

ORDINANCE NO. 5194

AN ORDINANCE OF THE MESA CITY COUNCIL, MARICOPA COUNTY, ARIZONA, AMENDING VARIOUS SECTIONS OF TITLE 9, CHAPTER 13, OF THE MESA CITY CODE ENTITLED FOREIGN TRADE ZONE TO UPDATE TITLE 9, CHAPTER 13, TO MAKE CHANGES TO CONFORM TO FEDERAL LAW, TO UPDATE AND AMEND FEES AND CHARGES, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ORDINANCE.

**WHEREAS**, the Foreign-Trade Zones Board (FTZB) revised its regulations issued pursuant to the Foreign-Trade Zones (FTZ) Act concerning the authorization and regulation of foreign-trade zones and zone activity in the United States effective April 30, 2012.; and

**WHEREAS**, the City of Mesa is the Grantee of General-Purpose Foreign Trade Zone (“FTZ”) No. 221 located at Phoenix Mesa Gateway Airport, as approved by the Foreign Trade Zone Board (“Board”) Order No. 883, dated April 25, 1997, reorganized and expanded by Board Order No. 1538 on January 7, 2008; and

**WHEREAS**, the City of Mesa Office of Economic Development retained the services of The Rockefeller Group to serve as its FTZ consultant; and

**WHEREAS**, The Rockefeller Group has reviewed the City of Mesa code relating to the FTZ and made recommendations to bring the code into compliance with the FTZB revised regulations;

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

Text written in **BOLD ALL CAPS** indicates new language. ~~Strikethrough~~ fonts indicate deletions.

SECTION 1. That Title 9, Chapter 13, of the Mesa City Code entitled “FOREIGN TRADE ZONE” is set forth in its entirety and hereby amended as follows:

FOREIGN TRADE ZONE

9-13-1: PURPOSE

9-13-2: DEFINITIONS

9-13-3: CREATION OF FOREIGN TRADE ZONE

~~9-13-4: FTZ BOUNDARY MODIFICATION~~

9-13-54: APPLICATION ~~TO OPERATE UNDER~~ **FOR** FOREIGN TRADE ZONE

9-13-65: ACTIVATION AND DEACTIVATION

~~9-13-76: FEES AND TARIFF SCHEDULE~~

9-13-87: PROCEDURES  
~~9-13-9: CONFIDENTIALITY~~  
9-13-108: APPEALS  
9-13-119: PENALTY

9-13-1: PURPOSE:

The purpose of this Chapter is to promote economic development through the creation of a foreign trade zone ("FTZ").

9-13-2: DEFINITIONS:

Unless the context requires otherwise, the following words and phrases shall have the following meanings:

- (A) **ACT:** The Foreign Trade Zones Act of June 18, 1934, **AS AMENDED (PUB. L. 73-397, 48 STAT. 998-1003 (19 U.S.C. 81A-81U)).** (~~48 Stat. 998-1003; 19 U.S.C. 81A-81U~~), as amended by Public Law 397, 73rd Congress, approved June 18, 1950. (~~15 CFR §400.2[A]~~).
- (B) **BOARD:** The Foreign Trade Zones Board ("**FTZB**") created by the Act to carry out the provisions thereof. ~~The Foreign Trade Zones Board~~ **FTZB shall CONSISTS** of the Secretary of the Department of Commerce (**CHAIRMAN**) ~~AND THE, who shall be the chairman, the Secretary of the Treasury, and the Secretary of the Army~~ **OR THEIR DESIGNATED ALTERNATES** representatives. (15 CFR §400.2[**BD**]).
- (C) **FOREIGN TRADE ZONES (FTZ OR ZONE):** Restricted-access sites in or near ports of entry that are licensed by the Foreign Trade Zones Board and operated under the supervision of ~~the U.S. Customs Service~~ **& BORDER PROTECTION. TO THE EXTENT ZONES ARE "ACTIVATED" UNDER U.S. CUSTOMS AND BORDER PROTECTION (CBP) PROCEDURES IN 19 CFR PART 146, AND ONLY FOR THE PURPOSES SPECIFIED IN THE ACT (19 U.S.C. 81C), ZONES ARE TREATED FOR PURPOSES OF THE TARIFF LAWS AND CUSTOMS ENTRY PROCEDURES AS BEING OUTSIDE THE CUSTOMS TERRITORY OF THE UNITED STATES. UNDER ZONE PROCEDURES, FOREIGN AND DOMESTIC MERCHANDISE MAY BE ADMITTED INTO ZONES FOR OPERATIONS SUCH AS STORAGE, EXHIBITION, ASSEMBLY, MANUFACTURE AND PROCESSING, WITHOUT BEING SUBJECT TO FORMAL CUSTOMS ENTRY PROCEDURES AND PAYMENT OF DUTIES, UNLESS AND UNTIL THE FOREIGN MERCHANDISE ENTERS CUSTOMS TERRITORY FOR DOMESTIC CONSUMPTION.**
- (D) **GRANTEE:** The grantee of Foreign Trade Zone No. 221 is the City of Mesa, Arizona, an organization to which the privilege of establishing, operating, and maintaining a foreign trade zone has been granted by Order 883 **AND ORDER 1538** of the Foreign Trade Zones Board.
- (E) **PORT DIRECTOR, U.S. CUSTOMS:** The Port Director of ~~the U.S. Customs Service~~ **& BORDER PROTECTION (CBP)** located in Phoenix, Arizona, or

