



# MEMORANDUM

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**To:** Mayor and City Councilors

**From:** Rich Olson, City Manager

**Date:** July 8, 2015

**Re:** Consideration – Call for a Public Hearing to Repeal Article VII of Chapter 14 of the City's Code or Ordinances in its Entirety

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***BACKGROUND:***

Section 2 of Session Law 2015-103 (HB 836) was signed into law on June 22, 2015 (see attached). As a result, NCGS §66-77, which is the statute that required licenses to conduct closing-out-sales has been repealed effective July 1, 2015.

***ANALYSIS:***

Pursuant to authority granted by NCGS §66-77, the City of Elizabeth City's Code of Ordinances, Chapter 14, Article VII (attached) required the City Clerk to supervise and regulate advertising and issue licenses to businesses conducting closing-out-sales in Elizabeth City. Due to the repeal of §66-77, the City's Code is now in conflict with state law.

In order to comply with HB 836, City staff has drafted an ordinance to repeal Chapter 14, Section VIII in its entirety and requests that the City Council call for a Public Hearing to receive comment on this matter.

***STAFF RECOMMENDATION:***

By motion, call for a Public Hearing to be held on Monday, August 10, 2015 at 7:30 p.m. in Council Chambers of the Municipal Administration Building to receive comment regarding the adoption of an ordinance repealing Chapter 14 Business Regulations, Article VII Closing Out Sales in its entirety.

RCO/vdw

ORDINANCE # 2015 – 08- \_\_\_\_\_

**TO REPEAL**  
**Closing Out Sales as Found in Chapter 14 - Business Regulations,**  
**Article VII of the City of Elizabeth City Code of Ordinances**

**WHEREAS**, Section 2 of Session Law 2015-103 (HB 836) was signed into law on June 22, 2015, and as a result, NCGS §66-77, was repealed effective July 1, 2015; and

**WHEREAS**, pursuant to authority granted by NCGS §66-77, the City of Elizabeth City's Code of Ordinances, Chapter 14, Article VII required the City Clerk to supervise and regulate advertising and issue licenses to businesses conducting closing-out-sales in Elizabeth City; and

**WHEREAS**, in an effort to comply with HB 836, the Elizabeth City Council desires to repeal Chapter 14 Business Regulations, Article VII Closing Out Sales of the City of Elizabeth City Code Of Ordinances in its entirety.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY THAT:**

**SECTION I. EFFECTIVE DATE:** Effective upon adoption, Article VII Closing Out Sales found in Chapter 14 - Business Regulations of the City of Elizabeth City Code of Ordinances is repealed in its entirety.

**SECTION II. CODIFICATION.** The provisions of Section I of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable.

**SECTION III. SEVERABILITY CLAUSE.** If any section, or part of provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**SECTION IV. PUBLICATION AND EFFECTIVE DATE.** This Ordinance shall take effect immediately upon adoption according to law and for subsequent years unless rescinded or modified in accordance with law.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Joseph W. Peel  
Mayor

*Attest:*

\_\_\_\_\_  
Vivian D. White, CMC/NCCMC  
City Clerk

ELIZABETH CITY CODE

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Div. 3. Downtown Maintenance Code.....	CD10:6
Art. III. Rental Housing Code .....	CD10:6
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14. Business Regulations .....	CD14:1
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Art. II. Advertising and Advertisements.....	CD14:3
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Art. IV. License Taxes and Privilege Licenses.....	CD14:6
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Art. VI. Pool and Billiard Parlors.....	CD14:14
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15—17. Reserved .....	CD15:1
18. Cemeteries.....	CD18:1
Art. I. In General.....	CD18:3
Art. II. Burials .....	CD18:3
Art. III. Prohibited Conduct.....	CD18:4
19—21. Reserved .....	CD19:1
22. Civil Emergencies .....	CD22:1
23—25. Reserved .....	CD23:1
26. Docks, Wharves and Harbors.....	CD26:1
27—29. Reserved .....	CD27:1
30. Environment.....	CD30:1
Art. I. In General.....	CD30:3
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Div. 1. Generally .....	CD30:6
Div. 2. Authority and General Regulations .....	CD30:6
Div. 3. Subdivision of Land .....	CD30:7
Div. 4. Development Regulations.....	CD30:9
Div. 5. Public Health Regulations.....	CD30:13
Div. 6. Administration, Enforcement and Appeals .	CD30:14
31—33. Reserved .....	CD31:1
34. Fire Prevention and Protection .....	CD34:1
Art. I. In General.....	CD34:3
Art. II. Fire Prevention Code.....	CD34:5
35—37. Reserved .....	CD35:1
38. Floods .....	CD38:1
Art. I. In General.....	CD38:3
Art. II. Flood Damage Prevention.....	CD38:9
Div. 1. Generally .....	CD38:9
Div. 2. Administration .....	CD38:10

