

## **ORDINANCE NO. 813**

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, A MUNICIPAL CORPORATION OF ARIZONA, REPEALING AND RE-ENACTING THE TAX CODE OF THE TOWN OF PRESCOTT VALLEY IN CHAPTER 8A "TRANSACTION PRIVILEGE TAX", ARTICLE 8A-01 "ADOPTION OF MODEL TAX CODE", SECTION 8A-01-010 "ADOPTION OF MODEL TAX CODE"; ADOPTING BY REFERENCE A DOCUMENT ENTITLED "TAX CODE OF THE TOWN OF PRESCOTT VALLEY (2015 EDITION)" (DECLARED BY RESOLUTION NO. 1944 TO BE A PUBLIC RECORD) WHICH CONFORMS TO AMENDMENTS TO THE MODEL TAX CODE APPROVED BY THE MUNICIPAL TAX CODE COMMISSION IN 2012, 2013 AND 2014 AND RESOLVES CERTAIN DISCREPANCIES BETWEEN THE MODEL TAX CODE AND THE TAX CODE OF THE TOWN OF PRESCOTT VALLEY; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING THAT ANY SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE OR PORTION OF THIS ORDINANCE OR RE-ENACTED TOWN TAX CODE HELD INVALID OR UNCONSTITUTIONAL BY A COURT OF COMPETENT JURISDICTION SHALL NOT EFFECT THE VALIDITY OF THE REMAINING PORTIONS THEREOF; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE CONFORM TO THE MODEL CITY TAX CODE; AND PROVIDING THAT THIS ORDINANCE SHALL BE EFFECTIVE THIRTY (30) DAYS AFTER ITS PASSAGE AND APPROVAL ACCORDING TO LAW.

WHEREAS, Ordinance No. 2 of the Town of Prescott Valley adopted a "Transaction Privilege Tax Code" for the Town, effective October 12, 1978; and

WHEREAS, Ordinance No. 6 of the Town amended said Tax Code with regard to exemptions to the transaction privilege tax, effective February 26, 1979; and

WHEREAS, Ordinance No. 32 amended the Tax Code with regard to when taxes were payable and the penalty for delinquency, effective August 1, 1980; and

WHEREAS, Ordinance No. 84 amended Article 3-1 of the Town Code of the Town of Prescott Valley to provide that taxes would be due, payable and delinquent as provided in applicable state statutes, effective July 26, 1983; and

WHEREAS, Ordinance No. 96 amended §3-A-9 of the "Transaction Privilege Tax Code" with regard to building contractor services, effective 30 days after its passage and approval on April 12, 1984; and

WHEREAS, Ordinance No. 99 increased the transaction privilege tax from 1% to 2% for a period of 2 years, effective 30 days after its passage and approval on May 10, 1984; and

WHEREAS, Ordinance No. 148 amended §8-2-3(A) of the "Transaction Privilege Tax Code" to provide that the tax rate would be 2% (subject to review after 2 years), effective July 9, 1987; and

WHEREAS, Ordinance No. 148 was itself amended by Ordinance No. 148(A) to change the effective date from July 9, 1987 to July 20, 1987; and

WHEREAS, effective November 12, 1987, Ordinance No. 165 repealed the "Tax Code" section of the Town Code and adopted a version of the Arizona "Model City Tax Code" which had been established with the assistance of the League of Arizona Cities and Towns, effective November 12, 1987; and

WHEREAS, Ordinance No. 176 repealed §8A-445 of the new "Tax Code" (having to do with rental, leasing and licensing for use of real property) as earlier adopted by Ordinance No. 165, effective 30 days after its passage and approval on April 28, 1988; and

WHEREAS, Ordinance No. 177 (dated April 28, '1988) adopted certain amendments to the "Tax Code" that had been recommended by the League of Cities and Towns, effective retroactively to November 12, 1987; and

WHEREAS, Ordinance No. 178 adopted the new Town Code of the Town of Prescott Valley, including Chapter 8A which made the "Model Town Tax Code" (adopted by Ordinance No. 165) a part of the Town Code as though fully set forth therein, effective May 26, 1988; and

WHEREAS, Ordinance No. 192 amended §8A-480 and Regulation No. 8A-350.2 of the "Tax-Code" (having to do with taxation of utility services and recordkeeping), with the purpose of not allowing utility companies to take a tax offset for franchise fees paid to the Town, effective October 27, 1988; and

WHEREAS, Resolution No. 330 (dated June 22, 1989) declared that the Town's 2% transaction privilege tax rate (established in Ordinance Nos. 148 and 148A) had been reviewed by the Mayor and Council as required in §3 of Ordinance No. 148, and that the Mayor and Council had determined it was not cost-effective to reduce said tax rate; and

WHEREAS, Ordinance No. 203 (dated March 23, 1989) repealed Ordinance No. 176 and re-adopted §8A-445 imposing a transaction privilege tax on rental, leasing and licensing for use of real property, but imposed a tax rate of 0%, effective retroactively to June 10, 1988; and

