

ORDINANCE _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING AND REPLACING IN ITS ENTIRETY MESA CITY CODE TITLE 5, CHAPTER 7 ENTITLED “AUCTIONEERS, PAWNBROKERS, SCRAP METAL DEALERS, AND SECONDHAND DEALERS”.

WHEREAS, Title 5, Chapter 7 of the Mesa City Code entitled “Auctioneers, Pawnbrokers, Scrap Metal Dealers, and Secondhand Dealers” governs the licensing of auctioneers, pawnbrokers, scrap metal dealers, and secondhand dealers in Mesa, Arizona;

WHEREAS, the City Council was made aware of instances of unlawful activity on the part of certain elements of the licensed industry and that the Mesa City Code language governing the regulation of the industry has not been significantly updated since 1995;

WHEREAS, to enhance the professionalism and integrity of the licensed industry and reduce unlawful activities the City Council has determined revising and strengthening the language of Title 5, Chapter 7 of the Mesa City Code; and

WHEREAS, revising and strengthening the language clarifies the rights and responsibilities of licensees while continuing to protect the health, safety and welfare of the public.

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 Mesa City Code Title 5, Chapter 7 entitled “Auctioneers, Pawnbrokers, Scrap Metal Dealers, and Secondhand Dealers” is repealed in its entirety and replaced with the following language:

CHAPTER 7

AUCTIONEERS, PAWNBROKERS, SCRAP METAL DEALERS, AND SECONDHAND DEALERS

SECTION:

- 5-7-1: DEFINITIONS**
- 5-7-2: ADMINISTRATION; LICENSES**
- 5-7-3: LICENSE APPLICATION; FEE**
- 5-7-4: FINGERPRINTING REQUIREMENTS**
- 5-7-5: LICENSE RENEWAL**
- 5-7-6: RECORDKEEPING AND REPORTING REQUIREMENTS; INSPECTIONS**
- 5-7-7: FRUITS OF A CRIME; POLICE HOLD**
- 5-7-8: LICENSE DENIAL, SUSPENSION, OR REVOCATION**
- 5-7-9: APPEALS**
- 5-7-10: EXEMPTIONS**
- 5-7-11: PENALTY**

5-7-1: DEFINITIONS

The terms of this Chapter have the below meanings unless the context otherwise requires. Words used 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. The definitions prescribed in A.R.S. §§ 44-1601, 44-1621, and 44-1641 apply to this Chapter, where applicable, unless a term is specifically defined in this Chapter. All citations to specific statutes in this Chapter shall include the law as amended.

- (1) **APPLICANT:** A person who applies for a license pursuant to this Chapter who, upon approval of the application, will be the licensee.
- (2) **ARTICLE:** A particular item, thing, good, asset or other movable or transferable piece of property.
- (3) **AUCTIONEER:** Any person who is the controlling person operating a business of auctioning articles or offering any articles for sale by public outcry, where such items offered for auction are sold immediately to the highest bidder.
- (4) **BUSINESS DAY:** Any day between and including Monday through Friday.
- (5) **BUSINESS LICENSING ADMINISTRATOR:** The Business Licensing and Revenue Collections Administrator of the City or their designee.
- (6) **BUSINESS SERVICES DIRECTOR:** The Business Services Director of the City or their designee.
- (7) **CITY:** City of Mesa, Arizona.
- (8) **CITY MANAGER:** The City Manager pursuant to Chapter 20 of Title 1 of the Mesa City Code or their designee.
- (9) **CONTROLLING PERSON:** Any individual (natural person) who is any of the following:
 - (a) Stockholder who owns ten percent (10%) or more of a corporation;
 - (b) General partner of a limited partnership or any partner of a non-limited partnership;
 - (c) Managing member of a limited liability company/corporation; or
 - (d) Sole proprietor of a sole proprietorship.
- (10) **DESIGNATED AGENT:** The individual (natural person) designated by the licensee to be the party who receives City notices pursuant to this Chapter. If a licensee is an individual (natural person) the licensee may name themselves as the designated agent.
- (11) **HEARING OFFICER:** The Business Services Department Director or their designee.
- (12) **LICENSE:** A license issued to an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer in accordance with this Chapter.
- (13) **LICENSEE:** Any person to whom the City has issued a license under this Chapter or any person acting on behalf of such person.

