

## Chapter 5-02

### GENERAL LICENSING PROVISIONS

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**Section 5-02-01      LEGAL AUTHORITY**

Idaho Code Sections 50-301 and 50-307 authorize the city of Boise City, state of Idaho (“the City”) to regulate occupations and businesses within the City.

**Section 5-02-02      PURPOSE**

The City finds that public health, safety and welfare require that certain occupations and businesses within the City be regulated without restraining, burdening, or over regulating the businesses or occupations. The City issues a license pursuant to this Chapter and the regulated business’ pertinent licensing chapter of the Boise City Code (the “Code”) to assure, as is reasonably practicable, that each person and business licensed in accordance with the Code is in substantial compliance with these minimum standards and procedures. The issuance of a license pursuant to this Chapter, however, does not constitute a representation of any affirmance to any person who transacts business with a person or business licensed pursuant to this Chapter that said licensee is free from risk. The City shall not be liable for nor shall a cause of action exist for any loss or damage based upon the failure of any person or business licensed under this Chapter to meet the standards contained herein.

**Section 5-02-03      SCOPE**

This Chapter sets forth policies, standards, requirements, and procedures applicable to all of the following persons, businesses, trades and occupations licensed or regulated by the City:

- A. Alarm installer and alarm installation service, Chapter 5-19;
- B. Alcoholic beverage, Chapter 5-05;
- C. Alcohol beverage catering, Chapter 5-05;
- D. Auction house, auction sale, and auctioneer, Chapter 5-30;
- E. Child care facility, Chapter 5-33;
- F. Child care worker, Chapter 5-33;
- G. Commercial driver, Chapter 5-03;
- H. Commercial vehicle, Chapter 5-03;
- I. Eating and drinking, Chapter 8-05;
- J. Going out of business sale, Chapter 5-01;
- K. Immobilization agent, Chapter 5-04;

- L. Immobilization service, Chapter 5-04;
- M. Massage establishment, Chapter 5-35;
- N. Non-aerial fireworks and public fireworks display, Chapter 7-01;
- O. Non-commercial kennel, Chapter 6-07;
- P. Non-consent towing, Chapter 10-23;
- Q. Pawnbroker, Chapter 5-16;
- R. Precious metal dealers, Chapter 5-20;
- S. Private patrol agent, Chapter 5-19;
- T. Private security service, Chapter 5-19;
- U. Sidewalk café permit, Chapter 5-06;
- V. Solicitor, Chapter 5-12;
- W. Special events, Chapter 5-10;
- X. Stationless bicycle share programs, Chapter 5-11;
- Y. Taxicab business, Chapter 5-24;
- Z. Taxicab driver; Chapter 5-24;
- AA. Taxicab vehicle, Chapter 5-24;
- BB. Tree pruning and tree removal, Chapter 9-16;
- CC. Temporary merchant, Chapter 5-12;
- DD. Vendor, Chapter 5-12; and
- EE. Valet, both regular and special event, Chapter 5-13.

**Section 5-02-04      DEFINITIONS**

For the purposes of this Chapter, the following terms, phrases, words, and derivations thereof, shall have the meaning given herein, except where the context clearly indicates a different meaning. When consistent with the context, words used in the present tense include the future,

words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "he" shall include "she." Words used throughout this Chapter, but not defined herein, shall have their plain, ordinary, and common meaning.

- A. **APPLICANT:** A person who applies for a license to engage in or operate a regulated business within the City.
- B. **CITY:** The city of Boise City, Idaho.
- C. **CITY CLERK'S OFFICE:** The Office of the City Clerk of the City or its designee.
- D. **CONVICTION:** An individual is considered to have been convicted of a criminal offense for purposes of this Chapter when:
  - 1. A judgment of conviction, adjudication, or withheld judgment has been entered against the individual by any federal, state, military, or local court;
  - 2. There has been a finding of guilt against the individual by any federal, state, military, or local court;
  - 3. A plea of guilty or no contest by the individual has been accepted by any federal, state, military, or local court; or
  - 4. The individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes when the individual has entered into participation in a drug court, mental health court, domestic violence court, or other specialty court.
- E. **DIRECTOR:** The Director of the Department of Finance and Administration or the Director's designee, who must be an employee of the City.
- F. **DISQUALIFYING CRIME:** A conviction for a crime that results in a denial, revocation, or suspension of a license to an applicant or licensee.
- G. **DRIVING BUSINESS:** A business where the primary nature of the business requires the applicant or licensee, his employees or agents to drive a motor vehicle in order to engage in or operate the business. The term "Driving Business" includes Commercial Transportation Businesses, Chapter 5-03; Non-consent Towing, Chapter 5-24; Taxicabs, Chapter 5-24; and Valets, Chapter 5-13.
- H. **GOOD CAUSE:** A substantial reason that affords a legal excuse.
- I. **LICENSE:** Written permission from the City to engage in or operate a business regulated by the City pursuant to the Code. The term "license" includes to word "permit."

