

AGENDA

TUSAYAN TOWN COUNCIL MUNICIPAL CODE WORKSHOP

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

Wednesday, February 5, 2014 at 5:00pm

TUSAYAN TOWN HALL BUILDING

845 Mustang Drive, 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 and Municipal Code workshop open to the public on Wednesday, February 5, 2014 at the Tusayan Town Hall Building. 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 the Town Manager at (928) 638-9909 as soon as possible.

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.

TOWN COUNCIL MUNICIPAL CODE WORKSHOP

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. ROLL CALL

MAYOR GREG BRYAN
VICE MAYOR AL MONTOYA

COUNCILMEMBER BILL FITZGERALD
COUNCILMEMBER JOHN RUETER
COUNCILMEMBER CRAIG SANDERSON

** One or two Councilmembers may attend by telephone*

3. DISCUSSION OF DRAFT LANGUAGE FOR THE TUSAYAN MUNICIPAL CODE

Chapter 9 – Business Regulations

4. MOTION TO ADJOURN

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 ____ day of January, 2014, at _____ pm in accordance with the statement filed by the Tusayan Town Council

Signature of person posting the agenda

CHAPTER 9
BUSINESS REGULATIONS
ARTICLE 9-1

PEDDLER'S/SOLICITOR'S LICENSE (2004-A280) (2008-A355)

- 9-1-1 Definitions
- 9-1-2 License Required
- 9-1-2.1 Exemptions
- 9-1-3 Applications
- 9-1-4 Licensing, Bonding, and Fees
- 9-1-5 Fees for Charitable, Religious or Civic Organizations (2010-A373)
- 9-1-6 License to be posted
- 9-1-7 Location Restrictions
- 9-1-8 Undue Noise Prohibited
- 9-1-9 Enforcement Provisions
- 9-1-10 Revocation
- 9-1-11 Signs to be Observed

SECTION 9-1-1 DEFINITIONS (2004-A280) (2008-A355)

In this article unless the context otherwise requires:

- A. "Canvasser or solicitor" means any person, whether a resident of the Town or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance from place to place, from house to house or from street to street taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether such person is collecting advance payments on such sales or not, provided that such definition shall include any person who, for himself or for another person, hires, leases, uses or occupies any building, structure, tent, railroad car, boat, hotel room, lodging house, apartment, shop, or any other place within the Town for the sole purpose of exhibiting samples and taking orders for future delivery.
- B. "Peddler" means any person, whether a resident of the Town or not, traveling by foot, wagon, automobile, or any other type of conveyance from place to place, from house to house or from street to street carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck farm products or provisions, offering and exposing the same for sale or making sales and delivering articles to purchasers, or a person who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, railroad car or other vehicle or conveyance. It is further provided that a person who solicits orders and, as a separate transaction, makes delivery to purchasers as a part of the scheme or design to evade the provisions of this chapter shall be deemed a peddler subject to the provisions herein contained. The word "peddler" shall include the words "hawker" and "huckster".

- C. "Transient merchant," "itinerant merchant," or "itinerant vendor" means any person, whether owner or otherwise, whether a resident of the Town or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within the Town, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad car, boat, hotel room, lodging house, apartment, shop, or any street, alley or other place within the Town for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction, provided that such definition shall not be construed to include any person, firm or corporation who, while occupying such temporary location, does not sell from stock but exhibits samples only for the purpose of securing orders for future delivery. The person so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant, or auctioneer or by conducting such transient business in connection with, as a part of or in the name of any such local dealer, trader, merchant, or auctioneer.
- D. "Special Event" includes the temporary sales and displays by street vendors, craft shows, fair booths, and similar operations usually associated with a special event or holiday.
- E. "Producer" includes owners, proprietors or tenants of agricultural lands, orchards, farms and gardens whereon food products are grown, raised, or prepared for market. "food product" includes: every product of the soil in its natural or manufactured state, including, without limitation, beef and beef products; swine and pork products; fowls and poultry products; eggs and egg products; milk and milk products; honey, and lamb and sheep products.

SECTION 9-1-2 LICENSE REQUIRED (2004-A280) (2008-A355)

It is unlawful for any peddler, solicitor, canvasser, transient merchant, itinerant merchant, or itinerant vendor to engage in such business within the corporate limits of the Town without first obtaining a Peddler/Solicitor's license in compliance with the provisions of this chapter. This article does not apply to participants of Town Events who have paid booth fees, OR garage sales, auctions, sidewalk sales, home-based party sales of items for personal use (avon, tupperware, etc.), student fund raising sales, and bake sales that occur less than three (3) times per year. This article also does not apply to licensed retail businesses that conduct occasional off-site sales events, such as car and recreational vehicle shows and home shows. However, off-site sales may require zoning clearance.