which a charge is directly or indirectly made for the playing of any game or contest thereon or any place of business having fewer tables than designated above if the primary purpose of said place of business is the operation of tables for the playing of pool or billiards for which a charge is directly or indirectly made for the playing of any game or contest thereon.

(Code 1976, § 5-20; Code 1993, § 5-156)

**Sec. 14-193. License required.**

No person shall maintain or operate any pool or billiard parlor without first having secured from the city council a license therefor.

(Code 1976, § 5-21; Code 1993, § 5-157)

**Sec. 14-194. License application.**

Applications for licenses required by this article shall be made on forms provided by the city. Forms shall be completed under oath and filed with the city clerk. Such application shall be filed in ample time to afford due investigation by the appropriate officials of the city prior to such meeting at which the petitioner desires to present such application.

(Code 1976, § 5-22; Code 1993, § 5-158)

**Sec. 14-195. Prohibited acts.**

No licensee or his servant, agent or employee shall:

- (1) Suffer or permit the licensed premises to become disorderly;
- (2) Suffer or permit any person to bet upon any game played on any table in the licensed premises.

(Code 1976, § 5-26; Code 1993, § 5-161; Ord. of 3-6-1995, § 1; Ord. No. 02094, 9-9-2002)

**Sec. 14-196. Revocation of license.**

The city council may at any time for cause, and after a hearing for which reasonable notice has been given to the licensee, revoke any license issued under the provisions of this article. If any licensee should be convicted on two occasions for violations of this article, his license shall automatically be revoked.

(Code 1976, § 5-27; Code 1993, § 5-162)

**Secs. 14-197—14-215. Reserved.**

**ARTICLE VII. CLOSING-OUT SALES\***

**Sec. 14-216. Definitions.**

The following words, 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* means and includes any notice of intention to sell, whether by word of mouth, newspaper advertising, magazine advertising, handbill, written notice, printed notice, printed display, billboard display, poster, radio announcement and any other means of communication, oral, written or printed.

*Sale and closing-out sale* means and includes the sale or offer for sale to the public, of goods, wares and merchandise of any and all kinds and descriptions, upon the representation by the seller, either express or implied, that such sale is anticipatory to the termination, closing out, liquidation, wind up, discontinuance, conclusion or abandonment of the business in connection with such sale. It shall include any sale or offer of sale published or advertised to be an "adjustment sale," "trustee's sale," "liquidation sale," "reorganization sale," "alteration sale," "executor's sale," "administrator's sale," "fire sale," "insurance salvage sale," "mortgage sale," "assignee's sale," "adjustor's sale," "receiver's sale," "loss of lease sale," "wholesaler's closeout sale," "removal sale," "creditor's committee sale," "forced out of business sale" and any and all sales or offers to sell, published or advertised in such manner as to convey to the public that upon the termination of the sale of the stock of goods, wares and merchandise on hand, the business in connection therewith shall cease, be discontinued and abandoned. "Closing-out" sale also shall be as defined in G.S. 66-76.

(Code 1976, § 5-41; Code 1993, § 5-181)

\***State law reference**—Closing-out sales, G.S. 66-76 et seq.

