

ORDINANCE NO. 5259

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, RELATING TO TRANSACTION PRIVILEGE TAXES; REPEALING AND REPLACING MESA CITY CODE TITLE 5, CHAPTER 10, Article III; REPEALING MESA REGULATIONS FOR PRIVILEGE AND EXCISE TAXES 5-10-300.1, 5-10-300.2, 5-10-310.1, 5-10-310.2, 5-10-310.3, 5-10-350.1, 5-10-350.2, 5-10-350.3, 5-10-360.1, AND 5-10-360.2; PROVIDING FOR EFFECTIVE DATES THEREOF.

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

Section 1: REPEAL. Mesa City Code Title 5, Chapter 10, Article III entitled “LICENSING AND RECORD KEEPING” is repealed in its entirety.

Section 2: ADOPTION. The document entitled “Licensing and Recordkeeping” as made a public record by Resolution adopted on December 1, 2014, three copies of which are on file with the Office of the City Clerk, is adopted as Mesa City Code Title 5, Chapter 10, Article III.

Section 3: REPEAL. The following Privilege and Excise Tax Regulations are repealed from the Mesa City Code:

- Regulation 5-10-300.1: WHO MUST APPLY FOR A LICENSE
- Regulation 5-10-300.2: (Reserved)
- Regulation 5-10-310.1: (Reserved)
- Regulation 5-10-310.2: (Reserved)
- Regulation 5-10-310.3: (Reserved)
- Regulation 5-10-350.1: RECORDKEEPING; INCOME
- Regulation 5-10-350.2: RECORDKEEPING; EXPENDITURES
- Regulation 5-10-350.3: RECORDKEEPING; OUT-OF-CITY AND OUT-OF-STATE SALES
- Regulation 5-10-360.1: PROOF OF EXEMPTION; SALE FOR RESALE; SALE, RENTAL, LEASE OR LICENSE OF RENTAL EQUIPMENT
- Regulation 5-10-360.2: PROOF OF EXEMPTION; EXEMPTION CERTIFICATE

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.

Section 6: PENALTY. The penalties include the penalties provided in Sections 5-10-330, 5-10-340, 5-10-350, and 5-10-370 as set forth in the document entitled "Licensing and Recordkeeping" referenced in Section 2 of the Ordinance above. For the purpose of meeting the requirements of A.R.S. § 9-803, the penalties in Sections 5-10-330, 5-10-340, 5-10-350, and 5-10-370 are set forth in full below.

5-10-330: Licensing; duration; transferability; display; penalties; penalty waiver; relicensing; fees collectible as if taxes.

- (a) The Transaction Privilege and Use Tax License shall be valid only for the calendar year in which it is issued unless renewed each year by filing the appropriate application for license renewal and paying the applicable license renewal fee for each license, subject to the limitations in A.R.S. 42-5005. Such fee shall be due and payable on January 1 of each year and shall be considered delinquent if not paid and received on or before the last business day of January. Application and payment of the annual fee must be received in the Tax Collector's office to be deemed paid and received.
- (b) The Transaction Privilege and Use Tax License shall be nontransferable between owners or locations, and shall be on display to the public in the licensee's place of business.
- (c) Any person required to be licensed under this Chapter who fails to obtain a license on or before conducting any business activity requiring such license shall be subject to the license fees due for each year in business plus a penalty in the amount of fifty percent (50%) of the applicable fee for each period of time for which such fee would have been imposed, from and after the date on which such activity commenced until paid. This penalty shall be in addition to any other penalty imposed under this Chapter and must be paid prior to the issuance of any license. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 5-10-540.
- (d) Any licensee who fails to renew his license on or before the due date shall be deemed to be operating without a license following such due date, and shall be subject to all penalties imposed under this Chapter against persons required to be licensed and operating without a license. The non-licensed status may be removed by payment of the annual license fee for each year or portion of a year he operated without a license, plus a license fee penalty of 50% of the license fee due for each year. License fee penalties may be waived by the Tax Collector subject to the same terms as the waiver of tax penalties as provided for in Section 5-10-540.
- (e) Any licensee who permits his license to expire through cancellation as provided in Section 5-10-340, by his request for cancellation, by surrender of the license, or by the cessation of the business activity for which the license was issued, and who thereafter applies for a license, shall be granted a new license as a new applicant and shall pay the current license fee imposed under Section 5-10-320.
- (f) Any licensee who needs a copy of his Transaction Privilege and Use Tax License which is still in effect shall be charged the current license fee for each reissuance of a license.
- (g) Any person conducting a business activity subject to licensing without obtaining a Transaction Privilege and Use Tax License shall be liable to the city for all applicable fees and penalties and shall be subject to the provisions of Sections 5-10-580 and 5-10-590, to the same extent as if such fees and penalties were taxes and penalties under such Sections.