WHEREAS, Ordinance No. 211 (dated July 27, 1989) amended the "Tax Code" (as adopted by Ordinance Nos. 165 and 192) to apply a 1% tax rate to sales proceeds derived from contracts entered into before July 20, 1987, over a 180-day grace period, effective retroactively to July 9, 1987; and

WHEREAS, Ordinance No. 225 repealed Ordinance No. 192 and re-adopted §8A-480 and Regulation No. 8A-350.2 to again provide for tax credit offsets for franchise fees paid to the Town pursuant to franchise agreements, effective 30 days after its passage and approval on March 22, 1990; and

WHEREAS, Ordinance No. 229 (dated June 14, 1990) adopted certain 1990 amendments to the "Tax Code", effective August 1, 1990; and

WHEREAS, Ordinance No. 311 (dated December 2, 1993) amended §8A-485 and Regulations 8A-270.1 and 8A-460.1 to apply a tax to gross income obtained from collecting and treating wastewater; and

WHEREAS, Ordinance No. 352 (dated December 15, 1994) adopted certain 1995 amendments to the Arizona Model City Tax Code designed to make it correspond more closely with the State's Tax Code (generally effective January 31, 1995, except for deletion of the definition of "manufacturing" which was effective June 30, 1995); and

WHEREAS, Ordinance No. 402 (dated November 7, 1996) adopted certain 1996 amendments to the Arizona Model City Tax Code designed to develop a "taxpayer's bill of rights" component to said Model Tax Code; and

WHEREAS, Ordinance No. 409 (dated January 23, 1997) amended the Town Tax Code to add provisions related to the use tax which had been inadvertently omitted from the 1996 amendments; and

WHEREAS, Ordinance No. 438 (dated May 28, 1998) adopted certain 1998 amendments to the Arizona Model City Tax Code which conformed local transaction privilege tax codes with changes to the State's transaction privilege tax code and responded to proposed State preemptive legislation; and

WHEREAS, Ordinance No. 446 (dated September 24, 1998) adopted "Supplementary Local Audit Procedures for the Town Tax Code of the Town of Prescott Valley, Arizona" to supplement the audits conducted by ADOR with local audits conducted by professional auditors as a local tax code option; and

WHEREAS, Ordinance No. 478 (dated November 4, 1999) adopted certain 1999 amendments to the Arizona Model City Tax Code which conformed local transaction privilege tax codes with changes to the State's transaction privilege tax code and responded to proposed State preemptive legislation; and

WHEREAS, Ordinance No. 519 (dated December 20, 2001) adopted certain 2001 Tax Code Amendments which standardized interpretations between the Arizona Department of Revenue and municipalities; and

WHEREAS, on July 3, 2002, an ad hoc citizen's committee which had reviewed options for financing needed street improvements recommended to the Town Council that (among other things) the Council increase the tax rate from 2.00% to 2.33% on most transaction categories and dedicate the increase towards bonds sold to fund the highest priority roadways, including Robert Road, Navajo Drive, and Lakeshore Drive; and

WHEREAS, at its regular meeting on July 25, 2002, the Council directed staff to prepare the necessary documents and start the necessary processes for raising the tax rate from 2.00% to 2.33%

on most transaction categories for purposes of funding improvements to Robert Road, Navajo Drive, Lakeshore Drive, and other priority roadways identified by the ad hoc committee; and

WHEREAS, Ordinance No. 532 (dated September 12, 2002) raised the tax rate from 2.00% to 2.33% on most transaction categories; and

WHEREAS, Ordinance No. 558 (dated May 22, 2003) adopted certain 2002 Tax Code Amendments based on changes to Arizona statutes; and

WHEREAS, Ordinance No. 658 (dated May 25, 2006) adopted certain 2006 Tax Code Amendments based on changes to Arizona statutes as well as an agreement with state housing associations concerning federal low-income housing programs; and

WHEREAS, Ordinance No. 677 (dated December 7, 2006) adopted certain 2007 Tax Code Amendments based on changes to Arizona statutes; and

WHEREAS, Ordinance No. 714 (dated April 24, 2008) adopted certain 2008 Tax Code Amendments based on changes to Arizona statutes; and

WHEREAS, Ordinance No. 735 (dated September 10, 2009) adopted certain 2009 Tax Code Amendments based on changes to Arizona statutes; and

WHEREAS, Ordinance No. 761 (dated July 28, 2011) adopted certain 2010-11 Tax Code Amendments based on changes to Arizona statutes; and

WHEREAS, in the 2011 legislative session the Arizona Legislature adopted HB 2336 making the Arizona Department of Revenue responsible for administering the official copy of the Model City Tax Code (including maintaining the official MCTC for each municipality on its website), effective July 1, 2012; and

