Chapter 5-17

PAWNBROKER'S OR JEWELRY AUCTIONS

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Section 5-17-01 DEFINITION

Every person who shall at public outcry offer for sale, either as principal or agent, to the highest bidder on the spot, any article of merchandise or property, shall be deemed an auctioneer and every such sale shall be deemed an auction. Provided, however, that nothing in this Chapter shall apply to judicial sales nor to sales by executors, administrators or trustees under court order.
(Ord. 1622, Sec. 1; 1922 Code, Sec. 2-1301; 1952 Code, Sec. 11-2201)

Section 5-17-02 CLASSIFICATION

Closing-out auctions shall be auctions of stock on hand conducted by persons in fact retiring from business. Pawnbroker's auction shall be auctions of personal property on hand theretofore bona fide received and dealt with as pawned or pledged articles in accordance with law by one regularly engaged in the City in the business of pawnbroking as defined by Chapter 1 of this Title, and unredeemed. No license shall be issued for any such auction unless the person applying for such license shall have been continuously in business in the City as a retail or wholesale merchant or pawnbroker for the period of three (3) years next preceding such sale.
(Ord. 1622, Sec. 2; 1963 Code, Sec. 2-1302; 1952 Code, Sec. 11-2202)

Section 5-17-03RINGING BELL

No auctioneer or licensee shall ring a bell or permit the same to be rung, nor permit singing, or loud noises, or soliciting by persons for the purpose of attracting the public, in or about or in front of the premises where an auction is conducted before, during, or after such auction.
(Ord. 1622, Sec. 3; 1963 Code, Sec. 2-1303; 1952 Code, Sec. 11-2203)

Section 5-17-04FRAUD AND FALSE BIDDING

It shall be unlawful for any person to act or to employ another to act as a by-bidder, or what is commonly know as a "capper" or "booster" or "switcher," at any auction sale; or to make or accept any false or misleading or self bid, or to bid or purchase in the name or pretended name of another, or to pretend to buy, or sell, or deliver, any such aforesaid articles sold or offered for sale at any such auction, or to reoffer or resell or replace in stock for offer or sale at or during such auction any article declared sold and delivered to a purchaser or pretended purchaser during such auction.
(Ord. 1622, Sec. 4; 1936 Code, Sec. 2-1304; 1952 Code, Sec. 11-2204)

Section 5-17-05 JEWELRY AUCTIONS; LICENSE, BOND

Except sales under judicial process, it shall be unlawful for any person to sell, dispose of, or offer for sale in the City, at public auction, any platinum, gold, silver, or plated ware, precious or semiprecious stones, or imitations thereof, watches, clocks, or jewelry, whether the same be his property, or whether he shall sell or offer the same for sale as agent, factor, or employee of others; provided, however, that a closing-out or pawnbroker's auction, conducted by persons in fact retiring from business as retail and/or wholesale jewelry merchants, or by persons regularly engaged as pawnbrokers in the City, may be held, but no such auction shall be permitted unless and until the person desiring to hold such auction shall obtain a license therefore, and provided, only one (1) pawnbroker's auction shall be held in any year, and then only between the fifteenth day of August and the fifteenth day of October.
(Ord. 1622, Sec. 5; 1936 Code, Sec. 2-1305; 1952 Code, Sec. 11-2205)

Section 5-17-06 APPLICATION; BOND; INVENTORY

Any person qualified to hold a closing-out or pawnbroker's auction as in this Chapter provided, shall file with the Clerk, at least sixty (60) days prior to the opening day of such auction, a written application under oath for a license so to do, showing:

A. That the person has been continuously engaged in business in the City as a retail and/or wholesale merchant for the sale of jewelry, or as a pawnbroker as defined by Chapter 16 of this Title, for a period of three (3) years next preceding such application;

B. That such applicant at the time of making such application has owned the goods to be auctioned for a period of sic (6) months prior thereto, or that the articles to be auctioned were bona fide received and dealt with as pawned or pledged articles by the applicant as a pawnbroker in the City, in accordance with law, and that the redemption period therefore ended one (1) month or more prior to the application;

C. That said applicant for a period of one (1) year immediately preceding such application has been continuously engaged in the jewelry, or pawnbroker business upon the same premises where the auction is proposed to be held;

D. That no auction has been held by the applicant, or by any copartnership, association or corporation, and no auction license has been issued for any auction to any of the above named, or a predecessor thereof, in any capacity in any place in the City at any time within three (3) years in the case of closing-out auctions, or within one (1) year in the case of pawnbroker's auctions, next preceding the closing date of such proposed auction;