- (14) **LICENSING OFFICE:** Business Licensing and Revenue Collections Division of the City under the supervision of the Business Licensing Administrator.
- (15) **PAWNBROKER:** A person engaged in the business of advancing money on the security of pledged goods or engaged in the business of purchasing tangible personal property on the condition that it may be redeemed or repurchased by the seller for a fixed or variable price within a fixed or variable period of time.
- (16) **PERSON:** Any corporation, company, partnership, firm, association, organization, joint venture, business entity, trust, proprietor, agent, or society, as well as an individual (natural person).
- (17) **POLICE DEPARTMENT:** The Police Department for the City pursuant to Title 3, Chapter 1 of the Mesa City Code.
- (18) **SCHEDULE OF FEES AND CHARGES:** The current City schedule of fees and charges as approved by the City Council.
- (19) **SCRAP METAL DEALER:** Each person (except “automotive recyclers” as defined and licensed pursuant to Arizona Revised Statutes Title 28, Chapter 10) whose primary business is the dismantling, selling or disposing of parts or accessories of motor vehicles engaged in the business of purchasing, trading, bartering, or otherwise receiving secondhand or castoff material of any kind which is commonly known as scrap metal. Scrap metal includes insulated and uninsulated metallic cables.
- (20) **SECONDHAND:** Any new or used property (article) that has been sold, traded, exchanged, consigned or otherwise disposed of by the original owner. The definition of secondhand includes, but is not limited to: (i) old stamps; (ii) old coins and money; (iii) “precious item” as defined in A.R.S. § 44-1601; and (iv) used automotive components when purchased by a “used automotive components dealer” as that term is defined in A.R.S. § 44-1321. The definition of secondhand does not include “numismatic coin” as defined in A.R.S. § 44-1801.
- (21) **SECONDHAND DEALER:** Any person engaged in conducting, managing, facilitating, or carrying on the business of buying, selling, trading, exchanging, receiving on consignment, or otherwise dealing in any of the following secondhand items: goods, wares, merchandise, or articles. This definition applies whether such business is the principal or sole business carried on, managed, or conducted or is merely incidental to or in connection with a branch or department of some other business.
- (22) **STATE:** State of Arizona.

5-7-2: ADMINISTRATION; LICENSES

- (A) It is the duty and responsibility of the Business Licensing Administrator to administer the provisions of this Chapter. Pursuant to this duty, the Business Licensing Administrator will issue, renew, deny, suspend, or revoke auctioneers, pawnbrokers, scrap metal dealers, and secondhand dealer licenses in accordance with this Chapter.
- (B) Any party aggrieved by a decision of the Business Licensing Administrator under this Chapter may appeal within ten (10) calendar days of issuance of the decision. The appeal must meet the requirements set forth in Section 5-7-9.

- (C) Any person who operates a business in the City as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must obtain a license from the Licensing Office as provided in this Chapter. A person who operates as an antiques dealer is a secondhand dealer under this Chapter. Antiques dealers will be issued a license governed by the requirements of this Chapter pertaining to secondhand dealers; however, the title on the license will be that of “Antiques Dealer.” For the purposes of this Subsection (C), an “antiques dealer” means a person who is primarily engaged in the business of buying and selling items collected or desirable due to age, rarity, condition or some other unique feature.
- (D) A person must obtain a separate license for each location in the City where they operate as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, except a separate license is not required for each location for firearms transactions by a pawnbroker acting as a federally licensed firearms dealer at an organized gun show in accordance with A.R.S. § 44-1627.
- (E) All licenses will be issued for a period of one (1) year. Licenses cannot be sold or transferred.
- (F) A licensee must display its license in a conspicuous place at the business location.
- (G) A licensee must at all times be in compliance with local, state, and federal law applicable to the licensed activity which could include, but is not limited to, the laws set forth in Arizona Revised Statutes Title 44. If the language of this Chapter is preempted and conflicts with the language of state law, then the state law will control.