9-1-2.1 Exemptions

A person conducting the following shall be exempt from this chapter. **(NOTE: FIREWORKS SALES ARE NOT EXEMPT FROM THIS CHAPTER.):**

- a. Activities required by statute or by order of any court
- b. Bona fide auction sales pursuant to arizona law
- c. Religious, political, or nonprofit organizations, as recognized by internal revenue service (must provide documentation)
- d. School and youth activities (i.e. boy scouts, girl scouts, church clubs, youth sports groups, etc.).
- e. Fund raising activities intended to provide financial assistance to the gravely ill, to assist the victims of crimes, disasters, or the less fortunate, for the construction of a community facility, etc.
- f. Governing agencies (federal, state, county, city or town)
- g. Outdoor sales or activities being conducted on a property directly related to the primary sales of a business located on the same property (though, activity shall be subject to zoning compliance)
- h. Any business or vendor that is participating in a community-wide special event activity that is sponsored by the town or a private (non-public) organization. However, a vendor who does not have a permanent Tusayan business license must obtain a temporary business license for special events pursuant to the town of Tusayan special event policy.
- i. Producer of farm products on agricultural lands, farms, and gardens
- j. Activities intended to increase public awareness of public programs.

SECTION 9-1-3 APPLICATIONS (2004-A280) (2008-A355)

- A. Applicants for a Peddler/Solicitor's License under this chapter must file with the clerk a sworn application in writing, on a form to be furnished by the Clerk, which shall give the following information:
1. A current and valid driver's license or other form of state-issued identification that includes the applicant's name, description, and recent photograph.
 2. Complete address, physical and mailing of the peddler/solicitor
 3. A brief description of the nature of the business and the goods to be sold.
 4. Verification of a Transaction Privilege Tax License.
 5. If employed, the name and address of the employer, together with credentials establishing the exact relationship.
 6. The length of time for which the right to do business is desired. No Peddler/Solicitor's License shall be issued for a period longer than three (3) consecutive days.
 7. If a vehicle is to be used, a complete description, including make and model, license plate and number, vehicle identification number, and other identifying characteristics of all vehicles that will be used in the business.
 8. A statement as to whether or not the applicant has ever been convicted of any crime, misdemeanor, or violation of any municipal laws and the nature of the offense and the punishment or penalty assessed therefore.
 9. If operating from a specific location (i.e. retail parking lot) and not door-to-door, original written and signed letter of consent from the property owner of record permitting the activity or event.
 10. Copies of any necessary health or other regulatory permits required by law.
- B. No license issued hereunder shall be transferable.

SECTION 9-1-4 LICENSING, BONDING, AND FEES (2004-A280) (2008-A355)

A. Fees

The license fees for peddlers, solicitors, canvassers, and transient merchants and the application fee provided in Section 9-1-3 shall be determined by resolution of the Council, BUT IS NO LESS THAN THE ACTUAL COSTS ASSOCIATED WITH A BACKGROUND CHECK. No fee shall be required of any person, agency, or agent selling products of the farm, soil, or orchard.

B. Bond Required

The applicant shall post either a certified check or a surety bond payable to the town of Tusayan in the amount of one thousand dollars (\$1,000) with the town clerk. Every business, firm, company, or corporation, which has employees or agents acting in the capacity of peddler, solicitor, canvasser, or transient merchant, shall file with the clerk a blanket surety bond covering all such employees or agents and running to the town in the amount of five thousand dollars (\$5,000). The surety bond must remain active for the duration of the license. If the bond is cancelled or renewal premiums are not paid, the license will be revoked immediately. Surety bonds must include the following statement, at minimum: this bond meets the requirements of chapter 9, business regulations, of the town code.

C. License

The applicant shall submit fingerprint(s) and all fees associated with the cost of a background check to the marshal's office for a complete background check. The clerk shall forward a copy of the application to the marshal's office. The marshal's office shall have ten (10) working days in which to respond with comments or concerns. Following a clean background investigation and payment of license fees, the clerk shall issue the peddler/solicitor's license for a period not to exceed three (3) days. The license shall be displayed with the peddler/solicitor at all times.

Peddler/solicitor's license may be issued to the same person(s) or organization no more than three (3) times in a one-year period.

**SECTION 9-1-5 FEES FOR CHARITABLE, RELIGIOUS OR CIVIC ORGANIZATIONS (2004-A280)
(2008-A355)(2010-A373)**

There shall be no fees assessed for the use of Town-owned facilities, grounds, or equipment by charitable*, religious, or civic organizations¹. It shall be the duty of the Clerk to determine if the organization making the application is a charitable, religious, or civic organization and that the individual making the application is a member of the organization. The Town Clerk is authorized to waive user fees only for these organizations based on Council policy. Fees are determined by Council Resolution on an annual basis. The determination by the Clerk may be appealed to the Town Manager, which may at his discretion decide such appeal or refer it to the Council.

