

61

ORDINANCE NO. 185

AN ORDINANCE REGULATING THE SALE OF GOODS, WARES AND MERCHANDISE BY AUCTION, REGULATING AUCTIONEERS, PROVIDING PENALTY FOR THE VIOLATION THEREOF, DECLARING AN EMERGENCY, AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

THE CITY OF WALLOWA DOES ORDAIN AS FOLLOWS:

**SECTION 1. Definitions.** When used in this ordinance, the following words shall have the meaning ascribed to them unless the content clearly indicates otherwise.

**Person.** Any individual, firm, corporation, including the plural or combination of the same, whether acting as principal, agent, employer or employee, and for themselves or any other person, firm or corporation.

**Auction.** Any public sale at which goods, wares or merchandise are offered for sale to the highest bidder.

**Auction House.** Shall mean any permanent establishment within the City of Wallowa where auctions are carried on from time to time.

**Auctioneer.** Any person who shall conduct an auction sale.

**SECTION 2. Classes of Auctions and License fees.** Auctions shall be divided into the following classes:

**First Class.** An auction conducted in an auction house which shall be known and advertised as such. Auctions of the first class shall pay an annual license fee of \$200.00 and auctioneers conducting auctions of the first class shall pay an annual license fee of \$200.00.

**Second Class.** Auctions of the second class shall be those sales of merchants desiring to close out their stocks, where the same has been kept as a continuous stock for sale within the City of Wallowa for not less than one year prior to the date of the sale. Auctions of the second class shall pay a license fee of \$20.00 per day or \$100.00 per week and the auctioneers conducting auctions of the second class shall pay a license fee of \$20.00 per day or \$100.00 per week.

**Third Class.** Auctions of the third class shall be those conducted for the sale of goods brought into the city for the sale, whether the same be the property of the auctioneer or not. Auctions shall be deemed to be of the third class if they consist of stocks offered for sale within one year of the date they were brought into the city except such auctions as come within the definition of second class auctions. Auctions shall be deemed to be of the third class if the auctioneer conducting the same cannot give satisfactory evidence so as to establish the auction as one of the second class. Auctions of the third class shall pay a daily license fee of \$30.00 or \$150.00 weekly. Auctioneers conducting sales of the third class shall pay a daily license fee of \$30.00 or \$150.00 weekly.

**Fourth Class.** Any auction offering for sale any diamonds, semi-precious stones, or imitations thereof, watches, clocks, jewelry, gold, silver, or plated ware, china or glass ware, bric-a-brac, art goods, or leather goods shall be deemed an auction of the fourth class. No auction shall offer any such goods for sale without first qualifying as and satisfying all the requirements for a fourth class auction. Auctions of the fourth class shall pay a daily license fee of \$30.00 or \$150.00 weekly. Auctioneers conducting auctions of the fourth class shall pay a daily license fee of \$30.00 to \$150.00 weekly.

**SECTION 3. Contents of License.** An auction license shall state the class of the auction for which it was issued, the fee paid, the duration of the auction, the exact place where the auction shall be held, and the person for whom the auction is being conducted.

An auctioneer's license shall state the name and permanent address of the auctioneer, the temporary address while within the City of Wallowa, the class of auction for which the license was issued, the fee paid, and the duration of the license.

**SECTION 4. Application for and Issuance of License.** Any person desiring to obtain an auctioneer's license must prove himself to be of good moral character. If such person is not personally known by the recorder or the person issuing the license, he may be required to produce three written references, not more than 30 days old, from reputable individuals testifying as to such person's good moral character. The references shall become a part of the written application. If the recorder or person issuing the license is not satisfied that the applicant has proven his good moral character as required herein, then no license shall be issued. Applicants for an auctioneer's license must appear in person and present their application at least one week prior to the first date of the auction for which the license is desired. Applications for an auction or auctioneer's license shall be in writing and shall contain all the facts required to be stated in the license.

**SECTION 5. Display of License.** The auction license and the license of the auctioneer conducting the auction shall be posted and prominently displayed at the place of the auction.

**SECTION 6. Payment of License fees.** License fees shall be payable in advance at the time application is made for a license. If the license is for any reason not granted, the applicant shall be entitled to return of the fee.

**SECTION 7. Conduct of Class Three Auctions.** Every article offered for sale in a class three auction shall have securely attached thereto a tag upon which shall be plainly written the name of the manufacturer of the article or the trade name by which the article is known and a statement as to whether the article is new or used. For the purposes of this ordinance, any article which has been a floor model or has been on display shall be deemed as used. The tag shall remain attached to the article sold and shall be delivered to the purchaser by the persons selling the same. The information stated on the tag shall be deemed to be a representation to the buyer inducing him to purchase. Before bids are requested on any article the information stated on the tag shall be read to the prospective bidders.

**SECTION 8. Conduct of Class Four Auctions.** Every article offered for sale in a class four auction shall have securely attached thereto a tag, card or label upon which there shall be plainly written a true and correct statement of the kind and quality of the metal or material of which said article is made or composed and the percentage or karat of purity of such metal; and in case such article is plated overlaid, then such statement shall contain a true statement of the kind of plate and the percentage of purity of such plating, and the kind of material or metal covered; and in case such article is a precious or semi-precious stone, such statement shall contain the true name, weight, quality and fineness of said stone; and in case such article be an imitation of a precious or semi-precious stone, such article shall be described as such; and in case such article be a watch or clock, such statement shall contain the true name of the manufacturer thereof; and in case any second hand or old movement or substitute part of movement of any watch or clock be offered for sale in a new case, such fact shall be set forth in such statement and no such article so sold or offered

63

for sale shall bear any false or misleading name, description or trademark.

