

## HAILEY ORDINANCE NO. 1095

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, BY AMENDING CHAPTER 5.02, LICENSES GENERALLY, TO ADD A PURPOSE SECTION AND AN APPLICABILITY SECTION, TO AMEND THE DEFINITION OF BUSINESS OR OCCUPATION, TO EXEMPT HOME OCCUPATIONS FROM THE REQUIREMENTS OF CHAPTER 5.02 AND TO ADD A STANDARD FOR ISSUANCE OF A BUSINESS LICENSE FOR CHILD CARE SERVICES; BY REPEALING CHAPTER 5.03, CHILD CARE FACILITY LICENSING; BY PROVIDING FOR A SEVERABILITY CLAUSE; BY PROVIDING FOR A REPEALER CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Mayor and the City Council of the City of Hailey wish to eliminate duplication between city and state permitting for businesses operating within the City of Hailey while maintaining public safety and reducing costs and time associated with permitting incurred by the city and the applicant;

WHEREAS, Chapter 5.03 of the Hailey Municipal Code was originally adopted on September 13, 1999 by Ordinance No. 740 when state licensing requirements for child care facilities were not considered to be adequate by the City of Hailey to protect the safety of occupants of child care facilities located within the City of Hailey;

WHEREAS, Idaho State Code Title 39, Chapter 11 establishes regulations for child care providers and Idaho Administrative Procedures Act (IDAPA) establishes procedures for implementing the state regulations.

WHEREAS, Idaho Legislature has granted authority to the Department and Board of Health and Welfare to adopt and enforce rules governing standards for licensure or certification of child care facilities.

WHEREAS, the Idaho Department of Health and Welfare conducted extensive information gathering from local cities during late 2008 through early 2010 resulting in revisions to the state requirements, which were adopted in 2010 (*see* IDAPA 16.06.02 – Standards for Child Care Licensing);

WHEREAS, in April 2011, the state revised IDAPA 16.06.02 – Standards for Child Care Licensing, which became effective July 1, 2011. This regulation requires proof that daycare applicants meet local building, electrical, fire and planning and zoning codes;

WHEREAS, the current state day care licensing regulations mirror the requirements set forth in Chapter 5.03 of the Hailey Municipal Code and are therefore duplicative;

WHEREAS, City of Hailey Fire Marshal and Fire Inspectors are required to be State Certified Fire Inspector and are required to inspect all child care facilities for state licensing purposes and therefore are involved in the regulation of child care facilities located within the City of Hailey; and

WHEREAS, the Mayor and City Council find that such an amendment will further the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Chapter 5.02 of the Hailey Municipal Code is amended by the addition of a new Section 5.02.005 as follows:

Section 5.02.005 Purpose. The purpose of the city of Hailey business license is to provide a process whereby the city is able to confirm buildings within the city of Hailey are safe to occupy and the use and building are compatible and comply with all applicable city requirements, such as building, fire, and zoning codes and to coordinate city and state regulations, to the greatest extent possible, to facilitate the permitting process for business owners.

Section 2. Section 5.02.010 of the Hailey Municipal Code is amended by the deletion of the stricken language, as follows:

5.02.010 Definitions. In construing the provisions of this chapter, the following definitions shall apply:

“Business” or “occupation” means all activities, trades, and pursuits conducted or engaged in for profit, ~~including without limitation, wholesale businesses, retail businesses, and personal service businesses and professions, in any and all situations where suppliers, vendors, customers, clients, and/or members of the general public visit or frequent the premises where the business or occupation is conducted, but shall not mean home occupations as defined by the Hailey Zoning Ordinance, Hailey Ordinance No. 532, as amended.~~

“City” means the city of Hailey, Idaho.

“City clerk” means the city clerk of the city of Hailey, Idaho, or his/her designee acting as the licensing officer.

“Not-for-profit business” means any organization exempt from taxation as provided by 26 USC 501 and meeting all the requirements for the exemption provided by USC 26 USC 503.

“Person” means any individual, firm, partnership, company, corporation, joint venture, association, or other business entity.

“Premises” means all real property and structures where any business or occupation is conducted.