SECTION 9-1-6 LICENSE TO BE POSTED (2004-A280) (2008-A355)

The license issued by the Clerk shall be posted in a conspicuous place if the licensee is using a vehicle or a building in his business and otherwise must be kept by the person and exhibited at any time upon request.

SECTION 9-1-7 LOCATION RESTRICTIONS (2004-A280) (2008-A355)

No peddler, canvasser, or transient merchant shall locate on the public street or property, and must have written permission of a property owner for private property in their possession and on file with the clerk's office. It is unlawful for any peddler, canvasser, or transient merchant to operate in any stationary location, to operate within three hundred feet of a public school ground, or to operate in any congested area where such operation might impede or inconvenience the public or cause traffic or parking hazards. The judgment of a law enforcement officer exercised in good faith shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

SECTION 9-1-8 UNDUE NOISE PROHIBITED (2004-A280) (2008-A355)

No licensee, nor any person on the licensee's behalf, shall shout, make any outcry, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound amplifying system, for the purpose of attracting attention to any goods, wares, or merchandise which such licensee proposes to sell upon any of the streets, alleys, parks or other public places of the Town or upon any private premises in the Town where sound of sufficient volume is emitted or produced that is capable of being plainly heard upon the public thoroughfares.

SECTION 9-1-9 ENFORCEMENT PROVISIONS (2004-A280) (2008-A355)

It shall be the duty of any law enforcement officer of the Town to enforce the provisions of this article.

SECTION 9-1-10 REVOCATION (2004-A280) (2008-A355)

The Clerk after notice for any of the following causes may revoke permits and licenses issued under the provisions of this chapter:

- A. Fraud, misrepresentation, or false statement contained in the application for license;
- B. Fraud, misrepresentation, or false statement made in the course of carrying on business;
- C. Any violation of this article;
- D. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

SECTION 9-1-11 SIGNS TO BE OBSERVED (2004-A280) (2008-A355)

It is unlawful for any peddler, solicitor, canvasser or transient merchant, in the course of his business to ring the doorbell or knock at any building whereon a sign bearing the words "No Peddlers," "No Solicitors," "No Canvassers," "No Transient Merchants," or a similar message is exposed to public view.

*Charitable organizations must be recognized as tax-exempt by the internal revenue service. Documentation proving IRS exemption shall be presented at the time of the request to waive fees.

ARTICLE 9-2

OFF-PREMISES CANVASSING AND SIGNAGE

9-2 Definitions

9-2-1 Limitations on Off-Premises Canvassing Activity

9-2-3 Specific Prohibitions and Appropriate Conduct

9-2-4 Violations and penalties

SECTION 9-2 DEFINITIONS

- A. "Off-premises solicitations" mean activities initiated by businesses or its representatives that is meant to engage the public in a conversation in order to consummate a business transaction.
- B. "Visitor's Center" means the town of Tusayan facility operated as the town's official visitor's center.
- C. "Visitor's Center Signage" means that signage that is specific to the Town's official Visitor's Center. no other signage implying that a business is the town's official visitor's center will be permitted.
- D. "Business" means any commercial activity in which any real property, timeshare interests, goods, services, or edibles are sold or offered for sale or for rent within the corporate limits of the Town.
- E. "Business Agent" means the employee, representative, agent, or solicitor of any business.
- F. "Enclosed Structure" means a structure having a roof and supported by columns or walls. enclosed structure does not include any sidewalks under a roofed area.
- G. "Goods" shall mean any tangible item, including, but not limited to edibles, merchandise, products, supplies, coupons, pamphlets, brochures, and maps.
- H. "Off-Premises Canvassing" (OPC) means person-to-person efforts initiated by a business agent solely intended to interest, entice pedestrians in or solicit the participation of any person to participate in commercial transactions with a business, including, but not limited to offers of goods, cash, discounts on products or services, or other items including the offering of free goods or services of value made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction, except when done entirely within an enclosed structure.
- I. "Opc Employer" means any business or other person who directly hires or otherwise contracts with an opc solicitor to conduct opc activities on its behalf.
- J. "OPC solicitor" shall mean any person engaged in off-premises canvassing.
- K. "Product" shall mean the real property comprising the primary business of a resort or commercial lodging establishment but only that portion of real property that is owned by a resort or commercial lodging establishment which is used exclusively for resort or commercial lodging activity. such activity includes only the providing of lodging or ancillary services to the provision of lodging for the benefit of the establishment's guests.
- L. "Sidewalk" means any outside walkway, public or private, used by pedestrians.
- M. "Street" shall mean all that area dedicated to public use for public street purposes and is within the jurisdiction and control of the town of Tusayan or the arizona department of transportation and shall include, but not be limited to public roadways, parkways, and alleys.

