Chapter 5

AMUSEMENTS[1]

Art. I. **In General, §§ 5-1—5-20**
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ARTICLE I. IN GENERAL

Sec. 5-1. Machines and devices; license tax.

(a) There is hereby levied and shall be collected a license tax upon every person owning or operating a music device or amusement device, that is card-operated, coin-operated or otherwise electronically operated, when such music device or amusement device is within the city and available for use in any place of business (see Appendix A), prorated on a quarterly basis if issued during the year. This license tax is not refundable and can not be transferred to another device. This license tax is in addition to all other taxes which may be separately levied by the city.

(b) Any antique device, as hereinafter defined, shall be exempted. An "antique music or amusement device" shall be defined as such a device manufactured more than fifty (50) years prior to the calendar year for which the license tax is to be collected and activated by a coin of five cents ($0.05) or smaller in denomination.

(c) The license tax provided in this section shall be due and payable immediately upon the first day of January each year or immediately when such taxable device is placed at a business establishment within the city. The license tax shall be delinquent five (5) days after it becomes due and thereafter shall require payment of an additional twenty percent (20%) penalty per month before the required license is issued. No such license shall be issued until all previous taxes and penalties have been paid. All payments shall be made to the finance and technology director or his authorized representative.

(d) The finance and technology director or any of his authorized agents and any police officer of the city shall have the right to inspect any premises and device for valid licenses. It shall be unlawful to have a device subject to this license available for use at any place of business within the city unless a valid license is affixed to the device. Both the owner of the taxable device and the owner of the business upon whose premises such device is located within the city shall be guilty of a separate misdemeanor for each day the taxable device is there located without a valid license.
(Code 1967, § 5-1; Ord. No. 87.49, § 1, 10-22-87; Ord. No. 97.22, 4-24-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 5-2. Temporary special events or activities; permit.

(a) In addition to any other permits, licenses, taxes or requirements imposed by this code, the following temporary special events or activities shall be required to obtain a permit before

[1]**Cross references**—Licenses, taxation and miscellaneous business regulations, Ch. 16.

carrying on such activity within the city:

(1) Any outdoor public gathering or celebration involving the use of city owned properties that involve but are not limited to any of the following:

a. Entertainment;

b. Dancing;

c. Music;

d. Dramatic productions;

e. Athletic tournaments;

f. Amusements, festivals or carnivals;

g. Sale of merchandise, food or alcohol, including sidewalk sales;

h. Parades, walks, bicycle rides or runs; or

i. Any temporary extension of premises of an existing use.

(2) Any activity taking place on private or city owned property which requires a state issued temporary extension of liquor licensed premises or a special event liquor license;

(3) Any activity taking place on private or city owned property, which may require for its successful execution city services to a degree significantly over and above that routinely provided under ordinary circumstances; and

(4) Any activity taking place on city or privately owned property used as a public gathering place that involves a substantial deviation from the current land use designation or legal nonconforming use.

(b) Parades, runs, walks, bicycle rides, or other similar events which will use or may impact city streets or rights-of-way will be required to comply with the provisions of § 19-43 of the Tempe City Code.

(c) The promoter or sponsoring organization, or their authorized agent, shall apply to the city manager or his authorized representative at least sixty (60) days in advance of the scheduled starting date of the event or activity. At the time of the application, the promoter or sponsoring organization shall pay a non-refundable application fee (see Appendix A). Late applications will be accepted at an additional fee (see Appendix A). If the event is cancelled by the promoter, the application fee shall not be refunded to the applicant. Once the event or activity is approved and permitted within the city, the promoter or sponsoring organization shall pay a permit fee for each day of operation of the event or activity (see Appendix A). The permit fee shall not exceed a maximum of five (5) days per event.

(d) The city manager or his authorized representative shall send copies of applications and other pertinent material to other city departments which could be affected by the proposed special event or activity. Such departments may recommend to the city manager or his authorized representative that the permit be issued only after the applicant has met, at his own cost, certain stipulations including but not limited to any of the following:

(1) Hiring a stated number of security personnel;

(2) Erecting security fencing or approved security barriers;

(3) Providing sanitary facilities;

(4) If restricted parking areas as defined in § 19-93 of this code are temporarily used for a purpose other than accessible parking, providing adequate alternative accessible parking for the duration of the special event;

(5) Agreeing to pay for any anticipated or unforeseen costs associated with the special event, including posting a performance bond if requested by the city;

(6) Applying for and receiving all other necessary permits and approvals; or

(7) Taking other measures to provide for fire protection or the health, safety and welfare of the public.

