

SUMMARY OF AGENDA ITEM

DATE: March 7, 2007
TO: Mayor and Council
FROM: Legal Department
SUBJECT: Ordinance 709 and Resolution 2248

PURPOSE:

Ordinance 709 and Resolution 2248¹ amend Chapter 110 (Business Licenses) of the Town Code. These amendments will require all businesses operating in the Town of Payson to be on an equal footing.

SUMMARY OF CHANGES TO ACCOMPLISH THIS PURPOSE:

- 1) When applying for a business license, applicants will be required to provide (i) an affidavit certifying that all of the applicant's employees are legally within the United States, (ii) proof of any licenses required by State law (such as a contractor's license, a cosmetology license, etc), and (iii) proof of workers compensation insurance if required. Section 110.03.
- 2) The remedy for a violation will be revocation of the business license. Section 110.12.
- 3) All businesses licensed by the Town will be required to have their Town license number in all of their advertising, including any logo's, names, or marks on their cars or trucks. Section 110.16(B).
- 4) The requirement that certain business persons be fingerprinted is also removed as a housekeeping measure to streamline the process. Section 110.02(D).

The amendments are presented in redline/strikeout format. All text not in redline is currently in the Town Code and has not been changed. Other non-substantive changes have been made as shown in redline/strikeout to simply the Ordinance. A small change to Section 110.07 and several changes to Section 110.12 were made between the first and second reading. These changes are noted by being redlined and underlined. Additionally, a delayed effective date of July 1, 2007 was added (Section 7 of the Ordinance).

¹ In order to avoid the expense of having to publish all of Chapter 110, Resolution 2248 is being adopted as a public record and Ordinance 709, if approved, would implement the changes set forth in Resolution 2248.

RESOLUTION NO. 2248

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, AMENDING CHAPTER 110 (BUSINESS LICENSING) OF THE CODE OF THE TOWN OF PAYSON AND DECLARING SUCH AMENDMENT TO BE A PUBLIC RECORD.

WHEREAS, the Code of the Town of Payson was declared to be a public record by Resolution Number 1536 of the Town of Payson; and

WHEREAS, the Code of the Town of Payson was adopted as a public record by Ordinance Number 588 of the Town of Payson; and

WHEREAS, it is the intention of the Town of Payson to amend Chapter 110 (Business Licensing) of the Code of the Town of Payson; and

WHEREAS, such amendment may be enacted by reference, pursuant to A.R.S. § 9-802,

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. Chapter 110 (Business Licensing) of the Code of the Town of Payson is hereby amended, as amended shall read as set forth in Exhibit A attached hereto.

Section 2. If any section, subsection, sentence, clause, phrase or portion of Resolution Number 2248 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 of Resolution Number 2248. The Town Council of Payson declares that it would have adopted Resolution Number 2284 and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses, phrases, or portions may be declared invalid or unconstitutional.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON this ____ day of _____, 2007, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

F. Robert Edwards, Mayor

ATTEST:

APPROVED AS TO FORM:

Silvia Smith, Town Clerk

Samuel I. Streichman, Town Attorney

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CHAPTER 110: BUSINESS LICENSING

§ 110.01 PURPOSE AND SCOPE.

The purpose of this chapter is both regulatory and revenue raising. The regulations are for the protection of the health, safety and welfare of the residents, business owners and visitors of the town. Regulations found in other chapters of this title, which pertain to specific types of businesses, shall be in addition to those found within this chapter.

§ 110.02 BUSINESS LICENSE ~~AND CERTIFICATE OF OCCUPANCY~~ REQUIRED.

(A) It is unlawful for any person to carry on any non-exempt business, game or amusement, calling, profession or occupation within the municipal limits of the town without having first procured a business license ~~and certificate of occupancy~~ from the town. An applicant/licensee must comply with any and all laws applicable to or affecting the applicant/licensee ~~regulations imposed upon the business, game or amusement, calling, profession or occupation by any governmental or other authority with jurisdiction, as well as all provisions of this code, all town ordinances, county ordinances and state laws affecting the health, safety and welfare of the public.~~

(B) A separate business license shall be required for each separate business, game or amusement, calling, profession or occupation. Only one license is required for each business, game or amusement, calling, profession or occupation if operated at more than one location. ~~Each location shall have a copy of the license issued to the business prominently displayed as required by this chapter.~~ Each license shall indicate the name and location of the business, game or amusement, calling, profession or occupation. No licensee shall carry on, pursue or conduct a business, game or amusement, calling, profession or occupation at a location other than one indicated upon the license issued to the licensee.

