

Ordinance No. 1093

AN ORDINANCE to amend Chapter 17 of The Code of the City of Alexandria, Virginia, 1953, by adding a new Article thereto numbered VIII, which Chapter 17 relates to LICENSES and license taxes and which new Article VIII provides for the regulation and the imposing and laying of a tax on persons conducting distress merchandise sales; and prescribing penalties for violations.

THIS CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 17 of the Code of the City of Alexandria, Virginia, 1953 be, and the same hereby is, amended by adding thereto a new Article VIII to read as follows:

ARTICLE VIII. DISTRESS MERCHANDISE SALES

Section 17-118. **Definitions**—The following terms shall have the meanings ascribed unless the context clearly indicates a different meaning.

“Distress Merchandise Sale” shall mean any offer to sell to the public, or sale to the public, of goods, wares, or merchandise on the implied or direct representation that such sale is in anticipation of the termination of business at its present location or that the sale is being held other than in the ordinary course of business. Without limiting the generality of the above, distress merchandise sales shall include any sale advertised either specifically or in substance to be a “fire sale”, “smoke and water damage sale”, “trustee’s sale”, “bankrupt sale”, “save us from bankruptcy sale”, “insolvent sale”, “insurance salvage sale”, “mortgage sale”, “assignee’s sale”, “adjuster’s sale”, “must vacate sale”, “quitting business sale”, “receiver’s sale”, “loss of lease sale”, “forced out of business sale”, or “removal sale”.

“Advertise” shall mean any and all means of conveying to the public notice of sale or notice of intention to conduct a sale, whether by word of mouth, newspaper or magazine advertisement, handbill, circular, pamphlet, written notice, printed notice, printed display, billboard display, window display, poster, radio or television announcement, by recordings, films, tapes and any and all other means, oral, written or printed.

“License Officer” shall mean the tax inspector of the City of Alexandria.

“Person” shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

“City” shall mean the City of Alexandria, Virginia.

Section 17-119. **License Required**—It shall be unlawful for any person to advertise or conduct a distress merchandise sale without first having obtained a license to do so in accordance with the provisions of this Article.

Section 17-120. **Application of Regulations.**

(a) **Provisions Supplement General Licensing Laws of City.** The provisions of this Article are intended to augment and be in addition to the provisions of the General Licensing Laws of this City. Where

this Article imposes a greater restriction upon persons, premises, businesses or practices than is imposed by the General Licensing Laws of this City this Article shall control.

(b) **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 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 this City, his or her heirs, devisees or legatees shall have the right to apply at any time for a license hereunder.

(c) **Persons Exempted.** The provisions of this Article 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 appointed personal representatives of deceased persons;

(4) Persons or firms executing bona fide deeds of trust, mortgages and like instruments;

(5) Duly licensed auctioneers, selling at auction;

(6) Persons conducting a sale of the type regulated herein on the effective date of this Article, unless such sale is continued for a period of more than 30 days from and after such effective date, in which event, such persons, at the lapse of the said 30 day period, shall comply with the provisions of this Article.

(7) Any publisher of a newspaper, magazine or other publication, who published in good faith, any advertisement, without knowledge that the provisions of this Article have not been complied with.

(d) **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.

Section 17-121. Application for License. Any person desiring to conduct a distress merchandise sale shall make written application to the License Officer at least fifteen (15) days prior to the date on which said sale is to commence, on blanks furnished by the License Officer and verified by the applicant before a person authorized to administer oaths. Each application shall contain the following information and such other information as the License Officer may deem necessary.

(a) The name and address of the owner of the goods, wares, or merchandise to be the object of the sale and if the sale is to be

conducted by a person not the owner of the goods, then the name of the person conducting such sale.

(b) A description of the place where such sale is to be held.

(c) The nature of the occupancy of the place where such sale is to be held whether by lease or otherwise, and the effective date of termination of such occupancy.

(d) A full and complete statement of the facts regarding the distress merchandise sale, including the reason why such sale is being conducted, the manner in which such sale will be conducted, and the commencement and termination date of such sale.

(e) The means to be employed in advertising such sale, together with the content of any proposed advertisement.

(f) A complete and detailed inventory of the goods, wares, and merchandise to be offered for sale, as disclosed by applicants records. Said inventory shall be attached to and become a part of the required application.

