

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2015-31

3
4
5 AN ORDINANCE

6 AMENDING THE DISTRESS MERCHANDISE SALE LICENSE PROVISIONS, SECTION
7 18-5.1 SFCC 1987, TO REQUIRE ADDITIONAL INFORMATION BE PROVIDED WITH
8 AN APPLICATION FOR A BUSINESS LICENSE; AND TO CLARIFY UNDER WHAT
9 CIRCUMSTANCES A LICENSE WILL BE DENIED.

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

12 Section 1. Subsection 18-5.1 SFCC 1987 (being Code 1953, §21-1 as amended)
13 is amended to read:

14 18-5.1 Distress Merchandise Sale License.

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

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

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

- 1 (2) A description of the place where such sale is to be held;
- 2 (3) The nature of the occupancy of the place where such sale is to be held,
3 whether by lease or otherwise, and the effective date of the termination of the occupancy of the
4 premises;
- 5 (4) The commencement and termination dates of the distress merchandise
6 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, the
9 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 terms
15 and conditions of the acquisition of the property, the amount and description of the goods, wares
16 or merchandise to be sold and the location of the goods, wares and merchandise at the time of the
17 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 filing
21 of the application;
- 22 (9) A statement that no goods will be added to the inventory after the
23 application is made or during the sale; and
- 24 (10) A statement that the applicant or its principal officers or agents have not
25 been 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 distress merchandise sale license issued under the Act or this section revoked
2 within five (5) years of the filing of this application.

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

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

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

17 (2) The application states that the applicant or any of its principal officers or
18 agents have been convicted of a violation of the Distress Sales Act or this section or has had a
19 distress merchandise sale license issued under the act or this section revoked within five (5) years
20 of the filing of the application;

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

1 addition was made in contemplation of the sale and for the purpose of selling the goods at the
2 sale;

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

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

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

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

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

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

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

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

19 (2) The sale shall be held by the distress merchandise sale licensee for a
20 period of not more than sixty (60) days following the date set forth in the license;

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

23 (4) The distress merchandise sale license shall be prominently displayed at
24 the location of the sale at all times; and

25 (5) The distress merchandise sale licensee shall keep suitable books at the

1 sale location that shall be open for inspection by the city during normal business hours.

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

4 E. *License Fee.* The fee shall be fifty dollars (\$50.00) or one-fourth of one percent
5 (1/4 of 1%) of the inventory cost value of the goods, wares or merchandise to be sold at the sale,
6 whichever is more, to a maximum of two hundred dollars (\$200).

7 F. *Renewal of License.* If during the period that the distress merchandise sale license
8 is in effect it appears to the city that all of the goods in the original inventory have not been sold,
9 the city may upon application and for good cause shown extend the distress merchandise sale
10 license for a period not to exceed fifteen (15) days.

11 G. *Revocation of License.* The distress merchandise sale license shall be revoked if
12 the city manager finds the following:

13 (1) Violation of any provision of the Distress Sales Act or this section;
14 (2) Violation of any condition of the distress merchandise sale license;
15 (3) Material misstatement in the application for the distress merchandise sale
16 license;

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

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

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

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

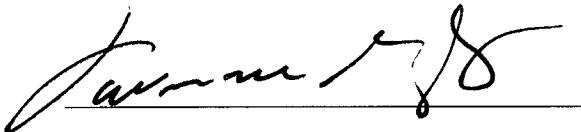
25 (8) Any fraudulent practice in the conduct of the sale authorized by the

1 distress merchandise license.

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

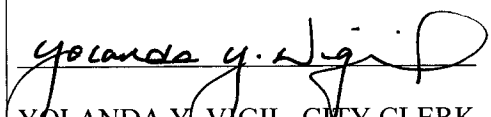
5 H. *Confidentiality Requirements.* The filing of an application for a distress
6 merchandise license, the contents of the application and the issuance of the distress merchandise
7 sale license shall be confidential information and no disclosure thereof shall be made except that
8 which is necessary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

12 PASSED, APPROVED and ADOPTED this 30th day of September, 2015.

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14 JAVIER M. GONZALES, MAYOR

15 ATTEST:

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18 
19 YOLANDA Y. VIGIL, CITY CLERK

20 APPROVED AS TO FORM:

21 
22
23 KELLEY A. BRENNAN, CITY ATTORNEY

24
25 *M/Legislation/Ordinances 2015/2015-31 Distress Merchandise Sales*