

## **ORDINANCE 5621**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING IN ITS ENTIRETY MESA CITY CODE TITLE 5, CHAPTER 8 ENTITLED “PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS” AND REPLACING IT WITH A NEW MESA CITY CODE TITLE 5, CHAPTER 8 ENTITLED “PEDDLERS AND SOLICITORS” REQUIRING THE LICENSE AND REGULATION OF PEDDLERS AND SOLICITORS.

**WHEREAS**, the City Council acknowledges that peddlers and solicitors enhance the lifestyle of the residents of Mesa by offering for sale goods and services at unique and convenient locations throughout Mesa that may not otherwise be available to the public.

**WHEREAS**, the City Council seeks to protect the public health, safety, and welfare by enacting reasonable licensing requirements and regulations on peddlers and solicitors allowing the City to investigate peddlers and solicitors who interact with the public by selling or offering for sale goods and services both at public locations and events and at private properties by travelling door to door.

**WHEREAS**, the City Council determines that repealing Title 5, Chapter 8 of the Mesa City Code and replacing it with revised language serves to protect the public health, safety, and welfare by enacting reasonable regulations to ensure the business of peddlers and solicitors is conducted in a safe manner and to clarify provisions of the City Code applicable to peddlers and solicitors.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:**

**SECTION 1.** Mesa City Code Title 5, Chapter 8 entitled “Peddlers, Solicitors, and Transient Merchants” is repealed in its entirety and replaced with a new Mesa City Code Title 5, Chapter 8 as follows:

### **CHAPTER 8 PEDDLERS AND SOLICITORS**

#### **SECTION:**

- 5-8-1: PURPOSE AND ADMINISTRATION**
- 5-8-2: DEFINITIONS**
- 5-8-3: LICENSING REQUIREMENTS**
- 5-8-4: EXEMPTIONS**
- 5-8-5: OPERATIONAL REQUIREMENTS**
- 5-8-6: FEES**
- 5-8-7: VIOLATIONS; SUSPENSION; REVOCATIONS**
- 5-8-8: PENALTIES**
- 5-8-9: APPEALS**
  
- 5-8-1: PURPOSE AND ADMINISTRATION**

- (A) The purpose of this Chapter is to protect the public health, safety, and welfare by establishing reasonable regulations for peddlers and solicitors who operate throughout the City and interact with the public both in public locations and at private homes and businesses and to promote the safe and orderly operations of peddlers and solicitors in the City.
- (B) It is the duty and responsibility of the Licensing Administrator to administer the provisions of this Chapter. The Licensing Administrator will issue, deny, suspend, and revoke licenses as required by this Chapter as well as issue notices in accordance with Section 5-8-7(D) and enforce civil violations in accordance with Section 5-8-8(B). An application for a license will be granted or denied within the timeframes established by the Licensing Administrator. Pursuant to these duties, the Licensing Administrator has the authority to create rules, regulations, and policies related to peddlers, solicitors, and licenses consistent with the purpose of this Chapter.

## **5-8-2: DEFINITIONS**

The terms of this Chapter have the below meanings, whether or not the term is capitalized, unless the context requires otherwise. Words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Definitions set forth in this Section 5-8-2 apply only to this Chapter and do not affect and are not to be applied to any other Mesa City Code.

**APPLICANT:** A natural person who applies for a license pursuant to this Chapter and who, upon approval of the application, will be the licensee.

**A.R.S.:** Arizona Revised Statutes.

**CITY:** The City of Mesa, Arizona.

**DIRECTOR:** The City's Business Services Director or designee.

**HEARING OFFICER:** The City staff person responsible for hearing appeals under this Chapter, or other such individual contracted with the City to hear appeals under this Chapter.

**LICENSE:** A peddler and solicitor license issued to a natural person in accordance with the provisions of this Chapter.

**LICENSEE:** The natural person who applied for a license pursuant to this Chapter and in whose name such license was issued by the City pursuant to this Chapter.

**LICENSING ADMINISTRATOR:** The City's Business Licensing and Revenue Collections Administrator, or other such City employee who supervises the Licensing Office or designee.

