



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 16, 2012 REPORT NO: 12-089
ATTENTION: Public Safety & Neighborhood Services Committee
SUBJECT: Vice Permits and Licensing Proposed Ordinance Changes

REQUESTED ACTION:

Adopt the amendments to Chapter 3, Article 3 of the San Diego Municipal Code (SDMC) reflecting the following changes:

1. Division 1. Clarification of the exemption for Secondhand Dealers and Secondhand Non-tangible Dealers regarding the requirement for separate permits.
2. Division 5. Designation of the Fire-Rescue Chief to hear appeals related to fire-harmful gas alarm penalties and revocations.
3. Division 6. Deletion of all listed exemptions except government entities.
4. Division 7. Deletion of non-profit promoters.
5. Division 11. Addition of the definitions identified in California Business and Professions relating to “Builder tools”, “Junk”, “Junk yard”, “Pawnbroker”, Secondhand dealer”, “Secondhand non-tangible personal property dealer”, and “Tangible personal property”.
6. Division 14. Deletion of exemption for non-profits.
7. Division 15. Deletion of exemption for non-profits.
8. Division 35. Addition of an exception for those massage therapists who are licensed by the State of California. Deletion of massage trainee.
9. Division 37. Deletion of exemptions except Government buildings and the City of San Diego.
10. Division 44. Deletion of massage trainee.

STAFF RECOMMENDATION:

Approve the amendments to Chapter 3, Article 3, Division 1, Division 5, Division 6, Division 7, Division 11, Division 14, Division 15, Division 35, Division 37, and Division 44.

SUMMARY:

The San Diego Police Department (Department) is responsible for issuing permits and regulating a variety of businesses and occupations collectively referred to as *Police Regulated Occupations and Businesses*.

Chapter 3 of the SDMC identifies certain exemptions regarding the acquisition and payment for a police permit in the codes regulating promoters, entertainment permits, solicitors, and alarms. These exemptions are in conflict with the intent of Proposition 26 which was passed by voters on November 2, 2010.

The City Attorney has advised the Department that the existence of exemptions for individuals or entities while requiring others to pay for the same permit fee highlights a potential conflict with the intention of Proposition 26. Permit fees are calculated based on the type of service rendered, the number of permits provided, and the estimated number of hours required to regulate the industry or event. Those that are afforded an exemption are not required to pay for their permit which in some cases results in that cost being spread across those regulated industries that are required to pay.

In addition, this report identifies other changes to the SDMC that are needed because of the impact of other changes to California State law. Some of the proposed changes only serve to provide clarification to existing practices.

MUNICIPAL CODE AMENDMENTS:

The Department is responsible for issuing permits and regulating a variety of businesses and occupations collectively referred to as *Police Regulated Occupations and Businesses*.

Chapter 3 of the SDMC identifies certain exemptions regarding the acquisition and payment for a police permit for non-profits. Exemptions are in conflict with the intent of Proposition 26 which was passed by voters on November 2, 2010. See City Attorney Memorandum of Law 11-3, Dated March 4, 2011.

Required Police Permits, Article 3 Division 1:

Article 3, Division 1 of the SDMC requires that Police regulated businesses obtain a separate permit for each regulated business activity. Section 33.0102 provides an exception for Secondhand Dealers. There are two types of Secondhand Dealers, secondhand tangible and secondhand non-tangible. Secondhand tangible dealers deal in serialized property and precious metals; while secondhand non-tangible sell used books, clothing, and furniture. The addition of this clarification will continue to allow Secondhand dealers to operate as either a non-tangible or tangible dealer with one permit.

Fire-Harmful Gas Alarms Revocations and Hearings, Article 3 Division 5:

Article 3, Division 5 currently describes the process for appeals relating to the Departments enforcement of the SDMC as it relates to Police Regulated Businesses. Section 33.0501 (a) – (g) describes the steps in the process. Section 33.0501 (h) would be added to provide the same process for the Fire-Rescue Department's Fire-Harmful Gas Alarm program. The Fire-Rescue Department utilizes the same penalty, revocation, and appeals process used by the Police Department. This change would designate the Fire-Rescue Chief to hear appeals related to Fire-Harmful Gas Alarm system revocations and penalties.

Exemptions, Article 3 Division 6:

Exempt institutions have been precluded from the requirement to pay for a police regulated business permit and are defined in section 33.0601 of the SDMC as "any federal, state, county, or municipal organization, or any non-profit organization". These exemptions directly impact the Department's compliance with Proposition 26 and the regulation of promoters, single-event entertainment permits, and alarm permits. Non profit organizations will be deleted as an exemption.

