

ORDINANCE NUMBER O- 20436 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 25 2014

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 33.0102; AMENDING CHAPTER 3, ARTICLE 3, DIVISION 11 BY RETITLING THE DIVISION AND RENUMBERING SECTION 33.1101 TO 33.1103, ADDING NEW SECTION 33.1101, AMENDING SECTION 33.1102, AMENDING AND RENUMBERING SECTIONS 33.1103 TO 33.1104, 33.1104 TO 33.1105, 33.1105 TO 33.1106, AND 33.1106 TO 33.1107, AND ADDING NEW SECTION 33.1108, ALL RELATING TO SECONDHAND DEALERS, PAWNBROKERS, AND JUNK YARDS.

WHEREAS, the City desires to make changes to the San Diego Municipal Code (SDMC) to conform to current state law and court cases relating to secondhand dealers, pawnbrokers, and junk yards; and

WHEREAS, a municipality may regulate secondhand dealers and pawnbrokers if the local regulations are consistent with state law; regulations inconsistent with state law are preempted; and

WHEREAS, several regulations in Chapter 3, Article 3, Division 11 of the SDMC are inconsistent with state law; and

WHEREAS, amendments will be made to the SDMC to conform with the rulings in *Malish v. City of San Diego*, 84 Cal. App. 4th 725 (2000), *Tosi v. County of Fresno*, 161 Cal. App. 4th 799 (2008), and for purposes of protecting public health and safety and reducing crime; and

WHEREAS, amendments will be made to define tangible and non-tangible secondhand dealers and to only regulate secondhand dealers (those selling tangible and non-tangible personal property), pawnbrokers and junk yards, and delete references to junk dealers and junk collectors to ensure that there is no confusion as to what industries are regulated by Chapter 3, Article 3, Division 11; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 3, Article 3, Division 1 of the San Diego Municipal Code is amended by amending section 33.0102, to read as follows:

§33.0102 Separate Permits Required

- (a) A separate *police permit* is required for each police regulated business activity carried on at a specific location, except for *secondhand dealers* and *secondhand non-tangible personal property dealers*, as defined in section 33.1101. *Secondhand dealers* and *secondhand non-tangible personal property dealers* are only required to obtain one *permit* per dealer; however, a copy of the *permit* must be posted in accordance with this Division.
- (b) [No change in text.]

Section 2. That Chapter 3, Article 3, Division 11 of the San Diego Municipal Code is amended by renaming the title of the division and renumbering section 33.1101 to 33.1103, adding new section 33.1101, amending section 33.1102, amending and renumbering sections 33.1103 to 33.1104, 33.1104 to 33.1105, 33.1105 to 33.1106, and 33.1106 to 33.1107, and adding new section 33.1108, to read as follows:

§33.1101 Definitions

For the purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Builders' tools has the same meaning as in California Business and Professions Code section 21550.

Engaged in the business shall include owning, conducting, operating, managing, or carrying on of a commercial or industrial enterprise through which property is sold, furnished, or constructed.

Junk has the same meaning as in California Business and Professions Code section 21600.

Junk yard has the same meaning as in California Business and Professions Code section 21602.

Pawnbroker has the same meaning as in California Financial Code section 21000.

Secondhand dealer has the same meaning as in California Business and Professions Code sections 21626 and 21626.5.

Secondhand non-tangible personal property dealer means a person who is *engaged in the business* of selling, or buying and reselling, previously-used goods including, but not limited to, the following categories of goods:

- (1) Clothing, including shoes.
- (2) Books and magazines, including comic books and textbooks.
- (3) Household furnishings, including furniture, floor coverings, bedding, kitchen and cooking utensils, crockery, glassware, and appliances.

(4) Sports and recreational equipment.

