

2



CITY OF SACRAMENTO

DEPARTMENT OF FINANCE

REVENUE DIVISION

October 17, 1986
RD:861366-ADM:MLM:ldm

Budget & Finance Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: GOING OUT OF BUSINESS SALE PERMITS

SUMMARY

This report recommends the repeal of City Code Chapter 7, Article III which requires a special City permit to conduct a going out of business sale.

BACKGROUND

City Code Section 7.32 states that the purpose of the going out of business sale permit is to:

... safeguard the public and encourage competition by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented and by which members of the public are defrauded or injured.

In order to obtain the permit the applicant business must: pay a \$50.00 nonrefundable application fee; pay a \$100.00 investigation fee; and provide the City with a detailed listing of the business's inventory. At the conclusion of the going out of business sale, the City's actual expenditures for monitoring the sale are deducted from the investigation fee and the balance, if any, is refunded to the business.

ANALYSIS

The permit requirement was established in 1938. In recent years, other consumer protection measures have been adopted that achieve the intended purpose of the permit and do not add to the financial loss experienced by owners of failed businesses. Both the County District Attorney and the State Attorney General have consumer and business affairs units that afford consumers and businesses protection from unfair, dishonest, and fraudulent practices.

The City going out of business sale permit does not provide additional protection beyond that offered by the County District Attorney or the State Attorney General; therefore it represents an unfair financial burden to the owners of the failed businesses.

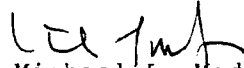
FINANCIAL ANALYSIS

The net revenue loss from repealing City Code Chapter 7, Article III is less than \$300 annually.

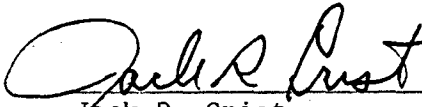
RECOMMENDATION

It is requested that the committee recommend approval to the City Council the attached ordinance which repeals the requirement to obtain a City permit to conduct a going out of business sale.

Respectfully submitted,


Michael L. Medema
Revenue Officer

RECOMMENDATION APPROVED:



Jack R. Crist
Deputy City Manager

Attachment

October 28, 1986
All Districts



CITY OF SACRAMENTO

DEPARTMENT OF FINANCE

REVENUE DIVISION

October 17, 1986
RD:861385-ADM:MLM:ldm

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: GOING OUT OF BUSINESS SALE PERMITS

SUMMARY

The attached Budget & Finance Committee report recommends the repeal of the going out of business sale permit requirement.


DISCUSSION

Other consumer protection measures have replaced the need for the going out of business sale permit. The permit requirement causes additional financial hardship for failed businesses and is no longer necessary; therefore it should be eliminated.

RECOMMENDATION

It is recommended by the Budget and Finance Committee that the City Council adopt the attached ordinance which eliminates the going out of business sale permit requirement.

Respectfully submitted,


Michael L. Medema
Revenue Officer

RECOMMENDATION APPROVED:

WALTER J. SLIPE, City Manager

Attachment

All Districts
November 5, 1986

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE REPEALING CITY CODE CHAPTER 7, ARTICLE III
WHICH REQUIRES A CITY PERMIT TO CONDUCT A GOING OUT OF
BUSINESS SALE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Chapter 7, Article III of the Sacramento City Code is hereby repealed.

PASSED FOR PUBLICATION:

ENACTED:

EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

AN ORDINANCE REPEALING CITY CODE CHAPTER 7, ARTICLE III
WHICH REQUIRES A CITY PERMIT TO CONDUCT A GOING OUT OF
BUSINESS SALE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1

Chapter 7, Article III of the Sacramento City Code is hereby repealed.

~~Article III. Closing-out, etc., Sales~~

~~§ 7.31 Definitions.~~

~~Whenever used in this article, the following terms shall have the meanings respectively ascribed to them by this section:~~

~~Inspector: "Inspector" shall mean an inspector appointed by or authorized by the city.~~

~~Publishing, advertising: "Publish," "publishing," "advertisement" and "advertising" 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, by newspaper advertisement, by magazine advertisement, by handbill, by written notice, by printed notice, by printed display, by billboard display, by poster, by radio or television announcement and any and all means, including oral, written or printed.~~

