

Chapter 5-12

VENDORS, SOLICITORS, TEMPORARY MERCHANTS

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Section 5-12-01 PURPOSE

The purpose of this Chapter is to protect the health, safety, and welfare of the City of Boise and its residents.

This ordinance is not intended to prohibit or hamper speech which is protected by the First Amendment, but merely to regulate specific activities which are commercial in nature.
(6159, Amended, 07/09/2002; 5348, Added, 10/29/1991)

Section 5-12-02 DEFINITIONS

A. ADA COUNTY HIGHWAY DISTRICT (ACHD):

The Ada County Highway District has jurisdiction over public streets and sidewalks in Ada County, Idaho.

B. CITY:

The City of Boise, Idaho.

C. CITY CLERK:

The licensing officer of the City of Boise.

D. DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (Downtown BID):

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Area bounded by State Street, Fourth Street, Myrtle Street, and Thirteenth Street.

E. MOBILE VENDING CART:

A movable push cart that is operated by a vendor standing on the sidewalk.

F. MOBILE VENDING TRAILER:

A mobile trailer operated by a vendor standing on or within the frame of the trailer on the public rights-of-way between the curb lines.

G. MOBILE VENDING VEHICLE:

A motorized vehicle operated by a vendor standing on or within the frame of the vehicle on the public rights-of-way between the curb lines.

H. PUBLIC SAFETY OFFICER:

Is defined as a City licensing officer, fire fighter, police officer, and meter monitor.

I. SIDEWALK:

That portion of the public right of way which is between the curb lines or the lateral lines of a roadway and the adjacent property line intended for the use of pedestrians in public places of the City of Boise.

J. SIDEWALK VENDING:

The peddling, vending, selling, displaying, or offering for sale any item of tangible personal property or other thing of value from a mobile vending cart by a vendor to persons on the public right of way including sidewalks.

K. SOLICITOR:

Is defined as an individual, including an employee or agent of a group of individuals, partnership, or corporation, whether a resident of the City or not, who is taking or attempting to take, whether in person or by telephone, orders for sale of food, beverages, goods, merchandise or services to be furnished or performed in the future, whether he is collecting advance payments on such sales or not. Such definitions shall include any person who, for himself, or for another person hires, leases, uses or occupies any building, structure, or motor vehicle within the City for the sole purpose of exhibiting samples and taking orders for future delivery.

L. SPECIAL EVENT:

The temporary use, with a valid permit, of public property, including streets, beaches, parks, community centers and waterways, for the purpose of conducting certain short-term events such as art shows, music concerts, fund-raising events, sidewalk sales, amusement attractions, circuses, carnivals, rodeos, swap meets, sporting events, including, but not limited to, organized float trips, contests, street dances, tournaments, walkathons, marathons, races, exhibitions or related activities.

M. STREET VENDING:

The peddling, vending, selling, displaying, or offering for sale any item of tangible personal property or other thing of value from a mobile vending trailer or vehicle situated on the public rights-of-ways between the curb lines by a vendor to persons on the sidewalk.

N. TEMPORARY MERCHANT:

Is defined as any person, whether owner or otherwise, whether a resident of the City or not, who

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engages in a temporary business of selling and delivering goods, wares, merchandise and services within the City, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure or motor vehicle within the City for the exhibition and sale of food, beverages, goods, merchandise or services.

O. **TEMPORARY:**

Is defined as six months or less.

P. **VENDOR:**

Is defined as any person, including an employee or agent of a group of individuals, partnership, or corporation, who sells or offers to take orders or sell food, beverages, goods, or merchandise from a mobile vending cart, mobile vending vehicle, or mobile vending trailer, or any other type of conveyance or from his or her person. The word vendor shall include the words "hauler", "huckster" and "peddler".

(6159, Amended, 07/09/2002; 5348, added, 10-29-91)

Section 5-12-03 LICENSES REQUIRED

It shall be unlawful for any vendor, solicitor, or temporary merchant, as the same are herein defined, to engage in such business or to employ another in such business within the corporate limits of the City without first obtaining a license from the City Clerk's Office in compliance with the provisions of this Chapter. All vendors, solicitors, or temporary merchants must meet all applicable city, state, including Central District Health Department Regulations and Requirements, and federal law and licensing requirements to be issued and continually maintain a City issued license.

