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(a) Except as set forth in paragraph (b) below, the following are mandatory minimum fines to be imposed by the municipal court for violation of Section 14-8.10 SFCC 1987 upon issuance of a citation by the [L]and [U]se [D]epartment. The effective date of this paragraph (8) is July 25, 2011.

First violation \$100

Second violation \$200

Third and subsequent violations \$300

(b) The following are mandatory minimum fines to be imposed by the municipal court upon the holder of a *business* license for violation of Subsections 14-8.10(H) (28)(f) or (29) upon issuance of a citation by the land use department. The fines shall be imposed for each day or part of a day that the violation exists. The effective date of this paragraph is [July 25, 2011] \_\_\_\_\_, 2012 [*effective date of this ordinance*].

First violation \$250

Second violation \$500

Third and subsequent violations \$500 and up to ninety days in jail

**Section 2. A new Subsection 14-8.10(H)(28)(f) SFCC 1987 is ordained to read:**

(f) **[NEW MATERIAL]** Distress Merchandise Sale Signs

(i) A *sign* advertising a distress merchandise sale is prohibited unless the following conditions are met:

A. A *sign permit* shall be obtained from the

city. Each *permit* shall allow a *business* to place a *sign* for a *permit* period corresponding to the licensed duration of the distress merchandise sale.

B. A *sign* shall not exceed 12 inches by 24 inches.

C. A *sign* must bear an official *city* of Santa Fe sticker, tag, or other device at all times during the *permit* period indicating the approved dates of the *permit* period.

D. A *sign* shall be removed by the *permit* holder immediately after the *permit* period.

(ii) The *city* may remove a *sign* if the above conditions are not met.

**Section 3. Section 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 fifteen (15) day time period is not applicable. The application shall contain the following information:

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

1 sold;

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

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

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

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

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

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

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

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

24 (10) A statement that the applicant or its principal officers or agents have not been  
25 convicted of a violation of the Distress Sales Act [57-10-1 to 57-10-12 NMSA 1987] or this

1 section or had a license issued under the Act or this section revoked within five (5) years of  
2 the filing of this application.

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

7 (1) The applicant has held a sale subject to regulation under the Distress Sales  
8 Act [57-10-1 to 57-10-12 NMSA 1978] or this section at the location described in the  
9 application, within three (3) years from the date of the application;

10 (2) The ~~[application states that the]~~ applicant or any of its principal officers or  
11 agents have been convicted of a violation of the Distress Sales Act or this section or has had a  
12 license issued under the act or this section revoked within five (5) years of the filing of the  
13 application;

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

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

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

25 (6) The sales methods to be used by the applicant in conducting the sale will

work a fraud upon the purchasers;

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

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

(9) The applicant has acquired bankrupt stock or other distress sale merchandise from another area within six (6) months of the application~~[-]~~; or

(10) The applicant or any of its principle officers or agents have been issued a notice of violation of Subsections 18-5.1(C) or (D).

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

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

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

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

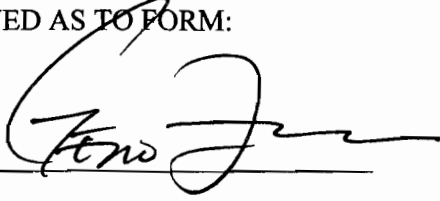
(4) The license shall be prominently displayed at the location of the sale at all times; ~~and~~

(5) The licensee shall keep suitable books at the sale location that shall be open for inspection by the city during normal business hours~~[-]~~; and

(6) Any sign related to the distress merchandise sale shall, at all times, be in compliance with Subsection 14-8.10(B)(8) SFCC 1987.

**Section 4. Effective Date.** This ordinance shall be effective immediately upon adoption.

1 APPROVED AS TO FORM:

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4 GENO ZAMORA, CITY ATTORNEY

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25 *cao/Melissa/bills 2012/2012-30 distress merchandise sales (clean)*