



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 3, 2014 REPORT NO: 14-049
ATTENTION: City Council
SUBJECT: Vice Permits and Licensing Proposed Ordinance Changes

REQUESTED ACTION:

The San Diego Police Department recommends the following amendments to the San Diego Municipal Code (SDMC):

- A. Secondhand, Pawnbrokers, and Junk Dealers
 - 1. Chapter 3, Article 3, Division 1. Clarification of the exemption for Secondhand Dealers and Secondhand Non-tangible Dealers regarding the requirement for separate permits.
 - 2. Chapter 3, Article 3, Division 11. Addition of a definitions section, include definition for secondhand dealers of non-tangible personal property, amend to require reporting on Department of Justice approved forms, property to be held for 30 days from the date of the report, and revocation of permits if a pattern of conduct is shown.

- B. Massage and Holistic Health Practitioners
 - 1. Chapter 3, Article 3, Division 35. Add definition of the State regulatory body to section 33.3502 . Elimination of section 33.3507 inspections of massage establishments by County Health Department. Deletion of entire massage trainee permit requirements in section 33.3512. An addition of an exemption for those massage therapists who are certified by the State of California in section 33.3513. Section 33.3527 will be amended to delete language related to County inspections. The grandfather clause in section 33.3529 has expired and will be eliminated.
 - 2. Chapter 3, Article 3, Division 44. Reference to massage trainee in section 33.4402 will be deleted. Section 33.4410, a now obsolete grandfather clause will be eliminated.
 - 3. Chapter 4, Article 6, Division 1. Massage Technician permits no longer are issued and the Article and Division will be eliminated.

C. Alarms

1. Chapter 3, Article 3, Division 5. Designation of the Fire-Rescue Chief to hear appeals related to fire-harmful gas alarm penalties and revocations.
2. Chapter 3, Article 3, Division 37. Deletion of exemptions except Government buildings and the City of San Diego.

There is a separate ordinance for each Sub Item above—A, B, and C. The Committee can accept all three ordinances and send each for full Council approval. Or, if the Committee finds it important to vet one of the Sub Items more thoroughly, then the Committee can approve of the other two Sub Items for full Council approval, and retain the one ordinance in order to develop more information.

STAFF RECOMMENDATION:

Approve; Sub Item A and the amendments to Chapter 3, Article 3, Division 1 and Division 11; Sub Item B and the amendments to Chapter 3, Article 3, Division 35; Division 44 and Chapter 4, Article 6, Division 1; Sub Item C and the amendments to Chapter 3, Article 3, Division 5 and Division 37.

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*. The Department is requesting the following amendments to the SDMC in order to stay current with changes to state law, more effectively capture accurate cost recovery revenue, protect public health and safety, and to better reduce crime.

Sub Item A - Secondhand, Pawnbrokers, and Junk Dealers

Required Police Permits, Chapter 3, Article 3 Division 1:

Chapter 3, Article 3, Division 1 of the SDMC requires that Police regulated businesses obtain a separate police permit for each regulated business activity carried on at a specific location. Section 33.0102 provides an exception for secondhand dealers, who are only required to obtain one permit per dealer. With the additional definition of a secondhand dealer added to Division 11 there will be two types of secondhand dealers: secondhand tangible and secondhand non-tangible dealers. Secondhand tangible dealers deal in serialized property and precious metals; while secondhand non-tangible sell used books, clothing, and furniture. Secondhand non-tangible personal property dealers will only be required to obtain one permit per dealer as well.

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

Chapter 3, Article 3, Division 11 of the SDMC police regulates secondhand dealers, pawnbroker businesses and junk yards. This Division is to be updated to reflect the court rulings in *Malish v. City of San Diego*, 84 Cal. App. 4th 725 (2000) and *Tosi v. County of Fresno*, 161 Cal. App. 4th 799 (2008).

