

COUNCIL DECISION REQUEST

SUBJECT: Town Business License Paragraph in Agreements with Governmental Agencies

MEETING DATE: August 19, 2010

PAYSON GOAL: NEW: EXISTING:

ITEM NO.:

TENTATIVE SCHEDULE:

SUBMITTED BY: Legal Department

AMOUNT BUDGETED:

SUBMITTAL TO AGENDA

EXPENDITURE REQUIRED:

APPROVED BY TOWN MANAGER

CONT. FUNDING REQUIRED:



EXHIBITS (If Applicable, To Be Attached):

**Paragraphs 13 and 14 of Standard Town Contract/Agreement
Section 110.03 Business License Applications (of the Town Code)**

POSSIBLE MOTION: I move to direct Town Staff to discontinue the use of standard paragraph 13 in contracts and agreements with other governmental entities.

SUMMARY OF THE BASIS FOR POSSIBLE MOTION:

In April of 2007, the Town Council amended the Town's business license provisions requiring all business license applications to include (1) an affidavit that all employees of the business were in the United States legally, (2) proof that the business had all required state licenses, and (3) that the business was in compliance with the worker's compensation statutes. At a subsequent Council Meeting, staff presented a contract to the Council for approval. During the discussions of the contract, Council asked why there was not an explicit provision in the contract related to the requirements of the recently adopted business license requirements. In response to the Council's inquiry, Staff has included paragraph 13 (Town Business License) or a similar paragraph in all subsequent contracts when possible. See attached paragraph 13.

Since 2007, the State has passed numerous laws related to undocumented workers and business and local government's responsibility to such workers. One such law is codified as A.R.S. 41-4401 and requires the Town to include what has become paragraph 14 (Authorized Presence Requirements/Government Procurement) in the Town's contracts and agreements. See attached paragraph 14.

Recently, the Fire Department was working on an agreement with Central Arizona College and the College asked if paragraph 13 could be eliminated from the agreement. Given the change in State Law and the inclusion of paragraph 14, staff now believes that paragraph 13 is no longer needed in the context of contracts and agreements with other governmental agencies. Because the Council originally requested that the provisions of paragraph 13 be included in all contracts and agreements, staff believes Council direction is needed before eliminating paragraph 13 in contracts and agreements with governmental entities.

PROS: _____

AUG 19 2010 I.1*

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CONS:

PUBLIC INPUT (if any):

BOARD/COMMITTEE/COMMISSION ACTIONS/RECOMMENDATIONS (if any) (give dates and attach minutes):

FUNDING:

Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:
Acct:	Budget:	Available:	Expense:	Remaining:

3A: _____ Date: _____

13. **Town Business License.** The Contractor shall provide the Town with a copy of its Town business license. If the Contractor is exempt from the Town's business licensing requirements, it shall still provide the Town with the items required under Section 110.03(C)-(D) of the Town Code.

14. **Authorized Presence Requirements/Government Procurement (A.R.S. §41-4401).**
 - 14.1 Contractor and any Subcontractor employed by Contractor warrants their compliance with all Federal immigration laws and regulations that relate to their employees and with Arizona Revised Statutes Section 23-214(A).

 - 14.2 A breach of the warranty under Section 14.1 above shall be deemed a material breach of this Contract and shall be subject to penalties up to and including termination of the Contract.

 - 14.3 The Town retains the legal right to inspect the papers of the Contractor or Subcontractor who works on this Contract to ensure that the Contractor and Subcontractor is complying with Section 14.1.

§ 110.03 BUSINESS LICENSE APPLICATION.

Application for a business license shall be made on forms furnished by the Town Business License 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 division, the term 'employee' shall mean all persons for whom 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 A.R.S. Title 4 or Title 32 or Rule 31 of the Rules of the Arizona Supreme Court.

(E) Proof that the applicant is in compliance with A.R.S. Title 23, Chapter 6 (Workers' Compensation).

(*82 Code, 8-1-4) (Am. Ord. 550, passed 10-14-99; Am. Res. 2248A, passed 4-5-07; Am. Ord. 709A, passed 4-5-07; Am. Ord. 738, passed 7-17-08) Penalty, see 110.99