

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 7-301, 7-302, 7-311, 7-313, 7-314, 7-315, 7-316, 7-319, AND 7-320, ADDING NEW SECTIONS TO BE NUMBERED 7-319 AND 7-320, AND REPEALING SECTIONS 7-317 AND 7-318 OF SAID CODE; UPDATING THE GOING OUT OF BUSINESS SALE REGULATIONS; SETTING A 90-DAY DURATION; ELIMINATING RENEWALS AND STOCK LISTS; PROHIBITING FALSE ADVERTISING; AND SETTING A MUNICIPAL INFRACTION PENALTY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. That the Article 7-300 Title and Section 7-301 of the Billings, Montana, City Code be amended so that they shall read as follows:

ARTICLE 7-300. GOING OUT OF BUSINESS, RELOCATION, FIRE OR RETIREMENT
~~BANKRUPT, FIRE OR CLOSING OUT SALE*~~

DIVISION 1. GENERALLY

Sec. 7-301. Definitions.

For the purposes of this article the following terms, phrases, words and their derivations shall have the meaning given herein:

City Administrator means the City Administrator or his/her designee.

Fire and other altered goods sale means a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water, or other means.

Going-out-of-business sale means a sale held out in such a manner as to ~~reasonably~~ cause the public to reasonably believe that upon the disposal of the stock of goods on hand the business will cease and be discontinued, including but not limited to the following sales: adjuster's adjustment; ~~alteration~~; assignee's; bankrupt; benefit of administrator's; benefit of creditor's; benefit of trustees; building coming down; closing creditor's committee; creditor's end; executor's; ~~final days~~; ~~forced-out~~ loss of lease; force out of business; insolvent's; ~~last days~~; lease expires; ~~liquidation~~; loss of lease, mortgage sale; receiver's; trustee's; quitting business; retirement.

Goods means any goods, wares, merchandise or other property capable of being the object of a sale regulated hereunder.

Relocation of business sale is a sale held out in such a manner as to cause the public to reasonably believe that the person conducting the sale will cease and discontinue business at

the place of sale at the end of the sale, and will then move to and resume business at a new location in the city or will then continue business from other existing locations in the city. There shall be no renewal of any license issued under this subsection.

Section 2. That Section 7-311 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Sec. 7-311. Required.

A license issued by the city administrator shall be obtained by any person before offering to sell any goods at a sale to be advertised or held out by any means to be one of the following kinds:

- (1) Going-out-of-business sale;
- (2) Relocation of business sale;
- (3) Fire and other altered stock sale; and
- (4) Retirement sale.

In addition, the licensee shall also possess or obtain a current City of Billings Article 13-400 business tax receipt prior to the issuance of a license under this Article.

Section 3. That Section 7-313 of the Billings, Montana, City Code be amended so that such section shall read as follows:

Sec. 7-313. Application requirements.

A person desiring to conduct a sale regulated by this article shall make a written application at least two (2) weeks before the date of beginning of such sale to the city administrator setting forth and containing the following information. Such two (2) week period may be waived by the city administrator following proper application of such person showing that a hardship exists justifying the shortened time. such dispensation. The following information shall be provided in the application:

- (1) The true name and address of the owner of the goods to be sold. ~~to be the object of the sale;~~
- (2) A description of the place where the sale is to be held;
- (3) The nature of the occupancy, whether by lease or sublease and the effective date of termination of the occupancy;
- (4) The dates of the period of time in which the sale is to be conducted;
- (5) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted;

a. ~~*Bona fide orders.*~~ All goods for sale shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.

b. *Good purchased for sale hereunder.* Sale items shall not include goods ordered in contemplation of conducting a sale regulated hereunder. Any unusual purchase, or additions to

the stock of goods of the business hereby effected within ninety (90) days before the filing of an application hereunder shall be deemed to be of such character.

Section 4. That Section 7-302 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-314. Duties of licensee.

A licensee under this article shall:

(1)

~~(2) Advertise properly, refrain from employing any untrue, deceptive or misleading advertising and shall in no manner or form whatsoever, either directly or indirectly, indicate that the sale is held with the approval of the city;~~

~~(3)(1) Adhere to advertisements, and conduct the licensed sale in strict conformity with any such advertising, or holding out incident thereto;~~

(2) Conspicuously display the license at or near the entrance to the location of the sale and include the license number in all written or electronic advertisements of the sale.

(3) Close the doors of any store location from which a going-out-of-business or relocation-of-business sale has been held at the termination of the ~~thirty (30)~~ ninety (90) day period allowed for such a sale, and shall not engage in any further mercantile activity in or from such location.

(4) At the termination of the time period allowed for such sale by ~~Article Section 7-31600~~, immediately cease and discontinue the business for which a going-out-of-business or relocation of business sale license was issued.

