

Article 3: Police Regulated Occupations and Businesses

Division 10: Sales — Advertising

§33.1001 Definitions

(a) Retail Merchandise Business

For the purpose of this Division a retail merchandise business is defined to be a business where the proprietor sells goods, wares and merchandise to the public in smaller quantities than he buys.

(b) Fake Sale

A fake sale for the purpose of this ordinance is hereby defined to be:

- (1) The sale of goods, wares or merchandise, or the offering of goods, wares or merchandise for sale in limited quantity or quantities of less than the full amount of such merchandise owned or carried in stock by the person, firm or corporation offering the same for sale;
- (2) The sale or offering for sale of goods, wares or merchandise of a different quality, brand, and/or bearing a different trade– mark as a substitute for the merchandise which had been previously advertised for sale for the particular day on which said substitution is proposed or effected;
- (3) The sale or offering for sale of any goods, wares or merchandise misrepresented as to quantity, quality, brand or otherwise;
- (4) The sale or offering for sale of any goods, wares or merchandise, which is contingent on the concurrent purchase or sale of any other article or articles of a different nature, quality or brand.

(Incorp. 1–22–1952 by O–5046 N.S.)

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§33.1002 Exceptions to Provisions

The provisions of this Division excepting Section 33.1003 shall not be applicable to trustees in bankruptcy, executors, administrators, receivers, or public officials acting under judicial process.

(Incorp. 1-22-1952 by O-5046 N.S.)

§33.1003 Fake Sales Prohibited

That it shall be unlawful for any person, firm or corporation engaged in the retail merchandise business to conduct, maintain, operate at retail, or advertise any fake sale of goods, wares or merchandise within The City of San Diego.

(Incorp. 1-22-1952 by O-5046 N.S.)

§33.1004 Bankruptcy, Creditor's Sale — Inventory Required

Whenever any person desires to advertise, represent, or hold or conduct any sale of goods, wares or merchandise that is to be advertised or represented as a whole or part of goods, wares or merchandise from a bankruptcy, insolvency, assignees, adjuster's, trustee's, creditor's, executor's, liquidator's, administrator's, receiver's, or other apparent body of creditor's sale, such person shall first file with the Chief of Police of the City of San Diego, an inventory of the goods, wares or merchandise to be sold, and a statement showing the name of the person from whom the goods, wares or merchandise were obtained. The inventory required shall contain a complete and accurate list of the stock of goods, wares or merchandise to be sold, together with the wholesale prices thereof.

(Incorp. 1-22-1952 by O-5046 N.S.)

§33.1004.1 Sale Merchandise Required to be Included in Inventory

It shall be unlawful to sell, offer or expose for sale or advertise for sale or to include in such inventory herein provided for any goods, wares or merchandise which are not an actual part of the stock of goods, wares or merchandise obtained from the bankrupt, insolvent, assignee, adjuster, trustee, creditor, executor, liquidator, administrator, receiver, or other apparent body of creditors, or to make any replenishments or additions to such stock for the purpose of such sale, and it shall be unlawful for any such person at any such sale to sell goods, wares or merchandise not specifically described in such inventory.

(Incorp. 1-22-1952 by O-5046 N.S.)

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§33.1006 Closing-Out Sales — License Required

No person shall advertise or conduct a closing-out sale or sell or offer for sale any goods, wares or merchandise at a sale represented to be a closing-out sale without first obtaining a license to conduct such closing-out sale from the Chief of Police.
(Amended 2-23-1987 by O-16812 N.S.)