~~(C) A separate certificate of occupancy shall be required for each location of a business, game or amusement, calling, profession or occupation and for each separate location wherein the business is being conducted, even if only one business, game or amusement, calling, profession or occupation is being conducted at more than one location. Each location shall prominently display the certificate issued to that location as required by this chapter. Each certificate shall certify that the described business, game or amusement, calling, profession or occupation is authorized at that specified location.~~

~~(D) Each applicant for a business license identified in this division to be issued by the town shall provide fingerprint identification to the Chief of Police. The Chief of Police shall, when otherwise permitted and pursuant to A.R.S. § 41-1750 and 5 USC 9101 or 42 USC 14611 et seq., forward those fingerprints accompanied by appropriate fees to the Arizona~~

~~Department of Public Safety and the Federal Bureau of Investigation for the purpose of seeking criminal history record information on the applicant. The information shall be used only for the purpose of evaluating the fitness of applicants for the following types of licenses from the town:~~

Canvassers	Sexually Oriented Business Owners/Employees
Transient Merchants	Peddlers
Solicitors	Escort Service Owners/Employees
Auctioneers	Pawn Shop Owners/Employees
Second Hand Dealers	

§ 110.03 BUSINESS LICENSE APPLICATION

Application for a business license shall be made on forms furnished by the Town Clerk. All applications shall include the following:

- (A) A completed business license application
- (B) The application fee as may be set by the Town Council
- (C) An affidavit of the applicant stating under oath that the applicant has reviewed the employment records for the business and that all employees currently working in the business's Payson location are United States citizens, permanent resident aliens, or persons otherwise lawfully in the United States. For the purpose of this subsection, the term 'employee' shall mean all persons for which the employer is required to fill out an I 9 form pursuant to Federal Law.
- (D) Proof that the applicant is currently licensed if the profession engaged in by the applicant is required to be licensed by Title 4 or Title 32 of the Arizona Revised Statutes or Rule 31 of the Rules of the Arizona Supreme Court.
- (E) Proof that the applicant is in compliance with Chapter 6 of Title 23 of the Arizona Revised Statutes (Workers' Compensation).

§ 110.034 ISSUANCE OF LICENSE.

(A) Upon receipt of a complete application, the Town Clerk shall prepare and issue a business licenses under this chapter for every person, firm, company or corporation required to procure a license hereunder, and to which shall state in each license the fee thereof, the period of time covered, the name of the person, firm, company, or corporation or other entity for whom issued, the business, game or amusement, calling, profession or occupation licensed, and the location(s) or place(s) of business where the business, game or amusement, calling, profession or occupation is to be carried on.

(B) The license shall be issued in the name of the applicant, ~~and if the business operates under another name~~, the letters “dba” (doing business as), followed by the name of the business, unless the license is issued to a corporation, limited liability company or similar entity, which license shall be in the name of the corporation, limited liability company or similar entity.

~~—(C) Application for a business license shall be made on forms furnished by the Town Clerk. Every application shall be accompanied by an application fee, as provided hereinafter. In the event no license is issued, the application fee shall not be returned to the applicant but shall be applied to cover part of the cost of processing the application. The Office of the Town Clerk shall be responsible for the acceptance and processing of all applications.~~

~~§ 110.04 ISSUANCE OF CERTIFICATE OF OCCUPANCY.~~

~~—(A) The following department heads or their designees must approve the certificate of occupancy before issuance:~~

- ~~—(1) Community Development Director~~
- ~~—(2) Fire Chief~~
- ~~—(3) Public Works Director.~~

~~—(B) Where any business, game or amusement, calling, profession or occupation is subjected to a certificate of health or sanitary examination by the county, the applicant must produce a certificate or permit from the Gila County Health Department evidencing compliance with county health and sanitary regulations before a certificate of occupancy will be issued.~~

~~—(C) The Town Building Department shall issue the certificate of occupancy pursuant to the then adopted version of the *Uniform Building Code* and the fees established therein.~~

§ 110.05 PAYMENT OF LICENSE FEES, EXPIRATION, AND RENEWAL.