- J. LICENSEE: A person holding a valid license issued by the City Clerk’s Office pursuant to this Chapter.
- K. LICENSING OFFICE OR OFFICER: The City Clerk’s Office or its designee, who must be an employee of the City.
- L. PERSON: Any individual, partnership, association, corporation, or organization of any kind, or any governmental entity, including the state of Idaho and every political subdivision thereof.
- M. PERTINENT LICENSE CHAPTER: The chapter in the Code specifically addressing the additional requirements, disqualifications, and substantive rules governing each regulated business listed in 5-02-03.
- N. REGULATED BUSINESS: A business, trade, or occupation for which a license is required by this Chapter
- O. REVOCATION: The permanent removal of a license.
- P. SATISFACTORY DRIVING RECORD: A driving record that includes, but is not limited to, less than eight (8) points within twelve (12) months of applying for or renewing a license, and no suspensions or revocations of a driver’s license within three (3) years of applying for or renewing a license.
- Q. STATIONLESS BICYCLE SHARE OPERATOR: A person who owns, manages, or operates a Stationless Bicycle Share Program.
- R. STATIONLESS BICYCLE SHARE PROGRAM: A for hire system of self-service bicycles, E-bikes, or motorized scooters that does not require either a rack or sharing station, or other stationary object.
- S. SUSPENSION: The temporary removal of a license.
- T. TIER 1 BUSINESS: The following are Tier 1 businesses:
1. Alcoholic beverage, Chapter 5-05;
  2. Alcohol beverage catering, Chapter 5-05;
  3. Auction house, auction sale, and auctioneer, Chapter 5-30;
  4. Eating and drinking, Chapter 8-05;
  5. Going out of business sale, Chapter 5-01;
  6. Non-aerial fireworks, and public fireworks display, Chapter 7-01;
  7. Non-commercial kennel, Chapter 6-07;
  8. Sidewalk café permit, Chapter 5-06;
  9. Special events, Chapter 5-10; and
  10. Tree pruning and tree removal, Chapter 9-16.

U. TIER 2 BUSINESS: The following are Tier 2 businesses:

1. Immobilization agent, Chapter 5-04;
2. Immobilization service, Chapter 5-04;
3. Pawnbroker, Chapter 5-16;
4. Precious metal dealers, Chapter 5-20;
5. Non-consent towing, Chapter 10-23;
6. Temporary merchant, Chapter 5-12;
7. Temporary merchant, seasonal, Chapter 5-12; and
8. Vendor, Chapter 5-12.

V. TIER 3 BUSINESS: The following are Tier 3 businesses:

1. Alarm installer and alarm installation service, Chapter 5-19;
2. Child care facility, Chapter 5-33;
3. Child care worker, Chapter 5-33;
4. Commercial driver, Chapter 5-03;
5. Commercial vehicle, Chapter 5-03;
6. Massage establishment, Chapter 5-35.
7. Private patrol agent, Chapter 5-19;
8. Private security service, Chapter 5-19;
9. Solicitor, Chapter 5-12;
10. Stationless bicycle share programs, Chapter 5-11;
11. Taxicab business, Chapter 5-24;
12. Taxicab vehicle, Chapter 5-24;
13. Taxicab driver, Chapter 5-24; and
14. Valet, both regular and special event, Chapter 5-13.

**Section 5-02-05 LICENSE REQUIRED**

No person shall, wholly or in part, engage in or operate a regulated business within the City without first obtaining and maintaining, in full force and effect, all licenses required by the City in accordance with the Code. Every applicant or licensee must meet all of the qualifications and none of the disqualifications set forth in this Chapter and in the pertinent license chapter. In the event of a conflict between this Chapter and the pertinent license chapter, the stricter requirements shall govern.