5-7-3: LICENSE APPLICATION; FEE

- (A) Any person desiring to obtain an auctioneer, pawnbroker, scrap metal dealer or secondhand dealer license must apply to the Licensing Office. An applicant for a license must present to the Licensing Office the completed application, containing all information requested on the application and corresponding documents, along with the required application fee and fingerprint records. The application fee is non-refundable unless otherwise required by law.
- (B) Following receipt from the applicant of a complete application, fingerprints, and application fee as set forth in the Schedule of Fees and Charges, the Licensing Office will refer the application to the Police Department for investigation and criminal record review in accordance with this Chapter.
- (C) The Licensing Office will grant a license to an applicant unless it determines that the application is subject to denial in accordance with Section 5-7-8.
- (D) Upon approval, and prior to the issuance of a license, the applicant must: (i) pay a first-year license fee in accordance with the Schedule of Fees and Charges, and (ii) provide the Licensing Office with a designated agent if that person was not named in the application.
- (E) A person must apply for a license on forms furnished or approved by the City. The forms will include requests for information deemed necessary by the City consistent with the requirements of this Chapter and applicable law.

5-7-4: FINGERPRINTING REQUIREMENTS

- (A) Each person applying for a license must submit a full set of fingerprints to the City in a manner approved by the Licensing Office, including fingerprints for all controlling persons of the applicant. The fingerprints will be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with

the Federal Bureau of Investigation.

- (B) The Police Department, on behalf of the Licensing Office, will receive and review the criminal history record information resulting from the criminal records check set forth above, including conviction and non-conviction data of license applicants and controlling persons, for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension or revocation of a license. Such information will be used only for the purpose of such evaluation or for the purpose of supporting and defending a denial, non-renewal, suspension, or revocation of a license.
- (C) The Police Department will have a reasonable time within which to investigate the application and background of the applicant and controlling persons. Based on such investigation, the Police Department will recommend to the Licensing Office approval or denial of the license.

5-7-5: LICENSE RENEWAL

- (A) A license, unless revoked, may be renewed by a licensee and such renewal will be valid for a term of one (1) year. The completed renewal application must be submitted by the licensee no later than forty-five (45) calendar days prior to the expiration of the license along with the applicable renewal fee in the Schedule of Fees and Charges. The Licensing Office is authorized to obtain necessary information to update the original license application and to determine whether the license should be renewed in accordance with the requirements of this Chapter.
- (B) If a licensee fails to submit a complete renewal application and renewal fee at least forty-five (45) calendar days prior to the expiration of the term of the license, the license will expire at the end of the term of the license and will be deemed non-renewable. Licensees who fail to renew their license, but who wish to continue operating as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, must file a new application for a license pursuant to Section 5-7-3 and may not operate as an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer in the City until a new license is issued.
- (C) An application for renewal of a license may be denied based on the standards set forth in Section 5-7-8.

5-7-6: RECORDKEEPING AND REPORTING REQUIREMENTS; INSPECTIONS

- (A) Pawnbrokers. Pawnbrokers must file a true, complete and accurate report with the Police Department of each article the pawnbroker receives subject to the reporting requirements set forth in Arizona Revised Statutes Title 44, Chapter 11, Article 3.
 - (1) Reports filed with the Police Department will be consistent with the requirements contained in A.R.S. § 44-1625. Reports will be filed on forms approved by the Police Department. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The pawnbroker must collect a fingerprint from the right index finger of the pledgor or seller as required on the approved forms. The pawnbroker must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges.
 - (2) No article will be sold or exchanged by any pawnbroker until it has been in the custody of the pawnbroker for twenty (20) calendar days after the transaction date. Any article held in custody pursuant to this Subsection (A)(2) must not be altered or transformed in any way, but must be held in the same condition in which it was delivered to the

pawnbroker. This Subsection (A)(2) does not apply to the redemption of pawned or pledged articles.

(B) Secondhand Dealers.

