

MUNICIPALITY OF MONROEVILLE  
ALLEGHENY COUNTY, PENNSYLVANIA

ORDINANCE NO. 1750

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE, ALLEGHENY COUNTY, PENNSYLVANIA, ESTABLISHING RULES AND REGULATIONS FOR CONDUCTING CLOSING-OUT, DAMAGED GOODS AND DEFUNCT BUSINESS SALES IN THE MUNICIPALITY OF MONROEVILLE; ESTABLISHING A LICENSE FOR CONDUCTING SAID SALES AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

WHEREAS, retail sales to be licensed and regulated pursuant to the provisions of this Ordinance have often been conducted and advertised in such a manner as to mislead and defraud the public and otherwise to result in harm to the public interest; and

WHEREAS, such fraud and imposition on the public has included the misrepresentation of the condition or necessity which is the occasion of such sale; the misrepresentation of the identity of the person conducting such sale, and/or the name and style in which such sale is to be conducted; the misrepresentation that the goods offered at such sale are selling at sacrifice prices; the misrepresentation that the operator of the sale is selling merchandise on hand at the time when the necessity, which is the occasion of such sale, arose, when in fact he is replenishing his stock with additional merchandise both prior to the commencement and during the conduct of such sale so as to keep foisting upon the

public such added merchandise as though it were part of the original stock; and the excessive valuation and misrepresentation of the quality, former price and ownership of the goods to be sold at such sale; and

**WHEREAS**, in order to prevent such fraud and imposition, the public interest requires the regulation of such sales and the duration and conduct thereof; and

**WHEREAS**, the public interest therefor requires that no such sale should be conducted without a license or otherwise than in accordance with this Ordinance.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Council of the Municipality of Monroeville and it is hereby ordained and enacted as follows:

**SECTION 1.**        **Definitions**

For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory;

(1) The term "closing-out sale" shall include, but not be limited to, all sales advertised, represented, or held forth under the designation of "quitting business," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," "branch store-discontinuance sale," "building coming down," "end," "final days," "last days," "lease expires," "we give up sale," "we quit sale," "warehouse closing sale," "warehouse removal sale," "reorganization sale," and any other advertising or designation by any other expression or characterization similar to any of the foregoing, and giving notice to the public that the sale will precede the abandonment of a business location.

(2) The term "sale of goods damaged by fire, smoke or water" shall include, but not be limited to, all sales advertised, represented or held forth under the designation of "fire sale," "smoke damage sale," "water damage sale," "flood damage sale," "insurance sale," and any other advertising or designation by any other expression or characterization similar to any of the foregoing, and giving notice to the public that the goods, wares or merchandise offered for sale have been damaged.

(3) The term "defunct business sale" shall include, but not be limited to, all sales advertised, represented or held forth under the designation of "adjuster's sale," "administrator's sale," "assignee's sale," "bankrupt sale," "bankrupt stock sale," "benefit of administrator's sale," "benefit of creditor's sale," "benefit of trustee's sale," "creditor's committee sale," "creditor's sale,"

"executor's sale," "insolvent sale," "mortgage sale," "receiver's sale," "trustee's sale," and any other advertising or designation by any other expression or characterization similar to any of the foregoing, and conveying the same meaning or giving notice to the public of a sale resulting from death, business failure, or other adversity.

(4) "Unusual purchase or addition" shall mean any purchase of goods, wares or merchandise during the ninety days preceding the application for a license, the total value of which is at least twenty-five percent greater than purchases made by the applicant for a like ninety-day period during any one of three years next immediately preceding the year in which the application is made or his peak purchases for any ninety-day period if he has been in business for less than three years.

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

## SECTION 2. Unlawful Advertisement

It shall be unlawful for any person in the Municipality of Monroeville to advertise or hold out by any means that the sale of any goods, wares or merchandise is a "closing-out sale," "a sale of goods damaged by fire, smoke or water," or a "defunct business sale," unless a license is first obtained to conduct such a sale from the Manager of the Municipality.

SECTION 3.      Application Requirements

(a) Any person desiring to conduct a sale regulated by this Ordinance shall make a written application under oath to the Manager of the Municipality;

(b) If the application is for a "closing out sale" or a "defunct business sale," it shall be filed at least fifteen days prior to the date on which such sale is to commence;

(c) If the application is for a "sale of goods damaged by fire, smoke or water," it may be made at any time prior to the date on which such sale is to commence;

(d) All applications for a licensed sale regulated by this Ordinance shall set forth and contain the following information:

(1) The name and address of the applicant who must be the true owner of the goods, wares or merchandise to be sold, and if the applicant be a partnership, the names and addresses of all partners, or if the applicant be a corporation or association, the date and place of incorporation or organization, the address of the principal office within the Commonwealth and the names and addresses of all the officers of the applicant.

