

ORDINANCE NO. 24- _____

AN ORDINANCE PERTAINING TO BUSINESS LICENSES BY AMENDING SECTIONS 7-9-1-901, 7-9-1-902, 7-9-1-903, 7-9-1-904, 7-9-1-905, 7-9-1-906, 7-9-1-907, 7-9-1-908, 7-9-1-909, AND 7-9-1-910, DIVISION 7-9-1, ARTICLE 7-9; REPEAL AND RESERVING SECTIONS 7-9-1-911, 7-9-1-912, 7-9-1-913, 7-9-1-914, 7-9-1-915 AND 7-9-1-916, DIVISION 7-9-1, ARTICLE 7-9, CHAPTER 7, LAWTON CITY CODE, 2015; BY REMOVING THE REQUIREMENT FOR BUSINESSES TO OBTAIN DISTRESS/CLOSING OUT SALES, RETITLING THE ARTICLE TO ESTATE SALES, RETITLING THE DIVISION TO ESTATE SALES, DEFINING ESTATE SALES, REQUIRING A PERMIT FOR ESTATE SALES, LISTING THE APPLICATION REQUIREMENTS FOR ESTATE SALES, LISTING REQUIREMENTS FOR AUCTIONS AS PART OF ESTATE SALES, LISTING ISSUANCE AND TRANSFERABILITY OF ESTATE SALE PERMITS, TERM OF ESTATE SALE PERMITS, ESTATE SALE PERMIT FEES, STATING REASONS FOR REFUSAL TO ISSUE A PERMIT OR REVOCATION OF AN ESTATE SALE PERMIT, LISTING VIOLATIONS, ACCESSORY ACTIVITIES PROHIBITED, LISTING EXEMPTIONS FROM OBTAINING ESTATE SALE PERMITS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED by the Council of the City of Lawton, Oklahoma, that:

Section 1. Article 7-9 is hereby amended to read as follows:

Article 7-9 ~~DISTRESS AND CLOSING OUT SALES~~ ESTATE SALES

Section 2. Division 7-9-1 is hereby amended to read as follows:

Division 7-9-1 ~~Distress and Closing Out Sales~~ Estate Sales

Section 3. Section 7-9-1-901 is hereby amended to read as follows:

7-9-1-901 Definitions.

A. As used in this article, the following terms shall have the meanings ascribed to them in this section:

1. "Estate Sale" shall mean an event involving the personal property through the process of bidding; and
2. "Goods" includes any goods, wares, merchandise or other property capable of being the object of a sale regulated hereunder; and,
2. ~~"Sales" means "method of merchandising" as distinguished from "transfer of title" and are hereby classified and described as follows:~~
 - a. ~~"Distress sale" is a sale held out in such a manner as to reasonably cause the public to believe that the sale is occasioned by circumstances beyond the control of the owner of the goods which are the object of the sale;~~
 - b. ~~"Fire, freight damage or other altered goods sale" is a sale held out in such a manner as to reasonably cause the public to believe that the owner will offer goods damaged or altered by fire, smoke, water, freight handling or other means;~~

- c. ~~"Going out of business sale" is a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock of goods on hand the business holding such sale will cease and be discontinued, including, but not limited to, sales which may be designated as: Adjuster's; adjustment; alteration; assignee's bankrupt; bankrupt stock; benefit of administrator's; benefit of creditor's; benefit of trustee; building coming down; closing, creditor's committee; creditor's; end; executor's; final days; forced out; forced out of business; insolvents; last days; lease expires; liquidation; loss of lease; mortgagee sale; receiver's; trustee's; quitting business; and~~
- d. ~~"Removal of business sale" is a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business from other existing locations in the city.~~

Section 4. Section 7-9-1-902 is hereby amended to read as follows:

7-9-1-902 License Permit required.

- A. ~~Any person selling or 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. ~~Fire, freight damage or other altered goods sales;~~
 - 2. ~~Distress sale;~~
 - 3. ~~Going out of business sale; or~~
 - 4. ~~Removal of business sale;~~

~~Shall obtain a license from the city before selling or offering to sell any of the goods at such a sale.~~

No person shall hold, conduct, engage in or participate in any manner in any estate sale without a permit for same. A separate permit shall be required for each location at which an estate sale is to be held and no location shall be eligible for more than one (1) permit in any twelve (12) month period.