SECTION 9-2-1 LIMITATIONS ON OFF-PREMISES CANVASSING ACTIVITY

No person shall engage in off-premise canvassing within the corporate limits of the town of Tusayan, except on real property comprising the primary business of a resort or commercial lodging establishment.

SECTION 9-2-2 SIGNAGE

It shall be unlawful for any person, company, corporation, opc solicitor or opc employer or entity engaged in the procurement of prospective customers for sales, solicitations, presentation or substantially similar activity, to identify or advertise itself by means of any sign, that utilizes the following phrases or substantially similar phrases, "**Tourist Information**", "**Tourist Center**", "**Visitor Information**", "**Visitor Center**", "**Activity Center**", "**Activity Information**", unless:

- A. The identity of the business is disclosed on the face of the sign in letters of sufficient size to be clearly readable to the public, but in no event less than 50% of the average size of the sign text, which is larger; and

- B. The words "Sales Solicitation" are caused to be printed within thirty days after april 20, 2011 in an unobscured manner, in at least clearly readable three-quarter (3/4) inch block letters within two feet of aforementioned signage concerning tourist or visitor information either on the doors to the building or on the exterior wall of the building immediately adjacent to the door; or if the business operates from a booth within another business establishment, the same shall be printed on the front panel of the booth in a location clearly and consistently visible to any persons passing by.
- C. The following notice is provided in clearly visible and readable three-quarter (3/4) inch block letters on the doors of the building, or on the exterior wall of the building immediately adjacent to the doors or on any booth referred to in subsection B "Complaints or concerns about sales solicitation activity may be reported to the town of Tusayan by calling 928-567-6631.
- D. Such signs shall comply in all material respects with any ordinances or rules specifying signage standards within the Town Of Tusayan

SECTION 9-2-3 SPECIFIC PROHIBITIONS AND APPROPRIATE CONDUCT

In addition to the provisions of any other applicable term of this article, it shall be considered unlawful and a violation of this article for an opc solicitor to:

- A. Interfere with or obstruct the free travel or passage of any pedestrian on any street or sidewalk or obstruct or otherwise impede any person's free movement or access to or from any public street or sidewalk.
- B. Throw, place, or deposit solid waste, litter, paper, documents or handbills on any street or sidewalk.
- C. Intentionally inflict emotional distress by verbal or physical harassment or coercion on any person.
- D. Misrepresent in any way the price, quality, or nature of the product being promoted.
- E. Misrepresent the source or sponsor of any information offered or provided.
- F. Opc solicitors shall conduct themselves in accordance with the following standards:
 - 1. No opc solicitor shall touch a person without consent during a solicitation.
 - 2. No opc solicitor shall solicit using any offensively loud sound, vociferous speech, boisterous conduct, or profane or vulgar language.
 - 3. No opc solicitor shall solicit an occupant of a vehicle in a public street whether the vehicle is moving, stopped, or parked.

SECTION 9-2-4 VIOLATIONS AND PENALTIES

- 1. Any responsible OPC employer and each responsible opc solicitor shall be jointly and severally liable for any violations of this article.
- 2. Any violations of the terms of this article shall be punishable by a civil fine or in the alternative, may be prosecuted as a class 1 misdemeanor. In addition, the town may bring suit for injunctive relief where warranted.
- 3. The marshal's office and code enforcement official of the community development department is charged with the implementation and enforcement of this article.

ARTICLE 9-3

BUSINESS LICENSES (2008-A355)

- 9-3 Definitions
- 9-3-1 Purpose
- 9-3-2 Registration and License
- 9-3-3 Issuance of Business License
- 9-3-4 Payment
- 9-3-5 Posting of Business License
- 9-3-6 License not Transferable
- 9-3-7 Fees
- 9-3-8 Penalty

SECTION 9-3 DEFINITIONS (2008-A355)

- A. "Business" means occupation, work, or trade in which a person is engaged; commercial, industrial, or professional dealings; the buying and selling of commodities; and any commercial store or factory. For the purposes of this article, "Business" also includes those property owners that offer for lease three (3) or more residential units and/or one (1) or more commercial unit(s) that are located within the incorporated limits of the Town of Tusayan.
 - B. "Business Location" means the physical location (address) of the business location. If business location includes more than one parcel, all parcel numbers must be listed on the Application for Business License and receive a Zoning Clearance approval before a Business License will be issued.
 - C. "Home Occupation" means an occupation, profession, activity or use located in a residential district, and which uses is merely incidental to the residential use and does not change the character of the neighborhood by externally detectable lighting, noise, odor, or appearance associated with the activity, and is created and operated as a sole proprietorship with no more than one non-residential employee. No storage or use of toxic materials and/or chemicals that are utilized in connection with a Home Occupation are permitted in a residential district.
 - D. "Property Owner" means the legal owner of the land/parcel on which the business is conducted.
 - E. "Occupier of Land" means a Business Owner that does not own the land/parcel on which the business is conducted.
 - F. "Telecommuting" means working from home as an employee or employer by way of electronic transmission devices. Telecommuting does not require a Business License.
 - G. "Toxic Materials/Chemicals" mean liquid, aerosol, or solid substances that are harmful, destructive, deadly, or poisonous to human, animal, or fowl.
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SECTION 9-3-1 PURPOSE (2008-A355)

