

## Chapter 833 - DISTRESS MERCHANDISE SALES

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### **Sec. 833-1. - Definitions.**

For the purpose of this chapter the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(C.O. 751-1; renumbered to C.M.C. 833-1, eff. Jan. 1, 1972)

### **Sec. 833-1-D. - Distress Merchandise Sale.**

"Distress merchandise sale" shall mean any offer to sell to the public, or sale to the public, of goods, wares or merchandise on the implied or direct representation that such sale is in anticipation of the termination of a business at its present location, or that the sale is being held other than in the ordinary course of business. Without limiting the generality of the above, distress merchandise sales shall include any sale advertised either specifically or in substance to be a "fire sale," "smoke and water damage sale," "adjustment sale," "creditor's sale," "trustee's sale," "bankrupt sale," "save us from bankruptcy sale," "insolvent sale," "insurance salvage sale," "mortgage sale," "assignee's sale," "adjuster's sale," "must vacate sale," "quitting business sale," "receiver's sale," "loss of lease sale," "forced out of business sale" or "removal sale."

(C.O. 751-1; renumbered to C.M.C. 833-1-D, eff. Jan. 1, 1972)

### **Sec. 833-1-P. - Person.**

"Person" shall mean any individual partnership, association, firm or corporation.

(C.O. 751-1; renumbered to C.M.C. 833-1-P, eff. Jan. 1, 1972)

**Sec. 833-3. - License Required.**

No person shall advertise or conduct a distress merchandise sale without first having obtained a license to do so in accordance with the provisions of this chapter.

(C.O. 751-3; renumbered to C.M.C. 833-3, eff. Jan. 1, 1972)

**Cross reference—** Penalty, § 833-99.

**Sec. 833-5. - Application for License.**

Any person desiring to conduct a distress merchandise sale shall make written application to the city treasurer at least five days prior to the date on which the sale is to commence, on forms furnished by the city treasurer and verified by the applicant before a person authorized to administer oaths. In cases where due to circumstances beyond the control of the applicant - other than economic reverses - application cannot be made five days prior to commencement of the sale, the city treasurer shall waive the five day requirement.

Each application shall contain the following information, and such other information the city treasurer may deem necessary.

- (a) The name and address of the owner of the goods, wares or merchandise to be sold.
- (b) A description of the place where such sale is to be held.
- (c) The nature of the occupancy of the place where such sale is to be held, whether by lease or otherwise, and the effective date of termination of such occupancy.
- (d) A full and complete statement of facts regarding the distress merchandise sale, including the reason why such sale is being conducted, the manner in which such sale will be conducted and the commencement and termination date of such sale.
- (e) A complete and detailed inventory of the goods, wares and merchandise to be offered at such sale as disclosed by applicant's record; or a statement of both the cost and retail value of the inventory of goods, wares and merchandise to be offered at such sale based on the physical inventory used for applicant's most recent federal income tax return adjusted for sale, purchases and mark-downs. Adjustments for sales, purchases and mark-downs shall be shown on a monthly basis to date of application. In addition, there shall be shown on separate items in either form of inventory the retail value of all goods, wares and merchandise the applicant has on consignment which will be offered for sale and the cost and retail value of all goods, wares and merchandise on back order.

The filing of an application for a license, the contents of such application, and the issuance of a license shall be confidential information and no disclosure thereof shall be made except such as may be necessary in the administration of the provisions of this chapter; provided, however, that any disclosure may be made with the consent of the applicant and the filing of an application and the issuance of a license shall not be considered confidential after public notice has been given of the proposed sale. Disclosures made contrary to the provisions of this section shall be subject to the penalty provided in Section 833-99-A.

