

Chapter 5.32

CLOSING OUT SALES, FIRE SALES,  
BANKRUPTCY SALES, AUCTION SALES AND  
SALES BY TRANSIENT MERCHANTS AND  
ITINERANT VENDORS

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## Article I

### Legislative Purpose—Authority—Definitions

#### 5.32.010 Intent.

In order to regulate and license the sale of goods, wares and merchandise in the city which are held forth to the public to be the sale of goods belonging to a bankrupt, assignee, receiver or other person in a representative capacity, or of a person about to retire from business, or goods damaged by fire or water, or goods of transient merchants and itinerant vendors, and to provide a penalty for a violation thereof, the following chapter shall be enacted to control the sales to the public in the city. (Prior code § 123-1)

#### 5.32.020 Citation of statutory authority.

The purpose of this chapter is to regulate the businesses and occupations herein licensed, for the safety, welfare and prosperity of the inhabitants of the city, in accordance with the provisions of Section 2, Article 14, of an Act entitled: "An Act Concerning Municipalities," being Chapter 152 of the Laws of 1917, and also for the purpose of raising revenue. (Prior code § 123-49)

#### 5.32.030 Definitions.

As used in this chapter:

"He, she, his, him or her," or the plural thereof, shall be held to apply to and include any person, male or female, and a partnership, firm or corporation, and any other natural, artificial or legal entity.

"Building" means any permanent structure or edifice presently established and presently enrolled upon the tax books of the city, and shall be held to mean, further, any future structure or edifice which may be established in the municipality pursuant to plans regularly filed and approved by the building inspector of the city.

"Concession" means a portion of a store in which the business or intended type of business is not a generally accepted part of the principal business conducted therein.

"Goods" means any goods, wares, works of art, commodities, compounds or things, chattels or merchandise which may be lawfully kept or offered for sale, and/or services to be exerted upon or applied to goods for the improvement of same or enhancement of the value thereof.

"Store" means any place within the interior of a building, as previously defined, where goods, wares and merchandise of any kind, nature and description whatsoever are sold or offered for sale, specifically excluding, however, unenclosed porches from the category of "stores."

"Transient merchants and itinerant vendors," in addition to any other generally and properly accepted mean-

ings of the phrases, all persons, male or female, firms, partnerships or corporations and any other natural, artificial or legal entities who, individually or by their agents, servants or other employees or representatives, appear within the boundaries of the city and display for sale within the city, solicit orders for, offer for sale or exchange, sell outright or conditionally, any kind or species of tangible personal property at retail, or whomsoever may, for a consideration, offer for rent, let or hire out to any person in the city goods and/or offers to sell or sells services to be exerted upon or applied to goods for the improvement of same or enhancement of the value thereof; whether or not the contract or other agreement for the sale or exchange is approved or accepted by the vendor, his or her agent or servant in the city; whether or not the tangible personal property is to be delivered in the city; and whether the consideration to be paid therefor is paid or payable in the city; with the ostensible intent of closing out or discontinuing such business within one year from the date of commencement thereof. Any person, as defined above, individually or through his or her agent, servant, other employee or representative, who shall fail to conduct his or her business as aforesaid in a building or store, or concession thereof, as hereinafter defined, shall be deemed to be an "itinerant vendor" or "transient merchant," provided, however, that nothing in this chapter shall be construed to affect the sale of fruits, vegetables and kindred farm products when offered for sale or sold or exchanged by the grower thereof; provided, however, that a person shall be deemed to be a "grower" of all merchandise when sixty (60) percent of the merchandise is grown by him or her. Exempted from this definition are all flea markets sponsored by bona fide religious, charitable and eleemosynary organizations, and the vendors who participate in such flea markets which are sponsored by such religious, charitable and eleemosynary organizations. (Prior code § 123-2)

## Article II

### Auctioneers

#### 5.32.040 License required for conduct of auction—Exceptions.

No person, except persons, firms or corporations acting in a representative capacity under authority issued by any court or judicial authority in the state or by the federal government, shall conduct or engage in, either in his or her own behalf or in behalf of another, the business of or occupation of conducting an auction sale in the city, public or private, without first having obtained a license for the conduct of such sale. (Prior code § 123-3)

**5.32.050 License required for advertisement of auction.**

No person shall represent or circulate or place before the public any announcement, or insert or cause to be inserted any notice, that such person shall conduct an auction sale, or shall engage in the business of auctioning or conduct any kind of an auction sale whatsoever, public or private, without having first obtained a license therefor. (Prior code § 123-4)

**Article III  
Sales of Bankrupt and Damaged Goods**

**5.32.060 Licenses required for conduct of sales—Exceptions.**

No person, firm or corporation, except persons, firms or corporations acting in a representative capacity under authority issued by any court or judicial authority in the state or by the federal government, shall sell or offer for sale in the city, either at wholesale or at retail, any of the following goods, wares and merchandise, without obtaining a license therefor:

- A. Goods then or formerly of a bankrupt, assignee, receiver or other person in a representative capacity; and
- B. Goods damaged by fire, smoke or water.