Issuance of the permit may be made contingent upon meeting any or all of these recommended stipulations.

(e) The permit fee may be refunded by the city manager or his authorized representative if the proposed event is sponsored by a nonprofit charitable, educational or civic service organization and providing that the city manager or his authorized representative can determine to his own satisfaction that the net proceeds accruing to the sponsoring organization will be directed to a charitable purpose directly benefiting residents of the city. Requests for a refund must be made in writing at the time of the permit application. If the stipulated allocation of proceeds is not carried out within sixty (60) days after the final performance, the permit fee shall not be refunded. The amount of the refund shall be offset as described in subsection (c).

(f) The city manager or his authorized representative shall, after obtaining recommendations from the various departments, authorize issuance of the permit with or without stipulations or shall refuse to issue the permit if, on the basis of reports received, it appears that the intended activity would be detrimental to the health, safety or welfare of either the general public or of nearby residents or owners of nearby property or place an undue burden on city services. If the applicant disagrees with the decision of the city manager or his authorized representative, he shall promptly file with the city clerk a request for reconsideration by the city council at the next meeting which occurs fifteen (15) days or more after the request is made.

(g) If issuance of the permit is authorized pursuant to section (f) above, the permit shall not actually be issued until all applicable city code and state statutory requirements have been met, and all city and state permits have been obtained; until both the promoter or sponsoring organization have signed applications agreeing to indemnify and to hold harmless the city from and against any

and all losses, claims or actions resulting from the activities of the applicant or of the applicant's employees, principals or agents; and until the organization directly responsible for the special event or activity has provided satisfactory evidence of suitable personal injury and property damage insurance or other such insurance as deemed necessary by the city.

(h) The city manager or his authorized representative may revoke a special event permit if the permittee fails to abide by any of the conditions of the permit or any of the provisions of this section. Violations of this section are punishable as set forth in § 1-7, Tempe City Code.
(Code 1967, § 5-2; Ord. No. 2000.48, 11-2-00; Ord. No. 2012.03, 1-19-12)

Sec. 5-3. Fortunetellers, etc.; license.

(a) Every palmist, astrologer, clairvoyant, fortuneteller, soothsayer or any person wishing to conduct a similar activity shall obtain a license from the finance and technology director or designee before carrying on such activity within the city. In addition, these activities are specifically declared to be an amusement subject to tax and license requirements established by chapter 16 of this code.

(b) Any applicant desiring to obtain a license shall make application to the finance and technology director or designee. All information required for any license application is deemed necessary in order to conduct a complete background investigation. It shall be unlawful to provide false information on any application. The application shall be accompanied by an application fee, a license fee, a fingerprinting fee and a photographing fee as established by the city council (see Appendix A). All fees are nonrefundable.

(c) Each applicant shall be required to have two (2) satisfactory full-face identification photographs taken by the city.

(d) The applicant shall submit a full set of fingerprints to the Tempe police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee.

(e) All applicants must be approved by the chief of police or designee before carrying on any activities regulated by this section. The chief of police or designee shall approve or disapprove each application within forty-five (45) days after it is filed. Approval shall not be given if there is any evidence of a conviction for a felony or for any misdemeanor involving moral turpitude.

(f) License shall be valid only for the calendar year in which it is issued. Any license may be renewed by filing a renewal application for approval and paying the renewal fee as established by the city council (see Appendix A) before the first day of the year in which they wish to be licensed. Any license renewal application or fee received on or after the first day of the year will be subject to a late renewal penalty as established by the city council (see Appendix A). Licenses are not transferable.

(g) Failure of a licensee to timely renew their license for the current year will result in the licensee applying for a new license and paying all applicable fees.

(h) A licensee must operate their business in a permanent structure that meets building code, fire code and zoning code requirements.