**Section 5-02-06 APPLICATION FOR A LICENSE AND APPLICATION FOR RENEWAL**

- A. Application for a license and application for renewal for a regulated business shall be made to the City Clerk's Office in such form and manner as may be prescribed.
- B. The written application for a license and application for renewal thereof shall include, at a minimum, the following:

1. The name and address of the applicant or licensee; and if a partnership, the name and address of the general partner; and if a corporation or association, the name and address of the agent for service of process; the name, physical and mailing address, email address and phone number of the operating manager; and such other information as may be required.
  2. The license desired, together with a description of the business, trade, occupation, or profession.
  3. Whether the applicant or licensee has had a similar license denied, suspended, or revoked within the past five (5) years by the City, the state of Idaho, or by any other city, county or state.
  4. Whether the applicant or licensee has been convicted of any disqualifying crime, the type of offense, the location of the offense, and the date of conviction.
  5. The legal name of the proposed business, trade, or occupation and any trade names, and the street address, if any, where the regulated business is to be undertaken.
  6. Any other relevant information required by the pertinent license chapter and any other relevant information required by the City Clerk's Office.
  7. A statement signed and sworn by the applicant or licensee, under penalty of perjury, that all information submitted is true and correct to the best of his knowledge.
  8. Proof that the applicant or licensee is eighteen (18) years or older, unless otherwise specified in the pertinent license chapter.
  9. If the proposed applicant or licensee is a corporation, proof that the corporation is registered and in good standing in the state of Idaho.
- C. Upon receipt of an application for a license or application for renewal thereof, the City Clerk's Office shall cause an investigation to be made to the extent necessary to determine whether the applicant or licensee is qualified to be licensed in accordance with State law, this Chapter and the pertinent license chapter.
- D. Persons who apply for a license included within a Tier 2 or Tier 3 business, as set forth in Sections 05-02-04 S and T, shall submit to a background check, which shall include fingerprinting. Pursuant to Idaho Code Section 67-3008, the City Clerk shall forward fingerprints through the Idaho State Police to the Federal Bureau of Investigation (FBI) to conduct a national background investigation and criminal history check. Unless otherwise provided by law, criminal history records and the results of the background investigation received from the FBI are confidential and shall not be disseminated to any private

person or entity. The criminal history and national background check may also include a check of the Idaho Department of Transportation Driving Records, and other states and jurisdiction records and findings. Criminal history checks on those persons under the age of eighteen (18) years of age shall include a check of the juvenile justice records of adjudications of the magistrate division of the district court, county probation services, the department of Health and Welfare and other records as may be required by the pertinent licensing chapter. The cost of taking and processing such fingerprints shall be borne by the applicant or licensee and is nonrefundable.

- E. Every applicant or licensee must notify the City Clerk's Office in writing within ten (10) business days of any material change in information contained in his application for a license or application for renewal thereof, including, but not limited to, change of name, address, telephone number, employer, location of business office, registered agent, or addition or deletion of vehicles; provided, however, that if any of the individuals identified in Sections 05-02-10, 05-02-11, 05-02-12, and 05-02-13 is convicted of a disqualifying crime, the applicant or licensee shall notify the City Clerk's Office in writing within two (2) days of entry of such conviction.
- F. Every application for a license required by this Chapter or renewal thereof shall be accompanied by a nonrefundable license fee in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule. The required license fee, and all other required costs and fees, shall be paid at the time of application for such license.

**Section 5-02-07      DISPOSITION OF APPLICATION AND APPLICATION FOR RENEWAL**

The City Clerk's Office shall take action to approve or deny an application for a license, or application for renewal thereof within sixty (60) days of the receipt of a completed application or completed application for renewal.

**Section 5-02-08      TERM OF LICENSE**

A license issued by the City pursuant to this Chapter is valid for one (1) year from the date of issuance or renewal, unless stated otherwise in the pertinent license chapter or on the license, or unless sooner revoked, suspended, or relinquished.

**Section 5-02-09      FAILURE TO DISCLOSE INFORMATION AND CHANGE OF INFORMATION**

An applicant or licensee who knowingly omits, misrepresents, or fails to provide any required information, or who fails to sign the application for a license or application for renewal, or who fails to disclose any material change in information may be subject to denial, suspension, or revocation of a license, or prosecution under this Chapter, or a combination of any of the above.

**Section 5-02-10      DISQUALIFYING CRIMES OR CIRCUMSTANCES - TIER 1**



## **BUSINESSES**

No applicant or licensee will be issued or renewed a license to engage in or operate a Tier 1 business unless the applicant or licensee, or any of his employees, meets all of the qualifications and none of the disqualifications set forth in the pertinent license chapter.