**MOBILE FOOD VENDOR:** As defined by Mesa City Code 5-4-2.

**PEDDLE:** To sell and make immediate delivery, or offer for sale and immediate delivery, any personal property, good, merchandise, ware, or thing, in possession of the seller, at any place within the City other than from a fixed place of business.

**PEDDLER:** A natural person who peddles.

**SCHEDULE OF FEES AND CHARGES:** The City's then current schedule of fees and charges approved by the City Council.

**SOLICIT:** To sell or take orders, or offer to sell or take orders, for any personal property, good, merchandise, ware, or thing for future delivery, or for services to be performed in the future.

**SOLICITOR:** A natural person who solicits.

### **5-8-3: LICENSING REQUIREMENTS**

- (A) It is unlawful for a person to peddle or solicit within the City without a valid license.
- (B) A license is valid for a period of one (1) year from the date of issuance/renewal so long as the licensee is in compliance with this Chapter. A license is non-transferable and non-assignable. Any attempted transfer or assignment will void the license and all fees paid will be forfeited. A license does not create an exclusive right for a licensee to peddle or solicit in a specific area or location on public property.
- (C) A person desiring to obtain a new or renewal license must apply to the City by presenting a complete application on the forms prescribed by the Licensing Administrator and accompanied by the applicable fees prescribed in the schedule of fees and charges to the Licensing Administrator. The application must include, but not be limited to:
  - (1) The name, address, and contact information of the applicant including a history of residential addresses of the applicant;
  - (2) A general description of the nature of the business and the goods and services to be sold;
  - (3) If engaging in business from a "vehicle" as that term is defined in A.R.S. § 28-101(77), a description, including make, model, year, and color, license plate number, photograph, proof of insurance, and proof of registration for the vehicle;
  - (4) If required by Subsection (E) below, the fingerprints of the applicant; and
  - (5) A certification from the applicant stating whether the applicant has been convicted of any crime or violation of law (excluding civil traffic convictions), the nature of the offense, and the punishment and penalty assessed.
- (D) Following receipt of the required documents and fees, all applications will be submitted to the City Police Department for investigation and criminal record review on behalf of the City Licensing Office. The Police Department will receive and review the criminal history record information resulting from the criminal records check, including conviction and non-conviction data, of the applicant for the purpose of evaluating the fitness of the applicant in connection with the issuance, renewal, suspension, or revocation of a license. The Police Department evaluation and the criminal information obtained must be used only for the purpose of supporting and defending a denial, non-renewal, suspension, or revocation of a license.

- (E) An applicant who intends to use the license to peddle or solicit by traveling door to door, whether to residential or commercial locations, must submit, with the application, a full set of fingerprints in the manner prescribed by the Licensing Administrator.
- (1) The fingerprints will be submitted to the Arizona Department of Public Safety to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation.
  - (2) The City Police Department, on behalf of the City Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data, of the applicant for the purpose of evaluating the fitness of the applicant in connection with the issuance, renewal, suspension, or revocation of a license. Such information must be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension or revocation of a license.
- (F) A complete renewal application must be submitted to the Licensing Administrator no later than forty-five (45) calendar days prior to the expiration of a license; otherwise, the license will be deemed expired and non-renewable. If the renewal application is not received as stated above, the licensee must submit an application for a new license and provide all information and fees required for a new license application.
- (G) A licensee must update the Licensing Administrator in writing of any change to any information provided in an application, including but not limited to the information listed in Subsection (C) above, within ten (10) calendar days of occurrence of the change.
- (H) The Licensing Administrator may refuse to issue a new or renewal license for any of the following reasons:
- (1) The application was incomplete, the application was not timely submitted, the applicant made false or misleading statements to City staff during the application process, the application contains false or misleading statements, or the fees required by the schedule of fees and charges were not paid;
  - (2) The applicant, within one (1) year period immediately preceding the submission of the application, failed to update application information pursuant to Subsection (G) above;
  - (3) The applicant is currently in violation of this Chapter;
  - (4) The applicant failed to comply with any federal or state law applicable to a peddler or solicitor;
  - (5) The applicant has a current debt related to any open or closed account maintained with the City; or

