

ORDINANCE NO. 709

AN ORDINANCE 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 ADOPTING SUCH AMENDMENTS BY REFERENCE.

WHEREAS, the Town of Payson is authorized by A.R.S. §9-240(18) and (19) to regulate, tax, and license persons, firms, corporations, or associations doing business within the Town; and

WHEREAS, Chapter 110 of the Code of the Town of Payson provides for the licensing and regulation of business operations within the Town of Payson; and

WHEREAS, the Town of Payson desires to protect its citizens and workforce by requiring all persons, firms, corporations, or associations doing business within the Town to follow all Federal, State and Local laws and ordinances; and

WHEREAS, the Town of Payson has found that the adoption of this Ordinance Number 709 is necessary and appropriate to provide for and promote the health, safety, and welfare of the citizens of the Town of Payson and is a lawful exercise of police power vested in the Town; and

WHEREAS, an amendment to Chapter 110 of the Code of the Town of Payson was declared to be a public record by Resolution 2248; and

WHEREAS, it is the desire of the Mayor and Common Council to amend the Code of the Town of Payson by amending Chapter 110 by reference pursuant to A.R.S. § 9-802,

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

- Section 1. That the amendment to Chapter 110 (Business Licensing) of the Code of the Town of Payson set forth in Resolution 2248 was heretofore declared to be a public record by such Resolution, and all the provisions thereof are hereby referred to and added to the Code of the Town of Payson and adopted by this reference as though all the provisions thereof were set forth in full in this Ordinance Number 709.
- Section 2. That at least three copies of the amendment to Chapter 110 of the Code of the Town of Payson, as adopted by this Ordinance Number 709 shall be filed in the Office of the Town Clerk of the Town of Payson and the same shall be maintained and kept available for public use and inspection.
- Section 3. All violations of Chapter 110 of the Code of the Town of Payson shall be punishable as set forth in Section 110.99 as set forth below:

§ 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.

Section 4. Section 10.99 (General Penalty) of the Code of the Town of Payson is hereby amended, and as amended shall read as follows:

§ 10.99 GENERAL PENALTY.

(A) Any person found guilty of violating any provision of this Code shall be guilty of a class one misdemeanor, and upon conviction thereof shall be punished in the same manner as is provided for the punishment for class one misdemeanors in A.R.S. Title 13, Chapters 7, 8 and 9, as amended from time to time, and as currently providing for a fine of not more than \$2,500 for individuals and not more than \$20,000 for firms, entities, companies, corporations, or businesses and by imprisonment for not more than six months or by probation for not more than three years, or by any combination or all of such fine, imprisonment and probation. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

(B) Any violation of or failure or refusal to do or perform any act required by Title VII of this code constitutes a civil traffic violation which shall result in a civil penalty not to exceed \$250. In addition, the court shall levy penalty assessments pursuant to A.R.S. §§ 12-116.01 and 12-116.02. Civil traffic violations are subject to the provisions of A.R.S. §§ 28-1591 *et seq.*, as amended.

Section 5. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance Number 709 are hereby repealed to the extent of such conflict.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance Number 709 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 this Ordinance Number 709. The Mayor and Common Council of the Town of Payson declares that it would have adopted this Ordinance Number 709 and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases or portions would 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

MEMORANDUM

TO: Town Council
FROM: Fred Carpenter, Town Manager 
SUBJECT: Business License Amendment/
Enforcement Issues
DATE: February 22, 2007

An ordinance changing some business license requirements is included on the agenda for the March 1 meeting. If adopted, proper enforcement could require considerable staff effort. I recently met with appropriate department heads to develop some recommendations with regard to enforcement staffing.

- One additional full-time staff position may be required. The ideal candidate would be a person with considerable experience in public contact and court procedures, possibly a fully certified police officer;
- The new position would be under supervision of the police department;
- In addition to business license enforcement, the new position would assist the Community Development Department with property clean up, sign code enforcement and abandoned vehicles.

If second reading adoption occurs on March 15, the normally scheduled date, the new ordinance would take effect on April 15. The new position, however, could not be filled prior to July 1 as it is not included in the FY 06/07 budget. As we develop the 07/08 budget, it may be prudent to allow for the new position should the additional workload on existing staff warrant it.

**RESOLUTION NO. 2248 IS
PROVIDED FOR INFORMATION
ONLY
AT THE 3/1/07 COUNCIL MEETING.**

**RESOLUTION NO. 2248 WILL
BE AGENDIZED AS AN ACTION
ITEM WHEN ORDINANCE 709
IS SCHEDULED FOR SECOND
READING.**

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

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 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.

§ 110.121 REVOCATION.

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) Fraud, misrepresentation or false statement contained in the application or other documents required to accompany the application for the business license.

(B) Fraud, misrepresentation or false statement made in the course of carrying on the

business.

(C) Any violation of this chapter.

(D) 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.