



**ACTION SHEET**  
**CITY COUNCIL COMMITTEE MEETING OF 08/03/15**  
**ITEM FROM FINANCE COMMITTEE MEETING OF 08/12/15**

**ISSUE:**

16. Request for Approval of an Ordinance Amending the Distress Merchandise Sale License Provisions, Section 18-5.1 SFCC 1987 to Require Additional Information be Provided With an Application for a Business License; and to Clarify Under What Circumstances a License Will be Denied. (Mayor Gonzales) (Lisa Martinez)

**Committee Review:**

Public Works Committee (approved)	07/27/15
City Council (request to publish)	08/12/15
City Council (public hearing)	09/09/15

Fiscal Impact – No

**FINANCE COMMITTEE ACTION:**

Approved as Consent item.

**FUNDING SOURCE:**

**SPECIAL CONDITIONS OR AMENDMENTS**

**STAFF FOLLOW-UP:**

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	Excused		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

**ACTION SHEET  
ITEM FROM THE  
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING  
OF  
MONDAY, JULY 27, 2015**

**ITEM 12**

REQUEST FOR APPROVAL OF AN ORDINANCE AMENDING THE DISTRESS MERCHANDISE SALE LICENSE PROVISIONS, SECTION 18-5.1 SFCC 1987 TO REQUIRE ADDITIONAL INFORMATION BE PROVIDED WITH AN APPLICATION FOR A BUSINESS LICENSE; AND TO CLARIFY UNDER WHAT CIRCUMSTANCES A LICENSE WILL BE DENIED **(MAYOR GONZALES) (LISA MARTINEZ)**

**PUBLIC WORKS COMMITTEE ACTION: Approved**

**FUNDING SOURCE:**

**SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP: Add Councilor Bushee as co-sponsor**

<b>VOTE</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
<b>CHAIRPERSON TRUJILLO</b>			
<b>COUNCILOR BUSHEE</b>	<b>X</b>		
<b>COUNCILOR DIMAS</b>	<b>X</b>		
<b>COUNCILOR DOMINGUEZ</b>	<b>X</b>		
<b>COUNCILOR RIVERA</b>	<b>X</b>		

# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

Bill No. 2015-33

### Distress Merchandise Sales

---

**SPONSOR(S):** Mayor Gonzales

**SUMMARY:** The proposed bill amends the distress merchandise sale license provisions, Section 18-5.1 SFCC 1987 to require additional information be provided with an application for a business license; and to clarify under what circumstances a license will be denied.

**PREPARED BY:** Rebecca Seligman, Legislative Liaison Assistant

**FISCAL IMPACT:** No

**DATE:** July 15, 2015

**ATTACHMENTS:** Bill  
FIR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**CITY OF SANTA FE, NEW MEXICO**

**BILL NO. 2015-33**

**INTRODUCED BY:**

Mayor Javier M. Gonzales

**AN ORDINANCE**

**AMENDING THE DISTRESS MERCHANDISE SALE LICENSE PROVISIONS, SECTION 18-5.1 SFCC 1987 TO REQUIRE ADDITIONAL INFORMATION BE PROVIDED WITH AN APPLICATION FOR A BUSINESS LICENSE; AND TO CLARIFY UNDER WHAT CIRCUMSTANCES A LICENSE WILL BE DENIED.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

**Section 1. Subsection 18-5.1 SFCC 1987 (being Code 1953, §21-1 as amended)**

**is amended to read:**

**18-5.1 Distress Merchandise Sale License.**

A. *License.* It shall be unlawful for any person to advertise or conduct a distress merchandise sale without having first obtained a license to do so in accordance with this section.

B. *Application.* Any person desiring to conduct a distress merchandise sale within the city shall make a written application verified under oath to the finance department at least fifteen (15) days prior to the date on which the sale is to commence unless the merchandise to be sold consists of perishable goods, or goods damaged by smoke, fire or water in which case the

1 fifteen (15) day time period is not applicable. The application shall contain the following  
2 information:

3 (1) The name and address of the owner of the goods, wares or merchandise  
4 to be sold;

5 (2) A description of the place where such sale is to be held;

6 (3) The nature of the occupancy of the place where such sale is to be held,  
7 whether by lease or otherwise, and the effective date of the termination of the occupancy of the  
8 premises;

9 (4) The commencement and termination dates of the distress merchandise  
10 sale;