WHEREAS, during this transition the Arizona League of Cities and Towns ceased providing to member cities and towns the formal changes needed for each individual tax code (per ARS §42-6053(D)) to conform with changes to the Model City Tax Code approved by the Municipal Tax Code Commission; and

WHEREAS, as a result the Tax Code of the Town of Prescott Valley was not amended to reflect changes approved by the Municipal Tax Code Commission in 2012, 2013, and 2014 (and became increasingly inconsistent with the version of the Model City Tax Code shown for the Town on the ADOR website); and

WHEREAS, in April 2015 Town staff began coordinating with League staff to update the Town Tax Code by going through all electronic documents on the ADOR website to distill them into a single document that identified what ADOR said was the tax code for Prescott Valley, creating its own MS Word document for the 2011 Edition of the Town Tax Code, folding in the 2012, 2013 and 2014 MCTC amendments which related to the Town, comparing the two documents and identifying any substantive discrepancies, researching to discern which document

was correct, and proposing changes to the Town version or suggesting changes to the ADOR version; and

WHEREAS, League staff took the resulting proposals to ADOR and Model City Tax Commission staff and made a determination as to what the final document should be; and

WHEREAS, in the meantime the Town Council considered restoring Town services (including maintenance and construction of roadways) which had been curtailed during the worldwide economic recession from 2008 to 2012 and determined to raise the transaction privilege tax and use tax rate from 2.33% to two and eighty-three hundredths percent (2.83%) on most transaction categories (but expressly not on the business of mining or rental, leasing and licensing for use of real property) for the support and maintenance of the departments of the Town (*Wade v. Greenlee County*, 173 Ariz 462, 463 (1992)); and

WHEREAS, after public hearings the Council adopted Ordinance No. 811 (dated October 22, 2015) approving the tax rate increase effective January 1, 2016 (in compliance with an intergovernmental agreement with ADOR dated June 25, 2015), providing that the increased revenue would not be subject to any economic incentives the Town might thereafter negotiate with respect to reimbursement of tax revenues generated by specified commercial developments, and (per ARS §42-6053(E)) gave notice of the rate change to the Municipal Tax Code Commission and ADOR so that it would be reflected in the official copy of the Model City Tax Code; and

WHEREAS, all of these changes are now included in the proposed “Tax Code of the Town of Prescott Valley (2015 Edition)” prepared by League staff to replace the current Town Tax Code within Chapter 8A of the Town Code; and

WHEREAS, ARS §9-802 provides for adoption by reference of lengthy documents which are “public records”; and

WHEREAS, the proposed Tax Code of the Town of Prescott Valley (2015 Edition) has been declared by Resolution No. \_\_\_\_ to be a “public record”;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PRESCOTT VALLEY, ARIZONA:

Section 1. That the Tax Code of the Town of Prescott Valley (2011 Edition) in Chapter 8A “TRANSACTION PRIVILEGE TAX”, Article 8A-01 “ADOPTION OF MODEL TAX CODE”, Section 8A-01-010 “Adoption of Model Tax Code” is hereby repealed in its entirety.

Section 2. That that certain document entitled “Tax Code of the Town of Prescott Valley (2015 Edition)” declared to be a public record by Resolution No. \_\_\_\_ (and available for public inspection in the office of the Town Clerk, 7501 East Civic Circle, Prescott Valley, Arizona, 86314), which is hereby referred to, enacted, adopted and made a part hereof (as if fully set forth herein) in Chapter 8A “TRANSACTION PRIVILEGE TAX”, Article 8A-01 “ADOPTION OF MODEL TAX CODE”, Section 8A-01-010 “Adoption of Model Tax Code”.

Section 3. That any person found guilty of violating any provision of the re-enacted Town Tax Code shall be guilty of a class one misdemeanor. Furthermore, each day that a violation continues shall be a separate offense punishable as hereinabove described.

Section 4. That, if any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the re-enacted Town Tax Code adopted herein by reference 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. That the provisions of this Ordinance conform this local tax code to the Model City Tax Code, which is controlling. The provisions of each section are effective as provided by the Municipal Tax Code Commission upon approval of each change to the Model City Tax Code. Provisions subject to a retroactive effective date at the time of approval by the Municipal Tax Code Commission favor taxpayers by reducing an imposition of the tax or increasing an allowable deduction, exemption, or exclusion. Provisions that increase the imposition of the tax or decrease the application of a deduction, exemption, or exclusion had a prospective effective date at the time of approval by the Municipal Tax Code Commission. Provisions creating a new Option state the first effective date the new Option is available for selection. Provisions eliminating an existing Option state the last effective date of the eliminated Option.

Section 6. That this Ordinance shall be effective 30 days after its passage and approval according to law.

PASSED AND ADOPTED by the Mayor and Council of the Town of Prescott Valley, Arizona, this 14<sup>th</sup> day of January, 2016.

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Harvey C. Skoog, Mayor

ATTEST:

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Diane Russell, Town Clerk

APPROVED AS TO FORM:

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Ivan Legler, Town Attorney