

ORDINANCE NO. 3695

TITLE: AN ORDINANCE REGULATING GOING-OUT-OF-BUSINESS SALES, REMOVAL OF BUSINESS SALES, AND FIRE AND OTHER ALTERED GOODS SALES; REQUIRING PERSONS CONDUCTING SUCH SALES TO OBTAIN A LICENSE; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: DEFINITIONS.

For the purposes of this Ordinance the following terms phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- a. "City" is the city of Albany
- b. "City License Officer" is the City Recorder of the city of Albany.
- c. "Fire and other altered goods sale" is a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water or other means.
- d. "Going-out-of business sale" is a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock of goods on hand the business will cease and be discontinued, including but not limited to the following sales: Adjuster's; Adjustment; Alteration; Assignee's; Bankrupt; Benefit of Administrator's; Benefit of Creditors'; Benefit of Trustees; Building Coming Down; Closing; Creditor's Committee; Creditor's; End; Executor's; Final Days; Forced Out; Forced Out of Business; Insolvents'; Last Days; Lease Expires; Liquidation; Loss of Lease; Mortgage Sale; Receiver's; Trustee's; Quitting Business.
- e. "Goods" is meant to include any goods, wares, merchandise or other property capable of being the object of a sale regulated hereunder.
- f. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

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- g. "Removal of business sale" is a sale held out in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location in the city or will then continue business from other existing locations in the city.

Section 2: LICENSE REQUIRED.

A license issued by the City License Officer shall be obtained by any person before selling or offering to sell any goods at a sale to be advertised or held out by any means to be one of the following kinds:

- a. Going out-of-business sale;
- b. Removal of business sale; and
- c. Fire and other altered stock sale.

Section 3: APPLICATION OF REGULATIONS.

- a. Established Business Requisite. Any person who has not been the owner of a business advertised or described in the application for a license hereunder for a period of at least six (6) months prior to the date of the proposed sale shall not be granted a license.
 - (1) Exception for Survivors of Businessmen. Upon the death of a person doing business in the city his or her heirs, devisees or legatees shall have the right to apply at any time for a license hereunder.
- b. Interval Between Sales. Any person who has held a sale, as regulated hereunder, at the location stated in the application, within one (1) year last past from the date of such application shall not be granted a license.
- c. Restricted Location. Where a person applying for a license hereunder operates more than one place of business the license issued shall apply only to the one store, or branch specified in the application and no other store or branch shall advertise or represent that it is cooperating with it, or in any way participating in the licensed sale, nor shall the store or branch conducting the licensed sale advertise or represent that any other store or branch is cooperating with it or participating in any way in the licensed sale.

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- d. Persons Exempted. The provisions of this Ordinance shall not apply to or affect the following persons:
- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction;
 - (2) Persons acting in accordance with their powers and duties as public officials;
 - (3) Duly licensed auctioneers, selling at auction;
 - (4) Persons conducting a sale of the type regulated herein on the effective date of this Ordinance, unless such sale is continued for a period more than thirty (30) days from and after such effective date, in which event, such person, at the lapse of the said thirty (30) day period, shall comply with the provisions of this Ordinance;
 - (5) Any publisher of a newspaper, magazine or other publication, who publishes in good faith, any advertisement, without knowledge of its false, deceptive or misleading character, or without knowledge that the provisions of this ordinance have not been complied with.

Section 4: APPLICATION REQUIREMENTS.

- a. Written Information Required. A person desiring to conduct a sale regulated by this Ordinance shall make a written application to the License Officer setting forth and containing the following information:
- (1) The true name and address of the owner of the goods to be the object of the sale;
 - (2) The true name and address of the person from whom he purchased the goods to be sold and the price therefor, and if not purchased, the manner of such acquisition;
 - (3) A description of the place where such sale is to be held.
 - (4) The nature of the occupancy, whether by lease or sublease and the effective date of termination of such occupancy;
 - (5) The dates of the period of time in which the sale is to be conducted;

- (6) A full and complete statement of the facts in regard to the sale, including the reason for the urgent and expeditious disposal of goods thereby and the manner in which the sale will be conducted;
- (7) The means to be employed in advertising such sale together with the proposed content of any advertisement;
- (8) A complete and detailed inventory of the goods to be sold at such sale as disclosed by the applicant's records. Said inventory shall be attached to and become part of the required application.
 - (aa) Bona Fide Orders. All goods included in such inventory shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.
 - (bb) Goods Purchased for Sale Hereunder. Such inventory shall not include goods ordered in contemplation of conducting a sale regulated hereunder. Any unusual purchase, or additions to the stock of goods of the business hereby affected within thirty (30) days before the filing of an application hereunder shall be deemed to be of such character.

- b. License Fee. Any applicant for a license hereunder shall submit to the License Officer with his application a license fee of TWENTY-FIVE DOLLARS (\$25.00). Any applicant for a renewal license hereunder shall submit to the License Officer with his renewal application a renewal license fee of FIFTEEN DOLLARS (\$15.00).

Section 5: EFFECT OF LICENSE.

- a. A license shall be issued hereunder on the following terms:
- (1) Licensing Period. The license shall authorize the sale described in the application for a period of not more than sixty (60) consecutive days, Sundays and legal holidays excluded, following the issuance thereof.
 - (aa) Renewal Procedure. The License Officer shall renew a license for one period of time only, such period to be in addition to the sixty

(60) days permitted in the original license and not to exceed thirty (30) consecutive days, Sundays and holidays excluded, when he finds:

- (a-1) That facts exist justifying the license renewal;
- (a-2) That the licensee has filed an application for renewal;
- (a-3) That the licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original application and inventory.
 - (a-3a) For the purposes of this subsection, any application for a license under the provisions of this Ordinance covering any goods previously inventoried as required hereunder, shall be deemed to be an application for renewal, whether presented by the original applicant, or by any other person.

- (2) Nature of Sale. The license shall authorize only the one type of sale described in the application at the location named therein.
- (3) Saleable Goods. The license shall authorize only the sale of goods described in the inventory attached to the application.
- (4) Surrender of General License. Upon being issued a license hereunder for a going-out-of-business sale the licensee shall surrender to the License Officer all other business licenses he may hold at the time applicable to the location and goods covered by the application for a license under this Ordinance.
- (5) Non-transferability. Any license herein provided for shall not be assignable or transferable.

Section 6: DUTIES OF LICENSEE.

- a. A licensee hereunder shall:

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- (1) Adhere to Inventory. Make no additions whatsoever, during the period of the licensed sale, to the stock of goods set forth in the inventory attached to the application for license.
- (2) Advertise Properly. Refrain from employing any untrue, deceptive or misleading advertising.
- (3) Adhere to Advertising. Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto.
- (4) Keep Duplicate Inventory. Keep available at the place of sale a duplicate copy of the inventory submitted with the application and shall present such duplicate to inspecting officials upon request.
- (5) Segregate Non-inventoried Goods. Keep any other goods separate and apart from the goods listed in the filed inventory as being objects of sale and shall make such distinction clear to the public by placing tags on all inventoried goods in and about the place of sale apprising the public of the status of all such goods.

Section 7: PENALTIES.

Section 1.04.010 of the Albany Municipal Code shall apply as penalty for violation of this Ordinance.

Passed by the Council: March 28, 1973
Approved by the Mayor: March 28, 1973
Effective Date: April 27, 1973

Blatt Davis
Mayor

ATTEST:

Ernest J. Sham
City Recorder

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