(2) The name and address of the person or persons who will be in charge and responsible for the conduct of such sale.

(3) The exact address of the place at which the proposed sale is to be conducted and the length of time the applicant has been engaged in business at such location.

(4) The date on which it is proposed to begin the sale.

(5) The nature of the occupancy where such sale is to be held, whether by lease or otherwise, and the effective date of termination of such occupancy.

(6) The reason for the urgent and expeditious disposal of the goods, wares or merchandise to be offered at such sale.

(7) A statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale.

(8) A statement that the business is to be terminated permanently or reopened at another location; the location of the premises at which the business is to be moved if the applicant intends to resume the operation of the business upon the termination of the sale; and the name or designation under which such business is to be resumed.

(9) A full, complete, detailed, and itemized inventory of the goods, wares and merchandise to be offered at such sale as disclosed by applicant's records, which inventory shall:

(i) Itemize the goods to be offered for sale and contain sufficient information concerning each item, including quantity, make, brand name, model and manufacturer's number, if any, to clearly identify it;

(ii) List separately any goods to be offered for sale which were purchased and received during a ninety-day period immediately prior to the date of making application for the license;

(iii) The total retail value of the inventory of goods, wares, and merchandise to be offered at such sale based on the inventory used for applicant's most recent Federal income tax return adjusted for sales and purchases.

(iv) If the application is for a license to conduct a "sale of goods damaged by fire, smoke, or water" and the applicant was not the owner at the time when the goods, wares and merchandise to be offered at the contemplated sale were damaged, he shall attach to the said application certified copies of the bill of sale and all other documents connected with such transfer obtained by him from the previous owner of such goods, wares and merchandise.

(v) If the application is for a license to conduct a "defunct business sale," and the applicant was not the owner of the goods, wares and merchandise to be offered at the contemplated sale at the time of occurrence of the circumstances warranting the termination of such business, he shall attach to the application certified copies of the bill of sale and the official appraisal made by the trustee, receiver, assignee for the benefit of creditor, referee in bankruptcy, or the personal representative of a decedent.

(10) A statement that no goods will be added to the inventory after the application is made.

(11) A statement that all goods included in such inventory have been purchased by the applicant for resale on bona fide orders without cancellation privileges and that said inventory comprises no goods purchased on consignment.

(12) A statement that no merchandise listed in the inventory has been the subject of a licensed sale conducted within one year prior to the date of the application, unless such merchandise was damaged by fire, smoke or water while in the possession of the applicant.

#### SECTION 4. Exemptions

(a) The provisions of this Ordinance shall not apply to nor affect the following persons:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction;

(2) Persons who are required to file an accounting with a court of competent jurisdiction;

(3) Persons acting in accordance with their powers and duties as public officers such as sheriffs, constables and marshals;

(4) Any publisher or employee of a newspaper, magazine, or any operator or employee of a radio or television broadcasting station, who publishes or broadcasts any such advertisement in good faith without knowledge of its false, deceptive and misleading

character, or without knowledge that the provisions of this Ordinance are not being complied with.

(b) Nor shall the provisions of this Ordinance apply to any sale advertised as an "alteration sale," "remodeling sale," "clearance sale," "surplus stock liquidation sale," or "special purchase sale."

SECTION 5.        Bond Required

No license shall be issued unless there is filed with the Manager of the Municipality a bond payable to the Municipality of Monroeville conditioned upon the faithful observance of all the provisions of this Ordinance, and the indemnifying of any purchaser at such sale who suffers any loss by reason of misrepresentation made in connection with such sale, and for the payment to the Municipality or the Commonwealth of all taxes due and owing or which may become due, and authorizing actions thereunder by the Municipality and by any purchaser at such sale for damage or loss suffered by reason of any misrepresentation made in connection with such sale; provided, however, that the aggregate liability of the surety for all breaches of the conditions of the bond shall in no event exceed the amount of said bond. The amount of said bond shall be determined as follows: five percent of the first one hundred thousand (\$100,000) dollars of the retail value of all the goods, wares and merchandise to be offered at such sale; two percent of the next four hundred thousand (\$400,000) dollars; and



one percent of the balance. Said bond shall be approved as to form and sufficiency by the municipal solicitor and by the municipal manager.