(5) *Builders' tools.*

The term *secondhand non-tangible personal property dealer* does not include persons *engaged in the business* of buying and reselling, selling, or otherwise dealing in secondhand or used motor vehicles, trailers, or boats; persons engaged in the selling of new automobile tires or batteries or other automotive equipment taking in part payment used articles of the same kind and thereafter selling or disposing of the same as referenced in California Business and Professions Code section 21603; core recyclers, as defined in California Business and Professions Code section 21610; automobile dismantlers, as defined in California Vehicle Code section 220 and not exempted by California Vehicle Code section 221; coin dealers, as defined in California Business and Professions Code section 21626; licensed firearms dealers, as defined in California Penal Code and regulated under Chapter 3, Article 3, Division 42 of the San Diego Municipal Code; *pawnbrokers*; junk dealers, as defined in California Business and Professions Code section 21601; recyclers, as defined in California Public Resources Code section 14519.5; business machine dealers, as defined in California Business and Professions Code section 21628.5; swap meet, vendor, or operator, as defined in California Business and Professions Code section 21661; or *secondhand dealers*.

Tangible personal property has the same meaning as in California Business and Professions Code section 21627.

§33.1102 Permit Required

It is unlawful for any *person* to operate as a *secondhand dealer, pawnbroker, or*

secondhand non-tangible personal property dealer without a *police permit*.

§33.1103 Records Required — Reports Required

- (a) All *pawnbrokers* and *secondhand dealers* shall keep a record in accordance with state law of any and all articles acquired by purchase, pledge or otherwise.
- (b) The record and the articles shall at all times during ordinary business hours be subject to inspection by any *police officer* of the City.
- (c) Such *person* shall, in addition to keeping such records, daily deliver to the *Chief of Police*, upon forms approved or provided by the California Department of Justice for that purpose, a full, true and complete report of all such previously named articles acquired by purchase, pledge or otherwise by such persons during the entire calendar day preceding such report. All records and forms shall be legible.
- (d) *Secondhand non-tangible personal property dealers* shall not be required to keep a record of articles acquired by purchase or otherwise, except for the purchase of *builders' tools*, in which case records shall be kept in accordance with state law. However, such articles and records and the place of business of each *secondhand non-tangible personal property dealer* shall at all times during their normal business hours be subject to inspection by any *police officer* of the City as provided in section 33.0103.

§33.1104 Pawnbrokers—Records of Loans

All *pawnbrokers* shall keep a record of all loans made by them, which shall at all times during ordinary business hours be open to inspection by any *police officer*

of the City. Such record shall contain the names and addresses of all persons to whom loans are made, a reasonable description of such persons, the amounts of money loaned, the length of time during which such loan is to continue, and the rate of interest exacted for such loans.

§33.1105 Disposal of Merchandise — Regulations

It shall be unlawful for any *pawnbroker* or *secondhand dealer* to sell or otherwise dispose of any article, merchandise, or thing, except to the pledgor, for a period of thirty days from the date the report of its acquisition was made to the *Chief of Police*. All transactions shall be conducted only on the licensed *premises*.

§33.1106 Junk Yard — Operating Rules

It shall be unlawful for any *person* to carry on, maintain or conduct a *junk yard* or to deal in secondhand articles in the City of San Diego, unless such business is carried on, maintained or conducted in compliance with the following regulations:

- (a) That such business shall be carried on, maintained or conducted entirely inside an enclosed building or buildings, unless the *premises* on which such business is carried on, maintained or conducted shall be entirely enclosed by a solid fence or wall constructed according to the requirements of the Building and Zoning Codes of said City.
- (b) That such fence or wall shall be maintained in a neat, substantial, safe condition and shall be painted.
- (c) No sign, picture, transparency, advertisement or mechanical device which is used for the purpose of, or which does advertise or bring to notice any *person* or persons, or article or articles of merchandise, or any business or

profession, or anything that is to be or has been sold, bartered or given away, shall be placed, or caused to be placed or to be maintained, or caused to be maintained, upon the outward face of such fence or wall; except that the business carried on, maintained or conducted within such fenced or walled enclosure may be advertised by use of a space not exceeding six feet in height and fifteen feet in length on each side of such enclosure.

