAL PARK FOR URANIUM MINING FOR 20
YEARS.

WHEREAS on July 20, 2009, Secretary of the Interior Ken Salazar issued a two year segregation order limiting new mining claims on nearly one million acres of federal public lands surrounding Grand Canyon National Park; and

WHEREAS, since the issuance of the Segregation Order in 2009, the Department of Interior has been evaluating whether to withdraw federal public lands from mining for an additional 20 years;

NOW THEREFORE BE IT RESOLVED BY THE TUSAYAN TOWN COUNCIL,
COCONINO COUNTY, ARIZONA AS FOLLOWS:

The Tusayan Town Council supports Secretary of Interior Salazar's proposal to withdraw the lands consistent with the current two year Segregation Order for an additional 20 years.

PASSED AND ADOPTED BY THE TOWN COUNCIL this 23rd day of March, 2011.

Greg Bryan, Mayor

ATTEST

Hollie L. Drew, Town Clerk

APPROVED AS TO FORM

William J Sims, Town Attorney

TOWN OF TUSAYAN STAFF REPORT

Date: March 23, 2011

To: Tusayan Town Council

From: Interim Town Manager Cynthia Seelhammer

Subject: Leasing Options – New Modular Office Building

ISSUE: Mayor and Council wanted additional research and options to provide the Lease for the new Modular Office Building. The need for the lease is to conserve expenditures in the current fiscal year to remain within the State Expenditure Limitation of \$1.2 million.

BACKGROUND: The Mayor and Council were presented three leasing options from Baystone Financial, which is a lender provided through the Mohave Educational Services Cooperative. The modular buildings were secured through Mohave from TrowTiere Precision Construction LLC. At the time of the leasing quote, Tusayan was using a \$275,000 principal amount for quotation.

DISCUSSION AND ANALYSIS: Staff contacted additional vendors with the following results:

Chase Government Banking

Chase declined to accept an application given the length of time the community had been incorporated.

GE Capital

GE advised their minimum loan for single tenant assets is \$2,000,000. The \$275,000 being sought by Tusayan was significantly less than this minimum requirement.

LeaseSmart

LeaseSmart advised that given the length of incorporation and no previous borrowing experience, it may be more appropriate to rent the buildings to establish credit, and then seek a lease at a later date.

Mosaic International Leasing

After reviewing the application information, Mosaic declined to quote a lease, again due to the brief time of incorporation and lack of rating and credit experience for Tusayan. They referred staff to Leasing Innovations, whom Mosaic advised carried “higher risk” municipal clients.

Leasing Innovations

Leasing Innovations would only quote a 5 year lease, at a total cost of \$369,140. There were options to prepay at any time, but they would only quote a 5 year term.

Baystone Financial

As previously reported, Baystone offered three lengths of lease with different interest rates: 2 years for a cost of \$293,277.12; 3 years for \$300,118.74; and 5 years for \$312,816.90.

FISCAL IMPACT: The amount for the semi-annual lease payments can be included in the future budget planning for the community. The need for the borrowing is not due to cash shortages, but capacity within the 2010-11 State Expenditure Limit. There is sufficient cash on hand to pay for the lease, but it is not likely Tusayan can remain within the \$1.2 million of expenses if \$275,000 is committed to pay cash for the Modular Office Building.

RECOMMENDATION: Staff recommends 2 year lease term from Baystone Financial as it allows for an opportunity to develop a credit history, commits the least amount of cash, and allows for Tusayan to plan for additional projects in the near term, rather than beyond five years.

Staff is also looking for direction to include the engineering and site preparation within the borrowing, or only borrow for the structure. The engineering design by Woodson Engineering is not in a condition to provide construction estimates at this time, so it may be appropriate for Council to direct these costs be added when they are confirmed.

RECOMMENDED MOTION:

Motion to authorize staff to negotiate a 2 year term lease with Baystone Financial for the Modular Office Building, Engineering and Site Plan preparation.

TOWN OF TUSAYAN STAFF REPORT

Date: March 23, 2011

To: Tusayan Town Council

From: Interim Town Manager George Pettit

Subject: Model Tax Code Jet Fuel Tax Local Option

ISSUE: Shortly after incorporation, Tusayan adopted the Model City Tax Code, including a local option to tax jet fuel at \$.05 per gallon.

BACKGROUND: The Arizona Department of Transportation (ADOT) operates the Grand Canyon Airport. ADOT receives funds from the Federal Aviation Administration (FAA), which has various pre-emptive legal requirements regarding revenues raised from airport operations. ADOT, to comply with their understanding of federal law has not been collecting this tax, which they believe is prohibited under the Airport and Airway Safety and Capacity Expansion Act of 1987.