The Council has determined that it is in the best interest of the public to maintain a list of business activities within the Town to provide contacts for emergency services, directories, compliance with zoning codes, building and fire codes, tax, and/or other ordinances and statutes.

SECTION 9-3-2 REGISTRATION AND LICENSE (2008-A355)

It is unlawful for any person, firm, organization, corporation or other entity to engage in business within the corporate limits of the Town without first obtaining a Business License in compliance with the provisions of this chapter.

SECTION 9-3-3 ISSUANCE OF BUSINESS LICENSE (2008-A355)

It is the duty of the Town Clerk to prepare and issue a Business License under this article for every person, firm, company, or corporation liable therefore; the period of time covered; the name of the person, firm or corporation for whom issued; the type of business; the location or place of business and verification of privilege tax license.

SECTION 9-3-3.1 CERTIFICATE OF COMPLIANCE (2008-A355)

No operation of any new business, excluding Home Occupation or service businesses that do not have a permanent location, will be allowed or Business License issued within the limits of the Town without the issuance of a Certificate of Compliance from the Building Department. The Certificate of Compliance requires a physical inspection of the building to verify that the proposed business activity and building are in compliance with all zoning, building, and fire codes, as approved by the Building Official.

Issuance of the Business License does not imply that the Town in any way regulates or warrants the manner in which the operator does business.

SECTION 9-3-4 PAYMENT (2008-A355)

- A. All Business License fees shall be paid at the office of the Town Clerk.
- B. Business Licenses are issued for a 12-month period. Annual renewal payments are due on the first day of the month in which the license was first issued. For example, renewal fees for License #000 issued on January 30, 2008 becomes due on January 1, 2009.

- C. The Business License and registration for all businesses which do not pay the required fees within thirty days of their due date will be cancelled. A new application and associated fees will be required to reinstate the Business License.
- D. A full fee shall be paid for each fee period.
- E. A separate Business License must be obtained for each branch established or separate place of business in which any business is carried on. If a business location includes more than one parcel, all parcel numbers must be listed on the Application for Business License. All parcels must receive Zoning Clearance approval before a Business License will be issued.

SECTION 9-3-5 POSTING OF CERTIFICATE (2008-A355)

Every person, firm, company, or corporation, having a Business License under the provisions of this article, shall keep such Business License posted and exhibited, while in force, in some conspicuous part of the place of business. Every person having such Business License and not having a fixed place of business shall carry such Business License with him at all times while carrying on that business for which the same was granted. Every person, firm, company, or corporation having a Business License under the provisions of this article shall produce and exhibit the same whenever requested to do so by any officer authorized to issue, inspect, or collect by the Town.

SECTION 9-3-6 LICENSE NOT TRANSFERABLE (2008-A355)

No Business License issued under the provisions of this article shall in any manner be assignable or transferable to any other person, firm, company, or corporation.

SECTION 9-3-7 FEES (2008-A355)

All businesses liable shall pay a set fee as set forth by the Council by resolution. Fees are non-refundable and are not set on a pro rata basis.

SECTION 9-3-8 PENALTY (2008-A355)

It is unlawful for any person to commence, transact, or carry on any business within the Town without first having obtained a license from the Town or to comply with all provisions of this Chapter. Violations shall be punishable under Chapter 1, Article 1-8 with each day that such business is practiced, transacted or carried on constituting a separate offense. It shall be the duty of any authorized personnel or officer of the Town to enforce the provisions of this chapter.

ARTICLE 9-4

MINING (2000-A160) (2001-A180)

- 9-4-1 General Provisions
- 9-4-2 Definitions
- 9-4-3 Permitting Requirements and Procedures
- 9-4-4 General Regulations
- 9-4-5 Administration

SECTION 9-4-1 GENERAL PROVISIONS

- A. Authority. The authority of the Town to establish the regulations in this article is granted by ARS 9-462.01 Zoning Regulations, as may be amended, and 9-240 B5(c) General Powers of Common Council, as may be amended.
- B. Purpose. It is the intent of the Town to establish regulations on uses that mine, quarry, or extract resources which are taken from the natural environment. These regulations are intended to aid in managing the town's resources by complimenting the federal, state, county, and local regulations.
- C. Applicability and Exemptions. The regulations contained in this article apply to all business operations that mine, quarry or extract natural resources as defined herein. This article shall not be construed to prevent, restrict or otherwise regulate the use or occupation of land or improvements for railroad, grazing or general agricultural purposes. Mining, quarrying or processing of natural resources for personal use, as defined herein, are exempt from the requirements of this article. This article supersedes sections 104 and 105 of the Planning and Zoning Ordinance as far as the activities and uses described herein.