- (d) Gates for access to the *premises* shall swing inwardly, and such gates shall be kept closed when the *premises* are not open for business.
- (e) That no *junk* or secondhand article shall be piled, or permitted to be piled, in excess of the height of the enclosing fence or wall or nearer than two feet thereto.
- (f) That all gas, oil, or other inflammable liquid shall be drained and removed from any inoperable motor vehicle located thereon.
- (g) That the *premises* shall be so arranged that reasonable inspection or access to all parts of the *premises* can be had at any time by the proper fire, health, police and building authorities.
- (h) That no license shall hereafter be issued until the provisions of this Division have been complied with.

§33.1107 Pawnbrokers, Secondhand Dealers — Operating Hours

It shall be unlawful for any *pawnbroker* or *secondhand dealer* to conduct such business between the hours of 9:30 p.m. and 8:30 a.m. *Secondhand non-tangible personal property dealers* are excluded from this restriction.


§33.1108 Denial of Permit Application, Suspension, or Revocation of Permit

Notwithstanding section 33.0403, whenever an action to deny an application for a *permit* or to suspend or revoke a permit held by a *secondhand dealer* or *pawnbroker* is based upon a *violation* of Division 8, Chapter 9, Articles 4 or 5 of the California Business and Professions Code, or Division 8, Chapters 1 or 2 of the California Financial Code, or this Division, the *violation* alleged must demonstrate a pattern of conduct.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

Paige E. Folkman
Deputy City Attorney

PEF:amt
October 8, 2014
Or.Dept:Police
Doc. No. 841378_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of ~~NOV 10 2014~~.

ELIZABETH S. MALAND
City Clerk

By *Mary Setranyi*
Deputy City Clerk

Approved: 11/24/14
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 33.0102; AMENDING CHAPTER 3, ARTICLE 3, DIVISION 11 BY RETITLING THE DIVISION AND RENUMBERING SECTION 33.1101 TO 33.1103, ADDING NEW SECTION 33.1101, AMENDING SECTION 33.1102, AMENDING AND RENUMBERING SECTIONS 33.1103 TO 33.1104, 33.1104 TO 33.1105, 33.1105 TO 33.1106, AND 33.1106 TO 33.1107, AND ADDING NEW SECTION 33.1108, ALL RELATING TO SECONDHAND DEALERS, PAWNBROKERS, AND JUNK YARDS.

§33.0102 Separate Permits Required

- (a) A separate ~~police permit~~police permit is required for each police-regulated business activity carried on at a specific location, except for ~~Secondhand Dealers~~ secondhand dealers and secondhand non-tangible personal property dealers, as defined in section 33.1101. ~~Secondhand Dealers~~ Secondhand dealers and secondhand non-tangible personal property dealers are only required to obtain one ~~permit~~permit per dealer; however, a copy of the ~~permit~~permit must be posted in accordance with this Division.
- (b) [No change in text.]

**Division 11: ~~Junk Dealer, Junk Collector, Secondhand Dealers,~~
~~Pawn-Broker~~brokers, and Junk Yards**

§33.1101

Definitions

For the purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Builders' tools has the same meaning as in California Business and Professions Code section 21550.

Engaged in the business shall include owning, conducting, operating, managing, or carrying on of a commercial or industrial enterprise through which property is sold, furnished, or constructed.

Junk has the same meaning as in California Business and Professions Code section 21600.

Junk yard has the same meaning as in California Business and Professions Code section 21602.

Pawnbroker has the same meaning as in California Financial Code section 21000.

Secondhand dealer has the same meaning as in California Business and Professions Code sections 21626 and 21626.5.