**Sec. 14-217. Declaration of purpose.**

Sales and closing-out sales and advertising in connection therewith, are hereby declared to be matters affecting the public welfare and safety, requiring regulation.  
(Code 1976, § 5-40; Code 1993, § 5-182)

**Sec. 14-218. Exemptions.**

The provisions of this article shall not apply to sales conducted by sheriffs, constables or other public or court officials, nor to any person acting under the directions or authority of any court selling goods, wares or merchandise in the course of his official duties nor to duly licensed auctioneers selling at auction sales.  
(Code 1976, § 5-42; Code 1993, § 5-183)

**Sec. 14-219. License required.**

No person shall publish, advertise, offer to sell or conduct any sale of the type herein defined without securing a license therefor from the city clerk.  
(Code 1976, § 5-43; Code 1993, § 5-184)

**Sec. 14-220. Powers and duties of the city clerk.**

(a) The city clerk is hereby authorized and empowered to supervise and regulate advertising and to make and promulgate such reasonable regulations governing the conduct of such sales and the advertising in connection therewith, as will serve to prevent fraud and deception on the public.

(b) A license required by the provisions of this article shall be issued in the discretion of the city clerk. Upon submission of written application in a form approved by the city clerk and verified by the person who intends to conduct such sale and to cause to be published the advertising in connection therewith.

(c) Such application shall contain:

- (1) A description of the place where such sale is to be held;
- (2) The nature of the occupancy, whether by lease or sublease;

- (3) The effective date of the termination of the occupancy;
- (4) The application shall contain an itemized list of all goods, wares and merchandise proposed to be sold;
- (5) The place where such stock was purchased or acquired;
- (6) If not purchased, the manner of such acquisition;
- (7) The itemization of goods, wares and merchandise proposed to be sold shall contain a listing of all goods, wares and merchandise which have been in stock for a period of 15 days or longer, prior to the application for license, and a listing of all goods, wares and merchandise received in stock within 15 days immediately preceding the application for license;
- (8) The application shall state the form and content of advertising proposed to be made or published in connection with the sale;
- (9) The application shall contain any additional information the city clerk may require, and
- (10) Any false statement made in connection with such application shall be deemed to be a violation of this article.

(d) Upon receipt of an application and payment of the fee, the city clerk shall cause the application to be examined and investigated.

(e) If the city clerk is satisfied as to the truth of the statements contained in such application, and as to the form and content of the advertising to be used in connection with such sale, he may then issue a license permitting the publication and conduct of such sale.

(f) Such license shall be for a period not exceeding 30 days, except that upon satisfactory proof by the licensee that the stock itemized in the original application has not been disposed of, the city clerk may renew such license for an additional 30-day period, upon payment of the renewal fee. Such proof for a renewal license shall be furnished in a form approved by the city clerk. The application for a renewal license shall contain an itemized list of goods, wares and merchan-

dise proposed to be sold in the same manner as prescribed for the original application, and the same shall be verified by the applicant.

(g) The city clerk shall cause the application for renewal to be examined and investigated, and if satisfied as to the truth of the statement therein contained, he may then issue a renewal license for a period not exceeding 30 days; provided, however, that not more than three such renewals shall be granted for any such sale for the same location within a period of one year from the date of issuance of the first license.

(h) No goods, wares or merchandise shall be advertised for sale, sold or offered for sale at any sale or closing-out sale, other than those goods, wares and merchandise itemized in the application for license or renewal license. The advertisement for sale, closing-out sale or offer for sale of any goods, at any sale or closing-out sale other than those itemized in the application for license or renewal license, by any licensee, his servants, agents or employees, shall operate automatically to revoke the license to such licensee made pursuant to the terms of this article. The city clerk is hereby further authorized and empowered to suspend, cancel or revoke for cause at any time any license granted pursuant to the terms of this article.

(i) From any action taken by the city clerk pursuant to this article, an appeal may be taken to the city council by any person aggrieved.  
(Code 1976, § 5-44; Code 1993, § 5-185)

#### **Sec. 14-221. Enforcement.**

Upon commencement of any sale, the license issued by the city clerk together with a duplicate original of the stock list contained in the application shall be prominently displayed near the entrance to the premises. At the close of each business week, the stock list so posted shall be revised by marking thereon those items sold or disposed of during such week. Suitable books and records as prescribed by the city clerk shall be kept by the licensee and shall at all times be available for the inspection of the city clerk or his agents. The licensee shall permit the city clerk or his agents to examine all merchandise in the premises for the purpose of comparison with the

stock list. All advertisements and the language contained therein shall be in accordance with the purpose of the sale as stated in the application and the language of such advertisement shall not vary from the language as indicated in the application.

