

ORDINANCE NO. 999

AN ORDINANCE TO AMEND TITLE XI, CHAPTER 110 OF THE MOUNT PLEASANT CITY CODE BY AMENDING SECTION 110.11 AND ADDING SECTION 110.29 TO REGULATE GOING OUT OF BUSINESS SALES.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF MOUNT PLEASANT:

Section 1. Amendment. Title XI, Chapter 110, Section 110.11 of the Mount Pleasant City Code is amended to read as follows:

§ 110.11 REQUIRED LICENSES.

(A) No person shall engage in the following business or activities without first obtaining a license which shall require payment of a license fee in amounts set from time to time by City Commission resolutions:

- (1) Auctioneers;
- (2) Circus, menagerie, carnival, exhibition, side show;
- (3) Junk dealers;
- (4) Mobile food service providers;
- (5) Pawnbrokers;
- (6) Taxicab businesses, vehicles, and drivers; and
- (7) Vendors.

(B) No person shall engage in a "going out of business sale," as defined in Section 110.29, without first obtaining a license which shall require payment of a license fee as provided in Section 110.29.

Section 2. Amendment. Title XI, Chapter 110 of the Mount Pleasant City Code is amended by adding Section 110.29 to read as follows:

§ 110.29 GOING OUT OF BUSINESS SALES.

(A) Definitions. The meaning of the terms in this Section shall be as follows:

- (1) "Going out of business sale" means any sale, whether described by that name or by any other name such as, but not limited to, "closing out sale," "liquidation sale," "lost our lease sale," "forced to vacate sale," held in such a manner as to indicate a belief that upon disposal of the stock of goods on hand, the business will cease or no longer continue at the premises where the sale is conducted.
- (2) "Goods" means all goods, wares, merchandise and other personal property, excepting, choses in action and money.
- (3) "City Clerk" means the duly appointed City Clerk of the City or his/her designee.
- (4) "Removal sale" means any sale held in such a manner as to induce a belief that upon dismissal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted and thereafter will be moved to and occupy another location.

(B) License Required. No person shall advertise, represent or hold out that any sale of goods is an insurance, bankruptcy, mortgage, insolvent, assignee's executor's, administrator's, receiver's trustee's, removal sale, going out of business sale or sale of goods damaged by fire, smoke, water or otherwise, unless he or she first obtains a license to conduct the sale from the City Clerk. This Section shall not apply to any sales by a person regularly engaged in insurance or salvage sale of goods, or the sale of goods which have been damaged by fire, smoke, water or otherwise, who acquired the goods for the account of others as a result of fire or other casualty, sheriffs, constables, or other public or court officers, or to any other person or persons acting under the license, direction or authority of any court, state or federal, selling goods, wares or merchandise in the course of their official duties.

(C) License Application. Any applicant for a license under this Section shall file an application in writing and under oath with the City Clerk that is in a form provided by the City Clerk and that provides the following facts and information regarding such a proposed sale:

- (1) The name, postal address, telephone number, and electronic mail address of the applicant for the license, who must be the owner of the goods to be sold, and in addition, if the applicant is a partnership, corporation, firm or association, the name and the position of the individual filing such application.
- (2) The name and style in which such sale is to be conducted and the address where the sale is to be conducted.
- (3) The dates and period of time during which the sale is to be conducted.
- (4) The name, postal address, telephone number, and electronic mail address of the person who will be in charge and responsible for the conduct of the sale.
- (5) A full explanation of the condition or necessity which is the occasion for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. If the application is for a license to conduct a going out of business sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the application is for a license to conduct a removal sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the application is for a license to conduct a sale of goods damaged by fire, smoke, water or otherwise, it shall also contain a statement as to the time, location and cause of the damage.
- (6) A full, detailed and complete inventory of the goods that are to be sold, which inventory shall:
 - (a) Itemize the goods to be sold and contain sufficient information concerning each item, including make and brand name, if any, to clearly identify it.
 - (b) List separately any goods which were purchased during a 60-day period immediately prior to the date of making application for the license.
 - (c) Show the cost price of each item in the inventory together with the name and address of the seller of the items to the applicant, the date of the purchase, the date of the delivery of each item to the applicant and the total value of the inventory at cost.
- (7) A statement that no goods will be added to the inventory after the application is made or during the sale and that the inventory contains no goods received on consignment.