5-10-340: LICENSING; CANCELLATION; REVOCATION:

- (a) **Cancellation.** The Tax Collector may cancel the Transaction Privilege and Use Tax License of any licensee as "inactive" if the taxpayer, required to report monthly, has neither filed any return nor remitted any taxes imposed by this Chapter for a period of six (6) consecutive months; or, if required to report quarterly, has neither filed any return nor remitted any taxes imposed by this Chapter for two (2) consecutive quarters; or, if required to report annually, has neither filed any return nor remitted any taxes imposed by this Chapter when such annual report and tax are due to be filed with and remitted to the Tax Collector.
- (b) **Revocation.** If any licensee fails to pay any tax, interest, penalty, fee, or sum required to be paid under this Chapter, or if such licensee fails to comply with any other provisions of this Chapter, the Tax Collector may revoke the Transaction Privilege and Use Tax License of said licensee.
- (c) **Notice and Hearing.** The Tax Collector shall deliver notice to such licensee of cancellation or revocation of the Transaction Privilege and Use Tax License. If the licensee requests a hearing within twenty (20) days of receipt of such notice, he shall be granted a hearing before the Tax Collector.
- (d) After cancellation or revocation of a taxpayer's license, the taxpayer shall not be issued a new license until all reports have been filed; all fees, taxes, interest, and penalties due have been paid; and he is in compliance with all provisions of this Chapter.

5-10-350: OPERATING WITHOUT A LICENSE:

It shall be unlawful for any person who is required by this Chapter to obtain a Transaction Privilege and Use Tax License to engage in or continue in business without a license. The Tax Collector shall assess any delinquencies in tax, interest, and penalties which may apply against such person upon any transactions subject to the taxes imposed by this Chapter.

5-10-370: RECORDKEEPING; CLAIM OF EXCLUSION, EXEMPTION, DEDUCTION, OR CREDIT; DOCUMENTATION; LIABILITY:

- (a) All deductions, exclusions, exemptions, and credits provided in this Chapter are conditional upon adequate proof and documentation of such as may be required either by this Chapter or Regulation.
- (b) Any person who claims and receives an exemption, deduction, exclusion, or credit to which he is not entitled under this Chapter, shall be subject to, liable for, and pay the tax on the transaction as if the vendor subject to the tax had passed the burden of the payment of the tax to the person wrongfully claiming the exemption. A person who wrongfully claimed such exemption shall be treated as if he is delinquent in the payment of the tax and shall be subject to interest and penalties upon such delinquency. However, if the tax is collected from the vendor on such transaction it shall not again be collected from the person claiming the exemption, or if collected from the person claiming the exemption it shall not also be collected from the vendor.

The foregoing penalties are in addition to any other penalties found in Title 5, Chapter 10 of the Mesa City Code or the Mesa City Code.

Section 7: EFFECTIVE DATE. The effective date of this Ordinance shall be 30 days following adoption by the Mesa City Council.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona,
this 8th day of December, 2014.