**SECTION 6.**            **Branch Stores and Warehouses**

If the applicant for a license hereunder owns, conducts or operates more than one store or a warehouse in connection with such store or stores, the license issued will apply only to the one store or warehouse for which it was issued, and no other store, branch or warehouse may advertise or represent in any way that it is cooperating with or participating in any way in the licensed sale, nor shall the licensed store or any person advertise or represent that any other store or warehouse is cooperating with or participating in the licensed sale. The licensed sale conducted by any store of a chain or group of stores shall be conducted solely at the location of the store for which the license was obtained and no goods, wares or merchandise shall be brought from any other store and placed on sale at the store licensed to conduct a sale hereunder.

**SECTION 7.**            **Substitution, addition and commingling of goods; license void; certain purchases prohibited**

(a) Any substitution for or addition to goods described in an inventory filed pursuant to this Ordinance, or any change in the time or place for a sale conducted pursuant to this Ordinance,

shall be unlawful and shall void any license issued to conduct a sale pursuant to this Ordinance, and such license shall be revoked.

(b) In the case of a sale licensed under this Ordinance conducted by the applicant in addition to conducting a business of selling other goods, wares or merchandise not included in the inventory accompanying the application, the goods to be sold at such sale shall be clearly and distinctly segregated, marked or identified, and advertised if at all, so that both on display and in advertising such goods may be readily distinguished from other stocks, and their identity readily ascertained. Any commingling of such goods with other stocks of the licensee in such a manner as to cause the goods to lose their separate identity, either on display or in advertising, shall be unlawful and shall void any license issued to conduct such a sale pursuant to this Ordinance, and such license shall be revoked.

SECTION 8.            Investigation of application; grounds for denial; revocation of license

(a) Upon receipt of the application, the Manager of the Municipality may, in his/her discretion, make or cause to be made an examination, or order an investigation of the applicant, and all the facts contained in the application and inventory in relation to the proposed sale. A license shall be denied or refused if any one or more of the following facts or circumstances are found to exist:

(1) That the applicant has not been the owner of the business advertised or described in the application for a license hereunder for a period of at least three months prior to the date

of the application, or if the applicant be a partnership, corporation or association, controlling interest in the corporation or association was transferred within six months prior to the date of the application for a license hereunder, except -

(i) Where the application is for a license for a "sale of goods damaged by fire, smoke or water," or a "defunct business sale," and the inventory listed in the application contains only those goods, wares or merchandise which were on the premises at the time of the occurrence of the circumstances warranting the granting of a license hereunder;

(ii) Upon the death of a person doing business in this Commonwealth, his or her heirs, distributees, devisees, legatees, or their successors and assignees, shall have the right to apply at anytime for a license hereunder;

(iii) Where a business is required or compelled to be discontinued because the premises whereupon it is being conducted has been condemned, taken for purposes of urban renewal or development or because the premises must be vacated because of legal or judicial proceedings.

(2) That in the case of a "closing out sale," the applicant, either as owner, partner, member of an association, or principal stockholder of a corporation, was granted a prior license hereunder within one year preceding the date of the filing of the application.

(3) That the inventory contains goods, wares or merchandise not purchased by the applicant for resale on bona fide orders without cancellation privileges.

(4) That the inventory contains goods, wares or merchandise purchased by the applicant on consignment, except if the consigned goods, wares or merchandise have been damaged while in the consignee's possession.

(5) That the applicant, except in the case of an application for a license to conduct a "sale of goods damaged by fire, smoke or water," or a "defunct business sale," either as owner, partner, officer of an association, or principal stockholder

of a corporation, was granted a prior license hereunder within one year preceding the date of the filing of the application at the particular location for which the license is sought, or within one year prior to the date of filing of the application, has conducted a sale in connection with which he advertised or represented that the entire business conducted at the particular location for which the license is sought was to be closed out or terminated.

(6) That the applicant has within one year prior to the filing of the application been convicted of a violation of this Ordinance.

(7) That the goods, wares or merchandise as described in the inventory, were transferred or assigned to the applicant prior to the date of the filing of the application and that said transfer or assignment was not made for a valuable and adequate consideration.

(8) That the inventory contains goods, wares or merchandise purchased by the applicant or added to his stock in contemplation of such sale and for the purpose of selling the same at such sale. For this purpose any unusual purchase or addition to the stock of such goods, wares and merchandise made within ninety days prior to the date of the filing of such application shall be presumptive evidence that such purchase or additions were made in contemplation of such sale and for the purpose of selling the same at such sale.

(9) That any representation made in the application is false.

(b) Revocation. Upon written and signed complaint being filed with the Manager of the Municipality by a resident of the municipality, or a resident of any adjoining municipality or township, or upon the initiative of such individual or Manager after making an investigation, the Manager shall revoke any license granted under the provisions of this Ordinance if he/she shall determine:

(1) That any sale by the applicant is conducted in violation of any provision of this Ordinance.