(A) All business license fees shall be paid at the office of the Town Clerk or in such a manner as may be specified by the Town Clerk. The licenses shall expire on the last day respectively of March, June, September and December of each year, as determined by the Town Clerk. ~~License renewal fees shall be paid before expiration of the previous license. The Town Clerk may require reapplication before renewal, if the Town Clerk determines that there has been a substantial change in the business.~~

(B) Any business subject to licensing under this chapter, which fails to pay its license fee within the time period specified in division (A) of this section, shall, in addition to any other penalties imposed for violating the Town Code, be subject to a late penalty fee ~~of \$10~~ in addition to the regular business license fee due and payable.

(C) The purpose of the license fee is to help offset the costs incurred by the town in processing the application for a license and for the inspection by the department heads or their designees of the premises. The amount of the license fee shall be established from time to time by resolution of the Town Council.

(D) A licensee seeking renewal of its license shall comply with all of the requirements of Section 110.03. If the Town Clerk determines that there has not been a substantial change in the business, a new application shall not be required if all other fees and documentation are provided.

§ 110.06 POSTING OF LICENSE AND ADVERTISING REQUIREMENTS.

(A) Every person, firm, company or corporation having a business license and certificate of occupancy under the provisions of this chapter, and carrying on a business, game or amusement, calling, profession or occupation at a fixed place of business, shall keep a license and certificate of occupancy posted and exhibited, while in force, in some conspicuous part of the place of business. Every person having a business license and not having a fixed place of business shall carry a license with him or her at all times while carrying on that business, game or amusement, calling, profession or occupation for which the license was issued. Every person, firm, company or corporation having a business license and/or certificate of occupancy under the provisions of this chapter shall produce and exhibit the same, whenever requested to do so by the Community Development Director or the Director's designee, any police officer of the town or any department head or authorized representative of any department head, who is required to approve the issuance of a license or certificate.

(B) Every person, firm, entity, company or corporation having a business license shall include the business license number in all its advertising, including, but not limited to print, radio, television, mailers, and with any logos, names or other decals or identifying marks placed on vehicles. Any non-vehicular signage regulated by the Unified Development Code shall be exempt from the provisions of this subsection.

§ 110.07 CERTIFICATE OF OCCUPANCY.

(A) It is unlawful for any person to carry on any business, game or amusement, calling, profession or occupation in any structure within the municipal limits of the town without having first procured a certificate of occupancy from the town.

(B) The following department heads or their designees must approve the certificate of occupancy before issuance:

- (1) Community Development Director
- (2) Fire Chief
- (3) Public Works Director.

(C) Where any business, game or amusement, calling, profession or occupation is subjected to a certificate of health or sanitary examination by the county, the applicant must produce a certificate or permit from the Gila County Health Department evidencing compliance with county health and sanitary regulations before a certificate of occupancy will be issued.

(D) The Town Building Department shall issue the certificate of occupancy pursuant to the version of the Building Code then adopted and used by the Town and the fees established therein.

§ 110.078 ENFORCEMENT AUTHORITY.

(A) The Police Chief, the Community Development Director, the Zoning Administrator, the Town Building Official, or any of their designees ~~The Community Development Director, the Director's designees and the Zoning Enforcement Officer~~ shall have the power to issue citations and cause complaints to be filed against persons violating the provisions of this chapter.

(B) The aforementioned persons shall have the power to enter free of charge at any reasonable time any place of business for which a business license is required by this chapter. The person shall have the right to inspect for compliance with the regulations regarding the particular license, and to demand the exhibition of the license for the current term from any person engaged or employed in the transaction of any business. If any person fails to exhibit a license, failure shall constitute a violation of this chapter.

~~— (C) The Building Department shall have enforcement authority in regard to certificates of occupancy pursuant to the then adopted version of the *Uniform Building Code*.~~

§ 110.089 TRANSFER OF LICENSE AND CERTIFICATE OF OCCUPANCY.

No business license or certificate of occupancy granted or issued under any of the provisions of this chapter shall be in any manner assignable or transferable to anyone other than is therein mentioned or named to do business. No license or certificate shall authorize any other business than is therein mentioned or named to be done or transacted, nor authorize any business to be conducted at any place except as is therein mentioned or named, without first obtaining authorization from the appropriate department heads upon application to the Town Clerk.

