

Ordinance No. 020-2023

An Ordinance Of The Town Council Of The Town Of Palm Beach, Palm Beach County, Florida Providing Amendments To Chapter 94. Sales At Article III, Closing-Out Or Distress Sales At Division 2. Permit By Amending Section 94-101. Required, By Deleting Section 94-102. Application Required; Form, Contents, By Amending Section 94-103. False Information Prohibited in Application And By Renumbering Said Section, By Deleting Section 94-104. Investigation, Issuance Of Permit; Duration, By Renumbering Section 94-106. Not Transferable, By Amending Sections 94-107. Denial Of Permit, 94-108. Renewal, And 94-109. Fees And By Renumbering Said Sections, By Deleting Section 94-110. Permit Suspension, By Amending Section 94-111. Permit Revocation, Appeals And By Renumbering Said Section, By Renumbering Section 94-112. Display Required, By Amending Section 94-113. Duplicate Application And Inventory To Be Kept On Premises And Section 94-114. Records Required; Inspection And By Renumbering Said Sections, By Renumbering Section 94-115. Additions To Stock Prohibited And Section 94-116. Accuracy of Advertising, By Amending Section 94-117. Statement Required in Advertising And By Renumbering Said Section, By Renumbering Section 94-118. Marketing Of Distressed Goods, By Amending Section 94-119. Doing Business Beyond Closing Date And By Renumbering Said Section, And By Adding The Following Sections, 94-116. Duties Of Permittee, 94-117. Waiver Of Provisions, 94-118. Penalties, 94-119. Possession; Providing For Severability; Providing For Repeal Of Ordinances In Conflict; Providing For Codification; Providing For An Effective Date.

BE IT ORDAINED by the Town Council of the Town of Palm Beach as follows:

Section 1 –

Chapter 94. Sales is hereby amended at Article II. Auctions and Auctioneers and at Article III. Closing-Out Or Distress Sales as follows:

ARTICLE III. CLOSING-OUT OR DISTRESS SALES

DIVISION 1. GENERALLY

Sec. 94-66. Definitions.

The following words, ~~term~~terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advertise, advertising, advertisement, advertised, and publish means all means of conveying to the public notice of a sale, or notice of intention to conduct a sale, whether by word of mouth, newspaper, magazine, periodical, handbill, written notice, printed display, poster, billboard, ~~radio~~radio, and television announcement and any and all other means.

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

Permit means a permit issued pursuant to this article.

Permittee means the person to whom a permit has been issued pursuant to this article.

Sale means:

- (1) The sale, or offer to sell, by any person to the public of goods in stock, on order, or in transit, with a declared advertised purpose that such sale is anticipatory to the termination, closing, liquidation, revision, windup, discontinuance, conclusion or abandonment of the business, or any part thereof, or any line of goods, or any one store of a group of stores in connection with such sale, and it shall include any and all sales advertised in such manner as to reasonably convey to the public the impression that upon the disposal of the goods advertised, or on hand, the business will permanently cease and be discontinued;
- (2) The sale, or offer to sell, by any person to the public of goods in stock, on order, or in transit, with a declared advertised purpose that such sale is anticipatory to the temporary closing or temporary discontinuance of the business for the purpose of alterations or remodeling of the premises, or for the purpose of moving to another specific location in the town;
- (3) The sale, or offer to sell, by any person to the public, of goods so advertised as to reasonably convey to the public that such goods are damaged or altered by fire, smoke, water, hurricane, flood, explosion, or other means; or
- (4) The sale, or offer to sell, by any person to the public, of goods advertised in such a manner as to reasonably cause the public to believe that the goods to be sold, or any part thereof, have been involved in any business failure, or have been derived from a business that has failed, been closed, discontinued or liquidated, or where such advertising indicates a business failure or emergency affecting the seller or any previous holder of the goods to be sold.

Sec. 94-67. Exceptions.