§33.1006.1 Definition

Whenever used in this article, the term ‘closing-out sale’ shall mean any offer to sell to the public, or sale to the public, of goods, wares or merchandise upon the implied or expressed representation that such sale is in anticipation of the ceasing, discontinuance, or termination of a business, or that such sale is other than in the ordinary course of business. Without limiting the generality of the above, a closing-out sale shall include any sale advertised or represented, either specifically or in substance to be: “Adjustor’s Sale”, “Administrator’s Sale”, “Bankrupt Sale”, “Creditor’s Sale”, “Executor’s Sale”, “End of Business Sale”, “Final Sale”, “Forced Out of Business Sale”, “Insolvent Sale”, “Inventory Liquidation Sale”, “Inventory Close-Out Sale”, “Inventory Disposal”, “Last Days Sale”, “Lease Expires Sale”, “Liquidation Sale”, “Lost Lease Sale”, “Must Vacate Sale”, “Quitting Business Sale”, “Receiver’s Sale”, “Selling Out Sale”, “Stock Disposal”, “Stock Sell Out”, “Stock Liquidation Sale”, “Termination Sale”, “Wind-up Sale”, or any other term tending to convey to the public that upon the disposal of the stock of goods on hand the business will cease and be discontinued.

(Amended 3-22-1960 by O-8269 N.S.)

§33.1006.2 Application for License

Application for license required by this section shall be filed with the Chief of Police by the person conducting the closing-out sale at least ten (10) days prior to the commencement thereof. Said application for license shall be in writing, signed and verified under oath, by the person who intends to conduct such sale, and each application shall set forth and contain the following information:

- (a) Description and street location of the place at which such sale is to be held;
- (b) The nature of the occupancy, whether by ownership or lease or sublease and if by lease or sublease, the effective date of termination of such tenancy;
- (c) The means to be employed in publishing such sale, together with the proposed contents of such advertising;

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- (d) The facts in regard to the insolvency, bankruptcy, assignment, receivership or other cause for the dissolution of the business;
- (e) An inventory or statement setting forth the quantity and description of all goods, wares and merchandise to be sold at such sale. All goods, wares and merchandise listed upon the inventory or statement shall be so described in detail by lot, number, brand name and other additional detail so that the identity of such goods with the inventory listing may be readily determined. All consignment goods listed upon the inventory or statement shall be so designated. No consignment goods may be included in the sale unless said consigned goods have been in the applicant's possession for at least thirty (30) days prior to the filing of the application as required by this section.
- (f) In the event that said sale will be conducted at public auction, the name of the auctioneer who shall conduct said auction sale.
(*"Application for License" added 3-22-1960 by O-8269 N.S.*)

§33.1006.3 Issuance of License

Upon filing of the application, the Chief of Police may make, or cause to be made, an examination or investigation of the statements put forth in such application, or of the applicant and his affairs, in relation to the proposed closing-out sale. If the Chief of Police finds that the statements in the application are true, that the advertising to be used is not false, deceptive or misleading in any respect, and that the proposed methods of conducting the sale are not such as, in the opinion of the Chief of Police, would work a fraud or misrepresentation on the purchaser, then the Chief of Police shall issue a license to conduct such a sale in accordance with the provisions of this section; otherwise, the Chief of Police shall deny the application and refuse such license. No application for such license shall be accepted by the Chief of Police unless accompanied by a filing fee, no part of which shall be refundable. At the time of delivery of such license, the licensee shall sign the following agreement, to be witnessed by the Chief of Police: "The above license is accepted by the undersigned upon the condition that licensee agrees to comply with, and abide by, all the provisions of Section 33.1006 and subsections thereof, of the San Diego Municipal Code."

(*Amended 2-23-1987 by O-16812 N.S.*)

§33.1006.4 Conditions of the License

Any license issued under the provisions of this section shall authorize the conduct and advertising of the one type of sale named therein, and at location specified therein, for

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a period of not more than sixty (60) calendar days. Provided, however, that the Chief of Police may, upon a verified application therefor, renew said license for a period of not to exceed thirty (30) days, upon the payment of a renewal fee. Such verified petition for renewal shall, upon request of the Chief of Police, include a listing of such remainder goods, wares or merchandise remaining in stock from the original inventory and shall not contain any goods, wares or merchandise not named in the original application. If a sale is to be conducted at two or more locations, separate licenses must be obtained for each location at which said sale takes place. The conditions prescribed as precedent to the issuance of a license for one location shall be the same conditions to be satisfied for any and all licenses issued for more than one location. Stocks of merchandise in warehouses not located on the premises for which license is issued, shall be listed on separate inventories. If sale of merchandise is to be conducted at the warehouse location, a separate license shall be required. No person who has not been the owner of record of a business for which such license is sought, for a period of at least three (3) months, shall be granted a license.