§ 110.109 EXEMPTIONS.

(A) No business license shall be required for the following:

(1) The practice, transaction or carrying on of any business, game or amusement, calling, profession or occupation which is solely engaged in delivery.

(2) ~~By an Any~~ agency or department of the United States Government or the State of Arizona not subject to ~~for which the government has failed to make provisions allowing states and municipal taxation municipalities to so tax.~~

(3) Hospitals, whether or not operated for profit.

- (4) Physicians, surgeons or nurses not engaged in private practice.
- (5) ~~Residential~~ Rental units of three or less, ~~if in a non-commercial zoning district.~~
- (6) Sellers of agricultural produce grown within the town by the seller.
- (7) Religious, charitable or other non-profit organizations, institutions or associations.
- (8) Any hobby or crafts sales in which the seller is the creator or a non-paid representative of the creator and for which the gross sales of each hobbyist and craftsmen shall not exceed \$3,000 in any 12-month period of time.
- (9) Employees of any business, game or amusement, calling, profession or occupation either possessing a business license or exempt from having to possess a business license.

~~(B) No certificate of occupancy shall be required for the following:~~

~~(1) Any business, game or amusement, calling, profession or occupation physically located outside the municipal limits of the town:~~

~~(2) Any business, game or amusement, calling, profession or occupation doing business within the municipal limits of the town without a fixed place of business:~~

§ 110.110 NOTICE OF TERMINATION OF BUSINESS REQUIRED.

Every licensee shall notify the Town Clerk in writing of the termination of his or her business, game or amusement, calling, profession or occupation, either before the termination date or within ten days thereafter.

§ 110.12+ NON COMPLIANCE; REMEDIES; REVOCATION OF LICENSE FOR VIOLATION.

~~A person, firm, company or corporation may be denied a business license, or if the person, firm, company or corporation currently possesses a business license it may be revoked, for any of the following causes:~~

A business license may be revoked or denied for knowingly:

(A) Committing any fraud or Fraud; misrepresentation or making a false statement contained in the application or other documents required to accompany the application for the business license.

(B) Committing any fraud or Fraud; misrepresentation or false statement made in the course of carrying on the business.

(C) Violating Any violation of this chapter.

(D) ~~Being convicted~~ Conviction of any felony or misdemeanor involving moral turpitude.

(E) Conducting business in violation of any town ordinance, county ordinance or state law relating to the public health, safety and welfare.

(F) Failing to maintain a license if the profession engaged in by the business is required to be licensed by Title 4 or Title 32 of the Arizona Revised Statutes or Rule 31 of the Rules of the Arizona Supreme Court.

(G) Failing to comply with Chapter 6 of Title 23 of the Arizona Revised Statutes as may be amended from time to time (Workers' Compensation).

(H) Employing any person who is not a United States citizen, permanent resident alien, or otherwise lawfully in the United States.

(I) After the effective date of this Ordinance, renting to any person who is not a United States citizen, permanent resident alien, or otherwise lawfully in the United States.

§ 110.132 APPEAL; NOTICE AND HEARING.

Any person, firm, company or corporation aggrieved by the denial of an application for a business license, and any person, firm, company or corporation whose business license has been revoked, shall have the right of appeal to the Town Manager. The appeal shall be taken by filing with the Town Clerk, within 14 calendar days after denial, a written statement setting forth fully the grounds for the appeal. The Town Manager shall set a time and a place for hearing of the appeal, and notice of the hearing shall be given to the appellant at least 10 calendar days prior to the date set for the hearing. The mailing of the notice to the address on the business license application shall constitute proper notice to the licensee. The decision of the Town Manager on the appeal shall be final.

§ 110.99 PENALTY.

(A) Any person, firm, company or corporation convicted of violating any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor, and shall be subject to revocation of the entity's business license and to punishment as provided in § 10.99 of this code.

(B) Each separate day or part thereof during which any violation of this chapter occurs or continues shall constitute a separate offense, and upon conviction thereof shall be punishable as herein provided.

(C) In addition to any other penalties, a person, firm, company, or corporation convicted of violating any of the provisions of this chapter shall be assessed all costs and expenses related to the investigation and prosecution of such violation.