Any existing legal non-conforming operations as of the date of adoption of this article are considered a "grandfathered" right of continued use unless one or a combination of the following occur:

1. Operations on the site were illegally installed on the property as defined herein as a non-conforming use;
2. The mining, quarrying, or extracting operations are discontinued for a period of six continuous months or more unless the Director grants written permission;
3. The land area used for the mining, stockpiling, and/or processing operations is increased, by purchase or annexation, to encompass more than the original land area used for the mining operation, this article is not to be construed to require a permit for operations where mining is moving from one location to another within the boundaries of the property lines where an existing non-conforming mining operation is located;
4. The introduction of different processing uses which are related to the mining, quarrying or processing operation such as crushing, batching or other related processing of mined materials; this does not apply to new methods which are similar or the same as existing processing operations or any uses that are listed in the grandfathered use permits; and/or
5. The operation expands to mine or quarry a new resource not previously extracted from the site, this does not include resources which are mined as part of the existing operation but are not necessarily processed or sold. In no case is this exemption to be construed to allow any existing non-conforming use to operate in a fashion so as to cause a public nuisance pursuant to Section 108-A of the Planning and Zoning Ordinance. Where the processing of natural resources is conducted as a sole use, not combined with a mining or quarry operation, such uses are restricted to appropriate zoning districts.

SECTION 9-4-2 DEFINITIONS

In this article unless the context otherwise requires:

- A. "Agent" means any person, business, corporation or other entity proposing an application on behalf of the property owner. Agent will provide a copy of the agreement that the requested use is permissible from the owner.
- B. "Agricultural purpose" means grazing, growing of crops, or other bona-fide agricultural uses of property as defined by the State of Arizona.
- C. "Applicant" means any real property owner or agent applying for a permit according to this article.

- D. "Commission" means the Planning and Zoning Commission of the Town of Tusayan.
- E. "Department" means the Community Development Department of the Town of Tusayan.
- F. "Director" means the director of the Community Development Department of the Town of Tusayan.
- G. "Environmental Impact" means a change, modification or effect that positively or negatively influences the condition, volume, number, nature or quality of air, water, earth, plant and animal life, natural resources, noise, public services, transportation and circulation, land use, aesthetics, cultural, archeological and historical resources, the provision of public utilities, human health, and recreation.
- H. "Established Residential Area," means an area that is zoned for residential use and is subdivided or contains a residential structure. The exterior property line of the subdivided lot or residential site delineates such areas.
- I. "Existing Illegal Non-Conforming Use" means any use that is conducted without the required permits or is not a legal non-conforming use.
- J. "Extract" means removing, cutting, gathering, digging, scraping, pumping, or other similar action resulting in the separation of a natural resource from its original environment as part of a mining, quarrying, or processing operation.
- K. "Legal Non-Conforming Use" means any use that legally exists with all permits required at the time the use was installed.
- L. "Mining or Quarrying Operation" means any commercial or industrial operations involving extraction, removal, processing, quarrying, or transportation of natural resources and related products, and the storage, stockpiling, distribution and sale thereof from the site where such resources were derived. Such operations include the extraction, removal and the delivery of the product off-site, of natural resources for monetary gain, regardless of the size of the site or the volume of extraction.
- M. "Natural Resource" means sand and gravel, rock or any mineral, gas or petroleum product, geothermal energy, and earth or clay that is naturally found on a property.
- N. "Permanent Mining Operation" means any mining operation that is conducted on a site for a period of six continuous months or more.
- O. "Permittee" means any person, business, company corporation or entity that is granted approval of a Use Permit according to this article.
- P. "Personal Use" means on-site excavation and movement, on- or off-site, of natural resources to improve a site for the purposes of agriculture or development. Materials under this definition will be limited to incidental sales as determined by the Director. In no case shall this definition be construed to require a permit under this article if excavation activities are specifically related to agriculture or development of the property and not for monetary gain from the sale of natural resources.
- Q. "Planning and Zoning Ordinance" means Ordinance 87-A23, copies of which are on file in the office of the town clerk, as adopted and amended from time to time by the Town, that regulates land use and development within the Town.
- R. "Processing," means the act of preparing, mixing, batching, washing, crushing, or otherwise modifying a natural resource for the purpose of creating a saleable commodity or product.
- S. "Temporary Mining Operation" means a short-term use, less than six months in one period, where natural resources are subject to the requirements listed in Section 9-4-4.