- (6) The applicant, within the ten (10) year period immediately preceding the submission of the application, was convicted of any of the following crimes or the applicant has any outstanding warrants or any pending cases in any court of competent jurisdiction involving such crimes:
  - (a) Felony or misdemeanor involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, or any preparatory offenses of the aforementioned crimes;
  - (b) Felony or misdemeanor involving a fraudulent or dishonest act;
  - (c) Felony or misdemeanor involving the sale, manufacture, or transportation of any dangerous drug as defined in A.R.S. § 13-3401, a “violent crime” under A.R.S. Title 13, Chapters 11, 12, or 13, a “sexual offense” under A.R.S. Title 13, Chapter 14, or for conduct in another jurisdiction which if carried out in Arizona would constitute an offense under one of the statutory provisions enumerated in this Subsection; or
  - (d) Felony or misdemeanor involving moral turpitude.

#### **5-8-4: EXEMPTIONS**

The following persons are exempt from the requirements of this Chapter:

- (A) A person who peddles or solicits solely on behalf of a nonprofit organization exempt from federal income tax under Section 501 of the Internal Revenue Code;
- (B) A person who peddles or solicits solely at a special event and is listed on the vendor list for the special event and the special event has a valid license issued pursuant to Mesa City Code Title 5, Chapter 1. For purposes of this Subsection, “special event” means as defined in Mesa City Code Title 11, Chapter 87 and “vendor list” means as defined in Mesa City Code 5-1-2;
- (C) A mobile food vendor with a valid license issued pursuant to Mesa City Code Title 5, Chapter 4;
- (D) A “producer” of a “food product” as those terms are defined by A.R.S. § 3-561 and any employee, agent, family member, or other person in the service of the producer, when the food products are sold or disposed of on behalf of and for the benefit of the producer;
- (E) A person who peddles or solicits solely newspapers;
- (F) A person who peddles or solicits solely goods they made by hand and solely at a fair, bizarre, market, or similar event;
- (G) An individual under the age of eighteen (18); and
- (H) A person who is exempted from the licensing requirements of this Chapter by state law.

#### **5-8-5: OPERATIONAL REQUIREMENTS**

- (A) It is unlawful for a person to peddle or solicit in violation of this Section 5-8-5.
- (B) A licensee must keep the license on their person or post the license in a conspicuous place in the vehicle or facility from which the licensee conducts business at all times while they peddle or solicit, and the license must be made available for inspection upon the demand of any City official.
- (C) A licensee must comply with the City Zoning Ordinance set forth in Title 11 of the Mesa City Code.
- (D) A peddler and solicitor must not:
  - (1) Operate in any area congested by either traffic or people where operation might unreasonably impede or inconvenience the public. For purposes of this Subsection, the good faith judgment of a police officer is conclusive as to whether an area is congested and as to whether the public is impeded or inconvenienced;
  - (2) Yell, shout, cry out, blow a horn, ring a bell, or use any sound-amplifying devices or systems such as loudspeakers, microphones, radios, or any other similar devices for the purpose of attracting attention to themselves or their business if the sound emitted or produced is of sufficient volume that it can be plainly heard upon the thoroughfares;
  - (3) Peddle or solicit by travelling door to door, whether to residential or commercial locations, from dusk or 8:00 P.M. of any day, whichever occurs earlier, to dawn or 8:00 A.M. of the following day, whichever occurs earlier; or
  - (4) Peddle, solicit, ring the doorbell, knock, or otherwise attempt to gain the attention of any person at a property whereon a sign bearing the words “no soliciting” or “no peddling” or language with a similar meaning is exposed to public view.

#### **5-8-6: FEES**

The following new and renewal licensing and application fees must be paid in the amounts prescribed in the schedule of fees and charges: (1) application fee and (2) annual license fee.

#### **5-8-7: VIOLATIONS; SUSPENSION; REVOCATION**

- (A) It is a violation of this Chapter for a person to provide false information on any license application.
- (B) It is a violation of this Chapter for a person to peddle or solicit without meeting all the requirements in this Chapter.
- (C) It is a violation of this Chapter for a peddler or solicitor to fail to display the license or other required documents to any City official upon demand.