Secondhand non-tangible personal property dealer means a person who is engaged in the business of selling, or buying and reselling, previously-used goods including, but not limited to, the following categories of goods:

- (1) *Clothing, including shoes.*
- (2) *Books and magazines, including comic books and textbooks.*

(3) Household furnishings, including furniture, floor coverings, bedding, kitchen and cooking utensils, crockery, glassware, and appliances.

(4) Sports and recreational equipment.

(5) Builders' tools.

The term *secondhand non-tangible personal property dealer* does not include persons engaged in the business of buying and reselling, selling, or otherwise dealing in secondhand or used motor vehicles, trailers, or boats; persons engaged in the selling of new automobile tires or batteries or other automotive equipment taking in part payment used articles of the same kind and thereafter selling or disposing of the same as referenced in California Business and Professions Code section 21603; core recyclers, as defined in California Business and Professions Code section 21610; automobile dismantlers, as defined in California Vehicle Code section 220 and not exempted by California Vehicle Code section 221; coin dealers, as defined in California Business and Professions Code section 21626; licensed firearms dealers, as defined in California Penal Code and regulated under Chapter 3, Article 3, Division 42 of the San Diego Municipal Code; pawnbrokers; junk dealers, as defined in California Business and Professions Code section 21601; recyclers, as defined in California Public Resources Code section 14519.5; business machine dealers, as defined in California Business and Professions Code section 21628.5; swap meet, vendor, or operator, as defined in California Business and Professions Code section 21661; or *secondhand dealers*.

Tangible personal property has the same meaning as in California Business and Professions Code section 21627.

§33.1102 Use of Fictitious Name Prohibited Permit Required

~~It shall be unlawful for any person to sign or give a fictitious name or address upon the deposit, sale or pledge of any goods, wares, merchandise or a thing of value, or for use in the report form required to be made by the provisions of this Division or for use in the register required to be kept by other provisions of law. Any such report made, delivered or received pursuant to this Division shall be open only to the inspection of the Police Department of said City, unless ordered exhibited by a court of competent jurisdiction.~~

It is unlawful for any person to operate as a secondhand dealer, pawnbroker, or secondhand non-tangible personal property dealer without a police permit.

§33.110103 Records Required — Reports Required

- (a) All junk dealers, as defined in Business and Professions Code section 21601, pawnbrokers, as defined in Financial Code section 21000, and dealers in secondhand articles as defined in Business and Professions Code section 21626 pawnbrokers and secondhand dealers shall keep a record in accordance with state law of any and all articles acquired by purchase, pledge or otherwise.
- (b) The record and the articles shall at all times during ordinary business hours be subject to inspection by any ~~police officer~~ police officer of said the City.
- (c) Such ~~person~~ person shall, in addition to keeping such records, daily deliver to the ~~Chief of Police~~ Chief of Police, upon forms of a type and content

~~which shall be approved by the Chief of Police or provided by the California Department of Justice for that purpose, and setting forth a full, true and complete report of all such previously named articles acquired by purchase, pledge or otherwise by such persons during the entire calendar day preceding such report, together with the hour and date of the transaction and a reasonable description and true name of the person from whom such article was so acquired, as accurately as can be obtained by the person making such report. All records and forms shall be legible.~~

- (d) Secondhand non-tangible personal property dealers shall not be required to keep a record of articles acquired by purchase or otherwise, except for the purchase of builders' tools, in which case records shall be kept in accordance with state law. However, such articles and records and the place of business of each secondhand non-tangible personal property dealer shall at all times during their normal business hours be subject to inspection by any police officer of the City as provided in section 33.0103.

§33.110304 Pawnbrokers—Records of Loans

All ~~pawnbrokers~~ pawnbrokers shall keep a record of all loans made by them, which shall at all times during ordinary business hours be open to inspection by any ~~police officer~~ police officer of said ~~the~~ City. Such record shall contain the names and addresses of all persons to whom loans are made, a reasonable description of such persons, the amounts of money loaned, the length of time during which such loan is to continue, and the rate of interest exacted for such loans.

