

ORDINANCE NO. 5056

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, ADOPTING NEW TITLE 6, CHAPTER 22 OF THE MESA CITY CODE RELATING TO CONVENIENCE STORES.

WHEREAS, the Mesa Police Department studied methods for reducing the occurrence of crime, preventing the escalation of crime, and increasing the successful prosecution of crime that occurs in convenience stores; and

WHEREAS, the Mesa Police Department determined in a review of numerous studies, practices of other jurisdictions, its own research, and the experience of Task Force members that convenience store owners play a key role in promoting safety in their establishments; and

WHEREAS, training employees in safety procedures, posting notice of crime prevention strategies in use, increasing visibility, and utilizing safety devices can increase the safety of store employees and customers; and

WHEREAS, the registration of convenience stores with the City would facilitate the application and enforcement of this ordinance and other laws;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, ARIZONA:

SECTION 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

SECTION 2. That Title 6 of the Mesa City Code of Ordinances, Mesa, Arizona, is hereby amended by adding a new Chapter 22 that reads as follows:

CHAPTER 21

CONVENIENCE STORES

6-22-1 PURPOSE OF CHAPTER.

The purpose of this Chapter is to protect the health, safety, and welfare of the citizens of the City of Mesa by reducing the occurrence of crime, preventing the escalation of crime, and increasing the successful prosecution of crime that occurs in convenience stores in the City. To this end, this Chapter establishes a registration program for convenience stores and provides requirements relating to security of the stores.

6-22-2 DEFINITIONS.

In this Chapter, the following words and phrases shall have the meanings stated in this Section unless the context otherwise requires:

(A) CERTIFICATE OF REGISTRATION means a certificate of registration issued by the Chief under this Chapter to the owner or operator of a convenience store.

(B) CHIEF means the Chief of Police of the City of Mesa or the designated agents of the Chief of Police.

(C) CONVENIENCE STORE means retail establishments that sell a limited line of groceries, prepackaged food items, tobacco and tobacco products, magazines, and other household goods, primarily for off-premises consumption and typically having extended hours of operation in a small building of less than 7,500 square feet. This definition includes small retail stores located on the same parcel as, or operated in conjunction with, a service station.

(D) DROP SAFE means a cash management device in which money can be deposited without the depositor having immediate access to the contents.

(E) EMPLOYEE means any person who performs any service on the premises of a convenience store on a full-time, part-time, temporary or contract basis (including managers), whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair, maintenance or cleaning of the premises or for the delivery of goods to the premises.

(F) HEIGHT MARKER means a measuring strip that may be attached on or near a door frame of a convenience store to aid in identifying the height of a person entering or exiting the convenience store.

(G) MANAGER means the person designated in the registration application filed under this Chapter as being responsible for the daily operation of a convenience store.

(H) NOTICE means any written notice that the Chief is required to give an applicant or registrant under this Chapter.

(I) PERSON means any individual, corporation, organization, partnership, association, or any other legal entity.

(J) POLICE CALLS FOR SERVICE means the number of calls to the Mesa Police Department for criminal or suspected criminal activity.

(K) REGISTERED AGENT means the person identified in the registration application filed under this Chapter who is authorized to receive on behalf of the convenience store any legal process or notice required or provided for in this Chapter.

(L) REGISTRANT means a person issued a certificate of registration for a convenience store under this Chapter and includes all owners, lessees and operators of the convenience store identified in the registration application filed under this Chapter.

6-22-3 AUTHORITY OF CHIEF.

The Chief shall implement and enforce this Chapter and may establish rules, regulations, or procedures as necessary to carry out the purpose of this Chapter.

6-22-4 DELIVERY OF NOTICES

A notice is deemed to be delivered: (1) on the date the notice is hand delivered to the applicant, registrant, or the registered agent of the applicant or registrant; or (2) when placed in the United States mail with postage affixed thereto and addressed to the applicant, registrant, or the registered agent of the applicant or registrant at the address provided for in the registration application. Delivery of the notice to any applicant or registrant on the application or the registered agent shall constitute sufficient notice to all registrants.

6-22-5 REGISTRATION REQUIRED.

(A) Each convenience store within the City of Mesa must have a valid certificate of registration within thirty (30) calendar days after it has opened for business.

