

ORDINANCE NO. 5651

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, CREATING A NEW MESA CITY CODE TITLE 5, CHAPTER 5 ENTITLED "BUSINESS LICENSE" REQUIRING LICENSING OF ALL BUSINESSES CONDUCTING BUSINESS WITHIN MESA, ARIZONA.

WHEREAS, until December 31, 2016, the City of Mesa ("City") issued transaction privilege tax ("TPT") licenses to businesses performing taxable business activity in Mesa, Arizona.

WHEREAS, on January 1, 2017, the State of Arizona Department of Revenue ("ADOR") began administering TPT on behalf of all cities and towns in Arizona, including the City. ADOR's administration created additional requirements related to taxpayer data confidentiality, resulting in the City no longer being able to use the business data internally or externally in a manner that was previously permitted.

WHEREAS, the City Council finds that identifying and licensing businesses that conduct business in Mesa, AZ will protect the public health, safety, and welfare by providing demographic data needed by City departments, City partners, and the business community which may be used to: assist businesses in locating, relocating, and expanding by providing information regarding the location of similar businesses and clustering of certain businesses in specific areas of the City; assist the City in implementing programs benefitting businesses, such as grant programs for businesses; assist the police department, fire department, and other emergency personnel in their efforts to enforce laws, respond to emergencies, and prevent crimes, fires, and accidents; provide a system of cross-reference of businesses in the City for use in locating responsible parties during emergency situations; enforce applicable tax and zoning laws; accumulate demographic data for use by the City in adopting ordinances, resolutions, and other legislation; and establish responsibility for assessment of fines and other enforcement actions.

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 5, entitled "Business License" is created as follows:

**CHAPTER 5
BUSINESS LICENSE**

SECTION:

- 5-5-1: PURPOSE AND ADMINISTRATION**
- 5-5-2: DEFINITIONS**
- 5-5-3: LICENSING REQUIREMENTS**
- 5-5-4: EXEMPTIONS**
- 5-5-5: ENFORCEMENT AND PENALTY; APPEAL**

5-5-1: PURPOSE AND ADMINISTRATION

- (A) The purpose of this Chapter is to promote the public health, safety, and welfare by providing the City with names, addresses, and other data of persons conducting business within the City, enabling the City to form a database of businesses in Mesa, AZ which may be used to: (1) assist businesses in locating, relocating, and expanding by providing information regarding the location of similar businesses and clustering of certain businesses in specific areas of the City; (2) assist the City in implementing programs benefitting businesses, such as grant programs for businesses; (3) assist the police department, fire department, and other emergency personnel in their efforts to enforce laws, respond to emergencies, and prevent crimes, fires, and accidents; (4) provide a system of cross-reference of businesses in the City for use in locating responsible parties during emergency situations; (5) enforce applicable tax and zoning laws; (6) accumulate demographic data for use by the City in adopting ordinances, resolutions, and other legislation; and (7) establish responsibility for assessment of fines and other enforcement actions.
- (B) It is the duty and responsibility of the Licensing Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Licensing Administrator will issue and renew licenses in accordance with this Chapter and will maintain a record for each license issued. An application for a license will be granted or denied within the timeframes established by the Licensing Administrator.

5-5-2: 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 apply only to this Chapter and do not affect and are not to be applied to any other Mesa City Code.

APPLICANT: The 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.

CONDUCT BUSINESS: Engaging in any activity upon which a transaction privilege tax license is required pursuant to the Mesa City Tax Code or maintaining within the City a fixed business location such as an office, distribution house, sales house, warehouse, developed commercial real property ownership, or other place of business, whether located at a residential or commercial location.

DESIGNATED AGENT: The person designated by the applicant or licensee as the point of contact to receive correspondence from the City related to the application, license, and the provisions of this Chapter.

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

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

PERSON: An individual, firm, partnership, joint venture, association, company, corporation, estate, trust, or any other group or combination acting as a unit.

LICENSE: A business license issued to a person in accordance with the provisions of this Chapter.

LICENSEE: The 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.

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

5-5-3: LICENSING REQUIREMENTS

- (A) A person shall not conduct business within the City without a valid license for the business issued pursuant to this Chapter.
- (B) A license will be issued in the legal name of the licensee. Issuance of a license will in no way be construed as permission to operate a business in violation of any applicable law, rule, or regulation. A license is valid for one (1) year from the date of issuance or renewal. A license is non-transferable from one owner to another owner, from one entity to another entity, and from one location to another location. Attempted transfer of a license will void the license and any fees paid will be forfeited.
- (C) Every person subject to the requirements of this Chapter who conducts business at more than one fixed location within the City shall pay the fees prescribed in the schedule of fees and charges for each location.
- (D) To obtain a new or renewal license, a person must submit a complete application to the City on the forms prescribed by the Licensing Administrator accompanied by the fees prescribed in the schedule of fees and charges. An application must include, at a minimum and where applicable, all the following:
 - (1) Name, address, and contact information for the applicant, designated agent, and the owner(s) of the applicant business, including each partner if a general partnership, manager and member if a limited liability company, and chief executive officer and chief financial officer if a corporation.
 - (2) Description of the business including, state where incorporated or formed, trade name, address for all fixed business locations within the City, mailing address, telephone number, number of employees, and business activity to be conducted.
 - (3) Date on which the business began or will begin operating in the City.