SECTION 9-4-3 PERMITTING REQUIREMENTS AND PROCEDURES

A. Permit Required

1. The establishment or expansion of mining or quarrying operations may occur in any zoning district if Council approves a Conditional Use Permit. The setback requirements of mining or quarrying operations will be a maximum of 300 feet from the property line. However, Council will regulate the setback requirement on a case-by-case basis determined by, but not limited to, topography and adjacent land uses.
2. For uses applicable to this article, a complete Use Permit Application must be filed with the Department. All Use Permits shall be processed in accordance with this article and Sections 108-J and 113 of the Planning and Zoning Ordinance.

3. For temporary mining or quarrying operations, as defined herein, a Temporary Use Permit shall be reviewed. Permits must comply with criteria in Subsection B of this section and are processed according to Subsection E of this section. The Council reserves the right to apply reasonable and necessary conditions on permanent and temporary mining operations as they deem the best interest of the public.

B. Procedure for Obtaining Permits

1. Any party that wishes to install or expand a mining, quarrying, or processing operation shall complete a Use Permit or Temporary Use Permit application obtained from the Department. This application shall be filed with the appropriate fees, as established by Council resolution.
2. The Director shall place the application on the next available agenda when a complete application is submitted to the Department. The procedures in Subsection E of this section apply to temporary permits. Appropriate projects shall be noticed, posted, and advertised for public hearing according to state law and the requirements of the Planning and Zoning Ordinance.
3. Before filing an application, the applicant will meet with the director or other duly appointed representative of the Town for discussing the intended use(s). The Department will also prepare a list of requested data based on the discussion of the intended use, any preliminary project data provided by the applicant and federal, state and local requirements. This list will assist the applicant in preparing the required application, but in no means, shall be construed as a complete listing of all requirements from all agencies. It is the applicant's responsibility to acquire all necessary permits and licenses. When the application is completed to the Director's satisfaction, it will be submitted, if required to the Commission for review. A recommendation from the Commission will then be submitted to the Council with a request for Council action. A permit is non-transferable without Council approval. The report may include, but is not limited to the following:
 - a. **Based on Local Requirements**
 - 1) Completed Application - Use Permit/Temporary Use Permit
 - 2) Proposed Location - Impacts to existing residentially developed properties
 - 3) Noise Impacts - Related to noise created by truck traffic, engine warm-up, and operation of mining and processing equipment
 - 4) Dust - Impacts on surrounding land uses
 - 5) Screening - Screening and buffering of operation form properties that are zoned residential
 - 6) Operational Controls - Related to setbacks and environmental impacts
 - 7) Lighting - Planning and Zoning Ordinance
 - 8) Parking - Planning and Zoning Ordinance
 - 9) Post-Mining Plan - A proposed use of the area following the mining project
 - 10) Noise and Vibration Control Plan - Planning and Zoning Ordinance
 - 11) Other Environmental Impacts - Impacts identified by the applicant or staff
 - 12) Other information as determined by the Director or Council.
 - b. **Based on Federal, State, County Requirements, and Local Input**
 - 1) Transportation - Impacts related to truck traffic routes and associated traffic hazards. **ADOT/Local**
 - 2) Excavation and Reclamation - Quality and effectiveness of site restoration plan and consideration of site reuse and development timing. **FEMA/Local**
 - 3) Hydrology Plan - **Yavapai County/Army Corps of Engineers**
 - 4) Sanitation Permit - **Yavapai County**
 - 5) EPA Permits - **Federal/State**
 - 6) DEQ/ADEQ Permits - **Federal/State**
 - 7) Erosion Plan - **FEMA/Army Corps of Engineers/Yavapai County**
 - 8) Archeological Permit - **State**
 - 9) Others, as determined by **Federal, State, County** or **Local** requirements.