(B) A registrant shall obtain a new certificate of registration within thirty (30) calendar days after any change in the information contained in the application for a certificate of registration for a convenience store, including, but not limited to, any changes in ownership of the convenience store, and any changes in the registered agent, manager, or emergency contact person for the convenience store. If the convenience store holds an Alternative Security Plan at the time that the change of information is provided, the Chief shall review the Plan to determine whether it shall remain effective.

6-22-6 CERTIFICATE OF REGISTRATION

(A) To obtain a certificate of registration for a convenience store, a person must submit to the Chief a notarized application on a form provided by the Mesa Police Department. The applicant must be the person who will own, operate, or manage the convenience store.

(B) For those convenience stores that are not required to implement the security measures identified in Section 6-22-10(B), their application for registration shall include a listing of the security measures in 6-22-10 which are already in place in their stores.

6-22-7 ISSUANCE, DENIAL, AND DISPLAY OF CERTIFICATE OF REGISTRATION.

(A) The Chief shall issue to the applicant a certificate of registration for a convenience store if the Chief determines that the applicant has complied with all requirements for issuance of the certificate of registration.

(B) If the Chief determines that the requirements of Section 6-22-6 have not been met, the Chief shall deliver written notice to the applicant that the application is denied and shall include in the notice the reason for denial and a statement informing the applicant of the right of appeal pursuant to Section 6-22-13.

(C) A certificate of registration must be displayed in a conspicuous manner and location in the convenience store that is visible to the public inside the store. The certificate of registration must be presented upon request to the Chief or any other peace officer or regulatory officer or official having responsibility for enforcement of this Code for examination.

6-22-8 EXPIRATION AND RENEWAL OF CERTIFICATE OF REGISTRATION.

(A) A certificate of registration for a convenience store expires two (2) years after the date of issuance.

(B) A certificate of registration may be renewed by making application in accordance with Section 6-22-6. A registrant shall apply for renewal at least thirty (30) calendar days before the expiration of the certificate of registration.

6-22-9 REVOCATION OF CERTIFICATE OF REGISTRATION.

(A) The Chief may revoke a certificate of registration for a convenience store if the Chief determines that any registrant made a false statement as to a material matter in the application or in a hearing concerning the certificate of registration.

(B) Before revoking a certificate of registration under Subsection (A), the Chief shall deliver Notice to any registrant that the certificate of registration may be revoked. The Notice must include the reason for the proposed revocation, action the registrant may take to prevent the revocation, and a statement that the registrant has fourteen (14) calendar days after the date

of mailing or delivery to comply with the Notice. The registrant then must file a notarized, certified letter with the Chief that they have completed the actions required in the notice.

(C) If, after fourteen (14) calendar days from the date the notice required in Subsection (B) is delivered, the registrant has not complied with the Notice, the Chief may revoke the certificate of registration and deliver Notice of the revocation to the registrant. This Notice must include the reason for the revocation, the date the Chief orders the revocation, and a statement informing the registrant of the right of appeal pursuant to Section 6-22-13.

6-22-10 APPLICABILITY OF SECURITY MEASURES

(A) Newly Constructed or Remodeled Convenience Stores: Newly constructed convenience stores and convenience stores remodeled on or after the effective date of this Chapter shall comply with all provisions of this Chapter, regardless of its number of calls for police service. For purposes of this Chapter, "remodeled" shall mean 50% or more of the store has been improved since the effective date of this ordinance.

(B) Security Measures: Newly constructed and remodeled convenience stores shall comply with all security measures identified in this Section. Any convenience store that has had an average of 30 calls for police service per year for the 4 years immediately preceding the effective date of this ordinance shall comply with the following security measures within the timeframe designated by the Chief, which shall not be less than 60 days.

(1) Security Signs: Signs stating "NO TRESPASSING" with "A.R.S. 13-1502" in letters at least two inches high, in both English and Spanish must be posted at each public entrance and exit of a convenience store. Metal "NO TRESPASSING" in English and Spanish with "A.R.S. 13-1502" signs shall also be placed on each of the exterior sides of the building. The signs may contain additional language as required by law and must be in a format approved by the Chief. For convenience stores located in a strip mall and not having more than two (2) exterior walls, one (1) of the above mentioned metal "NO TRESPASSING" signs shall be affixed to the back door side of the building and one (1) current Mesa Police Department provided Trespass Enforcement Program sticker shall be affixed to the glass front door next to or below the entrance door handle.

