

Chapter 5-01

GOING OUT OF BUSINESS, CLOSING OUT SALES

Sections:

5-01-01	DEFINITIONS
5-01-02	LICENSE REQUIRED
5-01-03	APPLICATION OF REGULATIONS
5-01-04	APPLICATION FOR LICENSE
5-01-05	LICENSE FEE, TERM AND BOND
5-01-06	DUTIES OF LICENSEES
5-01-07	PENALTIES

Section 5-01-01 DEFINITIONS

For the purposes of this Ordinance the following terms, phrases, words and derivations shall have the meaning given herein. The word "shall" is always mandatory and not merely directory.

- A. Applicant: A person making application for a license or the renewal thereof.
- B. Council: The Council of Boise City.
- C. Fire and other altered goods sale: A sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other like causes or means.
- D. Going out of business sale: A sale held out in such a manner as to reasonably cause the public to believe that upon disposal of the stock of goods on hand the business will cease and be discontinued, such sale including but not limited to the following kinds of sales: adjustor's; adjustment; alteration; administrator's; assignee's; bankruptcy; benefit of administrator or executor; benefit of creditors; benefit of trustees; building coming down; closing; creditor's committee; creditors; end; executor; final days; force out forced out of business; insolvency; insurance; last days; lease expires; liquidation; loss of lease; mortgage; receivers; trustees; and quitting business.
- E. Goods: Includes any goods, wares, merchandise or other property capable of being the object of a sale regulated hereunder.
- F. License Officer: The City Clerk.
- G. Person: A person, firm, partnership, association, corporation, company or organization of any kind.
- H. Removal of business or closing out sale: A sale held in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location in the City or will then continue business from other existing locations in the City; provided, however, that the sale closing out of a line or type of goods not resulting in the cessation of the entire business shall not be deemed a removal of business or closing out sale.

Boise Municipal Code

Section 5-01-02 LICENSE REQUIRED

Except as to sales under judicial process and prior to obtaining a license to hold or conduct a sale pursuant to the provisions of this Ordinance, it shall be unlawful for any person to sell or offer to sell any goods at a sale to be advertised or held out by any means constituting any one of the following kinds:

- A. Fire, distress and other altered stock sale;
- B. Going out of business sale; and
- C. Removal of business or closing out sale.

Section 5-01-03 APPLICATION OF REGULATIONS

Except as to an application for a fire and other altered goods sale made within thirty (30) days from the date such goods were damaged by fire, smoke, water or other like causes or means:

- A. Any person who has not been the owner of a business advertised or described in the application for a license hereunder for a period of at least six (6) months prior to the date of the proposed sale shall not be granted a license, except that on the death of a person doing business in this City, his or her heirs, devisees or legatees shall have the right to apply for a license hereunder.
- B. Any person who has held a sale, as regulated hereunder, at the location stated in the application within one year last past from the date of such application shall not be granted a license.
- C. Where a person applying for a license hereunder operates more than one place of business, the license issued shall apply only to the one store or branch specified in the application and no other store or branch shall advertise or represent it is cooperating with it, or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.
- D. The provisions of this Ordinance shall not apply to or affect the following persons:
 - 1. Persons acting pursuant to an order or process of a court of competent jurisdiction;
 - 2. Persons acting in accordance with their powers and duties as public officials;
 - 3. Duly licensed auctioneers selling at auction; or
 - 4. Any publisher of a newspaper, magazine or other publication, who publishes in good faith, any advertisement, without knowledge of its false, deceptive or misleading character, or without knowledge that the provisions of this Ordinance have not been complied with.

Section 5-01-04 APPLICATION FOR LICENSE

Application for a license to conduct a sale regulated by this Ordinance shall be made to the License Officer at least ten (10) days prior to such sale in such form and manner as prescribed by the Council, but containing at least the following information:

- A. The name and address of the person for which an application is made and the name and address

Boise Municipal Code

- of the owner or owners (if a partnership or corporation, the names and addresses of partners, officers and managers) of the goods to be the object of the sale;
- B. The length of time the person has been in business in Boise City and the length of time the person has been in business at the address at which the sale is to be held;
 - C. Whether, and when, any sales enumerated by this Chapter have previously been held by said applicant including the date and location of said sales.
 - D. A statement explaining the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted.
 - E. The dates of the period of time within which the sale is to be held.
 - F. A description of the place where said sale is to be held.
 - G. An inventory describing generally the goods to be offered for sale at said sale. Such inventory shall not include goods ordered in contemplation of conducting a sale regulated hereunder, and any goods purchased within thirty (30) days before the filing of an application hereunder shall be deemed to have been goods ordered in contemplation of a sale regulated by this Chapter.

Section 5-01-05 LICENSE FEE, TERM AND BOND

- A. An applicant for a license hereunder shall submit to the License Officer with his application a non-refundable license fee in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule.
- B. The license, if the application is approved by the Licensing Officer, shall authorize the sale described in the application for a period of not more than sixty (60) consecutive days, Sundays and holidays excluded, following the date of issuance thereof.
- C. Upon payment of an additional non-refundable license fee in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule, the License Officer may renew or extend a license for one period of time only, such period to be in addition to the period of time permitted in the original license, and such renewal shall not exceed thirty (30) consecutive days, Sundays and holidays excluded, when the Licensing Officer finds:
 - 1. That facts existing justify the license renewal;
 - 2. That the licensee filed an application for renewal;
 - 3. That the licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included on the original application and inventory.
 - 4. The license or renewal thereof shall authorize only the type of sale described in the application at the location named therein.
 - 5. The license shall authorize only the sale of goods described in the inventory attached to

Boise Municipal Code

the application.

- D. The applicant for a license hereunder shall tender with the application a bond in the sum of one thousand dollars (\$1,000.00) conditioned upon the observance of this Ordinance and for the indemnification of any purchaser at such sale who suffers a loss by reason of misrepresentation. (6419, Amended, 09/20/2005; 4931, Added, 06/17/1986; 4931, Added, 6-17-86)

Section 5-01-06 DUTIES OF LICENSEES

A licensee hereunder shall have the duty to:

- A. Make no additions whatsoever during the period of the licensed sale to the stock of goods set forth in the inventory attached to the application for license.
- B. Refrain from employing any untrue, deceptive or misleading advertising, and conduct the licensed sale in conformity with any advertising or holding out incident thereto.
- C. Keep available at the place of sale a copy of the inventory submitted with the application and shall present such duplicate to the License Officer, his representative or any police officer upon request.
- D. Keep any other goods separate and apart from the goods listed in the filed inventory as being objects of sale and shall make such distinction to the public by placing tags on all the inventoried goods in and about the place of sale apprising the public of the status of all such goods. Combining any additional or other goods with the goods inventoried shall cause the goods inventoried to lose its identity for the purposes of the sale and any such license issued shall cease to apply to the sale of such goods.

Section 5-01-07 PENALTIES

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars (\$300.00), or by imprisonment in the City jail for not more than six (6) months, or by both such fine and imprisonment. (Ord. 3948, 12-27-76)