

ORDINANCE _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, CREATING A NEW MESA CITY CODE TITLE 5, CHAPTER 22 “AUTOMATED KIOSKS” REQUIRING THE LICENSE AND REGULATION OF AUTOMATED KIOSKS.

WHEREAS, the City of Mesa (“City”) encourages the development and use of emerging technologies that are equipped with safety features that protect personal identifying information and safeguard against theft;

WHEREAS, automated kiosks allow users to sell cell phones, tablets or other consumer electronic devices at a self-service machine for immediate cash or to deposit electronic devices for recycling;

WHEREAS, the operators of automated kiosks generate revenue through the sale of these consumer electronic devices to third-party resellers, online marketplaces or other direct-to-consumer storefronts, or through the recycling of the devices;

WHEREAS, the City desires to protect public safety and welfare by deterring criminal activity by individuals depositing and selling stolen devices at automated kiosks;

WHEREAS, routine inspections by the City ensure compliance with safety protocols and investigative processes to establish a high level of quality control that preserves chain of custody procedures; and

WHEREAS, the City seeks to regulate automated kiosks to discourage criminal activity, safeguard the privacy of the residents of the City, and protect against identity theft.

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 22, entitled “Automated Kiosks” is created as follows:

CHAPTER 22 AUTOMATED KIOSKS

SECTION:

- 5-22-1: DEFINITIONS**
- 5-22-2: LICENSING AND OPERATION**
- 5-22-3: REPORTS TO LAW ENFORCEMENT**
- 5-22-4: STORAGE, RETENTION AND RETRIEVAL**

5-22-5:	FEES
5-22-6:	PENALTIES
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5-22-1: DEFINITIONS

The below words and phrases, wherever used in this Chapter, shall be construed as defined in this section unless, clearly from the context, a different meaning is intended. 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.

- (A) “*Applicant*” means the person who applies for a license pursuant to this Chapter.
- (B) “*Automated Kiosk*” means an interactive device that is installed within a retail space at which used consumer electronic devices are sold, traded, recycled, or otherwise received by a person.
- (C) “*Automated Kiosk License*” means a license issued pursuant to this Chapter authorizing a person to operate one or more automated kiosk(s) within the boundaries of the City.
- (D) “*Consumer Electronic Device*” means any portable electronic or digital device designed to be purchased and used by end users or consumers for daily, non-commercial purposes; examples of consumer electronic devices include, but are not limited to, cellular telephones, touch screen tablets, laptop computers, smart watches, and digital media players.
- (E) “*Controlling Person*” means a person who either (A) has a ten percent (10%) or greater interest in the ownership or earnings of the business, or (B) is any of the following:
 - (1) An officer, director, or any stockholder who owns ten percent (10%) or more, of a corporation licensee/applicant;
 - (2) A general partner of a limited partnership licensee/applicant or partner of a non-limited partnership licensee/applicant;
 - (3) An officer, president, or secretary of a limited liability company/corporation licensee/applicant; or
 - (4) The sole proprietor of a sole proprietorship licensee/applicant.
- (F) “*Designated Agent*” means the person designated by the applicant or licensee to receive notices from the City pursuant to this Chapter.
- (G) “*ESN*” means a unique number assigned by the manufacturer to identify a mobile phone or device, commonly referred to as an electronic serial number.

- (H) “*IMEI*” means a unique number used by wireless carriers and cell phone manufacturers to identify mobile phones and devices, commonly referred to as an international mobile equipment identity.
- (I) “*Licensee*” means the person who applied for a license pursuant to this Chapter and in whose name such license was issued by the City pursuant to this Chapter.
- (J) “*MEID*” means a unique identifier used by wireless carriers and cell phone manufacturers to identify a mobile phone, commonly referred to as a mobile equipment identifier.
- (K) “*Person*” means an individual, partnership, corporation, association or any other entity of whatever kind or nature.

5-22-2: LICENSING AND OPERATION

- (A) It shall be unlawful for a person to operate an automated kiosk at any location within the City without obtaining a license pursuant to this Chapter.
- (B) A license issued pursuant to this Chapter is valid for a period of one (1) year from the date of issuance.
- (C) The automated kiosk(s) shall operate only at the location(s) designated on the license. Each automated kiosk location to be operated by the licensee under the license must be approved by the City. Approval of an automated kiosk location will be determined at the best interest of the community based on the history for the past five (5) years of criminal activity at the proposed location. The license shall designate all locations where property belonging to the licensee is processed and stored. Property of the licensee may be processed and stored at locations not designated on the license only with the written and signed consent of the City.
- (D) Any person desiring to obtain a new or renewal license must apply to the City by presenting a complete application, the applicable fee, and fingerprint records to the City Licensing Office.
 - (1) The application shall include, but not be limited to, the following information:
 - (a) The names, addresses, and contact information for all controlling persons and designated agents of the applicant.
 - (b) All locations within the City at which the applicant intends to operate an automated kiosk and the number of automated kiosks that will be at each such location.
 - (c) The location(s) where property obtained at the automated kiosk may be processed and stored.