Section 5. Section 7-9-1-903 is hereby amended to read as follows:

7-9-1-903 License Permit application—Contents.

- A. A person desiring to conduct a an estate sale regulated by this article shall make ~~a written~~ application to the ~~licensing officer~~ building division setting forth and containing the following information:
 - 1. ~~The true name and address of the owner of the goods to be the object of the sale~~ full name and address of the applicant;
 - 2. ~~The true name and address of the supplies or suppliers, not exceeding the ten (10) principal suppliers from whom he purchased the goods to be sold and if not purchased, the manner of such acquisition~~ address that the proposed estate sale will be held;
 - 3. ~~The address of the place where such sale is to be held;~~
 - 4. ~~The nature of the occupaney, whether by lease or sublease and the effective date of termination of such occupaney;~~ A list of items to be sold during the estate sale;

- ~~54. The date or dates of the period of time in which the estate sale is to be conducted and;~~
~~65. A full and complete statement of 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; and An affidavit from all participants to the effect that all goods to be sold at the estate sale are owned by the participants and have not been obtained for the purpose of reselling them at the estate sale.~~
~~7. The approximate cost, plus freight, to seller of the goods to be sold.~~

Section 6. Section 7-9-1-904 is hereby amended to read as follows:

7-9-1-904 ~~Inventory requirements~~ Auctions as part of an estate sale.

- ~~A. A complete and itemized inventory of all the goods to be offered at a sale regulated by this article, as disclosed by the applicant's records, must be verified by oath of the applicant and must be attached to and become part of the required application. Such inventory shall indicate in hand and in stock at the location of the proposed sale as of the date application for permit is made.~~
~~B. All goods included in such inventory shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment. Goods to be included in such sale which were purchased and received during the sixty day period immediately prior to the day of making application for license shall be listed separately.~~
~~C. The inventory 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 regulated within sixty (60) days before the filing of an application hereunder shall be deemed to be goods ordered in contemplation of conducting a sale regulated hereunder and shall be deleted from a going out of business or removal of business sale.~~

Auctions that are held as part of an estate sale shall not require an additional license, however, the auctioneer shall be licensed in accordance with Article 7-6 of Lawton City Code.

Section 7. Section 7-9-1-905 is hereby amended to read as follows:

7-9-1-905 ~~Established business prerequisite to license~~ Exception Issuance of permit – Transferability.

~~Any person who has not been the owner of a business advertised or described in the application for a license hereunder for a period of at least six months prior to the date of the proposed sale shall not be granted a going out of business or removal of business license. However, upon the death of a person doing business in this city, this section shall not be applied to prevent his legal representative or heirs, devisees, legatees or surviving partner from applying for and receiving a license hereunder in the administration and settlement of his estate, or in the dissolution and settlement of the affairs of a partnership occasioned by such death.~~

- A. The estate sale will be issued for the dates requested, unless it does not comply with City Code.

- B. If the estate sale is not held on the date for which the permit is issued or is terminated due to inclement weather conditions and an affidavit by the permittee to this effect is submitted, the building division may issue another permit to the applicant for an estate sale to be conducted at the same location within thirty (30) calendar days from the date of the first estate sale was to be held.
- C. The estate sale permit shall be non-transferable between locations.

Section 8. Section 7-9-1-906 is hereby amended to read as follows:

7-9-1-906 ~~License restricted to one location~~ Term of permit.

~~Where a person applying for a license hereunder operates more than one place of business, the license issued shall apply only to the one store or branch specified in the application. No other store or branch shall advertise or represent that it is cooperating with it, or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.~~

The term of the permit will be for three (3) consecutive days.

Section 9. Section 7-9-1-907 is hereby amended to read as follows:

7-9-1-907 ~~License~~ Permit fees.

~~The fees set forth in the schedule of fees are levied and shall be paid in advance of the issuance of any license or extension thereof~~ The fees are as set forth in Appendix A, Schedule of Fees and Charges.

Section 10. Section 7-9-1-908 is hereby amended to read as follows:

7-9-1-908 ~~Term of license~~ Refusal to issue permit; revocation.