representative.

- (F) **SUBZONE: A SITE (OR GROUP OF SITES) ESTABLISHED FOR A SPECIFIC USE.** ~~special purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. Foreign merchandise may be admitted to the area without the payment of U.S. Customs duties and taxes or the imposition of U.S. quotas; domestic merchandise is allowed in the area. No U.S. Customs duties, taxes, or quotas apply if the merchandise is exported; U.S. Customs duties, taxes, and quotas are applicable if the merchandise is imported into the U.S. Customs territory either on the basis of the imported materials or the finished product, depending on the zone status designation.~~
- (G) ~~TARIFF: A Customs term for an approved schedule of fees charged by the grantee of the FTZ or subzone.~~
- (HG) **ZONE OPERATOR:** The City of Mesa or an organization, corporation, partnership, or person that operates **WITHIN FTZ NO. 221** under the terms of an agreement with the City of Mesa, **WITH CONCURRENCE OF U.S. CUSTOMS & BORDER PROTECTION.**
- (H) **ZONE PARTICIPANT: A CURRENT OR PROSPECTIVE ZONE OPERATOR, ZONE USER, OR PROPERTY OWNER.**
- (I) **ZONE SCHEDULE: THE GRANTEE'S RULES, REGULATIONS AND POLICIES FOR THE ZONE INCLUDING ALL RATES OR CHARGES ASSESSED BY OR ON BEHALF OF THE GRANTEE AND INFORMATION REGARDING ANY OPERATOR WHICH HAS AN AGREEMENT WITH THE GRANTEE TO OFFER SERVICES TO THE PUBLIC, INCLUDING THE OPERATOR'S RATES OR CHARGES FOR ALL ZONE-SPECIFIC SERVICES OFFERED. THE ZONE SCHEDULE MAY BE UPDATED FROM TIME TO TIME BY THE CITY OF MESA ECONOMIC DEVELOPMENT DEPARTMENT.**
- (J) **ZONE SITE (SITE): THE PHYSICAL LOCATION OF A ZONE OR SUBZONE.**
- (HK) **ZONE USER: A PARTY USING A ZONE UNDER AGREEMENT WITH A ZONE OPERATOR.** ~~person or firm using a zone for storage, handling, or processing of merchandise.~~
- (J) ~~ZONE YEAR: Each zone operator may choose its own zone year. September 30 is the year end for Foreign Trade Zones Board annual purposes.~~

**9-13-3: CREATION OF FOREIGN TRADE ZONE:**

~~In conjunction with the Foreign Trade Zones Board and the U.S. Customs Service, the City Council hereby creates Foreign Trade Zone No. 221 at Williams Gateway Airport. The exterior boundaries of the FTZ shall be coterminous with the exterior boundaries of Williams Gateway Airport. The zone is to provide trade assistance to those businesses locating at the airport.~~ **FTZ NO. 221 WAS GRANTED BY THE FOREIGN TRADE**

**ZONES BOARD TO THE CITY OF MESA, ARIZONA ON APRIL 25, 1997 (BOARD ORDER #883). FTZ NO. 221 WAS REORGANIZED AND EXPANDED ON JANUARY 7, 2008 (BOARD ORDER #1538).**

The City may also assist those businesses that request trade assistance outside of the airport proper **FTZ NO. 221 BOUNDARIES** through the use of a foreign trade **MODIFICATION OF THE GENERAL PURPOSE ZONE BOUNDARIES (MAJOR OR MINOR) OR THROUGH SPONSORSHIP OF A subzone** with all applicable rights and privileges of the general purpose zone when approved by the City of Mesa.