Promoters, Article 3 Division 7:

A Promoter is defined in section 33.0702 of the SDMC as “a person who contracts for or arranges a venue to provide any police-regulated activity, and who is responsible for or organizes the presentation of the activities or events”. Currently the City has 20 active promoters. They are responsible for arranging entertainment for venues throughout the City.

Section 33.0707 of the SDMC identifies promoters of theatrical, athletic, educational, religious, civic, charitable, political, circuses, rodeos, carnivals, and non-profits as exempt. Non-profits’ will be removed as exempt. As advised by the City Attorney, these exemptions are no longer legal under the intent of Proposition 26. The Department does not currently track exempted promoters and therefore is unable to determine the impact of this change.

Secondhand Dealers, Pawnbrokers and Junk Yards, Article 3 Division 11:

Article 3, Division 11 of the SDMC has been updated to ensure that there is no confusion as to what industries are regulated. The SDMC regulates secondhand dealers, pawnbrokers and junk yards, and not the sale of junk and scrap metal by junk dealers and recyclers. A definition section is added to Division 11 and the two types of secondhand dealers are defined—those selling tangible and non-tangible personal property. In addition, the Division is updated so the municipal code is not in conflict with the California Business and Professions Code and California Financial Code, which regulates secondhand dealers and pawnbrokers. To be consistent with state law the SDMC is amended to substitute that the Chief of Police must approve of the required reporting forms, with the requirement that the forms must be approved by the Department of Justice. State law does not require a dealer to obtain the hour and date of the transaction nor a reasonable description of the person from whom the dealer obtain the property. This reporting requirement is deleted from the municipal code to be consistent with state law. In addition, the requirement to retain newly acquired property for 30 days is amended to be from the date the report is made to the Chief of Police, and not from the date the item is purchased. The SDMC is further amended to add a section that clarifies that if any regulatory action is taken against a permit because of a violation of the municipal code or the state codes, it must be based on a pattern of conduct and not based upon a single violation.

Solicitors Permits, Article 3 Division 14:

Article 3, Division 14 of the SDMC requires those conducting door to door interviewing or sales activity in public obtain a permit. Currently section 33.1402 exempts non-profits. This exemption will be removed in order to be consistent with the concerns over Proposition 26. The exemptions for charitable, religious, and political organizations will remain.

Single-Event Entertainment Permits, Article 3 Division 15:

Article 3, Division 15 of the SDMC provides for police regulation of entertainment venues including what is called single-event entertainment permits. The City recognizes the need to regulate entertainment venues to ensure the safety of those attending. The issues involved in regulating entertainment include alcohol, security, ages of attendees, type of entertainment, and location.

Currently section 33.1504 exempts events conducted by or sponsored by any bona fide club, organization, society or association which is exempt from taxation pursuant to Internal Revenue Code section 501(c)(3), when all proceeds, if any arising from such *entertainment* are used exclusively for the benevolent purposes of such club, society or association. The section requires that the entity comply with all applicable laws.

The Department issued 95 paid single-event permits in 2011. Before the permit is issued, Vice Permits and Licensing officers review the application and conducts required criminal history checks. The officer meets with the applicant either in person and/or over the phone to discuss the type of entertainment, alcohol issues (ABC Permit), crowd size, security issues, historical issues, impact on the community, and any other issues that may impact the attendees or the neighborhood.

In addition to the 95 single-event paid permits issued, an additional 188 were issued to entities or persons falling under the list of exemptions. Of the exempted permits, 179 events involved alcohol. These permits required the same attention to detail as the paid 95 but did not require the payment of the cost recovery fee for the permit. As advised by the City Attorney, these exemptions are no longer legal under the intent of Proposition 26. All single events that fulfill the requirements under Article 3 Division 15 of the SDMC will require payment of the cost recovery fee. The Fiscal Year 2013 budget is reflective of this change. The cost recovery fee and corresponding revenue has been calculated with the assumption that there will be no exemptions for this permit type.

Those events that are on private property and not open to the public would not require a permit.

Massage Article 3 Division 35:

Article 3, Division 35 of the SDMC provides for police regulation and administration of the massage industry. The City recognizes the importance of insuring compliance by those involved in the massage industry to provide a safe and clean environment as well as to prevent criminal activity. There are approximately 85 permitted businesses and 48 individuals permitted in the City of San Diego.

In 2008, the California Legislature passed Senate Bill 731 which implemented a voluntary state certification program for massage practitioners and massage therapists. In 2009, the bill was codified in California Business and Professions Code section 4600 et seq. The provisions of the Business & Professions Code set standards that therapists must meet to obtain certification. The certifications are issued by a nonprofit organization called the California Massage Therapy Council (CAMTC).