Provisions of this article shall not apply to sales advertised as anticipatory or closing for vacation or the summer or discontinuing business for vacation or the summer; except that, in no event, shall such sales exceed a period of time of longer than 30 consecutive days, Sundays and legal holidays included, in any one year after such sale is first advertised or commenced. It shall be unlawful to conduct such sale in violation of this section; and for the purpose of this section failure of the person so advertising or conducting such sale to close the business immediately after expiration of such period of time for a period of at least 14 consecutive days, Sundays and legal holidays included, shall be prima facie evidence of the intent of such person to mislead or defraud the public.

Sec. 94-68. Persons and officers exempt.

The following persons shall be exempt from the provisions of this article:

- (1) Persons acting pursuant to an order of a court of competent jurisdiction.
- (2) Sheriffs and marshals acting in accordance with their powers and duties as public officers.
- (3) Duly licensed auctioneers, selling at auction.

DIVISION 2. PERMIT

Sec. 94-101. Required.

No person shall advertise or conduct a sale without first obtaining a permit from the town. If, while any application is pending, or during the term of any permit granted pursuant thereto, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the town in writing thereof within 48 hours after such change.

~~Sec. 94-102. Application required; form, contents.~~

~~No permit for a sale shall be granted except upon written application, upon forms provided, to the town clerk; and such application shall be signed and verified before a person authorized to administer oaths by the person who intends to conduct such sale. Such application shall be submitted to the town clerk at least five days prior to the advertising or conducting of such sale, and each application shall set forth and contain the following:~~

- ~~(1) The name and address of the owner of the goods to be sold, and if the owner is a corporation, the name, address and title of at least one officer of the corporation.~~
- ~~(2) A description of the place where such sale is to be held.~~

- (3) ~~The nature of the occupancy, whether by lease, sublease or otherwise, and the date of the beginning of such occupancy and the date of the termination thereof.~~
- (4) ~~The means to be employed in advertising such sale, together with the proposed language content of any advertisement to be used for such sale.~~
- (5) ~~A complete and detailed inventory of all goods to be sold, or offered for sale, including all goods then in stock, on order or in transit, and the cost and retail price of such goods.~~
- (6) ~~The place where such goods were purchased or acquired and, if not purchased, the manner of such acquisition.~~
- (7) ~~A statement by the applicant that upon receipt of permit for a sale, the applicant will immediately surrender any existing occupational licenses for the business for cancellation without refund of the tax, or any portion thereof, paid for such occupational license.~~
- (8) ~~A statement by the applicant that representations made therein are bona fide. If the application is made for a sale as defined in section 94-66, such application shall also state, that if such permit is issued by the town clerk, acting in reliance on such representations, the applicant will not, directly or indirectly, engage in the same business or any similar business under the same trade name or a similar trade name in the town, for a period of two years from the date of application and shall not engage in the same business or similar business under any name at the premises for a period of two years from the date of application.~~
- (9) ~~Any additional information relating to such sale as the town clerk may deem necessary.~~

Sec. 94-~~102~~103. False information prohibited in application.

No person shall knowingly falsify or misrepresent any information or representations made in the permit application ~~provided for in section 94-102.~~

Sec. 94-104. Investigation, issuance of permit; duration.

~~Upon receipt of an application pursuant to this article and payment of the fee prescribed by section 94-109, the town clerk shall cause the same to be investigated. If after such investigation the town clerk is satisfied as to the truth of statements contained in the application, and as to the form and language content of the proposed advertising matter, he may, in his discretion, issue a permit permitting the advertising and conduct of such sale for a period of not more than 30 consecutive days, Sundays and legal holidays included, following the issuance thereof; provided that, in addition, for a sale as defined in section 94-66, the applicant shall surrender all occupational licenses held for the business as a prerequisite to issuance of such license.~~

Sec. 94-~~103~~106. Not transferable.

A permit shall not be assignable or transferable, and no person shall assign or transfer or attempt to assign or transfer such permit.

Sec. 94-~~104~~107. Denial of permit.