(6159, Amended, 07/09/2002; 5348, Added 10-29-91)

Section 5-12-04 EXCEPTIONS

The provisions of this Chapter shall not apply to:

- A. Any sales under court order;
- B. Traveling salespersons, commercial travelers or the like who exclusively or primarily sell to, or solicit orders for future delivery, from local retailers, local businesses, local governments, local schools, or local wholesale firms;
- C. The sale of farm or garden products by the person producing the same;
- D. The sale of a newspaper subscription in which the seller is a person engaged in both the delivery and sale of the newspaper;
- E. The occasional sale of admission by local school students to a function of their school; or fund raising sales by local service clubs or groups such as Elks, Kiwanis, Lions, Boy or Girl Scouts.;
- F. Any political group seeking funds or membership;
- G. Garage, yard, or similar sales by individuals at their residence or place of business not exceeding two (2) separate sales in one (1) calendar year, not to exceed three (3) days each, which sales

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shall not include business inventory or items that have been purchased for the purpose of resale at another garage sale;

- H. Any organization exempt from taxation as provided by 26 U.S.C. 501 and meeting all the requirements for the exemptions provided by U.S.C. 503;
- I. Any activity conducted pursuant to a Special Events Permit.

(6159, Amended, 07/09/2002; 5348, Added, 10-29-91)

Section 5-12-05 APPLICATION FOR LICENSE

Applicants for a license under this Chapter must file with the City Clerk an application furnished by the City Clerk, which shall contain the following information:

- A. Name and description of the applicant; if the applicant is an association company or corporation, then it shall state its name along with the names and descriptions of the persons who will be soliciting in the City;
- B. Address - both legal and local;
- C. A brief description of the nature of the business and the goods to be sold;
- D. If employed, the name and address of the employer, together with credentials establishing the exact relationship between the employer and the applicant;
- E. The proposed method of operation, length of time for which the right to do business is desired and if a motor vehicle is to be used, a description of the same, together with license number or other means of identification;
- F. Whether a permit or license issued to the applicant has been revoked during the past five (5) years, and if so, where and when;
- G. Personal identifying information of the applicant or the persons acting on its behalf in the City as may be necessary for the City Clerk to conduct a background investigation;
- H. A statement as to whether or not the applicant or the persons acting on its behalf in the City has been convicted of a violation of any federal, state or municipal law, the nature of the offense and the date, and the punishment or penalty assessed therefore;
- I. The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time said application is filed, and the proposed method of delivery;
- J. When the applicant proposes to peddle any prepared food product for human consumption, a certification by the Central Health District and a Boise City Eating and Drinking license, issued under Title 8, Chapter 5, Boise City Code, shall be required prior to issuance and throughout the duration of a license;
- K. No license issued hereunder shall be transferable.

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- L. The City Clerk shall approve or deny the application within thirty (30) days of receipt of the completed application and application fee. Any denial may be appealed pursuant to the provisions of Chapter 2 of this Title. If not denied within that period, the application shall be deemed approved.
- M. Once a license is issued, the applicant has an affirmative duty to maintain all applicable licenses and certifications and to notify the City Clerk in writing of any material change in the information provided by the Applicant in the original application.

(6636, Amended, 01/22/2008; 6159, Amended, 07/09/2002; 5348, Added, 10-29-91)

Section 5-12-06 INVESTIGATION FEES; INVESTIGATION OF APPLICANT; ISSUANCE OF LICENSE

- A. At the time of filing an original application, the applicant shall pay an investigation fee to the City Clerk, and in the event the applicant is a business entity, a separate fee for each individual authorized to act on its behalf in the City, as follows:
 - 1. For an investigation within the State of Idaho, an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule;
 - 2. For an investigation outside the State of Idaho, an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule;
- B. Upon receipt of such application, or application for renewal, the City Clerk shall cause an investigation to determine the validity and completeness of the information presented on the application. Provided, where application for renewal of a license is involved, and the City Clerk has received no complaint or allegation of any violation of this Chapter or other laws by the applicant, the City Clerk may waive payment of the investigation fee and issue the renewal license.
- C. If the applicant or a person authorized to solicit on its behalf has been convicted of a violation of any municipal, state or federal laws, except for minor traffic violations, in the previous five (5) years; or if the applicant has made a false statement on the application then it may be disapproved. Such disapproval may be appealed pursuant to the provisions of Chapter 2 of this Title.