E. That such applicant tenders with the application a good and sufficient bond in the sum of two thousand five hundred dollars ($2,500.00), conditioned for the observance of the provisions of this Chapter and for the indemnification including a reasonable attorney fee, of any purchaser at

such auction suffering loss by reason of fraud or misrepresentation, or other violation of this Chapter, in the sale of any article described in Section 5-17-4, and as assurance to the City that said applicant will pay the sums due as license fees and as indemnity to the City and as indemnity to any and all persons, in any manner, who sustain monetary loss in any contractual or other relation as a result of the conduct of said auction;

F. That the applicant intends in good faith to retire from business at the close of such auction, or to dispose of no articles described in Section 5-17-4, except such as are bona fide unredeemed pledged or pawned articles as herein provided;

G. That the auction shall be conducted, by and the auctioneering carried on by the actual owner, manager, or officer of the applicant, who shall have been such owner, manager, or officer for a period of at least one (1) year prior to such auction sale, or by an auctioneer, giving his name and address and the terms other than the amount of compensation of his contract or agreement for such auction;

H. The dates and place when and where such auction will be conducted, which dates must be within the times specified in this Section;

I. If the sale is to be by an auctioneer, the application for the auction shall be accompanied by an application for a closing-out or pawnbrokers auctioneer's license, and such auctioneer's daily 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 form of application for either a closing-out or pawnbrokers auctioneer's license shall be furnished by the Clerk, which form shall be signed in the applicant's handwriting and shall show the name, age, place of residence, length of time the applicant has resided in the State. Upon receipt of such application, and the bond, and the notarized true copy of the inventory, hereinafter provided for in Section 5-17-6, the Clerk may issue such license, specifying the class thereof and the date therefore, which dates must be within the times herein provided.

(6419, Amended, 09/20/2005; 1622, Added, 01/01/1936, 1622; 1936 Code, Sec. 2-1306; 2174; 1952 Code, Sec. 11-2206)

Section 5-17-07 REGULATIONS

All auction, as in this Chapter defined, of articles described in Section 5-17-4 hereof, shall be held on successive days, Sundays and legal holidays excepted, and on the dates specified in the application, and in the case of pawnbroker's auctions only between August 15 and October 15, and shall not continue for more than thirty (30) consecutive calendar days in all from the commencement of said auction. The applicant must at or before the date of such application file a notarized, true copy of the inventory with the Clerk, and thereafter at all times until fifteen (15) days after the closing date of such auction keep at the place of auction subject to the inspection and copy by the Chief of Police or other persons designated by the Council, an itemized and numbered descriptive inventory of all articles of the character described in Sections 5-17-4 and 5-17-5(B) hereof to be offered at such auction, and such inventory shall show in connection with each item, if acquired within the previous three (3) months, the date of acquisition by the application, and as to all items forfeited after date hereof, the pawn ticket number therefore, and no other article shall be added to such inventory or offered or sold at such auction; provided, that an article not pledged or pawned and which was theretofore for more than three (3) months a bona fide part of the stock of the pawnbroker and not acquired in anticipation of such auction, may be offered at the pawnbroker's auction if shown on the inventory as filed with the application. It shall be unlawful for any licensee, for or in anticipation of such auction, before, or during, the progress of any auction, to bring into said business or purchase, or add to or replenish his stock by substitution fill-ins, leaders or goods of any character, whatever, and no merchandise other than shown on the inventory when

filed shall be sold or offered for sale at said auction. Any false or fraudulent statement or representation made by any applicant for the purpose of procuring a license, or any failure to make, keep, permit inspection of, or note sales upon, such inventory, or any other violation of this Chapter shall forfeit the right to conduct further auctions under such license, which forfeiture may be declared by the Chief of Police or the Council; provided, that the Council may suspend such auction during any delinquency, but such suspension shall not extend the time for closing such auction.
(Ord. 1622; 1936 Code, Sec. 2-1307; Ord. 2174; 1952 Code, Sec. 11-2207)

Section 5-17-08 TAGS AND LABELS

No licensee shall offer for sale or sell at any auction any article as described in Section 5-17-4 hereof, unless there is at the time securely attached thereto a tag or label upon which there is plainly written or printed, in English, a true and correct statement of the markings thereon and the meaning thereof relating to the kind and quality of the metal of which such article is made or composed, and the percentage of karat of purity of such metal, and in case such articles are plated or overlaid, of the kind of plate and percentage of purity of such plating and the kind of material or metal covered; and as to precious or semiprecious stones the true names; calipered or actual weight, quality and fineness of said stones; limitations shall be stated to be such; the names of manufacturers shall be stated; no parts of the movements or mechanism of watches or clocks, nor parts of other articles, shall be substituted or contain false or misleading names or trademarks, nor shall secondhand or old movements be offered for sale in new cases, without in each instance a true statement to that effect attached thereto. If any of the forgoing are unmarked and unknown the tag or label shall so state and shall also state each of the foregoing requirements to the best of the licensee's knowledge and belief. Such tag or label shall show the pawn ticket number as hereinbefore provided for the inventory, if pawned or pledged, and the number identifying such article with the inventory thereof required by Section 5-17-6.
(Sec. 8, Ord. 1622; 1936 Code, Sec. 2-1308; 1952 Code, Sec. 11-2208)