“Public street or place” as used in this chapter means sidewalk, street, alley, highway, public right-of-way, park, parking lot, or other place owned in fee by the city or in, on or over which an easement exists in the name of or held by the city, or which exists for the benefit and use of the public.

Section 3. Chapter 5.02 of the Hailey Municipal Code is amended by the addition of a new Section 5.02.015 as follows:

Section 5.02.015      Applicability. Except as otherwise provided in Section 5.02.030, it shall be unlawful for any person to conduct a business within the City of Hailey in any and all situations where suppliers, vendors, customers, clients, and/or members of the general public visit or frequent the premises where the business or occupation is conducted, including without limitation, wholesale businesses, retail businesses, personal service businesses, professional service businesses, child care services, restaurants and bars, without first applying for and being granted by the city a Business License.

Section 4.      Section 5.02.030 of the Hailey Municipal Code is amended by the addition of the underlined language as follows:

5.02.030      Exceptions. The following activities are exempted from the provisions of this chapter:

- A.      Any sales under court order;
- B.      A bona fide auction sale;
- C.      Garage, yard, or similar sales by individual at their residence or place of business not exceeding twice in one calendar year; which sales shall not include business inventory; and
- D.      Any business activity or event approved under Chapter 5.24 (Fireworks) or Chapter 12.14 (Special Events) of the Hailey Municipal Code.
- E.      Home occupations as defined by the Hailey Zoning Ordinance, Hailey Ordinance No. 532, as amended.

Section 5.      Section 5.02.040 of the Hailey Municipal Code is amended by the addition of the underlined language, as follows:

5.02.040      Standards for issuance of license. A license shall be issued by the city clerk only to applicants who meet the following requirements:

- A.      Compliance with Building and Fire Regulations. The business and premises for which the license application is made has not been cited by the building or fire departments for a violation of the adopted International Building or Fire Code, or, having been cited for such a violation, is in the process of correcting the violation to the satisfaction of the building official or fire chief. The applicant shall specify what steps are being taken to correct the violation. Businesses relocating in new structures or remodeled structures and all new businesses opening for the first time shall have obtained a certificate of occupancy furnished by the city building inspector establishing that the premises are not in violation of the applicable International Building Code and applicable International Fire Code.
- B.      Compliance with Zoning Requirements. The business and premises for which the application is made are not in violation of any zoning regulations.
- C.      Water & Sewer Connection Required. The business and premises for which the application is made shall be connected to city water and sewer systems, and shall not be in violation of any section of Chapter 13 of the Hailey Municipal Code.

D. The business and premise for which the application is made shall not be placed upon or encroach upon any public street or place, with the exceptions of sidewalks. Encroachments upon private parking or yard areas, public sidewalks or other areas outside of a business structure connected to city water and sewer systems shall be shown clearly upon the business license application and shall not restrict a clear six-foot lane for pedestrian traffic. The encroachment must meet all other applicable rules, regulations, and ordinances of the city of Hailey.

E. The intended use of any business areas outside of a business structure connected to city water and sewer systems, whether upon public sidewalks or private parking and yard areas shall be shown upon the application, and shall be restricted to the same use and business activity as is conducted within the business structure connected to city water and sewer systems.

F. Any business providing child care services, regardless of the number of children being cared for, shall obtain a State of Idaho Child Care License, pursuant to Idaho Code Title 39, Chapter 11 and Idaho Administrative Procedures Act (IDAPA) Standards for Child Care Licensing and shall provide the city a copy of such state license and shall provide the full names of all employees and volunteers. The full names of any new employees or volunteers hired at any time after a business license has been approved are required to be submitted to the city.

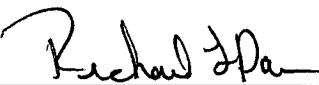
Section 6. Chapter 5.03 of the Hailey Municipal Code, Child Care Facility Licensing, is repealed in its entirety.

Section 7. Severability Clause. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

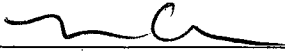
Section 8. Repealer Clause. All ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 9. Effective Date. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL and approved by the Mayor this 29<sup>th</sup> day of November, 2011.

  
Richard L. Davis, Mayor

ATTEST:

  
Mary Cone, City Clerk

*Summary published*  
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