(Code 1976, § 5-45; Code 1993, § 5-186)

#### **Sec. 14-222. Fees.**

Upon filing an original application or renewal application for a license to advertise and conduct a sale, the applicant shall pay to the city clerk a fee as set from time to time by the city council, if not otherwise established by state law. If any application or renewal application is disapproved, the payment shall be forfeited as the cost of investigation of the statements contained in such application or renewal application.

(Code 1976, § 5-46; Code 1993, § 5-187)

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

SESSION LAW 2015-103  
HOUSE BILL 836

AN ACT TO PROVIDE REGULATORY RELIEF FOR LOCAL GOVERNMENTS BY AUTHORIZING CITIES TO RESERVE CERTAIN EASEMENTS WHEN PERMANENTLY CLOSING STREETS AND ALLEYS; TO REPEAL THE REQUIREMENT FOR LICENSING OF GOING OUT OF BUSINESS SALES BY LOCAL GOVERNMENTS; TO AUTHORIZE ELECTRONIC SUBMISSION OF ABSENTEE BALLOT LISTS BY COUNTY BOARDS OF ELECTIONS; TO AUTHORIZE THE USE OF NEW TECHNOLOGY FOR PAPER BALLOTS; TO EXTEND THE TIME FRAME TO IMPLEMENT THE REQUIREMENT FOR PAPER BALLOTS FROM JANUARY 1, 2018 TO SEPTEMBER 1, 2019, FOR COUNTIES THAT USE DIRECT RECORD ELECTRONIC VOTING MACHINES FOR CURRENT VOTING REQUIREMENTS; TO AUTHORIZE CERTAIN MUNICIPALITIES TO CONDUCT MALT BEVERAGE AND UNFORTIFIED WINE ELECTIONS; TO REQUIRE COUNTY BOARDS OF ELECTIONS TO NOTIFY A REGISTERED VOTER OF THE OPTION TO COMPLETE A WRITTEN REQUEST FOR AN ABSENTEE BALLOT AT A ONE-STOP VOTING LOCATION WHEN THE VOTER PRESENTS WITHOUT AN ELIGIBLE FORM OF PHOTO IDENTIFICATION; TO AUTHORIZE VOTERS WHO SUFFER FROM A REASONABLE IMPEDIMENT PREVENTING THE VOTER FROM OBTAINING PHOTO IDENTIFICATION TO COMPLETE REASONABLE IMPEDIMENT DECLARATIONS WHEN VOTING; TO REMOVE TERM LIMITS FOR SERVICE ON THE BOARD OF EDUCATION OF ALEXANDER COUNTY; AND TO REQUIRE ELECTRONIC POLL BOOKS TO BE CERTIFIED BY THE STATE BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

**CLARIFY EASEMENT RESERVATION AUTHORITY FOR CITIES CLOSING STREETS AND ALLEYS**

**SECTION 1.** G.S. 160A-299 reads as rewritten:

**"§ 160A-299. Procedure for permanently closing streets and alleys.**

...  
(f) A city may reserve ~~its~~ a right, title, and interest in any ~~utility improvement~~ improvements or ~~easement~~ easements within a street closed pursuant to this section. ~~Such~~ An easement under this subsection shall include utility, drainage, pedestrian, landscaping, conservation, or other easements considered by the city to be in the public interest. The reservation of an easement under this subsection shall be stated in the order of closing. ~~Such~~ The reservation also extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the city.

...."