Section 5-17-09 REMOVAL OF TAGS OR LABELS PROHIBITED

Such tag or label shall remain securely attached to any article or merchandise, shall be delivered to the purchaser as a true and correct description and representation of the article sold, and shall be deemed prima facie evidence of intent to defraud, in case said written statement is not a true and correct description and representation of such articles sold.
(Sec. 9, Ord. 1622; 1936 Code, Sec. 2-1309; 1952 Code, Sec. 11-2209)

Section 5-17-10 PURCHASER TO SIGN INVENTORY

At any closing-out or pawnbroker's auction there shall be kept and maintained the applicant's copy of the inventory, which shall contain the identical information shown on the inventory filed with the Clerk, and at the time of each sale the purchaser shall sign on the applicant's copy of the inventory in the space provided and sign in his own handwriting his name, address and all moneys paid. Tags showing the inventory number, and the pawn ticket number, as hereinbefore provided for the inventory, if pawned or pledged, of each article shown, must remain on the article until after the purchaser has signed in the blanks provided on the inventory. The purchaser must sign said inventory before any other article shall be exposed for sale, on all sales over five dollars ($5.00). Failure to keep and maintain such inventory shall be sufficient cause for the immediate revocation of said license. In the event that a sale has been declared to have been made but no purchaser comes forward and signs the inventory, then the article shall be immediately reoffered, beginning at the next highest bid, and the sale thereof completed before any other article is offered; provided, that the seller may refuse to sell where only one (1) bid has been made, but not otherwise.

(Ord. 1622; 1936 Code, Sec. 2-13-11; Ord. 2174; 1952 Code, Sec. 11-2210)

Section 5-17-11 AUCTIONEER TO RETAIN MONEY

The licensee so selling and offering for sale any article described in Section 5-17-4 hereof shall retain in his possession as auctioneer the money or other valuable thing received for the article sold for at least twenty-four (24) hours from the time such sale was made.
(Sec. 11, Ord. 1622; 1936 Code, Sec. 2-1311; 1952 Code, Sec. 11-2211)

Section 5-17-12 RETURN OF PURCHASE PRICE

If any purchaser of such article or thing sold shall, within twenty-four (24) hours, make a claim against said licensee upon the ground that the article sold to him at auction was not as represented and shall demand the return of the money or other consideration, and shall offer to return the article purchased, then and in such case said licensee shall return to the purchaser the purchase price, or deposit with the Chief of Police, taking his receipt therefore, said purchase price as a fund to answer and pay any judgment that may be recovered against said licensee by the purchaser; provided, that if no action therefore shall be commenced within fifteen (15) days from the date of such sale the Chief of Police shall no longer be required to hold such money deposited with him and upon presentation of the receipt may return said money; provided, that the purchaser shall have the right to commence and maintain an action directly on the bond provided for by this Chapter, in the name of the City.
(Sec. 12, Ord. 1622; 1936 Code, Sec. 2-1312; 1952 Code, Sec. 11-2212)

Section 5-17-13 HOURS OF SALE

It shall be unlawful to conduct any auction sale of the article described in Section 5-17-13 hereof between the hours of 10:00 P.M. of one (1) day and 2:00 P.M. of the day following, nor shall any such auction be held during the month of December and no permit shall be granted extending the right to hold such auction between December 1, and December 31 in any year.
(Sec. 13, Ord. 1622; 1936 Code, Sec. 2-1313; 1952 Code, Sec. 11-2213)

Section 5-17-14 REVOCATION OF LICENSE

(Rep. by Ord. 4683, 8-6-82)

Section 5-17-15 CONSTRUCTION OF ORDINANCE

Each and every section and provision of this Chapter is adopted by the City Council independently of all other sections and provisions, and the holding of any section or provision thereof to be void shall in nowise affect any other section or provision.
(Sec. 15, Ord. 1622; 1936 Code, Sec. 2-1315; 1952 Code, Sec. 11-2215)

Section 5-17-16 PENALTY

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.
(Sec. 16, Ord. 1922; 1936 Code, Sec. 2-1316; 1952 Code, Sec.n 11-2216)