(2) That the applicant has made any material misstatement in his application for said license.

(3) That the applicant has failed to include in the inventory required by the provisions of this Ordinance, the goods, wares

or merchandise required to be contained in such inventory.

(4) That the applicant has added or permitted to be added to said sale or offered or permitted to be offered at said sale, any goods, wares or merchandise not described in the original application and inventory.

(5) That the applicant made or permitted to be made any false, misleading or deceptive statements in advertising said sale, whether written or oral, or in displaying, ticketing or pricing goods, wares or merchandise offered for sale.

SECTION 9.      Appeal from denial or revocation of license

Any applicant for a license, who is aggrieved by the denial, refusal or revocation of a license, may appeal within five days from the date of denial, refusal or revocation to the court of common pleas of the county in which the license is sought. The appeal shall be upon petition of the applicant for an injunction prohibiting the denial, refusal or revocation of a license. A copy of such appeal shall be served upon the Manager of the Municipality who has refused, denied or revoked the license. The court shall hear the application for an injunction expeditiously at a time as it shall fix of which notice shall be given to the Manager of the Municipality from whose refusal, denial or revocation of a license the appeal has been taken. The court shall either sustain the denial, revocation or refusal of the license or order the issuance of the license to the applicant.

SECTION 10.      Copy of application, inventory and license to be posted; license to be referred to in advertisements

A copy of the application for license to conduct a sale under this Ordinance, including the inventory filed therewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods are to be sold, so that the public may be informed of the facts relating to the goods before purchasing same. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of the license, the date of its expiration, and if applicable, the location where the business is to be resumed.

SECTION 11.      Duration of sale; license fee

A license to conduct a sale issued pursuant to this Ordinance shall be good for no more than a period of thirty consecutive calendar dates and may be renewed for one consecutive period not exceeding thirty consecutive calendar days upon the affidavit of the applicant 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 Ordinance by purchase, acquisition, on consignment or otherwise. The application for renewal shall be made not more than ten days prior to the time of the expiration of the license and shall contain a new inventory of the 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. The Manager of the Municipality where such sale is to be conducted shall receive from the applicant for such license, upon the granting thereof, a fee of fifty (\$50) dollars, and upon the renewal thereof, a fee of one hundred (\$100) dollars. The applicant shall not be entitled to a refund of the fee paid if said application is refused, denied or revoked.

SECTION 12.      Opening of a similar business

The opening of a business similar to the one for which the sale, licensed pursuant to this Ordinance, was conducted, except the licensed "sale of goods damaged by fire, smoke or water," by the person, partnership, association, corporation, or partner of a partnership, officer of an association or principal stockholder of a corporation, who or which conducted the sale upon the same premises within one year of the termination of the sale, shall constitute a violation of this Ordinance. Every day in which business is conducted within the prohibited period of one year shall constitute a separate violation of this Ordinance.

SECTION 13.      Records

(a) Suitable books and records concerning said sale shall be kept by the licensee for the duration of the licensed sale and one year thereafter, and shall be open for inspection by the Manager or Monroeville's duly authorized representative.

(b) Upon the termination of a sale licensed hereunder, the applicant shall, within thirty days of such termination, file a statement with the Manager of the Municipality in which the sale was held stating:

(1) The total retail value of the goods, wares or merchandise not disposed of during the sale; and

(2) The ultimate disposition thereof, and if transferred to another, the name and address of the transferee.

SECTION 14. Common Pleas Court Jurisdiction

Upon complaint of any person, the common pleas court of the county wherein a violation of this Ordinance occurred shall have jurisdiction in equity to restrain and enjoin any act forbidden or declared illegal by any provision of this Ordinance.

SECTION 15. Penalties

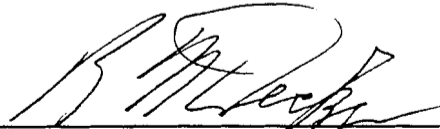
Any person violating any provision of this Ordinance shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine not more than one thousand (\$1000) dollars or to imprisonment for a term of not exceeding thirty days. Each day any sale is conducted in violation of this section shall be a separate violation of this Ordinance. The right to appeal from such conviction shall exist as in other cases of summary proceedings.



SECTION 16. Any Ordinance or part of an Ordinance in conflict herewith is hereby repealed.

ORDAINED AND ENACTED into law this 9 day of April, 1991.

ATTEST:

  
Robert N. Decker  
Acting Municipal Manager

MUNICIPALITY OF MONROEVILLE

BY   
Thomas R. Schuerger, Mayor