

CITY OF DAPHNE
ORDINANCE NO. 2010-02

**AN ORDINANCE TO DEFINE THE PROCEDURES AND PENALTIES FOR GOING
OUT OF BUSINESS AND OTHER SIMILAR SALES**

WHEREAS, commercial activity is vital to the growth and development of the City of Daphne; and

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

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

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

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, AS FOLLOWS:

SECTION I: DEFINITIONS

Applicant is any person applying for a license under this chapter, including its principal, if such person is the agent of another who is the true owner, notwithstanding whether that other is an individual, partnership, association, firm or corporation and notwithstanding whether the name of the true owner appears on the application or not.

Distressed merchandise sale is any offer to sell 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 above, "distress merchandise sales" shall include, but not be limited to, any sale advertised either specifically or in substance 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.

Fire and other altered goods sale means 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.

Going out of business sale means any 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 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, forced out.

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

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.

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

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 II: LICENSE

A. License Requirement.

A license issued by the City Finance Director, or her designee, shall be obtained by any person before selling or offering for sale any goods at a sale to be advertised or held out by any means to be one (1) of the following kinds:

- (1) Going out of business sale.

- (2) Removal of business sale.
- (3) Fire and other altered stock sale.

B. Application.

Written information required. A person desiring to conduct a sale regulated by this article shall make a written application to the City Finance Director, 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 lease or sublease, and the effective date of termination of such occupancy.
- (5) The dates and period of time in which the sale is to be concluded.
- (6) The 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.

C. Conditions; fee.

A license shall be issued under this article 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 as described in this subsection:
 - (a) No more than 30 consecutive calendar days following issuance. . . \$150.00
 - (b) No more than 60 consecutive calendar days following issuance. . . \$300.00

The City Council may authorize that sales continue for an additional 30 consecutive calendar-day period beyond the 60-day period above, upon receipt of a written request stating the reasons for the 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 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 in inventory at the beginning of the sale.

(4) *Surrender of general license.* Upon being issued a license under this article for a going out of business sale, the licensee shall surrender to the City Finance Director, or her designee, all other business licenses they may hold at that time applicable to the location and goods covered by the application for a license under this article.

(5) *Non-transferability.* Any license provided for in this article 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 distress merchandize sale, a licensee may 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 merchandise set forth in the certified inventory attached to the application for the license, the licensee shall file an amendment with the City Finance Director, 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 an out of business sale or distress merchandize sale in addition to any penalties pursuant to Section IV of 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) A licensee shall not advertise a going out of business sale or distress 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. However, licensees are not authorized to use the City of Daphne's name or the number of the license issued pursuant to this article in conjunction with advertising the sale.

SECTION III: RESTRICTIONS**A. Interval between sales.**

Any person who has held a sale, as regulated under this article, 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.

B. Restricted location.

Where a person applying for a license under this article 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 license 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 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 distress 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 distress 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 article sold or offered for sale at any going out of business sale or distress merchandise sale.

E. Exceptions and exemptions.

(1) *Exception for survivors of businessmen.* Upon the death of a person doing business in the City, his heirs, devisees or legatees shall have the right to apply at any time for a license under this article.

(2) *Persons exempted.* The provisions of this article shall not apply to nor affect the following persons:

(a) Lay persons acting pursuant to an order or process of a court of competent jurisdiction; or

(b) Persons acting in accordance with their powers and duties as public officials.

SECTION IV: PENALTIES

(1) A person convicted of a willful violation of any of the provisions of this article shall be fined not more than Five Hundred Dollars (\$500.00) and may be

imprisoned for not more than six (6) months, or both, at the discretion of the court trying the case.

(2) Each separate sale, offering for sale or advertising for sale at a going out of business sale or distress merchandise sale of any goods, wares or merchandise in violation of the provisions of this article constitutes a separate offense.

SECTION V: CONSTRUCTION

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

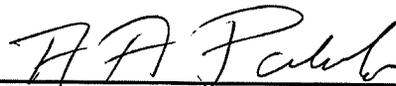
SECTION VI: SEVERABILITY

The provisions of this Ordinance are severable. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

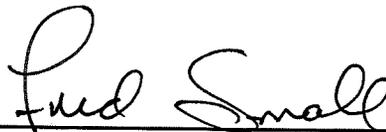
SECTION VII: EFFECTIVE DATE

This Ordinance shall become effective immediately and be in full force after final passage and publication as required by law.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DAPHNE, ALABAMA, THIS 4th day of January, 2010.

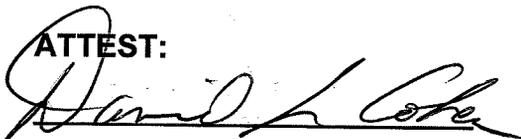


**AUGUST PALUMBO
COUNCIL PRESIDENT**



**FRED SMALL
MAYOR**

ATTEST:



**DAVID L. COHEN
CITY CLERK. MMC**