

SUBJECT: REVIEW OF CURRENT REGULATIONS PERTAINING TO YARD SALES

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT - PLANNING DIVISION

COMMENT: Due to complaints regarding a proliferation of yard sale signs, code enforcement was tasked with identifying violators. This resulted in the discovery of perpetual yard sales. At their meeting on April 15, 2014, the City Council requested that staff provide the current standards for "yard sales" for their consideration, in response to a concern voiced during oral communications. The standards for yard sales (also known as "garage sales") are identified within Chapter 18-8.2 of the Municipal Code and Section 301.21(b) of the Development Ordinance and are as follows:

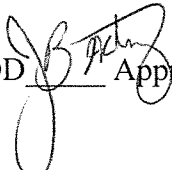

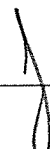
**CHAPTER 18-8.2: SALE OF PERSONAL PROPERTY FROM RESIDENTIAL PREMISES:**

- A. Residential Sales Prohibited: It shall be unlawful for any person to conduct, or participate in the conduct of, a sale of personal property to the general public by means of a "garage" sale, "patio" sale, "yard" sale, or other sale similarly conducted on any residentially zoned premises, except as permitted in this section or authorized by Chapter 21 of this code, or other law.
- B. Time And Place Of Sale: Only one such sale may be conducted at a particular place in any six (6) month period. No sale shall continue more than three (3) days. Sales shall be conducted between the hours of eight o'clock (8:00) A.M. and eight o'clock (8:00) P.M. only.
- C. Court Sales: This section shall not apply to sales conducted pursuant to process or order of any court of competent jurisdiction.
- D. Penalty: Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor. (Ord. 1147 §§ 1\_4, 7/18/1978)

**SECTION 301.21 TEMPORARY USES**

A Temporary Use is intended to operate only for a limited period of time. Unless otherwise specific, temporary uses shall require a permit in accordance with Chapter 605, Temporary Use Permits. Temporary uses shall be located, developed and operated in compliance with the standards of this section.

- (b) **Garage Sales.** A garage or yard sale may be permitted on any developed lot in an R district, in accordance with Section 18-8.2 of the Municipal Code and the following standards.
  - (1) Garage sales are limited to no more than three (3) consecutive days in any six (6) month period.
  - (2) All merchandise to be sold shall be displayed on a private lot and not within the public right-of-way.

DD  Appropriated/Funded  CM 

Item No 31

Series 700 of the Development Ordinance defines Garage Sales as: *The sale or offering for sale to the general public of over five (5) items of personal property on a portion of a lot in a residentially zoned district, whether inside or outside any building.*

Staff evaluated the garage/yard sale standards of other cities (Visalia, Tulare, and Dinuba). All of the ordinances are consistent in limiting property owners to two sales per property per year; however, Dinuba will allow additional sales with a Conditional Use Permit at a fee of \$1,966.00 per occurrence. The Cities of Porterville and Visalia are the most similar in that no permit is required, two sales per year may be held for three consecutive days each, and hours of operation are limited to between 8:00 a.m. and 8:00 p.m. The City of Tulare requires a permit fee of \$6.25, but senior citizens are allowed one free garage sale per year; further, their ordinance states that more than one sale per six month period is presumed to be a business and not a garage or yard sale.

The State Board of Equalization (BOE) substantiates the City of Tulare's presumption of business activity, in that BOE requires a person to obtain a seller's permit if sales events are three or greater in a 12-month period. (See Regulation 1595 of the Business Taxes Law Guide, Section (a)(4)(A), attached). Typically, a garage/yard sale would not be required to charge sales tax so long as certain limits are not exceeded, but a seller's permit would be required.

RECOMMENDATION: That the City Council review and discuss the above information and if needed, provide direction to staff.

ATTACHMENTS:

1. Comparison of Yard Sale Ordinances
2. Board of Equalization – Publication 107
3. Board of Equalization – Article 7, Regulation 1595

## **Comparison of Yard Sale Ordinances: Porterville, Visalia, Tulare, Dinuba**

### **The City of Porterville Yard Sale rules are:**

- One sale allowed in any 6 month period, or 2 per year.
- Allowed from 8 a.m. to 8 p.m.
- No longer than 3 consecutive days in length.
- Signs are not permitted to be attached to any pole, post sign or tree in the right of way or placed on the sidewalk or median.
- "Garage sale" means the sale or offering for sale to the general public of over five (5) items of personal property on a portion of a lot in a residentially zoned district, whether inside or outside any building.

### **The City of Visalia rules are:**

- Only two (2) yard/garage sales are allowed per calendar year, not to exceed 3 consecutive days
- Sales shall be conducted between 8 a.m. to 8 p.m.
- Signs - one sign not exceeding 2 ft by 2 ft in size may be posted on the property where the sale is being held during the duration of the sale only. No signs regarding such sale shall be posted on any property other than where the sale is held.
- "Garage sale" means a sale, offer to sell, or holding for the purpose of selling, conducted by any individual or individuals, of household furnishings, goods, or other tangible personal property, conducted in a non-commercial garage, yard, patio, driveway, or on any portion of the premises in a residential zone. This definition does not include sales made on commercial premises.

