

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2012-31

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4  
5 AN ORDINANCE

6 RELATING TO THE LAND DEVELOPMENT CODE, CHAPTER 14 SFCC 1987 AND  
7 ARTICLE 18-5.1 SFCC 1987 REGARDING DISTRESS MERCHANDISE SALES SIGNS  
8 AND LICENSES; AMENDING SECTION 14-8.10(B)(8) SFCC 1987 REGARDING  
9 VIOLATIONS OF SIGN REGULATIONS TO INCLUDE DISTRESS MERCHANDISE SALE  
10 SIGNS IN THE H DISTRICTS; CREATING A NEW SECTION 14-8.10(H)(28)(f) SFCC 1987  
11 REGARDING THE REGULATION OF DISTRESS MERCHANDISE SALE SIGNS IN THE  
12 H DISTRICTS; AMENDING SECTION 18-5.1 SFCC 1987 REGARDING THE GROUNDS  
13 FOR DENIAL OF A DISTRESS MERCHANDISE SALE LICENSE AND THE  
14 REVOCATION OF A DISTRESS MERCHANDISE SALE LICENSE; AND MAKING SUCH  
15 OTHER STYLISTIC AND GRAMMATICAL CHANGES AS ARE NECESSARY.

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

18 Section 1. Section 14-8.10(B)(8) SFCC 1987 (being Ord. No. 2007-17, §2, as  
19 amended) is amended to read:

20 (8) Fines for Violations

21 (a) Except as set forth in paragraph (b) below, the following are  
22 mandatory minimum fines to be imposed by the municipal  
23 court for violation of Section 14-8.10 SFCC 1987 upon  
24 issuance of a citation by the land use department. The  
25 effective date of this paragraph (8) is July 25, 2011.

1 First violation \$100

2 Second violation \$200

3 Third and subsequent violations \$300

4 (b) The following are mandatory minimum fines to be imposed  
5 by the municipal court upon the holder of a *business* license  
6 for violation of Subsections 14-8.10(H) ~~(28)(f)~~ or (29) upon  
7 issuance of a citation by the land use department. The fines  
8 shall be imposed for each day or part of a day that the  
9 violation exists. The effective date of this paragraph is  
10 October 30, 2012.

11 First violation \$250

12 Second violation \$500

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

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

16 (f) **NEW MATERIAL** Distress Merchandise Sale Signs

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

19 A. A *sign permit* shall be obtained from the  
20 *city*. Each *permit* shall allow a *business* to  
21 place a *sign* for a *permit* period  
22 corresponding to the licensed duration of the  
23 distress merchandise sale.

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

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

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

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

9 **Section 3. Section 18-5.1 SFCC 1987 (being Code 1953, §21-1, as amended) is**  
10 **amended to read:**

11 **18-5.1 Distress Merchandise Sale License.**

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

14 B. *Application.* Any person desiring to conduct a distress merchandise sale within the  
15 city shall make a written application verified under oath to the finance department at least fifteen (15)  
16 days prior to the date on which the sale is to commence unless the merchandise to be sold consists of  
17 perishable goods, or goods damaged by smoke, fire or water in which case the fifteen (15) day time  
18 period is not applicable. The application shall contain the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21          (8)     Representations made in the application are false;

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

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

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

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

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

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

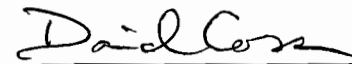
10 (4) The license shall be prominently displayed at the location of the sale at all  
11 times;

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

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

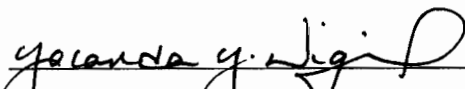
16 **Section 4. Effective Date.** This ordinance shall be effective immediately upon  
17 adoption.

18 PASSED, APPROVED, and ADOPTED this 30<sup>th</sup> day of October, 2012.

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21 DAVID COSS, MAYOR

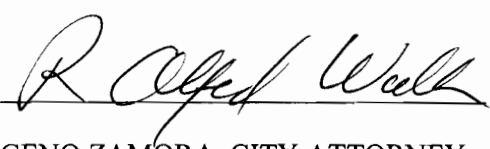
22 ATTEST:

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25 VOLANDA Y. VIGIL, CITY CLERK

1 APPROVED AS TO FORM:

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A handwritten signature in black ink, appearing to read "R. Alfred Walsh", is written over a horizontal line.

4 GENO ZAMORA, CITY ATTORNEY

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25 *cao/Melissa/Ordinances 2012/2012-31 distress merchandise sales*