### **Section 5-02-11      DISQUALIFYING CRIMES OR CIRCUMSTANCES - TIER 2 BUSINESSES**

No applicant or licensee will be issued or renewed a license to engage in or operate a Tier 2 business if, in addition to the disqualifiers listed in 5-02-10, the applicant or licensee, or any of his employees:

- A. Has, within the five (5) years immediately preceding the date of application, had any license of the same or similar kind revoked by the City, the state of Idaho, or by any other city, county or state; or
- B. Has an outstanding warrant for his arrest, detainment, extradition or deportment.
- C. Has within five (5) years prior to the date of making application for such license or application for renewal been convicted of any felony; provided, however, that any applicant, licensee or any of his affiliates, or employees who has not had a prior conviction within the past five (5) years solely because he has been incarcerated shall be disqualified;
- D. Has, within the three (3) years immediately preceding the date of the application for such license or application for renewal been convicted of any misdemeanor criminal violation involving theft, larceny, or other dishonest act, including but not limited to, misdemeanor forgery of and fraudulent use of a financial transaction card, misdemeanor forgery and counterfeiting, misdemeanor identity theft, misdemeanor insurance fraud, misdemeanor public assistance fraud in the state of Idaho or in any other city or jurisdiction; provided, however, that any applicant, licensee or any of his affiliates, or employees who has not had a prior conviction within the past three (3) years solely because he has been incarcerated shall be disqualified; or
- E. At the time of application is currently serving any term of felony probation or parole.

### **Section 5-02-12      DISQUALIFYING CRIMES OR CIRCUMSTANCES - TIER 3 BUSINESSES**

No applicant or licensee will be issued or renewed a license to engage in or operate a Tier 3 business if, in addition to the disqualifiers listed in 5-02-10 and 11, the applicant or licensee, or his employees:

- A. Is required to register as a sex offender, pursuant to the Sexual Offender Registration Notification and Community Right-to-Know Act, Idaho Code section 18-8301, et seq., or

the Juvenile Sex Offender Registration Notification and Community Right-to-Know Act, Idaho Code Section 18-8401, et seq;

- B. Has, within three (3) years prior to the date of making application for such license or application for renewal, been convicted of any misdemeanor involving: the use of force against the person or property of another; the threat of force against the person of another; stalking, telephone harassment, or violations of protection orders or no contact orders; theft or larceny; the use, possession, or sale of illicit drugs or drug paraphernalia; possession of a concealed weapon; or illicit sexual activity. Provided, however, that any applicant, licensee or any of his affiliates, or employees who has not had a prior conviction within the past three (3) years solely because he has been incarcerated shall be disqualified; or
- C. Has a conviction, whether felony or misdemeanor, involving the sexual battery of any person, sexual exploitation or sexual abuse of a minor or vulnerable adult, enticement of a minor, child pornography, kidnapping, lewd conduct with a minor, prostitution, rape, or homicide.
- D. Is a respondent in a domestic violence protection order entered pursuant to Idaho Code Title 39 Chapter 63 after receiving notice of and an opportunity for hearing; provided, entry of an ex parte order pursuant to Idaho Code Section 39-6301 et seq. shall not apply herein.

**Section 5-02-13      DISQUALIFYING CRIMES OR CIRCUMSTANCES, AND OTHER REQUIREMENTS - DRIVING BUSINESSES**

- A. In addition to those disqualifications included within a license's tier, no applicant or licensee will be issued or renewed a license to engage in or operate a driving business while the applicant or licensee's driver's license is suspended or invalid.
- B. Each applicant or licensee must submit a copy of a valid Idaho driver's license and a copy of that applicant's or licensee's driving record showing that the applicant or licensee has a satisfactory driving record. The driving record shall be dated not more than ten (10) days prior to the date the application is submitted.
- C. Medical Certificate. Every two (2) years, each applicant or licensee for a Driving Business shall submit with the application a Department of Transportation medical card stating that the applicant or licensee has sufficient hearing, vision, and general health such that the applicant or licensee is physically and mentally fit for the safe operation of a Driving Business. The medical card must be valid for at least eleven (11) months after the date the applicant or licensee submits his application.
- D. No applicant or licensee shall be issued a license to operate a Driving Business until the applicant or licensee has provided proof of insurance as provided in the pertinent license chapter.