### **The City of Tulare rules are:**

- Permit Fee of \$6.25 per sale; however, senior citizens are allowed one free garage sale per year
- 1 sale in each 6 month period or you are presumed to be engaged in a business other than a garage or yard sale.
- Length of sale shall not exceed three consecutive days.
- "Garage or Yard Sale" means the sale from the residence or residential lot of a vendor of personal property which was not purchased or solicited by the vendor(s) for purpose of resale, and when the personal property has been used in the home of the vendor and, or, in the home of not to exceed five other vendors.

### **The City of Dinuba rules are:**

- Two per calendar with a permit required: First time during calendar year, permit required (no fee); Second event during calendar year \$5.00 permit fee
- More than two sales require a Conditional Use Permit \$1,966.00 per additional event.
- No sale shall last more than three days. Allowed from 6 a.m. to 8 p.m.
- Signs advertising a sale shall be located on the property only. Individual signs shall not exceed 3 ft; total signs shall not exceed 9 sq. ft. in the aggregate, and shall not be placed so as to block vehicular or pedestrian view from adjoining properties. Posting of signs shall be only during time of sale and in conformance with Chapter 17.72.
- "Garage sale" is defined as a sale, offer to sell, or holding for the purpose of selling, conducted by any person or persons, of household furnishings, goods or other tangible personal property, conducted in a noncommercial garage, yard, patio, driveway or on any portion of the premises in a residential property.

## Publication 107, *Do you Need a California Seller's Permit?*

**March 2014**

Do you Need a California Seller's Permit?	Required Registration to Report Use Tax	Applying for a Seller's Permit	Additional Information
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When you sell or lease merchandise, vehicles, or other tangible personal property in California, even temporarily, you are generally required to register with our agency, the Board of Equalization (BOE), and to pay sales tax on your taxable sales. When you register, we will issue you a seller's permit. Sometimes people incorrectly refer to a seller's permit as a resale number or resale permit. A seller's permit is a state license that allows you to sell items at the wholesale or retail level and to issue resale certificates to suppliers. Issuing a resale certificate allows you to buy items you will sell in your business operations without paying amounts for tax to your suppliers.

Generally, if you make three or more sales in a 12-month period, you are required to hold a seller's permit. This applies even if your sales are made through Internet auction houses, such as eBay and uBid, or websites that offer online classified advertisements (online advertisers) such as Craigslist. For additional information, please see publication 177 (</formspubs/pub177/index.html>), *Internet Auction Sales and Purchases*, available at [www.boe.ca.gov/](http://www.boe.ca.gov/) or call our Taxpayer Information Section at 800-400-7115.

When you have a garage sale and sell used items, you are generally not required to hold a seller's permit unless you have more than two garage sales in a 12-month period or are required to hold a seller's permit for being engaged in the business of selling merchandise, goods or items (tangible personal property). Please see Regulation 1595 (</lawguides/business/current/btlg/vol1/sutr/1595.html>), *Occasional Sales—Sale of A Business—Business Reorganization*.

Making sales of merchandise, goods or other items in California without first getting a seller's permit violates the law and subjects you to fines and penalties. California law requires a seller's permit be held for warehouse locations when: the retailer has one or more sales offices in this state, the sale is negotiated out of state, and the order is filled from the retailer's in-state stock of goods at the warehouse. You are not required to hold a seller's permit if all your sales are made exclusively in interstate or foreign commerce, and you make no sales in this state. However, your business may meet the requirements of a "qualified purchaser" and you may be required to register for a use tax account as discussed in the next section.

**ATTACHMENT  
ITEM NO. 2**

*Note:* This publication summarizes the law and applicable regulations in effect when the publication was written, as noted above. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, decisions will be based on the law and not on this publication.

California law requires a "qualified purchaser" to register with the BOE and annually report and pay use tax directly to the BOE through our eFiling system. A "qualified purchaser" includes businesses with at least \$100,000 in annual gross receipts from business operations. Gross receipts are the total of all receipts from both in-state and out-of-state business operations. For additional information, see publication 126, ([pdf/pub126.pdf](#)) *Mandatory Use Tax Registration for Service Enterprises* available from our website.

## **Websites**

A retailer with a computer server located in California on which a website resides may not be required to have a seller's permit unless the retailer has a proprietary interest in the server and the activities at that location otherwise qualify for a seller's permit. You may need to obtain other licenses, permits, or documents to operate your business (see Additional requirements for your business) (#) or you may be required to register for a use tax account with the BOE if you are a "qualified purchaser", as explained above. Please note that a California seller's permit does not grant you any other rights, privileges, or status under local, state, or U.S. law.

## **Obligations of seller's permit holders**

When you hold a seller's permit, you must file sales and use tax returns and pay any sales or use tax due on your sales and purchases. You must report and pay sales tax on each taxable sale. At the time you make the sale, you may collect from your customer an amount equal to the tax you will owe. As a registered seller, you will need to take the time to learn how to properly apply the sales and use tax law in your business operations. You also must keep adequate records that document your sales and purchases. Our classes publications and online seminars can help you learn to meet your obligations and help ensure that you don't pay more or less tax than you owe.