- (4) The transaction privilege tax license number and location code issued to the applicant by the Arizona Department of Revenue for each fixed business location.
- (5) Certification by the applicant that statements contained in the application and made to City staff during the application process are true and correct.
- (E) A complete renewal application must be submitted to the City no later than thirty (30) calendar days prior to the expiration of the subject license; otherwise, the license will be deemed expired and non-renewable. If the renewal application is not received by the above deadline, the licensee must apply for a new license and provide all information and fees required for a new license application.
- (F) A licensee must inform the City in writing of any changes to the information submitted during the application process within ten (10) calendar days of occurrence of the change.
- (G) If a licensee no longer conducts business in the City, the licensee must cancel their license by informing the City in writing of the effective date of the cancellation and the reason for the cancellation. The fees paid for any cancelled license shall not be prorated or otherwise repaid by the City. A licensee who cancels their license and thereafter applies for a license must submit a new license application and fees as prescribed in the schedule of fees and charges.
- (H) A person, whether or not required by this Chapter, may voluntarily obtain a license through the process described in this Chapter.

5-5-4: EXEMPTIONS

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

- (A) Any person exempted by Arizona state law from business licensing requirements including, but not limited to, those exempted by A.R.S. §§ 3-563, 9-491.01, 9-491.02, 9-1304, 20-1098.17, and 41-2052.
- (B) A federal, state, county, city, or town governmental agency engaging in business in its governmental capacity.
- (C) A religious, veteran, or civic service organization that on four (4) or fewer occurrences during a calendar year conducts business in the City for a bona fide nonprofit purpose and maintains an exempt status under Section 501 of the Internal Revenue Code.
- (D) A person who conducts solely casual business activity. For purposes of this Subsection (D), “casual business activity” means engaging in a transaction of an isolated nature, such as the private sale of a personal automobile, handmade good, or garage sale item, in the City on four (4) or fewer occurrences during a calendar year.
- (E) A person who provides solely educational lessons or tutoring, such as music, language, cooking, swimming, on an individual basis and from a non-commercial location.

- (F) A person who provides solely caregiving, childcare, or babysitting services and who is not required to be licensed by the state of Arizona pursuant to A.R.S. Title 36.
- (G) An independent contractor or sales representative who is not registered as a separate legal entity and only offers products or services on behalf of a parent organization such as health and beauty products, kitchen utensils, jewelry, beautician services, or other services or products.
- (H) A person conducting business solely at a “special event,” as that term is defined in Mesa City Code Title 11, Chapter 87, with a valid permit issued pursuant to Mesa City Code Title 5, Chapter 1 and the subject business is included on the “vendor list,” as that term is defined in Mesa City Code 5-1-2.
- (I) A person who has a valid license issued pursuant to any of the following Chapters of Title 5 of the Mesa City Code: Chapter 4, “Mobile Food Vendors”; Chapter 8, “Peddlers and Solicitors”; and Chapter 22, “Automated Kiosks.”

5-5-5: ENFORCEMENT AND PENALTY; APPEAL

- (A) Any City official may inspect a business during regular business hours to ensure compliance with the provisions of this Chapter. The license or a copy thereof must be kept at every fixed location of the business and must be displayed upon demand of any City official.
- (B) Any person required to be licensed under this Chapter who fails to obtain or maintain a license in compliance with this Chapter will be subject to the license fee and late fee prescribed in the schedule of fees and charges. The fees imposed by this Chapter will be deemed a debt owed to the City and the City may take any legally permissible action to collect the debt. A license will not be issued until all fees prescribed in the schedule of fees and charges are paid in full.
- (C) A person assessed a late fee pursuant to Subsection (B) above may appeal the late fee within thirty (30) calendar days of notice of the late fee. The appeal must be in writing, state the grounds for the appeal, and be sent to the Director. The Director may deny an appeal without further review if the requirements of this Subsection (C) are not met. If an appeal meets the requirements of this Subsection (C), the Director will issue a decision to sustain or waive the late fee. A late fee may be waived by the Director upon a finding by the Director that the subject business has consistently obtained and maintained a license in compliance with this Chapter throughout the twenty-four (24) month period immediately preceding the late fee assessment, or upon a finding by the Director that reasonable cause exists for the failure to obtain and maintain the license in the circumstances resulting in the late fee. A late fee, if not appealed, is final. If a late fee is appealed, the decision of the Director is the City’s final decision on the late fee.
- (D) The penalties prescribed in Subsections (B) and (C) above are the sole and exclusive penalties provided in the Mesa City Code for a violation of this Chapter. No other penalty or enforcement action under the Mesa City Code shall apply to a violation of this Chapter, whether civil or criminal in nature, including the general penalty of Mesa City Code Title

1, Chapter 26 and the civil code violations of Mesa City Code Title 1, Chapter 27.

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.

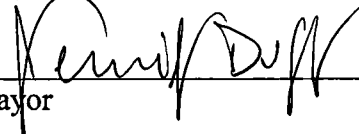
SECTION 4: PENALTY. The penalty prescribed by Section 5-5-5(B) of this Ordinance will not be enforced by the City until one (1) calendar year after the effective date of this Ordinance, to provide ample time to educate the public and business community regarding the provisions of this Ordinance prior to enforcing a penalty.

SECTION 5: 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 6: 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 15th day of November, 2021.

APPROVED:

Vice Mayor  _____
Mayor

ATTEST:

Deidun Mickelson _____
City Clerk