§33.110405 Disposal of Merchandise — Regulations

It shall be unlawful for any ~~pawnbroker~~ pawnbroker, or ~~secondhand dealer~~ secondhand dealer, or ~~junk dealer~~ to sell or otherwise dispose of any article, merchandise, or thing within thirty (30) days, except to the pledgor, after the same has been received or purchased or to fail to keep such article, merchandise or thing unaltered, as pledged or purchased, in lots separate and apart from other articles, merchandise or things in the place of business of such pawnbroker, secondhand dealer, or junk dealer, for a period of thirty (30) days from the date of pledge or purchase thereof, except upon the approval of the report of its acquisition was made to the Chief of Police Chief of Police of The City of San Diego. All transactions hereunder shall be conducted only on the licensed ~~premises~~ premises.

§33.110506 Junk Yard — Operating Rules

It shall be unlawful for any ~~person~~ person to carry on, maintain or conduct a junk yard junk yard or to deal in secondhand articles in the City of San Diego, unless such business is carried on, maintained or conducted in compliance with the following regulations:

- (a) That such business shall be carried on, maintained or conducted entirely inside an enclosed building or buildings, unless the ~~premises~~ premises on which such business is carried on, maintained or conducted shall be entirely enclosed by a solid fence or wall constructed according to the requirements of the Building and Zoning Codes of said City.

- (b) That such fence or wall shall be maintained in a neat, substantial, safe condition and shall be painted.
- (c) No sign, picture, transparency, advertisement or mechanical device which is used for the purpose of, or which does advertise or bring to notice any ~~person~~person or persons, or article or articles of merchandise, or any business or profession, or anything that is to be or has been sold, bartered or given away, shall be placed, or caused to be placed or to be maintained, or caused to be maintained, upon the outward face of such fence or wall; except that the business carried on, maintained or conducted within such fenced or walled enclosure may be advertised by use of a space not exceeding six ~~(6)~~ feet in height and fifteen ~~(15)~~ feet in length on each side of such enclosure.
- (d) Gates for access to the ~~premises~~premises shall swing inwardly, and such gates shall be kept closed when the ~~premises~~premises are not open for business.
- (e) That no ~~junk~~junk or secondhand article shall be piled, or permitted to be piled, in excess of the height of the enclosing fence or wall or nearer than two ~~(2)~~ feet thereto.
- (f) That all gas, oil, or other inflammable liquid shall be drained and removed from any inoperable motor vehicle located thereon.
- (g) That the ~~premises~~premises shall be so arranged that reasonable inspection or access to all parts of the ~~premises~~premises can be had

at any time by the proper fire, health, police and building authorities.

- (h) That no license shall hereafter be issued until the provisions of this Division have been complied with.

§33.110607 Pawnbrokers, Secondhand Dealers — Operating Hours

It shall be unlawful for any ~~person conducting, managing or carrying on the business of pawnbroker~~ *pawnbroker* or ~~secondhand dealer~~ *secondhand dealer* to conduct such business between the hours of 9:30 p.m. and 8:30 a.m. *Secondhand non-tangible personal property dealers* are excluded from this restriction.

§33.1108 Denial of Permit Application, Suspension, or Revocation of Permit

Notwithstanding section 33.0403, whenever an action to deny an application for a permit or to suspend or revoke a permit held by a *secondhand dealer* or *pawnbroker* is based upon a violation of Division 8, Chapter 9, Articles 4 or 5 of the California Business and Professions Code, or Division 8, Chapters 1 or 2 of the California Financial Code, or this Division, the violation alleged must demonstrate a pattern of conduct.

PEF:amt
October 8, 2014
Or.Dept:Police
Doc. No. 841373_3

Passed by the Council of The City of San Diego on NOV 10 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 25 2014

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 28 2014

, and on

NOV 25 2014

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20436