In *Malish v. City of San Diego*, the Fourth District Court of Appeal found that certain provisions of Division 11 were preempted by the California Business and Professions Code. A city may duplicate a state's reporting and holding requirements, but only to the extent that they are

consistent with the Business and Professions Code. The SDMC will be amended to require forms approved by the Department of Justice, and not forms approved by the Chief of Police. It will also be amended to require a dealer to hold property for 30 days from the date of the report and not from the date the dealer receives or purchases the property. In addition, the SDMC will be updated to allow a permit to be revoked but only if a pattern of conduct can be shown, as required by *Malish*.

In *Tosi v. County of Fresno*, the Fifth District Court of Appeal found certain provisions of Fresno County's ordinances regulating junk dealers and junk collectors to be preempted by provisions of the California Business and Professions Code. The SDMC has been updated to ensure that there is no confusion as to what industries are regulated by Division 11 of the SDMC. The SDMC regulates secondhand dealers (those selling tangible and non-tangible personal property), pawnbrokers and junk yards. The California Business and Professions Code and the Public Resources Code regulate the sale of junk and scrap metal by junk dealers and recyclers. In addition, currently the municipal code does not distinguish between tangible and non-tangible secondhand dealers. The SDMC will be amended to clarify the definitions of each and the regulations applicable to both. The section will address regulation of secondhand dealers of non-tangible personal property, which are not regulated by the California Business and Professions Code, including dealers of secondhand clothing, books, and other items that can be regulated for purposes of protecting public health and safety and reducing crime.

Sub Item B - Massage and Holistic Health Practitioners

Massage Chapter 3, Article 3 Division 35:

Chapter 3, 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 33 permitted businesses and 30 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 permit 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 1094 massage permits (96% reduction from FY09 to FY13) and the loss of \$348,892 in cost recovery.

In addition, the SDMC requires that a massage establishment obtain a County Health Department inspection and investigation for a health permit to obtain a police permit to operate. The County of San Diego no longer conducts these inspections or investigations. Therefore section 33.3507 needs to be eliminated.

The SDMC requires that an applicant for a massage trainee permit pass a qualifying test. The qualifying test is no longer provided by the County of San Diego. The Department no longer issues massage trainee police permits. Therefore section 33.3512 needs to be eliminated.

The SDMC also requires that a massage establishment that changes locations must comply with all applicable provisions of this article. It goes on to require that the responsible party must provide proof that the San Diego County Departments of Health Services and Department of Building Inspections inspect the new location and assure it meets standards. The County of San Diego no longer conducts these inspections. The language related to County inspections and permits within section 33.3527 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.

Section 33.3529 will be eliminated. It identified a "Grandfather Clause" for Massage Therapists operating in 2001. This section has already expired and needs to be removed from the SDMC.

The Fiscal Year 2014 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.

Holistic Health Practitioners, Chapter 3, Article 3 Division 44:

Chapter 3, 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 needs to be removed from the SDMC.

Massage Technician Regulations, Chapter 4, Article 6, Division 1:

Chapter 4, Article 6, Division 1 provides for police regulation of massage technicians. All of Article 6 regulates massage technicians. The Department no longer issues massage technician permits, therefore Article 6, Division 1 shall be eliminated.

Sub Item C - Alarms

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

Chapter 3, Article 3, Division 5 currently describes the process for appeals relating to the Department's 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.

Alarm Permits, Chapter 3, Article 3 Division 37:

Chapter 3, 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 shortcomings, 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 City and other government agencies would continue to be exempt but all others, not otherwise exempted under the municipal code, would be eliminated.

This would require approximately 257 banks 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.

These changes are not anticipated to impact the budgeted cost recovery revenue included for these industries in the Fiscal Year 2013 budget.

FISCAL CONSIDERATIONS:

As discussed throughout this report. The Fiscal Year 2014 budget includes estimates of the proposed changes.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Approved at Public Safety/Neighborhood Services Committee. Presented at the December 4, 2012 City Council Meeting and returned for modifications.

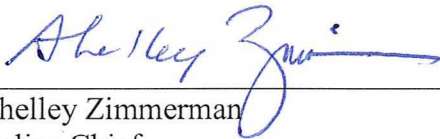
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

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 blue ink that reads "Shelley Zimmerman". The signature is written in a cursive style and is positioned above a horizontal line.

Shelley Zimmerman
Police Chief