11 (5) A full and complete statement of the facts regarding the reasons why the  
12 distress merchandise sale is being conducted, the manner in which the sale is to be conducted, the  
13 means to be employed in advertising the sale, together with the content of any proposed  
14 advertisement or advertising themes, or copies thereof;

15 (6) If a defunct business is involved, the name and address of the defunct  
16 business, and the owner or former owner thereof,

17 (7) A complete and detailed inventory of the goods, wares and merchandise  
18 including goods received on consignment to be offered at the distress merchandise sale, the terms  
19 and conditions of the acquisition of the property, the amount and description of the goods, wares  
20 or merchandise to be sold and the location of the goods, wares and merchandise at the time of the  
21 filing of the application;

22 (8) A statement that the applicant has not in contemplation of the distress  
23 merchandise sale ordered, purchased or received on consignment any goods, wares or  
24 merchandise for the purpose of selling them at the sale within ninety (90) days prior to the filing  
25 of the application;

1                   (9)     A statement that no goods will be added to the inventory after the  
2 application is made or during the sale; and

3                   (10)    A statement that the applicant or its principal officers or agents have not  
4 been convicted of a violation of the Distress Sales Act [57-10-1 to 57-10-12 NMSA 1987] or this  
5 section or had a license issued under the Act or this section revoked within five (5) years of the  
6 filing of this application.

7                   (11)    A letter of attestation from the property owner as to the dates of the  
8 lease.

9           C.     *Examination and Investigation; Grounds for Denial of License.* The city may  
10 upon the filing of an application investigate the applicant and examine the applicant's affairs in  
11 relation to the proposed sale and may examine the inventory and records of the applicant. A  
12 license shall not be issued if it is found that:

13                   (1)     The business has held a sale subject to regulation under the Distress  
14 Sales Act [57-10-1 to 57-10-12 NMSA 1978] or this section at the location described in the  
15 application, within three (3) years from the date of the application, and the business is not unique  
16 from the business that previously occupied that location and had a distress sale license within  
17 three (3) years, which can be established by a preponderance of characteristics such as unique  
18 advertising, branding, logo(s), operations, ownership structure, inventory, products, services,  
19 location, physical separation or other characteristics that would make the commercial operation  
20 distinctly different;

21                   (2)     The application states that the applicant or any of its principal officers or  
22 agents have been convicted of a violation of the Distress Sales Act or this section or has had a  
23 license issued under the act or this section revoked within five (5) years of the filing of the  
24 application;

1                   (3)     The inventory submitted with the application includes goods, wares or  
2 merchandise purchased or held on consignment by the applicant or added to the applicant's stock  
3 in contemplation of such sale and for the purpose of selling the stock at the distress merchandise  
4 sale. Any unusual addition to the stock of goods, wares or merchandise which is made within  
5 ninety (90) days prior to the filing of the application shall be prima facie evidence that the  
6 addition was made in contemplation of the sale and for the purpose of selling the goods at the  
7 sale;

8                   (4)     The applicant, in ticketing the goods, wares or merchandise for sale has  
9 misrepresented the original retail price or value thereof;

10                  (5)     The advertisement or advertising themes are false, fraudulent, deceptive  
11 or misleading in any respect;

12                  (6)     The sales methods to be used by the applicant in conducting the sale will  
13 work a fraud upon the purchasers;

14                  (7)     The information set forth in the application is insufficient;

15                  (8)     Representations made in the application are false; or

16                  (9)     The applicant has acquired bankrupt stock or other distress sale  
17 merchandise from another area within six (6) months of the application.

18                  D.     *Issuance of License; Conditions.* If the application complies with the provisions  
19 of the Distress Sales Act [57-10-1 to 57-10-12 NMSA 1978] or this section and the license fee as  
20 set forth below has been paid, a license shall be issued to advertise and conduct the sale described  
21 in the application subject to the following conditions:

22                  (1)     The sale shall be held at the place named in the application;

23                  (2)     The sale shall be held by the licensee for a period of not more than  
24 [~~ninety~~] sixty (~~90~~60) days following the date set forth in the license;

1 (3) Only goods, wares and merchandise included in the inventory attached to  
2 the application shall be displayed on the premises and sold at the sale;

3 (4) The license shall be prominently displayed at the location of the sale at  
4 all times; and

5 (5) The licensee shall keep suitable books at the sale location that shall be  
6 open for inspection by the city during normal business hours.

