

## ORDINANCE NO. 378-2010

### AN ORDINANCE TO DEFINE THE PROCEDURES AND REGULATIONS FOR GOING OUT OF BUSINESS AND OTHER SIMILAR SALES

**WHEREAS**, commercial activity is vital to the growth and development of the City of Spanish Fort; and

**WHEREAS**, the collection of sales tax derived from commercial activities and the regulation of said commercial activities is within the City's authority for the health, safety and welfare of its citizens and visitors; and

**WHEREAS**, there is currently no ordinance delineating the procedure and regulations under which a commercial entity may begin the process of selling its inventory and terminating its existence within the corporate limits of the City of Spanish Fort; and

**WHEREAS**, the City Council of the City of Spanish Fort, after due consideration and deliberation, has determined it to be in the best interests of the City to require commercial entities to follow set regulations when such a commercial entity terminates its existence.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SPANISH FORT, ALABAMA, AS FOLLOWS:**

#### **SECTION 1: Definitions.**

A. Applicant is any person applying for a license under this Ordinance, and if such person is the agent of another who is the true owner, the principal or owner, notwithstanding whether or not the name of the true owner appears on the application.

B. Distressed merchandise sale is any offer to sell or advertisement to the public, or a sale to the public, of goods, wares or merchandise on the implied or direct representation that such sale is being held other than in the ordinary course of business and not otherwise defined herein. Without limiting the generality of the foregoing, "distressed merchandise sales" shall include, but shall not be limited to, any sale advertised either specifically or in reference to be any one of the following:

- (1) Fire sale;
- (2) Smoke damage sale;
- (3) Water damage sale;
- (4) Adjustment sale;
- (5) Insurance salvage sale;
- (6) Mortgage sale;
- (7) Adjuster's sale;
- (8) Re-organization sale; or
- (9) Other sale of similar intent or terminology to any of the above.

C. Fire and other altered goods sale means a sale to be advertised or 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 means any sale to be advertised or 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 be limited to, the following sales: alteration, assignee's, bankrupt, benefit of administrator's, benefit of creditor's, benefit of trustee's, building coming down, closing, creditor's committee, creditor's end, executor's final days, forced out of business, insolvents, last days, lease expires, liquidation, loss of lease, receiver's, trustee's, quitting business and forced out.

E. Goods means goods, wares, merchandise or other property capable of being the object of a sale regulated under this Ordinance.

F. Inventory is a list of the goods, wares or merchandise on hand, which the applicant intends to offer for sale at such sale. The inventory shall show the quantity, kind and grade of each item, the wholesale cost thereof, the price at which each item is proposed to be sold and the total wholesale and retail value of the inventory based on the foregoing.

G. Person is any individual, entity, partnership, association, firm, corporation or organization of any kind.

H. Removal of business sale means 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 inventory on hand and will then move to and resume business at a new or other existing location in the City.

## **SECTION 2. License.**

### **A. License Requirement.**

A license issued by the City Clerk, or her designee, shall be obtained by any person before advertising, selling or offering for sale any goods at a sale which is to be advertised or held out as one or more of the following kinds of sales:

- (1) Distressed merchandise sale,
- (2) Going out of business sale,
- (3) Fire and other altered stock sale, or
- (4) Removal of business sale.

### **B. Application.**

Written information required. A person desiring to conduct a sale regulated by this Ordinance or requiring a license shall make a written application to the City Clerk, or her designee, 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) A sworn statement by the legal owner of the business, stating that no additional inventory will be added to the existing inventory during the sale;
- (3) A description of the place where such sale is to be held;
- (4) The nature of the occupancy, whether by ownership, lease or sublease, and the effective date of termination of such occupancy;
- (5) The dates and times of sale, including the date and time the sale is to be concluded;
- (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; and
- (7) The means to be employed in advertising such sale, together with the proposed content of any advertisement.

### **C. Conditions of License; Fee.**

A license shall be issued under this Ordinance on the following terms:

- (1) *Licensing period and fee.* The license shall authorize the sale described in the application for a period of time and for a license fee described as follows:
  - (a) No more than thirty (30) consecutive calendar days following issuance. . . \$150.00; or
  - (b) No more than sixty (60) consecutive calendar days following issuance. . . \$300.00.

The City Council, in its discretion, may authorize that sales continue for an additional thirty (30) consecutive calendar-day period beyond the period of time set forth above, not to exceed a total of ninety (90) days upon receipt of a written request stating the reasons for such request. Upon said authorization from the City Council, the applicant shall incur an additional \$150.00 mandatory fee.