DISCUSSION AND ANALYSIS: Staff met with John Nichols, Director of the Administrative Services Division of ADOT who supervises the Grand Canyon Airport, John Thureau of the Attorney General's Office, and Don Cassano of ADOT's Intergovernmental Affairs group to address and resolve this tax issue. Mr. Nichols was clear that the Grand Canyon Airport is under directive to become self-sufficient in operating revenues and expenditures. Presently the State Aviation Fund covers a \$1.4 to \$1.5 million annual loss from operations of the airport. ADOT has been pursuing a stakeholder involvement process to increase fees and charges for airport uses, which will increase the costs to the users of the airport, and will affect the affordability of the tourist activities there.

In addition, ADOT has been advised by the Attorney General as well as the Federal Aviation Administration that provisions of the Airport and Airway Safety and Capacity Expansion Act of 1987 specifically identify local taxes on aviation fuels established after December 30, 1987 as airport revenues. Such funds must be retained on the airport property. Staff also contacted Tony Garcia of the FAA Los Angeles Office who confirmed his belief that the Tusayan tax is airport revenue and therefore must be treated as airport revenues and used solely on the airport property.

Staff briefly discussed the possibility of an Intergovernmental Agreement with ADOT to accept back the Tusayan Jet Fuel Tax proceeds and invest them on the airport. ADOT staff and the Attorney General representative were uncertain if ADOT had the authority to enter into that type of Agreement. Further discussion also viewed such an Agreement, even if legal, to be a complication for accounting and reporting for such funds. A more straightforward approach was to have Tusayan repeal the Jet Fuel Tax, and allow ADOT to continue its efforts to achieve self sufficiency through fees and charges to users.

There is no question the presence of the Grand Canyon Airport and its users represent an important element of the overall economic viability of Tusayan's employment base and tourism activities.

The general sales tax continues to be collected and levied on those activities at the airport which are subject to the tax, such as retail sales. They are viewed as being like any other taxable activity within Tusayan. The issue under discussion here is with a specific transaction for an item only available at the airport -- jet fuel -- and whether sales are taxable by a local government. Staff is advising the League of Arizona Cities and Towns of the restrictions on use of post-1987 jet fuel taxes so other communities will not have to go through this exercise. Even those communities who own airports are restricted on using jet fuel taxes anywhere outside of the airport.

FISCAL IMPACT: While the initial budget included \$50,000 per year as a General Fund fuel source, all subsequent financial models have not shown this tax as a continuing revenue source.

RECOMMENDATION: Staff recommends approval of the attached Ordinance, which removes the local Jet Fuel Tax option from the Tusayan Tax Code.

ORDINANCE NO. 2011-03-23-01

AN ORDINANCE OF THE TOWN OF TUSAYAN, ARIZONA, REMOVING LOCAL OPTION LL, THE TAX ON JET FUEL PROVIDED IN THE TOWN TAX CODE; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; PROVIDING FOR SEVERABILITY; AND DESIGNATING AN EFFECTIVE DATE.

WHEREAS the Town of Tusayan shortly after its incorporation adopted a local option under the Model City Sales Tax Code to tax jet fuel sales at the rate of \$0.05 per gallon effective July 1, 2010; and

WHEREAS the Arizona Department of Transportation (ADOT) owns and operates the Grand Canyon Airport and is required to comply with federal regulations regarding operation and taxation of the airport; and

WHEREAS, in meetings with ADOT officials and teleconferences with Federal Aviation Administration (FAA) officials it was confirmed that the Airport and Airway Safety and Capacity Expansion Act of 1987 includes a prohibition of local taxes on aviation fuels being used outside of the airport property; and

WHEREAS, it has been determined that ADOT may not have the legal authority to contractually develop an Agreement to apply the tax collected by Tusayan back to the airport; and

WHEREAS, the Tusayan Council recognizes the economic benefit to the community of a healthy and financially secure airport operation for employment and tourism activities generated by the airport.

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF TUSAYAN, ARIZONA:

Section 1. Sec. 8A-400 of the Town tax code is amended to read:

SEQ CHAPTER \h \r 1**Sec. 8A-400. Imposition of Privilege**

Taxes; presumption.

(a) There are hereby levied and imposed, subject to all other provisions of this Chapter, the following Privilege Taxes for the purpose of raising revenue to be used in defraying the necessary expenses of the Town, such taxes to be collected by the Tax Collector:

(1) a Privilege Tax upon persons on account of their business activities, to the extent provided elsewhere in this Article, to be measured by the gross income of persons, whether derived from residents of the Town or not, or whether derived from within the Town or from without.

(2) (Reserved)

~~(3) A privilege tax upon persons for the privilege of selling jet fuel, whether derived from residents of the Town or not, or whether derived from within the Town or from without, in accordance with the provisions of Section 8A-422. (RESERVED)~~

(b) Taxes imposed by this Chapter are in addition to others. Except as specifically designated elsewhere in this Chapter, each of the taxes imposed by this Chapter shall be in addition to all other licenses, fees, and taxes levied by law, including other taxes imposed by this Chapter.