(1) Reportable Transactions and Records.

- (a) Secondhand dealers must file a true, complete and accurate report with the Police Department of each article the secondhand dealer receives on deposit, consignment, trade, exchange, or purchase that meets any of the following requirements (hereafter “Reportable Transaction”):
 - (i) Bears a serial number;
 - (ii) Bears an owner applied number (O.A.N.);
 - (iii) Has a fair market value in excess of one hundred dollars (\$100.00);
 - (iv) Any item that meets the definition of a “precious item” as that term is defined in A.R.S. § 44-1601; or
 - (v) Any coin fabricated from a metal meeting the definition of a “precious item” as set forth in A.R.S. § 44-1601 and that does not meet the definition of “numismatic coin” as that term is defined in A.R.S. § 44-1801.
- (b) Reports must be filed on forms approved by the Police Department within two (2) business days of the Reportable Transaction. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The secondhand dealer must collect a fingerprint of the right index finger of the pledgor or seller of an article in a Reportable Transaction as required on the approved forms and verify the identity of the seller as required by A.R.S. § 44-1602. The secondhand dealer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges.
- (c) A secondhand dealer will retain in its custody any article obtained in a Reportable Transaction at its place of business or other storage location approved by the Police Department for a period of twenty (20) calendar days after filing a completed report form with the Police Department. Any article held in custody must not be altered or transformed in any way, but will be held in the same condition in which it was delivered to the secondhand dealer.
- (d) The provisions of Subsection 5-7-6(B)(1) do not apply to any of the following:
 - (i) Purchases by a secondhand dealer from a business with a fixed business location of either business inventory or business equipment, provided the secondhand dealer acquires, by the time of the transaction, the secondhand dealer has documentation of:
 - (A) The name and address of the business;
 - (B) The state and local privilege (sales) tax license number of the

business, if applicable; and

- (C) A copy of the invoice or other document showing the business's bona fide purchase of or right to possess the articles sold to the secondhand dealer and, where applicable, a copy of a completed report required by Subsection 5-7-6(B)(1) filed with the Police Department by the business.
 - (ii) Secondhand dealer purchases of household items from a place of residence provided all the below requirements are met.
 - (A) The purchase is made by the secondhand dealer by check or other negotiable instrument made payable to the seller, or the purchase is made in cash and the secondhand dealer has obtained a receipt for that cash payment from the seller bearing the seller's name and address verified to be accurate by the secondhand dealer.
 - (B) The seller produced for the secondhand dealer's inspection documentation establishing the seller is either the lawful occupant of the premises from which the household items are being sold or the seller has the legal right to sell the items offered for sale. The secondhand dealer must either retain a copy of the documentation produced or record from the documentation a description of the document, including the name or nature of the document, and, to the extent available, its date, the seller's name and address thereon, and any account number.
 - (iii) Consignments to secondhand dealers, other than a firearm, provided that no payment is made by the secondhand dealer to the consignor for a period of ten (10) calendar days after the date of consignment.
 - (iv) Articles received by a secondhand dealer in trade, exchange, or by purchase which are: (1) used clothing or furniture; (2) from a business engaged in the lawful liquidation of its business; or (3) from an auctioneer or pawnbroker possessing a valid license.
 - (e) All documentation required to substantiate any of the exclusions set forth in Subsection (d) above must be retained on the business premises of the secondhand dealer for a period of twenty-four (24) months from the day the article is acquired by the secondhand dealer.
- (2) Dealers of Precious Items.
- (a) In addition to the requirements set forth in Subsection 5-7-6(B)(1) above, secondhand dealers who deal in "precious item[s]" as defined in A.R.S. § 44-1601 must maintain the records, file the reports and meet all requirements of Arizona Revised Statutes Title 44, Chapter 11, Article 1.
 - (b) Reports filed with the Police Department will be consistent with the requirements contained in A.R.S. § 44-1602. Reports will be filed on forms approved by the Police Department. The secondhand dealer must collect a fingerprint of the right index finger of the seller of a precious item as required on the approved forms. The secondhand dealer must purchase the transaction report forms in a manner

required by the City at the rate set forth in the Schedule of Fees and Charges. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction.