Section 5. That Section 7-304 is amended so that such section shall read as follows:

Sec. 7-304 Sale of Remaining Inventory

(a) No going-out-of-business or relocation-of-business sale licensee shall sell or offer for sale any goods or inventory which have been inventoried or offered for sale at any other going-out-of-business or relocation-of-business sale.

(b) It is unlawful for a going-out-of-business or relocation-of-business licensee or any employees, employers, partners, owners or stockholders of the closing business to again personally sell any of the remaining goods or inventory at retail.

Section 6. That Section 7-314 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-315. Fee.

Any applicant for a license under this ~~division~~ Article shall submit to the city administrator with the application for a license a fee as prescribed by council resolution. ~~There shall not be an additional license charge for any renewal granted under the provisions of section 7-315.~~

Section 7. That Section 7-315 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-316. Issuance.

- (a) A license shall be issued under this ~~division~~ Article on the following terms:
- (1) When the city administrator shall find that all of the application requirements of section 7-313 have been met;
 - (2) When recommended and passed by the council, but only after an appeal shall have been made to the council following denial of a license by the city administrator;
 - (3) When ordered by a court of competent jurisdiction following the denial of a license by the council.
- (b) The license shall authorize only the one type of sale described in the application at the location named therein.
- (c) The license shall authorize only the sale of goods described in the inventory, ~~attached to the application.~~

Section 8. That Section 7-316 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-317. ~~Term.~~ Duration of Sale

The license issued under this ~~division~~ Article shall authorize the sale described in the application for a period of not more than ~~thirty (30)~~ ninety (90) consecutive calendar days. ~~or one (1) calendar month.~~ The start of the ninety (90) period shall begin on the date of the first publicized advertisement for the sale described in the application. No renewal or extension of the ninety (90) day duration shall be granted.

Section 9. That Section 7-317 of the Billings, Montana, City Code is hereby repealed and declared null and void and of no effect.

Sec. 7-317. ~~Display; stock list; examination.~~

~~On commencement of any sale as licensed under this division, the license issued by the city administrator shall be prominently displayed near the entrance to the premises. A duplicate original of the application and stock list pursuant to which the license was issued shall at all times be on the premises and available to the city administrator, and the licensee shall permit the city administrator to examine all merchandise on the premises at any time during the period of the sale for comparison with the stock list.~~

Section 10. That Section 7-318 of the Billings, Montana, City Code is hereby repealed and declared null and void and of no effect.

Sec. 7-318. ~~Renewal.~~

- ~~(a) Except for a relocation of business sale, the city administrator shall renew a license for two (2) additional thirty (30) day periods only, so that the maximum sale time allowed hereunder shall not exceed ninety (90) consecutive days, Sundays and holidays included; provided, however, that the same procedure shall govern all renewal licenses that apply to the original licenses, and the following criteria shall be considered:~~
- ~~(1) That facts exist justifying the license renewal;~~

- ~~(2) That the licensee has filed an application for renewal;~~
~~(3) That the licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory.~~
~~(b) For the purposes of this section, any application for a license under the provisions of this division covering any goods previously inventoried as required hereunder, shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.~~

Section 11. That Section 7-319 of the Billings, Montana, City Code be amended and renumbered so that such section shall read as follows:

Sec. 7-319~~318~~. Transfer.

Any license issued under this ~~division~~ Article shall not be assignable or transferable.

Section 12. That the Billings, Montana, City Code be amended by adding a new section to be numbered 7-320, to read as follows:

Sec. 7-320 False advertising.

Any person advertising by newspaper, radio, television, posters or otherwise, representing any sale defined in this Article which is fake, false, misleading or deceptive, shall be guilty of a municipal infraction as provided in Section 7-322.

Section 13. That the Billings, Montana, City Code Section 7-320 be amended and renumbered so that such section shall read as follows::

Sec. 7-321. Appeal to city council.

An applicant who has been denied a license ~~or whose license has been revoked~~ may appeal the denial ~~or revocation~~ to the city council by written notice in writing filed with the city clerk within ten (10) days of the date of denial or revocation. The notice shall state any reasons supporting the issuance of a license, the applicant's correct mailing address and shall be signed by the applicant. The city clerk shall cause the matter to be placed on the next available regular council agenda ~~not less than ten (10) days~~ after receipt of notice of appeal. The applicant shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda. The applicant may appear at the time and place and be heard.

Section 14. That the Billings, Montana, City Code be amended by adding a new section to be numbered 7-322, to read as follows:

Sec. 7-322. Penalty

Any violation of this Article shall be punishable as a municipal infraction with civil penalties as provided in Section 18-304 of this Code.

Section 15. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 16. REPEALER. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 17. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this _____ day of _____, 2010.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2010.

CITY OF BILLINGS

By _____
Mayor

ATTEST:

By _____
City Clerk