- (2) Fingerprint records are required:
 - (a) On all new applications, for all applicants and controlling persons; and
 - (b) For renewal applicants, for any new controlling person(s) for the licensee.
- (3) Fingerprints shall be submitted in a form approved by the City. The fingerprints shall 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 United States Federal Bureau of Investigation.
- (E) Following receipt of the required documents and fees, all new applications shall be submitted to the City Police Department for investigation and criminal record review in accordance with this Chapter. The City Police Department, on behalf of the City Licensing Office, shall 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 shall 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.
- (F) Complete renewal applications must be submitted to the City Licensing Office no later than forty-five (45) calendar days prior to the expiration of a license, otherwise the license shall be deemed expired and non-renewable. If the renewal application is not received as stated above, the licensee shall submit an application for a new license and provide all information and fees required for a new license application.
- (G) A new or renewal license shall be issued to an applicant pursuant to this Chapter unless:
 - (1) The applicant failed to provide a completed application, the required fee, or the fingerprint records;
 - (2) The applicant or a controlling person has been convicted during the ten (10) year period prior to submission of the application of a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, any preparatory offenses of the aforementioned crimes, a felony involving fraudulent or dishonest act, or a misdemeanor involving moral turpitude;
 - (3) The applicant fails to pay the applicable license and reporting fee for a new license when the license is submitted for approval;

- (4) The applicant or a controlling person is currently in violation of this Chapter or City Code;
 - (5) The application contains false or misleading information; or
 - (6) The applicant has a current debt related to any open or closed account maintained or formerly maintained with the City.
- (H) A licensee may operate an automated kiosk in the City only if the automated kiosk performs all of the functions set forth in this subsection:
- (1) Uses a live representative to remotely monitor the automated kiosk during all hours of operation;
 - (2) Verifies a seller's identity via a valid motor vehicle operator's license, valid motor vehicle non-operating identification license, valid armed forces identification card or other valid government issued photo identification, including the serial or identification number of such valid document sufficient to verify the information required to be reported in Section 5-22-3(A);
 - (3) Secures storage of consumer electronic devices accepted by the automated kiosk and adheres to the storage and retention requirements pursuant to Section 5-22-4;
 - (4) Captures and stores images during each transaction of (i) the seller, (ii) the identification required in Section 5-22-2(H)(2), and (iii) the consumer electronic device;
 - (5) Electronically reports all transactions to law enforcement pursuant to Section 5-22-3;
 - (6) Reads and records ESN, IMEI, or MEID, subject to Section 5-22-3(B)(7); and
 - (7) Only buys consumer electronic devices.
- (I) The City shall give written notice of a violation to the licensee or designated agent that may result in the suspension or revocation of the license. The notice shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the license. The notice shall be personally served on the licensee or mailed to the licensee's last known address. Service of the notice shall be deemed complete upon mailing or personal service on the licensee.
- (J) The licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 5-22-7. If the licensee fails to comply with the requirements of this

Chapter by the date provided in the notice, the City may suspend or revoke the license as provided in this section.

- (K) The City may suspend a license for a period of time not to exceed thirty (30) calendar days if the City determines that the licensee or the designated agent or a controlling person of the licensee has violated or is not in compliance with any provision of this Chapter. During the suspension period, the licensee shall not transact any business through the automated kiosk(s) associated with the suspended license(s). If a fine is associated with the violation that is the basis for the suspension, the suspension may continue beyond the period set forth in this Subsection (K) until such time as the licensee pays the fine.
- (L) The City may revoke a license issued pursuant to this Chapter if the City determines:
 - (1) A licensee or designated agent operated the business during a period of time when the license was suspended;
 - (2) A licensee, designated agent or controlling person is convicted of a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, any preparatory offenses of the aforementioned crimes, a felony involving fraudulent or dishonest act, or a misdemeanor involving moral turpitude;
 - (3) The licensee or designated agent has operated, or has attempted to operate, an automated kiosk at a location that is unlicensed;
 - (4) The City previously issued three (3) or more notices of suspension within an eighteen (18) month period;
 - (5) The licensee or designated agent has not complied with a provision of this Chapter or has failed to provide information as required by this Chapter;
 - (6) The application fee, annual license fee(s), reporting fee, or any transaction privilege tax has not been paid; or
 - (7) The licensee fails to pay outstanding fines or resolve any violations.
- (M) It is a violation of this Chapter for any person to provide false information on any license application.
- (N) It is a violation of this Chapter for a person to operate an automated kiosk that either fails to meet all of the requirements in this Chapter or when the person does not have a license issued pursuant to this Chapter.
- (O) If a license is revoked pursuant to this section, the licensee and its controlling person(s) may not apply for a license under this Chapter for a period of one (1) year from the date of revocation.