*Note:* You should not obtain a seller's permit just to take advantage of the opportunity to issue resale certificates to your suppliers. Issuing a resale certificate to avoid paying tax on items you will use rather than sell is against the law and may result in fines and penalties. It is a misdemeanor to issue a resale certificate if at the time of purchase you do not intend to resell the merchandise.

You must notify the BOE if you intend to sell or close your business. If you are not making sales, your permit may be canceled. For more information, please see Regulation 1699 ([/lawguides/business/current/btlg/vol1/sutr/1699.html](http://lawguides/business/current/btlg/vol1/sutr/1699.html)) *Permits* and publication 74 ([/pdf/pub74.pdf](http://pdf/pub74.pdf)) *Closing Out Your Seller's Permit*

You can register on our website at [www.boe.ca.gov](http://www.boe.ca.gov) (/) by selecting *New Registration* (<https://efile.boe.ca.gov/ereg/index.boe>), and then select *Register a business activity with BOE*. You can also register in person at any of our field offices ([/info/phone.htm](http://info/phone.htm)). Please contact our Customer Service Center for assistance at 1-800-400-7115 (TTY:711). You will need to provide information about your business, including bank account details and estimated income. You must also provide information about yourself including your driver license number and social security number (or substitute documents, as explained on the application). If you purchased your business, you'll need to provide the previous owner's name and seller's permit number. To make sure you won't have to pay any tax, interest or penalties owed by the previous owner, you should request in writing, a tax clearance from us 60 days prior to your purchase. There is no charge for a seller's permit. However, depending on your type of business and expected taxable sales, we may ask you for a security deposit. The BOE may be able to issue your permit the same day.

### **Temporary permits**

If you make sales of a temporary nature such as Christmas tree sales or sales of fireworks, you may apply for a temporary seller's permit. Temporary permits are issued to those whose sales activity will last no longer than 90 days.

### **Additional requirements for your business**

In addition to registering for a seller's permit, you may need to register for one of the other taxes and fees we administer. You can register on our website at [www.boe.ca.gov](http://www.boe.ca.gov) (/) by selecting *New Registration* (<https://efile.boe.ca.gov/ereg/index.boe>), and then select *Register a business activity with BOE*. You can also register in person at any of our field offices ([/info/phone.htm](http://info/phone.htm)). Please contact our Customer Service Center at 1-800-400-7115 (TTY:711) for additional information. The state and federal governments have additional requirements for businesses. You must file income tax returns with the California Franchise Tax Board and the U.S. Internal Revenue Service (IRS). Certain businesses are required to obtain permits from the California Department of Consumer Affairs and state and local environmental agencies. If you have employees, you are required to register as an employer with the California Employment Development Department and the IRS and to pay payroll withholding taxes. You will probably need to obtain a business license or other extensive local, state, and federal business permit information at a special site on the Internet: [www.calgold.ca.gov](http://www.calgold.ca.gov) (<http://www.calgold.ca.gov>).

Chambers of commerce, economic development organizations, and other business organizations are other good sources of information. Often the business licensing department of a city or county can assist you, too. Some counties and cities publish special guides for small businesses, available free or at a low cost.

For more information regarding seller's permits, please see publication 73 ([/pdf/pub73.pdf](#)) , *Your California Seller's Permit*. For a complete list of other BOE-administered taxes and fees, please see publication 51 ([/pdf/pub51.pdf](#)) , *Board of Equalization Resource Guide to Free Tax Products and Services*. You may find these and all our publications at our website at [www.boe.ca.gov](http://www.boe.ca.gov) ([/](#)) , under the Forms & Pubs ([/formspubs/](#)) tab.

## Regulations

1595 ([/lawguides/business/current/btlg/vol1/sutr/1595.html](#)) *Occasional Sales—Sale of a Business—Business Reorganization*

1699 ([/lawguides/business/current/btlg/vol1/sutr/1699.html](#)) *Permits*

## Publications

51 ([/pdf/pub51.pdf](#)) *Board of Equalization Resource Guide to Free Tax Products and Services*

73 ([/pdf/pub73.pdf](#)) *Your California Seller's Permit*

74 ([/pdf/pub74.pdf](#)) *Closing Out Your Seller's Permit*

126 ([/pdf/pub126.pdf](#)) *Mandatory Use Tax Registration for Service Enterprises*

177 ([/formspubs/pub177/index.html](#)) *Internet Auction Sales and Purchases*

California Board of Equalization

Article 7, Regulation 1595- Occasional Sales

<https://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/1595.html>

Relevant Excerpt

(4) SERIES OF SALES REQUIRING THE HOLDING OF A SELLER'S PERMIT. A person not otherwise engaged in an activity requiring the holding of a seller's permit may make a series of sales sufficient in number, scope and character to require the holding of a seller's permit. The sale in that series of sales, and subsequent sales, during any 12-month period which resulted in the requirement to hold a permit are subject to tax, unless otherwise exempt.

(A) Number.

1. Generally the minimum number of sales to require the holding of a seller's permit by a person not otherwise engaged in a selling activity is three within any 12 month period.

Attachment 3