(2) Height Marker: A height marker must be posted at each public exit door of a convenience store depicting the actual height of an individual exiting the store.

(3) Store Visibility: A registrant shall provide for and maintain visibility in a convenience store as follows:

(a) An unobstructed line of sight that allows a view of and from the cash register and sales transaction area through all windows and public entrance and exit doors must be maintained in the convenience store at all times. The unobstructed line of sight must, at a minimum, extend from four (4) feet above the ground to at least seven (7) feet above the ground.

(b) All public entrance and exit doors of a convenience store must be made of glass or another transparent material.

(4) Employee Safety Training: A registrant shall ensure that safety training is provided for and completed by employees of the convenience store in compliance with this Section.

(a) Each employee of a convenience store (with the exception of temporary employees) shall bi-annually complete a safety training program offered by the City of Mesa Police Department or otherwise approved by the Chief.

(b) Each employee (with the exception of temporary employees) must complete the safety training program within thirty (30) calendar days after beginning employment with the convenience store.

(c) If the convenience store hires temporary employees (either directly or through a temporary agency), those employees must complete a comparable safety training program prior to beginning work. This program may be provided directly by the manager or any registrant of the convenience store.

(d) Each employee shall sign a statement indicating the date, time, and place of completion of the safety training program. Copies of each employee's statements must be maintained on file in the convenience store or electronically for six (6) months after the employee left employment with the convenience store or until the next bi-annual training is completed by that employee. The statements must be made available to the Chief or any other peace officer within a reasonable timeframe, not to exceed fourteen (14) calendar days, upon request.

(5) Telephone Access: Landline telephone access must be provided at each convenience store for use by employees to contact law enforcement or other emergency response if needed.

(6) Trespass Enforcement Program Affidavit:

(a) A registrant shall execute a Trespass Enforcement Program affidavit, on a form provided by the Chief, which authorizes the police department to enforce, on behalf of the registrant, all applicable trespass laws on the premises of the convenience store. This form expires two (2) years from the date of the application. A renewal application for this affidavit shall be submitted thirty (30) calendar days prior to the expiration date.

(b) A true and correct copy of the Trespass Enforcement Program sticker must be posted at the convenience store in a manner and location that it is clearly visible to the public at all times.

(c) A Trespass Enforcement Log will be kept on the premises at all times out of public view, but accessible to staff and representatives of the Mesa Police Department on request. This log is a form provided by the Mesa Police Department where the trespassed individuals, along with their pertinent information, are listed for future reference in case of any further violations.

(7) General Safety Conditions:

(a) Exterior entrances to the convenience store shall be illuminated with a minimum of five (5) footcandles, which equals five (5) lumens per square foot, of light at ground level to six (6) feet vertical from dusk to dawn.

(b) Existing exterior lamps provided on the building and in the parking areas for security of patrons and employees shall be repaired within forty-eight (48) hours when the light is not operational to maximize the lighting efficiency.

(c) If the convenience store has outdoor pay phones, they must be lit from dusk to dawn with a minimum of five (5) footcandles, which equals five (5) lumens per square foot, of light.

(d) Any graffiti that may appear on the registrant's property shall be removed or covered within forty-eight (48) hours of discovery or when notice is given by the Police Department.

(e) Anytime the lobby or area open to the public is unattended and void of customers, the lock on the entry doors will be engaged. A "Reopen in 10 Minutes" or similar sign will be acceptable to have on the customer entrance door during this time. An audible door alarm on entry doors that can be heard in each individual area of the store can serve as an alternative to locking the entry doors. Employees are then required to make every effort to return to the lobby or area open to the public as soon as the door alarm is activated, so as not to leave the area unattended when occupied by customers.

(f) Eight (8) inch tall address numbers must be installed in the form of paint, vinyl, plastic or other manmade material, wood or metal and maintained on each street facing side of building or on a stand-alone sign for emergency address identification.

(g) The exterior refuse area of the convenience store must be lit from dusk to dawn with a minimum of five (5) footcandles, which equals five (5) lumens per square foot, of light.

(h) Coolers containing beer or other alcoholic beverages will be secured or locked from public access from 2:00 a.m. to 6:00 a.m. (Monday through Sunday).

