

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

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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 I. 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;

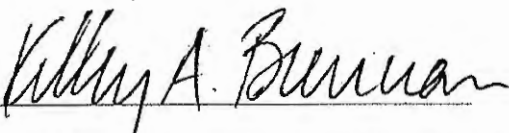
1 (7) Making or permitting to be made any false or misleading statements or
2 representations in advertising the sale or in displaying, ticketing or pricing goods, wares or
3 merchandise offered for sale; or

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:

18 
19 _____
20 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 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.

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: Kelley 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

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			

4-13-15

**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

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

Councilor Lindell said the pillars were actually from Renter Nation whose stated goal was rent control and that is not legal in this state. So this does need more work.

Councilor Bushee said one of her first efforts was to look at rent control and that is not allowed by our constitution. But the resolution doesn't ask for rent control but to engage in a dialogue across all levels. So for her, this kicks off a dialogue and we should talk about how to do that - to generate a good discourse and take true opinions from the community. And, to some degree. To decide what the concerns are. Perhaps some folks are increasingly aware of it being a tale of two cities. Whether this gets the input we need or not, she wasn't sure.

She saw no real budget to do this so she presumed it is in-house. Often we don't have FIRs although they are required.

Councilor Dominguez moved to approve the request. Councilor Bushee seconded the motion.

Councilor Dominguez said the intent might be to establish 5 pillars that are appropriate to Santa Fé. He didn't want to wordsmith it tonight but to acknowledge the importance of those 5 pillars and part of the "be it resolved" is to make those applicable to our community. On page 4, the second "be it further resolved" talks about the strategic plans, MPO pedestrian plan and annual funding related to housing. Staff needs to dig that up to get it done. Staff will come up with a statement that some of it cannot be included for the reason that it doesn't apply to Santa Fé.

Councilor Bushee said in her experience on the transportation boards it was always about cars but now it is incorporating alternatives. Chainbreakers isn't mentioned specifically but we face some specific concerns. It is housing and it is broad and, economically, what stems from it. We are not specific how the City needs to help. We don't have an affordable housing round-table any more. If Chainbreakers can proceed with it in some way, she would be happy and we have to see what comes back.

The motion passed by unanimous voice vote.

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 MARTÍNEZ)

Committee Review:

Council (Request to publish)	07/29/15
Finance Committee (Scheduled)	08/03/15
Council (Public Hearing)	08/26/15

Councilor Bushee asked to have her name added as a co-sponsor. She wanted to know if this is enough because are there other enforcement things. This has been an ongoing problem and it involves the state. It is also about whether they are genuine products. The language when they have going out of business sales allows them to then just change their name. She didn't see where enforcement has been done.

Ms. Martinez said Staff worked closely with the City Attorney. They thought the revision would help with the enforcement mechanism. One thing they did was to check with similar cities - Aspen and Vail, who have had a very similar problem and Staff took language directly from their ordinance and that seems to be working.

On page 3 of the legislation it speaks to ensuring what we are dealing with. It seems to work well for them and they have not had the problems that the City is dealing with. This seems to be a very good starting point.

Councilor Bushee moved for approval, adding her name, but asking the City Attorney to ensure that penalties are there and repeat offenders know that the City means business. Councilor Dominguez seconded the motion and it passed by unanimous voice vote.

13. REQUEST FOR APPROVAL OF THE 2017-2021 INFRASTRUCTURE CAPITAL IMPROVEMENTS PLAN (ICIP)

- **REQUEST FOR APPROVAL OF A RESOLUTION ADOPTING THE 2017-2021 INFRASTRUCTURE CAPITAL IMPROVEMENTS PLAN (ICIP) (COUNCILOR TRUJILLO) (ISAAC PINO)**

Committee Review:

Finance Committee (Scheduled)
Council (Scheduled)

08/03/15
08/12/15

Councilor Bushee noted that Council whittles down this list every year. She saw things in there that she didn't understand like the Senior Center Warehouse Project. There are also things that need to be moved up. She asked why some of these things were still on the list. The west Alameda Street drainage and bike lanes should be moved up. She asked if the Arts and Creativity Center still needed to be on the list. There are others that should be on this list like fiber optics throughout the city. She asked how this could be done.

Mr. Pino said this list is a carryover from the previous year and is what we can do over the next five years. The intent is to hear from the Committee about new projects that need to be on it. The list can be expanded or shortened - whatever the Committee wants. The ranking really comes in December when we prioritize them.

Councilor Bushee asked why Warehouse 21 still on the list.

Mr. Pino said certain nonprofits were allowed to be here.

Councilor Bushee recalled that at one time, Tierra Contenta wanted something from the City to be a sustaining entity. She perceived this to be a wish list and not CIP. But the list could still have projects on it that would grab attention like the Airport. She asked why it wouldn't have things like fiber optics.

Mr. Pino said when we get the list to the legislature we don't want any of the projects to cost over \$1 million. Regarding Tierra Contenta, they no longer have the developer activities they had at one time to cover the infrastructure construction.

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

4-13-15