(g) The place where such stock was purchased or acquired and the terms and conditions of such acquisition, and in the case of stock placed upon the premises within 90 days prior to such sale, the time of acquisition of such stock.

(h) A statement that all goods included in such inventory were purchased by the applicant for resale on bona fide orders without cancellation privileges and are not goods purchased on consignment, or goods ordered in contemplation of conducting a distressed merchandise sale as defined herein. Any unusual purchases, or additions to the stock of goods of the business hereby affected within sixty (60) days before the filing of an application shall be deemed to be of the latter character.

Section 17-122. Investigation of Application. Grounds for Denial of License. Upon receipt of the application the License Officer shall cause an investigation to be made of all pertinent facts surrounding the conduct of the sale. No license shall be issued if any one or more of the following facts or circumstances are found to exist.

(a) That the inventory contains goods, wares, or merchandise not purchased by the applicant for resale on bona fide orders without cancellation privileges or are goods, wares or merchandise acquired on consignment.

(b) That the applicant was granted a license hereunder within three (3) years preceding the date of the filing of the application.

(c) That the applicant has heretofore been convicted of a violation of this Article or has had a license issued to him pursuant to this Article revoked within a five (5) year period immediately preceding the date of the present application for license.

(d) That the goods, wares or merchandise described in the inventory were transferred or assigned to the applicant for less than an adequate consideration.

(e) That the inventory contains goods, wares or merchandise purchased by the applicant or added to his stock in contemplation of such

sale and for the purpose of selling the same at such sale. For the purpose of this subparagraph any unusual addition to the stock of such goods, wares or merchandise made within sixty (60) days prior to the filing of such application shall be prima facie evidence that such addition was made in contemplation of such sale and for the purpose of selling the same at such sale.

(f) That any representation made in said application is purposefully untrue or misleading.

Section 17-123. **Effect of License.** A license shall be issued hereunder on the following terms.

(a) The sale shall be held at the place named in the application and by the particular licensee for a period of not more than sixty (60) consecutive calendar days (Sundays and legal holidays excluded), next following the date of the issuance of said license.

(1) **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:

(1-a) That facts exist justifying the license renewal.

(1-b) That the licensee has filed an application for renewal.

(1-c) 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.

(1-c-1) For the purpose of the subsection, any application for a license under the provisions of this Article 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.

(b) Only the goods, wares, and merchandise described in the inventory attached to the application shall be sold at said sale.

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

(d) Upon the commencement of said sale and for its duration, the license issued hereunder shall be prominently displayed in the place of sale by the licensee.

(e) Upon being issued a license hereunder for a distressed merchandise sale the licensee shall surrender to the License Officer all other business licenses he may hold at that time applicable to the location and goods covered by the application for a license under this Article.

(f) Any license herein provided for shall not be assignable or transferrable.

Section 17-124. **Duties of Licensee.** A licensee hereunder shall:

(a) **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.

(b) **Advertise Properly.** Refrain from employing any untrue, deceptive or misleading advertising.

(c) **Adhere to Advertising.** Conduct the licensed sale in strict conformity with any advertising or holding out incident thereto.

(d) **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.

(e) **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 17-125. **License Fee.** The fee for licenses issued pursuant to this Chapter shall be Seventy-Five Dollars (\$75.00) and shall be Fifty Dollars (\$50.00) for any renewals thereof.

Section 17-126. **Violations.** Any person violating any provisions of this Article shall upon conviction thereof, be fined not less than \$100.00 nor more than \$500.00 or be imprisoned for a term not to exceed six months, or both. In addition, any licenses or renewals thereof issued hereunder, shall stand revoked. The imposition of one penalty for any violation of this Article shall not excuse the violation or permit it to continue and each day that a violation exists shall constitute a separate offense. Violation of the provisions of this Article may also be restrained, prohibited, and enjoined in any court of equity jurisdiction in the City.

Section 2. That this Ordinance shall be published in a newspaper of general circulation in the City not later than five days following its introduction together with a notice containing the time and place for a public hearing. The Clerk of the Council shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This Ordinance shall become effective the date of its final passage.

LEROY S. BENDHEIM

Mayor

Final Passage: October 11, 1960