(i) A licensee who desires to change their business location shall notify the city in writing at least thirty (30) days in advance of such intention and pay a relocation fee as established by council (see Appendix A). No business shall be conducted until the appropriate city departments have stated in writing that building code, fire code and zoning code requirements have been met at the new business location.

(j) Licenses issued under this section will be revoked if at any time there is evidence of a felony conviction or of a misdemeanor involving moral turpitude or a violation of this code section or a violation of other city codes. Notification of revocation of this license will be by certified mail to the last known address of the licensee.
(Code 1967, § 5-2.1; Ord. No. 2001.17, 7-26-01; Ord. No. 2002.24, 8-1-02; Ord. No. 2010.02, 2-4-10)

Sec. 5-4. Clothing of entertainers in restaurants, nightclubs, etc.

(a) Any person entertaining or performing any dance or in any play, exhibition, show or other entertainment or any female serving food or spirituous liquors as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or in any public place, who appears clothed, costumed, unclothed or uncostumed in such a manner that the areola (the more darkly pigmented portion of the breast encircling the nipple) is not covered by a brassiere consisting of a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.

(b) A person who knowingly conducts, maintains, owns, manages, operates or furnishes any restaurant, nightclub, bar, cabaret, tavern, tap room, theater or any place serving food or spirituous liquors, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or a private, fraternal, social, golf or country club, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or any public place, where a female appears clothed, costumed, unclothed or uncostumed in such a manner that the areola (the more darkly pigmented portion of the breast encircling the nipple) is not covered by a brassiere consisting of a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.

(c) Any person entertaining or performing any dance or in any play, exhibition, show or other entertainment, or any person serving food or spirituous liquors as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, in a restaurant, nightclub, bar, cabaret, tavern, tap room, theater, or in a private, fraternal, social, golf or country club, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or in any public place, who appears clothed, costumed, unclothed or uncostumed in such a manner that the lower part of his or her torso, consisting of the mons veneris and genitalia (the private parts) or anal cleft or cleavage of the buttocks, is not covered by a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.

(d) A person who knowingly conducts, maintains, owns, manages, operates or furnishes any restaurant, nightclub, bar, cabaret, tavern, tap room, theater or any place serving food or spirituous liquors, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or a private, fraternal, social, golf or country club, as defined by title 4, chapter 1, article 1, Arizona Revised Statutes, as amended, or any public place where any person appears clothed, costumed, unclothed or uncostumed in such a manner that the lower part of his or her torso, consisting of the mons veneris and genitalia (the private parts), anal cleft or cleavage of the buttocks, is not covered by a fully opaque fabric material or is so thinly covered as to appear uncovered is guilty of a misdemeanor.
(Code 1967, § 5-3.1)

Secs. 5-5—5-20. Reserved.

ARTICLE II. BINGO[2]

Sec. 5-21. Definitions.

All words and phrases appearing in this article, unless the context requires otherwise, shall be given the meanings ascribed to them in Arizona Revised Statutes, §§ 5-401, 5-421.
(Code 1967, § 5-4)

Sec. 5-22. Licensing required.

No person shall operate or maintain a bingo game or small bingo game within this city without first obtaining and properly maintaining in force a bingo license issued by the state under the procedures specified in state law.
(Code 1967, § 5-5)

Sec. 5-23. License application procedure.

Pursuant to Arizona Revised Statutes, §§ 5-406, 5-423, applications for bingo and small bingo licenses are to be filed with this city for transmission to the state, and the city council is required to recommend approval or disapproval of the application for issuance of such license. To satisfy these requirements, the following procedures are hereby established:

(1) All applications shall be made upon forms approved by the licensing authority and shall be filed with the finance and technology director or his designated agent. The finance and technology director shall accept no application which does not contain all the information required by Arizona Revised Statutes, §§ 5-404, 5-423, as the case may be;

(2) In addition to such information and application fees as are required by Arizona Revised Statutes, §§ 5-404 or 5-423, each applicant shall submit with his application his prepaid bingo license tax payment as is hereinafter provided. Should any such application be denied by the state, the prepaid tax shall be promptly returned to the applicant by the finance and technology director;

[2]**State law reference**—-Games of bingo, A.R.S. § 5-401 et seq.