(3) Used Automotive Components Dealer.

“Used automotive component dealers”, as that term is defined in A.R.S. § 44-1321, must maintain the records and file the reports set forth in Arizona Revised Statutes Title 44, Chapter 9, Article 9.

- (C) Auctioneers. Auctioneers must file a true, complete and accurate report with the Police Department of all articles received by the auctioneer except for clothing, books, records, compact discs, and audio tapes. Reports will be made on forms approved by the Police Department. The form will contain a statement in which the seller will be required to attest to the accuracy of the information contained in the report and the authority to enter into the transaction. The auctioneer must collect a fingerprint of the seller of the article as required on the approved forms. The auctioneer must purchase the transaction report forms in a manner required by the City at the rate set forth in the Schedule of Fees and Charges. The reports must be delivered or postmarked within twenty-four (24) hours after receipt of the article. An auctioneer will describe the article using either of the following methods:
- (1) By attaching a legible copy of the auctioneer's consignment agreement, purchase receipt, purchase invoice, or other similar document containing a description of the article; or
 - (2) For groups of articles that are received as part of one business transaction that are not readily distinguishable or identifiable as individual items, by furnishing on one (1) report a general description of the group of articles.
- (D) Scrap Metal Dealers. Scrap metal dealers must file a true, complete and accurate record within twenty-four (24) hours of receipt of scrap metal in accordance with Arizona Revised Statutes Title 44, Chapter 11, Article 3.1.
- (E) If a licensee comes into possession of abandoned property, the licensee must turn over such property to the Police Department who will hold the property in accordance with Police Department policy. For this Subsection (E), “abandoned property” is defined as property that was voluntarily discarded, left behind or otherwise intentionally relinquished by the owner.
- (F) It will not be considered a violation of Section 5-7-6 if the violation is the result of a bona fide error, provided the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer maintains procedures reasonably adapted to avoid the occurrence of such bona fide error. For the purpose of this Subsection (F), bona fide error means clerical, calculation, computer malfunction, programming, printing, and other similar errors.
- (G) Inspections. The business premises of any licensee, along with their transaction records and stock of goods (articles) will be open to reasonable inspection by any peace officer of any governmental unit within or of this state when the business premises are open during regular business hours. Each licensee must maintain a current copy of this Chapter on the premises and will make it available upon request to any employee, customer, and law enforcement.
- (H) All auctioneers, pawnbrokers, scrap metal dealers, and secondhand dealers must maintain at their place of business a copy of any reports or transaction records required under this Chapter or applicable law for a period of at least two (2) years after the date the transaction occurred.

5-7-7: FRUITS OF A CRIME; POLICE HOLD

- (A) Upon notification by any peace officer that the peace officer has probable cause to believe property received on deposit or consignment, in pawn, pledge, trade, exchange, or purchase are the fruits of a crime, the peace officer may place a Police Hold (as defined herein) on such article and no auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer will dispose of such article (sell, trade, return to consignor, or otherwise relinquish possession of) until notified by the law enforcement agency of which the peace officer placing the hold is a member.
- (B) A peace officer may place a hold on property requiring an article not to be disposed of in any manner (hereafter “Police Hold”). A Police Hold must be requested with a written notice; however, an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer will honor a Police Hold made in person, via telephone, or by other reasonable means of communication for five (5) business days after which time the Police Hold will no longer be valid unless written notice is received continuing the Police Hold during the five (5) business day period. A written notice for a Police Hold will include all the following information:
 - (1) The date the Police Hold;
 - (2) A description of the property, including serial number if applicable;
 - (3) The name and, if applicable, badge number of the peace officer requesting the Police Hold;
 - (4) The telephone number of the peace officer requesting the Police Hold; and
 - (5) The law enforcement agency’s report number.
- (C) If a peace officer declares a Police Hold on any article, the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must attach a tag supplied by the Police Department to the article. The tag will include the information required on the written notice of the Police Hold as set forth in Subsection (B) above. The tag must remain on the article until the law enforcement agency releases the Police Hold or until the Police Hold expires pursuant to Subsection (D) below.
- (D) A Police Hold will expire ninety (90) calendar days after the date of the Police Hold. For the purpose of criminal investigation or for use in any judicial proceeding, a Police Hold may be extended by the law enforcement agency in ninety (90) day increments by written notification to the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer if the notification is received prior to the expiration of the Police Hold.
- (E) Interest upon articles pawned or pledged will cease to accrue during a Police Hold.
- (F) Upon receiving a receipt from any peace officer, the auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer must turn over articles on a Police Hold to the peace officer.