(C.O. 751-5; renumbered to C.M.C. 833-5, eff. Jan. 1, 1972)

**Cross reference—** Penalty, § 833-99-A.

**Sec. 833-7. - Bond Required.**

No license shall be issued for a distress merchandise sale unless there is filed with the city treasurer a bond conditioned upon the faithful observance of all the provisions of this chapter and the indemnifying of any purchaser at the sale who suffers any loss by reason of any misrepresentation made in connection with the sale, and authorizing actions thereunder by the city for the violation of any provision of this chapter, and by any purchaser at the sale for damage or loss suffered by reason of any misrepresentation made in connection with the sale. The amount of the bond shall be determined as follows:

Ten percent of the first \$100,000 of the inventory cost of all the goods, wares and merchandise to be offered at sale; five percent on the next \$400,000 and two percent on the balance. The bond shall be approved as to form by the city solicitor and as to sufficiency by the director of finance.

(C.O. 751-7; renumbered to C.M.C. 833-7, eff. Jan. 1, 1972)

**Sec. 833-9. - Investigation of Application; Grounds for Denial of License.**

Upon receipt of an application, the city treasurer shall make any necessary investigation of the facts contained therein. No license shall be issued if any one or more of the following facts or circumstances are found to exist:

- (a) That the applicant was granted more than one license hereunder for a going-out-of-business sale within two years preceding the date of the filing of the application.
- (b) That the applicant has heretofore been convicted of violation of this chapter or has had a license issued pursuant to this chapter revoked within a five year period immediately preceding the date of the filing of the application.
- (c) That the inventory includes goods, wares, or merchandise purchased by the applicant or added to stock in contemplation of such sale and for the purpose of selling at such sale. For the purpose of this sub-paragraph, any unusual addition to the stock of such goods, wares, and merchandise 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 at such sale.
- (d) That the applicant, in the ticketing of goods, wares, and merchandise to be offered at the sale, has misrepresented the original retail price or value thereof.
- (e) That any representation made in the application is false.

(C.O. 751-9; renumbered to C.M.C. 833-9, eff. Jan. 1, 1972)

**Sec. 833-11. - Hiring of Examiners.**

The city manager or person designated by the city manager shall, from time to time, enter into contracts with competent, qualified persons for the examination of the inventories and records of applicants for licenses. Such persons shall work under the direction and control of the city treasurer and shall make such examinations of records and inventories as are specified by the city treasurer and authorized by this chapter.

All information obtained by such persons or any city employees or officials through applications or examinations made pursuant to this chapter shall be confidential, and any disclosure thereof, except where such disclosure is necessary in the administration of the provisions of this chapter, shall constitute a misdemeanor.

(C.O. 751-10; renumbered to C.M.C. 833-11, eff. Jan. 1, 1972; a. Ord. No. 92-1977, eff. Mar. 23, 1977)

**Cross reference—** Penalty, § 833-99.

**Sec. 833-13. - Issuance of License.**

When it appears to the city treasurer that all the statements in the application are true and that the proposed sale is of the character represented therein, that the application is in full compliance with the terms and conditions of this chapter, and that the required license fee has been paid and the required bond filed, the city treasurer shall issue a license to the applicant authorizing the applicant to advertise and conduct the sale as described in the application, subject to the following conditions:

- (a) The sale shall be held at the place named in the application and by the particular licensee for a period of not more than 30 consecutive calendar days (Sundays and legal holidays excluded), next following the date specified in the license;
- (b) Only the goods, wares and merchandise included in the inventory attached to the application shall be sold at the sale;
- (c) Upon the commencement of the sale and for its duration, the license issued hereunder shall be prominently displayed in the place of sale by the licensee;
- (d) The licensee shall keep suitable books during the sale, at the location at which the sale is conducted, in which shall be made daily entries showing:
  - (1) Dollar amount of retail sales.
  - (2) Dollar amount of mark-downs. (Without limiting the meaning of the term "mark-down," the difference between the retail and wholesale price of goods wholesaled by licensee shall be considered a mark-down.)
  - (3) Dollar amount, both retail and cost price, of goods on back order received.
  - (4) Dollar amount of wholesale sales.

