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## **Sec. 16A-30. Definitions.**

In this article, unless the context requires otherwise:

*Applicant* means the person who applies for a license pursuant to this article.

*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.

*Automated kiosk license* means a license issued pursuant to this article authorizing a person to operate one or more automated kiosk(s) within the boundaries of City of Tempe.

*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.

*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.

*Designated agent* means the person designated by the applicant or licensee to receive notices from the City of Tempe pursuant to this article.

*ESN* means a unique number assigned by the manufacturer to identify a mobile phone or device, commonly referred to as an electronic serial number.

*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.

*Licensee* means the person who applied for a license pursuant to this chapter and in whose name such license was issued by the City of Tempe pursuant to this article.

*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.

*Person* means an individual, partnership, corporation, association or any other entity of whatever kind or nature.

(Ord. No. O2018.72 , § 9, 11-29-18)

## **Sec. 16A-31. Licensing.**

- (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 article.
- (b) A license issued pursuant to this article is valid for a period of one (1) calendar year or portion thereof, and a new application shall be required for each subsequent calendar year.

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- (c) The kiosk(s) shall operate only at the location(s) designated on the license. 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 of Tempe.
- (d) Application requirements; procedure. Any person desiring to obtain a new or renewal license must apply to the City of Tempe by presenting a complete application, the applicable fee, and fingerprint records to the City of Tempe Chief of Police or his/her authorized representative.
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 of Tempe at which the applicant intends to operate a kiosk and the number of kiosks that will be at each such location.
    - c. The location(s) where property obtained at the 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 of Tempe. 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 state law. 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 of Tempe Police Department for investigation and criminal record review in accordance with this article.
- (f) The City of Tempe Chief of Police or his/her authorized representative 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.
- (g) Complete renewal applications must be submitted to the City of Tempe Chief of Police or his/her authorized representative no later than sixty (60) 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.
- (h) A new or renewal license shall be issued to an applicant pursuant to this article 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 of a felony 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 article;
  5. The application contains false or misleading information; or

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6. The applicant has a current debt related to any open or closed account maintained or formerly maintained with the City of Tempe.

(Ord. No. O2018.72 , § 9, 11-29-18)

### **Sec. 16A-32. Operation.**

- (a) A licensee may operate an automated kiosk in the City 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 photo identification sufficient to verify the information required to be reported in Section 16A-3(a)(6).
  - (3) Secures storage of consumer electronic devices accepted by the automated kiosk and adheres to the storage and retention requirements pursuant to Section 16A-34;
  - (4) Captures and stores images during each transaction of i) the seller, ii) the identification required in Section 16A-3(a)(4) and iii) the consumer electronic device;
  - (5) Electronically reports all transactions to law enforcement pursuant to Section 16A-32;
  - (6) Reads and records ESN, IMEI, or MEID, subject to Section 16A-33(b)(7); and
  - (7) Only buys consumer electronic devices.
- (b) The City may issue a civil violation to the licensee, controlling person or designated agent of any automated kiosk that violates this article.
- (c) The City may suspend or revoke the license to operate an automated kiosk if the licensee, controlling person or designated agent fails to comply with a written warning of suspension or revocation, or if the licensee, controlling person or designated agent violates this ordinance three (3) or more times in a twelve (12) month period.
- (d) The City may warn the licensee, controlling person or designated person that the license will be suspended or revoked by providing such person with a written notice delivered either in person or sent by registered or certified mail. The notice shall include all of the following:
  - (1) Date of the violation/s;
  - (2) Location of violation/s;
  - (3) Description of the violation/s;
  - (4) Statutory or code reference;
  - (5) Corrective action required;
  - (6) Timeframe for corrective action;
  - (7) Notification that failure to comply may result in suspension or revocation of license; and
  - (8) Name and contact information for the City of Tempe employee initiating the notice.
- (e) Should the City suspend or revoke a license to operate an automated kiosk, a written notice will be provided to the licensee, controlling person or designated agent. The notice will be delivered either in person or sent by registered or certified mail and shall include all of the following:
  - (1) Date of violation/s;