5-7-8: LICENSE DENIAL, SUSPENSION, OR REVOCATION

- (A) In addition to any penalties set forth in this Chapter, an application for a license may be denied for any of the following reasons:
 - (1) Police Department recommends denial of an application based upon applicant’s failure to meet the requirements set forth in this Chapter or applicable state law.
 - (2) Applicant or a controlling person was convicted within the ten (10) year period

immediately preceding the date of application of any of the following:

- (a) a felony or misdemeanor offense having a reasonable relationship to the functions of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer, as applicable;
 - (b) a felony offense involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud; or
 - (c) a felony or misdemeanor offense of a crime involving moral turpitude.
 - (3) Applicant failed to pay the application processing fee or, upon approval of the license, failed to pay the applicable license fee.
 - (4) Applicant or a controlling person has an outstanding warrant for his or her arrest.
 - (5) Application contained false statements or material misrepresentations.
 - (6) Applicant failed to provide all the information and documentation required for the application.
 - (7) Applicant or a controlling person is currently in violation of any provision of this Chapter.
 - (8) Applicant currently owes a debt to the City and therefore cannot be issued a license as set forth in Mesa City Code Title 1, Chapter 32.
 - (9) Applicant failed to meet a requirement set forth in this Chapter or state law for the issuance of a license by the City.
 - (10) Applicant, within the one (1) year period immediately preceding the date of application, had an application for a license denied or had a license revoked.
- (B) In addition to any penalties set forth in this Chapter, an application for renewal of a license may be denied for any of the following reasons:
- (1) Applicant failed to submit the renewal application within the required time frame or pay the applicable fee.
 - (2) For any reason set forth in Subsection (A) above except a renewal license may be issued if the licensee or controlling person has any felony or misdemeanor charge of the type set forth in Subsection (A) pending in a trial court (defined as a court of original jurisdiction where the evidence is first received and considered); however, the issuance of such renewal license will not prevent the City from taking any action prescribed in this Chapter against the licensee should the licensee or controlling person be convicted of the pending charge including, but not limited to, suspension or revocation of the license.
- (C) In addition to any penalties set forth in this Chapter, a license will be suspended if during the term of the license:
- (1) Licensee or a controlling person for the licensee is convicted of a criminal offense:
 - (a) Having a reasonable relationship to the functions of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer;

- (b) Involving trafficking in stolen property, fraudulent schemes, forgery, theft, extortion or conspiracy to defraud; or
 - (c) A crime involving moral turpitude.
- (2) The application upon which the license was awarded was found to contain false statements or material misrepresentations, or the licensee failed to meet any of the requirements for the issuance of a license.
- (3) Licensee or a controlling person for the licensee knows or should have known that trafficking in stolen property is occurring or has occurred in the operation of the licensed establishment.
- (4) The licensee ceased to use the license for purposes of the business of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer. The failure of a licensee to operate in the business of an auctioneer, pawnbroker, scrap metal dealer, or secondhand dealer under the license for thirty (30) consecutive calendar days will create a rebuttable presumption the licensee has ceased to use the license.
- (5) If on two (2) or more occasions within an eighteen (18) month period, the licensee or an employee, agent or representative of the licensee, while in the conduct of business at the licensed establishment, commits a criminal offense of the type set forth in Subsection 5-7-8(C)(1). For the purposes of this Subsection (C)(5):
 - (a) a person will be deemed to have committed an offense upon conviction;
 - (b) in applying the eighteen (18) month provision, the date of the commission of the offense will be the determining factor; and
 - (c) the two (2) or more offenses subjecting the license to suspension do not have to be committed by the same person and do not have to be violations of the same statute or ordinance so long as they are offenses of the type listed in Subsection 5-7-8(C)(1).
- (6) The penalty for a suspension under Subsection (C) will be:
 - (a) For the first suspension of a license during an eighteen (18) month period, licensee will pay a fine of \$250 and the license will be suspended up to fourteen (14) calendar days.
 - (b) For the second suspension of a license during an eighteen (18) month period, licensee will pay a fine of \$500 and the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days.
 - (c) For the third suspension of a license during an eighteen (18) month period, the license will be revoked.
- (D) In applying the eighteen (18) month period provision of Subsection 5-7-8(C)(6) the date the decision was issued by the Business Licensing Administrator for the first of the three (3) suspensions will constitute the beginning of the eighteen (18) month period.