(3) When the finance and technology director has received the required application, application fee and prepaid tax, he shall deem the application submitted and submit the application to the office of the city clerk, the community development department, the fire marshal and the county health services department;

(4) The city clerk shall schedule the application for public hearing at a subsequent council meeting at which all interested persons may give testimony. The community development department and the fire marshal shall submit to the city council their recommendations based upon the presence or absence of zoning, building, fire and health code violations; and

(5) Subsequent to public hearing, the city clerk shall promptly send to the licensing authority certification of approval or disapproval of the application by the city council together with any petitions or letters submitted to the city council relating to the application.

(Code 1967, § 5-6; Ord. No. 97.20, 4-10-97; Ord. No. 2001.17, 7-26-01; Ord. No. 2010.02, 2-4-10)

Sec. 5-24. License tax.

(a) Whenever the state has issued a bingo or small bingo license, a city bingo license tax shall become immediately applicable (see Appendix A).

(b) For new licenses, the license tax shall be due and payable at the time of application. For renewal licenses, the tax shall be due and payable on or before January 1 of the calendar year for which the license is renewed.

(c) Any tax payment for a renewal license made after January 1 of the calendar year for which the license was renewed shall be subject to a penalty (see Appendix A).

(d) It shall be unlawful for any licensee or any officer or agent of any licensee to:

(1) Fail or refuse to pay a delinquent city bingo license tax within ten (10) days after a compliance request is mailed to the premises or the last known address of the licensee; or

(2) Fail or refuse to pay any penalty assessed for late payment within ten (10) days after a notice of such penalty assessment is mailed to the premises or the last known address of the licensee.

(Code 1967, §§ 5-7, 5-8)

Sec. 5-25. Taxes cumulative.

The tax imposed by this article shall be in addition to such taxes imposed upon the privilege of maintaining a bingo business within the city pursuant to § 16-18 paragraph (12) of this code.

(Code 1967, § 5-9)

Secs. 5-26—5-29. Reserved.

ARTICLE III. NUISANCE PARTIES AND UNLAWFUL GATHERINGS

Sec. 5-30. Purpose.

(a) The city finds and determines that the control of nuisance parties on private property is necessary when such continued activity is determined to be a threat to the peace, health, safety or general welfare of the public. Police officers are often required to make several return trips to a location of a nuisance party in response to complaints, in order to disperse uncooperative participants or enforce criminal laws, and the return of police officers to a location constitutes a drain of personnel and resources which may leave other areas of the city without minimal levels of police protection, all of which creates a significant hazard to the safety of the police officers and to the public in general.

(b) The city finds and determines it is a public nuisance for any responsible person or social host to permit, allow, or host an unlawful gathering at his or her place of residence (or other private real property under his or her ownership or control) where spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person. When unlawful gatherings occur, the city finds and determines that early intervention through substance use education for the responsible person is desirable.
(Ord. No. 94.29, 12-8-94; Ord. No 2011.56, 11-3-11)

Sec. 5-31. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them herein unless the context requires otherwise:

(1) *Juvenile* means a minor under the age of eighteen (18) years.

(2) *Minor* means any person under the age of twenty-one (21) years.

(3) *Nuisance party* means an assembly of persons for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.

(4) *Police service fee* means the fee as shown by a schedule adopted by the city council with the recommendation of the police chief which is based on the number of officers and units, per hour, to respond to or remain at a nuisance party or unlawful gathering; which schedule may also include any appropriate overhead; the cost of any medical treatment to injured officers; any loss or damage incurred by the department, and the cost of repairing any damaged city equipment or property;

(5) *Responsible person* means the person who owns the property where the nuisance party or unlawful gathering takes place; or the person in charge of the premises; or the person who organized the nuisance party or unlawful gathering. If such a person is a juvenile, the term "responsible person" includes, in addition to the juvenile, the juvenile's parents or guardians. Responsible person does not include owners or persons in charge of premises where an unlawful gathering takes place if the persons in attendance obtained use of the property through illegal entry or trespassing;

(6) *Special security assignment* means the police services provided during a second or subsequent call during a ninety (90) day period to the location of a party, gathering or event after the distribution of a written warning that a police service fee may be imposed for costs incurred by the city for any subsequent police response.