The town ~~clerk or designee~~ shall not issue the permit provided for in this article if any one or more of the following facts or circumstances are found:

- (1) That the applicant was granted a permit for a sale within two years preceding the date of the filing of the application.
- (2) That the applicant has heretofore been convicted of violation of this ~~article,~~ ~~or article~~ or has had a permit issued to him ~~or her~~ pursuant to this article revoked within a five-year period immediately preceding the date of filing of the application.
- (3) That the inventory includes goods purchased by the applicant, or added to the stock, in contemplation of such sale and for the purpose of selling the same at such sale. For the purpose of this subsection, any unusual addition to the stock of goods made within 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.
- (4) That the applicant in ticketing, pricing, or marking of the goods to be offered for sale has misrepresented the retail price as listed in the inventory required under this article, or the value thereof, or the quality, kind or quantity of such goods, or the country of origin of such goods.
- (5) That any lease or sublease held by the applicant was formerly held by a corporation of which the applicant was an officer, ~~director~~ ~~director,~~ or stockholder, or by any member of the applicant's immediate family, who have been granted a permit under this article within two years preceding the date of the filing of the application.
- (6) That any representation made in the application is false.

Sec. 94-~~105~~108. Renewal.

The town ~~clerk or designee~~ may renew a permit for one period of time only, such period to be in addition to the 30 days permitted in the original permit and not to exceed 15 consecutive days, Sundays and legal holidays included, when ~~it is found~~ ~~he or she finds~~ upon submission ~~to him~~ of an application ~~on forms provided~~, and payment of the fee hereafter provided for, that goods have not been disposed of and that facts exist justifying permit renewal.

Sec. 94-106109. Fees.

The applicant for an original permit or a renewal, shall pay to the town clerk ~~an administrative processing fee in accordance with the fee schedule adopted by the town council by resolution~~ the sum adopted by resolution of the town council, as may be amended from time to time., upon filing of each such application as a fee to defray the cost of investigating statements contained in such application, and no part of such fee shall be refundable.

Sec. 94-110. Permit suspension.

If for good cause shown it appears to the town clerk or designee that in any sale a violation has occurred, the town clerk or designee may, in his discretion, temporarily suspend any permit for a time not to exceed 24 hours for the purpose of investigation of such violation. If upon investigation the town clerk or designee finds no violation has occurred, the time period in which the sale was to be conducted under this article shall be extended by the period of time during which such suspension was in effect, but not to exceed a period of 24 hours.

Sec. 94-107111. Permit revocation, appeals.

The town manager or his designee shall have the authority to revoke a closing-out sales permit issued under this division upon violation of the terms of the permit. The permit shall be determined to be null and void and may be immediately terminated. If a closing-out sales permit is denied or revoked, any person aggrieved shall have the right to appeal to the town council. The appeal must be filed at least five days prior to the next available meeting of the town council subsequent to the notice of appeal. ~~The town clerk or designee shall revoke any permit if it is found he or she shall find that the permittee has knowingly:~~

- (1) Violated one or more provisions of this article.
- (2) Made any material misstatement in his or her application.
- (3) Failed to include an in the inventory of required under this article all goods being advertised, sold, or offered for sale on the permitted premises.
- (4) Failed to revise the inventory daily or keep complete and detailed books and records of the sale.
- (5) Made or permitted to be made any false or misleading statements or representations in advertising the sale or goods or in displaying, ticketing, pricing or identifying goods offered for sale.
- (6) Refused to allow examination by the town's clerk or his inspectors, of the goods offered for sale or of the books and records of the sale.

Sec. 94-108112. Display required.

Upon commencement and throughout the duration of any sale, the original permit or renewal shall be prominently posted, so as to be visible to the public, near the entrance to the premises where such sale is advertised or conducted; and no person shall advertise or cause to be advertised any copy or reproduction of such permit.

Sec. 94-~~109~~113. Duplicate application and inventory to be kept on premises.