**Section 5-02-14      REQUEST FOR EXEMPTION REVIEW**

- A. An applicant or licensee who is denied a license or whose license is not renewed may submit a written request for an exemption review.
- B. The request for an exemption review must be based upon good cause and filed with the City Clerk's Office at the time of application or within seven (7) business days upon denial of such application.
- C. The written request for an exemption review must state the applicant's or licensee's name, address and phone number, the remedy requested and must contain a concise written statement of the facts, circumstances, and grounds for the requested exemption and any supplemental information establishing suitability for licensure. Any decision to grant an exemption shall not be considered as precedent or be given any force or effect in any other proceedings. A request for an exemption review may be renewed annually.
- D. The City Clerk's Office shall consider the following factors or evidence in determining whether the applicant or licensee has shown good cause for granting an exemption:
  - 1. The severity or nature of the crime or disqualifying circumstance;
  - 2. The period of time that has passed since the crime or disqualifying circumstance under review;
  - 3. The number or pattern of crimes or disqualifying circumstance or other similar incidents;
  - 4. The circumstances surrounding the crime or disqualifying circumstance that would help determine the risk of repetition;
  - 5. The relationship of the crime or disqualifying circumstance to the license;
  - 6. The applicant's or licensee's activities since the crime or disqualifying circumstance under review, such as employment, education, participation in treatment, or any other factors which may be evidence of current rehabilitation;
  - 7. The falsification or omission of information on the application form and other supplemental forms submitted; and
  - 8. Any other information regarding rehabilitation or mitigating circumstances.
- E. The applicant or licensee shall bear the burden of establishing good cause for an exemption and his current suitability for a licensure.
- F. When such an exemption is granted, the license may be issued with restrictions and stipulations. If the licensee does not fully comply with the restrictions, the license may be

revoked or suspended.

**Section 5-02-15 NOTICE OF INABILITY TO PROCEED**

If, at the time of initial application or renewal, an applicant or licensee has a pending criminal action for a disqualifying crime or an outstanding warrant for his arrest, detainment, extradition or deportation, the City Clerk's Office shall issue a notice of inability to proceed. The applicant or licensee may submit documentation that the matter has been resolved and that the applicant or licensee qualifies for the license within sixty (60) days of notification. If the applicant or licensee fails to provide such notice, the application or renewal shall be deemed denied and the applicant must apply anew for the license.

**Section 5-02-16 NON-TRANSFERABILITY**

A. A license to engage in or operate a regulated business shall not be transferred or leased without the written approval of the City Clerk's Office or unless authorized by the pertinent license chapter.

B. A nonrefundable application fee in an amount established by the Boise City Council and listed on the most current City Clerk License Fee schedule shall accompany the application for each transfer requested.

**Section 5-02-17 CONSENT TO COMPLIANCE INSPECTIONS**

Every licensee consents to reasonable compliance inspections during its regular hours of business by the City Clerk's Office, Chief of Police or their respective designees to enter, free of charge, any place of business or to stop, in accordance with the law, any vehicle for which a license is required. The compliance inspections are solely for the purpose of determining whether the activity is being carried on in compliance with federal and state laws and municipal ordinances and to promote the public health, safety, and welfare.

**Section 5-02-18 NOTICE OF VIOLATION**

A. Upon determining that a licensee is in violation of any federal, state or local law, rule or regulation, but that the licensee does not pose an immediate threat of harm to the public health, safety, or welfare, the City Clerk's Office may issue a notice of violation.

B. Every notice of violation issued pursuant to this Chapter shall:

1. Conform to the same notice and service requirements as a notice of denial, suspension, or revocation;
2. Include all of the information listed in a notice of denial, suspension, or revocation;
3. Identify the corrective action(s) that shall be taken to address the basis for the notice of violation;

4. State the date and time by which the required corrective action(s) shall be completed;
  5. State the date on which the license suspension or revocation will begin, and the length and terms of such a suspension, should the licensee fail to complete the required corrective action(s) by the date and time specified in the notice of violation; and
  6. Explain the licensee's opportunity to request an informal review, an administrative review hearing by the Director, and a review hearing by a hearing officer to contest the proposed decision or action.
- C. In the event a licensee, having received a notice of violation, fails to complete the corrective action(s) stated in the notice of violation, his affected license shall be suspended or revoked as stated in the notice of violation without any further notice or action. The notice of suspension or revocation contained within the notice of violation shall suffice to provide notice of suspension or revocation.
- D. It shall be the duty of the licensee to provide proof of completion of the corrective action(s) to the Licensing Officer. Failure to do so shall result in license suspension or revocation as stated in the notice of violation.
- E. Upon receipt of satisfactory proof of completion of the correction action(s), the Licensing Officer shall provide the licensee with written notice rescinding the possibility of the suspension or revocation as stated in the notice of violation.