**REPEAL LICENSING FOR GOING OUT OF BUSINESS/DISTRESS SALES**

**SECTION 2.(a)** G.S. 66-77 is repealed.

**SECTION 2.(b)** G.S. 66-80 reads as rewritten:

**"§ 66-80. Continuation of sale or business beyond termination date.**

No person shall conduct a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise or a distress sale beyond the termination date specified for such ~~sale, except as otherwise provided for in subsection (b) of G.S. 66-77;~~ sale; nor shall any person, upon conclusion of such sale, continue that business which had been



represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the same city or town where the inventory for such sale was filed for a period of 12 months; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. As used in this section, the term "person" includes individuals, partnerships, corporations, and other business entities. If a business entity that is prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or any other transaction, for the purpose of continuing the business, the successor entity or individual shall be considered the same person as the original entity for the purpose of this section. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, that entity shall be considered the same person as the individual for the purpose of this section."

**SECTION 2.(c)** This section becomes effective July 1, 2015.

### **ELECTRONIC REPORTING FOR COUNTY BOARDS OF ELECTIONS**

**SECTION 3.(a)** G.S. 163-232 reads as rewritten:

**"§ 163-232. Certified list of executed absentee ballots; distribution of list.**

The county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections, and which have been received as of 5:00 p.m. on the day before the election. At the end of the list, the ~~chairman~~ chair shall execute the following certificate under oath:

"State of North Carolina

County of \_\_\_\_\_

I, \_\_\_\_\_, ~~chairman~~ chair of the \_\_\_\_\_ County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which have been approved by the county board of elections and which have been returned no later than 5:00 p.m. on the day before the election. I certify that the ~~chairman~~ chair, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of ~~chairman~~ chair of  
county board of elections)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
Witness my hand and official seal.

\_\_\_\_\_  
(Signature of officer  
administering oath)

\_\_\_\_\_  
(Title of officer)"

No later than 10:00 a.m. on election day, the county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately (i) submitted electronically in a manner approved by the State Board of Elections or (ii) deposited as "first-class" mail to the State Board of Elections. The board shall retain one copy in the board office for public inspection and the board shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The county board of elections shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the county board of elections shall, upon request, provide a copy of the complete list to the ~~chairman~~ chair of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.



**§ 66-77. License required; contents of applications; inventory required; fees; bond; extension of licenses; records; false statements.**

(a) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, or a distress sale unless he shall have obtained a license to conduct such sale from the clerk of the city or town in which he proposes to conduct such a sale or from the officer designated by the Board of County Commissioners if the sale is conducted in an unincorporated area. The applicant for such a license shall make to such clerk an application therefor, in writing and under oath at least seven days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, the opening and terminating dates of any previous distress sale or closing-out sale held by the applicant within that county during the preceding 12 months, a complete inventory of the goods, wares or merchandise actually on hand in the place whereat such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold. Provided, the seller in a distress sale need not file an inventory.

(b) If such clerk shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the clerk shall issue a license, upon the payment of a fee of fifty dollars (\$50.00) therefor, together with a bond, payable to the city or town or county in the penal sum of five hundred dollars (\$500.00), conditioned upon compliance with this Article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application. The license fee provided for herein shall be good for a period of 30 days from its date, and if the applicant shall not complete said sale within said 30-day period then the applicant shall make application to such clerk for a license for a new permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum of fifty dollars (\$50.00), and a second extension period of 30 days may be similarly applied for and granted by the clerk upon payment of an additional fee of fifty dollars (\$50.00) and upon the clerk being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner; provided, however, that the clerk may not grant an extension period as provided in this subsection if (i) the applicant conducted a distress sale immediately preceding the current sale for which the extension is applied for and (ii) the period of the extension applied for, when added to the period of the preceding sale and the period of the current sale, will exceed 120 days. No additional bond shall be required in the event of one or more extensions as herein provided for. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale, or any merchant who shall have been conducting a business in one location for such period but who shall, by reason of the building being untenable or by reason of the fact that said merchant shall have no existing lease or ownership of the building and shall be forced to hold such sale at another location, shall be exempted from the payment of the fees and the filing of the bond herein provided for.

(c) Every city or town or county to whom application is made shall endorse upon such application the date of its filing, and shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the license was granted or refused.

(d) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury. (1957, c. 1058, s. 2; 1981, c. 633, ss. 2-4; 1987, c. 387, s. 1.)