(6636, Amended, 01/22/2008; 6419, Amended, 09/20/2005; 5348, Added, 10/29/1991)

Section 5-12-07 LICENSE FEES

The vendor, solicitor or canvasser, or temporary merchant non-refundable license fee, in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule, shall be paid in advance.

(6419, Amended, 09/20/2005; 5348, Added, 10/29/1991)

Section 5-12-08 BOND REQUIREMENT

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Before any license as provided herein shall be issued for engaging in the business of vendor, solicitor, or temporary merchant as defined in this Chapter,

- A. Every applicant plying his trade as an individual, shall file with the City Clerk a bond, in the amount of one thousand dollars (\$1000.00)
- B. Every business association, company or corporation, which has employees or agents acting in the capacity of vendor, solicitor, or temporary merchant, shall file with the City Clerk a bond covering all such employees in the amount of one thousand dollars (\$1000.00) per employee to a maximum of five thousand dollars (\$5000.00).
- C. The bond may be in form of a surety bond issued by a company licensed to issue insurance in the State of Idaho, a money order or cashier's check payable to the City of Boise, or cash delivered to the City Clerk. The bond shall protect against any and all claims against the vendor, solicitor or temporary merchant arising during the effective dates of the license issued under this Chapter and filed with the City Clerk within sixty (60) days of the expiration of any such license.

Vendors, Solicitors and Temporary Merchants shall notify each customer that they are bonded and that any claim may be presented to the City Clerk at 150 N Capitol Blvd. during regular business hours. Vendors, Solicitors, and Temporary Merchants maintaining a stationary location through the term of the license may satisfy this requirement by a notice conspicuously posted near the point of sale.

- D. After expiration of a license, the City Clerk shall, upon application of the licensee, return the bond to the person designated in the application sixty (60) days after receipt of application for return, unless the Clerk has been notified of the pendency of any claim or cause of action by any person upon the bond. If the Clerk received notice of a claim, the bond shall not be released except as directed by a court or the persons(s) submitting the claim.

After being licensed for two (2) years, without claims against the bond, the above bonding requirements will be waived.

(6636, Amended, 01/22/2008; 5348, 10-29-91)

Section 5-12-09 ISSUANCE AND EXHIBITION OF LICENSE:

- A. The City Clerk shall notify the applicant whether his license request is approved and shall issue a license. Such license shall show the name, address, photograph of said licensee, the type of license issued, and the kind of goods to be sold or type of sales to be solicited thereunder, the amount of fee paid, the date of issuance and the date of expiration.
- B. The City Clerk shall notify the applicant if his license request is disapproved, the reasons therefore, and advise him of the appeal procedure pursuant to the provisions of Chapter 2 of this title.
- C. The license issued to the licensee hereunder by the City Clerk shall be exhibited in a conspicuous place if the licensee is using a vehicle or a building in his business, and otherwise must be displayed on the outside garment of the individual during hours of operation. (5348, Added, 10-29-91)

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Section 5-12-10 GENERAL RESTRICTIONS

Vendors, solicitors, and temporary merchants are subject to the following restrictions:

- A. No vendor, solicitor, or temporary merchant hereunder shall have any exclusive right to any location in a public street or sidewalk, nor shall he/she be permitted to operate in any congested area where his operations might impede or inconvenience the public. This license does not preclude the issuance of a special events permit or other permits by the Parks Department in public parks or the granting of permission to sell and/or operate on private property by its owners.
- B. Vendors, solicitors, and temporary merchants shall be allowed to engage in their licensed business only between nine (9) a.m. and one hour after sunset unless located in a commercially zoned area. In commercially zoned areas vendors, canvassers, and solicitors shall be allowed to engage in their licensed business between the hours of six (6) a.m. on Sunday, Monday, Tuesday, Wednesday, and Thursday until three (3) a.m. on the following day. Vendors, canvassers, and solicitors shall be allowed to engage in their licensed business between the hours of six (6) a.m. on Friday and Saturday until five (5) a.m. the following day in commercially zoned areas. All mobile vending carts, trailers, or vehicles must be removed from public property during non-vending hours. If a Special Event Permit is sought, the City may make an exception to the usual hours of operation.
- C. Any public safety officer or city licensing officer shall be authorized to enforce this ordinance.
- D. Unless positioned on a designated Identified Vending Location, a mobile vending cart, trailer, or vehicle shall not be located:
 - 1. Where clear pedestrian passage on the public sidewalk is less than five feet wide;
 - 2. Within a midblock crosswalk area;
 - 3. On the portion of a public sidewalk crossed by a public or private driveway or within ten feet of either side of the driveway;
 - 4. Within any street corner area.
 - 5. For purposes of this section:
 - a. "Midblock crosswalk area" means the sidewalk area which falls between the two lines fifteen feet beyond each side of a marked midblock crosswalk area (identified by the crosswalk lines delineated on the street pavement) and perpendicular to the curb.
 - b. "Street Corner Area" means the sidewalk area at the intersection of two streets, circumscribed by curbs, the property lines abutting the sidewalk area, and the line including the point along the curb of the street either fifteen feet from the outside line of a corner crosswalk or where there is no marked crosswalk, twenty-five feet from the curb line on the mid-point of the intersecting streets.
 - 6. Within five (5) feet from a perpendicular line drawn to the curb from either side of a doorway;
 - 7. In a manner in which the movement or visibility of vehicles using the street or other public right-of-way is obstructed.
- E. Unless otherwise provided, mobile vending carts, trailers, or vehicles shall not be placed within fifty (50) feet of another mobile vending cart, trailer, vehicle, or Identified Vending Location.
- F. Mobile vending carts, trailers, or vehicles shall not be locked or chained to a parking meter, tree, street light or other street furniture.

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- G. Mobile vending carts, trailers, and vehicles shall not be left unattended on city streets or sidewalks for more than fifteen (15) consecutive minutes.
- H. Utility service connections are not permitted. Electrical lines are not allowed overhead or lying in the pedestrian portion of the sidewalk. City street light facilities shall not be used in any way to supply electrical service to a vendor site.
- I. Vendors, solicitors, and temporary merchants shall keep the area of operation free of debris. Vendors selling food or beverages must provide trash receptacles and waste removal adjacent to or as a part of their operations. All spilled food, beverages, grease, or other trash or debris accumulating within twenty (20) feet of any mobile vending cart, trailer or vehicle shall be cleaned and collected by the vendor and deposited in the vendor's trash receptacle. The vendor is prohibited from depositing its waste, ice, and any grey or waste water into sidewalk waste receptacles, privately owned dumpster, City planters, gutters or the street drainage system.
- J. Mobile vending carts, trailers, or vehicles shall be maintained in such a manner that prevents the spilling or splattering of grease, water, food, or trash on any public right-of-way where the cart, trailer, or vehicle is located. The cart, trailer, or vehicle owner shall be responsible for the cleaning and repair of any public right-of-way soiled, stained, or damaged by the placement and operation of their mobile vending operations.