(8) Surveillance Camera System: A registrant shall provide, maintain, and operate a minimum of two (2) color digital high resolution surveillance cameras inside the convenience store and a minimum of two (2) color or black & white digital high

resolution surveillance cameras on the exterior of the building viewing the parking lot and/or gas pump area.

(a) Each camera must be capable of providing a digital image that clearly depicts the facial features of the person being filmed.

(b) One (1) interior camera must be positioned to provide coverage of the person operating the cash register and any person who approaches the cash register. The other interior camera must be positioned to provide a clear view of each individual entering or exiting the main public entrance of the store. The coverage of the cameras required by this subsection must remain unobstructed by any display, sign, or other item.

(c) Each camera must be operating and recording at all times, including hours when the store is not open for business. Each camera must be operated in a fixed position and not in a panning motion.

(d) Each camera must display the correct date and time of each recording.

(e) A sign stating "STORE IS UNDER VIDEO SURVEILLANCE," in letters at least two (2) inches high, must be posted at each public entrance and exit of the convenience store and must be readable from inside and outside the store.

(9) Video Recording and Storage:

(a) One (1) or more digital video recording devices must be used to record images from each surveillance camera in the convenience store. Each recording device must be kept in a secured location that is remote from the surveillance cameras.

(b) The video recording devices must be designed, equipped, and operated, at a minimum, to digitally record images from the surveillance cameras every time motion occurs in the convenience store, whether or not the store is open for business.

(c) All digital video recordings must be maintained for at least fifteen (15) calendar days.

(d) A digital video recording must be made available to the Chief or any other peace officer for viewing as soon as possible but no later than seventy-two (72) hours after being requested.

(10) Alarm System: A registrant shall provide, maintain, and operate an alarm system in the convenience store.

(a) A convenience store must have a silent panic or holdup alarm system for which a valid alarm license is held in compliance with Title VI, Chapter 15 of this Code. The system must, at a minimum, include a panic button located within reach of the cash

register and out of view of the customer. The panic button must generate a silent alarm signal indicating a holdup or other life-threatening emergency requiring an immediate police department response.

(b) A sign indicating that an alarm system is in use must be posted at each public entrance and exit of the convenience store.

(11) Drop Safes: A registrant shall provide and maintain drop safes and signs indicating the use of drop safes in the convenience store.

(a) A convenience store shall have a cash accountability policy mandating the maximum amounts of cash that can be kept in cash registers.

(b) A drop safe must be bolted to the floor of the convenience store. A drop safe may have a time-delay mechanism to allow small amounts of change to be removed.

(c) A sign indicating that employees cannot open the drop safe and that employees have minimum cash on hand must be posted at each public entrance and exit of the convenience store.

(C) Right To Require Additional Security Measures: The Chief shall continue to monitor the number of calls for police service of those convenience stores that have implemented the security measures required in Section 6-22-10. If the Chief determines that a convenience store continues to have excessive calls for police service despite compliance with all security measures identified in 6-22-10, the Chief may order the convenience store to take additional security measures targeted at the specific criminal act(s) or suspected criminal activity(s) occurring at the convenience store by issuing a Notice to the registrant of additional measures required. Any such measures must be implemented in accordance with the timeframes set forth in the Notice.

6-22-11 SECURITY ASSESSMENTS, INSPECTIONS

Property Inspections: An applicant or registrant shall permit, without notice during business hours and at other reasonable times upon request, representatives of the Police Department to inspect the interior and exterior of the convenience store, including but not limited to surveillance camera systems (if applicable), for the purpose of conducting a security assessment and ensuring compliance with this Chapter.

6-22-12 ALTERNATIVE SECURITY PLAN

(A) Any registrant of an existing convenience store as of the effective date of this ordinance may request that the Chief approve an alternative Safety and Security Plan in lieu of one or more of the security measures required by Sections 6-22-10. The Alternative Security Plan will (1) outline which security measures described in Section 6-22-10 will be implemented; (2) outline what alternative safety and security measures the registrant will implement and (3) explain how this Alternative Security Plan will meet the goals of this ordinance, including

reducing crime; preventing the escalation of crime; and increasing the successful prosecution of crime that does occur

(B) If the Chief determines that the Alternative Security Plan will meet the goals of this ordinance, he may approve the Alternative Security Plan. In determining whether to approve or disapprove the request for an Alternative Security Plan, the Chief will consider the following criteria:

- (1) The proposed security measures;
- (2) The number of calls for police service from the registrant's convenience store;
- (3) The types of calls for police service from the registrant's convenience store;
- (4) The cost of compliance with the security measures required by Section 6-22-10; and
- (5) The overall safety and security issues in the surrounding neighborhood.