**Section 5-02-19 NOTICE OF DENIAL, REVOCATION, OR SUSPENSION**

- A. If an application for a license is denied, suspended, or revoked, a letter will be sent by registered or certified mail to the applicant's or licensee's address on file in the City Clerk's Office.
- B. Every notice of denial, suspension or revocation shall include a statement or description explaining:
1. The proposed decision or action, and if for suspension or revocation, the effective date of the proposed decision or action, which date shall not be less than ten (10) business days after the date of the notice unless the license is being suspended or revoked pursuant to Section 5-02-22; and for suspension, the time period for the suspension, which shall be no longer than six (6) months;
  2. The reasons why the license is being denied, suspended, or revoked;
  3. That the applicant or licensee has the opportunity to request an informal review, an administrative review hearing by the Director, and a review hearing by a

hearing officer to contest the proposed decision or action;

4. If the applicant or licensee fails to request an informal review within ten (10) business days of the date of the notice, the licensee or applicant waives his opportunity to contest the proposed decision or action, and the action shall become final on the notice's effective date.

**Section 5-02-20 DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE**

- A. In addition to any other penalty provided by this Chapter, the pertinent license chapter, or by law, any license issued in accordance with this Chapter may be denied, revoked, or suspended for any of the following reasons:
  1. Any one of the individuals identified in Sections 05-02-10, 05-02-11, 05-02-12, and 05-02-13 is convicted of a disqualifying crime; or any individual identified in Section 05-02-13 fails to maintain a satisfactory driving record, fails to submit the required medical certificate, or fails to maintain and show proof of the requisite insurance coverages;
  2. The licensee or applicant, or any of his partners, affiliates, or employees fails to comply with any of the minimum standards, requirements, polices, or procedures set forth in this Chapter or the pertinent license chapter;
  3. The licensee obtained his license by fraud or misrepresentation;
  4. The licensee fails to take corrective action within the timeframe specified in a notice of violation;
  5. The license is being or has been exercised contrary to the terms or conditions of the license;
  6. The licensee or applicant fails to pay any applicable fee imposed pursuant to this Chapter or the pertinent license chapter;
  7. The licensee is operating the regulated business in such a manner as to be detrimental to the public health, safety and welfare.

**Section 5-02-21 STAY OF SUSPENSION OR REVOCATION**

- A. Absent an emergency as set forth in Section 5-02-22, the effective date of a proposed suspension or revocation shall be not less than ten (10) business days after the date of the notice, unless otherwise mutually agreed to between the City Clerk's Office and the licensee.
- B. The decision of the City Clerk's Office to deny or not renew a license shall result in no stay and the decision shall become effective immediately.

**Section 5-02-22            EMERGENCY SUSPENSION OR REVOCATION**

- A.     Notwithstanding any other provision of this Chapter, when, in the opinion of the City Clerk’s Office, there is a clear and immediate threat to the health, safety, or welfare of the public, there shall be no stay of the suspension or revocation. The City Clerk’s Office shall prepare a written notice of suspension or revocation that includes a statement of the decision or action, an explanation of the reasons for the decision or action, the Code section(s) relied upon for the decision or action and an explanation of the licensee’s rights to request an administrative review hearing from the Director and a review hearing by a hearing officer.
  
- B.     The licensee shall have the right to request an administrative review hearing within ten (10) days of the emergency suspension or revocation.

**Section 5-02-23            WAITING PERIOD BEFORE BECOMING ELIGIBLE TO REAPPLY AFTER REVOCATION**

A licensee whose license was revoked may not reapply for a license until one (1) year has elapsed from the date of notice of the revocation, the informal review, the written decision in an administrative review or the written decision following a hearing before a hearing officer, whichever is latest; such waiting period shall also apply to any applicant that is a partnership, association or corporation that includes a previously revoked licensee holding a ten percent (10%) or more interest in the partnership, association or corporation. A licensee’s failure to accept, acknowledge, or receive notice shall not invalidate the waiting period.