(c) Presumption. For the purpose of proper administration of this Chapter and to prevent evasion of the taxes imposed by this Chapter, it shall be presumed that all gross income, ~~or gallons sold,~~ is subject to the tax until the contrary is established by the taxpayer.

(d) Limitation of exemptions, deductions, and credits allowed against the measure of taxes imposed by this Chapter. All exemptions, deductions, and credits set forth in this Chapter shall be limited to the specific activity or transaction described and not extended to include any other activity or transaction subject to the tax.

Section 2. Section 8A-422 of the Town tax code is amended to read:

SEQ CHAPTER \h \r 1**Sec. 8A-422. Jet fuel sales.** (RESERVED)

~~(a) The tax rate shall be at an amount of five cents per gallon sold from the business activity upon every person engaging or continuing in the business of selling jet fuel.~~

~~(1) Gallons sold includes all gallons sold, bartered, exchanged,~~

~~included as part or whole of a trade-out, or similar transactions regardless of the type or form of payment.~~

~~(2) For purposes of this section the following terms are substitutable in Articles III and V of this chapter, and corresponding regulations:~~

~~(A) "gallons" for "gross income"~~

~~(B) "gallon(s)" for "amount(s)".~~

~~(b) The burden of proving that a sale of jet fuel is not a taxable sale shall be upon the person who made the sale.~~

~~(c) Except as provided in Section 8A-567, when this town and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a jet fuel sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this chapter such city or town has sole and exclusive right to such tax.~~

~~(d) The appropriate tax liability for any jet fuel sale where the order is received at a permanent business location of the seller located in this town or in an Arizona city or town that levies an equivalent excise tax shall be at the rate of the city or town of such seller's location.~~

~~(e) Exemptions. Notwithstanding Section 8A-400(d), the exemptions in Section 8A-465(a),~~

~~(b) and (d) through (z) will apply to sales of jet fuel taxed under this Section.~~

Section 3. Any person found guilty of violating any provision of this ordinance shall be guilty of a class 2 misdemeanor.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 5. The provisions of this ordinance shall become effective on May 1, 2011.

PASSED AND ADOPTED by the Mayor and Council of
the Town of Tusayan, Arizona, this 23rd day of March, 2011.

Mayor
ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

TOWN OF TUSAYAN STAFF REPORT

Date: March 16, 2011
To: Tusayan Town Council
From: Richard Turner, AICP, Contract Planner
Subject: Amendment to Fee Schedule, Non-Profit Organizations

ISSUE: Should the Town amend the fee schedule to adopt a substantially reduced fee for certain applications filed by schools, community organizations and other non-profit groups?

BACKGROUND: On March 2, 2011, the Council approved a fee schedule for the Town. In the course of discussion the issue of reducing the fee charged for certain applications filed by non-profit groups was raised. Staff committed to return to the Council with a proposal that would address the Council's concerns on this issue.

DISCUSSION AND ANALYSIS: Tusayan has adopted the Coconino County Zoning Ordinance and all of the various permits and processes that go with it. While the Zoning Ordinance refers to Special Uses, there is no Special Use Permit per se. There are Conditional Use Permits for long term uses and Temporary Use Permits for short term activities. A Temporary Use Permit would be required for a weekend outdoor art sale or an outdoor holiday bazaar. For short term activities in the public right-of-way, an encroachment permit would be required. At this point in time, the Town has no road rights-of-way. A temporary event held in the State Highway right-of-way would need approval from ADOT. Most short term events that would be held by a non-profit group would require a Temporary Use Permit and that is the application fee that needs to be adjusted.

Town Staff proposes an amendment to the adopted fee schedule that would reduce the application fee charged public or charter schools, community and other non-profit organizations for Temporary Use Permits and Special Event Permits (in the event the Town acquires right-of-way in the future) to \$40. The same temporary event can only be held 3 times a year and last a maximum of 5 days per event. Non-profit groups are typically less able to afford the ordinary application fee and would more likely cancel an event than try to pay a high filing fee. The community would do well to encourage the types of events commonly held by non-profit groups. The benefits to the community often outweigh the monetary gain to the Town from a high application fee.

FISCAL IMPACT: The fiscal impact from the reduction of the application fees for non-profit groups would not appear to be significant. There are non-fiscal benefits from promoting a healthy, non-profit sector in the local community.

RECOMMENDATION: It is recommended that **the Town Council amend the Land Use and Building Permit Fee Schedule, the Exhibit to Resolution 2011-02-16-02, to reduce the fee charged public and charter schools, community organizations and other non-profit organizations for Temporary Use Permits and Special Event Permits to \$40.**

As a reminder, if you are carrying a cell phone, electronic pager, computer, two-way radio, or other sound device, we ask that you silence it at this time to minimize disruption of today's meeting.