~~Sale: "Sale" includes sale or an offer to sell to the public, goods, wares and merchandise of any and all kinds and descriptions on hand and in stock in connection with a declared purpose as set forth by advertising, on the part of the seller, that such sale is anticipatory to the termination, closing, liquidation, revision, wind-up, discontinuance, conclusion or abandonment of the business in connection with such sale. It shall also include any sale advertised to be a "fire sale," "adjustment sale," "creditor's sale," "trustee's sale," "liquidation sale," "reorganization sale," "alteration sale," "executor's sale," "administrator's sale," "insolvent sale," "insurance salvage sale," "mortgage sale," "assignee's sale," "adjustor's sale," "receiver's sale," "loss of lease sale," "wholesaler's closeout sale," "creditor's committee sale," "forced-out-of-business sale," "removal sale" and any and all sales advertised in such manner as to reasonably convey to the public that upon the disposal of the stock of goods on hand, the business will cease and be discontinued.~~

~~§ 7.32--Purpose of article.~~

~~The purpose of this article is to safeguard the public and encourage competition by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented and by which members of the public are defrauded or injured.~~

~~§ 7.33--Liberal construction of article.~~

~~This article shall be liberally construed so that its beneficial purposes may be served.~~

~~§ 7.34--Permit Required.~~

~~It shall be unlawful for any person to publish or conduct any sale of the type defined in section 7.31 without a permit therefore.~~

~~§ 7.35--Same--Application; inventory list.~~

~~Every application for the permit required by the preceding section shall be in writing and shall be verified under oath. Such application must contain:~~

~~(a) The name of the owner of the goods, wares and merchandise to be offered for 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, whether by lease or sublease, and the effective date of termination of such occupancy;~~

~~(d) The means to be employed in publishing such sale, together with the proposed content of any advertisement;~~

~~(e) The place where such stock was purchased or acquired, and if not purchased, the manner of such acquisition, and in the case of stock placed upon the premises within ninety days prior to such sale, the time of acquisition of such stock;~~

~~(f) An itemized stock list of inventory of the goods, wares and merchandise to be offered for sale, together with the cost at which the goods, wares and merchandise were obtained by the owner thereof, or person conducting such sale. All goods, wares and merchandise listed upon the inventory herein required shall be so described in detail by manufacturer's name and lot number, the individual number of articles so numbered, colors, sizes and otherwise, that the identity of such goods with the goods listed on such inventory can be readily determined;~~

(g) ~~Such additional information as the assessor-collector may require.~~

~~§ 7.36 Same Filing fee.~~

~~No application for any permit to hold a sale, pursuant to this article, shall be accepted by the assessor-collector for filing unless accompanied by a filing fee in the amount established by resolution of the city council, no part of which shall be refunded; provided, however, that the assessor-collector is authorized to waive the permit fee, where the person's business is situated within any redevelopment project area and the close-out sale results from the acquisition of the real property by the redevelopment agency of the city where the business is conducted.~~

~~§ 7.37 Same Issuance of denial.~~

~~Upon the filing of an application, the assessor-collector after investigation thereof, and determining that the provisions of this article have been complied with, shall issue a permit. If the assessor-collector determines that the provisions of this article have not been complied with, the application must be denied.~~

~~§ 7.38 Same Promise by permittee to comply with article.~~

~~Each permit issued under the provisions of this article shall have printed, written or stamped on the face thereof the following:~~

~~"This permit is granted by the assessor-collector and accepted by the permittee upon the condition that such permittee will comply with and abide by all the provisions of sections 7.31 to 7.51 of the City Code," with a line thereunder for the signature by the permittee and a witness.~~

~~At the time of the delivery of the permit such statement must be signed by the permittee in the presence of an employee of the city, who shall sign as a witness.~~

~~§ 7.39 Scope of permit.~~

~~A closing-out sale permit shall be valid only for the advertising, representation and sale of the particular goods, wares or merchandise described in the original application therefore, and at the particular time and particular place stated therein, and by the particular applicant. Any renewal, replenishment or substitution or storage of such goods, wares, or merchandise, or change of such time or place for such sale, or change of person conducting the sale, shall be unlawful and shall render such permit void.~~

~~§ 7.40--Display of permit:~~

~~Upon commencement of any sale, the permit therefore shall be conspicuously displayed near the entrance to the premises.~~

~~§ 7.41--Duration of permit--Sixty days.~~

~~A closing-out sale permit shall not authorize a sale for a period of more than sixty calendar days, and such permit shall expire and become invalid sixty days, at the most, after the date of issuance.~~

~~§ 7.42--Same--Renewal permits; fee; total time per year during which sale may be held:~~