(Amended 1-7-1980 by O-15151 N.S.)

§33.1006.5 Rules and Regulations

Any license issued under the provisions of this section shall be valid only for the advertising and conducting of sale of the particular goods, wares and merchandise described in the original application therefor, and during the particular time, and at the particular location stated therein and by the particular applicant therefor, and any renewal, replenishment or substitution of such goods, wares or merchandise, or change of time or place of such sale, or change of person conducting such sale, shall be unlawful and shall render such license void. Each and every sale of goods, wares or merchandise as was not included in the original inventory shall constitute a separate offense under this section.

(“Rules and Regulations” added 3-22-1960 by O-8269 N.S.)

§33.1006.6 Records to be Kept

Suitable records of daily sales shall be kept by licensee and shall be made available on request of the Chief of Police or appointed investigators. The Chief of Police, or appointed investigators, shall at all times have access to such records and shall be permitted to examine all merchandise on the premises for comparison with such records.

(“Records to be Kept” added 3-22-1960 by O-8269 N.S.)

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§33.1006.7 Exemptions

The provisions of this section shall not apply in the case of:

- (a) Sales conducted by order or process of a court of competent jurisdiction,
- (b) Sales conducted by public officers such as marshals and sheriffs in accordance with their powers and duties;
- (c) Sales made under an assignment for the benefit of creditors generally; provided that facts of such termination and liquidation be clearly set forth in the public announcement of such sale.

(“Exemptions” added 3–22–1960 by O–8269 N.S.)

§33.1007 Sales of Merchandise — Requirements for Advertising

No person, engaged in the business of selling goods, wares and merchandise, as principal, agent or otherwise, shall advertise the sale of such goods, wares or merchandise in any newspaper, periodical, magazine or in or upon any advertising medium within the City of San Diego, unless it shall be stated in such advertisement of the sale of such goods, wares or merchandise, that such persons, so advertising the sale of such goods, wares or merchandise, is a dealer in the same, or unless it is stated in such advertisement that such person is engaged in the business of selling such goods, wares, or merchandise, or unless the word “Dealer” is used conspicuously in such advertisement in reference to such person advertising the sale of such goods, wares or merchandise; provided, however, that the advertisement of the sale of any goods, wares or merchandise in any advertising medium in such form or with such display as to prices, quality and description of such goods, wares or merchandise and the character of the business engaged in as to make it apparent therefrom that such person thus advertising the sale of such goods, wares or merchandise, is actually engaged in such sale as a business, shall be deemed a sufficient compliance with this Division.

(Incorp. 1–22–1952 by O–5046 N.S.)

§33.1008 Searchlight Advertising — Certificate of Electrical Inspection

Every person conducting, managing, or carrying on the business of advertising by means of any searchlight or searchlights, shall be required, as a prerequisite to a granting of a City license, to obtain from the Electrical Inspection Department of the City of San Diego, certification that all equipment used and the operator or operators

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of such equipment, meet all requirements of the provisions of the Electrical Code of the City of San Diego.

(Incorp. 1-22-1952 by O-5046 N.S.)

§33.1008.1 Revocation of License Where No Inspection

The use of any equipment which has not been inspected and approved or the employment of any operator who has not qualified, in accordance with the provisions of the Electrical Code, shall be cause for revocation of any city license issued hereunder.

(Incorp. 1-22-1952 by O-5046 N.S.)

§33.1009 Used Automobile Advertising Regulated

It shall be unlawful for any used car dealer to advertise in any newspaper; or through any other medium that he has for sale any automobile, which automobile is not actually for sale at the premises at the time the advertisement is inserted in the newspaper or medium and it shall be unlawful for any person not to discontinue the advertisement of any automobile within three (3) days after the selling of the same. The record and books of all used car dealers shall be open to the authorized representatives of The City of San Diego to determine whether or not any used car dealer has unlawfully advertised for sale cars which are not actually for sale at his premises at the time the advertisement of such vehicle is inserted in the newspaper or medium.

(“Used Automobile Advertising Regulated” added 2-23-1987 by O-16812 N.S.)