**9-13-4: FTZ BOUNDARY MODIFICATION:**

~~The zone grantee may submit to the Foreign Trade Zones Board an application to modify the boundary of an existing zone or subzone. This process involves the exchange, not an increase, of like acreage/square footage.~~

**9-13-54: APPLICATION TO OPERATE UNDER FOR FOREIGN TRADE ZONE:**

**(A) REQUESTS FOR AN ACTIVATION, EXPANSION OR SUBZONE MUST BE MADE TO THE CITY OF MESA OFFICE OF ECONOMIC DEVELOPMENT.**

~~(AB) Applications AGREEMENTS to operate WITHIN under the FTZ guidelines AN ZONE SITE must be made to the ENTERED INTO WITH City of Mesa and approved by the City Council.~~

**(BC) All applicable fees shall be received by the City prior to granting authorization to ESTABLISH OR operate IN in a Mesa-approved FTZ-GENERAL-PURPOSE ZONE or subzone SITE.**

**(C) ARIZONA OFFERS A PROPERTY TAX BENEFIT FOR ACTIVATED ZONE SITES UNDER A.R.S. 42-12006. APPROVAL OF A ZONE SITE BY THE FTZB DOES NOT, IN AND OF ITSELF, CONVEY THE ARIZONA PROPERTY TAX BENEFIT TO ANY ZONE PARTICIPANT (OPERATOR, USER OR PROPERTY OWNER). THE CITY OF MESA WILL NOT SPONSOR ANY ZONE SITE SEEKING PROPERTY TAX RECLASSIFICATION WITHOUT A WRITTEN EXPLANATION OF THE TAX IMPACT AND THE NECESSARY CONCURRENCE OR NON-OBJECTION LETTER FROM THE APPLICABLE LOCAL TAXING AUTHORITY.**

~~(C) Applications may be obtained from the Office of Economic Development, City of Mesa. (3404)~~

**9-13-65: ACTIVATION AND DEACTIVATION:**

**(A) The zone grantee, with the THE Port Director of U.S. Customs & BORDER PROTECTION for Foreign Trade Zone Operations, WITH CONCURRENCE FROM THE GRANTEE, may approve activating ACTIVATION OF all or any**

A portion of the ~~A zone approved by the Foreign Trade Zones Board SITE pursuant to regulations of the U.S. Customs Service.~~ **BASED ON A WRITTEN ACTIVATION APPLICATION SUBMITTED TO THE CUSTOMS PORT DIRECTOR BY A PROPOSED ZONE OPERATOR PURSUANT TO 19 CFR PART 146.**

- (B) **AN ACTIVATED** zone operator may file a request with the Customs Port Director to deactivate all or a portion of an existing activated **GENERAL PURPOSE** zone or subzone and shall **THEREAFTER** cease to admit merchandise into the zone site in zone status. Final action and disposition of the **ZONE** merchandise must be made with the concurrence of the ~~Customs~~ Port Director.

~~9-13-76: FEES AND TARIFF SCHEDULE:~~

- (A) The following list of fees ~~and tariffs~~ is adopted:

1. Application Fee:

Minor Boundary Modification	\$ 1,000.00
<del>EXPANSION APPLICATION Major Boundary Modification</del>	<del>\$ 5,000.00</del>
<del>General Purpose</del>	<del>\$ 1,000.00</del>
Subzone <b>APPLICATION Mesa City Limits</b>	<b>\$ 5,000.00</b>
<del>Subzone Maricopa County</del>	<del>\$ 7,500.00</del>
<del>Subzone Outside Maricopa County</del>	<del>\$20,000.00</del>

~~Deposit~~ **FEES ARE** payable within ten (10) days after City of Mesa Council approval of application **AND PRIOR TO SUBMISSION OF APPLICATION TO THE FOREIGN TRADE ZONES BOARD.** Balance due within ten (10) days after filing of application with Foreign Trade Zones Board.

2. Activation Fee:

**THE CITY OF MESA CHARGES A FEE TO COVER THE COSTS OF REVIEWING AND PROCESSING THE NECESSARY GRANTEE DOCUMENTATION FOR FTZ ACTIVATION APPLICATIONS TO CBP.**

**ACTIVATION FEE \$1,000.**

<del>Minor Modification</del>	
<del>-(Determined by U.S. Customs)</del>	<del>\$ 1,000.00</del>
<del>Major Modification</del>	
<del>-(Determined by U.S. Customs)</del>	<del>\$ 1,000.00</del>
<del>General Purpose</del>	<del>\$ 1,000.00</del>
<del>Subzone Mesa City Limits</del>	<del>\$ 1,000.00</del>
<del>Subzone Maricopa County</del>	<del>\$ 1,000.00</del>
<del>Subzone Outside Maricopa County</del>	<del>\$ 1,000.00</del>

~~Due to grantee~~ **THE ACTIVATION FEE IS DUE** within ten (10) days after ~~filing of~~

~~activation request with U.S. Customs~~ EXECUTION OF AN OPERATING AGREEMENT AND PRIOR TO ISSUANCE OF GRANTEE'S ~~issuance of an~~ ACTIVATION CONCURRENCE LETTER.