~~The license shall authorize the sale described in the application for a period of not more than thirty (30) consecutive days following the issuance thereof.~~

1. Any permit issued under this Article may be revoked or any application for issuance of a permit may be refused by the Chief Building Official if the application submitted by the applicant contains any false, fraudulent or misleading statements.
2. If any person is convicted of an offense under this Article, the person may have their estate sale permit cancelled and not be issued another estate sale permit for a period of one (1) year from the date of conviction.
3. Applicant may appeal to the hearing officer as detailed in Section 7-1-1-112 of City Code to get the ability to be issued estate permits back.

Section 11. Section 7-9-1-909 is hereby amended to read as follows:

7-9-1-909 ~~Time between sales~~ Violations – Accessory activities prohibited.

~~Any person who has held a going out of business or removal of business sale, as regulated hereunder, at the location stated in the application, either directly or indirectly, within one year~~

last past from the date of such application shall not be granted a going out of business or removal of business license.

1. No sale of food or beverages shall be permitted in conjunction with an estate sale.
2. No more than two (2) signs on the property involved and two (2) signs off the property shall be permitted. Signs shall be permitted as required in Article 18-9 of City Code.
3. Every date that an estate sale is conducted in violation of this Article shall constitute a separate offense. Penalties shall be as per Section 1-1-119 of City Code.

Section 12. Section 7-9-1-910 is hereby amended to read as follows:

7-9-1-910 Duties of licensee Exemptions.

- A. ~~A licensee hereunder shall~~ The provisions of the Article shall not apply to or affect the following:
1. ~~Make no additions whatsoever, during the period of the licensed sale, to the stock of goods set forth in the inventory attached to the application for license~~ Non-profit organizations;
 2. ~~Refrain from employing any untrue, deceptive or misleading advertising~~ Charitable organizations or persons when all gross sales from the sale are used directly for charitable purposes and the goods or articles are not sold on a consignment basis; and
 3. ~~Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto; those individuals holding residential sales as defined in Article 7-20 of City Code.~~
 4. ~~Keep available at the place of sale a duplicate copy of the inventory submitted with the application and shall present such duplicate to inspecting officials upon request; and~~
 5. ~~Post in a prominent place upon the premises where the sale is conducted the license issued hereunder and show the license number in all advertising relating to the sale.~~

Section 13. Section 7-9-1-911 is hereby repealed and reserved to read as follows:

7-9-1-911 Renewal procedure. Reserved.

- A. ~~The licensing officer shall renew a license for one period of time only, such period to be in addition to the thirty (30) days permitted in the original license and not to exceed thirty (30) days when he finds that:~~
1. ~~Facts exist justifying the license renewal;~~
 2. ~~The licensee has filed an application of renewal; and~~
 3. ~~The licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listed and any goods not included in the original application and inventory.~~
- B. ~~The city manager may upon request of the licensee extend the period of the sale beyond the period allowed in Subsection A of this section if it can be shown that the sale could not reasonably be concluded in the initial sixty (60) day period. The renewal license will specify the length of the extension and whether or not additional or third extension would be allowed.~~

~~C.— For the purposes of this section, any application for a license under the provisions of this article covering any goods previously inventoried as required hereunder shall be deemed to be an application for renewal.~~

Section 14. Section 7-9-1-912 is hereby repealed and reserved to read as follows:

~~7-9-1-912 Nature of sale authorized.~~ Reserved.

~~The license shall authorize only the one type of sale described in the application at the location named therein.~~

Section 15. Section 7-9-1-913 is hereby repealed and reserved to read as follows:

~~7-9-1-913 Goods permitted to be sold.~~ Reserved.

~~The license shall authorize only the sale of goods described in the inventory attached to the application.~~

Section 16. Section 7-9-1-914 is hereby repealed and reserved to read as follows:

~~7-9-1-914 Fraud and deceit prohibited.~~ Reserved.