**Section 5-02-24            REQUEST FOR INFORMAL REVIEW BY THE CITY CLERK’S OFFICE**

- A.     Upon receipt of a notice of denial, suspension, revocation or violation, an applicant or licensee may request an informal review by the City Clerk’s Office within ten (10) business days after the date the decision is mailed or otherwise delivered to the applicant or licensee.
  
- B.     A request for an informal review shall contain the following information:
  - 1.     The name of applicant or licensee;
  - 2.     If an existing licensee, the City of Boise applicant or license number; and
  - 3.     The reasons for which the review is requested set forth with specificity.

**Section 5-02-25            INFORMAL REVIEW**

- A.     If the City Clerk’s Office receives a request for an informal review, the City Clerk’s Office shall:

1. Review the decision or action and any information submitted by a licensee or an applicant; and
  2. Communicate with the licensee or applicant if additional documentation or clarification is required.
- B. The City Clerk's Office will refuse to consider any request for informal review that is not received within ten (10) business days of the date of the notice of denial, suspension, violation, or revocation.
- C. If the licensee fails to respond to communication requests, the decision or action shall become effective at twelve o'clock (12:00) a.m. on the effective date of the notice.
- D. The applicant or licensee has the burden of proof and must establish that the decision or action of the Licensing Officer was arbitrary or capricious.
- E. The review shall be conducted informally. The City Clerk's Office shall review the decision or action and the reasons therefore with the applicant or licensee. The applicant or licensee, in person or through his attorney, may present any evidence showing reason why the decision or action was arbitrary or capricious.
- F. The City Clerk's Office's decision with respect to a request for informal review will be issued within seven (7) business days of the receipt of the informal review request or upon receipt of additional documentation or clarification as requested.
- G. The informal review shall not be conducted by the Licensing Officer who issued the notice of violation, denial, suspension, or revocation.

**Section 5-02-26      REQUEST FOR ADMINISTRATIVE REVIEW BY THE DIRECTOR**

- A. If the applicant or licensee fails to obtain the relief requested in the informal review, or if the licensee's license is suspended or revoked pursuant to Section 5-02-22, the applicant or licensee may request an administrative review hearing by the Director.
- B. A request for an administrative review must occur within seven (7) business days of the mailing or hand-delivery of the final decision of the informal review to the applicant or licensee.
- C. A request for an administrative review shall contain the following information:
1. The name of applicant or licensee;
  2. If an existing licensee, the City of Boise applicant or license number;



3. The reasons for which the review is requested set forth with specificity;
4. The applicant's or licensee's intent to be represented by legal counsel;
5. The remedy requested; and
6. The applicant's or licensee's availability for a hearing within the next seven (7) to fifteen (15) business days.

**Section 5-02-27 ADMINISTRATIVE REVIEW HEARING BY THE DIRECTOR**

- A. If the Director receives a request for an administrative review hearing, the Director shall:
  1. Schedule a date for the hearing not more than fifteen (15) business days and not less than seven (7) business days after the Director receives the request;
  2. Notify the licensee or applicant of the date, time and location of the hearing; and
  3. State in the notice that the applicant or licensee must appear at and participate in the hearing in order to contest the violation, denial, non-renewal, or the proposed suspension or revocation.
- B. The Director will refuse to consider any request for review that is not received within seven (7) business days of the date of the mailing or hand-delivery of final resolution of the informal review.
- C. If the licensee fails to appear at the hearing, the decision or action shall become effective at twelve o'clock (12:00) a.m. the day following the hearing.
- D. The applicant or licensee has the burden of proof and must establish that the decision or action of the City Clerk's Office was arbitrary or capricious.
- E. The hearings shall be conducted informally. The Director or his designee shall review the decision or action and the reasons therefore with the applicant or licensee. The applicant or licensee, in person or through his attorney, may present any evidence showing reason why the decision or action was arbitrary or capricious. The Director shall cause an audio or video recording to be made of the hearing.
- F. If an applicant or licensee fails to appear at the administrative review hearing, the Director shall enter a proposed decision of default upholding the denial, suspension or revocation. The proposed decision of default may be rescinded if, within seven (7) business days of the date of mailing, the applicant or licensee submits a written explanation for not appearing, which the Director finds substantial and reasonable.
- G. The Director's written decision will be issued within seven (7) business days of the hearing. The Director's decision will include the reasons for his decision.