(D) License; Issuance and Restrictions.

- (1) The City Clerk, after receiving an application including all the information under oath as required by Section 110.29(C) and upon receipt of the fee provided for in Section 110.29(E), may issue a license to the applicant, authorizing the applicant to advertise, represent and sell the particular goods so inventoried at the time and place stated in the application and in true accordance with the provisions of this Section. The license shall be issued in duplicate and shall bear a number and date of its expiration. A license issued under this Section shall be granted and valid only for the sale of the inventoried goods which are the property of the licensee. The license shall apply only to the premises specified in the application, and it may not be transferred or assigned. If a licensee under this Section is engaged in business in other locations, advertising or offering of goods on behalf of such location shall not represent or imply any participation in or cooperation with the sale on the premises specified in the license, nor shall any advertising or other offering of goods on behalf of the premises where the licensed sale is being conducted represent or imply any participation in or cooperation with such sale at other locations. No license under this Section shall be issued to any person:

(a) To conduct a sale in the trade name or style of a person in whose goods the applicant for the license has acquired a right or title thereto within 6 months prior to the time of making application for such a license.

(b) To continue a sale in the name of a licensee under this Section whose goods such person acquired a right or title while such a sale is in progress.

(c) To conduct a sale, other than an insurance sale, a salvage sale or a sale of damaged goods, on the same premises within 1 year from the conclusion of a prior sale of the nature covered by this Section.

(2) Section 110.29(D)(1)(a), Section 110.29(D)(1)(b), and Section 110.29(D)(1)(c) shall not apply to any person who has acquired a right, title or interest in goods as an heir, devisee or legatee or pursuant to an order or process of a court of competent jurisdiction.

(E) License; Term, Renewal, Fee. A license to conduct a sale issued pursuant to this Section shall not be issued or valid for a period of more than 30 days from the start of the sale and the sale may be conducted only during the period set forth in the license. The license may be renewed not more than twice for a period not to exceed 30 days for each renewal upon affidavit of the licensee that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this Section, by purchase, acquisition on consignment or otherwise. The application for renewal of the license shall be made not more than 5 days prior to the time of the expiration of the license and shall contain a new inventory of goods remaining on hand at the time the application for renewal is made, which new inventory shall be prepared and furnished in the same manner and form as the original inventory. No renewal shall be granted if any goods have been added to the stock listed in the inventory since the date of the issuance of the license. A fee in the amount set forth in Section 6 of 1961 PA 39, as amended from time to time, or in such other amount as shall be established by resolution of the City Commission, shall accompany an application for the license and for the renewal of a license, unless the City Clerk receiving the application waives that fee.

(F) Clerk's Records. The City Clerk shall endorse upon the application the date of its filing, shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in the application in a book kept for the purpose, properly indexed, containing the name of the person asking such license, the nature of the proposed sale, the place where the sale is to be conducted, its duration, the inventory of the goods to be sold and a general statement as to where the same came from and shall make in the book a notation as to the issuance or refusal of the license applied for together with the date of the same. The City Clerk shall endorse on the application the date the license is granted or refused, and the application and abstract shall be prima facie evidence of all statements therein contained.

(G) Advertisement. Any person who advertises, represents or holds out any sale of goods to be an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrators, receiver's, trustee's, removal or going out of business sale, or a sale of goods damaged by fire, water, smoke or otherwise, without having first complied with the provisions of this act, is guilty of a violation of this Section.