- C. Application Requirements for Permanent Mining Operations.** An application filed for permanent mining, quarrying, and processing operations, as defined in this article, shall include the following information:
1. A completed Use Permit Application
 2. A site excavation and reclamation plan containing all required data contained in Subsection D of this section.
 3. A complete list of all required permits from county, state and federal agencies that regulate the proposed use. This list shall include a description of the required permit, including contact person names, phone numbers and addresses, and an anticipated time frame for obtaining each required permit.
- D. Excavation and Reclamation Plan.** All Use Permit Applications for mining operations shall include an excavation and reclamation plan, as required by Subsection C of this section. If the proposed operation is located in a floodplain area, a topographic survey shall be provided in accordance with Yavapai County Flood Control District and/or Army Corps of Engineers requirements. The Excavation and Reclamation Plan shall be reviewed in conjunction with the information gathered by staff. For the purposes of ensuring that the site is reclaimed for reuse and mined in an expeditious manner, the applicant shall provide the following:
1. The general location of resources to be mined overlaid on the topographic survey of the site, if provided.
 2. The method of grading and restoring vegetation.
 3. The location and containment methods for stockpiling of mined materials, including dust and erosion control.
 4. A description of the mining method.
 5. An estimate of the costs associated with the restoration of the site.
 6. The Applicant will provide the Department with sufficient copies of all required documentation for preliminary and secondary review.
- E. Permit Requirements for Temporary Mining Operations**
1. Certain temporary mining operations, as defined herein, may not require the same permitting procedures as permanent uses. Only one temporary permit per site may be issued. Successive permits or occasional use of temporary permits are not allowed, and such operations shall be deemed permanent mining operations subject to the permitting requirements provided in this article.
 2. For temporary mining operations, such as major grading operations where excavated fill is to be sold or other similar types of operations, a permit may be reviewed and approved by the Council without advertising a public hearing when these operations do not exceed a 30-day period. If such operations are to exceed a 30-day time period, but are less than six months in duration, the Commission shall review the Temporary Use Permit and forward a recommendation to Council. Upon filing an application for a temporary mining operation, the operator shall provide the following information:
 - a. The site plan and permit requirements for permanent mining operations stated in Subsection C, paragraphs 2, 3 and 4 of this section.
 - b. The excavation and restoration information required in Subsection D, paragraphs 2, 3, 4 and 5 of this section.
 - c. Other information as requested by Council.

SECTION 9-4-4 GENERAL REGULATIONS

The general regulations contained in this article shall apply to all mining operations and permits.

- A. Site Development and Operational Regulations.** All mining, quarrying and processing operations shall conform to all applicable plans and documentation approved as presented or revised in the Use Permit or Temporary Use Permit application. In addition to the conditions applied on the permit, all operations shall meet the following operational regulations:

1. **Dust Control.** All haul roads, public or private, connecting internal operations and roads connecting to paved public streets or easements shall be kept wetted, treated with a dust palliative or hard-surfaced and maintained so as to control dust while in use. No person shall drive or move any truck or other vehicle within the town unless the vehicle is so constructed or loaded as to prevent any load contents, including without limitation, litter, dust or other forms of debris from being blown or deposited upon any street, alley or other public place. No person shall drive or move any truck or other vehicle carrying garbage, litter, refuse, rubbish and/or other forms of debris within the town unless the garbage, litter, refuse, rubbish and/or other forms of debris is completely and securely covered by a tarpaulin, canvas, or other cover.
 2. **Setbacks.** The setback requirements of mining or quarrying operations will be a maximum of 300 feet from the property line. However, Council will regulate the setback requirement on a case-by-case basis as determined by, but not limited to, topography and adjacent land uses.
 3. **Noise.** May be regulated depending upon haul route and the neighborhood.
- B. Implementation of Use Permit.** If the Council approves the Use Permit, the applicant shall provide the following prior to the issuance of the Use Permit:
1. Written proof and verification of approval of all required permits from county, state, or federal agencies.
 2. Written verification of compliance with all conditions of approval placed on the permit, as applicable.
 3. The applicant shall provide appropriate financial assurance equal to the amount and method approved by the Town for restoration of the site. The Council will make a determination based on the excavation and reclamation plan using one or more of the following options:
 - a. Allowing the applicant to provide property as security.
 - b. Allowing a percentage of the monetary gain to be placed in trust as security.
 - c. Other approved methods of assurance.

SECTION 9-4-5 ADMINISTRATION

- A. Subsequent Review and Expiration of Permits.** All Use permits issued pursuant to this article are subject to periodic review and expiration as determined by Council.
- B. Revocation of Use Permit.** Violation of any applicable federal, state, county, or local regulation is sufficient grounds for Council action that may lead to the revocation of the Use Permit.
- C. Appeals.** If the applicant or affected property owner disagrees with the decision of the Director to issue or deny a temporary permit or the requirements for permit processing related to a permanent or temporary operation, such person may file a written appeal with the Director within ten (10) days of the Director's decision. Such appeal shall be referred to the Board of Adjustment pursuant to Section 112 of the Planning and Zoning Ordinance. Further appeals are possible through Superior Court.
- D. Permit Status.** Issuance of a permit is not an approval by the Town of any use or activity that is prohibited by any other governmental agency or private covenant.

SECTION 9-4-6 PENALTY (2006-A332)

Pursuant to Article 1-8, any person that fails to comply with any provision of this article, or uses property in violation of any provision of this article or permit issued herein, shall be guilty of a Class 2 Misdemeanor for the first offense, and a misdemeanor for a second or subsequent offense as to the same property or activity, with each day that the property or activity is not in compliance constituting a separate offense. "Person" includes the property owner, occupant, agent, or any person having control over the use of the property. Enforcement of this ordinance may also be pursuant to Council action under ARS §9-462.05, as may be amended.