- H. The Director's decision shall become effective ten (10) business days after the date the decision is mailed or hand-delivered to the applicant or licensee.

**Section 5-02-28 REVIEW OF DIRECTOR'S DECISION**

- A. A licensee or applicant may request a review of the Director's decision by a hearing officer within ten (10) business days of the effective date of the Director's decision.
- B. A request for review of the Director's decision must be filed in writing and must include that information set forth in Section 5-02-26. In addition, the request for review must be accompanied by a copy of the decision or action that is the subject of the review, and identify all legal and factual basis of disagreement with the Director's decision. Requests for review must also include the applicant's or licensee's intent to be represented by legal counsel and include payment of two hundred fifty dollars (\$250).
- C. The applicant or licensee has the burden of proof and must establish that the decision or action of the Licensing Officer was arbitrary or capricious.
- D. If an applicant or licensee fails to appear at the review hearing, the hearing officer shall enter a proposed decision of default. The proposed decision of default may be rescinded if, within seven (7) business days of the date of mailing, the applicant or licensee submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable.

**Section 5-02-29 AUTHORITY OF HEARING OFFICER**

- A. The hearing officer will consider only information that was available to the Director at the time the decision was made. If a party shows with good cause that there is additional relevant information that was not presented to the Director, the hearing officer will remand the request for administrative review to the Director for reconsideration. No hearing officer has the jurisdiction to invalidate any federal or state statute, ordinance, rule or regulation, or court order. The hearing officer must defer to the Director's interpretation of statutes, ordinances, rules, regulations or policy unless the hearing officer finds the Director's interpretation to be contrary to the plain meaning of the statute or ordinance or an abuse of discretion.
- B. The hearing officer shall have and exercise the power to regulate the proceedings and to do all acts and to take all measures necessary or proper for the efficient performance of the hearing officer's duties under this Chapter. The hearing officer shall have all powers of the City for the hearing of these matters, may issue subpoenas in the name of the City, may rule upon the admissibility of evidence, may put witnesses under oath and may examine them and may call the parties to the action and examine them upon oath.

**Section 5-02-30 WRITTEN REPORT**

- A. The hearing officer shall make findings of fact and conclusions of law as appropriate and issue a written report. The order must either affirm the Director's action or reverse and remand the Director's action for further proceedings. The hearing officer does not have authority to modify the Director's action. The hearing officer shall file the report with the Director, along with the recording of the proceedings, transcripts, if any, minutes, evidence and original exhibits offered or received at the hearing. The hearing officer shall transmit a copy of the report to all persons entitled to notice. Hearing officer shall cause an audio or video recording to be made of the hearing.
- B. The hearing officer's report will be issued within fifteen (15) business days of the hearing, and shall become effective three (3) business days after the date the decision is mailed or hand-delivered to the applicant or licensee. Failure of the hearing officer to issue a report within fifteen (15) business days shall not invalidate any suspension or revocation.

**Section 5-02-31 UNLAWFUL ACTS**

It shall be unlawful for any applicant or licensee, or any of his respective employees, agents, or affiliates to:

- A. Engage in fraud, misrepresentation or to make a false statement in an application for a license or an application for renewal of a license;
- B. Fail to obtain all required licenses and permits. Each day a person fails to obtain all required licenses shall constitute a separate violation;
- C. Fail to report a licensee's failure to maintain all of the qualifications and none of the disqualifications as required by this Chapter or the pertinent licensing chapter;
- D. Refuse to allow the Chief of Police, City Clerk's Office or their designees to conduct compliance inspections; or
- E. To violate any of the provisions of this Chapter.

**Section 5-02-32 RESPONSIBILITIES OF LICENSEES**

Every licensee is responsible for ensuring that his respective employees, agents, and affiliates are familiar with the applicable policies, standards, laws and ordinances applicable to the license issued to him by the City.

**Section 5-02-33 PENALTIES**

The violation of any of the provisions of Section 5-02-31 is punishable as a general misdemeanor and upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1000.00) or by imprisonment in the County jail for not more than six (6) months or by both such fine and imprisonment. In addition to a criminal penalty, the violation of any of the

provisions of this Title may result in either the suspension or revocation of a license.

**Section 5-02-34 SEVERABILITY**

If any clause, sentence, paragraph, section, or any part of this Title is declared or adjudged to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect, invalidate, or nullify the remainder of this Title.

(Ord-39-15 Repealed and Replaced, 8/25/2015)