Such tag, card or label shall remain securely attached to any such article so sold or offered for sale and shall be delivered to the purchaser by the person, firm or corporation so selling the same as a correct description and representation of the article so sold.

SECTION 9. Rights of Purchaser in Class Three and Four Auctions. The auctioneer who has conducted any class three or four auction shall remain with the city not less than forty-eight hours after his license expires and shall retain in his possession any money or things of value received for the sale of any articles offered at the auction. If any purchaser of such article or thing sold shall, within forty-eight (48) hours after such sale, make a claim against said auctioneer upon the ground that the article or thing sold to him at public auction is not as represented by the auctioneer and shall offer to return the article or thing purchased, then and in such case the auctioneer shall either return to the purchaser the purchase price or deposit with the City Recorder of Wallowa twice the amount of such purchase price, but not less than \$50.00 in any event, said deposit to answer and pay any judgment that may be recovered against said auctioneer by the purchaser, provided that if no legal action shall be taken against said auctioneer within fifteen (15) days from the date of any such sale the said Recorder shall return said deposit to the auctioneer.

SECTION 10. Restricted hours. No class three or four auction shall be conducted from the hours of six o'clock P.M. and eight o'clock A.M.

SECTION 11. Restrictions on Class Two Auctions. No license for a class two auction shall be issued except for the purpose of enabling the person for whom the auction is being held to close out said person's stock in trade and retire from business. It shall be unlawful for any person to make application for a class two auction license or to conduct a closeout auction when any goods have been purchased or brought into the place of business in anticipation of such auction sale and shall be a violation of this ordinance. It shall be unlawful for any person during the progress of any class two auction to replenish his stock by substitution, fillins, leaders or goods of any kind. All closing-out auctions shall be held on successive days, Sundays and holidays excepted, and shall not continue for more than thirty days in all from the commencement of said sale.

SECTION 12. Attracting Public. No auctioneer conducting an auction nor any person for whom an auction is being conducted shall ring a bell or permit the same to be rung in or about the premises where he is conducting a sale either before, after or during such sale, Nor shall he permit music, singing or loud noises, or soliciting with a loud speaker or any device which may amplify sound anywhere within the city for the purpose of attracting the public to the sale.

SECTION 13. Fraud and False Bidding. It shall be unlawful for any person to act or employ another to act as a by-bidder or what is commonly known as a "capper" or "booster" at any auction sale, to make or accept any false or misleading bid, or to pretend to buy, or sell, any article sold or offered for sale at any auction.

SECTION 14. Suspension and Revocation of License. The City Recorder shall have the power to suspend any auction or auctioneer's license granted by the city whenever it shall appear to his satisfaction that the person to whom said license has been issued has been guilty of the violation of any of the terms or provisions of this ordinance or has been guilty of any unlawful or fraudulent act, practice, or course of conduct, in selling any articles at public auction. The person whose license has been so suspended shall have opportunity to be heard at the next regular meeting of the City Council

following such suspension. If the City Council shall find that reasonable grounds existed to support the act of the Recorder then it may, in its discretion revoke said license. If the City Council in the exercise of its discretion, decides not to revoke the license, then the suspension shall be lifted and the time during which the license is valid shall be extended by the time the suspension was in effect. Action taken to suspend or revoke a license shall have no effect on any criminal proceedings which may be brought for the violation of this ordinance.

SECTION 15. License Not Assignable. Licenses issued under the provisions of this ordinance shall not be transferrable or assignable.

SECTION 16. Penalty for Violation. Any person who shall violate any of the provisions or terms of this ordinance or who shall conduct an auction without having complied with the requirements herein set forth shall be deemed guilty of a misdemeanor and upon conviction thereof in the municipal court shall pay a fine not to exceed \$50.00, or may be imprisoned in the city jail for not more than twenty-five days, or both in the discretion of the court.

SECTION 17. What constitutes a Violation. Every sale made by auction in violation of the terms of this ordinance or without having complied with the terms hereof shall be deemed a separate offense and shall be punished accordingly.

SECTION 18. Sales Exempted. The provisions of this ordinance shall not apply to sales by executors, administrators, receivers, trustees acting under court order, or to any sale conducted under judicial process.

SECTION 19. Saving Clause. If any section, or part of a section, or paragraph of this ordinance is declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section, or sections or part of a section, or paragraph of this ordinance.

SECTION 20. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 21. Emergency Clause. Whereas the ordinances now in effect are wholly insufficient to property control auction sales and the license fees provided for are insufficient to cover the necessary cost of inspection and regulation, an emergency is hereby declared to exist and it is hereby ordered that this ordinance shall take effect immediately upon its passage by the Council and approval by the Mayor.

Passed by the Common Council this 20th day of September, 1955.

Attest:

Jennie Conklin

Approved by the Mayor this 20th day of September, 1955.

John W. Lyman  
Mayor