- (D) The Licensing Administrator must give written notice of a violation to the licensee which may result in the suspension or revocation of the license and/or a civil penalty. The notice must include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the License. The notice must be served on the licensee by either personal service or registered/certified mail. Service of the notice will be deemed complete upon mailing to, or personal service on, the licensee.
- (E) The licensee receiving a notice under this Section may request a hearing pursuant to Section 5-8-9 below. If the licensee fails to comply with the requirements of this Chapter by the date provided in the notice and does not request a hearing, then the Licensing Administrator may suspend or revoke the license as provided in this Section.
- (F) In addition to any penalties set forth in this Chapter, a license will be suspended if, during the term of the license, the licensee violates any of the provisions of this Chapter. During the suspension period, the licensee must not peddle or solicit. If a fine is associated with the violation that is the basis for suspension, the suspension may continue beyond the period set forth in this Subsection until such time as the licensee pays the fine. The penalty for a suspension of a license will be:
- (1) For the first suspension of a license during a twenty-four (24) month period, the license will be suspended up to fourteen (14) calendar days and a fine will be imposed in the amount prescribed in the schedule of fees and charges.
  - (2) For the second suspension of a license during a twenty-four (24) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days and a fine will be imposed in the amount prescribed in the schedule of fees and charges.
  - (3) For the third suspension of a license during a twenty-four (24) month period, the license will be revoked.
- (G) In addition to revocation for a third suspension as set forth in Subsection (F) above, the Licensing Administrator may revoke a license if the Licensing Administrator or other City official determines that:
- (1) The licensee was convicted of a criminal offense listed in Section 5-8-3(H)(6);
  - (2) The licensee peddled or solicited without a valid license;
  - (3) The licensee was previously issued three (3) or more notices of suspension or violation within a twenty-four (24) month period;
  - (4) The licensee failed to comply with a provision of this Chapter or failed to provide information required by this Chapter;

- (5) The application upon which a license was issued contained false or misleading information or an application or license fee was not paid; or
  - (6) The Licensing Administrator has reasonable cause to believe that the licensee committed fraud or made misrepresentations or false statements while peddling or soliciting.
- (H) If a license is revoked pursuant to this Section, the licensee may not be issued a license under this Chapter for a period of one (1) year from the date of the revocation.

#### **5-8-8: PENALTIES**

- (A) Each calendar day any violation of any provision of this Chapter continues will constitute a separate offense.
- (B) Civil Penalty. Among other penalties that may apply, including revocation or suspension of a license (when applicable), a violation of any provision of this Chapter that is not designated in this Chapter as unlawful will be a civil code offense which may be adjudicated and enforced by the City civil hearing process set forth in Section 5-8-9.
- (C) Criminal Penalty. Among other penalties that may apply, including of a license, any person who violates any provision of this Chapter that is designated as unlawful will be charged with a Class One Misdemeanor. If found guilty, such person may be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment.

#### **5-8-9: APPEALS**

- (A) Any party aggrieved by a decision of the Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Director. The failure of an appeal to meet the requirements of this Subsection will entitle the Director to deny the appeal without further review.
- (B) If an appeal meets the requirements of Subsection (A), the Director will schedule a hearing with a Hearing Officer. The hearing will be held within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Subsection (A) will suspend the decision of the Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Licensing Administrator, if upheld by the Hearing Officer, will be reinstituted and dated as of the original date the decision was issued by the Licensing Administrator; however, if the decision pertained to a period of suspension and such period of time has already passed, in whole or in part, the Hearing Officer may designate the period of suspension in accordance with this Chapter.
- (C) All proceedings before a Hearing Officer will be informal and without a jury, except that testimony must be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications.

Prehearing discovery will not be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the appeal at hand.

- (D) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with the proper jurisdiction to review the Hearing Officer's decision within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days will constitute a waiver of any right to judicial review of the Hearing Officer's decision.
- (E) A decision of the Licensing Administrator, if not appealed, will be the City's final decision on a matter pursuant to this Chapter. If the decision of the Licensing Administrator is properly appealed to a Hearing Officer, the decision of the Hearing Officer will be the City's final decision on the matter pursuant to this Chapter.

SECTION 2. RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3. EFFECTIVE DATE. The effective date of this Ordinance shall be thirty (30) days following adoption by the City Council.

SECTION 4. PRESERVATION OF RIGHTS AND DUTIES. This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 17th day of May, 2021.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Debra Mickelson  
City Clerk