(C) The Chief may grant an Alternative Security Plan subject to such terms and conditions as the Chief deems reasonably necessary to protect the health and safety of employees and the public, in light of the "Purpose" section of this Chapter.

(D) Eligibility

(1) Convenience stores constructed or remodeled after the effective date of this Chapter are not eligible for an Alternative Security Plan.

(2) A person who owns or operates a convenience store subject to this Chapter may request an Alternative Security Plan at any time. Forms for requesting an Alternative Security Plan will be provided by the Mesa Police Department.

(E) Review of Alternative Security Plan: If a registrant notifies the City of a change of registration information or if a registrant or convenience store receives a citation and the convenience store holds an Alternative Security Plan, the Chief shall review the Plan to determine whether it shall remain effective. Any changes to the Plan that are deemed necessary by the Chief to protect the health and safety of employees and the public, in light of the "Purpose" section of this Chapter shall be made within the timeframe set forth by the Chief.

6-22-13 APPEALS

If the Chief denies issuance or renewal of a certificate of registration, denies or modifies an Alternative Security Plan, or revokes a certificate of registration, this action is final unless the applicant or registrant files an appeal with the City Manager or designee within ten (10) calendar days after Notice of such decision is delivered to the applicant or registrant. The appeal shall be in writing and shall state the grounds for the appeal. The City Manager, or designee, shall schedule a hearing within thirty (30) calendar days of receipt of the appeal and render a decision within sixty (60) calendar days of the hearing.

6-22-14 VIOLATIONS; PENALTIES.

(A) A person who violates a provision of this Chapter, or who fails to perform an act required of the person by this Chapter, commits a civil offense.

(B) All owners, managers, operators, tenants or other persons in control of a convenience store regulated under this Chapter are jointly and individually liable for compliance with this Chapter.

(C) Any police officer or City employee designated by the City Manager is authorized to commence an enforcement action under the provisions of this Chapter by issuing a uniform civil code complaint citation in substantially the form authorized under Title I of the Mesa City Code.

(D) A first offense shall result in a warning which allows the person to correct the violation within fourteen (14) calendar days. If the violation is corrected within the allotted time, no fine will be assessed, and the violation will be expunged after one year from the date of the violation provided no additional violations occur within that timeframe. If the violation is not corrected within fourteen (14) calendar days, a first offense is punishable by a fine of one hundred fifty dollars (\$150). A second offense within 24 months of the first offense is punishable by a fine of two hundred fifty dollars (\$250). A third offense within 24 months of the second offense is punishable by a fine of five hundred dollars (\$500). For each offense thereafter, the violator shall be subject to Class One criminal misdemeanor prosecution in the Mesa Municipal Court as a habitual offender. For each violation as a habitual offender, the defendant is subject to a minimum fine of five hundred dollars (\$500.00) up to a maximum fine of two thousand five hundred dollars (\$2,500.00), six (6) months in jail, revocation of the certificate of registration or any combination of such fines, imprisonment, and revocation.

(E) The penalties provided for in Subsection (D) are in addition to any other enforcement remedies that the City may have under City ordinances and state law. Nothing in this Section shall preclude City employees from seeking voluntary compliance with the provisions of this Chapter or from enforcing this Chapter through notices of violation, warnings or other informal devices designed to achieve compliance in the most efficient and effective manner under the circumstances.

SECTION 3. That the Mesa City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this ordinance are severable and if any provision of this Ordinance is held to be unenforceable or unconstitutional by a court of competent jurisdiction, the remaining provisions shall remain in effect.

SECTION 5. That this ordinance will take effect sixty (60) calendar days after its adoption and it is accordingly so ordained.

SECTION 6. That after this ordinance has been in effect for 12 months, and annually thereafter, staff will return to the Mesa City Council to report on the effectiveness of the ordinance.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 14th day of July, 2011.

APPROVED:



Mayor

ATTEST:



City Clerk