5-22-3: REPORTS TO LAW ENFORCEMENT

- (A) At the time of each transaction whereby a consumer electronic device is received at an automated kiosk, a licensee shall prepare a true, complete, legible and accurate report of the transaction, including a description of the consumer electronic device received. The report shall be submitted to the City within twenty-four (24) hours after receipt of the consumer electronic device. The report shall be in a form designated by the City Police Department. Submission of the report to the City is deemed accepted when the report is delivered in person to the address designated by the City Police Department, or when the report is sent electronically to the City Police Department utilizing software approved by the City Police Department. The reporting party shall retain a copy of the report for a minimum of two (2) years from the date of the transaction.

- (B) Each report shall, at a minimum, contain for each consumer electronic device received all the following information:
 - (1) The name, current address and date of birth of the seller as shown on the identification requirements pursuant to Section 5-22-2(H)(2).
 - (2) A legible color copy of the photo identification used to verify the seller's identity in Section 5-22-2(H)(2).
 - (3) A digital color photograph of the consumer electronic device purchased by the licensee.
 - (4) A digital color photograph of the seller.
 - (5) An electronic signature and fingerprint of the seller.
 - (6) An accurate and legible description of each consumer electronic device item purchased or received, including, as applicable, the manufacturer's name, model number and serial number.
 - (7) The ESN, IMEI or the MEID of the consumer electronic device purchased. If the ESN, IMEI or MEID is not available at the time of purchase or receipt, the report filed pursuant to this subsection must be updated with the ESN, IMEI or MEID as soon as known by the licensee, but no later than fifteen (15) calendar days after the transaction. The hold requirement outlined in Section 5-22-4(A) shall not begin until all required contents of the report are complete and submitted to the City Police Department.
 - (8) The amount paid for the consumer electronic device.
 - (9) The date and time when the consumer electronic device was received.

- (10) The location of the automated kiosk where the consumer electronic device was sold or collected; and
 - (11) Require the seller to agree to a statement, using verbiage provided to the licensee by the City, in which the seller attests to the accuracy of the information provided as a part of the sale and the authority of the seller to sell the consumer electronic device.
- (C) It is a violation of this Chapter for any person to provide false information on reports required by this section.

5-22-4: STORAGE, RETENTION AND RETRIEVAL

- (A) A licensee shall retain consumer electronic devices received at an automated kiosk at a secure location designated on the license for at least thirty (30) calendar days after submitting the complete report to the City required under Section 5-22-3. Any consumer electronic device held in custody pursuant to this section shall not be altered or transformed in any way, but shall be held in the same condition in which it was received by the automated kiosk.
- (B) Consumer electronic devices retained at a designated location(s) under this section are subject to return and inspection by the City during regular business hours of the location or, at a minimum, during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.
- (C) Within twenty-four (24) hours of a request by the City Police Department or other law enforcement agency, the licensee shall comply with a request to open the automated kiosk during the automated kiosk's regular operating hours to allow the law enforcement agency the opportunity to inspect the accessory bin and review any data that records transactions.
- (D) Upon being advised by a representative of the City Police Department or other law enforcement agency that there is probable cause to believe a consumer electronic device in the possession of the licensee is stolen or was used in the perpetration of a crime, the licensee operating the automated kiosk shall, upon request by the City Police Department or other law enforcement agency:
 - (1) Within three (3) calendar days, surrender such consumer electronic device to the law enforcement agency and the law enforcement agency shall provide a seized property receipt for the consumer electronic device; or
 - (2) At the sole discretion of the requesting law enforcement agency, the consumer electronic device may be retained within the place of business on an investigative hold for a period not to exceed ninety (90) calendar days. During that time period, law enforcement may seize the consumer electronic device upon providing the licensee appropriate notification of the seizure and making arrangements to take physical custody of the consumer electronic device. The licensee shall produce the

consumer electronic device at reasonable times and places, or may deliver the consumer electronic device to a representative of the law enforcement agency.