(6515, Amended, 11/14/2006; 6159, Amended, 07/09/2002)

Section 5-12-11 MOBILE VENDING CART, TRAILER, AND VEHICLE STANDARDS

- A. Mobile vending carts, trailers, and vehicles must be designed and built meeting normal industry standards and used in a safe manner.
- B. A Mobile vending cart frame must not exceed five (5) feet wide by nine (9) feet long by seven (7) feet high, and must be able to be pushed by one person. The mobile vending cart must have a minimum of two functional rubber-tired wheels. The braking mechanism on the mobile vending cart shall be affixed in such a manner that it is not readily removable in order to secure the cart when parked on the sidewalk. The use of ropes and shocks as the sole braking mechanism is prohibited.
- C. Generators on mobile vending carts, trailers, and vehicles powered by gasoline are prohibited. Only generators powered by propane are acceptable. No mobile vending cart shall carry more than two five gallon containers of propane on a public right-of-way. Generators shall not be placed on the ground.
- D. Mobile vending carts, trailers, and vehicles must have the BBQ grill enclosed and permanently built into the structure of the vendor cart, trailer, or vehicle.
- E. A five-pound "K" class hand-held fire extinguisher is required if a heating or cooking appliance is used.
- F. With the exception of merchandise or food items to be sold, mobile vending carts, trailers, and vehicles presented for inspection shall be exactly as they will appear when operating on a public right-of-way, including any food rack.

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- G. Support equipment and accessories, other than the generator and the propane tanks, must not extend more than four (4) feet from the edge of the cart, trailer, or vehicle in any direction and shall not be placed so as to impede pedestrian traffic. Umbrellas, canopies, or other covers used on mobile vending carts, trailers, or vehicles must be securely fastened. Its open diameter may not exceed nine (9) feet with a minimum vertical clearance of seven (7) feet, eight (8) inches and must not extend more than four (4) feet from the edge of the cart, trailer, or vehicle in any direction.
- H. Unsecured menu boards or sidewalk signs are prohibited.
- I. Mobile vending carts, trailers, and vehicles shall have a clean appearance at all time.
(6159, Added, 07/09/2002)

Section 5-12-12 STREET VENDING RESTRICTIONS

In addition to the restrictions and qualifications contained in this chapter, street vendors are additionally subject to the following restrictions:

- A. Parking Restrictions. Vendor trailer or vehicles must at all times be parked in a legal manner. Vending operations shall be conducted only to pedestrians on sidewalks. No service to the public shall be made from the street side of the vehicles(s).
- B. "Open for Business" Sign. To differentiate between vending trailers or vehicles that are merely legally parked on the street from those that are actively engaged in vending operations, any street vending cart, trailer, or vehicle must place an "open for business" sign on the cart, trailer, or vehicle in a conspicuous manner when the vending operations are open for business. Conversely, this sign must be taken down when vending operations have ceased.
- C. Street vending within the Downtown Business Improvement District is prohibited pursuant to Section 5-12-13 Boise City Code.
(6159, Added, 07/09/2002)

Section 5-12-13 DOWNTOWN BUSINESS IMPROVEMENT DISTRICT (BID) RESTRICTIONS

In addition to the restrictions contained in this chapter, all vendors, solicitors, and temporary merchants must comply with the following restrictions in order to vend in the Downtown Business Improvement District (Downtown BID) unless exempted by a special events permit:

- A. Sidewalk vending in the Downtown BID, Restrictions
 1. Street vending is prohibited in the Downtown BID.
 2. Sidewalk Vending. Mobile vending carts and trailers are prohibited from selling within the specific area of Main and Idaho streets between Fourth and Eleventh Street, and Sixth Street between Idaho and Grove Street unless selling from a designated vending location that is designated with the symbol "IVL" (Identified Vending Location). IVL locations may be determined and marked, moved, removed, or restricted by hours and days of operation by Administrative Order of the City Clerk, as set forth below. A map indicating all Downtown BID IVLs can be obtained at the City Clerk's office at 150 N. Capitol Blvd. Boise Id. 83702.