3. Annual Fee:

THE CITY OF MESA CHARGES AN ANNUAL FEE THAT IS DUE AT THE END OF EACH CALENDAR YEAR.

PROPERTY OWNERS (NON-ACTIVATED SITE)	NO FEE CHARGED
GENERAL-PURPOSE ZONE OPERATORS	\$5,000
SUBZONE OPERATORS	\$5,000
Minor Modification	
<del>(Term not to Exceed 10 Years)</del>	<del>\$ 2,000.00</del>
Major Modification	
<del>(Term not to Exceed 10 Years)</del>	<del>\$ 5,000.00</del>
General Purpose	\$ (0)
Subzone Mesa City Limits	\$ 5,000.00
Subzone Maricopa County	\$ 6,000.00
Subzone Outside Maricopa County	\$ 7,500.00

- ~~(B) Charges and Services Fees. Service fees will be charged on all accounts receivable at thirty (30) days' age, checks returned due to "insufficient funds" in an account, etc. A list of such charges is available in the office of the zone operator.~~
- ~~(C) When Payable. Zone charges are due and payable as they accrue monthly.~~

9-13-87: PROCEDURES:

- (A) Agreements. All ~~firms using the services of a foreign trade zone operator~~ ZONE OPERATORS AND PROPERTY OWNERS must enter into an operating agreement with the City of Mesa, the zone grantee. ZONE USERS WHO ARE NOT ALSO ZONE OPERATORS MUST ENTER INTO A USER AGREEMENT WITH A ZONE OPERATOR. If there is a conflict between the ~~operating~~ AN agreement BETWEEN THE CITY OF MESA AND AN OPERATOR and this THE ZONE schedule, the agreement will prevail. IF THERE IS A CONFLICT BETWEEN A USER AGREEMENT AND THE ZONE SCHEDULE, THE ZONE SCHEDULE WILL PREVAIL UNLESS THE CITY OF MESA AGREES IN WRITING TO SUCH TERMS. ~~Individual firms may be designated as their own operator. Copies of the agreements are available from the zone grantee/operator.~~
- ~~(B) Hours of Business and Service. Hours of business and service, for U.S. Customs Service purposes, shall be prescribed by the zone operator. (3404)~~
- ~~(C) Independent Contractor Status. Zone grantee, zone operator, and zone user AND ZONE PROPERTY OWNER are not and shall not be considered as joint ventures, partners, or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in any written agreements. Zone grantee,~~

zone operator, ~~and~~ zone user AND ZONE PROPERTY OWNER agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another except as set forth in any written agreements.

- (C) **EXEMPTION FROM GRANTEE LIABILITY. THE CITY OF MESA WILL NOT UNDERTAKE DETAILED OPERATIONAL OVERSIGHT OF OR DIRECTION TO ZONE PARTICIPANTS. PURSUANT TO CFR §400.46 GRANTEE LIABILITY, AS MAY BE AMENDED FROM TIME TO TIME, THE CITY OF MESA SHALL NOT BE LIABLE FOR VIOLATIONS OF ANY LAWS BY ZONE PARTICIPANTS.**
- (D) **NO GRANTEE WARRANTIES. THE CITY MAKES NO WARRANTIES OR REPRESENTATIONS REGARDING THE BENEFITS THAT MAY OR MAY NOT BE REALIZED THROUGH PARTICIPATION IN THE FTZ PROGRAM BY PROPERTY OWNERS, ZONE OPERATORS OR ZONE USERS.**
- (E) **FOR FOREIGN TRADE ZONES BOARD ANNUAL REPORTING PURPOSES, THE ZONE YEAR IS A CALENDAR YEAR. FOR U.S. CUSTOMS & BORDER PROTECTION ANNUAL RECONCILIATION PURPOSES, EACH ZONE OPERATOR MAY CHOOSE ITS OWN OPERATING ZONE YEAR. EACH ZONE OPERATOR SHALL PROVIDE AN ANNUAL REPORT TO THE CITY OF MESA EACH CALENDAR YEAR OR AT SUCH OTHER TIME AS SET FORTH IN THE ZONE SCHEDULE OR OPERATOR AGREEMENT.**
- ~~(D) Procedures Manual. The City Council shall approve a procedures manual at a regularly scheduled Council meeting set by request from a City Department or by a U.S. Customs approved zone operator. All procedures manuals will remain on file with the Office of Economic Development. (3404)~~