~~The assessor-collector may, upon a verified application therefore, renew the closing-out sale permit for a period of not to exceed thirty (30) days, upon the payment of a renewal fee in the amount established by resolution of the city council. Such verified petition for renewal shall set forth a complete list of goods listed in the original application and remaining unsold, and shall not contain any goods, wares or merchandise not named in such original application. Upon receipt of such application for renewal, the assessor-collector shall cause an investigation to be made at once, and if satisfied of the truth of the statement therein contained, the assessor-collector shall grant such renewal, which shall be endorsed and signed as provided for the original permit. The assessor-collector may renew any original permit in the manner above provided, not to exceed two times, upon the payment of the sum of twenty-five (\$25) dollars for each renewal; provided, however, that the assessor-collector may not issue permits or renewals which will allow the conduct of any sale named in this article at any one location for more than one hundred twenty (120) calendar days in any one twelve-month period.~~

~~§ 7.43--Investigation of application and sale; costs to be paid by permittee; deposit against costs:~~

~~The applicant for an original or renewal permit to advertise or conduct a sale referred to in this article shall pay a sum sufficient to pay for the cost of investigating the application and for the cost of investigations during the progress of any sale. Upon filing an application, the applicant shall deposit the sum of one hundred dollars. The assessor-collector shall thereafter require further deposits of one hundred dollars each as he determines are reasonably necessary to continue such investigation. The assessor-collector may contract for the services of qualified persons to make such investigation and they shall be paid from the aforesaid deposits.~~

Any excess of the funds deposited by the applicant after the investigations are completed shall be returned to the applicant, and in all cases a statement of the cost of such investigations shall be rendered to each applicant at the conclusion of each sale. No permit shall be issued until the costs of investigations have been paid in full by the applicant.

§ 7.44 Goods on inventory list only to be sold on premises; segregation of other goods.

No goods, wares or merchandise shall be permitted to be offered for sale at the place of business where a sale is to be conducted other than those items listed in the inventory filed with the application for the permit. Each sale of goods, wares or merchandise as were not inventoried and described in the original application shall constitute a separate offense under this article.

All of the goods which are authorized by the permit to be sold, throughout the duration of the sale, must be definitely separated from any other goods displayed at or within the store or place of business, and all advertising, signs or notices referring to or calling attention to the sale must be confined to the display of goods involved in the sale.

§ 7.45 Replenishment of stock.

No person in contemplation of conducting any sale or during the continuance of such sale shall order or accept delivery of any goods, wares or merchandise for the purpose of selling them at such sale, and any unusual purchase or additions to the stock of such goods, wares or merchandise within sixty days before the filing of such application for a permit to conduct such sale shall be presumptive evidence that such purchase or additions were made in contemplation of such sale and for the purpose of selling them at such sale.

§ 7.46 Examination of merchandise by assessor-collector.

A duplicate original of the application and inventory list pursuant to which a permit was granted shall be available at all times to the assessor-collector, or to his inspectors, and the permittee shall allow such inspectors to examine all merchandise on the premises for comparison with such inventory list.

§ 7.47 Recording sales on inventory list.

At the close of business each day the inventory list attached to the application shall be revised and items on such list disposed of during such day shall be noted thereon.

§ 7.48 Books and records to be kept by permittee.

Suitable books and records as prescribed by the assessor-collector shall be kept by the permittee and shall be available at all times to the inspectors of the assessor-collector.

~~§ 7.49 Advertising.~~

~~All advertising shall be descriptive of the nature of the sale as stated in the application for the permit. The language in such advertising shall be identical with the advertising content as indicated in the application.~~

~~It shall be unlawful to indicate in such advertising, either directly or indirectly, that such sale is held with the approval of the assessor collector.~~

~~Such advertising shall contain a statement in the following words and no others: "Sale held pursuant to permit of the City of Sacramento, granted the _____ day of _____ and in such blank spaces the requisite dates shall be indicated."~~

~~§ 7.50 Assessor collector to supervise sales, rules and regulations.~~

~~The assessor collector is authorized to supervise and regulate sales as defined in section 7.31.~~

~~The assessor collector may make such rules and regulations for the conduct and advertisement of sales as, in his opinion, will serve to prevent deception and to protect the public.~~

~~§ 7.51 Injunction against violation of article; violation an infraction.~~

~~In addition to other remedies the city attorney, in the name of and in behalf of the city, may institute appropriate action or proceedings in any court of competent jurisdiction to restrain or abate violations of the provisions of this article. Any person violating any provision of this article is guilty of an infraction.~~

PASSED FOR PUBLICATION:

ENACTED:

EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK