COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2020 Legislative Session

Bill No. CB-18-2020

Chapter No. 20

Proposed and Presented by The Council Chair (by request – County Executive)

Introduced by Council Members Turner, Hawkins, Glaros, Harrison, Davis, Dernoga, Franklin and Taveras

Date of Introduction June 16, 2020

BILL

AN ACT concerning

"Going Out of Business" Sales

For the purpose of repealing Division 3 of Subtitle 14 of the Prince George’s County Code.

BY repealing:

SUBTITLE 14. MORALS AND CONDUCT.


SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 14-118, 14-119, 14-120, 14-121, 14-122, 14-122, 14-123, 14-124, 14-125, and 14-126 of the Prince George's County Code be and the same are hereby repealed:

[SUBTITLE 14. MORALS AND CONDUCT.

DIVISION 3. “GOING OUT OF BUSINESS” SALES.] RESERVED.

Sec. 14-118. [Definitions.] Reserved.

[(a) The following words and terms, when used in this Division, shall have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular is applied also to the plural.

(1) Advertise shall mean to publish, circulate, disseminate, or place before the public in any way or through any media whatever, for the purpose of the sale of goods, wares and
merchandise, and shall specifically, although not exclusively, include advertising by outside or inside signs, including neon or other electrical signs, advertising by radio, telephone, television, newspaper, magazine, book, notice, circular, pamphlet, letter, handbill, poster, placard card, price tag or card, label or any other similar or dissimilar to the foregoing.

(2) Director shall mean the Director of Permitting, Inspections, and Enforcement.

(3) Going Out of Business Sale shall mean and include any sale which is publicly advertised to be a termination of business by the owner or operator of said business, his agent or agents, or a cessation of the operation of said business, or a cessation of the operation of said business under its then known name, or a transfer to a new name, and shall include specifically, although not exclusively, "Quitting Business Sale," "Benefit of Creditors Sale," "Building Coming Down Sale," "Benefit of Trustees Sale," "Creditors Committee Sale," "Creditors Sale," "Force Out Sale," "Assignee Sale," "Forced Out of Business Sale," "Insolvent Sale," "Liquidation Sale," "Loss of Lease Sale," "Mortgage Sale," "Out-selling Sale," "Selling Out Sale," "We Quit Sale," "We Give Up Sale," "Fixtures for Sale," "Retiring Our Name Sale," "Changing Our Name Sale," and any other advertising or designation by any other expression or characterization closely similar to any of the foregoing and calculated to convey substantially the same meaning, all sales accompanied by notices or advertising indicating that the premises are available for purchase or lease, or are otherwise to be vacated, all sales advertised in any manner calculated to convey, to the public the information or belief that upon the disposal of the goods to be placed on sale the business being conducted at any location will cease, or be discontinued, or otherwise to be vacated or transferred, surrendered, or handed over to a successor in business or conducted under a new name, any sale, advertised, or represented as anticipatory, or to avoid the termination, liquidation, revision, windup, discontinuance, conclusion, dissolution, or abandonment of the business conducted at any location.

(4) Persons shall mean an individual, partnership, copartnership, association, trust, firm, corporation, or any agent or employee thereof.]

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Sec. 14-119. [Permit Required.] Reserved.

[It shall be unlawful for any person to advertise and conduct a "Going Out of Business" sale as defined herein, without first having obtained a permit from the director.]
Sec. 14-120. [– Same; application.] Reserved.

[(a) Any person desiring to advertise and conduct a "Going Out of Business Sale," as defined herein, shall make a written application therefor to the director, upon a form provided by the director for that purpose.

(b) In addition to such other information as the director may reasonable deem necessary for purposes of the implementation, administration and enforcement of this Section, the Application shall state the following information:

(1) The name of the applicant and, if the applicant is a partnership, the name and address of each partner; or, if the applicant is a corporation, the names and addresses of the principal officers of the corporation and the state in which incorporated, or the name and address of the authorized designated representative for the State of Maryland and the state in which incorporated;

(2) A description by street location, address and type of building, of the location at which such sale is to be conducted; and,

(3) A full and complete statement of the facts in regard to the "Going Out of Business" sale including the reason such sale is to be conducted, the manner in which such sale will be conducted, and the date of the commencement of the sale and any advertising associated therewith.

(c) Every application shall be signed and certified that the information given thereon is true and correct. The signature shall be that of the applicant, if the applicant is an individual; or if the applicant is a partnership or corporation, the signature shall be that of the officer or partner thereof.]

Sec. 14-121. [– Application; investigation, denial.] Reserved.

[(a) Upon receipt of the completed application, the director shall make or cause to be made an examination or investigation of the applicant and all the facts contained in said application in relation to the proposed sale.

(b) The director may deny or refuse to issue a permit to an applicant if, on the basis of said investigation, the director finds:

(1) That the applicant, either directly or indirectly, and within one (1) year prior to the date of the 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 was to be closed out or
terminated;

(2) That the applicant was previously granted a permit hereunder within one (1) year preceding the date of the filing of the application, where such permit was based upon an application setting forth that the entire business conducted at a particular location was to be closed out or terminated;

(3) That the applicant has previously been convicted of a violation of this Section within a period of three (3) years preceding the date of the filing of the application; or,

(4) That the applicant has willfully and deliberately stated false information on the application.

(c) The director shall not deny or refuse to renew a permit hereunder without first affording the applicant an opportunity for a hearing thereon. At least fifteen (15) calendar days prior to the date set for the hearing, the director shall notify all parties to the proceedings in writing of the date, time and place set for the hearing and the charge made, and afford all parties the opportunity to be heard in person and by counsel in reference thereto. The written notice shall be served by delivery of the notice to all parties by registered or certified mail. Within ten (10) working days following the hearing, the director shall render a decision and the reasons therefor in writing and shall forward a copy of the same to all parties by certified or registered mail.]

Sec. 14-122. [– Permit; issuance, conditions.] Reserved.

[(a) When the director is satisfied that all of the statements in the application are true and that the said proposed sale is of the character as represented therein, and that the required permit fee has been paid, the director shall issue a numbered permit to the applicant authorizing said applicant to advertise and conduct the sale as described in said application, which permit shall be issued under the following terms:

(1) Said permit shall authorize the type of sale, and any advertising associated therewith, as named and described in the application therefor at the place named therein and only by the applicant for a period of not more than one hundred and twenty (120) consecutive calendar days following the effective date of said permit; and

(2) Upon the commencement of said sale, or any advertising associated therewith, and for its duration, the permit issued hereunder shall be prominently displayed on the premises by the applicant.]
Sec. 14-123. [– Exemptions.] Reserved.

[(a) The provisions of this Division shall not apply to:

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

(2) Persons acting in accordance with their powers and duties as public officers, such as sheriffs; or,

(3) Any publisher of a newspaper, magazine, or any operator 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 Division are not being complied with.]

Sec. 14-124. [– Same; fee.] Reserved.

[Every applicant for a permit, as required hereunder, shall pay to the director a permit fee in the amount of Ten Dollars ($10.00) for each business location in the county where the applicant intends to advertise and conduct a "Going Out of Business" Sale.]

Sec. 14-125. [– Appeals.] Reserved.

[Any party aggrieved by a decision of the director with respect to the denial of a permit shall have the right to appeal any such decision to the Board of Appeals for Prince George's County, Maryland, within ten (10) calendar days after receipt of a denial decision by the director. Appeals to the Board of Appeals from denial decisions of the director shall be on the record before the director.]

Sec. 14-126. [– Penalty.] Reserved.

[Any person required to obtain a permit under this Section who advertises and conducts a "Going Out of Business" Sale, as defined herein, without first having obtained a permit from the director, or continues to advertise and conduct said sale after the permit therefor has expired, shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not exceeding One Thousand Dollars ($1,000.00) or incarceration up to six (6) months in jail, or both such fine and imprisonment.]

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SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since the same would have been enacted without the incorporation in this Act of any such invalid or unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45) calendar days after it becomes law.

Adopted this 14th day of July, 2020.

COUNTY COUNCIL OF PRINCE GEORGE’S COUNTY, MARYLAND

BY: ________________________________
    Todd M. Turner
    Council Chair

ATTEST:

__________________________________
Donna J. Brown
Clerk of the Council

APPROVED:

DATE: ____________________________ BY: ________________________________
    Angela D. Alsobrooks
    County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.