- (E) The investigative hold shall be effective immediately upon oral or written notice to the licensee. If the hold is placed orally, it shall be followed by a written notice mailed to the licensee operating the automated kiosk within five (5) calendar days.
- (F) A licensee shall not sell, transfer, exchange or otherwise dispose of any consumer electronic devices in violation of this section.

5-22-5: FEES

The following licensing and reporting fees shall be paid in amounts approved by City Council as set forth in the City's then current schedule of fees and charges:

- (1) Initial application fee.
- (2) Annual license and reporting fee for each automated kiosk location.

5-22-6: FINES; PENALTIES

- (A) Each day any violation of any provision of this Chapter shall continue shall constitute a separate offense, except when the violation is from a bona fide error that occurred provided that the licensee maintains adopted procedures reasonably anticipated to avoid the occurrence of bona fide errors.
- (B) A violation of this Chapter that is not a bona fide error, whether or not specifically designated as being unlawful, shall be a class one misdemeanor and upon conviction shall be punished as provided in Title One, Chapter 26 of the City Code.
- (C) For the purposes of this section, "bona fide error" includes clerical, calculation, computer malfunction, programming, and printing errors and other, similar errors.
- (D) A licensee or designated agent who does not comply with a request by a law enforcement agency to inspect an automated kiosk pursuant to Section 5-22-4(C), or refuses to return a consumer electronic device to law enforcement that is identified as stolen or involved in the perpetration of a crime pursuant to Section 5-22-4(D) shall be issued a notice stating that the licensee or designated agent shall comply with the request by the law enforcement agency within five (5) calendar days of receipt of the notice.
- (E) The notice issued pursuant to Subsection (D) above shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of how a hearing may be requested, the time limit for requesting

a hearing, and a warning that failure to timely request a hearing may result in revocation of the license.

- (F) A licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 5-22-7. If the licensee fails to comply with the requirements under Subsection (A) of this section by the date provided in the notice, the City Police Department may: (1) disable the automated kiosks by removing the automated kiosks from the power source and placing a notice on the machines that the automated kiosk is not operational; and (2) revoke the license pursuant to Section 5-22-2(L). The licensee is responsible for the cost incurred by law enforcement to disable the automated kiosks in accordance with this subsection and any fines or fees assessed by the court.
- (G) Once an automated kiosk is disabled, the City shall issue a notice to the licensee or its designated agent by certified mail that describes the action taken pursuant to this section. The notice shall include a description of the violation, the statutory or code reference, a description of how a hearing may be requested, and the time limit for requesting a hearing. A person receiving the notice under this subsection may request a hearing pursuant to Section 5-22-7. If a licensee or designated agent fails to request a hearing, the automated kiosks shall remain disabled.
- (H) The City Police Department shall take every reasonable precaution in the event the City finds it necessary to disable the automated kiosks and the City shall incur no liability by such action.

5-22-7: APPEALS

- (A) It is the duty and responsibility of the Business Licensing Administrator or his/her designee ("Licensing Administrator") to administer the provisions of this Chapter. Pursuant to this duty, the Licensing Administrator will issue, renew, deny, suspend, or revoke licenses in accordance with this Chapter.
- (B) Any party aggrieved by a decision of the Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal shall be in writing, state the grounds for the appeal, and be sent to the Business Services Director or his/her designee ("Director"); the failure of an appeal to meet the requirements of this subsection will entitle the Director to deny the appeal without further review.
- (C) If an appeal meets the requirements of Subsection (B), the Director shall schedule a hearing with a hearing officer who will be the Director or a person designated by the Director ("Hearing Officer"). The hearing will be held 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 (B) will suspend the decision of the Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Licensing Administrator, if upheld by the

Hearing Officer, shall 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.

- (D) All proceedings before a Hearing Officer shall be informal and without a jury, except that testimony shall 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 shall 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.
- (E) 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, shall constitute a waiver of any right to judicial review of the Hearing Officer's decision.
- (F) The decision of the Licensing Administrator, if not appealed, shall be the City's final determination on a matter pursuant to this Chapter. If the decision of the Licensing Administrator is appealed to a Hearing Officer, the decision of the Hearing Officer shall be the City's final decision on the matter unless appealed in accordance with this Chapter.

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

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