(Prior code § 123-7)

**5.32.070 License required for advertisement of sale—Exceptions.**

No person, firm or corporation, except persons, firms or corporations acting in a representative capacity under authority issued by any court or judicial authority in the state or the federal government, shall announce or cause to be announced, or publish or cause to be published, or insert, any notice that he or she will conduct a sale of any of the aforementioned goods, without having first procured a license to conduct such sale, provided, however, that such merchandise as is damaged by fire, smoke or water, when sold by the same owner as was in possession thereof immediately before the damage, and upon the same premises as were occupied at the time of the damage, may be sold without the necessity of procuring a license therefor. (Prior code § 123-8)

**5.32.080 Damaged goods—Sign required.**

No goods other than goods damaged by fire, smoke or water shall be sold by such licensee in the same premises during the time such goods damaged by fire, smoke or water are sold, unless clearly segregated from the goods damaged by fire, smoke or water, and identified by a sign not less than thirty-six (36) by thirty-six (36) inches, indi-

cating the fact that such "goods" are fresh stock or undamaged merchandise. (Prior code § 123-9)

**5.32.090 Application of provisions restricted.**

When goods damaged by fire, smoke or water are sold in the same premises or place where the goods were damaged, the provisions of Section 5.32.080 shall apply, but this chapter shall otherwise be inapplicable. (Prior code § 123-10)

**5.32.100 Bankrupt goods—Sign required.**

No goods other than bankrupt stock or goods of an assignee or receiver shall be sold by the licensee during the time such bankrupt stock or goods of an assignee or receiver shall be sold, unless clearly segregated from the goods of the bankrupt, assignee or receiver and identified by a sign not less than thirty-six (36) by thirty-six (36) inches, indicating the fact that the goods are not the goods of the bankrupt, assignee or receiver. (Prior code § 123-11)

**5.32.110 Displays regulated.**

No goods other than factory cancellations, factory outlet or mill outlet, by whatever name the goods may be designated, shall be displayed on the same counters as the alleged factory cancellations, factory outlet, mill outlet or otherwise similar but differently designated goods are displayed. (Prior code § 123-12)

**5.32.120 Restocking of original inventory prohibited.**

No goods will be permitted to be sold under this chapter other than those represented pursuant to Section 5.32.220(G). Replenishing and restocking under the license is prohibited, the purpose of this chapter being that the license expires with the disposition of the merchandise described in Section 5.32.220(G). Nothing herein contained, however, shall preclude the making of a new application for a new license and the issuance of same upon payment of a new fee. (Prior code § 123-13)

**Article IV  
Transient Merchants and Itinerant Vendors**

**5.32.130 Licenses required.**

All transient merchants and itinerant vendors, as hereinabove defined, before offering for sale any goods, shall procure a license therefor, which shall continue in favor of the person to whom it is issued for a period of one hundred eighty (180) days from the date of issuance, subject to the compliance of the following conditions:

A. No transient merchant or itinerant vendor license or permit shall be issued covering a location within one thousand five hundred (1,500) feet of another transient merchant or itinerant vendor.

B. No transient merchant or itinerant vendor license or permit shall be issued covering a location within one thousand five hundred (1,500) feet of an established business selling a similar product.

C. Written permission of the property owner must be obtained by the transient merchant or itinerant vendor for the use of property and such written permission must be furnished to the chief license inspector at the time of the filing of the application for the license. The written permission of the property owner must include the use of a minimum of nine hundred (900) square feet of contiguous open space of the owner's property for use by the transient merchant or itinerant vendor.

D. All transient merchants or itinerant vendors shall keep an accurate book of accounts of sales made, shall present the state Sales Tax Certificate at the time of the application and shall maintain same at all times while operating under such license and to be made available on demand to appropriate city officials. (Prior code § 123-16)

#### **5.32.140 Criterion for designation.**

In addition to the foregoing contained in this chapter, a person shall be deemed to be a transient merchant and/or an itinerant vendor who shall not appear to be listed upon the tax records of the city as having been assessed for personal property tax for the same or substantially similar merchandise contained in his or her store at the last preceding date for the assessment of such taxes. (Prior code § 123-17)

### **Article V General Regulations**

#### **5.32.150 Separate licenses required— Exception.**

A separate license must be obtained under the provisions of this chapter, for each branch, establishment or separate place of business in which the trade, following, profession or occupation of such licensee shall be conducted; provided, however, that nothing in this chapter shall require a person other than a licensed itinerant merchant or itinerant vendor to obtain a separate license for each branch, establishment or separate place of business. (Prior code § 123-21)

#### **5.32.160 Possession and display required— Duplicate licenses—Fee.**

Every person holding a license under the provisions of this chapter shall exhibit the same upon demand of any person, and the license shall be displayed in a conspicuous place on the premises wherein the licensee shall conduct the business licensed; provided, however, in the event a licensee, his or her agent, servant or other employee solicits orders for, offers for sale or exchange, sells or otherwise disposes of, for a consideration, any goods as herein defined at more than one place within the city, the licensee, his or her agent, servant or other employee shall have with him or her and exhibit same upon demand of any person, a duplicate license card bearing the signature of the license inspector of the city, and for each of which duplicate license cards the licensee shall pay the sum of fifty cents (\$0.50) in addition to the fees for charges otherwise required. (Prior code § 123-22)

#### **5.32.170 Licenses nontransferable.**

Licenses issued under the provisions of this chapter shall not be transferred. (Prior code § 123-23)

#### **5.32.180 Sales of jewelry established.**

No licensee shall sell any jewelry, precious stones, silverware or any thing or article made in whole or in part of gold, silver, platinum or precious stones, between the hours of 6:00 p.m. and 8:00 a.m. (Prior code § 123-24)

#### **5.32.190 Accurate accounts and records required—Inspections authorized.**

All licensees shall keep an accurate book of accounts of all sales made. The books shall be open to inspection by the director of the department of health, welfare and housing and/or designee, and/or his or her respective agents authorized in writing. The book of accounts shall also include sales tax collected for each transaction. (Prior code § 123-25)

#### **5.32.200 Duration of validity.**

All licenses issued under the provisions of this chapter shall continue in favor of the applicant for the length of time set forth in the application, as required by Article VI of this chapter, except licenses for itinerant vendors, who shall be limited to a period of one hundred eighty (180) days, but in no event shall any other license continue for more than one year, at the expiration of which time application for the renewal of the same must be made in the manner hereinafter set forth. (Prior code § 123-27)