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**INTRODUCED BY:**

Councilor Patti Bushee

**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.**

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

**Added to read:**

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

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

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

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

16  
17 APPROVED AS TO FORM:

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20 KELLEY A. BRENNAN, CITY ATTORNEY