The purpose of the new law was to make it easier for individual massage therapists to practice throughout the state without having to obtain a license to practice from each local municipality. The new state law prohibits cities from requiring any additional permit for an individual to practice massage so long as they have a state issued certificate from the CAMTC. However, those therapists who chose to not obtain a state certificate may still be required by a local municipality to obtain a local police permit to practice. Therefore the SDMC needs to be revised to exempt those massage therapists who hold a valid state certificate from obtaining a police permit. The Department has seen a reduction of 986 massage permits (79% reduction from FY09 to FY11) and the loss of \$340,000 in cost recovery.

In addition, the SDMC requires that a massage trainee obtain a permit. The qualifying test is no longer provided by the County of San Diego. Therefore section 33.3512 needs to be eliminated.

The educational requirements to obtain a police permit will be updated to reflect those schools and exams approved by the CAMTC. The CAMTC has listed criteria for schools and exams that it recognizes as meeting the legal requirements for applicants to obtain a state issued certificate. The CAMTC mandates that schools either be nationally accredited, state approved by the California Bureau for Private Postsecondary Education (BPPE), or a California community college. The CAMTC

determines if the curricula of schools meet the legal requirements for applicants to obtain certification, including general education guidelines. To ensure that the educational requirements to obtain a police permit are not less than what is required by the CAMTC, the requirements in the SDMC will be revised to require educational instruction from one of the schools approved by the CAMTC.

The FY 2013 budget includes the elimination of the massage trainee permit and a reduction of revenue reflective of the decline of permits within the City of San Diego.

Alarm Permits, Article 3 Division 37:

Article 3, Division 37 of the SDMC provides for police regulation and administration of residential and commercial alarms. The City recognizes the importance of a properly managed alarm program to ensure a low number of false alarms and that all monitored alarms are properly permitted to ensure proper police response. There are approximately 37,000 permitted residential and commercial alarms in the City of San Diego.

The Department is currently working with Fire Rescue to identify the best way to implement needed changes to the alarm program. Currently, the backbone of the system is a dated software program that was written more than 20 years ago. The system is further encumbered by an inefficient SDMC with a complicated penalty structure. In spite of the short comings, the Department has seen a decrease in the total number of false alarm calls since the last revision to the SDMC in 2007.

The first step in the process is to amend the existing SDMC and eliminate the exemptions to the permit requirement in section 33.3701. The exemption identifies the City, all other government agencies, banks, and savings and loans. The City and other government agencies would continue to be exempt but all others would be eliminated as required by Proposition 26.

This would require approximately 257 banks and 360 non-profits to pay for and be regulated alarm permittees. This step will enable the Department to better hold those entities accountable for chronic false alarms. As long as they are exempt, they cannot be held accountable for penalty fees.

Subsequent to this municipal code change and the implementation of updated software, the Department will be able to modify the permit fees and the penalty fee schedules which should structure the alarm program so those responsible for chronic false alarms are paying the majority of the cost instead of those paying the permit fee.

Holistic Health Practitioners, Article 3 Division 44:

Article 3, Division 44 provides for police regulation of Holistic Health Practitioners. Section 33.4402 contains language identifying a "massage trainee". This language will be eliminated so as to be consistent with the changes to the massage industry covered in Article 3, Division 35.

Section 33.4410 will be eliminated. It identified a "Grandfather Clause" for Holistic Health Practitioners operating in 2001. This section has already expired and was not removed from the SDMC.

These changes are not anticipated to impact the budgeted cost recovery revenue included for these industries in the FY2013 budget.

FISCAL CONSIDERATIONS:

As discussed throughout this report. The FY2013 budget includes estimates of the proposed changes. Where applicable, the cost recovery fees in the FY2013 budget include estimates of previously exempted individuals or entities. In some cases, this has resulted in a decline of the permit fee as the overall number of permits will increase, thus spreading the cost of regulation to a larger number of permittees. The Department will closely monitor the activity of each of the industries and make adjustments as necessary.

As the Police Department is not recommending any changes to the number of officers assigned to these industries, the impact of these actions will not result in increased revenue, simply the reallocation of revenue among permit types.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Notices of the changes to the Municipal Code will be provided to current permit holders and new applicants at the time of application or renewal and will be posted at all San Diego Police Department facilities. The changes to the Municipal Code will also be posted on the City's web site.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Stakeholders include all current and future permit holders.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William Lansdowne".

William Lansdowne
Police Chief

ATTACHMENT