- ~~A.— No person engaged in the sale of merchandise as herein classified and regulated shall misrepresent the true nature of such sale in any form of advertising. A person advertising a sale shall be deemed to have misrepresented the true nature of the sale if such advertising:~~
- ~~1.— Suggests as fact that which is not true and not believed to be true by the advertiser;~~
 - ~~2.— Asserts as a fact that which is not true and for which the advertiser has no reasonable ground to believe to be true; or~~
 - ~~3.— Advertises as being offered at such sale items of merchandise not included in the inventory attached to the application for license.~~

Section 17. Section 7-9-1-915 is hereby repealed and reserved to read as follows:

~~7-9-1-915 Persons exempt from article.~~ Reserved.

- ~~A.— The provisions of this article shall not apply to or affect the following:~~
- ~~1.— Persons acting pursuant to an order or process of a court of competent jurisdiction;~~
 - ~~2.— Persons acting in accordance with their powers and duties as public officials;~~
 - ~~3.— An individual conducting a sale of personal property owned by him but not acquired for the purpose of resale, where such sale is held at the residence of the owner;~~
 - ~~4.— Any publisher of a newspaper, magazine or other publication or radio station, television station or other advertising media, who publishes in good faith any advertisement, without knowledge of its false, deceptive or misleading character, or without knowledge that the provisions of the article have not been complied with; and~~
 - ~~5.— Persons located within a city approved urban renewal project area whose sale results directly from the execution of the urban plan for such area.~~

Section 18. Section 7-9-1-916 is hereby repealed and reserved to read as follows:

7-9-1-916 Penalty. Reserved.

~~A. Any person violating any provision of this article shall upon conviction be punished as provided in Section 1-119 of this code.~~

~~B. The continuation of such violation shall be grounds for the city to institute proceedings in a court of competent jurisdiction to enjoin the continuation of such violation.~~

Section 19. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

Section 20. Effective Date. The provisions of this ordinance shall become effective thirty days after passing of the ordinance.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma this 8th day of October, 2024.

STANLEY BOOKER, MAYOR

ATTEST:

DONALYNN BLAZEK-SCHERLER, CITY CLERK

APPROVED as to form and legality this _____ day of _____, 2024.

JOHN ANDREW, CITY ATTORNEY

ORDINANCE NO. 24- _____

AN ORDINANCE PERTAINING TO BUSINESS LICENSES BY AMENDING SECTIONS 7-9-1-901, 7-9-1-902, 7-9-1-903, 7-9-1-904, 7-9-1-905, 7-9-1-906, 7-9-1-907, 7-9-1-908, 7-9-1-909, AND 7-9-1-910, DIVISION 7-9-1, ARTICLE 7-9; REPEAL AND RESERVING SECTIONS 7-9-1-911, 7-9-1-912, 7-9-1-913, 7-9-1-914, 7-9-1-915 AND 7-9-1-916, DIVISION 7-9-1, ARTICLE 7-9, CHAPTER 7, LAWTON CITY CODE, 2015; BY REMOVING THE REQUIREMENT FOR BUSINESSES TO OBTAIN DISTRESS/CLOSING OUT SALES, RETITLING THE ARTICLE TO ESTATE SALES, RETITLING THE DIVISION TO ESTATE SALES, DEFINING ESTATE SALES, REQUIRING A PERMIT FOR ESTATE SALES, LISTING THE APPLICATION REQUIREMENTS FOR ESTATE SALES, LISTING REQUIREMENTS FOR AUCTIONS AS PART OF ESTATE SALES, LISTING ISSUANCE AND TRANSFERABILITY OF ESTATE SALE PERMITS, TERM OF ESTATE SALE PERMITS, ESTATE SALE PERMIT FEES, STATING REASONS FOR REFUSAL TO ISSUE A PERMIT OR REVOCATION OF AN ESTATE SALE PERMIT, LISTING VIOLATIONS, ACCESSORY ACTIVITIES PROHIBITED, LISTING EXEMPTIONS FROM OBTAINING ESTATE SALE PERMITS, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

BRIEF GIST

This ordinance will remove the requirement for commercial businesses to obtain a permit to get a distress/close out permit and requires estate sales to get permitted and lays out the requirements for the estate permits.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma this 8th day of October, 2024.

STANLEY BOOKER, MAYOR

ATTEST:

DONALYNN BLAZEK-SCHERLER, CITY CLERK

(Published in the Lawton Constitution this _____ day of _____, 2024.)