Copies of such daily entries shall be sent to the city treasurer weekly and all books of licensee shall be open for inspection by the city treasurer or duly authorized representatives during business hours.

(C.O. 751-11; renumbered to C.M.C. 833-13, eff. Jan. 1, 1972)

**Sec. 833-15. - Revocation of License.**

The city treasurer shall revoke any license issued pursuant to the provisions of this chapter if the licensee has:

- (a) Violated the provisions of this chapter;
- (b) Made any material misstatement in the application;

- (c) Failed to include in the inventory required by the provisions of this chapter all the goods, wares and merchandise being offered for sale;
- (d) Offered or permitted to be offered at the sale any goods, wares or merchandise not included in the inventory attached to the application;
- (e) Failed to keep suitable records of the sale; or
- (f) Made or permitted to be made any false or misleading statements or representations in advertising the sale, or in displaying, ticketing, or pricing goods, wares or merchandise offered for sale.

(C.O. 751-13; renumbered to C.M.C. 833-15, eff. Jan. 1, 1972)

**Sec. 833-17. - Renewal of License.**

The city treasurer shall upon application therefor renew a license issued under the provisions of this chapter for one or more periods of 30 days each (Sundays and legal holidays excluded), if the licensee has not sold all the goods listed on the inventory submitted with the original application. Such fact shall be sworn to by the applicant in the appropriate place on the application for renewal of the license. Only such goods as were listed on the original inventory filed with the application and not previously sold may be sold during the renewal period. The fee for the renewal of a license shall be \$20. No more than five license renewals shall be granted by the treasurer to any applicant.

(C.O. 751-15; renumbered to C.M.C. 833-17, eff. Jan. 1, 1972; a. Ord. No. 327-1975, eff. Sept. 1, 1975; a. Ord. No. 282-1979, eff. Sept. 1, 1979; a. Ord. No. 544-1982, eff. Jan. 21, 1983)

**Sec. 833-19. - License Fees.**

The fee for licenses issued pursuant to this chapter shall be \$77 or one-half of 1 percent of the cost inventory value of the goods, wares, and merchandise to be sold at the sale, whichever is the greater amount; provided, however, that no fee shall be charged for a license in the case of a business holding a distressed merchandise sale as the result of acquisition of the business premises by the city of Cincinnati or by any other governmental body, federal, state, or local, which is invested with the power of eminent domain. Nothing herein contained shall be interpreted as waiving compliance with all other provisions of this chapter.

(C.O. 751-17; a. Ord. No. 265-1962, eff. Aug. 4, 1962; a. Ord. No. 455-1965, eff. Dec. 10, 1965; a. Ord. No. 90-1969, eff. Apr. 1, 1969; renumbered to C.M.C. 833-19, eff. Jan. 1, 1972; a. Ord. No. 327-1975, eff. Sept. 1, 1975; a. Ord. No. 282-1979, eff. Sept. 1, 1979)

**Sec. 833-21. - Exceptions.**

The provisions of this chapter shall not apply to any sale conducted by a public officer as part of official duties, to any sale an accounting of which must be made to a court of law, or to any sale conducted pursuant to an order of a court of law.

(C.O. 751-19; renumbered to C.M.C. 833-21, eff. Jan. 1, 1972)

**Sec. 833-99. - Penalties.**

Whoever violates any provision of this chapter for which another penalty is not specifically provided

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shall be fined not more than \$100, or imprisoned not more than 30 days, or both. Each day's violation shall constitute a separate offense.

(C.O. 751-21; a. Ord. No. 414-1970, eff. Dec. 23, 1970; renumbered to C.M.C. 833-99, eff. Jan. 1, 1972)

**Sec. 833-99-A. - Violation of Section 833-5 or 833-11.**

Whoever violates any provisions of Section 833-5 or 833-11 of this chapter shall be fined not more than \$100 or imprisoned not more than 60 days, or both.

(C.O. 751-10; renumbered to C.M.C. 833-93-A, eff. Jan. 1, 1971)