(7) *Spirituous liquor* shall have the same meaning as defined in A.R.S. §4-101(31).

(8) *Unlawful gathering* means a party, gathering, or event where spirituous liquor is served to, or is in the possession of, or consumed by, any minor, or where illegal drugs are in the possession of, or consumed by, any person, regardless of whether it would otherwise qualify as a nuisance party.

(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03; Ord. No. 2011.56, 11-3-11)

Sec. 5-32. Recovery of costs for police services.

(a) When any police officer responds to any nuisance party and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the police officer shall issue a written notice to any responsible party that a second or subsequent response to any nuisance party at that same location or address within ninety (90) days of the first response shall be deemed a special security assignment rendered to provide security and order on behalf of the nuisance party, and that any responsible party may be liable for a police service fee for such special security assignment. The return call, or second or subsequent response, may also result in the arrest or citation of violators of state law or city ordinances.

(1) If, after written notice provided in subsection (a), a second or subsequent police response or responses is necessary to the same location or address for a nuisance party within ninety (90) days of the first response, such response shall be deemed a special security assignment and subject to police service fee as provided in this article.

(b) A responsible person for an unlawful gathering shall be assessed the police service fee upon the first police response. The responsible person may be eligible for substance use education class in lieu of the first-time police service fee assessment.

(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03; Ord. No. 2011.56, 11-3-11)

Sec. 5-33. Police service fee for special security assignment.

(a) The police service fee for special security assignments arising out of nuisance parties shall include the cost of personnel and equipment, and shall be established by the city council (see Appendix A). The police service fee for special security assignments arising out of unlawful gatherings shall be progressive depending on the number of repeat unlawful gatherings, and shall be established by city council (see Appendix A).

(b) The amount of such police service fees charged shall be deemed a joint and several debt to the city of any and all responsible person or persons, whether they received the benefit of such special security assignment services or not. If the responsible person for the nuisance party or unlawful gathering is a juvenile, then the parents or guardians of that juvenile will also be jointly and severally liable for the costs incurred for police services. Any person owing money due for the police service fee shall be liable in an action brought in the name of the city for recovery of such amount, including reasonable attorney fees.

(c) If a responsible person is the person who owns the property where a nuisance party or unlawful gathering takes place, the owner will not be charged the police service fee unless:

(1) The owner was present at or had knowledge of the nuisance party or unlawful gathering and took no reasonable action to prevent the nuisance party or unlawful gathering; or

(2) If the owner had been sent a notice from the city that a nuisance party had taken place on his property, and a subsequent nuisance party occurs within ninety (90) days of the mailing of such notice to the owner.

(d) The city may waive part or all of a police service fee charged against the owner of the property where a nuisance party takes place if the owner provides proof that they did not have an adequate period of time to prevent the nuisance party that triggered the fee, or that they have taken action to prevent the occurrence of future disturbances at the property.

(e) The city does not waive its right to seek reimbursement for costs through any other legal remedies or procedures.
(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03; Ord. No. 2011.56, 11-3-11)

Sec. 5-34. Billing; appeal.

(a) The chief of police or his designee shall cause appropriate billings for the special security assignment to be made to the responsible person, which shall include the name and address of the responsible person, the date and time of the incident and the police services performed, identification of the police services costs, and such other information as may be desired.

(b) Any responsible person who wishes to dispute the determination that they are liable for the police service fee may do so by submitting a request for an administrative review hearing in writing no more than ten (10) days after the assessment of the police service fee. The city and the responsible person disputing the fee shall be given notice of the hearing and an opportunity to be heard. The hearing officer shall establish rules of administration and procedure to ensure the fair and orderly conduct of hearings held pursuant to this section.
(Ord. No. 94.29, 12-8-94; Ord. No. 2003.29, 10-30-03)

Sec. 5-35. Other remedies.

Nothing in this article shall be construed as affecting the ability to initiate or continue concurrent or subsequent criminal prosecution for any violation of the provisions of the city code or state law arising out of the circumstances necessitating the application of this article.

(Ord. No. 94.29, 12-8-94)