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3. Determining Identified Vending Locations (IVLs). The Office of the City Clerk together with the Ada County Highway District (“ACHD”) and Capitol City Development Corporation (“CCDC”) will identify locations that are compatible with the public interest in the use of the sidewalk areas as public right-of-way. The Office of the City Clerk shall determine and mark each IVL location, or move, remove, or restrict by hours and days of operation, each IVL location, considering among other factors: the width of sidewalk, the proximity and location of intersections, crosswalks, driveways, doorways, police or fire stations, hospitals, schools, parks, fire escapes, trees, bus stops and shelters, truck loading zones, taxi stands, hotel zones, existing street fixtures such as signposts, lamp posts, parking meters, fire hydrants, benches, phone booths, and the known pedestrian congestion of a particular area to determine if the IVL location will provide for adequate public safety and pedestrian flow twenty-four hours a day.
4. IVLs are available on a first come, first serve basis.
 - a. Only one vending cart may occupy an IVL at one time.
 - b. Anytime a mobile vending cart occupies an IVL it must be open for business, and the vendor may not leave the cart unattended for greater than fifteen consecutive minutes. A mobile vending cart occupying an IVL that is unable to conduct business shall be removed after fifteen (15) minutes.
 - c. Beginning at six (6) a.m. the first properly licensed mobile vendor that positions his or her cart over the IVL may maintain that position until three (3) a.m. the following morning or five (5) a.m. on Saturday and Sunday, except as provided herein.
 - d. Any IVL which is designated as a "Restricted IVL" by Administrative Order of the City Clerk shall be prohibited from use by all vendors, solicitors, and temporary merchants between the hours of nine (9) p.m. on Friday and Saturday evenings until five (5) a.m. the following morning.
5. No person shall use a mobile vending cart while engaged in sidewalk vending within the Downtown BID without displaying thereon, in a conspicuous manner, all applicable licenses and permits.

(6515, Amended, 11/14/2006; 6159, Amended, 07/09/2002)

Section 5-12-14 UNLAWFUL CONDUCT

No licensee hereunder shall:

- A. Fail to comply with any of the requirements and restrictions set forth in this Chapter.
- B. Misrepresent the purpose of, or affiliation of those engaged in, the solicitation;
- C. Continue efforts to solicit from an individual once that individual informs the solicitor that he does not wish to give anything to or to buy anything from that solicitor;
- D. Represent the issuance of any license under this Chapter as an endorsement or recommendation of the solicitation;
- E. Enter upon any premises when the same is posted with a sign stating "No Peddlers Allowed" or "No Solicitation Allowed" or other words to such effect;
- F. Commit fraud, make misrepresentation or false statement in the course of carrying on the

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business. (5348, Added, 10-29-91)
(6159, Amended, 07/09/2002; 6159, Renumbered, 07/09/2002)

Section 5-12-15 CANCELLATION OF SALE

The buyer shall have the right to cancel the door-to-door sale within three business days. A business day is any calendar day except Sunday, or the following holidays New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

(6159, Renumbered, 07/09/2002; 5348, Added, 10-29-91)

Section 5-12-16 RENEWALS

Licenses which are not renewed for a minimum of two (2) years from the date of the original issue shall be, upon application for renewal, treated as an original application.

(6159, Renumbered, 07/09/2002)

Section 5-12-17 APPEAL FROM DENIAL OF LICENSE

(Title 5, Chapter 2)

(6159, Renumbered, 07/09/2002)

Section 5-12-18 SUSPENSION

(Title 5, Chapter 2)

(6159, Renumbered, 07/09/2002; 6159, Amended, 07/09/2002)

Section 5-12-19 EXPIRATION OF LICENSE

All licenses issued under the provisions of this Chapter shall expire on the date specified in the permit. No license shall be issued for a period longer than one (1) year.

(6159, Renumbered, 07/09/2002)

Section 5-12-20 PENALTY

Any person, business, firm, company or corporation who shall violate any of the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed three hundred dollars (\$300.00), or by imprisonment in the county jail for a period not to exceed thirty (30) days or both such fine and imprisonment. Each day or violation continued shall be separate offenses, punishable as hereinabove described.

(6159, Renumbered, 07/09/2002)

Section 5-12-21 SEVERANCE CLAUSE

The provisions of this Chapter are declared to be severable. If any section be found to be invalid, such finding shall not affect the validity of the remaining sections, sentences, clauses and phrases of this Chapter, but they shall remain in effect, it being the legislative intent that this Chapter shall stand notwithstanding the invalidity of any part.

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(6159, Renumbered, 07/09/2002)