(2) Nature of sale. The license shall authorize only the type of sale described in the application at the location named therein.

(3) Saleable goods. The license shall authorize only the sale of goods in inventory at the beginning of the sale.

(4) Expiration of general license. Upon being issued a license under this article for a going out of business sale, all other business licenses that the Licensee may hold at that time applicable to the location and goods covered by the application for a license under this Ordinance shall expire by operation of law upon the expiration of the license issued pursuant to this Ordinance.

(5) Non-transferability. Any license provided for in this Ordinance shall not be assignable or transferable.

D. Duties of licensee.

It shall be the duty of the licensee to:

(1) Adhere to inventory. During any going out of business sale or distressed merchandise sale, a licensee may not sell, offer for sale or advertise for sale goods, wares or merchandise which were not included in the inventory filed with his application. Should any inventory be added to the stock of goods, wares or merchandise set forth in the certified inventory attached to the application for the license, the licensee shall file an amendment with the City Clerk, or her designee, listing the additional inventory and when it was received by the licensee. Failure to adhere to this provision shall result in immediate revocation of the license to conduct a going out of business sale or distressed merchandise sale, and the license shall be subject to any other penalties or remedies set forth in this Ordinance.

(2) Advertise properly. Refrain from employing any untrue, deceptive or misleading advertising.

(3) Adhere to advertising. The licensee shall conduct the licensed sale in strict conformity with any applicable advertising regulations or holding out incident thereto. A licensee shall not advertise a going out of business sale or distressed merchandise sale earlier than seven (7) days prior to the date on which the sale is licensed to begin. Advertising of such sales shall state the date when the sale is to begin and, during the last fifteen (15) days of such sale, shall clearly and prominently state the date the sale shall end.

### **SECTION 3. Restrictions**

A. Interval between sales.

Any person who has held a sale as regulated under this Ordinance, at the location stated in the application, within one (1) year prior to the date of such application, shall not be granted a license.

B. Restricted location.

Where a person applying for a license under this Ordinance operates more than one place of business, the license issued shall apply only to the one store, branch or location specified in the application, and no other store, branch or location shall advertise or represent that it is cooperating with, or in any way participating in the license of sale, nor shall the store, branch or location conducting the licensed sale advertise or represent that any other store, branch or location is cooperating with, or participating in any way in the licensed sale, unless a separate license is obtained for each location.

C. Sales to be held only at regular store hours.

No going out of business sale or distressed merchandise sale shall be held at times other than regular store hours of the applicant, except that the City Council may make reasonable provision for extra evening hours upon good cause shown by the applicant.

D. False bidders prohibited.

No person who is not a bona fide potential purchaser shall act at any going out of business sale or distressed merchandise sale as bidder, or what is commonly known as a "capper," "booster" or "shiller," or offer to make any false bid to buy any goods, wares, merchandise or other property to be sold or offered for sale at any going out of business sale or distressed merchandise sale.

E. Exceptions and exemptions.

(1) Exception for survivors of sole proprietorships. 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 under this Ordinance.

(2) Persons exempted. The provisions of this Ordinance shall not apply to nor affect persons acting in accordance with their powers and duties as public officials.

#### **SECTION 4. Penalties.**

A. A person convicted of a violation of any of the provisions of this Ordinance shall be fined not more than Five Hundred Dollars (\$500.00) and may be imprisoned for not more than six (6) months, or both for each such offense, at the discretion of the court trying the case.

B. Each separate sale, offering for sale of any goods, wares or merchandise in violation of the provisions of this Ordinance shall constitute a separate offense.

C. Each day such violation of the provisions of this Ordinance continues shall constitute a separate offense.

#### **SECTION 5. Construction.**

The provisions of this Ordinance are intended to supplement and be in addition to the general licensing ordinances of the City. Where this Ordinance imposes a greater restriction upon persons, premises, business or practices than is imposed by the general licensing ordinances of the City, this Ordinance shall control.

#### **SECTION 6. Severability Clause.**

If any part, section or subdivision of this Ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this Ordinance, which shall continue in full force and effect notwithstanding such holding.

#### **SECTION 7. Effective Date.**

This Ordinance shall become effective upon its adoption or as otherwise required by state law.

Adopted and approved this \_\_\_\_\_ *day of March, 2010.*

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Joseph C. Bonner  
Mayor

ATTEST:

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Mary Lynn Williams, MMC  
City Clerk