7 (6) The applicant has already obtained a distress merchandise sale sign  
8 pursuant to Section 14-8.10(H)(28)(f) SFCC 1987.

9 E. *License Fee.* The fee shall be fifty dollars (\$50.00) or one-fourth of one percent  
10 (1/4 of 1%) of the inventory cost value of the goods, wares or merchandise to be sold at the sale,  
11 whichever is more, to a maximum of two hundred dollars (\$200).

12 F. *Renewal of License.* If during the period that the license is in effect it appears to  
13 the city that all of the goods in the original inventory have not been sold, the city may upon  
14 application and for good cause shown extend the license for a period not to exceed [~~thirty~~ fifteen  
15 ([30]15) days.

16 G. *Revocation of License.* The distress sale license shall be revoked if the city finds  
17 the following:

18 (1) Violation of any provision of the Distress Sales Act or this section;

19 (2) Violation of any condition of the license;

20 (3) Material misstatement in the application for the license;

21 (4) Failure to include in the inventory required by the Distress Sales Act or  
22 this section all the goods, wares or merchandise being offered for sale;

23 (5) Offering or permitting to be offered at the sale any goods, wares or  
24 merchandise not included in the inventory attached to the application;

25 (6) Failure to keep suitable records of the sale;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(7) Making or permitting to be made any false or misleading statements or representations in advertising the sale or in displaying, ticketing or pricing goods, wares or merchandise offered for sale; or

(8) Any fraudulent practice in the conduct of the sale authorized by the license.

(9) For any of the reasons stated in subsection G, the City Manager may also suspend or revoke the applicant's business license, subject to appeal to the governing body within fifteen (15) days of the City Manager's written decision.

H. *Confidentiality Requirements.* The filing of an application for a license, the contents of the application and the issuance of the license shall be confidential information and no disclosure thereof shall be made except that which is necessary in the administration of the Distress Sales Act or this section. However, disclosure of the abovementioned information may be made with the consent of the applicant. The filing of the application and the issuance of the license shall not be confidential after public notice of the proposed sale has been given by the applicant.

APPROVED AS TO FORM:



KELLEY A. BRENNAN, CITY ATTORNEY

### City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A. General Information**

(Check) Bill:  X  Resolution: \_\_\_\_\_

(A single FIR may be used for related bills and/or resolutions)

Short Title(s):  AN ORDINANCE AMENDING THE DISTRESS MERCHANDISE SALE LICENSE PROVISIONS, SECTION 18-5.1 SECC 1987 TO REQUIRE ADDITIONAL INFORMATION BE PROVIDED WITH AN APPLICATION FOR A BUSINESS LICENSE; AND TO CLARIFY UNDER WHAT CIRCUMSTANCES A LICENSE WILL BE DENIED.

Sponsor(s):  Mayor Gonzales

Reviewing Department(s):  City Attorney's Office / Legislative Services

Persons Completing FIR:  Jesse Guillen  Date:  7/20/15  Phone:  955-6518

Reviewed by City Attorney:  Kelly A. Brennan  Date:  7/21/15   
(Signature)

Reviewed by Finance Director: \_\_\_\_\_ Date:  7-21-2015   
(Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution:

This bill amends the distress merchandise sale provisions to require additional information be provided for a distress merchandise sale permit, detailing when a permit shall be denied, limiting the number of days a distress merchandise sale may be held, and giving the City Manager authority to suspend or revoke a business licenses if required provisions are not met.

**Section C. Fiscal Impact**

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: \_\_\_\_\_

X   Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
	Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____
	Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____
	Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____
	Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____
	Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____
	All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____
	Total:	\$ _____			\$ _____			

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs – Recurring or "NR" Non-recurring	Fund Affected
	_____	\$ _____	_____	\$ _____	_____	_____
	_____	\$ _____	_____	\$ _____	_____	_____
	_____	\$ _____	_____	\$ _____	_____	_____
	Total:	\$ _____		\$ _____		

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

None.

---

**Section D. General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None.

---

**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

Consumers would not have the additional protection from false distress merchandise sales.

---

**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None.

---

**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

These amendments will ensure that shoppers are not taken advantage of when distress merchandise sales are advertised. These additional provisions have proven useful in other cities where similar situations arose.

---

Form adopted: 01/12/05; revised 8/24/05; revised 4/17/08