**9-13-9:CONFIDENTIALITY:**

~~Under federal regulations, all foreign trade zone documentation shall be kept confidential except that which is required to be made public by the Foreign Trade Zones Board or U.S. Customs Service.~~

**9-13-108: APPEALS: ANY DETERMINATION MADE BY ANY OFFICIAL OF THE CITY CHARGED WITH THE ADMINISTRATION OF ANY PART OF THIS CHAPTER MAY BE APPEALED TO THE CITY MANAGER, OR HIS DESIGNEE. ALL APPEALS MUST INCLUDE A WRITTEN NOTICE OF APPEAL THAT CONTAINS AN EXPLANATION OF WHY THE APPELLANT FEELS THAT THE DETERMINATION WAS IN ERROR. THE NOTICE OF APPEAL MUST BE FILED WITH THE OFFICE OF ECONOMIC DEVELOPMENT WITHIN THIRTY (30) DAYS OF THE DETERMINATION FOR WHICH THE APPEAL IS BEING FILED. THE DETERMINATION OF THE CITY MANAGER, OR HIS DESIGNEE, SHALL BE FINAL.**

- ~~(A) Appeals may be filed for both approval or denial of an FTZ application or subzone application in accordance with the provisions of this Chapter.~~

- ~~(B) Appeals may be filed with the Office of Economic Development within thirty (30) days of the Council taking action.~~
- ~~(C) Denials. In the event of a denial for any application by the Port Director for any reason, the applicant, the zone grantee, or the zone operator of the zone may appeal the adverse ruling. If any revenue protection considerations are involved in such an application, the Foreign Trade Zones Board shall be guided by the determinations of the Secretary of the Treasury.~~

9-13-19: PENALTY:

- (A) Violations of this Chapter are civil under the City of Mesa authority and may also be subject to a federal action under the provisions and regulations of the U.S. Customs & BORDER PROTECTION and THE Foreign Trade Zones Board of the U.S. Department of Commerce. Violations can result in the loss of foreign trade zone privileges **OTHER REMEDIES INCLUDING MERCHANDISE SEIZURE, FINES, PENALTIES AND CRIMINAL SANCTIONS MAY BE APPLICABLE**, or consignee thereof, and/or may sell the goods by public auction, and/or pursue other remedies as may be ~~AS~~ provided by law **LAWS AND REGULATIONS**.
- ~~(B) Penalties of this Section are not exclusive. Persons violating this Chapter may also be subject to civil or criminal sanctions under other ordinances or laws.~~
- ~~(C) Termination-Conviction/Abandonment. Foreign trade zone PRIVILEGES usage may be terminated if:~~
- ~~(1) Zone PARTICIPANT operator/user shall be convicted under any law of a felony as defined by such law;~~
  - ~~(2) If the Foreign Trade Zones Board or U.S. Customs Service & BORDER PROTECTION should suspend or terminate SUSPENDS OR TERMINATES ZONE PARTICIPANT zone operator/user or the activated status of the zone;~~
  - ~~(3) If the ZONE PARTICIPANT zone operator/user shall voluntarily abandon, desert, or vacate ABANDONS, DESERTS, OR VACATES the premises or discontinues DISCONTINUES its operations;~~
  - ~~(4) IF ZONE PARTICIPANT Zone operator/user shall FAILS TO immediately provide all records and reports REQUIRED TO BE PREPARED OR MAINTAINED BY ZONE PARTICIPANT UNDER APPLICABLE LAW OR REGULATION TO for zone grantee, the Foreign Trade Zones Board, and the U.S. Customs Service & BORDER PROTECTION UPON REQUEST OF ONE OF THOSE ENTITIES.~~
  - ~~(5) IF ZONE PARTICIPANT VIOLATES OR FAILS TO COMPLY WITH ANY OF THE PROVISIONS OR REQUIREMENTS OF THIS TITLE 9 CHAPTER 13 OF THE MESA CITY CODE, THE ZONE SCHEDULE, OR ITS OPERATOR AGREEMENT WITH THE CITY OF MESA.~~

**SECTION 2: EFFECTIVE DATE.** The effective date of this Ordinance shall be thirty (30) days following adoption by the Mesa City Council.

**SECTION 3: PRESERVATION OF RIGHTS AND DUTIES.** The repealing provisions of this Ordinance do 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 4: 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 of this Ordinance.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 2<sup>nd</sup> day of December, 2013.

APPROVED:

\_\_\_\_\_  
Mayor



ATTEST:

*DeAnn Mickelson*  
City Clerk