A duplicate of the original application and inventory or renewal application and inventory for a permit shall be kept on the permitted premises at all times during such sale and shall be available at all times ~~to the town clerk or his inspectors~~, and the permittee shall permit the town's ~~clerk or his~~ inspectors to examine all goods on the premises for comparison with such inventory.

Sec. 94-~~110~~114. Records required; inspection.

At the close of each day's business, the permittee shall cause the inventory attached to such duplicate application to be revised by noting thereon items disposed of during the day. Complete and detailed books and records of the sale shall be kept by the permittee and shall be available at all times for inspection by the town's ~~clerk or his~~ inspectors.

Sec. 94-~~111~~115. Additions to stock prohibited.

No permittee shall bring upon or cause to be brought upon the permitted premises goods not shown or otherwise accounted for in the application and inventory with intent to advertise, sell or offer for sale of such goods to the public. For the purpose of this section, advertisement, exposure for sale as part of the stock, or display of such goods to the public shall be prima facie evidence of intent to sell or offer for sale of such goods to the public.

Sec. 94-~~112~~116. Accuracy of advertising.

Advertising shall be descriptive of the nature of such sale, and no sale shall be advertised or conducted for a purpose other than stated in the application therefor, and the language contained therein shall be identical with the advertising language content set forth in the application.

Sec. 94-~~113~~117. Statement required in advertising.

No permittee shall indicate in any advertising, either directly or indirectly, that a sale is held with the approval of the town or any of its officers and employees. Such advertising shall contain a statement in the following words and no others:

"This sale held pursuant to Town Permit No. _____, granted the _____ day of _____, 1920_____."

Sec. 94-~~114~~118. Marking of distressed goods.

Where goods held for sale or offered for sale as defined under section 94-66 are commingled with goods that have not been involved in any business failure, or that have not been derived from a business that has failed, been closed, ~~discontinued~~discontinued, or liquidated, such goods shall be plainly marked or ticketed as distressed items; and no goods not distressed shall be so marked or ticketed.

Sec. 94-~~115~~119. Doing business beyond closing date.

No person shall conduct a business or a sale after a date has been fixed for the closing of a business or by advertising unless a renewal permit provided shall first have been obtained from the town ~~clerk's office~~, and no person granted such renewal shall conduct such business or sale beyond the closing date fixed in such renewal.

Sec. 94-116. Duties of permittee.

The permittee under this division shall comply with all provisions of this article, other laws and ordinances of the town, state, and federal government, and all permit directions and conditions of the permit.

Sec. 94-117. Waiver of provisions.

The town council may in its discretion waive any requirements of this article.

Sec. 94-118. Penalties.

Persons found to be in violation of any provision of this chapter may be subject to penalties provided by law for the violation of municipal ordinances or, alternatively, may be subject to the jurisdiction of the code enforcement board. Nothing in this section shall prevent the town from seeking civil injunctive relief if deemed appropriate by the town in the circumstances.

Sec. 94-119. Possession.

The person heading or leading the sale shall carry the closing-out sales permit upon his or her person during the conduct of the sale and shall be present at the sale.

Section 2 – Severability.

If any provision of this ~~o~~Ordinance or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of this ~~o~~Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions of this ~~O~~Ordinance are hereby declared severable.

Section 3 – Repeal Of Ordinances Or Parts Of Ordinances In Conflict.

All other ordinances of the Town of Palm Beach, Florida, or parts thereof, which conflict with this or any part of this Ordinance are hereby repealed.

Section 4 – Effective Date.

This Ordinance shall take effect immediately upon its passage and approval, as provided by law.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach, Florida, on the First Reading the 10th day of October 2023; and for the Second and Final Reading on this 14th day of November 2023.

Danielle H. Moore, Mayor

Margaret A. Zeidman, Town Council President

Bobbie D. Lindsay, President Pro Tem

Julie Araskog, Town Council Member

ATTEST:

Edward Cooney, Town Council Member

Kelly Churney, Acting Town Clerk

Lewis S.W. Crampton, Town Council Member