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- (2) Location of violation/s;
  - (3) Description of violation/s;
  - (4) Statutory or code reference;
  - (5) Effective date of suspension or revocation;
  - (6) If suspension, duration of suspension;
  - (7) Appeal rights, procedures and time limits; and
  - (8) Name and contact information.
- (f) The City may suspend a license to operate an automated kiosk for a period of time not to exceed one (1) year from the date of violation 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 article. During the suspension period, the licensee shall not transact any business through the automated kiosk(s) associated with the suspended licenses. 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 until such time as the licensee pays the fine.
- (g) The City may revoke a license to operate an automated kiosk issued pursuant to this article if the City of Tempe determines that:
- (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 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 licensee or designated agent has not complied with a provision of this article or has failed to provide information as required by this article;
  - (5) The application fee, license fee, reporting fee, or any transaction privilege tax has not been paid; or
  - (6) The licensee fails to pay outstanding fines or resolve any violations.
- (h) It is a violation of this article for any person to provide false information on any license application.
- (i) It is a violation of this article for a person to operate an automated kiosk that either fails to meet all of the requirements in this article or when the person does not have a license issued pursuant to this article.
- (j) If a license is revoked pursuant to this section, the licensee and its controlling person(s) may not apply for a license under this article for a period of one (1) year from the date of revocation.

(Ord. No. O2018.72 , § 9, 11-29-18)

### **Sec. 16A-33. Reports to law enforcement.**

- (a) At the time of each transaction whereby a consumer electronic device is received at a 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 of Tempe within twenty-four (24) hours after receipt of the consumer electronic device. The report shall be in a form designated by the City of Tempe Police Department. Submission of the report to the City of Tempe is deemed accepted when the report is delivered in person to the address designated by the City of Tempe Police Department, or when

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the report is sent electronically to the Police Department utilizing software approved by the City of Tempe Police Department. The reporting party shall retain a copy of the report for a minimum of two years from the date of the transaction.

- (b) Each report shall, at a minimum, contain for each consumer electronic device received the following information:
- (1) The name, current address and date of birth of the seller as shown on the identification requirements pursuant to Section 16A-3(a)(4);
  - (2) A legible color copy of the photo identification used to verify the seller's identity in Section 16A-3(a)(4);
  - (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 16A-33(a) shall not begin until all required contents of the report are complete and submitted to the City of Tempe Police Department;
  - (8) The amount paid for the consumer electronic device;
  - (9) The date and time when the consumer electronic device was received; and
  - (10) The location of the automated kiosk where the consumer electronic device was sold or collected.
- (c) It is a violation of this article for any person to provide false information on reports required by this section.  
(Ord. No. O2018.72 , § 9, 11-29-18)

#### **Sec. 16A-34. 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 of Tempe required under Section 16A-32. 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 of Tempe 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 of Tempe Police Department or other law enforcement agency, the licensee shall comply with a request to open the automated kiosk 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 of Tempe Police Department that there is probable cause to believe a consumer electronic device in the possession of the licensee is stolen or was used in the

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perpetration of a crime, the licensee operating the automated kiosk shall, upon request by the City of Tempe 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 via facsimile, email or certified mail 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.

(Ord. No. O2018.72 , § 9, 11-29-18)

#### **Sec. 16A-35. Fees.**

- (a) Licensing and reporting fees shall be paid for each automated kiosk that is designated on the license. See Appendix A.

(Ord. No. O2018.72 , § 9, 11-29-18)

#### **Sec. 16A-36. Fines; penalties.**

- (a) Each day any violation of any provision of this article shall constitute a separate offense, except when the violation is from a bona fide error that occurred provided that the licensee maintains procedures reasonably adopted to avoid the occurrence of bona fide errors.
- (b) A violation of this article that is not a bona fide error, whether or not specifically designated as being unlawful, shall be subject to a civil sanction of not more than two thousand five hundred dollars (\$2,500.00) per violation.
- (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 16A-34(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 16A-34(d) shall be in violation of this ordinance.

(Ord. No. O2018.72 , § 9, 11-29-18)

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**Sec. 16A-37. Appeals.**

- (a) Notwithstanding any other provisions of this article, the license of any automated kiosk shall be suspended for six (6) months upon a showing that an operator or employee of such kiosk has been convicted of violating any of the provisions of this code or a City ordinance or any of the statutes of the state regarding the conduct of the business of such a kiosk three (3) or more times in a twelve (12) month period. Violations of this article or state law by any person or his agents or employees regarding the operations of businesses defined in this article shall be grounds to deny issuance or renewals of the license required in this article.
- (b) Conviction under any provision of this article shall be deemed conclusive evidence of such violation.
- (c) Any licensee whose license is suspended may, within ten (10) days after being sent by registered or certified mail notice of such suspension, give written notice to the City of Tempe police licensing specialist of their intention to appeal the suspension to the City Council. Appeals will be heard by the City Council at the next regularly scheduled meeting but no sooner than five (5) working days from the date of filing notice.

(Ord. No. O2018.72 , § 9, 11-29-18)

**Secs. 16A-38, 16A-39. Reserved.**