5-7-9: APPEALS

- (A) Any party aggrieved by a decision of the Business Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Business Services Director; the failure of an appeal to meet the requirements of this Subsection will entitle the Business Services Director to deny the appeal without further review.
- (B) If an appeal meets the requirements of Subsection (A), the Business Services Director will schedule a hearing with a Hearing Officer within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Subsection (A) will suspend the decision of the Business Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Business Licensing Administrator, if upheld by the Hearing Officer, will be reinstituted and dated as of the original date the decision was issued by the Business Licensing Administrator; however, if the decision pertained to a period of suspension and such period of time has already passed, in whole or in part, the Hearing Officer may designate the period of suspension in accordance with this Chapter.
- (C) All proceedings before a Hearing Officer will be informal and without a jury, except that testimony will be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. No prehearing discovery will be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the case at hand.
- (D) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with proper jurisdiction to review the Hearing Officer's decision at any time within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the action within thirty (30) calendar days, or such other time as is agreed upon in writing by the parties to the hearing, will constitute a waiver of any right to judicial review of the Hearing Officer's decision.
- (E) The decision of the Business Licensing Administrator, if not appealed, will be the City's final determination on a matter pursuant to this Chapter. If the decision of the Business Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer will be the City's final decision on the matter unless appealed in accordance with this Chapter.

5-7-10: EXEMPTIONS

The requirements of this Chapter do not apply to any of the following:

- (1) Any person who deals exclusively with clothing, phonograph records, books, audio cassette tapes, videotapes, compact discs, or digital video discs.
- (2) Any person who deals exclusively in titled vehicles or titled articles, the transfer of title to which is governed by the laws of the state, must be evidenced by written instrument, and recorded as a public record.
- (3) The operator of any self-service storage facility foreclosing its lien in accordance with A.R.S. § 33-1704. For this Subsection (3), the terms "operator" and "self-service storage facility" have the meanings prescribed in A.R.S. § 33-1701.
- (4) Garage sales, rummage sales, or similar nonrecurring sales between individuals.

- (5) Any organization exempt from federal income tax under Section 501 of the Internal Revenue Code.
- (6) Any business dealing in rent-to-own merchandise where the business is the original owner of the merchandise.
- (7) Any person who deals exclusively in “numismatic coins” as that term is defined in A.R.S. § 44-1801.
- (8) Any operator of an Automated Kiosk who is issued an Automated Kiosk license by the City pursuant to Mesa City Code Title 5, Chapter 22.

5-7-11: PENALTY

Among other penalties that may apply, a person that violates any provision of this Chapter will be guilty of a class one misdemeanor. Upon conviction, an individual (natural person) will be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a period not to exceed six (6) months, or by such fine and imprisonment. Upon conviction, a business entity will be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00). Each day in which a violation continues will constitute a separate criminal offense, punishable as described above.

SECTION 2: RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3: EFFECTIVE DATE. The effective date of this Ordinance will be thirty (30) days following adoption by the Mesa City Council.

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 will 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 27th day of August, 2018.

APPROVED:

Mayor

ATTEST:

City Clerk