(H) Purchase or Addition of Goods.

(1) No person in contemplation of conducting a sale, under a license as provided in this Section shall order or purchase any goods for the purpose of selling and disposing of the same at such sale. Each unusual purchase and additions to the stock of goods within 60 days prior to the filing of the application for license to conduct the sale shall be presumptive evidence that the purchases and additions to stock were made in contemplation of the sale and for the purpose of selling the same at the sale and shall be presumptive evidence of a violation of this Section, shall each constitute a separate offense under this Section, and shall void any license issued to conduct a sale under this Section.

(2) No person carrying on or conducting a sale under a license as provided in this Section shall add, during the continuance of the sale, any goods to the stock of goods described and

inventoried in his original application for the license. No goods shall be sold at or during the sale, excepting the goods described and inventoried in the original application. Every addition of goods to the stock of goods described and inventoried in the application and each sale of goods not inventoried and described in the application, shall be presumptive evidence of a violation of this Section, shall each constitute a separate offense under this Section, and shall void any license issued to conduct a sale under this Section.

(I) Removal of Goods. The license as provided for in this Section shall be valid only for a sale of the goods inventoried and described in the application for such license, in the manner and at the time and place set forth in the application. Any removal of the goods so inventoried and described in the application from the place of sale mentioned in the application shall cause the goods to lose their identity as an insurance, bankrupt, mortgaged, insolvent's, assignee's, executor's, administrator's, receiver's or trustee's stock of goods or a stock of goods being removed or closed out, or a stock of goods damaged by fire, smoke or water, or otherwise, and no license shall be issued for the conducting of a sale of any of such goods removed from the place described in the application, under the provisions of this act, at any other place or places.

(J) Unfair and Deceptive Business Practices.

(1) The following unfair and deceptive business practices are strictly prohibited in the course of a sale under this Section:

- (a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of the goods.
- (b) Representing that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.
- (c) Representing that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand.
- (d) Representing that goods are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
- (e) Disparaging the goods of another by a false or misleading representation of fact.
- (f) Advertising or representing goods with the intent not to dispose of the goods as advertised or represented.
- (g) Making a false or misleading statement of fact concerning the reasons for, existence of, or amounts of price reductions, including but not limited to advertising and/or conducting a going out of business sale when the business continues to operate and advertising and/or conducting a removal sale when the business continues to operate at its current location.
- (h) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.
- (i) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.
- (j) Using any other deceptive representations in connection with the sale of goods.

(2) Engaging in an unfair and deceptive business practice in the course of a sale under this Section shall constitute a violation of this Section. Both the person engaging in the unfair and deceptive business practice(s) pursuant to this Sub-Section and its employees, managers, and agents engaging in such unfair and deceptive business practice(s) shall be held liable for a violation of this Section.

(K) Other Requirements. Every applicant and licensee under this Section shall comply with all requirements of Act Number 39 of the Public Acts of Michigan of 1961, as amended from time to time. Failure to comply therewith or with the provisions hereof shall, in addition to any other penalties or remedies be grounds for the denial, suspension or revocation of any license obtained hereunder.

(L) Penalty. Regardless of the penalty provided for in Section 110.99 of this Code that applies to the other Sections contained in this Chapter, any person violating any of the provisions of this Section shall be guilty of a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$500 for a first offense, \$500 for any subsequent offense, or by imprisonment in the county jail for not less than 10 days nor more than 90 days, or both such fines and imprisonment. In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of the provisions of this Section shall be deemed a new and separate offense for each day that such condition continues to exist.

Section 3. Publication and Effective Date. The City Clerk shall cause to be published a notice of adoption of this ordinance within 10 days of the date of its adoption. This ordinance shall take effect 30 days after its adoption.

Jim Holton, Mayor

Jeremy Howard, City Clerk

Introduced: June 22, 2015
Adopted: July 13, 2015
Published: July 20, 2015
Effective: August 12, 2015