

Richard Hopp
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April 16, 2013

Emailed with Exhibits

Honorable Senator Jerry Hill
of the 13th District
State Capitol, Room 5064
Sacramento, California 95814

Emailed with Exhibits

California State Senate
Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, California 95814

Re: Opposition of SB 762 (2013-2014 Reg. Sess.)
Senate Public Safety Committee hearing on April 23, 2013 at 9:00 AM

Dear Senator Hill and Committee Members:

I wish to express my opposition to the consideration and passage of SB 762. This anticipated legislation is detrimental to the people of the State of California including those who live on minimal funds for whatever reason.

The terms, definitions, and results will be harmful to the most vulnerable and least represented members of California society.

This legislation as drafted is overreaching, unnecessary, and over inclusive.

My specific concern herein is the definition of what constitutes a secondhand dealer. Is it the intention of your offices to proffer legislation to criminalize activities of the sellers, holders and purchasers of/from garage sales, police auctions, church white elephant sales, library sales, and thrift shop shoppers? By broadly defining secondhand dealer as you have, you will penalize the activities of consumers, churches, thrift shops, etc., if the purchasers and sellers are not licensed and permitted.

SUBJECT: What defines a secondhand dealer?

The current definition of who and what is a secondhand dealer is vague, ambiguous, and overboard, and is therefore confusing within its own terms and conditions.

California Senate Bill 762 is convoluted and essentially proffers an unintelligible definition that is unworkable and sponsors excessive regulations and "heavy handed" enforcement of the California's Secondhand Goods Law¹ (Cal. Bus. & Prof. Code, §§ 21500-

¹ Sen. J. (1957 Reg. Sess.) Vol. 3, Appx 3. pp. 7-242

21672) and under the California's Control of Profits of Organized Crime Act² (Cal. Pen. Code, §§ 186-186.8).

Consequently it appears the legislators and law enforcement intend that occasional sellers³ and consumers^{4,5} be defined as secondhand dealers^{6,7} and retailers⁸ who buy, sell, or otherwise deal in used goods⁹. This bill mandates EBay¹⁰ and Amazon¹¹ buyers and sellers to be defined and under the jurisdiction of California's Secondhand Goods Law. Failure to comply will subject a person's personal property to seizure under the California's Control of Profits of Organized Crime Act.

This bill is silent on how consumers perform diligent inquiry^{12,13} and adequate evidence of the seller's authority¹⁴. The current law and this bill do not conform to the court's finding and

² Cal. Pen. Code (2013) 186.2(a)(34)

³ Rev. & Tax. Code (2013) §§ 6006.5, 6367; *Chemed Corp. v. State Bd. Of Equalization*, 192 Cal. App. 3d (1987); *Touche Ross & Co. v. State Bd. Of Equalization*, 203 Cal. App. 3d (1988)

⁴ Cal. Civ. Code (2013) § 1739.7(3)

⁵ [C]onsumers are to be distinguished from manufactures (who produce goods), and wholesalers or retailers (who sell goods). (Black's Law Dictionary (Sixth Edition) p. 316.)

⁶ The term "dealer" is "In the popular sense, one who buys to sell; not one who buys to keep, or makes to sell. One who purchases goods or property for resale to final customers; a retailer." (Black's Law Dictionary (Sixth Edition) p. 389.)

⁷ Cal. Civ. Code (2013) § 1739.7(4)

⁸ Rev. & Tax. Code (2013) § 6007

⁹ The term "goods" include wares, merchandise, tangible personal property and chattels.

¹⁰ Buy or sell (tangible personal property) through the eBay website (www.Ebay.com).

¹¹ Buy or sell (tangible personal property) through the Amazon website (www.Amazon.com).

¹² Cal. Pen. Code (2013) §§ 496, 496a, 496b; *People v. Cramblit* (1976) 62 Cal.App.3d 475; *People v. Cramblit* (1978) 84 Cal. App.3d 437.

¹³ The term "diligent inquiry" is "Such inquiry as a diligent man, in tent upon ascertaining a fact, would ordinarily make, and it is inquiry made with diligence and good faith ascertain the truth, and must be an inquiry as full as the circumstances of the situation will permit. (Black's Law Dictionary (Sixth Edition) p. 437-438.)

¹⁴ Cal. Bus. & Prof. Code (2013) § 21650

opinion towards the secondhand dealer definition illustrated in *Hopp v. City of Los Angeles* (2010) 183 Cal.App.4th 713.

Questions:

1. Shall a person or entity that buys used goods for personal use or not intended for resale maintain a secondhand dealer license?
2. Shall a person or entity that conducts either an occasional sale or has not conducted a series of qualifying sales be defined and classified as a secondhand dealer?
3. How do consumers perform diligent inquiry and adequate evidence of the seller's authority?
4. How does *Hopp v. City of Los Angeles* (2010) 183 Cal.App.4th 713 conform to the definition of secondhand dealer?

Analysis:

One way the public avoids paying retail is purchasing used goods and recycled tangible personal property through swap meets, public sales, online auctions, garage sales, and thrift stores.

Law enforcement deems that activities engaged in or caused to be engaged in with the objective of attaining direct or indirect gain, benefit or advantage are a business¹⁵ even though contrary to other governmental agencies¹⁶ (attached hereafter as Exhibits A – G). Thus, the buying of used goods, wares, merchandise, and chattels through any of the foregoing mediums constitutes engaged in business¹⁷ as a secondhand dealer¹⁸ that requires qualification, approval, maintenance, and governmental supervision, including, but not limited to, warrantless inspections^{19,20,21}, warrantless searches²², administrative searches²³, daily reporting^{24,25} and being

¹⁵ LAMC § 21.00(i)

¹⁶ Letter from Alfred Boehm, Dept. of Justice Manager of the Secondhand Dealer & Pawnbroker Licensing Unit to Richard Hopp, an individual (June 12, 2008) (on file with the California Department of Justice or www.BuyingItAll.com); Letter from Alicia Vega, Tax Compliance Officer III Custodian of Records, to Richard Hopp, an individual (April 3, 2008) (on file with the City of Los Angeles Office of Finance or www.BuyingItAll.com)

¹⁷ LAMC § 21.00(h)

¹⁸ Civ. Code, § 1739.7, subd. (a)(4); (Pen. Code, § 12071); (Health & Saf. Code, § 25215.1, subd. (b)); (Welf. & Inst. Code, § 14125.1, subd. (e)); Veh. Code, § 285, subd. (a); Rev. & Tax Code, § 30012; Health & Saf. Code, § 18002.6, subd. (a)(1), (b)(5)); (Pub. Resources Code, § 14510.

¹⁹ *Donovan v. Dewey* (1981) 452 U.S. 594, 598-599 [69 L.Ed.2nd 262, 268-169]; *New York v. Burger* (1987) 482 U.S. 691, 700 [96 L.Ed.2nd 601, 612-613]; *People v. Paulson* (1990) 216 Cal.App.3rd 1480, 1483-1484

classified and defined as a closely regulated business²⁶.

California Code of Business and Professions § 21626²⁷, defines the term secondhand dealer in part: “[w]hose business includes buying, selling, trading or otherwise dealing in...”

The state code’s use of the word buying is utilized in a disjunctive “or” format, not a conjunctive “and” format. State law and many County Codes and Municipal Ordinances characterize anyone who is buying tangible personal property for any purpose, including, but not limited to, his/her own personal use, is required to maintain a secondhand dealer permit. The failure to maintain a secondhand dealer permit by a secondhand purchaser exposes one to criminal and civil penalties²⁸ including, but not limited to, a fine of \$25,000.00 or imprisonment in the county jail up to six months, or both. In addition, the local District Attorney or the State

²⁰ Cal. Civ. Proc. (2013) § 1822.50

²¹ Cal. Pen. Code (2013) § 1523

²² *Winters v. Board of County Com'rs* (10th Cir.1993) 4 F.3d 848, 852; *Peterman v. Coleman* (11th Cir.1985) 764 F.2d 1416, 1420-1422

²³ *Camara v. Municipal Court*, 387 U.S. 523 (1967); *Currier v. City of Pasadena*, 48 Cal. App. 3d 810, 814 (1975)

²⁴ Cal. Bus. & Prof. (2013) § 21628

²⁵ *Miller v. Murphy* (1983) 143 Cal.App.3d 337, 191 Cal.Rptr. 740; *Shamblin v. Polich* (1973) 32 Cal.App.3d 756, 761, 108 Cal. Rptr. 410

²⁶ *Colonade Catering Corp. v. United States* (1970) 397 U.S. 72, 74, 77 [25 L.Ed.2nd 60, 63-65]; *Sanders v. City of San Diego* (1996) 93 F.3rd 1423, 1427; *G&G Jewelry Inc. v. City of Oakland* (9th Cir. 1993) 989 F.2nd 1093, 1099-1101

²⁷ A secondhand dealer is defined in section 21626 as follows:

"(a) A `secondhand dealer,' as used in this article, means and includes any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property. A `secondhand dealer' does not include a `coin dealer.'

"(b) As used in this section, a `coin dealer' means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals."

A secondhand dealer must be licensed pursuant to section 21641. Conditions imposed on the licensee are set forth in section 21642. (§ 21643.)

²⁸ Cal. Bus. & Prof. (2013) §§ 21645, 21646

Attorney General may bring a civil action to enjoin the violation or the threatened violation of any provision of the secondhand dealer regulation(s).

In the trial and subsequent appellate case, *Richard Hopp v. City of Los Angeles*²⁹, the position of the Los Angeles Police Department was that Mr. Hopp's buying of used goods, wares, merchandise, and tangible personal property, even if ultimately only for his own personal use, is to be engaged in business, and requiring the application, obtaining, and maintenance of a secondhand dealer license and did not fall within any exceptions³⁰.

Hopp is a case of first impression to define "business" and "dealer" at the appellate level. These terms were never previously addressed in a published appellate decision relating to police permits and the secondhand dealer issue.

The Second Appellate District found:

"Thus, *City* law acknowledges that a business is a commercial activity that "provides" services, products or entertainment – necessarily to others because one does not "provide" services or goods to oneself."

"Purchasing a secondhand book at a swap meet, and entertaining oneself while reading, is not a business."

"[n]o evidence has been developed that this is *Hopp*'s "business," i.e. a trade, occupation or employment, engaged in for the purpose of obtaining a livelihood, profit, or monetary gain."

Furthermore, the Appellate Court defines a dealer:

"State legislation consistently defines a "dealer" as a seller of goods"

"A "dealer" is "One that is engaged in buying and reselling goods to final customer."

The *City* acquiesced and the trial Court entered final judgment that *Hopp* is not a business or secondhand dealer³¹ and *Hopp* is not subject to regulation, classification, or subject to warrantless searches, inspections, or examination related to *Hopp*'s collecting activities.

Furthermore, the California Senate Public Safety Committee³² legal analyst opined:

"Limited Appellate Decisions on Secondhand Dealer Status

²⁹ *Hopp v. City of Los Angeles* (2010) 183 Cal. App. 4th 713

³⁰ Cal. Bus. & Prof. (2013) § 21629

³¹ *Hopp v. City of Los Angeles* (Super. Ct. LA County Nov. 13, 2008, BC401887) Stipulation for Entry of Judgment and Judgment, Jan. 18, 2012.)

³² Sen. Com. On Pub. Saf., Analysis of Sen. Bill No. 391 (2011-2012 Reg. Sess.) as Amended April 18, 2012, p. K.)

There are surprisingly very few appellate decisions discussing who is a secondhand property dealer. A litigant in one appellate case has provided the Committee, the author and the sponsor with a decision from the Court of Appeal of California, Second Appellate District, in Los Angeles interpreting and applying the Los Angeles City ordinance regulating secondhand dealers. In that case, the appellate court held that a person who buys and collects, but does not sell, used books and "ephemera" is not a secondhand dealer within the meaning of the local ordinance. (*Hopp v. City of Los Angeles* (2010) 183 Cal.App.4th 713,717-722.) The Los Angeles ordinance at issue in Hopp is similar to state law in defining persons who buy property as secondhand dealers. ***As such, the decision in Hopp could well to apply to a similar challenge of state law***". (Emphasis added.)

Discussion:

Charitable organizations provide funding, outreach, and services to assist the community through church and rummage sales. Members of the community will be discouraged from purchasing these items from these secondhand sources due to potential criminal exposure. In these economic times, where resources are spread thin, people with limited incomes benefit from the acquisition of essential items at reduced costs, as does the economy in general.

Most consumers are incapable of funding the legal battle to protect their freedom when confronting the bureaucratic institution and laws of the State³³, County³⁴, and City³⁵. We need to amend and better define the terms "secondhand dealer" and "business" through legislative means, to be **conjunctive and comprehensible and no longer disjunctive and ambiguous**³⁶. (Emphasis added.)

This proposed change is to protect the collector³⁷ in his/her hobby³⁸, low income person, the disadvantaged, occasional seller, and bargain shopping public so as to no longer classify them as potential criminals. Amendment of the existing codes is needed to achieve their intended purpose, e.g., curtail the sale of stolen property to a "fence",³⁹ yet still allow a widow to buy a teapot.

³³ Cal. Bus. & Prof. (2013) § 21640

³⁴ Cal. Bus. & Prof. (2013) §§ 21637, 21638

³⁵ *Id.*

³⁶ Nev. Rev. Stat. (2013) § 647

³⁷ Cal. Veh. Code (2013) §§ 5004, 5004.1, 5050-5052

³⁸ The term "hobby" is "[A]n activity not engaged in for profit." (Black's Law Dictionary (Sixth Edition) p. 430.); Cal. Veh. Code (2013) §§ 5004, 5004.1, 5050-5052; Cal. Fish & Game § 2271, 8032, 15006; Cal. Pub. Res. 6216.5

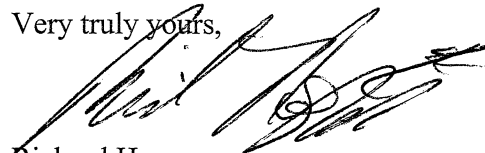
³⁹ The term "fence" is "A colloquial characterization of a receiver of stolen property; one who receives and sells stolen goods." (Black's Law Dictionary (Sixth Edition) p. 618.)

Solution:

Submit a request for a legal opinion⁴⁰ from the California Attorney General regarding licensing and regulations of secondhand dealing and the business⁴¹ and activities of secondhand dealers⁴² in light of the opinion and law enforcement actions illustrated in *Hopp* and marked as **exhibits A through G**. (Emphasis added.)

Thank you for your attention to this request.

Very truly yours,



Richard Hopp

- Attachments:
- Exhibit A: California Department of Justice Letter dated June 12, 2008
 - Exhibit B: City of Los Angeles Office of Finance Letter dated April 03, 2008
 - Exhibit C: *Hopp v. City of Los Angeles* (2010) 183 Cal. App. 4th 713
 - Exhibit D: *Hopp v. City of Los Angeles* (Super. Ct. LA County Nov. 13, 2008, BC401887) Stipulation for Entry of Judgment and Judgment, Jan. 18, 2012.)
 - Exhibit E: Attorney General Opinion No. 04-1001; 88 Ops.Cal.Atty.Gen. 41 (April 6, 2005)
 - Exhibit F: Attorney General Opinion No. 95-814; 79 Ops.Cal.Atty.Gen. 103 (June 20, 1996)
 - Exhibit G: *Hopp v. City of Los Angeles* Appellant's Appendix filed on November 6, 2009

⁴⁰ Cal. Gov't Code (2013) § 12519

⁴¹ *Union League 5 Club v. Johnson* (1941) 18 Cal.2d 275, 278.); (*Long v. City of Anaheim* (1967) 255 Cal.App.2d 191, 197; *Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 468.); (*Deering v. Blair* (D.C. Cir. 1928) 23 F.2d 975, 976.

Exhibit A

California Department of Justice Letter dated
June 12, 2008

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF CRIMINAL INFORMATION AND ANALYSIS

P.O. BOX 903387
SACRAMENTO, CA 94203-3870

Facsimile: (916) 227-3774

June 12, 2008

Richard Hopp
Post Office Box 3601
Van Nuys, California 91407

RE: Public Records Act Request

Mr. Hopp:

The California Department of Justice (DOJ) does not issue exemptions to individual persons or entities, with regards to the licensing requirements within the state of California, pertaining to Secondhand Dealers or Pawnbrokers. The Business and Professions Code and the Finance Code clearly define what activities require licensure as a Secondhand Dealer or Pawnbroker. It is clear, from your letter, that you are familiar with these statutes and the applicable sections.

The local law enforcement agencies (Police Departments and/or Sheriff's Offices) in California are the licensing authority and the enforcement authority for Secondhand Dealers or Pawnbrokers. The DOJ receives applications from local law enforcement agencies, collects fees, performs background investigations, and provides the results of those investigations back to the local law enforcement agency, which in turn decides whether or not to issue a license to the applicant(s). The local law enforcement agency, as the local licensing authority makes a determination based on state laws, particularly from the California Business and Professions Code and the Finance Code (with respect to Pawnbrokers). Local laws and ordinances, which vary from jurisdiction to jurisdiction, may also be considered.

From the description of your collecting activities, specifically that you only purchase goods (i.e. books, documents, and ephemera) and do not resell them, and having examined your websites, it does not appear that your activities constitute a Secondhand Dealership. However, your statement regarding the fact that you "recycle and donate" some of the items you collect is vague and the DOJ is not able to comment on what, if any, implications there would be for those activities.

The DOJ is not stating or implying that there are not other state or local permit, license, reporting, or other regulatory requirements that your activities, which do constitute a form of commerce, may be subject to. The DOJ does not provide legal services to private individuals. Therefore, DOJ cannot make any comments on issues that fall outside the statutory boundaries of our business area. We recommend that you contact the local law enforcement agencies in the

June 12, 2008

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jurisdictions in which you plan to conduct your collecting activities for additional information.

You may find all of the pertinent state laws at:

<http://www.leginfo.ca.gov/calaw.html>

This site allows searches by specific Code and by Keyword.

Thank you for your efforts to ensure that you are complying with all pertinent laws that may apply to your activities.

An electronic version of the above correspondence, from a DOJ email address, was also sent to you today, Thursday, June 12, 2008.

Sincerely,
INFORMATION ONLY
ALFRED BOEHM, Manager
Secondhand Dealer & Pawnbroker Licensing Unit

For EDMUND G. BROWN JR.
Attorney General

Exhibit B

City of Los Angeles Office of Finance Letter
dated April 03, 2008



ANTONIO R. VILLARAIGOSA
MAYOR

April 3, 2008

Richard Hopp
Pos Office Box 3601
Van Nuys, CA 91407

RE: Business Tax Registration

Dear Mr. Hopp:

This letter is in response to your request for a written exemption from the need to apply for, obtain and maintain a business license or permit with the City of Los Angeles.

The Los Angeles Municipal Code (LAMC) binds the Office of Finance. Specifically, Article 1, Chapter 2 of the LAMC defines business as "any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or others." Furthermore, the code states "No person shall engage in any business or occupation subject to tax under the provisions of this article without obtaining a registration certificate and paying the tax required thereunder."

Unfortunately, the Office of Finance is unable to provide you with the written exemption requested. Exemptions to the business tax requirements are enumerated within the code for specific business activities. Such exemptions are accompanied with both registration and reporting obligations.

Your letter, dated February 26, 2008, indicates that you are not engaged in business. As such, a business tax registration certificate would not be required for your "collecting" activities. However, if your "collecting" activities evolve to meet the statutory definition of "business" then the obligations of Article 1, Chapter 2 would be applicable to your activity. I can be contacted at (213) 978-1555 if you have any questions.

Sincerely,

Alicia Vega
INFORMATION ONLY

Alicia Vega, Tax Compliance Officer III
Custodian of Records

Exhibit C

Hopp v. City of Los Angeles (2010) 183 Cal.
App. 4th 713

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RICHARD HOPP,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B215265

(Los Angeles County
Super. Ct. No. BC401887)

**ORDER CERTIFYING OPINION
FOR PUBLICATION**

COURT OF APPEAL - SECOND DIST.

FILED

APR - 6 2010

JOSEPH A. LAINE

Clerk

Deputy Clerk

THE COURT:

The opinion in the above entitled matter filed on March 9, 2010, was not certified for publication in the Official Reports.

For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RICHARD HOPP,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent.

B215265

(Los Angeles County
Super. Ct. No. BC401887)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Malcolm Mackey, Judge. Reversed.

David A. Cordier for Plaintiff and Appellant.

Carmen A. Trutanich, City Attorney, Laurie Rittenberg, Assistant City Attorney,
Gabriel S. Dermer, Deputy City Attorney for Defendant and Respondent.

A municipal ordinance requires a police permit for persons in “the business of buying, selling, exchanging or otherwise dealing in secondhand books.” A hobbyist who collects secondhand books for his personal use—and not for resale—has brought a lawsuit for declaratory relief, challenging the municipality’s claim that he must obtain a police permit for his collecting activities. The trial court granted the municipality’s motion for judgment on the pleadings, finding that the hobbyist is a “secondhand book dealer” within the meaning of the ordinance.

After conducting an independent review, we conclude that the complaint states a cause of action for declaratory relief. The ordinance is directed at persons who engage in a commercial activity—both buying and selling—with a view to profit. Someone who simply collects books for personal enjoyment is not a “secondhand book dealer.” Accordingly, we reverse the judgment in favor of the municipality.

FACTS

Richard Hopp resides in the City of Los Angeles (the City). As a hobby, Hopp collects “books, documents, and ephemera.” Hopp purchases the books, documents and ephemera for his personal use: they are not resold, though he “may recycle and/or donate” unwanted items.

Hopp “actively promotes, advertises, and campaigns his collecting and hobby activities within publications, websites, and at various events and locations, including . . . exhibitions, festivals, meetings, flea markets, swap meets, trade shows, garage sales, and collector meetings.” He wants to have an “exhibitor’s table” or “buying booth” at these events in the City, to let people know that he is interested in purchasing books, documents and ephemera.

The City’s police department informed Hopp that he must obtain a permit for his collecting activities. The City’s insistence on a permit is based on a municipal ordinance regulating secondhand book dealers. Hopp resisted the City’s demand that he obtain a police permit, on the grounds that he is a book collector, not a book seller.

Hopp brought a declaratory relief action against the City. He alleges that an actual controversy has arisen between him and the City regarding their respective rights and

duties. He maintains that the City's ordinance regulating secondhand book dealers does not apply to him, or is preempted by state law. Hopp seeks judicial intervention because he may be subject to criminal prosecution unless it is determined that the City's ordinance is inapplicable or invalid.

The City moved for judgment on the pleadings. Hopp filed an opposition. The trial court granted the motion, and gave judgment to the City. Hopp's appeal from the judgment is timely.

DISCUSSION

1. Standards of Review and Statutory Interpretation

The trial court granted judgment on the pleadings. (Code Civ. Proc., § 438.) A motion for judgment on the pleadings is equivalent to a general demurrer, and the courts treat all properly pleaded material facts in the complaint as true. (*Kapsimallis v. Allstate Ins. Co.* (2002) 104 Cal.App.4th 667, 672.) We are not bound by the trial court's determination. Instead, we review the matter de novo, and render an independent judgment on whether a cause of action has been stated. (*Ibid.*; *Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198; *Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1220.)

When interpreting a law, we begin by examining the statutory language, giving the words their usual and ordinary meaning. If there is no ambiguity, the plain meaning of the language governs. If the language is ambiguous, "then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.'" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.)

2. The City's Ordinance

The City regulates "secondhand book dealers." Secondhand book dealers are defined as persons "engaging in, conducting, managing or carrying on the business of

buying, selling, exchanging or otherwise dealing in secondhand books and magazines, secondhand text books or secondhand educational materials.” A person cannot “carry on the business of secondhand book dealer without a written permit” from the City’s Board of Police Commissioners. (L.A. Mun. Code (LAMC), § 103.310, subds. (a), (b).)

Secondhand book dealers are required to execute a bill of sale showing the date of purchase, the name and address of the seller, the name of the purchaser receiving the secondhand books, and describing the books in an identifiable manner. A secondhand book dealer must “ascertain that the person selling or delivering for exchange any such secondhand books or materials has a legal right to do so.” Upon purchasing secondhand books, the dealer must stamp, write, print or permanently affix to each article the number of the bill of sale covering the purchase. (LAMC, § 103.310, subds. (d), (e), (f), (g).)

3. A “Business” Is Commercial Activity Carried on with a View to Profit

The City argues that its ordinance applies to people who purchase *or* sell secondhand books. In the City’s view, a collector who acquires used books for personal enjoyment is as much a “secondhand book dealer” as someone who purchases used books for resale. The City takes this position even though the ordinance expressly applies to those who engage in, conduct, manage, or carry on “the business” of dealing in secondhand books. (LAMC, § 103.310, subd. (a)(1).)

City law relating to police permits defines the term “business.” A business “means any occupation, trade, establishment or concern, regardless of form, which provides services, products or entertainment for which a permit is required under this article” (LAMC, § 103.01.) Thus, City law acknowledges that a business is a commercial activity that “provides” services, products or entertainment—necessarily to others, because one does not “provide” services or goods to oneself. Purchasing a secondhand book at a swap meet, and entertaining oneself while reading it, is not a “business.”

The City ordinance defining a “business” is consistent with the language used in appellate court opinions. The term “ordinarily means a business in the trade or commercial sense, one carried on with a view to profit or livelihood.” (*Union League*

Club v. Johnson (1941) 18 Cal.2d 275, 278.) “*Business* in its broad sense embraces everything about which one can be employed; the word is often synonymous with calling, occupation, or trade engaged in for the purpose of obtaining a livelihood or profit or gain.” (*Long v. City of Anaheim* (1967) 255 Cal.App.2d 191, 197; *Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 468.) Although business activities may result in a loss instead of a profit, “it is essential that livelihood or profit be at least one of the purposes for which the employment is pursued, in order to bring it within the accepted definition of the word” (*Deering v. Blair* (D.C. Cir. 1928) 23 F.2d 975, 976.)

Dictionary definitions echo the concept that a “business” is a money-making endeavor. It is defined as “Employment, occupation, profession, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. . . . Enterprise in which person engaged shows willingness to invest time and capital on future outcome. . . . That which habitually busies or occupies or engages the time, attention, labor, and effort of persons as a principal serious concern or interest or for livelihood or profit.” (Black’s Law Dict. (6th ed. 1990) p. 198.) Another dictionary defines “business” as “The occupation, work, or trade in which a person is engaged A specific occupation or pursuit Commercial, industrial, or professional dealings” (American Heritage Dict. (2d college ed. 1982) p. 220.) A hobby that involves book collecting is not a “business.”

4. A “Dealer” Is One Who Buys and Sells

The City’s ordinance regulates “secondhand book dealers.” A “dealer” is “One that is engaged in buying and selling.” (American Heritage Dict., *supra*, p. 369.) “In the popular sense, one who buys to sell; not one who buys to keep, or makes to sell. One who purchases goods or property for resale to final customers; a retailer.” (Black’s Law Dict., *supra*, p. 399.)

State legislation consistently defines a “dealer” as a seller of goods. For example: a dealer “means a person who is in the business of selling or offering for sale collectibles in or from this state” and “includes an auctioneer who sells collectibles at a public auction” (Civ. Code, § 1739.7, subd. (a)(4)); it is a person who is licensed to sell firearms

(Pen. Code, § 12071); it is “every person who engages in the sale of lead acid batteries directly to consumers” (Health & Saf. Code, § 25215.1, subd. (b)); it is a person or entity recognized by manufacturers “as a provider or retail outlet for its line of incontinence medical supplies, and which provide these supplies directly to consumers. The term ‘dealer’ includes a retailer” (Welf. & Inst. Code, § 14125.1, subd. (e)); it is someone who “For commission, money, or other thing of value, sells, exchanges, buys or offers for sale, negotiates or attempts to negotiate, a sale or exchange of an interest in, a vehicle subject to registration . . .” (Veh. Code, § 285, subd. (a)); it is every person “who engages in this state in the sale of cigarettes or tobacco products” (Rev. & Tax Code, § 30012); it is someone who negotiates “a sale or exchange of an interest in a manufactured home, mobilehome, or commercial coach” (Health & Saf. Code, § 18002.6, subd. (a)(1)), *excluding* persons who do not purchase or sell manufactured homes “as a business” (*id.*, subd. (b)(5)); and it is “a retail establishment which offers the sale of beverages in beverages containers to consumers” (Pub. Resources Code, § 14510.)

5. Collecting Used Books for Personal Enjoyment Is Not a “Business” and Hopp Is Not a “Dealer” in Secondhand Books

Hopp’s complaint alleges that he does not resell the used books he purchases. This is a material fact we must accept as true when reviewing a motion for judgment on the pleadings. For purposes of this motion, the City concedes that “Hopp does not sell what he collects”

Given the undisputed facts, there is no basis for finding that Hopp’s purchase of used books for personal enjoyment constitutes a “business” within the meaning of LAMC section 103.310, subdivision (a). At this stage of the proceedings, no evidence has been developed that this is Hopp’s “business,” i.e., a trade, occupation or employment, engaged in for the purpose of obtaining a livelihood, profit or monetary gain. For the same reasons, there is no basis for finding that Hopp is a “dealer” engaged in buying and reselling goods to final customers. Instead, he purchases items to keep. If the City can develop evidence that Hopp is not merely a purchaser and collector of secondhand books, and that he is reselling these items, then the City has a right to insist that Hopp obtain a

police permit. In other words, if Hopp’s “buying booth” at City events becomes a “selling booth,” then Hopp will run afoul of LAMC section 103.310.

Our conclusion is a matter of logic and common sense. Many people purchase secondhand books for their personal use and enjoyment—at bookstores specializing in used books, at public library book fairs, at yard sales, at swap meets, or on the internet. New lawyers may want to purchase a set of annotated California codes from a retiring lawyer. Under the City’s interpretation of its ordinance, all of these secondhand books purchasers must obtain a police permit from the City, even if they have no intention of reselling the books. The ordinance cannot bear the weight of such an absurd result.

The City relies upon *In re Holmes* (1921) 187 Cal. 640, for the proposition that a secondhand book dealer is required to have a city permit. *Holmes* is factually inapposite: it was “*stipulated* that [Holmes] is engaged in the business of buying, *selling, and exchanging* second-hand books, not as a mere incident to some other occupation, but *as his principal business.*” (*Id.* at pp. 644-645, italics added.) If the undisputed facts of this case showed that Hopp bought and sold secondhand books as his principal business, the outcome of this appeal would be entirely different. Because the complaint alleges that Hopp does not sell books, *Holmes* does not assist the City’s case.

The City argues that it is merely trying to curtail crime and prevent used book purchasers from becoming “fences.”¹ The Supreme Court addressed this point in *In re Holmes*: “The business of buying and selling second-hand books cannot be differentiated from the business of buying and selling other forms of second-hand personal property which, being movable, valuable, and passing easily from hand to hand, are often made the subject of purloining and petit larceny and of disposal in second-hand places of business. Such places of business have, therefore, been made the proper subjects of police inspection and regulation.” (187 Cal. at p. 645.) The critical point is that secondhand book dealers may accept stolen goods then sell these goods as part of their

¹ A “fence” is “A colloquial characterization of a receiver of stolen property; one who receives and sells stolen goods.” (Black’s Law Dict., *supra*, p. 618.)

business. Hopp alleges that he is not selling books, so the City's concern that he is a "fence" is misplaced, unless it can prove that he is accepting stolen goods.

In any event, state law imposes criminal penalties on dealers or collectors who buy or receive secondhand books, manuscripts, maps, charts or other works of literature bearing any mark or indicia of ownership by a public library, college or university "without ascertaining by diligent inquiry that the person selling or delivering the same has a legal right to do so." (Pen. Code, § 496b.) The City apparently seeks to go well beyond state law and impose onerous duties of inquiry upon individuals purchasing dog-eared novels at garage sales, even if the books have no indicia of ownership by a library or educational institution.

The City claims that it is not seeking to impose the permit requirement on people who "want[] to buy one book, or even 1,000 books"—so long as they do so quietly and privately. Hopp came to the City's attention because he "publicly" and "actively" promotes his book collecting activities. No valid distinction can be drawn between book collectors who go about their hobby in a quiet manner and those who do so with overt enthusiasm. If Hopp should start advertising the sale of his books, it would make him a secondhand book dealer, and the City could demand proof that the items have been properly identified and legitimately obtained.

CONCLUSION

Based on the allegations in appellant's complaint, which show that appellant is a hobbyist who collects books—but does not sell the books he collects—we conclude that appellant has stated a cause of action for declaratory relief. Persons who merely collect books for personal use, and not for resale, are not required to obtain a secondhand book dealer permit from the City of Los Angeles. LAMC section 103.310 does not apply to appellant, based on the facts alleged here. In light of our conclusion, we do not reach appellant's argument that the ordinance is preempted by state law.

DISPOSITION

The judgment is reversed. Appellant Hopp is awarded his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.

Exhibit D

Hopp v. City of Los Angeles (Super. Ct. LA County Nov. 13, 2008, BC401887) Stipulation for Entry of Judgment and Judgment, Jan. 18, 2012.)

1 David A. Cordier (SBN 111208)
2 Attorney At Law
3 466 Foothill Boulevard, Suite 300
4 La Cañada, California 91011
5 Telephone: (818) 553-3669
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FILED
LOS ANGELES SUPERIOR COURT
JAN 18 2012
JOHN G. CLARKE, CLERK
BY E. VERNER, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
CENTRAL JUDICIAL DISTRICT

Richard Hopp, an individual

Plaintiff,

vs.

City of Los Angeles, a Municipal Corporation

Defendant.

) Case No.: BC401887

) Hon. Malcolm H. Mackey

) STIPULATION FOR ENTRY OF
) JUDGMENT AND JUDGMENT

It is hereby stipulated by and between Plaintiff, RICHARD HOPP, ("Hopp") and
Defendant CITY OF LOS ANGELES ("City") that judgment shall be entered in favor of Hopp
and against City according to the following terms:

The Court hereby finds, adjudicates, declares, and orders Hopp's activities of buying used
secondhand books, documents, ephemera, secondhand goods, wares, and merchandise for
personal use or as a collector of such items, including but not limited to, such activities as to
broadcast such activities by means of audio, print, electronic, or digital media; whether in
person, by public view, in private or through a representative; at exhibitions, festivals, meetings,
markets, meets, shows, sales, auctions, or other venues, do constitute a hobby, and do not
constitute a business as those terms are defined in the Los Angeles Municipal Code including, but
not limited to, sections 21.00(h) and 103.01; an occupation as defined Angeles Municipal Code
section 21.03; a secondhand book dealer as that term is defined in Los Angeles Municipal Code

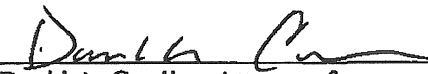
1 section 103.310(a); or a secondhand dealer as that term is defined in Los Angeles Municipal
2 section 103.311(a); and shall not be deemed to be activities which requires registration certificate
3 pursuant to Los Angeles Municipal Code section 21.06; or for which a permit is required
4 pursuant to Los Angeles Municipal Code sections 103.310(b) or 103.311(b) referring to a permit
5 or that is otherwise required of a secondhand book dealer and a secondhand dealer respectively.

6 The Court further finds and declares that Hopp's activities as heretofore detailed do not
7 constitute a closely regulated business, industry or classification that is subject to administrative
8 or warrantless searches, inspections, or examinations of Hopp or his premises nor require and
9 obligate Hopp to provide a license, permit, or certificate to the City, their employees, agents and
10 successors including, but not limited to, any peace officer.

11 This judgment is in conformity with the published opinion in *Hopp v. City of Los Angeles*,
12 183 Cal. App. 4th 713 (Cal. App. 2d Dist. 2010).

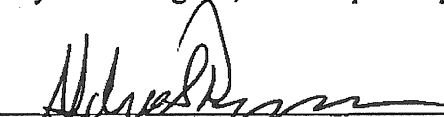
13 It is further ordered that Hopp shall be deemed to be the prevailing party in this action,
14 and as such, shall recover his costs, *in the amount of* _____.

15
16 Dated: 01-18-2011


David A. Cordier, Attorney for
Plaintiff, Richard Hopp

18 City of Los Angeles, a Municipal Corporation

19
20 Dated: 01-18-2011


By: Gabriel S. Dermer, Deputy City
Attorney for Defendant, City of Los Angeles

22
23 IT IS HEREBY ORDERED that judgment shall be entered in favor of Plaintiff, Richard
24 Hopp against Defendant, City of Los Angeles, a Municipal Corporation in accordance with the
25 foregoing terms.

26 DATED: 01-18-2011

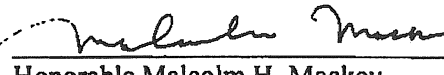
27 
Honorable Malcolm H. Mackey
Judge of the Superior Court MALCOLM H. MACKEY

Exhibit E

Attorney General Opinion No. 04-1001; 88
Ops.Cal.Atty.Gen. 41 (April 6, 2005)

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

OPINION	:	No. 04-1001
	:	
of	:	April 6, 2005
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
SUSAN DUNCAN LEE	:	
Deputy Attorney General	:	
	:	

THE HONORABLE VIRGINIA GENNARO, CITY PROSECUTING ATTORNEY, CITY OF BAKERSFIELD, has requested an opinion on the following question:

Is a person required to hold a license as a “secondhand dealer” if (1) he or she owns a “drop-off” store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet auction website, (2) the property is held for display or in storage at the store or off the premises, (3) the property is advertised and sold by an internet auction website, (4) the store owner arranges for payment and delivery of the property sold, and (5) he or she charges the seller a fee for services rendered?

CONCLUSION

A person is required to hold a license as a “secondhand dealer” if (1) he or she owns a “drop-off” store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet auction website, (2) the property is held for display or in storage at the store or off the premises, (3) the property is advertised and sold by an internet auction website, (4) the store owner arranges for payment and delivery of the property sold, and (5) he or she charges the seller a fee for services rendered.

ANALYSIS

The Legislature has enacted a comprehensive statutory scheme, the Secondhand Goods Law (Bus. & Prof. Code, §§ 21500-21672; “Act”)¹ to regulate the sale or other disposition of secondhand goods. (See *Malish v. City of San Diego* (2000) 84 Cal.App.4th 725, 728; 79 Ops.Cal.Atty.Gen. 103 (1996); see also Fin. Code §§ 21000-21307 [pawnbrokers]; Pen. Code, §§ 12070-12094 [firearms sales].) A secondhand dealer must be licensed by the local chief of police or sheriff (§§ 21640-21642), report daily to the chief of police or sheriff information concerning “all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning” (§ 21628), including “[a] legible fingerprint taken from the intended seller or pledger” (§ 21628, subd. (g)), and “retain in his or her possession for a period of 30 days all tangible personal property reported . . .” (§ 21636, subd. (a)).² Section 21626, subdivision (a), generally defines a “secondhand dealer” as follows:

“A ‘secondhand dealer,’ as used in this article, means and includes any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property. . . .”

We are asked whether a person meets the definition of a “secondhand dealer” for purposes of the Act if (1) he or she owns a “drop-off” store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet

¹ All further statutory references are to the Business and Professions Code, unless otherwise indicated.

² Property stored off the premises must “be produced at the licensee’s business premises within one business day of a request” by the chief of police or sheriff. (§ 21636, subd. (c).) With respect to the 30-day holding period, “[t]he chief of police or the sheriff may for good cause . . . authorize prior disposition of any property . . .” (§ 21636, subd. (a).)

auction website, (2) the property is held for display or in storage at the store or off the premises, (3) the property is advertised and sold by an internet auction website, (4) the store owner arranges for payment and delivery of the property sold, and (5) he or she charges the seller a fee for services rendered. We conclude that the store owner would be required to be licensed as a secondhand dealer in order to operate such a business in this state.

The type of business in question has come into existence in response to the rising popularity of online marketplace websites. Sales on these internet sites may be conducted either at a fixed price or through an auction. Using such websites as a venue, sellers create a listing of items to be sold, including a description of the items; set a fixed sales price for each or a minimum price for bidding; specify terms for payment and delivery; and, if the sales are to be conducted in an auction format, specify terms of the auction such as its duration and a reserve price. Buyers may browse through the items offered for sale, buy or bid on the items, and communicate with the sellers to arrange for payment and delivery. (See 86 Ops.Cal.Atty.Gen. 48, 49 (2003).)

When a sale is conducted by way of an auction, the actual bidding process is administered by use of proprietary software programs designed to recognize bids, alert bidders of the current bidding status, and notify the buyer and seller of the winning bid at the close of the auction period. Some programs also post bids automatically as a proxy for a would-be buyer, according to the buyer's specifications. (See 86 Ops.Cal.Atty.Gen., *supra*, at p. 52; Mackey, *Limiting Exposure for Internet Vendors: Separating the Wheat from the Chaff* (2003) 21 J. Marshall J. Computer & Info. L. 207, 222-223 [discussing use of "electronic agents," permitted under Uniform Electronic Transactions Act]; Korybut, *Online Auctions of Repossessed Collateral Under Article 9* (1999) 31 Rutgers L.J. 29, 100-112 [discussing differences between professional auctioneers and "virtual auctioneers"].)

The owner of a drop-off store provides a service to sellers by receiving items to be sold, consulting with the sellers about listing prices, photographing the items, creating written descriptions and selecting listing categories designed to attract buyers, communicating with the internet auction websites and prospective buyers as necessary, receiving payments, and arranging deliveries. In exchange for providing these services, the store owner receives a fee from the seller upon the sale of any item.

Returning to the language of section 21626, we have little doubt that the store owner falls within the definition of a "secondhand dealer." As described herein, the business arrangement between a prospective seller and the store owner amounts to "accepting for sale on consignment," thus bringing the business within the scope of section 21626. "A true consignment constitutes an agency or bailment relationship between the consignor and consignee. The consignor, as principal retains the ownership, may recall the goods, and sets the sale price. The consignee (agent) receives a commission and not the

profits of the sale.’ ” (*Consolidated Accessories Corp. v. Franchise Tax Board* (1984) 161 Cal.App.3d 1036, 1040; see *Jackson v. Department of Justice* (2001) 85 Cal.App.4th 1334, 1350-1351; *Bank of California v. Thornton-Blue Pacific, Inc.* (1997) 53 Cal.App.4th 841, 847; *Reiter v. Anderson* (1927) 87 Cal.App. 642, 649; see also Cal. U. Com. Code, § 2326, subd. (4); 3 Witkin, Summary of Cal. Law (9th ed. 1987) Sales, § 2.)

While the distinction between a sale and a consignment may at times be subtle (see *Consolidated Accessories Corp. v. Franchise Tax Board*, *supra*, 161 Cal.App.3d at pp. 1040-1041; *Reiter v. Anderson*, *supra*, 87 Cal.App. at pp. 648-649), for our purposes, the distinction is one without a difference. Section 21626 defines a secondhand dealer not only to include businesses that operate on consignment, but also to those that engage in sales, purchases, purchases in pawn, trades, and auctions of tangible personal property. Therefore, regardless of the details of the agreements between the prospective sellers and the store owner, we believe that the Act applies to anyone whose business includes accepting secondhand tangible property for sale to be conducted on an internet auction website, storing the property on or off the store premises, arranging for the sale of the property online, and charging a fee for the services rendered.

We reject the suggestion that the store owner would be exempt from the Act’s requirements under the statutory exception for “auctioneers.” Section 21626.5 provides:

“ ‘Secondhand dealer,’ as used in this article, does not include either of the following:

“(a) Any person who performs the services of an auctioneer for a fee or salary.

“ ”

The term “auctioneer” is not specifically defined for purposes of the Act. It is, however, defined in Civil Code section 1812.601, which is part of a statutory scheme (Civ. Code,

§§ 1812.600-1812.609) regulating auctioneers and auction companies.³ Civil Code section

³ Among other requirements, auctioneers and auction companies are required to maintain a \$20,000 bond with the Secretary of State (Civ. Code, § 1812.600); abide by certain ethical requirements (Civ. Code,

1812.601, subdivision (d), states:

“ ‘Auctioneer’ means any individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.”⁴

A person who owns a drop-off store cannot reasonably be said to “recognize” bids as they are made in the course of an online auction. Instead, that function is customarily performed by proprietary software owned by the online marketplace website. (See 86 Ops.Cal.Atty.Gen., *supra*, at p. 52; see also Civ. Code, § 1812.601, subd. (b).) A business of the type we are contemplating thus does not “perform the services of an auctioneer” within the meaning of section 21626.5, subdivision (a), and consequently a store owner would not be exempt from the Act’s requirements as an “auctioneer.”

Finally, we reject the further suggestion that the Act should not be applied to drop-off store owners because such application would not serve to further the purposes of the Act. Section 21625 describes the Legislature’s purposes in regulating secondhand dealers as follows:

“It is the intent of the Legislature in enacting this article to curtail the dissemination of stolen property and to facilitate the recovery of stolen property by means of a uniform, statewide, state-administered program of regulation of persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property and to aid the State Board of Equalization to detect possible sales tax evasion.

“Further, it is the intent of the Legislature in enacting this article to require the uniform statewide reporting of tangible personal property acquired by persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property, unless the property or the transaction is specifically exempt herein, for the purpose of correlating these reports with other reports of city, county, and city and county law enforcement

§ 1812.605); make certain disclosures in auction advertisements, at the entrance to each auction, and to the audience of the auction (Civ. Code, § 1812.607); and conform their contracts to specific requirements (Civ. Code, § 1812.608).

⁴ When two statutes deal with the same subject, as here, “the interpretation of similar sentences or phrases in one controls the interpretation of virtually the same phrases or sentences in the other.” (*In re Marriage of Pinto* (1972) 28 Cal.App.3d 86, 89; see *In re Phyle* (1947) 30 Cal.2d 838, 845.)

agencies and further utilizing the services of the Department of Justice to aid in tracing and recovering stolen property.

“ ”

On the one hand, the online format may deter some criminals from attempting to sell stolen property over the internet where it can be readily identified by its owner, and some online auction websites may conduct their own aggressive efforts to detect and deter trade in stolen property. On the other hand, criminals may be attracted to using an internet drop-off store if it is exempt from the Act's requirements, particularly the requirements of providing of fingerprints and giving notice of the property to law enforcement officials. These conflicting considerations are best evaluated by the Legislature in establishing the scope of the Act's provisions. We believe that subjecting the operation of drop-off stores to the requirements of the Act serves the general legislative purposes of "tracing and recovering stolen property." (§ 21625.)

We conclude that a person is required to hold a license as a "secondhand dealer" if (1) he or she owns a "drop-off" store located within the state where secondhand tangible personal property is accepted for sale to be conducted on an internet auction website, (2) the property is held for display or in storage at the store or off the premises, (3) the property is advertised and sold by an internet auction website, (4) the store owner arranges for payment and delivery of the property sold, and (5) he or she charges the seller a fee for services rendered.

Exhibit F

Attorney General Opinion No. 95-814; 79
Ops.Cal.Atty.Gen. 103 (June 20, 1996)

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

DANIEL E. LUNGREN
Attorney General

OPINION	:	
	:	No. 95-814
of	:	
	:	June 20, 1996
DANIEL E. LUNGREN	:	
Attorney General	:	
	:	
GREGORY L. GONOT	:	
Deputy Attorney General	:	
	:	

THE HONORABLE CATHIE WRIGHT, MEMBER OF THE CALIFORNIA STATE ASSEMBLY, has requested an opinion on the following question:

Do baseball trading cards purchased by a card shop constitute tangible personal property for purposes of regulation under the Secondhand Goods Law (Bus. & Prof. Code, §§ 21500-21672)?

CONCLUSION

Baseball trading cards purchased by a card shop do not constitute tangible personal property for purposes of regulation under the Secondhand Goods Law (Bus. & Prof. Code, §§ 21500-21672).

ANALYSIS

The regulation of the sale or other disposition of secondhand goods is set forth in a statutory scheme known as the Secondhand Goods Law (Bus. & Prof. Code, §§ 21500-21672; "Act").¹ Watches (§§ 21500-21509), builders' tools (§§ 21550-21556), junk (§§ 21600-21609), and tangible personal property (§§ 21625-21647) are among the items that are specifically regulated. The question

¹All section references hereinafter are to the Business and Professions Code.

presented for resolution is whether baseball trading cards purchased by a card shop² constitute "tangible personal property" subject to the Act's provisions. We conclude that baseball trading cards are not subject to the Act's requirements as tangible personal property when purchased by a card shop, but they would be subject to the Act's requirements as "sports trading cards."

The Legislature has expressly declared the Act's purposes in regulating tangible personal property. Section 21625 provides:

"It is the intent of the Legislature in enacting this article [§§ 21625-21647] to curtail the dissemination of stolen property and to facilitate the recovery of stolen property by means of a uniform, statewide, state-administered program of regulation of persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property and to aid the State Board of Equalization to detect possible sales tax evasion.

"Further, it is the intent of the Legislature in enacting this article to require the uniform statewide reporting of tangible personal property acquired by persons whose principal business is the buying, selling, trading, auctioning, or taking in pawn of tangible personal property, unless the property or the transaction is specifically exempt herein, for the purpose of correlating these reports with other reports of city, county, and city and county law enforcement agencies and further utilizing the services of the Department of Justice to aid in tracing and recovering stolen property.

"Further, it is the intent of the Legislature that this article shall not be superseded or supplanted by the provisions of any ordinance or charter of any city, county, or city and county."

Pursuant to section 21628, a secondhand goods dealer must report to a police chief or sheriff the purchase of tangible personal property:

"Every secondhand dealer . . . shall report daily, or on the first working day after receipt or purchase of such property, on forms either approved or provided at actual cost by the Department of Justice, all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief or police or to the sheriff"³

²A "card shop" would be one that is in the business of buying, trading, and selling baseball trading cards.

³A secondhand dealer is defined in section 21626 as follows:

"(a) A 'secondhand dealer,' as used in this article, means and includes any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property. A 'secondhand dealer' does not include a 'coin dealer.'

"(b) As used in this section, a 'coin dealer' means any person, firm, partnership, or corporation

No transactions that require reporting under section 21628 may be executed with a minor. (§ 21643.)

"Tangible personal property," insofar as that term may be relevant to the question presented, is defined in section 21627 as follows:

"(a) As used in this article, 'tangible personal property' includes, but is not limited to, all secondhand tangible personal property which bears a serial number or personalized initials or inscription or which, at the time it is acquired by the secondhand dealer, bears evidence of having had a serial number or personalized initials or inscription.

"(b) 'Tangible personal property' also includes, but is not limited to, the following:

"(1) All tangible personal property, new or used, received in pledge as security for a loan by a pawnbroker or a secondhand dealer acting as a pawnbroker.

"(2) All tangible personal property that bears a serial number or personalized initials or inscription which is purchased by a secondhand dealer or a pawnbroker or which, at the time of such purchase, bears evidence of having had a serial number or personalized initials or inscription.

"(3) All personal property commonly sold by secondhand dealers which statistically is found through crime reports to the Attorney General to constitute a significant class of stolen goods. A list of such personal property shall be supplied by the Attorney General to all local law enforcement agencies. Such list shall be reviewed periodically by the Attorney General to insure that it addresses current problems with stolen goods.

"....." ⁴

Does the foregoing definition of "tangible personal property" include baseball trading cards purchased by a card shop?⁵

whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals."

A secondhand dealer must be licensed pursuant to section 21641. Conditions imposed on the licensee are set forth in section 21642. (§ 21643.)

⁴Depending on the manner of acquisition, some items which would otherwise be considered tangible personal property are exempt from the requirements of the Act under the terms of section 21629.

⁵We are not concerned in this opinion with baseball trading cards that might be "received in pledge as security for a loan" (§ 21627, subd. (b)(1).)

A baseball trading card is a collectible item which typically bears a picture of a baseball player on one side of the card (usually about 2 1/2" by 3 1/2") and information about the player on the reverse side.⁶ The cards may range from having little or no monetary value to substantial value depending on such factors as age, condition, the number produced, and the popularity or achievement of the player depicted. In recent years, card shops have developed substantial businesses in purchasing, exchanging, and selling the cards.

Baseball trading cards generally do not bear a serial number⁷ or the player's autograph. Although a card signed by the player depicted may have some value, collectors normally regard an autograph as an alteration of the card which would not enhance (and may reduce) the card's intrinsic value. Any other extraneous markings on the card, whether initials, numbers, or an inscription, would similarly cause the loss of the card's "mint-condition" value. Other categories of personal property, in contrast, may be specially marked without a diminution in value in order to deter theft or assist in the recovery of the property if stolen.

We believe that baseball trading cards purchased by a card shop do not constitute tangible personal property for purposes of the Act, since they customarily do not bear "a serial number or personalized initials or inscription." (§ 21627, subd. (a).) This construction of the Act is consistent with the longstanding administrative interpretation of the Department of Justice, the state agency responsible for implementing sections 21625-21647, that baseball trading cards are not tangible personal property under the terms of section 21627, subdivision (a). "Unless unreasonable or clearly contrary to the statutory language or purpose, the consistent construction of a statute by an agency charged with responsibility for its implementation is entitled to great deference." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 460.)

Moreover, as previously indicated, it was the Legislature's purpose in enacting sections 21625-21647 "to curtail the dissemination of stolen property and to facilitate the recovery of stolen property" (§ 21625.) "In construing the words of a statute, [we are] required to read the statute in the light of the legislative objective sought to be achieved and the evil to be averted." (*People v. Fierro* (1991) 1 Cal.4th 173, 225.) In this regard, we note that baseball trading cards have not been determined by the Department of Justice "to constitute a significant class of stolen goods." (§ 21627, subd. (b)(3).)⁸

⁶Article 7 (§§ 21670-21672) of the Act, which is concerned with the authenticity of sports trading cards and is discussed below, defines "legitimate sports trading card" as "any card produced for use in commerce, that contains a company name or team logo, or both, and an image, representation, or facsimile of one or more players or other team member or members in any pose, and is produced pursuant to an appropriate licensing agreement." (§ 21670, subd. (b).)

⁷A particular card may sometimes contain a number indicating its production run but seldom, if ever, indicating the total number of cards printed.

⁸Currently only jewelry and silverware appear on the Attorney General's list.

Although tangible personal property as defined in subdivision (a) of section 21627 "includes, but is not limited to" the specifically enumerated items, we do not believe that *any* item which meets the literal definition of tangible personal property is covered by the statute. While the quoted phrase is one of "enlargement," it must be construed here to denote other kinds of tangible personal property which lend themselves to identification of ownership consistent with section 21627's purposes. (See *Dyna-Med, Inc. v. Fair Employment and Housing Com.* (1987) 43 Cal.3d 1379, 1390-1391 [phrase, "including, but not limited to," construed as permitting certain remedies, but not others].)

We note that if baseball trading cards were considered to be tangible personal property for purposes of section 21627, subdivision (a), minors could not sell cards to, or trade cards with, card shop owners without full parental involvement (including fingerprinting), since section 21643 provides that no transactions requiring reporting under section 21628 may be executed with a minor.

However, we do not mean to suggest that baseball trading cards purchased by card shops are not subject to *any* of the Act's requirements. Under article 7 (§§ 21670-21672) of the Act, the Legislature has addressed the dual problems of counterfeiting and fraudulent alteration of all types of sports trading cards. The purposes of the legislation were explained by the Legislature at the time of its enactment as follows:

"The Legislature hereby finds and declares all of the following:

"(a) A growing number of Californians are spending substantial amounts of money on sports trading cards.

"(b) As with any commodity, there are persons in the sports trading card market who take advantage of consumers by misrepresenting the authenticity of sports trading cards.

"(c) The integrity of the sports trading card market must be protected by requiring seller disclosure to buyers and traders of sports trading cards that have been altered or refurbished and by prohibiting the making and trafficking of unlicensed and fraudulent sports trading cards." (Stats, 1992, ch. 1120, § 1.)

Section 21671 provides civil penalties with respect to the trading of altered cards:

"(a) Any sports trading card that is altered or refurbished shall be accompanied by a certificate stating the exact work done to the sports trading card, the date the work was performed, the cost of that work, and the name, phone number, and address of the person who performed the work.

"(b) Any person or agent thereof, who knowingly sells or trades a sports card in violation of subdivision (a), shall both:

"(1) Refund to the buyer, the full amount paid for the altered or refurbished sports trading card or the full retail value of any nonmonetary consideration received in exchange for the altered or refurbished sports trading card, or both.

"(2) Be liable to the buyer for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Each card sold represents a separate and distinct violation."

Section 21672 provides both civil and criminal penalties with respect to the distribution of counterfeit cards:

"(a) Any person, or agent thereof, who knowingly manufactures, produces, or distributes unlicensed or counterfeit sports trading cards with the intent to deceive, injure, or defraud another, is guilty of a misdemeanor.

"Any person, or agent thereof, who violates this subdivision shall do both of the following:

"(1) Refund to the buyer the full amount paid for the unlicensed or counterfeit sports trading card or the full retail value of any nonmonetary consideration received in exchange for the unlicensed or counterfeit sports trading card, or both.

"(2) Be liable to the buyer for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Each card sold represents a separate and distinct violation.

"(b) Any person who knowingly sells a cut, unlicensed sports trading card that has been produced by cutting the card from a publication in which unlicensed sports trading cards are bound, without disclosing the source and the means of producing the card, with the intent to deceive, injure, or defraud another, is guilty of a misdemeanor.

"Any person who violates this subdivision shall do both of the following:

"(1) Refund to the buyer the full consideration paid or furnished for the cut, unlicensed sports trading card.

"(2) Be liable to the buyer for a civil penalty not to exceed five thousand dollars (\$5,000) for each violation. Each card sold represents a separate and distinct violation.

"....."

As baseball trading cards do not typically "bear a serial number or personalized initials or inscription" (§ 21627), do not readily lend themselves to the addition of ownership identification without adversely affecting their value, and are covered in the Act as "sports trading cards" (§§ 21670-21672), we conclude that baseball trading cards purchased by a card shop do not constitute tangible personal property for purposes of regulation under the Act.

* * * * *

Exhibit G

Hopp v. City of Los Angeles Appellant's
Appendix filed on November 6, 2009

2nd Civ. No. B215265

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

RICHARD HOPP,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendants and Respondents.

NO. B215265

(Los Angeles County Superior
Court No. BC401887)

(Hon. Malcolm Mackey, Judge)

APPELLANT'S APPENDIX

DAVID A. CORDIER
466 Foothill Blvd., No. 300
La Canada, California 91011
(818) 553-3669

Attorney for Appellant,
RICHARD HOPP

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1 Richard Hopp
2 Post Office Box 3601
3 Van Nuys, California 91407
4 Telephone: (818) 902-0532
5 Fax: (818) 670-7841

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 13 2008

6 Plaintiff Richard Hopp
7 in Propria Persona

John A. Clarke, Executive Officer/Clerk
By Dorothy Swain, Deputy

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
9 CENTRAL JUDICIAL DISTRICT

10
11 Richard Hopp, an individual

) Case No.: BC401887

12 Plaintiff,

) COMPLAINT FOR DECLARATORY RELIEF

13 vs.

) TO DETERMINE VALIDITY OF
14) ORDINANCES AND INJUNCTION

15 City Of Los Angeles, a
16 Municipal Corporation

Defendant.

) UNLIMITED JURISDICTION

17 Plaintiff alleges as follows:

18 1. Plaintiff is an individual who is and at all times
19 mentioned herein was an individual residing in the City of Los
20 Angeles, State of California.

21 2. Defendant CITY OF LOS ANGELES (hereinafter CITY) is
22 and at all times mentioned herein was a municipal corporation
23 organized and existing under the Constitution and Laws of the
24 State of California.

25 3. Plaintiff is and has been an avid collector of books,
26 documents, and ephemera as a hobby. Items acquired and
27 purchased are for Plaintiff's personal use and not for resale,
28 even though Plaintiff may recycle and/or donate duplicates or

1 unwanted items. Plaintiff does not hold himself out as a
2 business or occupation with regard to his collecting and hobby
3 activities.

4 4. Plaintiff actively promotes, advertises, and campaigns
5 his collecting and hobby activities within publications,
6 websites, and at various events and locations, including, but
7 not limited to, exhibitions, festivals, meetings, flea markets,
8 swap meets, trade shows, garage sales, and collector meetings.

9 5. Plaintiff wants to have an "exhibitor's table" or
10 "buying booth" within the City of Los Angeles at various events
11 such as those described in paragraph 4, at which Plaintiff is
12 seeking to inform and let know to the participants, other
13 exhibitors, attendees, and the public who Plaintiff is as a
14 collector and hobbyist who purchases books, documents, and
15 ephemera.

16 6. Plaintiff does not and has not engaged in any business
17 nor occupation as a secondhand book dealer, secondhand seller,
18 pawnshop, antique merchant, antique shop, pawn broker, or seller
19 of any kind of books, documents, and ephemera. Plaintiff merely
20 collects and seeks to reach a larger audience with regard to
21 Plaintiff's collecting, and the items and subjects in which
22 Plaintiff has an interest.

23 7. The CITY has enacted a series of ordinances as part of
24 the Municipal Code for the City of Los Angeles relating to the
25 regulation of secondhand book dealers and secondhand dealers.
26 The pertinent parts of the relevant ordinances are Municipal
27 Codes §§103.310, §103.301. These ordinances have been since
28 their enactment, and are now still in full force and effect and

1 are being enforced and utilized by Defendant, CITY, through
2 their many agencies, including, but not limited to the Los
3 Angeles Police Department.

4 8. The employees of the CITY's Police Department have
5 stated that the Plaintiff is a secondhand book dealer and as
6 such is a business, thus requiring him to comply with, apply
7 for, obtain, and maintain a local police permit as a business.
8 Defendant considers Plaintiff's collecting and hobby activates
9 as an unpermitted business and that will lead to Plaintiff being
10 subjected to arrest and prosecution.

11 9. According to the CITY, Plaintiff is required to
12 maintain a secondhand book dealer's permit to purchase any
13 books, documents or ephemera at all public and private sales
14 including, but not limited to, the following venues:

- 15 a. Storage Auctions
- 16 b. Personal Property Sales
- 17 c. Receivership Sales
- 18 d. UCC Foreclosure Sales
- 19 e. Sheriff's Sales
- 20 f. Swap Meets
- 21 g. Flea Markets
- 22 h. Garage Sales
- 23 i. Trustee Bankruptcy Sales
- 24 j. Abandonment Sales
- 25 k. Ebay.com, Amazon.com, etc. (internet websites)
- 26 l. Public Administrator Auctions
- 27 m. Treasury Auctions
- 28 n. Probate Auctions

1 o. Conservatorship Auctions

2 p. Estate Sales

3 q. Police Auctions

4 r. Divorce Liquidation Sales

5 10. An actual controversy has arisen and now exists
6 between Plaintiff and Defendant, CITY, relative to their
7 respective rights and duties. Plaintiff contends that the
8 ordinances are invalid and unenforceable as to him and his
9 collecting and hobby activities, being preempted by a State Law
10 that the Plaintiff is NOT required to apply for, obtain, and
11 maintain a secondhand dealer's permit.

12 11. Plaintiff contends that upon enactment of the
13 California State Statutory System which regulates secondhand
14 dealers, including, but not limited to secondhand book dealers,
15 the local regulatory ordinances are preempted. Defendant
16 disputes this contention and contends the local regulatory
17 ordinances are valid and that Plaintiff is a business even
18 though the California Department of Justice and the City of Los
19 Angeles, Office of Finance¹ has made a written determination and
20 conclusion otherwise.

21 12. The actual controversy which exists includes, but is
22 not limited to, the following:

23 a. The Municipal Code provides that a violation of
24 the Ordinances challenged herein, expose
25 Plaintiff to criminal prosecution under Municipal
26 Code §21.199(h).

27
28 ¹ The Office of Finance administers Los Angeles Police Department
permits financial operations.

1 b. If Plaintiff does not maintain a local regulatory
2 license and permit to engage in book documents,
3 and ephemera collecting, the CITY contends
4 Plaintiff may not engage in book documents, and
5 ephemera collecting as a hobby. Plaintiff is
6 required to procure a regulatory license and
7 permit under threat of criminal prosecution. The
8 City has been forwarded copies of the California
9 Department of Justice letter dated June 12, 2008,
10 and City of Los Angeles, Office of Finance letter
11 dated April 3, 2008.

12 c. Plaintiff may be subject to regular and
13 unannounced warrantless searches of non-public
14 areas of Plaintiff's residential premises by CITY
15 employees, not permitted by State law, under of
16 threat criminal prosecution of Plaintiff.

17 d. Plaintiff has been and is presently being exposed
18 by the CITY to threat of criminal prosecution.
19 Plaintiff has been denied administrative review
20 of his request due to the lack of procedures
21 established by the CITY to redress his request.
22 The CITY has and continues to refuse to provide a
23 written determination.

24 e. Plaintiff cannot seek review of any
25 administrative ruling, or lack thereof, but seeks
26 a legal determination of whether he is required
27 to submit to such ordinances and permit
28 requirements.

1 f. These unwarranted and arbitrary actions by CITY's
2 employees subject Plaintiff to potential criminal
3 prosecution; a violation and interference of
4 Plaintiff's free exercise of his right guaranteed
5 under the First and Fourteenth Amendment of the
6 United States Constitution and applicable
7 sections of the California Constitution.

8 g. Defendant, CITY, subjectively stated Plaintiff's
9 collecting and hobby actives are a business, thus
10 subject to the rules, duties, and regulations of
11 a secondhand book dealer. Failure to maintain a
12 secondhand book dealer permit will subject
13 Plaintiff to criminal prosecution.

14 13. Plaintiff has no alternative other than seeking a
15 declaration of his rights and duties in this Court.

16 14. Plaintiff has been and continues to be subject to
17 criminal enforcement of the local ordinances, all of which
18 Plaintiff alleges are preempted by State law. Plaintiff has no
19 other alternative or speedy remedy for determination of his
20 rights.

21 15. The CITY disputes that the City of Los Angeles
22 Municipal Code Ordinances challenged herein are preempted by
23 State law and CITY contends that each and every ordinance and
24 its application to Plaintiff's activities are valid.

25 16. Plaintiff desires a judicial determination as to the
26 validity of the ordinances and the question of their being
27 preempted by State law.

28 17. A judicial declaration is necessary and appropriate at

1 this time so that Plaintiff may ascertain his rights and duties
2 in the matter without first subjecting himself to liability by
3 violating the ordinances including the potential for criminal
4 prosecution.

5 18. Plaintiff further submits that it would be appropriate
6 for resolution at this time in order to avoid irrepressible
7 injury which will result to Plaintiff by the continued criminal
8 prosecution of Plaintiff by the CITY under their local
9 ordinances at significant expense unless the determination in
10 made.

11 WHEREFORE, Plaintiff prays for judgment as follows:

12 1. That this Court accept jurisdiction over this case and
13 schedule it for hearing at the soonest opportunity.

14 2. That this Court declares Plaintiff is not a secondhand
15 book dealer, secondhand seller, pawnshop, antique merchant,
16 antique shop, pawn broker, or seller of any kind of books,
17 documents, and ephemera or secondhand goods and wares, nor
18 conducting a business nor occupation with regard to his
19 collecting and hobby activities.

20 3. That this Court declares the ordinances in question
21 are preempted by State law, and as such are invalid and void as
22 to Plaintiff's collecting and hobby activities.

23 4. That this Court declares the respective rights and
24 duties of the parties under the ordinances in question.

25 5. That this Court declares that the actions of Defendant
26 in denying Plaintiff's right to collect books, documents, and
27 ephemera is *ultra vires* and unlawful according to the laws and
28 regulations of the City of Los Angeles.

1 6. That this Court issues a preliminary and permanent
2 injunction restraining Defendant from prohibiting Plaintiff from
3 actively promoting, publicizing, and advertising, his collecting
4 and hobby activities within publications, websites, and at
5 various events and locations, including, but not limited to,
6 exhibitions, festivals, meetings, flea markets, swap meets,
7 trade shows, garage sales, and collector meetings within the
8 jurisdiction of the City of Los Angeles.

9 7. That this Court declares enjoining Defendant, their
10 employees, agents, and successors in office from enforcing the
11 City of Los Angeles Ordinances, or in the alternative, enjoin
12 Defendant, their employees, agents, and successors in office
13 from enforcing the City of Los Angeles Ordinances against
14 Plaintiff's books, documents, and ephemera collecting and hobby
15 activity as described herein.

16 8. That this Court declares the City of Los Angeles
17 Ordinance(s) to be in violation of the United States
18 Constitution and applicable sections of the California
19 Constitution, or in the alternative declaring that the
20 application of the City of Los Angeles Ordinance to Plaintiff's
21 books, documents, and ephemera collecting and hobby activity as
22 described herein, violates Plaintiff's Federal and State
23 constitutional rights.

24 ///

25 ///

26 ///

27 ///

28 ///

- 1 9. For costs of suit incurred herein.
2 10. For reasonable attorney's fees, according to proof.
3 11. For such other and further relief as the Court may
4 deem just and proper.

5
6 Dated: November 12, 2008
7

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9
10 By: 

11 Richard Hopp, Plaintiff
12 in Propria Persona
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1 ROCKARD J. DELGADILLO, City Attorney (SBN 125465x)
2 LAURIE RITTENBERG, Assistant City Attorney (SBN 106683)
3 GABRIEL S. DERMER, Deputy City Attorney (SBN 229424)
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8 Attorneys for Defendant CITY OF LOS ANGELES

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 RICHARD HOPP, an individual

13 Plaintiff,

14 vs.

15 CITY OF LOS ANGELES, a Municipal
16 Corporation

17 Defendant.
18
19

CASE NO. BC 401 887

[Assigned to Hon. Malcolm H. Mackey,
Dept. 55]

DEFENDANT'S ANSWER TO COMPLAINT

20
21 Defendant City of Los Angeles (hereinafter the "CITY"), a municipal corporation, for
22 itself and no others, answers the Complaint of Richard Hopp (hereinafter "HOPP") as follows:

23 ///

24 ///

25 ///

1 Pursuant to the provisions of Code of Civil Procedure section 431.30, Defendant
2 CITY denies each and every allegation in the unverified Complaint.

3
4 FIRST AFFIRMATIVE DEFENSE

5 (Failure to State a Claim)

6 For a first, separate and distinct affirmative defense to the Complaint, Defendant
7 CITY alleges:

8 1. The Complaint fails to state facts sufficient to constitute a cause of action against
9 Defendant CITY.

10 SECOND AFFIRMATIVE DEFENSE

11 (Estoppel)

12 For a second, separate and distinct affirmative defense to the Complaint, Defendant CITY
13 alleges:

14 2. The CITY is informed and believes and thereon alleges that HOPP is estopped by
15 his own conduct from asserting any and all claims he has or may have had against Defendant
16 CITY arising from the transactions and occurrences set forth in the Complaint.

17 THIRD AFFIRMATIVE DEFENSE

18 (Immunity)

19 For a third, separate and distinct affirmative defense to the Complaint, Defendant CITY
20 alleges:

21 3. The CITY is immune from liability pursuant to sections 815.2, 818.4 and 820.2 of the
22 California Government Code with respect to any discretionary acts or omissions of Defendant
23 CITY or its agents, including with regard to the issuance, denial or revocation of a permit.

24 FOURTH AFFIRMATIVE DEFENSE

25 (Unclean Hands)

26 For a fourth, separate and distinct affirmative defense to the Complaint, Defendant CITY
27 alleges:

1 4. HOPP is guilty of unclean hands in the matter set forth in the Complaint which
2 conduct extinguishes his right to legal and equitable relief in this action.

3 FIFTH AFFIRMATIVE DEFENSE

4 (No Standing)

5 For a fifth, separate and distinct affirmative defense to the Complaint, Defendant CITY
6 alleges:

7 5. HOPP does not have standing to bring the within action.

8 SIXTH AFFIRMATIVE DEFENSE

9 (Adequate Remedy at Law)

10 For a sixth, separate and distinct affirmative defense to the Complaint, Defendant CITY
11 alleges:

12 6. As HOPP has an adequate remedy at law, he has no right to any equitable relief.

13 SEVENTH AFFIRMATIVE DEFENSE

14 (Failure to Exhaust Administrative Remedies)

15 For a seventh, separate and distinct affirmative defense to the Complaint, Defendant CITY
16 alleges:

17 7. HOPP's claims are barred in whole or in part because of his failure to exhaust
18 administrative remedies.

19 EIGHTH AFFIRMATIVE DEFENSE

20 (No Imminent Threat of Irreparable Injury)

21 For an eighth, separate and distinct affirmative defense to the Complaint, Defendant CITY
22 alleges:

23 8. HOPP's claims for preliminary injunctive relief are barred because he cannot
24 show an imminent threat of irreparable injury.

25 NINTH AFFIRMATIVE DEFENSE

26 (Unlikely to Prevail on the Merits)

27 For a ninth, separate and distinct affirmative defense to the Complaint, Defendant CITY
28 alleges:

1 9. HOPP's claims for preliminary injunctive relief are barred because he is unlikely
2 to prevail on the merits.

3 TENTH AFFIRMATIVE DEFENSE

4 (Balance of Interests Weighs in CITY's Favor)

5 For a tenth, separate and distinct affirmative defense to the Complaint, Defendant CITY
6 alleges:

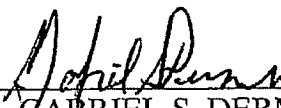
7 10. HOPP's claims for injunctive relief are barred because the balance of competing
8 interests weighs in the CITY's favor.

9
10 WHEREFORE, Defendant CITY OF LOS ANGELES prays for judgment as follows:

- 11 1. That HOPP take nothing by way of his Complaint on file herein;
12 2. That judgment be entered in favor of Defendant CITY OF LOS ANGELES, together
13 with costs and reasonable attorneys' fees; and
14 3. Such other relief as the Court deems proper and just.

15
16 DATED: December 11, 2008

17
18 ROCKARD J. DELGADILLO, City Attorney
19 LAURIE RITTENBERG, Assistant City Attorney
20 GABRIEL S. DERMER, Deputy City Attorney

21 By 
22 GABRIEL S. DERMER
23 Deputy City Attorney

24 Attorneys for Defendant CITY OF LOS ANGELES
25
26
27
28

PROOF OF SERVICE
Hopp v. City of Los Angeles
LASC Case No. BC 401887

I am employed by the Office of the Los Angeles City Attorney located in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 North Main Street - CHE, 9th Floor, Room 916, California 90012.

On December 12, 2008, I served the foregoing documents described as:

DEFENDANT'S ANSWER TO COMPLAINT

on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Hopp
POB 3601
Van Nuys, CA 91407
Tel: 818/ 902-0532
Fax 670-7841

☒ MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

☐ BY PERSONAL SERVICE - () I delivered by hand, or () I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

☐ BY OVERNIGHT COURIER - I caused the above-referenced document(s) to be delivered via: [DHL], an overnight courier service, for delivery to the above-addressee(s).

☐ BY FACSIMILE - I caused the above-referenced document(s) to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

☐ Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒ State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 12, 2008, at Los Angeles, California.


TERRY LEE

1 ROCKARD J. DELGADILLO, City Attorney (SBN 125465x)
2 LAURIE RITTENBERG, Assistant City Attorney (SBN 106683)
3 GABRIEL S. DERMER, Deputy City Attorney (SBN 229424)
4 200 N. Main Street, City Hall East, 9th Floor, Rm. 916
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8 Attorneys for Defendant CITY OF LOS ANGELES

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11
12 RICHARD HOPP, an individual

13 Plaintiff,

14 vs.

15 CITY OF LOS ANGELES, a Municipal
16 Corporation

17 Defendant.

CASE NO. BC 401 887

[Assigned to Hon. Malcolm H. Mackey,
Dept. 55]

DEFENDANT'S MOTION FOR JUDGMENT
ON THE PLEADINGS

Hearing

Date: March 3, 2009

Time: 8:30 a.m.

Dept: 55

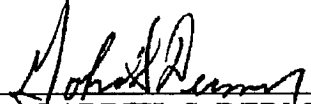
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21
22 TO PLAINTIFF AND TO ALL INTERESTED PARTIES:

23
24 PLEASE TAKE NOTICE that on March 3, 2009 at 8:30 a.m. or as soon thereafter as the
25 matter may be heard in Department 55 of this Court, located at 111 North Hill Street, Los
26 Angeles, California 90012, Defendant City of Los Angeles (the "City") will move, and does
27 move, pursuant to Code of Civil Procedure section 438 for judgment on the pleadings in favor of
28 the City as to the entire complaint.

1 This motion is made on the ground that the complaint does not state facts sufficient to
2 constitute a cause of action against the City, in that the challenged City ordinance, Los Angeles
3 Municipal Code section 103.310, is valid and constitutional and applies to the activities of
4 Plaintiff Richard Hopp ("Hopp") as alleged in his complaint. The motion will be based upon
5 this notice, the attached memorandum of points and authorities, the accompanying Request for
6 Judicial Notice, the files and records in this action, and any further evidence and argument that
7 the Court may receive at or before the hearing.

8
9 DATED: January 30, 2009

10 ROCKARD J. DELGADILLO, City Attorney
11 LAURIE RITTENBERG, Assistant City Attorney
12 GABRIEL S. DERMER, Deputy City Attorney

13 By 
14 GABRIEL S. DERMER
15 Deputy City Attorney

16 Attorneys for Defendant CITY OF LOS ANGELES
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MEMORANDUM OF POINTS AND AUTHORITIES
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **1. INTRODUCTION**

4 This case presents one simple question: Can the City of Los Angeles (the “City”) require
5 Plaintiff Richard Hopp (“Hopp”) to obtain a secondhand book dealer’s permit to engage in his
6 collecting activities? As will be shown, the answer is yes. Accordingly, no cause of action
7 exists and the City is entitled to judgment on the pleadings.

8 **2. THE FACTS**

9 Hopp is an “avid collector of books, documents and ephemera.” (Complaint at 1:26). He
10 does not sell what he collects, though he “may recycle and/or donate duplicates or unwanted
11 items.” (Complaint at 1:27 – 2:1). Hopp “actively promotes, advertises, and campaigns his
12 collecting and hobby activities within publications, websites, and at various events and
13 locations, including, but not limited to, exhibitions, festivals, meetings, flea markets, swap
14 meets, trade shows, garage sales, and collector meetings.” (Complaint at 2:4-8).

15 Hopp “wants to have an ‘exhibitor’s table’ or ‘buying booth’ within the City of Los
16 Angeles at various events” such as swap meets and flea markets. (Complaint at 2:9-11). Hopp
17 wants this buying booth or exhibitor’s table to inform and let attendees and the public know that
18 he is a collector and hobbyist who purchases books, documents, and ephemera. (Complaint at
19 2:12-15). Hopp alleges he “has not engaged in any business nor [*sic*] occupation” as a
20 secondhand book dealer, just that he “merely collects and seeks to reach a larger audience with
21 regard to [his] collecting.” (Complaint at 2:16-22).

22 Hopp alleges that the City has enacted Municipal Code sections, chiefly 103.310,¹ that
23 regulate secondhand book dealers. (Complaint at 2:23-27). Based on the above allegations,
24 Hopp seeks a judicial determination that he is “not a secondhand book dealer” (Complaint at
25

26
27

¹ The Complaint refers (at 2:27), possibly in error, to section 103.301 relating to Antique Shops.
28 Similarly, the Complaint refers to section 21.199(h) (at 4:26), relating to selling without a permit. As
buying (and not selling) secondhand books is the issue raised in the Complaint, the instant motion does
not address these other ordinances.

1 7:14), that the City's ordinance is "preempted by State law" (Complaint at 7:20-21), and that the
2 ordinance violates Hopp's "constitutional rights" (Complaint at 7:22-23). As will be shown,
3 there is nothing infirm about the City's ordinance at issue, and it does apply to Hopp and his
4 collecting activities.

5 **3. ARGUMENT**

6 A defendant may bring a motion for judgment on the pleadings on the same grounds as a
7 general demurrer, but the motion may be made after the time for filing the demurrer has expired.
8 Code of Civ. Proc. § 438. Grounds for a motion for judgment on the pleadings must appear on
9 the face of the challenged pleading and may be based on facts which the Court may judicially
10 notice.² *Id.*

11 **A. Rules of Statutory Interpretation**

12 As with any case that looks to statutes and their effects, one should first understand the
13 rules of statutory interpretation. "Our fundamental task in construing a statute is to ascertain the
14 intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining
15 the statutory language, giving the words their usual and ordinary meaning. If there is no
16 ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the
17 language governs. If, however, the statutory terms are ambiguous, then we may resort to
18 extrinsic sources, including the ostensible objects to be achieved and the legislative history. In
19 such circumstances, we select the construction that comports most closely with the apparent
20 intent of the Legislature, with a view to promoting rather than defeating the general purpose of
21 the statute, and avoid an interpretation that would lead to absurd consequences." *Day v. City of*
22 *Fontana* (2001) 25 Cal. 4th 268, 272 (citations omitted).

23 **B. Section 103.310 Applies to Hopp**

24 Hopp accurately states that the City has enacted ordinances "relating to the regulation of
25 secondhand book dealers and secondhand dealers." (Complaint at 2:23-24). The pertinent
26 ordinance is Municipal Code section 103.310 (Complaint at 2:27), entitled "Secondhand Book
27

28 ² The City has concurrently filed a request for judicial notice of the Municipal Code sections cited herein.

1 Dealers.” This section requires secondhand book dealers to have a permit from the Board of
2 Police Commissioners or the Police Permit Review Panel, and to record and keep bills of sale
3 available for inspection by police officers during business hours.

4 Subsection (a)(1) of said section defines who is a secondhand book dealer for purposes of
5 this regulation: “a person engaging in, conducting, managing or carrying on the business of
6 *buying, selling, exchanging or otherwise dealing in secondhand books.*” (emphasis added). In
7 other words, a person in the business of buying or otherwise dealing in secondhand books is a
8 “secondhand book dealer” under the ordinance.

9 It is necessary to understand what “business” means in this context, as this word appears
10 to be the lynchpin underlying Hopp’s argument that *he* does not need a permit, because he “does
11 not hold himself out as a business.” (Complaint at 2:1-2). As with many English words,
12 business has more than one strict meaning. In fact, the word “business” is in no way limited to
13 an “occupation” as suggested by Hopp; rather it may refer to, among other things, role, function,
14 and mission, or a particular field of endeavor, or an affair or matter.³

15 In the context of the ordinance, an obvious place to look for assistance is in the
16 “Definitions” of Section 103.01. There, business “means any occupation, trade, establishment
17 or concern, regardless of form, which provides services, products or entertainment for which a
18 permit is required.” This self-referencing definition makes clear that “business” is not used
19 strictly in the commercial sense; rather it may refer to *any concern*, in the sense of a task or
20 objective. This is consistent with Section 103.310’s reference to “buying ... or otherwise
21 dealing in secondhand books” as a commercial business would buy *and* sell books, and not
22 “otherwise” deal with them.

23 It is clear, therefore, that the ordinance’s insertion of the word “business” is not a limiting
24 reference to “occupation.” A person carrying on *the function of buying* secondhand books is a
25 secondhand book dealer under the ordinance. *Hopp* is a secondhand book dealer under the
26 ordinance. Further to Municipal Code section 103.310, Hopp is required to obtain a permit and
27

28 ³See, for example, “business” at Merriam-Webster’s Online Dictionary (at www.merriam-webster.com/dictionary/business).

1 to keep a bill of sale, containing the seller's name and a description of the book, open to police
2 inspection. In addition to conforming to the words themselves, this makes imminent sense in
3 terms of the policy underlying such regulations.

4 More than 80 years ago, our Supreme Court recognized the propriety of a city requiring a
5 secondhand book dealer to have a permit in *In re Holmes* (1921) 187 Cal. 640. In dismissing
6 Holmes' contention that "the business of dealing in second-hand books is not such a business as
7 requires or should be subjected to regulation under the police powers of the municipality," 187
8 Cal. at 645, the Court stated as follows:

9 Second-hand goods, wares, and merchandise have always been deemed the proper
10 subjects of police regulation by municipalities; and the grant by the constitution in
11 article XI, section 11 thereof, to municipalities 'to make and enforce all such local,
12 police, sanitary and other regulations as are not in conflict with general laws,' is
13 very broad and liberal. The business of buying and selling second-hand books
14 cannot be differentiated from the business of buying and selling other forms of
15 second-hand personal property which, being movable, valuable, and passing easily
16 from hand to hand, are often made the subject of purloining and petit larceny and
17 of disposal in second-hand places of business. Such places of business have,
18 therefore, been made the proper subjects of police inspection and regulation. It is
19 a matter of common knowledge that public libraries all over the country are
20 continually subjected to the depletion of their shelves through loss of books which
21 find their destination in second-hand stores, and that precautions against such loss
22 may be observed in the equipment and administration of every well-appointed
23 public library in the land.

24 *In re Holmes*, 187 Cal. at 645 (citations omitted).

25
26 As discussed, it is of no moment that Hopp collects, but does not sell, secondhand books.
27 The ordinance does not contain a "sell requirement" because the thief the ordinance is designed
28 to curtail does not care who ultimately purchases the books. It is sufficient that he sees Hopp at

1 his "buying booth" at the flea market and can dispose of the stolen items there. There is no
2 reason to believe that, in the years since the Court decided *In re Holmes*, police regulation of
3 Hopp's secondhand book buying "business" is any less necessary and proper.

4 **C. Preemption**

5 Assuming the City's ordinance does indeed apply to Hopp, he argues that the City's
6 regulations are preempted by the state's statutory system. (Complaint at 4:12-15).

7 "State preemption of local legislation is established by article XI, section 7 of the
8 California Constitution, which provides that '[a] county or city may make and enforce within its
9 limits all local, police, sanitary, and other ordinances and regulations not in conflict with general
10 laws.' In *Sherwin-Williams*, this court identified three types of conflict that cause preemption:
11 'A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied
12 by general law, either expressly or by legislative implication. Local legislation is contradictory
13 to general law when it is inimical thereto.' A local ordinance is preempted by a state statute
14 only to the extent that the two conflict." *Action Apartment Assn., Inc. v. City of Santa Monica*
15 (2007) 41 Cal. 4th 1232, 1242-43 (citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4
16 Cal.4th 893, 898; other citations omitted).

17 It is clear, then, that local legislation can be valid even where it may address the same
18 issues as state legislation. The issue here is what state laws, if any, govern secondhand books
19 and to what extent.

20 **a) As State Law Does Not Regulate Secondhand Books, the City's** 21 **Ordinance is Not Preempted**

22 The state laws concerning secondhand goods generally are found in Chapter 9, Division
23 8, Article 4 (section 21625 *et seq.*) of the Business and Professions Code.⁴ A "secondhand
24 dealer" means any person, copartnership, firm, or corporation whose business includes buying,
25 selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or
26

27 ⁴ Similar provisions regulating pawnbrokers may be found in Financial Code sections 21200 *et seq.* As
28 an interesting aside, Business and Professions Code section 21625 states that it is the "intent of the
Legislature in enacting the article to curtail the dissemination of stolen property."

1 auctioning secondhand tangible personal property. Bus. & Prof. Code § 21626(a). “Tangible
2 Personal Property” is defined in Business and Professions Code section 21627(a) as property
3 that “includes, but is not limited to, all secondhand tangible personal property which bears a
4 serial number or personalized initials or inscription or which ... bears evidence of having had a
5 serial number or personalized initials or inscription.” Tangible personal property may also
6 include “tangible personal property, new or used, including motor vehicles, received in pledge
7 as security for a loan by a pawnbroker.” Bus. & Prof. Code § 21627(b)(1).

8 Books, certainly for the most part, do not bear individual serial numbers or personalized
9 initials or secure loans by pawnbrokers. In fact, there is *no* reference to secondhand books or
10 non personalized property anywhere in the state’s statutory scheme. Secondhand books,
11 therefore, which are really *non-tangible* personal property, are not covered by the state statute.
12 Accordingly, there can be no conflict with state law and the City’s ordinance is proper and not
13 preempted.

14 Yet even if books *were* covered by the state statutory scheme, there is nothing in state
15 law that would preempt the subject ordinance. In fact, the issues that would be relevant to the
16 instant matter have previously been addressed in the City’s favor in the case *Malish v. City of*
17 *San Diego* (2000) 84 Cal. App. 4th 725.

18 **b) The City’s Ordinance is Valid Under the *Malish* Analysis**

19 In *Malish*, the plaintiff (Malish), a licensed pawnbroker, filed an action against the City
20 of San Diego seeking a declaratory judgment that certain city ordinances regulating
21 pawnbrokers were preempted by state law. The court relied upon sections 21636, 21637 and
22 21638 of the Business and Professions Code that expressly recognize and authorize local
23 regulation of pawnbrokers and other secondhand dealers (which Hopp would be if secondhand
24 books were covered under state law) in holding that the challenged ordinances were preempted
25 by state law *only* to the extent they exceeded the scope of local regulation permitted by those
26 statutory provisions. *Malish, supra*, 84 Cal. App. 4th at 729. Accordingly, the court held that
27 ordinances providing for local permits, reasonable police inspection during normal business
28

1 hours, grounds for denial of a local permit, and recording regulations did not conflict with state
2 law and were not preempted.

3 **1) The City May Require Secondhand Book Dealers to Have a**
4 **Permit**

5 The first challenged ordinance *Malish* addressed was San Diego Municipal Code section
6 33.0101, an introductory section entitled "Certain Businesses and Occupations Police Regulated;
7 Police Permit Required." *Malish* contended "section 33.0101 is inconsistent with the legislative
8 intent to establish uniform, statewide, state-administered regulations because it conflicts with the
9 provisions of the Business and Professions Code and the Financial Code governing the terms
10 and conditions under which local authorities must issue a state license to engage in pawnbroker
11 business at a particular address in the City." *Malish, supra*, 84 Cal. App. 4th at 729-730.
12 Noting that local governments are authorized under Business and Professions Code section
13 21638 to enact as well as enforce ordinances regulating pawnbrokers, the *Malish* Court
14 concluded "the City's local permit system is a proper means of enforcing local regulatory
15 ordinances that are not inconsistent with state regulatory statutes." *Id.* at 730.

16 In the instant matter, section 103.310 requires secondhand book dealers to have a permit.
17 As in *Malish*, there is nothing inconsistent with the state regulatory statutes. The City may
18 require secondhand book dealers to have a permit.

19 **2) Police Inspections are Constitutional and Permitted**

20 San Diego Municipal Code Section 33.0102,⁵ relating to police inspection rights, was the
21 next challenged ordinance. *Malish* contended this section effectively conditioned the issuance
22 of his local permit on unrestricted police access to his business and that the ordinance conflicted
23 with the legislative goal of uniform statewide regulation. *Malish, supra*, 84 Cal. App. 4th at
24 731. In reply, the Court held that section 33.0102 "does not give the police unrestricted access
25 to *Malish's* business...but rather restricts the police to *reasonable* inspection during normal
26 business hours. The ordinance does not conflict with state law." *Id.* (emphasis in original).

27 _____
28 ⁵ Renumbered to 33.0103.

1 The *Malish* Court also noted that “section 33.0102’s inspection provision is consistent
2 with Business and Professions Code section 21636, which requires secondhand dealers to hold
3 and produce personal property ‘for inspection by any peace officer or employee designated by
4 the chief of police or sheriff.’” *Malish, supra*, 84 Cal. App. 4th at 731 (citing Bus. & Prof. Code
5 § 21636(a) and (b)).

6 Malish additionally contended that section 33.0102 violated “the law governing
7 warrantless searches i.e., the Fourth Amendment.” *Malish, supra*, 84 Cal. App. 4th at 732. The
8 Court flatly rejected this contention based upon the decisions of state and federal courts that
9 considered and upheld similar warrantless inspection provisions based upon the “closely
10 regulated business” exception and/or because the authorizing statute or ordinance imposes time,
11 place, and scope restrictions. *Id.* (citing cases).

12 The City’s ordinance is equally valid to that of San Diego’s. It requires that bills of sale
13 “be kept on file and open during business hours to the inspection of any police officer or
14 representative of the Board.” It is a reasonable regulation that limits police inspections to
15 business hours. As with the ordinance *Malish* addressed, section 103.310 is not preempted by
16 state law, and it does not violate the Fourth Amendment’s proscription against warrantless
17 searches.

18 **3) The City May Have Regulations for the Denial of Permits in**
19 **Addition to the State**

20 The *Malish* Court also addressed the San Diego ordinances relating to the denial,
21 suspension and revocation of a local permit. Malish again contended “these ordinances conflict
22 with the legislative objective of uniform statewide regulation because they impose different
23 standards for denial, suspension or revocation of the local permit than the standards under state
24 law for denial, suspension or revocation of the state license.” *Malish, supra*, 84 Cal. App. 4th at
25 733. In sum, the Court found that the *denial* ordinance (San Diego Municipal Code section
26 33.0305) was consistent with state licensing statutes and not preempted. *Id.*

27 Hopp has neither applied for, nor been refused, a permit. His complaint appears to
28 challenge section 103.310 generally. Said section does not contain any reference to the denial of

1 a permit, as the City's grounds for denial are found in Municipal Code section 103.31. This
2 section contains many of the same grounds for denial as its San Diego counterpart, *e.g.*,
3 applicant made a false or misleading statement or is under eighteen years of age. Accordingly,
4 even if the City's denial ordinance were at issue, it would "constitute supplemental regulations
5 that fall within the reasonable exercise of the City's police power and do not offend the spirit of
6 the state licensing statute." *Malish, supra*, 84 Cal. App. 4th at 733.

7 **4) The City May Duplicate State Law**

8 *Malish* also addressed San Diego's ordinance requiring pawnbrokers to keep certain
9 records (section 33.1101). The ordinance was deemed invalid to the extent that it required
10 *Malish* to keep more records than provided for in the state laws. However, the Court rejected
11 *Malish's* "contention that section 33.1101 is preempted to the extent it *duplicates* state law
12 requiring pawnbrokers to keep records of loans and property transactions and subjecting those
13 records and property to police inspection. Although as a general rule duplicative ordinances are
14 preempted, that rule does not apply here because the Legislature has expressly authorized
15 duplicative ordinances regulating pawnbrokers by allowing the enactment and enforcement of
16 ordinances that are not inconsistent with state law, and prohibiting the adoption of local
17 identification, holding or reporting requirements only if they are 'other than' as set forth in the
18 relevant state statutes." *Malish, supra*, 84 Cal. App. 4th at 736 (citing *Sherwin-Williams, supra*,
19 4 Cal. 4th at 897 and Bus. & Prof. Code §§ 21637 and 21638).

20 Similarly, San Diego Municipal Code section 33.1103 merely duplicated the state's
21 recordkeeping requirement. As such, the *Malish* Court found it was consistent with the state
22 scheme and valid. *Malish, supra*, 84 Cal. App. 4th at 736

23 Here, section 103.310 obligates secondhand book dealers to ascertain the person selling
24 has the right to do so, and to record the name of the seller and a description of the book.
25 Assuming, *arguendo*, that Business and Professions Code section 21628 applies, secondhand
26 book dealers would have to do everything the City requires *plus* obtain a certification and
27 legible fingerprint from the seller. Because the City requires *less* than the state, the ordinance
28

1 cannot be deemed invalid. *Malish, supra*, 84 Cal. App. 4th at 736; Bus. & Prof. Code §§ 21637
2 and 21638.

3 **D. In Sum, the City's Ordinance is Proper and Valid**

4 The City's secondhand book ordinance cannot be preempted by the state as the state
5 statutes address serialized and personalized property, and do not address non-tangible
6 secondhand books. However, as shown, there is nothing material in Municipal Code section
7 103.310 that would be preempted *even if* secondhand books were covered by the state's
8 statutory scheme.

9 The City may require Hopp to obtain a permit, ascertain that sellers have the right to sell,
10 keep bills of sale containing the name of the seller and a description of the book, and permit
11 police officers to inspect the bills of sale during normal business hours. As *Malish* makes clear,
12 these requirements in no way conflict with the state's statutory scheme, and are valid. Similarly,
13 there can be no meaningful dispute that the City's ordinance is a proper and reasonable
14 regulation. *See, e.g., Malish, supra*, 84 Cal. App. 4th at 732.

15 **4. CONCLUSION**

16 For all of the foregoing reasons, the City of Los Angeles respectfully requests that this
17 Court find the Los Angeles Municipal Code section 103.310 to be valid and enforceable, and
18 applicable to Mr. Hopp's book buying activities. Accordingly, the complaint does not state facts
19 sufficient to constitute a cause of action and the City's motion for judgment on the pleadings
20 should be granted.

21
22 Respectfully submitted,

23 DATED: January 30, 2009

24 ROCKARD J. DELGADILLO, City Attorney
25 LAURIE RITTENBERG, Assistant City Attorney
26 GABRIEL S. DERMER, Deputy City Attorney

27 By



28 GABRIEL S. DERMER

Deputy City Attorney

Attorneys for Defendant CITY OF LOS ANGELES

PROOF OF SERVICE
Hopp v. City of Los Angeles
LASC Case No. BC 401887

I am employed by the Office of the Los Angeles City Attorney located in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 North Main Street - CHE, 9th Floor, Room 916, California 90012.

On January 30, 2009, I served the foregoing documents described as:

DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Hopp
POB 3601
Van Nuys, CA 91407
Tel: 818/ 902-0532
Fax 670-7841

☒ MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

☐ BY PERSONAL SERVICE - () I delivered by hand, or () I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

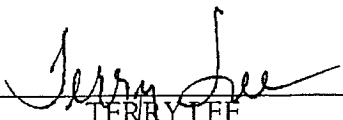
☐ BY OVERNIGHT COURIER - I caused the above-referenced document(s) to be delivered via: [DHL], an overnight courier service, for delivery to the above-addressee(s).

☐ BY FACSIMILE - I caused the above-referenced document(s) to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

☐ Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒ State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 30, 2009, at Los Angeles, California.


TERRY LEE

1 ROCKARD J. DELGADILLO, City Attorney (SBN 125465x)
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6 Attorneys for Defendant CITY OF LOS ANGELES

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11
12 RICHARD HOPP, an individual

13 Plaintiff,

14 vs.

15 CITY OF LOS ANGELES, a Municipal
16 Corporation

17 Defendant.
18

CASE NO. BC 401 887

[Assigned to Hon. Malcolm H. Mackey,
Dept. 55]

DEFENDANT'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS

Hearing

Date: March 3, 2009

Time: 8:30 a.m.

Dept: 55

19
20 TO THE HONORABLE COURT AND ALL INTERESTED PARTIES:

21
22 The Court may take judicial notice of regulations and legislative enactments of public
23 entities. Cal. Evid. Code § 452(b). Defendant City of Los Angeles (the "City") respectfully
24 requests that the Court take judicial notice of the following Municipal Code sections:

25 Los Angeles Municipal Code section 21.199, attached hereto as Exhibit "1."

26 Los Angeles Municipal Code section 103.01, attached hereto as Exhibit "2."

27 Los Angeles Municipal Code section 103.31, attached hereto as Exhibit "3."

28 Los Angeles Municipal Code section 103.301, attached hereto as Exhibit "4."

1 Los Angeles Municipal Code section 103.310, attached hereto as Exhibit "5."

2 San Diego Municipal Code section 33.0101, attached hereto as a portion of Exhibit "6."

3 San Diego Municipal Code Section 33.0103, attached hereto as a portion of Exhibit "6."

4 San Diego Municipal Code section 33.0305, attached hereto as Exhibit "7."

5 San Diego Municipal Code section 33.1101, attached hereto as a portion of Exhibit "8."

6 San Diego Municipal Code section 33.1103, attached hereto as a portion of Exhibit "8."

7
8 Respectfully submitted,

9
10 DATED: January 30, 2009

11 ROCKARD J. DELGADILLO, City Attorney
12 LAURIE RITTENBERG, Assistant City Attorney
13 GABRIEL S. DERMER, Deputy City Attorney

14 By



15 GABRIEL S. DERMER

16 Deputy City Attorney

17 Attorneys for Defendant CITY OF LOS ANGELES
18
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Exhibit 1

Official City of Los Angeles Municipal Code (TM)

SEC. 21.199. SALES TAX.

(a) **Imposition and Rate of Sales Tax.** (Reenacted, Amended by Ord. No. 137,130, Oper. 10/1/68) For the privilege of selling tangible personal property at retail a tax is hereby imposed, in addition to any other tax imposed under this article or under this chapter, upon all retailers at the rate of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in the City of Los Angeles on or after October 1, 1968, and to and including March 31, 1969.

Notwithstanding the foregoing provisions of this subsection, the tax imposed by this section shall not apply to selling tangible personal property at fixed prices agreed to in contracts executed in good faith prior to October 1, 1968.

For the purposes of this section, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination, or to a common carrier for delivery to an out-of-state destination. The gross receipts from sales shall include delivery charges when such charges are subject to the sales and use tax imposed by the State of California, regardless of the place to which delivery is made. In the event a retailer having a place of business within the City also has a place of business outside the City, both of which participate in some degree in a particular sale, the sale shall be deemed to have occurred within the City of Los Angeles if the principal negotiations were carried on there or by personnel normally assigned to that place of business. In the event a retailer has no permanent place of business in the City, but nevertheless engages in selling tangible personal property in the City, the sales shall be deemed to have occurred within the City if the sales were solicited or otherwise promoted by the seller or his agent within the City and the seller or his agent delivered the property within the City to a purchaser or to the purchaser's agent.

(b) **Reimbursement.** The retailer shall reimburse himself for the tax due from the consumer substantially in accordance with the following table up to the amount specified herein:

[Sales Tax — Retailer Reimbursement]

1 %

Price	Tax
.01 - .49	.00
.50 - 1.49	.01
1.50 - 2.49	.02

Official City of Los Angeles Municipal Code (TM)

2.50	-	3.49		.03
3.50	-	4.49		.04
4.50	-	5.49		.05
5.50	-	6.49		.06
6.50	-	7.49		.07
7.50	-	8.49		.08
8.50	-	9.49		.09
9.50	-	10.49		.10

The remainder of the schedule shall show amounts of reimbursement computed by applying the applicable tax rate to the sales price, rounded off to the nearest cent by eliminating any fraction less than one-half cent and increasing any fraction of one-half cent or over to the next higher cent.

(c) **Unlawful Advertising.** It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or that, if added, it or any part thereof will be refunded.

(d) **Tax Levied as State Sales & Use Tax Law.** The tax hereby levied, except as otherwise provided, is levied in the same manner, to the same extent and under the same conditions as sales taxes are levied pursuant to Part 1 of Division 2 of the California Revenue and Taxation Code, known as the "Sales and Use Tax Law," as amended and in force and effect on October 1, 1968.

(e) **Extension of Time; Due Date: Penalties.** The Director of Finance, for good cause, may extend for not more than 45 days the time for making any return or paying any sum required to be paid hereunder. The extension may be granted at any time provided a written request therefor is filed with the Director of Finance prior to the delinquency date.

All taxes payable monthly and all taxes payable quarterly hereunder shall be deemed delinquent if not paid on or before the close of business on the last day of the month following the monthly or quarterly period for which the tax is payable. Taxes payable hereunder for periods other than monthly or quarterly periods shall be deemed delinquent at the times designated by the Director of Finance in his rules and regulations. Whenever tax required to be paid by this section is not paid on or before the date on which it becomes delinquent, penalties and interest shall accrue and deficiency determinations shall be made in the manner provided in Sec. 21.05 and

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Sec. 21.15.

Each retailer shall, on or before the last day of the month following the close of each calendar quarter, make a statement to the Director of Finance on forms provided by him, of the total gross receipts received during the preceding quarter. At the time the statement is filed, the full amount of tax due shall be paid to the Director of Finance. Where the Director of Finance determines that efficiency in the administration of the tax would be promoted, he may establish reporting periods greater than quarterly, but not to exceed one year, for retailers who sell tangible personal property only occasionally or seasonally. The Director of Finance may establish shorter reporting periods for any retailer if he deems it necessary in order to insure connection of the tax and he may require further information in the statement. Statements and payments are due immediately upon cessation of business for any reason.

In addition to the powers of the Director of Finance mentioned in the foregoing paragraphs, he may, under circumstances set forth in Subsection (j) of this section require prepayment of taxes.

(f) **Registration; Permits.** Every person desiring to engage in or conduct business as a seller within the City of Los Angeles shall secure from the Director of Finance of said City a permit for each place of business. Such permits shall be issued by the Director of Finance upon receipt of a written application therefor setting forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business and such other information as the Director of Finance may require. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. A change of location may be endorsed upon the permit by the Director of Finance. The permit shall at all times be conspicuously displayed at the place for which issued.

(g) **Revocation of Permit; Renewal of Permit.** Whenever any person fails to comply with any provision of this section or any rule or regulation adopted pursuant hereto, the Director of Finance, upon hearing, after giving such person ten days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by such person. The notice may be served personally or by mail in the manner prescribed for service of notice in Sec. 11.00(i) or in Sec. 21.16 of this Code. The Director of Finance shall not issue a new permit unless he is satisfied that the former holder of the permit will thereafter comply with the provisions of this section and the rules and regulations adopted hereunder.

(h) **Selling Without Permit.** A person who engages in business as a seller in the City without a permit or permits, or after a permit has been suspended, and each officer of any

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corporation which so engages in business is guilty of a misdemeanor.

(i) **Violation of Ordinance.** The Director of Finance may at his option accept a State of California Resale Certificate as evidence that any sale is not a sale at retail, or he may in his discretion require an affidavit from the seller setting forth such information respecting such sale as he deems necessary to determine the nature of such sale.

(j) **State Resale Certificate Optional.** All provisions of the Sales and Use Tax Law, Part 1, Division 2 of the Revenue and Tax Code of the State of California, as amended and in force and effect on October 1, 1968, except the provisions pertaining solely to the Use Tax and Sections 6051, 6052, 6052.5, 6053, 6066, 6067, 6068, 6069, 6070, 6071, 6072, 6271 to 6292 inclusive, 6451, 6459, 6470, 6481 to 6592, inclusive, 6701 to 6799, inclusive, 6826 to 6828, inclusive, 6901 to 6937, inclusive, 6961 to 6963, inclusive, 6981, 7051 to 7056, inclusive, 7057, 7101 to 7154, inclusive, and 7176 applicable to sales of property at retail, are hereby adopted and made a part of this section as though fully set forth herein and all provisions of this Code conflict therewith are inapplicable to this section and the tax hereby imposed. All of the provisions of the California Sales and Use Tax Law hereby adopted, providing for the performance of official action on the part of the State Board of Equalization shall be performed by the Director of Finance of the City of Los Angeles.

(k) **Sections of State Law Adopted by Reference; Suit for Collection of Tax.** The term "gross receipts" as used herein does not include (1) the amount of any federal tax imposed upon or with respect to retail sales, whether imposed upon the retailer or upon the consumer, and regardless of whether or not the amount of federal tax is stated to customers as a separate charge; and (2) the amount of any California State or local Sales or Use Tax.

(l) **Gross Receipts Defined.** In addition to the exemptions contained in Part 1 of Division 2 of the Revenue and Taxation Code of the State of California, there shall be excluded from the computation of the tax gross receipts from;

1. Sales of property which is shipped to a point outside this City pursuant to the contract of sale by delivery by the retailer to such a point by means of (A) facilities operated by the retailer; (B) delivery by the retailer to a carrier for shipment to a consignee at such point; or (C) delivery by the retailer to a customs broker or forwarding agent for shipment outside this City.

(m) **Administration of Ordinance; Rules and Regulations.** The Director of Finance shall administer and enforce the provisions of this section and, with the approval of the City Attorney, shall prescribe, adopt and enforce reasonable rules and regulations for the purpose of

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administering and enforcing the section. Each of said rules and regulations which relate to the time, form and manner of making returns and payments of the taxes imposed hereby shall govern, notwithstanding any other provision of this article to the contrary. Such rules and regulations, among other things, require each retailer to keep such records, receipts, invoices and other pertinent papers in the manner therein set forth.

Inasmuch as this section is patterned after the Sales Tax provisions of the Revenues and Taxation Code of the State of California, and the State Board of Equalization has made various rules and regulations pertaining to the interpretation, administration and enforcement of said provisions of the Revenue and Taxation Code, and it may be reasonably assumed that the City of Los Angeles will be confronted with many of the problems dealt with in the state rules and regulations, each such rule and regulation, in so far as applicable, shall apply in the interpretation of this section until specifically abandoned by rules and regulations adopted by the Director of Finance pursuant to the authority of this section.

(n) **Inclusion of Portion of State Law.** The inclusion of any clause, portion or part of the State Sales and Use Tax Law, Part 1, Division 2 of the Revenue and Taxation Code of the State of California, verbatim in this section shall not in or of itself be deemed to exclude any of the remaining provisions of said Sales and Use Tax Law that are made a part hereof by reference only.

(z) **Validity of Ordinance.** If any subsection, sentence, clause, phrase or portion of this section, including but not limited to any exemption, is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section. The Council of this City hereby declares that it would have adopted this section and each subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Exhibit 2

SEC. 103.01. DEFINITIONS.

(Amended by Ord. No. 175,676, Eff. 1/11/04.)

Applicant means a person who files an application for a permit from the Board.

Board means the Board of Police Commissioners or the Police Permit Review Panel if the Board delegates the authority to the Panel pursuant to Section 102.13.01(d).

Business means any occupation, trade, establishment or concern, regardless of form, which provides services, products or entertainment for which a permit is required under this article, whether or not a permit has been granted, sought, applied for, denied, revoked or suspended.

Director of Finance means the Director of Finance for the City of Los Angeles, or his or her deputy.

Employee means any and all persons, including operators, managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of the business, whether or not the person is paid compensation by the business. This definition does not apply to persons incidentally involved with the business, such as persons delivering goods, food and beverages, or performing maintenance or repairs to the business premises.

Entertainer means any person who performs specified sexual activities or displays specified anatomical parts in a business.

Hearing Examiner means any person appointed by the Board to conduct hearings provided by this article.

Manager means any person appointed by an owner, operator or permittee of a business, who manages, directs, administers, or is in charge of the affairs and/or the conduct or operation of a business. This definition includes assistant managers.

Owner means (1) a sole proprietor or person(s) who own or operate a business; (2) all general partners of a partnership that owns or operates a business; (3) all officers of a corporation and all persons who own a controlling interest in a corporation or other limited liability entity that operates a business.

Patron means any individual, other than an employee, present in or at the business premises at any time during the hours of operation. This definition does not apply to persons incidentally involved with the business, such as persons delivering goods, food and beverages, or

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performing maintenance or repairs to the business premises.

Permittee means any person having a valid permit issued by the Board as required by the Los Angeles Municipal Code.

Premises means the building and real property occupied or used in the operation of the business, or the space in the building occupied by the business if the business does not utilize the entire building in the operation of the business.

Sexually oriented material means any element of sexually oriented merchandise, or any book, periodical, magazine, photograph, drawing, sculpture, motion picture film, video, compact disc, or other written, oral or visual representation, which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts.

Sexually oriented merchandise means sexually oriented implements and paraphernalia, such as, but not limited to condoms, lap dance bags, benwa balls, dildos, auto sucks, sexually oriented vibrators, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices that are designed or marketed primarily for the stimulation of or use with the stimulation of human genital organs or for sadomasochistic activity.

Specified anatomical parts means:

1. Less than completely and opaquely covered human genitals, pubic hair, buttocks, natal cleft, perineum, anus, anal region, pubic region, or female breast below a point immediately below the top of the areola; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

1. Actual or simulated: sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, masturbation, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory function in the context of a sexual relationship; or any of the following depicted sexually oriented acts or conduct, whether actual or simulated: anilingus, buggery, coprophilia, coprophagy, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, sapphism, urophilia, zooerastia, zoophilia; or

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2. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
3. Use of human or animal ejaculation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks, natal cleft, anal region, anus, or female breast; or
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
7. The presence of any person who performs a striptease, or appears in attire where specified anatomical parts are either not opaquely covered or minimally covered with bikinis, lingerie, or devices commonly referred to as pasties and G-strings, or any other similar opaque covering.

Exhibit 3

SEC. 103.31. DENIAL OF APPLICATION.

(Amended by Ord. No. 179,836, Eff. 6/7/08.)

If the Board determines that the application does not satisfy the requirements of this article, it shall deny the application. The Board may also deny a permit on any of the following grounds:

**(a) Grounds for Denial of Application Issued Subject to this Article.
(Except Sections 103.101.1, 103.102, or 103.109.)**

1. The applicant made a false or misleading statement of a material fact or omission of a material fact in the application;
2. The applicant is under eighteen years of age;
3. The applicant has committed or aided or abetted in the commission of any act or omission, which, if committed by a permittee, would be a ground for suspension, revocation, or other disciplinary action under this article;
4. The applicant has had a similar type of permit previously denied, suspended or revoked within five years immediately preceding the date of the filing of the application, and the applicant can show no material change in circumstances since the denial, suspension or revocation;
5. The business for which the permit is sought is prohibited by any local or state law, statute, rule or regulation, or prohibited in the particular location by the provisions of Chapter I of this Code;
6. The business for which the permit is sought has been or is a public nuisance;
7. The applicant has within five years immediately preceding the date of the filing of the application been convicted of a felony crime in any jurisdiction involving theft, fraud, violence, sale of a controlled substance as specified in Sections 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or any moral turpitude offense;
8. The applicant has within three years immediately preceding the date of the filing of the application been convicted of any offense listed in Section 103.31(a)(7) that has been made the subject of Section 17(b) of the California

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Penal Code;

9. The applicant has within five years immediately preceding the date of the filing of the application been convicted of any offense involving deceptive trade practices or other illegal business practices reasonably and narrowly related to the nature of conduct of the business for which the application is made; or

10. The business for which the permit is sought has failed to comply with all City business tax and Parking Occupancy Tax laws.

(b) Grounds for Denial of Application Issued Subject to Sections 103.101.1, 103.102, or 103.109. In addition to the grounds set forth in 103.31(a)(1) - (6) above, an application under this article may be denied for the following reasons:

1. The applicant has within five years immediately preceding the date of the filing of the application been convicted of any misdemeanor or felony classified by the state as a sex-related offense, or of any offense described in California Penal Code Sections 266h, 266i, 315, 318, 653.22, or 647(a) or (b);

2. The applicant has within five years immediately preceding the date of the filing of the application been convicted of any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6;

3. The applicant has within five years immediately preceding the date of the filing of the application been convicted of a charge of violating any lesser included or lesser related offense, including California Penal Code Section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section;

4. The applicant has been convicted of any offense that requires registration as a sex offender under California Penal Code Section 290; or

5. The business for which the permit is sought has failed to comply with all City business tax and Parking Occupancy Tax laws.

Exhibit 4

SEC. 103.301. ANTIQUE SHOPS.

(a) **Definitions.** As used in this article:

1. **"ANTIQUE SHOP"** means a shop where secondhand merchandise is sold at retail but where at least 90% measured according to value, of the used or secondhand merchandise on hand at any time consists of objects of art, bric-a-brac, curios, or household furniture or furnishings, offered for sale upon the basis, express or implied, that the value of the property, in whole or in substantial part, is derived from its age or from its historical association.

(b) **Permit Requirements.** The operator of any antique shop may, in lieu of the secondhand dealers' permit required by Section 103.311, apply for and obtain a special permit to conduct an antique shop. Every application hereunder must be accompanied by an investigation fee of \$50.00. If the application is approved, an additional fee of \$25.00 shall be collected upon the issuance of the permit, except in those cases where the applicant has already paid the secondhand dealer's permit fee for the same place of business. (Amended by Ord. No. 114,879, Eff. 12/20/59.)

(c) **Change of Location.** A change of location may be endorsed upon a permit hereunder upon written application by a permittee accompanied by a change of location fee as prescribed in Sec. 103.12.

(d) **Must Comply with Secondhand Dealers Regulations.** The holder of an antique shop permit shall obey all of the requirements of this article and the rules and regulations of the Board pertaining to the receipt, handling, disposal, and sale of secondhand merchandise generally, but shall be exempt from the hours of business limitations.

SEC. 103.310. SECONDHAND BOOK DEALERS.

(a) **Definitions.** As used in this section:

1. **"SECONDHAND BOOK DEALER"** means a person engaging in, conducting, managing or carrying on the business of buying, selling, exchanging or otherwise dealing in secondhand books and magazines, secondhand text books or secondhand educational materials.

2. **"SECONDHAND TEXT BOOKS"** or **"SECONDHAND EDUCATIONAL MATERIALS"** means those text books or other materials required or

Exhibit 5

SEC. 103.310. SECONDHAND BOOK DEALERS.

(a) **Definitions.** As used in this section:

1. **"SECONDHAND BOOK DEALER"** means a person engaging in, conducting, managing or carrying on the business of buying, selling, exchanging or otherwise dealing in secondhand books and magazines, secondhand text books or secondhand educational materials.

2. **"SECONDHAND TEXT BOOKS"** or **"SECONDHAND EDUCATIONAL MATERIALS"** means those text books or other materials required or designated by any university, college, school, or other educational institution to be used or which were used by students in studying the courses offered by said institutions. Such text books or other materials voluntarily used by said students in conjunction with those books required or designated by said institutions are included.

(b) **Permit Required.** No person shall engage in, conduct, manage, or carry on the business of secondhand book dealer without a written permit from the Board.

(c) **Change of Location.** A change of location may be endorsed on a permit by the Board upon written application by the permittee accompanied by the change of location fee prescribed in Section 103.12.

(d) **Bills of Sale.** Every secondhand book dealer buying, selling or exchanging or otherwise dealing in secondhand books, secondhand text books or secondhand educational materials or exchanging new text books or new educational materials for secondhand text books or secondhand educational materials, as whole or part payment therefor, shall immediately upon receiving the same, require the seller or other person from whom said secondhand text books or materials are bought, or received in exchange, to execute a bill of sale therefor. Said bills of sale shall be numbered consecutively and shall be kept on file and open during business hours to the inspection of any police officer or representative of the Board.

(e) **Contents of Bill of Sale.** Said bill of sale shall show:

1. **Date.** The date of purchase or receiving in exchange;

2. **Name of Seller.** The name and address of the person selling or exchanging such articles and the name of the educational institution said person is attending or in which he is registered;

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3. **Name of Institution.** The name of the educational institution, if any, requiring or designating the use of such textbooks or materials, including the date of the term or semester during which the same were used;

4. **Name of Purchaser.** The name and address of the purchaser or person receiving said secondhand books, secondhand text books or materials, said name and address coinciding with those showing upon the permit issued by the Board and held by said person;

5. **Description.** A description of the secondhand books, secondhand text books or materials purchased by him sufficient in all respect to clearly identify the same.

(f) **Right to Sell.** A secondhand book dealer who purchases or receives in exchange secondhand books, secondhand text books or other secondhand educational materials shall, prior to making such purchase or exchange, ascertain that the person selling or delivering for exchange any such secondhand books or materials has a legal right to do so.

(g) **Identification of Books.** The secondhand book dealer shall immediately upon purchasing or receiving in exchange any such secondhand books or materials stamp, write, print or otherwise permanently affix to each article so purchased or received the number of the bill of sale covering said articles.

(h) **Signs.** Secondhand book dealers shall maintain on the premises where said business is located a sign plainly printed in the English language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a department of any building, the sign shall be placed at the entrance to said department.

(i) **Exemptions.** This section shall not apply to the receipt or sale of secondhand books, secondhand text books or secondhand educational materials by any person who receives or purchases such books or materials from any other person when such other person has made required reports as fixed by rule or regulation of the Board and shall have held the said books or materials for the length of time therein required.

Exhibit 6

Article 3: Police Regulated Occupations and Businesses

*("Police Regulated Business Regulations" retitled to
"Police Regulated Occupations and Businesses"
on 11-20-2000 by O-18885 N.S.)*

Division 1: General Provisions**§33.0101 Certain Businesses and Occupations Police-Regulated; Police Permit Required**

- (a) The occupations and businesses in The City of San Diego listed in this Article are subject to the City's police power and are classified as "police-regulated."
- (b) All police-regulated occupations and businesses, and all *persons* conducting or proposing to engage in a police-regulated occupation or business, are subject to any investigation and regulation required by this Article as a prerequisite to the granting of a *police permit* to conduct the occupation or business.
- (c) It is a misdemeanor for any *person* to operate a business or engage in an occupation regulated by this Article without a *police permit*. The *police permit* is in addition to any other *license* or *permit* required under any other provisions of the San Diego Municipal Code, including the business tax certificate in Chapter III, Article 1, or any *license* or *permit* required by law.
- (d) It is not a defense in any proceeding brought under this Article that a *license* or *permit* was issued under some other provision of law, nor shall the issuance of a *permit* under this Article be a defense to a *violation* under other sections of this Code.

("Police Regulated" retitled to "Certain Businesses and Occupations Police-Regulated; Police Permit Required" and amended 11-20-2000 by O-18885 N.S.)

§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. Secondhand Dealers are only required to obtain one permit per dealer; however, a copy of the permit must be posted in accordance with this Division.

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- (b) Unless otherwise stated, any *person* desiring to operate a police-regulated business and to act in a police-regulated occupation must obtain *permits* to do both.

(*"Inspections and Authority of Peace Officers or Police Employees"* renumbered to Sec. 33.0103; *"Separate Permits Required"* added 11-20-2000 by O-18885 N.S.)

§33.0103 Inspections and Authority of Peace Officers or Police Employees

- (a) The *Chief of Police* shall make, or cause to be made, regular inspections of all police-regulated businesses. Any *peace officer* shall have free access to any police-regulated business during normal operating hours. It is unlawful for any *permittee* or *employee* to prevent or hinder any *peace officer* from conducting an inspection.
- (b) Any police code compliance officer assigned by the *Chief of Police* to conduct inspections shall have free access to any police-regulated business during normal operating hours. It is unlawful for any *permittee* or *employee* to prevent or hinder any police code compliance officer from conducting an inspection.
- (c) The right of reasonable inspection to enforce the provisions of this Article is a condition of the issuance of a *police permit*. The applicant or *permittee* shall acknowledge this right of inspection at the time of application. Refusal to acknowledge this right of inspection is grounds for denial of the application. The right of inspection includes the right to require identification from *responsible persons* or *employees* on the *premises*. The refusal to allow inspection upon reasonable demand or the refusal to show identification by *responsible persons* or *employees* is grounds for the suspension, revocation, or other regulatory action against the *police permit*.

(*"Posting of Licenses or Permits"* renumbered to Sec. 33.0105; *"Inspections and Authority of Peace Officers or Police Employees"* renumbered from Sec. 33.0102 and amended 11-20-2000 by O-18885 N.S.)

Exhibit 7

(11-2000)

§33.0305 Permit Issuance and Grounds for Denial

Except as otherwise provided in this Code, upon completion of the investigation of an applicant, the *Chief of Police* shall issue a *permit* unless:

- (a) the applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application; or
- (b) the applicant is under eighteen years of age, unless the particular business or occupation has a different age requirement pursuant to state or federal law, in which case the state or federal law controls the age requirement; or
- (c) the applicant has had a similar type of *license* or *permit* previously denied, suspended for a total of six months, or revoked, within five years immediately preceding the date of the filing of the application, and the applicant can show no material changes in circumstances since such denial, suspension, or revocation; or
- (d) the applicant has refused to consent to inspection pursuant to Section 33.0103; or
- (e) the applicant is within any of the following categories:
 - (1) within five years immediately preceding the date of application, the applicant has *been convicted* of a felony crime in any jurisdiction involving the following offenses: theft, fraud, violence, sale of a controlled substance as specified in Sections 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or any moral turpitude offense;
 - (2) within three years immediately preceding the date of application, the applicant has *been convicted* of any offense listed in Section 33.0305(e)(1) that has been made the subject of Section 17(b) of the California Penal Code;
 - (3) within five years immediately preceding the date of application, the applicant has *been convicted* of any offense involving deceptive trade practices or other illegal business practices reasonably and narrowly related to the nature of conduct of the business for which the application is made;

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- (4) in addition to the other categories, if the applicant is applying for a *permit* to engage in a business regulated under Divisions 9, 11, 32 or 43 of this Article, within five years immediately preceding the date of the application, the applicant has *been convicted* of any offense involving theft or fraud, including the receipt of stolen property, or any financial crime including money laundering and embezzlement.
- (f) the applicant has failed to provide proof of any application requirement as set forth in the Division regulating the business or occupation the applicant desires to engage in.
- ("Approval or Denial Stamped on Application by Investigating Official" repealed; "Issuance or Denial of License or Permit" renumbered from Sec. 33.0304, retitled and amended 11-20-2000 by O-18885 N.S.)*

§33.0306 Denial of Permit in Writing

If the *permit* is denied, the notification and reasons therefor shall be set forth in writing and shall be sent immediately to the applicant by means of registered mail or certified mail, or shall be hand-delivered to the applicant.

("Time Allowed for Investigation" repealed; "Denial of Permit in Writing" added 11-20-2000 by O-18885 N.S.)

§33.0307 Application and Regulatory Fees

It is the policy of The City of San Diego that the cost of investigating and processing an application for a *police permit* is to be borne by the applicant. To this end, unless otherwise specified, all applications shall be accompanied by a non-refundable application fee, which will cover the cost of investigating and processing the application. Any *person* who desires to obtain a business *permit* and an occupational *permit* (for example, a *massage establishment permit* and a *massage therapist permit*) shall pay only one application fee if the applications are submitted concurrently.

It is the policy of The City of San Diego that the cost of inspecting, regulating, and enforcing laws relating to police-regulated businesses be borne by the *permittees* in the form of regulatory fees. To this end, unless otherwise specified, regulatory fees shall be paid according to the schedule set in the City Clerk's Composite Rate Book. *("Term of Permit and Renewal" renumbered to Sec. 33.0308; "Application and Regulatory Fees" added 11-20-2000 by O-18885 N.S.)*

Exhibit 8

Article 3: Police Regulated Occupations and Businesses**Division 11: Junk Dealer, Junk Collector, SecondHand Dealer, Pawn Broker****§33.1101 Records Required — Reports Required**

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 Profession Code section 21626 shall keep a record in accordance with state law of any and all articles acquired by purchase, pledge or otherwise. The record and the articles shall at all times during ordinary business hours be subject to inspection by any police officer of said City. Such person shall, in addition to keeping such records, daily deliver to the Chief of Police, upon forms of a type and content which shall be approved by the Chief of Police 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.

(Amended 2-23-1987 by O-16812 N.S.)

§33.1102 Use of Fictitious Name Prohibited

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.

(Amended 2-23-1987 by O-16812 N.S.)

§33.1103 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 said 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

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loaned, the length of time during which such loan is to continue, and the rate of interest exacted for such loans.

(Amended 2-23-1987 by O-16812 N.S.)

§33.1104 Disposal of Merchandise — Regulations

It shall be unlawful for any pawnbroker, 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 Chief of Police of The City of San Diego. All transactions hereunder shall be conducted only on the licensed premises.

(Amended 2-23-1987 by O-16812 N.S.)

§33.1105 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 (6) feet in height and fifteen (15) feet in length on each side of such enclosure.

PROOF OF SERVICE
Hopp v. City of Los Angeles
LASC Case No. BC 401887

I am employed by the Office of the Los Angeles City Attorney located in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 North Main Street - CHE, 9th Floor, Room 916, California 90012.

On January 30, 2009, I served the foregoing documents described as:

DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR JUDGMENT ON THE PLEADINGS

on the interested parties in this action by placing [] the original [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Hopp
POB 3601
Van Nuys, CA 91407
Tel: 818/ 902-0532
Fax 670-7841

[X] MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[] BY PERSONAL SERVICE - () I delivered by hand, or () I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

[] BY OVERNIGHT COURIER - I caused the above-referenced document(s) to be delivered via: [DHL], an overnight courier service, for delivery to the above-addressee(s).

[] BY FACSIMILE - I caused the above-referenced document(s) to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

[] Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[X] State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 30, 2009, at Los Angeles, California.


TERRY LEE

1 Richard Hopp
2 Post Office Box 3601
3 Van Nuys, California 91407
4 Telephone: (818) 902-0532
5 Fax: (818) 670-7841
6 E-mail: MAIL@BC401887.INFO

CONFORMED COPY
OF ORIGINAL FILED
Lcs Angeles Superior Court

FEB 18 2009

John A. Clarke, Executive Officer/Clerk

By Raul Sanchez, Dept
RAUL SANCHEZ

5 Plaintiff Richard Hopp
6 in Propria Persona

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
9 CENTRAL JUDICIAL DISTRICT

11 Richard Hopp,	) Case No.: BC401887
12 Plaintiff,	)
13 vs.	) OPPOSITION TO MOTION FOR
	) JUDGMENT ON THE PLEADINGS;
14 City Of Los Angeles, a	)
15 Municipal Corporation	) Judge: Malcolm H. Mackey
	) Division: 55
16 Defendant.	) Date: March 3, 2009
	) Time: 08:30AM

17 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

18 Plaintiff, Richard Hopp ("Hopp") hereby submits his
19 opposition to the motion of Defendant City of Los Angeles
20 ("City") for judgment on the pleadings currently pending hearing
21 on March 3, 2009, at 08:30AM in Department 55 of the above-
22 entitled court.

23 I. INTRODUCTION.

24 Plaintiff, Richard Hopp ("Hopp") is an avid collector of
25 books, documents, and ephemera as a hobby. Complaint at ¶ 3. He
26 does not hold himself out as being in the business of occupation
27 with respect to his collecting or hobby activities. He has not
28 engaged in, conducted, managed, or carried on the business of

RICHARD HOPP
vs.
CITY OF
LOS ANGELES

BC401887

1 buying, selling, exchanging, or otherwise dealt in secondhand
2 books. City's employees who are responsible for enforcing
3 various City ordinances relating to the conduct of various
4 businesses have threatened to arrest Hopp for violation of one or
5 more ordinances if he fails to secure a secondhand books dealer's
6 permit. Accordingly, Hopp has filed the instant action seeking a
7 declaration of his rights, duties, and obligation (if any)
8 pursuant to City current ordinances.

9 Defendant, City of Los Angeles, ("City") has filed a motion
10 for judgment on the pleadings as to the complaint. The motion is
11 brought pursuant to Code of Civil Procedure section 438, on the
12 grounds that the complaint fails to state facts that constitute a
13 cause of action against City, inasmuch as City asserts that the
14 challenged ordinance (Los Angeles Municipal Code section
15 §103.310) is valid, constitutional, and "applies to the
16 activities of Plaintiff Richard Hopp ("Hopp") as alleged in his
17 complaint." City's motion at p. 2:1-4.

18 Hopp contends that irrespective of whether the ordinance(s)
19 in question are constitutional, or whether such ordinances have
20 been preempted by state law, the ordinances do not apply to his
21 collecting activities, and thus, the complaint properly states a
22 cause of action for declaratory relief.

23 **II. THE PURPOSE OF A MOTION FOR JUDGMENT ON THE PLEADINGS, LIKE**
24 **A DEMURRER IS TO TEST THE SUFFICIENCY OF THE COMPLAINT.**

25 Like a demurrer, a Defendant is entitled to judgment on the
26 pleadings if the Plaintiff's complaint does not state a cause of
27 action. In considering whether a Defendant is entitled to
28 judgment on the pleadings, the Court generally looks only to the
face of the pleading under attack. *Howard Jarvis Taxpayers Assn.*

1 v. *City of Riverside* (1999) 73 Cal. App. 4th, 679, 685. All
2 facts alleged in the complaint are admitted for purpose of the
3 motion, and the Court determines whether those facts constitute a
4 cause of action. Id. The Court may consider matters subject to
5 judicial notice. Id. As with a demurrer, the trial Court must
6 liberally construe the pleadings with a view to attaining
7 substantial justice among the parties. *Heckendorn v. City of San*
8 *Marino* (1986) 42 Cal. 3d 481, 486; *Gerawan Farming, Inc. v.*
9 *Kawamura* (2004) 33 Cal. 4th 1, 32. Thus, if Hopp's complaint
10 states a cause of action upon theory it would be error to sustain
11 a general demurrer. *Taylor v. S & M Lamp Co.* (1961) 190 Cal.
12 App. 2d 700, 704. A judgment on the pleadings must be treated
13 the same. "If there is a reasonable possibility that an
14 amendment will cure an inherent defect in a complaint, a
15 reviewing Court should not affirm a trial Court's order granting
16 judgment on the pleadings unless the Plaintiff's has been given
17 an opportunity to amend the complaint." *Lantzy v. Centex Homes*
18 (2003) 31 Cal. 4th 363, 385; *Gerawan Farming, Inc. v. Kawamura,*
19 *supra* a p. 32. Thus, it would be error to grant a motion for
20 judgment on the pleadings without leave to amend.

21 **III. RULES OF STATUTORY CONSTRUCTION.**

22 As City has pointed out, in order to understand the
23 ordinance at issue, one must first understand the rules of
24 statutory construction. City and Hopp generally concur on the
25 applicable rules of statutory construction.

26 "Our fundamental task in construing a statute is to ascertain
27 the intent of the lawmakers so as to effectuate the purpose of
28 the statute. (Citation) We begin by examining the statutory

1 language, giving the word their usual and ordinary meaning.
2 (Citation) If there is no ambiguity, then we presume the
3 lawmakers meant what they said, and the plain meaning of the
4 language governs. (Citation) If, however, the statutory terms
5 are ambiguous, then we may resort to extrinsic sources, including
6 the ostensible objects to be achieved and the legislative
7 history. (Citations) In such circumstances, 'we select the
8 construction that comports most closely with the apparent intent
9 of the Legislature, with a view to promoting rather than
10 defeating the general purpose of the statute, and avoid an
11 interpretation that would lead to absurd consequences.'" *Day v.*
12 *City of Fontana* (2001) 25 Cal. 4th 268, 272. "Furthermore, we
13 consider portions of a statute in the context of the entire
14 statute and the statutory scheme of which it is a part, giving
15 significance to every word, phrase, sentence, and part of an act
16 in pursuance of the legislative purpose." *Curle v. Superior*
17 *Court* (2001) 24 Cal. 4th 1057, 1063. "[A] construction making
18 some words surplusage is to be avoided." *Watkins v. Real Estate*
19 *Commissioner* (1960) 182 Cal. App. 2d 397, 400. The rules of
20 statutory construction apply equally to ordinances. *County of*
21 *Madera v. Superior Court* (1974) 39 Cal. App. 3d 665.

22 **IV. A PERSON WHO MERELY COLLECTS BOOKS SOLELY AS A HOBBY IS NOT**
23 **ENGAGED IN A BUSINESS AS A SECONDHAND BOOK DEALER AS DEFINED**
24 **BY LAMC SECTION 103.310.**

25 In his complaint, Hopp alleges the City's employees who are
26 charge with enforcing its ordinances have asserted that he is
27 required to obtain a secondhand book dealer's permit in order to
28 continue purchasing books as part of his book collecting

activities, and have threatened him with arrest if he does not comply.¹

In its motion, City argues that Hopp (and presumably any other person who collects used books) is subject to its secondhand book dealer permit requirements. City quotes the portion of Section 103.310, subd. (a)(1) which provides "SECONDHAND BOOK DEALER" means a person **engaging in, conducting, managing or carrying on the business** of buying, selling, exchanging or otherwise dealing in secondhand books..."² (Emphasis added.)

City notes that since the word "business" appears to be the linchpin underlying Hopp's position that he is not subject to regulation by City's ordinance (i.e. he is merely a collector and not engaged in business); that the definition of the word "business" is fundamental to the statutory construction of the ordinance. City then proceeds to refer to a standard dictionary for a definition of the word "business" despite the fact that the word is also defined (albeit in more restrictive terms) in a respected legal dictionary. Despite its reference to a standard dictionary, City also acknowledges that the word "business" is defined within its own statutory scheme to wit: "Business means any occupation, trade, establishment, or concern, regardless of

Since documents and ephemera are not books, to the extent Hopp were required to obtain a permit for collecting books, City would likely demand that he also obtain a secondhand dealer's permit. The secondhand dealer's permit is applicable to a persons who are in the business of dealing in secondhand or rebuilt or reconditioned goods, wares, and merchandise. See, LAMC §103.3311(a)(1). See discussion, infra.

² The definition of a secondhand book dealer also applies to those engaged in the business of buying, selling, or otherwise dealing in "secondhand magazines, secondhand text books, or secondhand educational materials."

1 form, which provides services, products, or entertainment for
2 which a permit is required under this article, whether or not a
3 permit has been granted, sought, applied for, denied, revoked, or
4 suspended. (Emphasis added.) LAMC §103.01.

5 City then proceeds to adopt an untenable position that the
6 term "business" as covered by its ordinance includes any person
7 carrying on the function of buying secondhand books. City's
8 argument fails to conform with the rules of statutory
9 construction for all the reasons set forth herein.

10 **A. The Usual and Ordinary Language of the Statue Clearly**
11 **Excludes Those Whom Limit Their Book Buying Activities**
12 **to Collect for Personal Use.**

13 As mention, supra, City has argued hat under its statutory
14 scheme, term "business" is defined in the broadest possible
15 terms, and thus, includes any function whether or not the person
16 or entity is engaged in the activity for commercial purposes.
17 The plain language of the statue actually suggests otherwise.

18 As noted, supra, Section 103.310, sudb. (a)(1) defines a
19 secondhand book dealer to include any person:

- 20 • engaging in the business;
- 21 • conducting the business;
- 22 • managing the business; or,
- 23 • carrying on the business;

24 of buying, selling, exchanging, or otherwise dealing in
25 secondhand books.

26 The statutory definition of "business" as used in City's
27 ordinance means "any occupation, trade, establishment, or
28 concern, regardless of form, which provides services, products,
or entertainment..." LAMC §103.01.

1 In attempted to broaden the scope of those who are required
2 to obtain a secondhand book dealer's permit, City chooses to rely
3 on a standard dictionary definition of business. However, even
4 the dictionary relied upon by City includes the following within
5 definition "a usually commercial or mercantile activity engaged
6 in as a means of livelihood." See, Merriam-Webster's Online
7 Dictionary (at www.merriam-webster.com/dictionay/business).³

8 City further argues that the word "concern" as used in its
9 ordinance defining business, refers to any task. Such a reading
10 is inconsistent with Section 103.02 which provides "No person may
11 operate, engage in, conduct, or carry on any business without
12 first obtaining a permit issued by the Board of Police
13 Commissioners."

14 Aside from the fact the City has chosen to ignore the usual
15 and ordinary (and perhaps the most common) usage of the word
16 "business," City has also ignored the definition found in Black's
17 Law Dictionary which defines business as "Employment, occupation,
18 profession, or commercial activity engaged in for gain or
19 livelihood" or to put it another way, "Activity or enterprise for
20 gain, benefit, advantage, or livelihood."

21 The definition found in Black's Law Dictionary is consistent
22 with California case law which has addressed the meaning of the
23 word "business." *Union League Club v. Johnson* (1941) 18 Cal. 2nd
24 275, 278 [the word "business as used in similar statutes
25 "ordinarily means a business in the trade or commercial sense,
26 one carried on with a view to profit or livelihood"]; *City of Los*

27
28 ³ This same source also notes the word "business" may be defined as a bowel
movement which may be a more apt description of City's argument (i.e. "male
bovine business").

1 Angeles v. Cohen (1954) 124 Cal. App 2d 225, 228 ["Business is
2 defined as that which occupies the time, attention, or labor of
3 men for the purpose of profit or improvement."]

4 B. Even If the Ordinance Were Ambiguous, the Statutory
5 Objectives Militate Against Inclusion of Those Who
6 Limit Their Book Buying Activities to Collecting for
Personal Use.

7 As discussed, supra, City has argued that the term
8 "business" is defined in the broadest possible sense, so that
9 virtually any activity relating to used books requires a
10 secondhand book dealer permit. Like the plain meaning of the
11 word "business," the statutory scheme suggests otherwise.

12 Section 103.310 which is part of Chapter X of City's
13 municipal code is entitled "Business Regulations." The entire
14 statutory scheme is clearly intended to provide for regulation of
15 various business operations which may (or may not) be perceived
16 as requiring the devotion of an inordinately high percentage of
17 police resources. There are 51 types of business listed which
18 include among others, dance halls, escort halls, massage parlors,
19 massage businesses (off premises), pawnbrokers, swap meet
20 operators, etc.

21 That the statutory scheme applies to those engaged in
22 commercial operations is evident by the various sections of
23 City's Municipal Code.⁴ As discussed, supra, by definition
24 "Business means any occupation, trade, establishment, or concern,

25

26 ⁴ It is worth noting that garage sales are not included among the types of
27 activities which require a permit to operate as a "business" In fact, although
28 City requires secondhand dealers of goods to obtain a permit (LAMC §103.311),
City exempts sellers of similar goods where such sales are conducted at a
garage sale (which by definition is limited to five such sales, not to exceed
ten days per year). See, LAMC §12.03 (under the definition of "Accessory
Use.")

1 regardless of, form, which provides services, products, or
2 entertainment for which a permit is required under this article,
3 whether or not a permit has been granted, sought, applied for,
4 denied, revoked, suspended. (Emphasis added.) LAMC §103.01.
5 Moreover, "No person may operate, engage in, conduct, manage, or
6 carry on the business of secondhand book dealer without obtaining
7 a permit issued by the Board of Police Commissioners. (Emphasis
8 added.) LAMC §103.310(b).

9 The statutory scheme allows for the denial of a permit for a
10 number of reasons, including without limitation, the fact that
11 the business for which the permit is sought has failed to comply
12 with all City business tax and parking occupancy laws. See, LAMC
13 §103.31 subd. (a)(10). However, there is nothing in the business
14 tax ordinance to suggest that a person who purchases books,
15 documents, or ephemera for his or her own use is subject to
16 City's business tax. See, LAMC §21.00 et. seq.

17 It is also notable that the specific section in question
18 refers to a secondhand book "dealer." Indeed, Division 9 of
19 City's ordinance which includes Section 103.310 applies generally
20 to "Dealers" and "Sales." Black's Law Dictionary defines
21 "dealer" as follows: "In the popular sense, one who buys to
22 sell, not one who buys to keep, or makes to sell." City has made
23 not effort to offer a definition of the word "dealer," or to
24 reconcile the definition of "business" with any definition of the
25 word "dealer" as used in the ordinance. The rules of statutory
26 construction require that a Court give significance to every word,
27 phrase, sentence, and part of an act in pursuance of the
28 legislative purpose. *Curle v. Superior Court*, supra at p 1063.

1 "A construction making some words surplusage is to be avoided."
2 *Watkins v. Real Estate Commissioner*, supra at p. 400. Thus, the
3 use of the word "dealer" cannot be ignored.

4 As City concedes, in construing the statute, if there is
5 ambiguity as to the **usual and ordinary** meaning of the words used,
6 the Court must select the construction that comports most closely
7 with the apparent intent of the Legislature, with view to
8 promoting rather than defeating the general purpose of the
9 statute. In view of the overall scheme of the ordinance, it is
10 abundantly clear that the permit requirements relate to
11 commercial type activities.

12 **C. Including Those Who Limit Their Book Buying Activities**
13 **to Collecting for Personal Use Would Be An**
Interpretation That Leads to Absurd Consequences.

14 As noted, supra, where the Court must attempt to construe a
15 statute or ordinance, the Court must also try to avoid an
16 interpretation that would lead to absurd consequences. *Day v.*
17 *City of Fontana*, supra.

18 If the Court were to include those who collect books as a
19 hobby within the definition of secondhand book dealer, there
20 would be absurd consequences. Every person located within the
21 City of Los Angeles who desired to purchase a used book,
22 irrespective of whether the purchase was of a single book or
23 1,000 books, would be required to obtain a permit under City's
24 construction of the ordinance unless the purchase was exempt
25 (i.e. purchase from another person who held a secondhand book
26 dealer's permit). LAMC §103.310, subd.(i). Thus, any private
27 party located within the City of Los Angeles who wished to
28 exchange a used paperback book with a friend would be required to

1 obtain a permit. If both parties were located within the City of
2 Los Angeles, both parties would be required to obtain a permit
3 prior to exchanging their respective paperback books.

4 The absurdity of City's position is further demonstrated
5 when considering the permit of a secondhand dealer.⁵ By City's
6 definition, a "'Secondhand Dealer' means a person engaging in,
7 conducting, managing, or carrying on the business of buying,
8 selling, or otherwise dealing in secondhand or rebuilt or
9 reconditioned goods, wares, and merchandise. LAMC §103.311(a).
10 Like a secondhand book dealer, a secondhand dealer must obtain a
11 permit prior to engaging in business. LAMC §103.311(b). (Of
12 course, secondhand books would fall within the definition of
13 "secondhand goods, wares, or merchandise.) Section 103.311
14 exempts "Any person engaging in, conducting, managing, selling,
15 exchanging, displaying, or offering for sale or exchange,
16 secondhand personal property at a swap meet..." LAMC §103.311(i).
17 It is notable that Section 103.311(i) does not exempt buyers at a
18 swap meet. Thus, if City's definition of business were applied,
19 consistent with the definition City suggests, anyone engaged in
20 the activity of "buying" secondhand (or used) goods, wares, and
21 merchandise within the City of Los Angeles would be required to
22 first obtain a secondhand dealer's permit, irrespective of
23 whether such person was buying for his personal use, and
24 irrespective of whether such person purchased such secondhand
25 goods at a rummage sale, swap meet, garage sale, or private
26 advertised sale. Such a scheme is clearly an absurd consequence

27
28 ⁵ Since Hopp buys secondhand documents and ephemera in addition to secondhand books, City presumably would require him to obtain a secondhand dealer's permit as well.

1 that results from the untenable definition of "business"
2 suggested by City.

3 **IV. A CITY'S SECONDHAND BOOK DEALER ORDINANCE IS PREEMPTED BY**
4 **STATE LAW.**

5 "A county or city may make and enforce within its limits all
6 local, police, sanitary, and other ordinances and regulation not
7 in conflict with general laws." California Constitution, Article
8 XI, Section 7. If otherwise valid local legislation conflicts
9 with state law, it is preempted by such law and is void.

10 *O'Connell v. City of Stockton* (2007) 41 Cal. 4th 1061, 1067. A
11 conflict exists if the local legislation duplicates, contradicts,
12 or enters an area fully occupied by general law, either expressly
13 or by legislative implication. *O'Connell v. City of Stockton*,
14 *supra*; *Sherwin Williams v. City of Los Angeles*, *supra* at p. 897-
15 898.

16 A local ordinance "contradicts" state law when it is
17 inimical to or cannot be reconciled with state law (e.g. a local
18 ordinance that sets the maximum speed limit for vehicles below
19 that set by state law). *O'Connell v. City of Stockton*, *supra* at
20 p. 1068; *Sherwin Williams v. City of Los Angeles*, *supra* at p.
21 898.

22 A local ordinance "enters a field fully occupied" by state
23 law in either of two situations --- when the Legislature
24 "expressly manifests its intent to occupy the legal area or when
25 the Legislature impliedly occupies the field. *O'Connell v. City*
26 *of Stockton*, *supra* at p. 1068; *Sherwin Williams v. City of Los*
27 *Angeles*, *supra* at p. 898. Where the legislature has manifested
28 an intention, expressly or by implication, wholly to occupy the
field, municipal power to regulate in that area is lost. *Id.*

1 When the Legislature has not expressly stated its intent to
2 occupy an area of law, the Court must look to whether it has
3 impliedly done so. Id. Preemption by implication occurs in
4 three situations when: (1) the subject matter has been so fully
5 and completely covered by general law as to clearly indicate that
6 it has become exclusively a matter of state concern; (2) the
7 subject matter has been partially covered by general law is
8 such terms as to indicate clearly that paramount state concern
9 will not tolerate further or additional local action; or (3) the
10 subject matter has been partially covered by general law, and the
11 subject is of such a nature that the adverse effect of a local
12 ordinance on the transient citizens of the state outweigh the
13 possible benefit to the locality. Id.

14 In accordance with the forgoing principles, the California
15 Supreme Court has held that a local ordinance providing for the
16 forfeiture of vehicles used to commit certain act made criminal
17 by state law since the illicit commercial activities
18 (prostitution and trafficking in controlled substances) are
19 matters of statewide concern that the Legislature has
20 comprehensively addressed through various provisions of the
21 state's Penal and Vehicle Codes, leaving no room for further
22 regulation at the local level. *O'Connell v. City of Stockton*,
23 *supra* at p. 1076.

24 **A. City's Ordinances Purporting to Regulate "Secondhand**
25 **Book Dealers Is Expressly Preempted At Least In Part by**
26 **State Law.**

27 The Legislature has enacted a comprehensive statutory scheme
28 regulating those engaged in the dealing of secondhand goods.
Business and Professions Code, Chapter 9 commencing with §21500.

1 Article of Chapter 9 commencing with Section 21625, specifically
2 applies to those whose business is the buying, selling, trading,
3 auctioning, etc. of secondhand tangible personal property.

4 Section 21625, evidences the Legislatures intent to preempt all
5 local regulation by stating:

6 "Further, it in the intent of the Legislature that this
7 article shall not be superseded or supplemented by the
8 provisions of any ordinance or charter of any city, county,
or city and county."

9 Section 21626, subd. (a) defines a secondhand dealer as "any
10 person, copartnership, firm, or corporation whose business
11 includes buying, selling, trading, taking in pawn, accepting for
12 sale on consignment, accepting for auctioning, or auctioning
13 secondhand tangible personal property. Irrespective of any
14 difference in the definition of secondhand dealer between Section
15 21626 and LAMC section 103.311(b), except as expressly
16 authorized, the Legislature has clearly evidenced an intent to
17 regulate the buying, selling, etc. of secondhand tangible
18 personal property to the exclusion of local laws. Business and
19 Prof. Code §21625.

20 Section 21637 allows for regulation by local authorities to
21 adopt local ordinances regulating secondhand dealers to the
22 extent such laws are not inconsistent with state law. However,
23 such authority limits any such ordinance to the extent that it
24 purports to alter the identification, holding, or reporting
25 requirements for the acquisition of tangible personal property,
26 other than as specifically allowed by specified state statutes.
27 Bus. and Prof. Code §§ 21637(b), 21638(b). These authorizing
28

1 statues are found in Bus. and Prof. Code §§21628, 21630, 21633,
2 and 21636, as well as Financial Code §21208.

3 Thus, to the extent the City's ordinance purports to alter
4 the identification, holding, or reporting requirements for the
5 acquisition of tangible personal property, except as specifically
6 allowed by state statute, the ordinance is invalid.

7 The provisions of City's ordinance relating to the
8 identification of secondhand books are invalid because it alters
9 the identification requirements set forth in state statutes.
10 City's ordinance provides that "The secondhand book dealer shall
11 immediately upon purchasing or receiving in exchange any such
12 secondhand books or materials stamp, write, print or otherwise
13 permanently affix to each article so purchased or received the
14 number of the bill of sale covering said articles." LAMC
15 §103.310(g). No such identification requirement is found in the
16 state statutory scheme.

17 Moreover, the only exemption provided in City's ordinance
18 relates to the receipt of secondhand books from another
19 secondhand book dealer. LAMC §103.310(i). This provision is
20 invalid in the state law exempts tangible personal property which
21 has been acquired in a nonjudicial bulk sale; acquired in a sale
22 made by any public officer in his official capacity, trustee in
23 bankruptcy, executor, administrator, or receiver; or acquired as
24 the surplus property of governmental authorities in addition to
25 acquisitions of such property from other secondhand dealers.
26 Because City's ordinance attempts to narrow the scope of
27 exemption transactions, it is invalid.

28

City's reliance of *Malish v. City of San Diego* (2000) 84 Cal. App. 4th 725 is misplaced. First and foremost, although *Malish* upholds local regulation generally, it invalidated the local ordinance to the extent such ordinance was inconsistent with state law. *Malish v. City of San Diego*, supra at p. 737-738.

B. City's Ordinances Relating to Secondhand Book Dealers Has Been Partially Covered By General Law, and Is Such A Nature That Adverse Effect of the Ordinance On the Transient Citizens Of The State Outweigh The Possible Benefit to The Locality.

Assuming for the sake of discussion only the definition of a secondhand book dealer that has been proffered by the City is correct, requiring a secondhand book dealer permit for those whose only actively is purchasing books in or around the City of Los Angeles is an adverse effect of a local ordinance on the transient citizens of the state that outweighs the possible benefit to the locality.⁶ Transient citizens whose only activity is purchasing books would need to first obtain a permit from the Police Commission, or otherwise be cognizant of the local boundary lines so that their purchases could be made outside of the City of Los Angeles (e.g. is West Hollywood a distinct city from Hollywood and/or North Hollywood), particularly given the number of local communities which the City of Los Angeles that suggest a separate city (e.g. Northridge, Chatsworth, Eagle Rock, etc.).

⁶ Although City's ordinance is presumed to apply only to those who engage in the regulated conduct within City's territorial limits, a strict reading of the ordinances might suggest otherwise. See, LAMC §103.02, 103.310, 103.311. However, any attempt to regulate business activity conducted outside its borders would surely be prohibited by Article XI, Section 7 of the California Constitution.

1 Such efforts are clearly outweighed by any possible benefit
2 to City. There is no revenue that might accrue to City by any
3 such purchase (other than a portion of the sales tax collected by
4 the seller, and/or gross receipts tax paid by the seller).
5 Requiring a person who is not engage in business, and whose sole
6 activity is buying to obtain a permit confers no benefit on City
7 other than the permit fees it hopes to collect.

8 **VI. CITY SECONDHAND BOOK DEALERS LAW IS UNCONSTITUTIONAL.**

9 California's Constitutional provides: "A county or city may
10 make and enforce within its limits all local, police, sanitary,
11 and other ordinances and regulations not in conflict with general
12 laws." California Constitution, Article XI, Section 7.

13 As discussed, supra, City's secondhand book dealer ordinance,
14 particularly as it relates to exemption form reporting
15 requirements, conflicts with existing state law. Moreover, the
16 purported narrowing of the exemption found within City's
17 ordinance cannot be reconciled with state law (e.g. by judicially
18 expanding the exemption set forth in the ordinance). Since
19 City's secondhand book dealer ordinance conflicts with existing
20 state law (as discussed supra) it is unconstitutional, and thus,
21 void in its entirety.

22 **VII. CONCLUSION.**

23 For all the reasons set forth, the Court should overrule
24 City's motion for judgment on the pleadings.

25 Dated: February 18, 2009

26
27 By: 
28 Richard Hopp, Plaintiff
in Propria Persona

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I live in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: Post Office Box 11202, Glendale, California 91226, telephone (818) 745-6770.

On Wednesday, February 18, 2009, I served the documents entitled: **OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS; PROOF OF SERVICE** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Mr. Gabriel S. Dermer, Deputy City Attorney
Business and Complex Litigation Division
Office of the City Attorney
200 North Main Street, Suite 916
Los Angeles CA 90012-4110

PERSONAL DELIVERY- I personally delivered the document listed above to the party or person authorized to receive service of process for the party.

I declare under penalty of perjury under the law of the State of California that the above is true and correct.

Executed on February 18, 2009, at Glendale, California.

Allen Silverman

1 Richard Hopp
Post Office Box 3601
2 Van Nuys, California 91407
Telephone: (818) 902-0532
3 Fax: (818) 670-7841
E-mail: MAIL@BC401887.INFO

CONFORMED COPY
OF ORIGINAL FILED
Lcs Angeles Superior Court

FEB 23 2009

5 Plaintiff Richard Hopp
in Propria Persona

John A. Clarke, Executive Officer/Clerk
By Raul Sanchez, Dept

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
9 CENTRAL JUDICIAL DISTRICT

11 Richard Hopp,) Case No.: BC401887
12 Plaintiff,)
13 vs.) PLAINTIFF'S REQUEST FOR JUDICIAL
14 City Of Los Angeles, a) NOTICE IN SUPPORT OF OPPOSITION
Municipal Corporation) TO MOTION FOR JUDGMENT ON THE
15 Defendant.) PLEADINGS; PROOF OF SERVICE
16)
17) Judge: Malcolm H. Mackey
Division: 55
Date: March 3, 2009
Time: 08:30AM

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 The Court may take judicial notice of regulation and
20 legislative enactments of public entities. California Evidence
21 Code §452(b). Plaintiff Richard Hopp ("Hopp") respectfully
22 requests that the Court take judicial notice of the following
23 Municipal Code sections:

24 Los Angeles Municipal Code section 12.03 (*emphasis added to*
25 *the definition of **Accessory Use***), attached hereto as Exhibit "A";

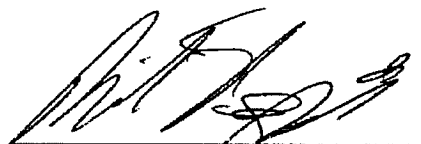
26 Los Angeles Municipal Code section 103.01, attached hereto
27 as Exhibit "B";
28

1 Los Angeles Municipal Code section 103.02, attached hereto
2 as Exhibit "C";

3 Los Angeles Municipal Code section 103.310, attached hereto
4 as Exhibit "D"; and,

5 Los Angeles Municipal Code section 103.311, attached hereto
6 as Exhibit "E".

7 Dated: February 22, 2009

8
9 By: 

10 Richard Hopp, Plaintiff
11 in Propria Persona
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I live in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 6203 Van Nuys Boulevard, Van Nuys, California 91401, Telephone (818) 994-5575.

Mr. Gabriel S. Dermer, Deputy City Attorney
Business and Complex Litigation Division
Office of the City Attorney
200 North Main Street, Suite 916
Los Angeles CA 90012-4110

ONTRAC
C10906200000862

Executed on February 22, 2009, at Van Nuys, California.

Lisa-Jayne Rosengren

EXHIBIT “A”

CITY OF LOS ANGELES MUNICIPAL CODE

SEC. 12.03. DEFINITIONS.

For the purpose of Article 2 to 6 inclusive of this chapter, certain terms and words are herewith defined as follows:

ABANDONED AUTOMOBILE. Any motor vehicle, which when operated upon a highway is required to be registered by the California Vehicle Code, whose registration has been expired for a period of six months or more. Notwithstanding the foregoing definition, a motor vehicle stored within a permitted building or structure shall not be considered to be an abandoned automobile. (Added by Ord. No. 131,925, Eff. 4/11/66.)

ACCESSORY BUILDING. A detached subordinate building, the use of which is customarily incidental to that of the main building or to the main use of the land and which is located in the same or a less restrictive zone and on the same lot with the main building or use. The relationship between the more restrictive and the less restrictive zones shall be determined by the sequence of zones set forth in Sec. 12.23 B.1.(c). (Amended by Ord. No. 106,571, Eff. 1/1/56.)

ACCESSORY LIVING QUARTERS. An accessory building used solely as the temporary dwelling of guests of the occupants of the premises; such dwelling having no kitchen facilities and not rented or otherwise used as a separate dwelling unit. (Added by Ord. No. 107,884, Eff. 9/23/56.)

ACCESSORY USE. A use, which is customarily incidental to that of the main building or the main use of the land and which is located in the same zone or a less restrictive zone and on the same lot with a main building or main use. The relationship between the more restrictive zones and the less restrictive zones shall be determined by the sequence of zones set forth in Section 12.23 B. of this Code. (Amended by Ord. No. 178,599, Eff. 5/26/07.)

The garaging, maintaining or storage of any commercial vehicle on private property which exceeds a registered net weight of 5,600 pounds shall not be considered an accessory use in the "R" Zones. The rental, storage, or storage for rental purposes of a commercial vehicle which exceeds a registered net weight of 5,600 pounds shall not be considered an accessory use in any zone more restrictive than the MR-1 Zone, except as approved by conditional use.

Notwithstanding the above, an accessory use shall also include the maintenance of an Historic Vehicle Collection as defined by Section 12.03 or this Code if the Zoning Administrator finds that all of the following conditions are met:

(a) all the historic vehicles and parts maintained in outdoor storage, whether currently licensed or unlicensed, or whether operable or inoperable constitute an Historic Vehicle Collection; (Amended by Ord. No. 177,103, Eff. 12/18/05.)

(b) the Historic Vehicle Collection occupies less than 50 percent of the area of the lot for the first 10,000 square feet of the lot area plus 20 percent of additional lot area for lots in excess of 10,000 square feet;

(c) the Historic Vehicle Collection is maintained in such manner as not to constitute a health or safety hazard;

(d) the Historic Vehicle Collection is fully screened from ordinary public view by means of a suitable fence, trees, shrubbery, opaque covering or other appropriate means;

(e) no portion of the Historic Vehicle Collection is located within five feet of any building or within any sideyards required by this Code; and

(f) plans for the maintenance of the Historic Vehicle Collection have been submitted to and approved by the Zoning Administrator in accordance with the procedures in Section 12.28 C.1., 2. and 3. and subject to the same fees as in Section 19.01 E. for relief from fence height limitation. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

An approval of an Historic Vehicle Collection and any use allowed by this Code shall be subject to conditions not in conflict with this Code which the Zoning Administrator may deem necessary or advisable to impose in order to protect the peace and quiet of occupants of contiguous property. **(Amended by Ord. No. 177,103, Eff. 12/18/05.)**

An accessory use shall also include the keeping of domestic animals, subject to other provisions of this article; and the keeping of wild animals, under an appropriate permit issued by the Department of Animal Services as provided for in Section 53.38 of the Code, but in no event including the following wild animals: bear, civet, coyote, eagle, eland, elephant, elk, giraffe, gnu, gorilla, hyena, hippopotamus, jaguar, leopard, lion, lynx, moose, orangutan, venomous reptile, puma, rhinoceros, sea lion, tiger, vulture, walrus, wart hog, wolf or yak.

The sale of not more than one dog or cat litter from a domestic household in a 12- month period shall be considered accessory to a residential use.

The noncommercial keeping of birds (not including fowl) without regard to their number shall be an accessory use in the RA, RE, RS, R1, RU and RZ Zones. However, if the Department of Animal Services determines that the keeping of birds or the keeping of a particular number of birds at a particular location constitutes a nuisance or a health or safety hazard, then the keeping of birds under those circumstance shall not be an accessory use.

For the purposes of this section, the occasional sale of birds which is incidental to the keeping of birds as a hobby, does not constitute a commercial use.

Garage and/or yard sales shall be considered accessory to a residential use, if the sale is only incidental to the individual's residential occupancy of the premises; and

1. The sales are confined to the sale of used items which were originally received or purchased for use in the household; and

2. The sales are restricted to a maximum of five sales events per calendar year as a means of disposing of used items originally received or purchased for use in the household; and

3. The sales are limited to not more than two consecutive days per event; and

4. The sales are limited to not more than ten days per calendar year total; and

5. The sales are limited to the hours between 9 a.m. and 5 p.m.

For purposes of this section, the term accessory use shall not apply to any garage and/or yard sales where new goods or merchandise, or items that were not intended to be used in the household are offered or displayed for sale or exchange. (“Department of Animal Regulation” renamed “Department of Animal Services” by Ord. No. 174,735, Eff. 9/13/02.)

ADDITION, GROUND FLOOR. An expansion of the exterior perimeter of a building measured at five feet or more above adjacent grade at any point. (Added by Ord. No. 169,775, Eff. 6/2/94.)

ADJACENT GROUND ELEVATION. Same as grade. (Amended by Ord. No. 131,309, Eff. 4/24/66.)

ADMINISTRATOR – See “Zoning Administrator”.

AGRICULTURAL WASTE. All plant materials generated from the growing and harvesting of agricultural crops, vegetables and fruits. (Added by Ord. No. 170,054, 11/13/94.)

AIRPORT OR AIRCRAFT LANDING FIELD. Any runway landing area or other facility designed, used, or intended to be used either publicly or privately by any person for the landing and taking off of aircraft including all necessary taxiways, aircraft storage and tiedown areas, hangars and other necessary buildings and open spaces.

ALZHEIMER'S/DEMENTIA CARE HOUSING. Residential housing that is licensed by the California Department of Social Services and provides 24-hour care for people suffering from Alzheimer's disease or other disorders resulting in dementia. The residential units shall be guest rooms only. The housing may be a component of an Eldercare Facility. (Added by Ord. No. 178,063, Eff. 12/30/06.)

ANIMAL KEEPING ENCLOSURE. Any structure or fence which establishes the perimeter of an animal keeping and maintenance area. (Added by Ord. No. 157,144, Eff. 11/22/82.)

ANIMAL KEEPING STRUCTURE. Any structure, as defined by this Code, which has a roof and may have one or more sides and is used in whole or in part for the housing or shelter of animals. (Amended by Ord. No. 161,352, Eff. 7/20/86.)

APARTMENT. Same as dwelling unit. (Added by Ord. No. 107,884, Eff. 9/23/56.)

APARTMENT HOTEL. A residential building designed or used for both two or more dwelling units and six or more guest rooms or suites of rooms. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

APARTMENT HOUSE. A residential building designed or used for three or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

AREA PLANNING COMMISSIONS. (Added by Ord. No. 173,268, Eff. 7/1/00, Oper. 7/1/00; and Amended by Ord. No. 173,374, Eff. 8/3/00.) Each Area Planning Commission shall consist of five members. Members shall be appointed and removed in the same manner as members of the City Planning Commission, except that residency in the area served by the Area Planning Commission shall be a qualification for appointment. Except as provided in Paragraph (d), Area Planning Commissions are quasi-judicial agencies.

Each Area Planning Commission, with respect to matters concerning property located in the area served by the Area Planning Commission, shall have and exercise the power to:

- (a) hear and determine appeals where it is alleged there is error or abuse of discretion in any order, requirement, decision, interpretation or other determination made by a Zoning Administrator;
- (b) hear and make decisions on any matter normally under the jurisdiction of a Zoning Administrator when that matter has been transferred to the jurisdiction of the Area Planning Commission because the Zoning Administrator has failed to act within the time limits prescribed by ordinance;
- (c) hear and determine applications for, or appeals related to, conditional use permits and other similar quasi-judicial approvals, in accordance with procedures prescribed by ordinance;
- (d) make recommendations with respect to zone changes or similar matters referred to it from the City Planning Commission pursuant to Charter Section 562; and
- (e) hear and determine other matters delegated to it by ordinance.

Notwithstanding the above, the City Planning Commission shall make decisions on any matter that would otherwise be heard by an Area Planning Commission if the matter involves a project which crosses the boundaries of the area served by more than one Area Planning Commission.

ASSISTED LIVING CARE HOUSING. Residential housing that is licensed by the California Department of Social Services and provides assistance to people 62 years of age or older who require assistance with two or more non-medical activities of daily living as defined in the Department of Social Services licensing requirements. The residential units may consist either of dwelling units or guest rooms. Full time medical services shall not be provided on the premises. The housing may be a component of an Eldercare Facility. (Added by Ord. No. 178,063, Eff. 12/30/06.)

AUTOMOBILE DISMANTLING YARD. Any property or place where the business of an automobile dismantler, as defined by California Vehicle Code Section 220, is conducted. (Added by Ord. No. 152,770, Eff. 9/15/79.)

AUTOMOBILE FOR HIRE. An automobile for hire is a motor vehicle, other than a commercial vehicle with registered net weight in excess of 5,600 pounds, which is let or rented or offered for rental, lease or hire to another for consideration. (Added by Ord. No. 148,857, Eff. 10/31/76.)

AUTOMOBILE AND TRAILER SALES AREA. An open area other than a street, used for the display, sale or rental of new or used automobiles or trailers, and where no repair work is done except minor incidental repair of automobiles or trailers to be displayed, sold or rented on the premises.

AUTOMOTIVE FUELING AND SERVICE STATION. A business which dispenses automotive fuel to the public and may provide the following incidental services: tube and tire repairing, battery servicing, automotive lubrication, mechanical adjustments, changing of spark plugs and other similar maintenance activities. (Added by Ord. No. 169,130, Eff. 12/16/93.)

AUTOMOTIVE REPAIR. A use involving the diagnosing of malfunctions, repairing or maintaining of motor vehicles. Included in this definition are body shops, paint shops, tire stores, muffler shops, auto electric shops, van conversions, lubrication centers, auto-sound shops, auto-alarm shops, auto upholstery shops, wheel alignment shops and other similar automotive related repair or installation businesses;

automotive repair does not include automotive fueling and service stations as defined in this section and installers of automotive telecommunication devices and computers. (Added by Ord. No. 169,130, Eff. 12/16/93.)

AUTOMOTIVE USE. The primary sale of used automobiles. In addition, this phrase shall include automotive repair and automobile and trailer sales area, as defined in this section. (Added by Ord. No. 178,382, Eff. 3/24/07.)

BACHELOR APARTMENT. Same as Efficiency Dwelling Unit. (Amended by Ord. No. 138,456, Eff. 5/30/69.)

BASE FLOOR. That story of a main building, at or above grade, which is not considered a basement, and which has the greatest number of square feet confined within the exterior walls, including the area of the attached covered parking at the same story. All levels within four vertical feet of each other shall count as a single story. (Added by Ord. No. 179,883, Eff. 6/29/08.)

BASEMENT. Any story below the first story of a building. (Amended by Ord. No. 131,309, Eff. 4/24/66.)

BED AND BREAKFAST FACILITY. A building or portion thereof which is used as a temporary lodging place for fewer than thirty consecutive days and which does not contain more than five guest rooms and one kitchen. (Added by Ord. No. 172,792, Eff. 10/4/99.)

BLOODMOBILE. A vehicle, or portable structure transported by a vehicle, easily transportable in one or more sections, which is used to provide blood collection services on a temporary basis in any one location. (Added by Ord. No. 166,045, Eff. 8/17/90.)

BOARD. (Repealed by Ord. No. 173,268, Eff. 7/1/00, Oper. 7/1/00.)

BOARDING OR ROOMING HOUSE. A dwelling containing a single dwelling unit and not more than five guest rooms or suites of rooms, where lodging is provided with or without meals, for compensation. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

BUILDABLE AREA. (Amended by Ord. No. 171,662, Eff. 8/17/97.) All that portion of a lot located within the proper zone for the proposed main building, excluding those portions of the lot which must be reserved for yard spaces, building line setback space, or which may only be used for accessory buildings or uses. For the purpose of computing the height district limitations on total floor area in buildings of any height, the buildable area that would apply to a one-story building on the lot shall be used.

Notwithstanding the above, in computing the height district limitations on total floor area for any development of residential dwelling units, or of both residential dwelling units and commercial uses, in the C2, C4, or C5 zones, buildable area shall have the same meaning as lot area. The additional square footage permitted by this calculation for residential use shall not result in an increase in the number of dwelling units beyond that which would have otherwise been permitted but may only be used to increase the floor area or number of habitable rooms within individual dwelling units.

This alternate definition of buildable area shall not apply within the following specific plan areas: Central City West, Century City North, Century City South, Coastal Bluffs, Devonshire/Topanga Corridor, Foothill Boulevard Corridor, Granada Hills, Oxford Triangle, Pacific Palisades Commercial Village/Neighborhoods, Playa Vista Area D, Porter Ranch Land Use/Transportation, San Pedro, Valley Village, and Westwood

Village. This alternative definition shall also not apply to any lot for which a "Q" or "D" limitation setting forth a floor area limitation had been imposed before July 1, 1997. In the event of a conflict with any other adopted specific plan, the most restrictive provision shall prevail.

BUILDING. Any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels or property of any kind. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

CARGO CONTAINER. Any container (refrigerated or non-refrigerated) that permits the temporary storage and protection of cargo, and which may be transported by ship, rail or truck without intermediate loading and unloading of the contents of the container. (Added by Ord. No. 177,244, Eff. 2/18/06.)

CARGO CONTAINER STORAGE YARD. An open-air site or facility, the primary use of which is the keeping of empty cargo containers, and equipment, and may have as accessory uses the storage of container chassis and truck cabs, repair facilities, warehouses and offices associated with the movement or storage of cargo containers. This definition does not include draying, freighting or trucking yards or terminals. (Added by Ord. No. 177,244, Eff. 2/18/06.)

CEMETERY. Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums and mortuaries when operated in conjunction with and within the boundary of such cemetery.

CHILD CARE FACILITY. A facility in which non-residential care is provided for children, 16 years of age or under, when licensed as a day care facility for children by the State of California or other agency designated by the State, under the categories defined in Section 30019 of Title 22 of the State of California Administrative Code. (Added by Ord. No. 145,474, Eff. 3/2/74.)

CHIPPING/GRINDING FACILITY. Any facility which temporarily stores and/or processes source-separated green waste and/or wood waste by means of chipping, grinding, mixing and/or screening to produce a material of varying particle size. The material produced by the above described processes may be used as ground cover, biofuel, wood chips, animal bedding, worm food or other similar uses. This definition shall not include any chipping and/or grinding of green waste and/or wood waste conducted for noncommercial, nonprofit purpose. (Added by Ord. No. 170,054, 11/13/94.)

CITY PLANNING COMMISSION. (Added by Ord. No. 173,268, Eff. 7/1/00, Oper. 7/1/00 and Amended by Ord. No. 173,374, Eff. 8/3/00.) The Board of Commissioners of the City Planning Department shall be known as the City Planning Commission and shall consist of nine members. It shall:

- (a) give advice and make recommendations to the Mayor, Council, Director of Planning, municipal departments and agencies with respect to City planning and related activities and legislation;
- (b) make recommendations concerning amendment of the General Plan and proposed zoning ordinances in accordance with Charter Sections 555 and 558;
- (c) make reports and recommendations to the Council and to other governmental officers or agencies as may be necessary to implement and secure compliance with the General Plan;
- (d) perform other functions prescribed by the Charter or ordinance;

(e) make decisions on any matter that would otherwise be heard by an Area Planning Commission if the matter involves a project which crosses the boundaries of the area served by more than one Area Planning Commission; and

(f) adopt guidelines for the administration of the provisions of this chapter if it determines that guidelines are necessary and appropriate. Authority to adopt guidelines for the administration of the provisions of this chapter may be delegated to others by adoption of a resolution by Council. Existing provisions of this chapter that delegate authority for the adoption of guidelines to others shall continue to apply with respect to those provisions.

COMMERCIAL COACH. A vehicle with or without motive power, designed and equipped for human occupancy for industrial, professional or commercial purposes. (Added by Ord. No. 161,716, Eff. 12/6/86.)

COMMERCIAL CORNER DEVELOPMENT. (Amended by Ord. No. 175,223, Eff. 6/30/03.)

(1) Any commercially used corner lot located in a C or M zone in Height District Nos. 1, 1-L, 1-VL or 1-XL, the lot line of which adjoins, is separated only by an alley adjacent to, or is located across the street from, any portion of a lot zoned A or R, or improved with any residential use (except in an M zone), or

(2) Any multi-family residentially used corner lot located in a C zone in Height District Nos. 1, 1-L, 1-VL or 1-XL, the lot line of which adjoins, is separated only by an alley adjacent to, or is located across the street from, any portion of a lot zoned RW1 or more restrictive zone.

For purposes of this definition, a Commercial Corner Development can be located on more than one lot only if the lots are adjacent, not divided by a public street, have a common parking area, and one or more buildings are erected or are proposed to be erected upon the lots.

COMMISSION. (Repealed by Ord. No. 173,374, Eff. 8/3/00.)

COMMUNITY APARTMENT PROJECT. The same as defined by Section 11004 of the California Business and Professions Code. (Added by Ord. No. 151,432, Eff. 10/12/78.)

COMPOSTING FACILITY. Any facility which processes source-separated organic materials to a stabilized state through controlled biological decomposition where the resultant material is beneficial to plant growth or soil structure when used as a soil amendment. Materials may initially be chipped, shredded, and/or screened on site prior to being composted. Composting may be conducted in an in-vessel system or in the open, such as windrow composting or aerated static pile composting. This definition shall not include any composting of green waste and/or wood waste conducted for noncommercial, nonprofit purpose. (Added by Ord. No. 170,054, 11/13/94.)

CONDOMINIUM. The same as defined by Section 783 of the California Civil Code. (Added by Ord. No. 151,432, Eff. 10/12/78.)

CONVERSION PROJECT, COMMERCIAL/INDUSTRIAL. An existing building used exclusively for commercial or industrial purposes, or both, proposed for conversion to a condominium or stock cooperative to be used exclusively for such purposes through approval of a tract or parcel map. For purposes of this definition, the term "existing" means that the building was constructed prior to 1945, or if it was built after 1945, a certificate of occupancy was issued for the building prior to the time of map application. (Added by Ord. No. 154,960, Eff. 4/3/81.)

CONVERSION PROJECT, COMMERCIAL/INDUSTRIAL TO RESIDENTIAL. An existing building used exclusively for commercial or industrial purposes, or both, proposed for conversion to a condominium, stock cooperative, or community apartment to be used exclusively for residential purposes through approval of a tract or parcel map. For purposes of this definition, the term "existing" means that the building was constructed prior to 1945 or, if it was built after 1945, a certificate of occupancy was issued for the building prior to the time of map application. (Added by Ord. No. 154,960, Eff. 4/3/81.)

CONVERSION PROJECT, RESIDENTIAL. An existing apartment house, apartment hotel, hotel, multiple dwelling or group dwelling used exclusively for residential purposes proposed for conversion to a condominium, stock cooperative, or community apartment project to be used exclusively for residential purposes through approval of a tract or parcel map. For purposes of this definition, the term "existing" means that the building was constructed prior to 1945 or, if it was built after 1945, a certificate of occupancy has been issued for the building prior to the time of map application. (Amended by Ord. No. 154,960, Eff. 4/3/81.)

CONVERSION PROJECT, RESIDENTIAL TO COMMERCIAL/INDUSTRIAL. An existing apartment house, apartment hotel, hotel, multiple dwelling or group dwelling used exclusively for residential purposes proposed for conversion to a condominium or stock cooperative which is to be used exclusively for commercial or industrial purposes through approval of a tract or parcel map. For purposes of this definition, the term "existing" means that the building was constructed prior to 1945 or, if it was built after 1945, a certificate of occupancy was issued for the building prior to the time of map application. (Added by Ord. No. 154,960, Eff. 4/3/81.)

CORPORATE HEADQUARTERS OR REGIONAL HOME OFFICE. (Added by Ord. No. 169,366, Eff. 4/1/94.) The main administrative center or centers of one or more enterprises whose day-to-day functions is the retrieval and/or dissemination of information to a subsidiary and/or client business in and outside the City's jurisdiction, through the means of electronic or data processing.

COUNSELING AND REFERRAL FACILITY. (Added by Ord. No. 149,517, Eff. 5/26/77.) A neighborhood facility which provides counseling services and subsequently refers applicants to appropriate licensed social service agencies offering professional remedial assistance. Counseling and referral services may be offered in one or more of the following areas: welfare, housing, employment, health, education, legal matters, job development, consumer action, recreation, family problems, juvenile problems, probation, and neighborhood improvement. Tutoring and legal aid shall be permitted as an accessory use only.

The facility may also administer the implementation of government funded programs established to provide low-income housing, job development classes and recreation.

The facility shall:

- (a) permit no more than 5 employees, and;
- (b) where located in a residentially developed area, maintain the residential character of the exterior of the building.

CURB LEVEL. The level of the established curb in front of the building measured at the center of such front. Where no curb level has been established, the City Engineer shall establish such curb level or its equivalent for the purpose of this article.

CURING FACILITY. Any composting facility, as defined by this Code, where additional and/or final biological stabilization is attained after most of the readily metabolized material has been decomposed, and where no chipping, grinding, or screening of material takes place. This definition shall not include any curing of green waste and/or wood waste conducted for noncommercial, nonprofit purpose. (Added by Ord. No. 170,054, 11/13/94.)

DANCE HALL. Any place where public dances are held or conducted, other than when incidental to the operation of a hotel, apartment hotel, banquet room, catering hall, church, school or lodge. (Amended by Ord. No. 169,990, Eff. 9/17/94.)

DANCE HALL, HOSTESS. Any dance hall or place conducting public dances where partners are provided for dancing or social contacts by those conducting, managing, maintaining or operating such public dances for patrons or guests and for which such patrons or guests pay a fee or other consideration. (Added by Ord. No. 155,718, Eff. 8/6/81.)

DANCE, PUBLIC. A gathering of persons in or upon any premises where dancing is participated in and to which premises the public is admitted. (Added by Ord. No. 155,718, Eff. 8/6/81.)

DAY CARE FACILITY. Same as Child Care Facility. (Added by Ord. No. 145,474, Eff. 3/2/74.)

DAY-CARE HOME. (Deleted by Ord. No. 173,085, Eff. 3/19/00.)

DAY-CARE HOME, LARGE FAMILY. (Deleted by Ord. No. 173,085, Eff. 3/19/00.)

DAY-CARE HOME, SMALL FAMILY. (Deleted by Ord. No. 173,085, Eff. 3/19/00.)

DESTROYED. Damaged so as to not be habitable as determined by the Department of Building and Safety. (Added by Ord. No. 153,144, Eff. 12/28/79.)

DINING AREA. A recess from a room or an alcove, adjoining and interconnected with the kitchen by a door or opening. (Added by Ord. No. 146,421, Eff. 9/14/74.)

DIRECTOR OF PLANNING (DIRECTOR). (Amended by Ord. No. 173,455, Eff. 9/22/00.) The chief administrative officer of the Department of City Planning shall be known as the Director of Planning and shall be appointed and removed as provided in Charter Section 508. The Director shall be chosen on the basis of administrative and technical qualifications, with special reference to actual experience in and knowledge of accepted practice in the field of city planning. The Director shall interpret the meaning of the General Plan and specific plans in instances when there is a lack of clarity in the meaning of those regulations, subject to appellate review. The Director may appoint a designee to act on his or her behalf, in which case, references in this Code and other land use ordinances to Director shall include this designee, unless otherwise stated.

In accordance with Charter Section 553, the Director of Planning or his or her designee shall:

- (a) prepare the proposed General Plan of the City and proposed amendments to the General Plan;
- (b) prepare all proposed zoning and other land use regulations and requirements, including maps of all proposed districts or zones;

(c) make investigations and act on the design and improvement of all proposed subdivisions of land as the advisory agency under the State Subdivision Map Act; and

(d) have additional powers and duties as are provided by ordinance.

DISASTER. Fire, flood, wind, earthquake, or other calamity, act of God or the public enemy. (Added by Ord. No. 153,144, Eff. 12/28/79.)

DORMITORY. A guest room designed, intended or occupied as sleeping quarters by more than two persons. Every 100 square feet of superficial floor area in a dormitory shall be considered as a separate guest room. (Added by Ord. No. 107,884, Eff. 9/23/56.)

DRIVE-THROUGH FAST-FOOD ESTABLISHMENT. Any establishment which dispenses food for consumption on or off the premises to an individual in a vehicle. (Added by Ord. No. 166,904, Eff. 5/18/91.)

DWELLING. Any residential building, other than an Apartment House, Hotel or Apartment Hotel. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

DWELLING, GROUP. Two or more one-family, two-family or multiple dwelling, apartment houses or boarding or rooming houses, located on the same lot. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

DWELLING, MULTIPLE. A dwelling containing two dwelling units and not more than five guest rooms. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

DWELLING, ONE-FAMILY. A detached dwelling containing only one dwelling unit. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

DWELLING, TWO-FAMILY. A dwelling containing two dwelling units. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

DWELLING UNIT. A group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purposes. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

DWELLING UNIT, LOW INCOME. (Deleted by Ord. No. 180,308, Eff. 12/7/08.)

DWELLING UNIT, MODERATE INCOME. (Deleted by Ord. No. 180,308, Eff. 12/7/08.)

EDUCATIONAL INSTITUTIONS. Colleges or universities supported wholly or in part by public funds and other colleges or universities giving general academic instruction as prescribed by the State Board of Education.

EFFICIENCY DWELLING UNIT. A room located within an apartment house or apartment hotel used or intended to be used for residential purposes which has a kitchen and living and sleeping quarters combined therein, and which complies with the requirements of Section 91.4930.2 of this Code. (Added by Ord. No. 138,456, Eff. 5/30/69.)

ELDERCARE FACILITY. One functionally operated facility, which provides residential housing for persons 62 years of age and older, and which combines in one facility, two or more of the following housing types: Senior Independent Housing, Assisted Living Care Housing, Skilled Nursing Care Housing, and/or

Alzheimer's/Dementia Care Housing. A minimum of 75 percent of the floor area, exclusive of common areas, shall consist of Senior Independent Housing and/or Assisted Living Care Housing. **(Added by Ord. No. 178,063, Eff. 12/30/06.)**

EQUINE. Any horse, pony, donkey, burro, or mule which is 12 months of age or older and is issued a current Equine License by the City Department of Animal Services. An animal which is under 12 months of age and is the offspring of or is unweaned and being nursed by a female equine lawfully kept on the property where said animal is kept shall not be considered an equine and shall be allowed by right on said property. **(“Department of Animal Regulation” renamed “Department of Animal Services” by Ord. No. 174,735, Eff. 9/13/02.)**

EQUINE ENCLOSURE. Any structure or fence which establishes the perimeter of an equine keeping and maintenance area. **(Added by Ord. No. 157,144, Eff. 11/22/82.)**

FACTORY-BUILT HOME. A residential building, dwelling unit, or individual dwelling room or combination of rooms, or building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly of, or damage or destruction to the part. This home shall comply with all applicable provisions of the California State Factory-Built Housing law. The term **“factory-built home”** shall not include a mobilehome, mobile accessory building or structure, recreational vehicle, or commercial coach. **(Added by Ord. No. 161,716, Eff. 12/6/86.)**

FAMILY. One or more persons living together in a dwelling unit, with common access to, and common use of all living, kitchen, and eating areas within the dwelling unit. **(Amended by Ord. No. 177,325, Eff. 3/18/06.)**

FAMILY DAY CARE HOME - A dwelling unit that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24 hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home. **(Added by Ord. No. 173,085, Eff. 3/19/00.)**

FAMILY DAY CARE HOME, LARGE - A family day care home for 9 to 14 children, including children under the age of 10 years who reside at the home, as set forth in Health and Safety Code Section 1597.465. **(Amended by Ord. No. 176,545, Eff. 5/2/05.)**

FAMILY DAY CARE HOME, SMALL - A family day care home for 8 or fewer children, including children under the age of 10 years who reside at the home, as set forth in Health and Safety Code Section 1597.44. **(Amended by Ord. No. 176,545, Eff. 5/2/05.)**

FLOOR AREA. The area in square feet confined within the exterior walls of a building, but not including the area of the following: exterior walls, stairways, shafts, rooms housing building-operating equipment or machinery, parking areas with associated driveways and ramps, space for the landing and storage of helicopters, and basement storage areas. Except that buildings on properties zoned RA, RE, RS, and R1, and not located in a Hillside Area or Coastal Zone are subject to the definition of Residential Floor Area. **(Amended by Ord. No. 179,883, Eff. 6/29/08.)**

FLOOR AREA, RESIDENTIAL. **(Added by Ord. No. 179,883, Eff. 6/29/08.)** The area in square feet confined within the exterior walls of a building or accessory building on a lot in an RA, RE, RS, or R1 Zone. Any floor or portion of a floor with a ceiling height greater than 14 feet shall count as twice the square footage of that area. The area of stairways shall only be counted once regardless of ceiling height. Area of

an attic or portion of an attic with a ceiling height of more than seven feet shall be included in the floor area calculation.

Except that the following areas shall not be counted:

1. The first 400 square feet of covered parking area.
2. Detached accessory buildings not exceeding 200 square feet; however, the total combined area exempted of all these accessory buildings on a lot shall not exceed 400 square feet.
3. The first 250 square feet of attached porches, patios, and breezeways with a solid roof if they are open on at least two sides.
4. Porches, patios, and breezeways that have an open lattice roof.
5. The first 100 square feet of any story or portion of a story of the main building on a lot with a ceiling height greater than 14 feet shall be counted only once.
6. A Basement when the elevation of the upper surface of the floor or roof above the basement does not exceed two feet in height at any point above the finished or natural grade, whichever is lower.

FOSTER CARE HOME. A dwelling unit in which full-time care is provided for unrelated children, 16 years of age or under, as part of the family, when such use is licensed by the State of California or other agency designated by the State as a full-time foster home. Foster care children may be in addition to those permitted under the definition of “Family” contained in this section. (Added by Ord. No. 145,474, Eff. 3/2/74)

FRONTAGE. All property fronting on one (1) side of a street between intersecting or intercepting streets, or between a street and right-of-way, waterway, end of dead-end street, or city boundary measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts.

GARAGE, PRIVATE. An accessory building or portion of a main building designed or used for parking or storage of motor vehicles of the occupants of a residential use. (Amended by Ord. No. 144,082, Eff. 12/11/72.)

GARAGE, PUBLIC. A building or portion of a building designed or used for the repairing, equipping or servicing of motor vehicles, or for the parking or storage of motor vehicles for remuneration, hire, sale, or convenience of the occupants of the premises or the general public, but not including a private garage. (Amended by Ord. No. 144,082, Eff. 12/11/72.)

GENERAL PLAN. A General Plan is a comprehensive declaration of purposes, policies and programs for the development of the city, which includes, where applicable, diagrams, maps and text setting forth objections, principles, standards and other features, and which has been adopted by the City Council. (Added by Ord. No. 138,800, Eff. 6/13/69, Oper. 6/23/69.)

GRADE (ADJACENT GROUND LEVEL). Is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line, or when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building. This definition does not apply to any building or structure located within the boundaries of the Century City

North or Century City South Specific Plans and which is subject to Section 12.21.2 of this Code. (Amended by Ord. No. 160,657, Eff. 2/17/86, Oper. 6/17/86.)

GREATER DOWNTOWN HOUSING INCENTIVE AREA. Those portions of the Central City and Southeast Community Plan Areas generally bounded by the 101 Freeway on the north, the 110 freeway and Figueroa Street (south of Adams Blvd) on the west, Alameda and Grand Avenue (south of 21st Street) on the east, and Washington Boulevard and Martin Luther King Jr. Blvd (west of Broadway) on the south as shown in the shaded portion of Map A, dated January 23, 2007, attached to Council File No. 05-1173. (Added by Ord. No. 179,076, Eff. 9/23/07.)

GREEN WASTES. All yard trimmings and/or leaves, grass clippings, agricultural wastes and vegetative landscaping materials generated from the maintenance of yards, parks or other similar facilities. (Added by Ord. No. 170,054, 11/13/94.)

GROUND FLOOR. The story or basement within a portion of a building that has an access door that is directly accessible to and fronts on the street, and the elevation of the floor level is within three feet above or below the adjacent curb. The point on the adjacent curb is determined by drawing a line perpendicular to the door between the centerline of such door and the curb of the street. No portion of a ground floor can be located directly above or below another ground floor. (Added by Ord. No. 174,999, Eff. 1/15/03.)

GUEST HOUSE. A dwelling containing not more than five guest rooms or suites of rooms, but with no kitchen facilities. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

GUEST ROOM. Any habitable room except a kitchen, designed or used for occupancy by one or more persons and not in a dwelling unit. (Added by Ord. No. 107,884, Eff. 9/23/56.)

HEIGHT OF BUILDING OR STRUCTURE. Is the vertical distance above grade measured to the highest point of the roof, structure, or the parapet wall, whichever is highest. Retaining walls shall not be used for the purpose of raising the effective elevation of the finished grade for purposes of measuring the height of a building or structure. This definition does not apply to any building or structure located within the boundaries of the Century City North and Century City South Specific Plans and which is subject to Section 12.21.2 of this Code. (Added by Ord. No. 160,657, Eff. 2/17/86, Oper. 6/17/86.)

HIGHWAY, MAJOR. Any street designated as a major highway on the Highways and Freeways maps of the Transportation Element of the General Plan. (Amended by Ord. No. 172,840, Eff. 11/4/99.)

HIGHWAY, SECONDARY. Any street designated as a secondary highway on the Highways and Freeways maps of the Transportation Element of the General Plan. (Amended by Ord. No. 172,840, Eff. 11/4/99.)

HILLSIDE AREA. Any land designated as a Hillside Area on the Bureau of Engineering Basic Grid Map, Map No. A-13372, excluding those areas specifically identified in maps entitled Hillside Ordinance Amended Exhibit A attached to Council File No. 91-1621. (Amended by Ord. No. 168,728, Eff. 5/30/93.)

HISTORIC VEHICLE COLLECTION. One or more vehicles, as defined by Sections 5004(a)(1), (2) and (3) of the California Vehicle Code, special interest vehicles, as defined by Section 5051(b) of the California Vehicle Code, out-of-production vehicles of historical importance, as determined by the Zoning Administrator or parts cars, as defined in Section 5051(c) of the California Vehicle Code, which are collected, restored, or maintained for non-commercial hobby or historical purposes. (Added by Ord. No. 161,931, Eff. 3/2/87.)

HOME OCCUPATION. An occupation carried on by the occupant or occupants of a dwelling as a secondary use in connection with the main use of the property, subject to the regulations of Section 12.05 A.16. of this Code. For dwelling units where a home occupation is conducted, the home occupation shall be considered a residential use for zoning purposes. (Amended by Ord. No. 171,427, Eff. 1/4/97, Oper. 3/5/97.)

HOSTEL. A one-family dwelling, boarding or rooming house, dormitory, apartment hotel or apartment house which is advertised as a hostel or which is listed with any recognized national or international hostel organization. (Added by Ord. No 167,689, Eff. 5/9/92.)

HOTEL. A residential building designated or used for or containing six or more guest rooms, or suites of rooms, which may also contain not more than one dwelling unit, but not including any institution in which human beings are housed or detained under legal restraint. (Amended by Ord. No. 138,685, Eff. 7/10/69.)

HOUSEHOLD, LOW INCOME. (Deleted by Ord. No. 180,308, Eff. 12/7/08.)

HOUSEHOLD, MODERATE INCOME. (Deleted by Ord. No. 180,308, Eff. 12/7/08.)

HOUSEHOLD MOVING RENTAL TRUCK. Any motor vehicle which is displayed, stored or offered for rental without a driver, used and maintained solely for the transportation of property, primarily used for the do-it-yourself movement of personal or household goods by private individuals on a short-term basis, having only two axles, and equipped with a body of no more than 22 feet in length measured at the vehicle chassis nor more than 12 feet in height measured from the surface upon which the involved truck rests. Such vehicle may exceed 5600 pounds in registered net weight. (Amended by Ord. No. 151,717, Eff. 1/13/79.)

HOUSING AUTHORITY. (Deleted by Ord. No. 180,308, Eff. 12/7/08.)

HOUSING DEVELOPMENT. The construction pursuant to a building permit of, or the proposed conversion to condominium ownership pursuant to a final subdivision tract map submitted for approval of any apartment house, apartment hotel, multiple dwelling or group dwelling, residential condominium development or cooperative apartment home having five or more dwelling units. (Added by Ord. No. 145,927, Eff. 6/3/74.)

HOUSING DIRECTOR. (Deleted by Ord. No. 180,308, Eff. 12/7/08.)

INOPERABLE VEHICLE. Any motor vehicle or trailer which is incapable of immediate and sustained movement for which it was designed. (Added by Ord. No. 176,840, Eff. 9/4/05.)

IN-VESSEL COMPOSTING. A process in which compostable material is enclosed in a drum, silo or similar structure where the environmental conditions are controlled and the compostable material is aerated and mechanically agitated. This process allows for accelerated decomposition. (Added by Ord. No. 170,054, 11/13/94.)

JOINT LIVING AND WORK QUARTERS. A combined living and work unit that includes a kitchen and a bathroom. The residential portion of the unit, including the sleeping area, kitchen, bathroom, and closet areas, occupies no more than 33 percent of the total floor area, and the living space is not separated from the work space. Living and work spaces which are independently accessible from one another shall not be considered joint living and work quarters but rather a separate dwelling unit and a separate commercial work space. (Added by Ord. No. 172,572, Eff. 6/3/99.)

JUNK YARD. Any property or place where the business of a junk dealer, as defined by either Section 21601 of the California Business and Profession's Code or Section 103.305 of the Los Angeles Municipal Code, is conducted – other than wholly within an enclosed building. In addition, a junk yard shall include property used for the storage of impounded, abandoned, partially dismantled, obsolete or wrecked automobiles – other than wholly within an enclosed building. Junk Yard does not include an Historic Vehicle Collection when maintained as an Accessory Use as defined by Section 12.03 of the Municipal Code, or Scrap Metal Processing Yard as defined in the Municipal Code. **(Amended by Ord. No. 161,931, Eff. 3/2/87.)**

KENNEL. Any lot or premises on which four (4) or more dogs, at least four (4) months of age, are kept.

A municipality may lawfully regulate the number of dogs that may be kept and may also prescribe an age limit.

Miller v. City of Arcadia, (1932) 121 Cal. App. 660.

KITCHEN. Any room or any portion of a dwelling unit, whether an enclosing subdivision thereof or otherwise, used or intended or designed to be used for cooking and preparing food except a light housekeeping room or that portion of a recreation room in a multiple residential use, or in an accessory building appurtenant thereto, containing the facilities for the cooking and preparation of food. **(Amended by Ord. No. 140,191, Eff. 5/15/70, Operative 10/12/70.)**

LEACHATES. Any liquid which has come into contact with or percolated through composting or curing materials and contains extracted or dissolved substances therefrom, or any other liquid which has been generated by the decomposition process. **(Added by Ord. No. 170,054, 11/13/94.)**

LIGHT HOUSEKEEPING ROOM. Any guest room which is designed and used as a bedroom and for the cooking and preparing of food, in a conformance with the provisions of Section 91.4930.1 of Article 1, Chapter 9 of this Code. For the purpose of applying the lot area and automobile parking space requirements of the various zones, each light housekeeping room shall be considered as a separate guest room. **(Added by Ord. No. 113,548, Eff. 6/10/59.)**

LOADING SPACE. An off street space or berth on the same lot with a building, or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

LOT. A parcel of land occupied or to be occupied by a use, building or unit group of buildings and accessory buildings and uses, together with the yards, open spaces, lot width and lot area as are required by this chapter and fronting for a distance of at least 20 feet upon a street as defined here, or upon a private street as defined in Article 8 of this chapter. The width of an access-strip portion of a lot shall not be less than 20 feet at any point. In a residential planned development or an approved small lot subdivision a lot need have only the street frontage or access as is provided on the recorded subdivision tract or parcel map for the development. **(Amended by Ord. No. 176,354, Eff. 1/31/05.)**

LOT – AIR SPACE. **(Added by Ord. No. 156,681, Eff. 6/21/82.)** A division of the space above or below a lot as defined in this section with a finite width, length, and upper and lower elevation occupied or to be occupied by a use, building or portion thereof, unit group of buildings or portions thereof, and accessory buildings or portions thereof or accessory uses. An air space lot shall be identified on a final map or a parcel map recorded in the office of the County Recorder with a separate and distinct number or letter.

An air space lot shall have such access to a street (as defined in this section) or private street (as defined in Article 8 of this chapter) by means of one or more easements or other entitlements to use in a form satisfactory to the Advisory Agency and the City Engineer.

LOT, FLAG. A lot so shaped and designed that the main building site area is set back from the street on which it fronts and includes an access strip not less than 20 feet in width at any point connecting the main building site area to the frontage street. (Added by Ord. No. 137,956, Eff. 3/2/69.)

LOT LINE, FRONT. In the case of an interior lot, the line separating the lot from the street or place, and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street, except in those cases where the latest tract deed restrictions specify another line as the front lot line.

LOT LINE, REAR. A lot line which is opposite and most distant from the front lot line and, in the case of an irregular, triangular, or gore-shaped lot, a line ten (10) feet in length within the lot, parallel to and at the maximum distance from the front line.

LOT LINE, SIDE. Any lot boundary line not a front lot line or a rear lot line.

LOT WIDTH. The horizontal distance between the side lot lines measured at right angles to the lot depth at a point midway between the front and rear lot lines.

LOT DEPTH. The horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

LOT AREA. The total horizontal area within the lot lines of a lot.

LOT, CORNER. A lot situated at the intersection of two (2) or more streets having an angle of intersection of not more than one hundred thirty five (135) degrees.

LOT, REVERSED CORNER. A corner lot the side street line of which is substantially a continuation of the front line of the first lot to its rear.

LOT, INTERIOR. A lot other than a corner lot.

LOT, KEY. The first interior lot to the rear of a reversed corner lot and not separated therefrom by an alley.

LOT, THROUGH. A lot having a frontage on two parallel or approximately parallel streets, but not including those lots having frontage on a street and frontage on a navigable public canal or waterway parallel or approximately parallel to said street. (Amended by Ord. No. 138,095, Eff. 4/19/69.)

LOT, TRANSITIONAL. The first 100 feet of a lot in an RA or R Zone having a side line adjoining or separated only by an alley from a lot in a C or M Zone. (Amended by Ord. No. 111,049, Eff. 5/3/58.)

LOT, VACANT. A lot on which no building, temporary or permanent, is erected. (Added by Ord. No. 153,361, Eff. 3/2/80.)

LOW TO MODERATE COST HOUSING. Housing for which the rent does not exceed the current Fair Market Rent for Existing Housing standards applicable to Los Angeles City as established for Section 8

and 23 Housing Assistance Payments Program by the United States Department of Housing and Urban Development. (Added by Ord. No. 151,432, Eff. 10/12/78.)

MAJOR REMODEL - HILLSIDE. Any remodeling of a main building on a lot in the Hillside Area whenever the aggregate value of all alterations within a one-year period exceeds 50 percent of the replacement cost of the main building. (Added by Ord. No. 168,159, Eff. 9/14/92.)

MANUFACTURED HOME. The term "manufactured home" shall include a factory-built home and mobilehome but shall not include a recreational vehicle, or commercial coach. (Added by Ord. No. 161,716, Eff. 12/6/86.)

MINI-SHOPPING CENTER. (Amended by Ord. No. 175,223, Eff. 6/30/03.) A building or group of buildings located on a lot or lots, having all of the following characteristics:

- (1) Size - comprised of less than 65,000 square feet of lot area before any dedications required in connection with the building permit or other permits for the Mini-Shopping Center;
- (2) Use - used for more than one retail establishment, such as a store, shop, business, service or facility;
- (3) Zoning - located in the C or M1, M2 or M3 Zones; and
- (4) Improvements - improved with a structure or structures that do not exceed a height of three stories.

For purposes of this definition, a Mini-Shopping Center can be located on more than one lot only if the lots are adjacent, not divided by a public street, have a common parking area, and one or more buildings are erected or are proposed to be erected upon the lots.

The definition of Mini-Shopping Center shall not include the following:

An automobile service station, including service bay areas, where accessory food sales do not exceed 600 square feet of floor area and other accessory uses do not exceed 500 square feet of floor area; or

Commercial buildings composed of general business or professional offices, including those of a real estate or stock broker, or an insurance or building and loan company, with 30% or less of the total square footage containing related commercial/retail uses that are located on the first and second floors, so long as parking is provided for the commercial/retail uses as required by Section 12.21 A.4.

MINOR EMERGENCY REPAIRS. Those repairs to a currently State licensed motor vehicle owned by the occupants of the property which do not require the complete immobilization of the vehicle in excess of 24 hours duration or does not require the removal of the engine transmission, rear-end or more than one wheel. Minor emergency repairs does not include body and fender work. (Added by Ord. No. 137,210, Eff. 10/12/68.)

MOBILEHOME. When used in Sections 12.08.1, 12.09.3, and 12.24 of this Code, this term shall mean a structure transportable in one or more sections, designed and equipped to be used as a dwelling unit or accessory to a dwelling unit. This structure shall comply with all applicable provisions of the California State Mobilehomes – Manufactured Housing Act. The term "mobilehome" shall not include a factory-built home, recreational vehicle, or commercial coach. (Amended by Ord. No. 164,904, Eff. 7/6/89.)

MOBILEHOME PARK. When used in Sections 12.09.3, 12.24, and 17.50 of this Code, this term shall mean any lot or portion of a lot used to provide rental or lease sites for two or more individual mobilehomes or trailers used as one-family dwellings. (Amended by Ord. No. 164,904, Eff. 7/6/89.)

MOBILEHOME SITE. When used in Section 12.24 of this Code, this term shall mean that portion of a mobilehome park set aside and designated for the occupancy of a mobilehome or trailer and including the area set aside or used for parking and buildings or structures such as awnings, cabanas or ramadas which are accessory to the mobilehome or trailer. (Added by Ord. No. 161,716, Eff. 12/6/86.)

MOBILE MEDICAL FACILITY. A vehicle, or portable structure transported by a vehicle, easily transportable in one or more sections, which is used to provide primarily diagnostic or preventive medical services on a temporary basis in any one location. (Added by Ord. No. 166,045, Eff. 8/17/90.)

MODEL DWELLING. (Deleted by Ord. No. 172,839, Eff. 11/1/99.)

MULCH. A woody vegetative material used as a nonnutritive ground cover to control erosion, improve water retention and retard weed growth. (Added by Ord. No. 170,054, 11/13/94.)

MULCHING FACILITY. Any facility which receives, temporarily stores and processes primarily source-separated carbonaceous wood waste and/or yard trimmings into a mulch. Examples of such materials include clean wood waste, tree and shrub trimming, leaves and other high carbon, low nitrogen material which decompose at a slow rate and have little leachate or odor-causing potential. Processing of such materials is achieved by chipping and screening to attain a uniform particle size and may include limited aging of the material to achieve a desired appearance. This definition shall not include any mulching of green waste and/or wood waste conducted for noncommercial, nonprofit purpose. (Added by Ord. No. 170,054, 11/13/94.)

NATURE PRESERVE. An area in its natural state which serves as a habitat for flora and/or fauna indigenous to the area, or as a corridor linking such habitats, including but not limited to a bird sanctuary, and which is designated as a nature preserve on the applicable community or district plan by footnote or other means, and where permitted uses are only incidental to the preservation and enhancement of the preserve. (Added by Ord. No. 166,168, Eff. 10/3/90.)

NONCONFORMING BUILDING. A building, structure or portion thereof, which does not conform to the regulations of this chapter and which lawfully existed at the time the regulations, with which it does not conform, became effective.

NONCONFORMING LOT. A lot whose width, area or other dimensions does not conform to the regulations of this chapter and which lawfully existed at the time the regulations with which it does not conform became effective. (Amended by Ord. No. 127,777, Eff. 8/1/64.)

NONCONFORMING USE. A use of building or land which does not conform to the regulations of this chapter and which lawfully existed at the time the regulations with which it does not conform became effective.

OUTDOOR EATING AREA. When used in Sections 12.12.2, 12.13, 12.14, 12.21.1 and 12.24, this term shall refer to a covered or uncovered portion of a ground floor restaurant which is not completely enclosed within the building; is used primarily for the consumption of food and/or drinks by the patrons of the restaurant; and is not larger than 50 percent of the dining area of the ground floor restaurant. A "ground floor" restaurant refers to any restaurant with an average finished floor elevation either below or not more

than three feet above natural grade as measured from any point along the exterior building wall closest to the restaurant. (Amended by Ord. No. 165,403, Eff. 2/17/90.)

PARALLEL PARKING STALL. A parking stall having its length parallel with its access aisle. (Amended by Ord. No. 142,306, Oper. 2/9/72.)

PARKING AREA, PRIVATE. An open area located on the same lot with a dwelling, apartment house, hotel or apartment hotel, for the parking of automobiles of the occupants of such building. (Amended by Ord. No. 138,859, Eff. 8/21/69.)

PARKING AREA, PUBLIC. Any open area other than a street or a private parking area, used for the parking of more than four automobiles.

PARKING BAY. The width of two rows of parking stalls and the aisle between, or on a single loaded aisle with width of one row of parking stalls and the access aisle. (Added by Ord. No. 142,306, Oper. 2/9/72.)

PARKING. BUILDING. Any garage designed and used primarily for the parking of automobiles. (Amended by Ord. No. 144,082, Eff. 12/11/72.)

PARKING SPACE, AUTOMOBILE. Space within a building or a private or public parking area, exclusive of driveways, ramps, columns, office and work areas, for the parking of one (1) automobile.

PARKING STALL. Same as Parking Space, Automobile. (Added by Ord. No. 142,306, Oper. 2/9/72.)

PHILANTHROPIC INSTITUTION. A nonprofit, charitable institution devoted to the housing, training or care of children, or of aged, indigent, handicapped or underprivileged persons, but not including the following: office buildings, except as an accessory to and located on the same lot with an institutional activity, as listed above; hospitals, clinics or sanitariums, correctional institutions, institutions or homes for the insane or those of unsound mind; lodging houses or dormitories providing temporary quarters for transient unemployed persons; organizations devoted to collecting and salvaging new or used materials, or organizations devoted principally to distributing food, clothing or supplies on a charitable basis.

POOL. Any constructed pool used for swimming, bathing or wading or as a fishpond or similar use. (Added by Ord. No. 109,714, Eff. 8/26/57.)

PRINCIPAL USE. The main permitted use of land or structures as distinguished from an accessory use. (Added by Ord. No. 152,467, Eff. 7/14/79.)

RECREATION ROOM. A room contained in either a main building or an accessory building, designed to be utilized primarily for games, the pursuit of hobbies, social gatherings, and such activities. Such a room may contain such plumbing fixtures as are utilized in a bar or for hobby activities. Such a room in a single-family or two-family dwelling or in an accessory building appurtenant to a single-family or two-family dwelling, may not include facilities for the cooking and preparation of food. However, in a multiple residential use or in an accessory building appurtenant thereto, a recreation room which is for the common use of all the dwelling units therein may contain the facilities for the cooking and preparing of food. (Added by Ord. No. 138,685. Eff. 7/10/69.)

RECREATIONAL VEHICLE. A portable vehicle mounted on wheels, with or without motive power, and primarily designed and constructed to provide human habitation for recreational, camping, travel or emergency purposes. (Added by Ord. No. 161,716, Eff. 12/6/86.)

RECREATIONAL VEHICLE PARK. Any lot or portion of a lot permitted by conditional use to provide rental or lease sites for individual recreational vehicles which are occupied for temporary purposes. (Added by Ord. No. 161,716, Eff. 12/ 6/86.)

RECYCLABLE MATERIALS. Items or materials to be recycled or reused, including but not limited to yard waste, paper, plastic, glass, metal, newspaper, and cardboard. (Added by Ord. No. 171,687, Eff. 8/19/97.)

RECYCLING AREA OR ROOM. An outdoor space or a room within a building which is designated for the collection of Recyclable Materials generated by the use(s) occupying only that site, is approved by the Fire Department and the Department of Building and Safety, and has the space to accommodate Recycling Receptacles. (Added by Ord. No. 171,687, Eff. 8/19/97.)

RECYCLING CENTER, MOBILE. A receptacle, usually a trailer, for the collection of recyclable materials that is drawn by motor power and bears a valid state license. (Added by Ord. No. 158,503, Eff. 1/1/84.)

RECYCLING CENTER OPERATOR OR JUNK DEALER. A person having a fixed place of business in the City and engaging in, conducting, managing or carrying on the business of buying, selling or otherwise charging or re-selling for reuse, materials approved for collection at an approved Recycling Center or Buyback Center, Recycling Materials Processing Facility, Recycling Materials Sorting Facility or Junk Yard as defined by this Code. (Amended by Ord. No. 171,687, Eff. 8/19/97.)

RECYCLING CENTER OR SITE. (Definition Deleted by Ord. No. 171,687, Eff. 8/19/97.)

RECYCLING COLLECTION OR BUYBACK CENTER. A facility where Recyclable Materials are deposited or redeemed for monetary value, and which may include baling or crushing operations for the purposes of efficiency of storage and transfer (volume reduction), but shall not include sorting or processing activities for other than temporary storage purposes. (Added by Ord. No. 171,687, Eff. 8/19/97.)

RECYCLING MATERIALS PROCESSING FACILITY. A facility which accepts Recyclable Materials for sorting and processing on the site. For the purpose of this definition, processing shall mean the process of changing the physical characteristics of a Recyclable Material, including the shredding, smelting, grinding and crushing of cans, bottles, and other materials, for other than temporary storage purposes. (Added by Ord. No. 171,687, Eff. 8/19/97.)

RECYCLING MATERIALS SORTING FACILITY. A facility which accepts commingled or source-separated Recyclable Materials of various types, which are separated on the site using a manual or automated system. For the purpose of this definition, source-separated Recyclable Materials are those which are separated from the waste stream at their point of generation for the purpose of recycling. This may include baling or crushing operations for the purposes of efficiency of storage and transfer (volume reduction), but shall not include processing activities for other than temporary storage purposes. (Added by Ord. No. 171,687, Eff. 8/19/97.)

RECYCLING RECEPTACLE. A container which is suitable for the collection of Recyclable Materials. Containers shall be covered, durable, waterproof, rustproof, and of incombustible construction,

and shall provide protection against the environment or be in completely enclosed indoor recycling areas. Containers must be clearly labeled to indicate the type of material to be deposited. **(Added by Ord. No. 171,687, Eff. 8/19/97.)**

REGISTERED NET WEIGHT. Registered net weight of a commercial vehicle is the unladen weight, as that term is defined by State Vehicle Code Section 660 and evidenced on the registration card kept within a commercial vehicle pursuant to State Vehicle Code Section 4454 or 4455 as the registration weight of a commercial vehicle pursuant to State Vehicle Code Section 9400. **(Added by Ord. No. 148,857, Eff. 10/30/76.)**

RENTABLE FLOOR AREA. The floor area in a building, exclusive of corridors, stairs, elevator shafts, laboratories, flues and janitor's storage closets.

RESIDENTIAL BUILDING. A building or portion thereof designed or used for human habitation. **(Added by Ord. No. 107,884, Eff. 9/23/56.)**

RESIDENTIAL PLANNING DEVELOPMENT. A group of residential buildings and appurtenant structures located and arranged in accordance with the requirement of the RPD - residential planned development district (Sec. 13.04) in which the property is located. A residential planned development may include schools. It may also include churches, hospitals, infirmaries, recreational and commercial uses, as an integral part of the development and intended for use by its occupants, to an extent commensurate with the planned population of the RPD district. **(Added by Ord. No. 141,474, Eff. 2/27/71.)**

RESIDENTIAL VEHICLE. A mobilehome, or a travel trailer containing a minimum of two hundred and twenty (220) square feet of superficial floor area exclusive of bath, closet and water closet areas, as defined by the California Health and Safety Code Sections 18211 and 18219. Such residential vehicle shall contain cooking, eating, sleeping, toilet and bathing facilities and shall display a California Department of Housing and Community Development insignia issued within one year prior to the date of application for the use of land permit herein required and a valid current California vehicle license. **(Added by Ord. No. 153,144, Eff. 12/28/79.)**

RETIREMENT HOTEL. A building with guest rooms and/or dwelling units in which 90 percent or more of the occupants are age 62 or older and for which a covenant running with the land is recorded limiting the use as such for as long as the building contains any guest rooms. **(Added by Ord. No. 159,714, Eff. 4/8/85.)**

REVERSE VENDING MACHINE. An automated mechanical device which accepts one or more types of empty beverage containers including aluminum cans, glass and plastic bottles, and which issues a cash refund or a redeemable credit slip with a value not less than the container's redemption value as determined by the State of California. A reverse vending machine may sort and process containers mechanically, provided that the entire process is enclosed within the machine. **(Added by Ord. No. 168,662, Eff. 4/29/93.)**

REVERSE VENDING MACHINE COMMODITY STORAGE BIN. A non-automated container which is covered and made of durable, incombustible, rustproof and waterproof construction, which is used to store the processed aluminum cans, glass and plastic bottles that are removed from a reverse vending machine. **(Added by Ord. No. 168,662, Eff. 4/29/93.)**

ROOM, HABITABLE. **(Amended by Ord. No. 146,421, Eff. 9/14/74.)** An enclosed subdivision in a residential building commonly used for living purposes, but not including any lobby, hall, closet, storage space, water closet, bath, toilet, slop sink, general utility room or service porch. A recess from a room or an

alcove (other than a dining area) having 50 square feet or more of floor area and so located that it could be partitioned off to form a habitable room, shall be considered a habitable room.

For the purpose of applying the automobile parking space requirements of this article, any kitchen as defined herein shall be considered a habitable room and, if it is a part of a room designed for other than food preparation or eating purposes, such remaining portion shall also be considered a habitable room.

For the purpose of applying the lot area requirements of this article, a kitchen less than 100 square feet of room area from wall to wall shall not be considered a habitable room.

For the purpose of applying the open space requirements of Section 12.21 G., a kitchen as defined herein shall not be considered a habitable room. **(Fourth Para. Added by Ord. No. 171,753, Eff. 11/17/97.)**

SCRAP METAL PROCESSING YARD. Any establishment or place of business which is maintained, used or operated solely for the processing and preparing of scrap metal for remelting by steel mills and foundries. **(Added by Ord. No. 145,040, Eff. 10/15/73.)**

SCHOOLS, ELEMENTARY AND HIGH. An institution of learning which offers instruction in several branches of learning and study required to be taught in the public schools by the Education Code of the State of California. High schools include Junior and Senior.

SENIOR INDEPENDENT HOUSING. Residential housing that consists of dwelling units for persons 62 years of age and older and may include common dining areas or other community rooms. Full time medical services shall not be provided on the premises. It may be a component of an Eldercare Facility. **(Added by Ord. No. 178,063, Eff. 12/30/06.)**

SERVANTS QUARTERS. An accessory building located on the same premises with the main building, used solely as the dwelling of persons employed on the premises, such quarters having no kitchen facilities and not rented or otherwise used as a separate dwelling unit. **(Added by Ord. No. 107,884, Eff. 9/23/56.)**

SHELTER FOR THE HOMELESS. A residential facility operated by a "provider," other than a "community care facility" as defined in the California Health and Safety Code Section 1502, which provides temporary accommodations to homeless persons and/or families and which meets the standards for shelters contained in Title 25, California Administrative Code, Part 1, Chapter F, Subchapter 12, Section 7972. The term "temporary accommodations" means that a homeless person or family will be allowed to reside at the shelter for a time period not to exceed six months. For the purpose of this definition, a "provider" shall mean a government agency or private non-profit organization which provides, or contracts with recognized community organizations to provide, emergency or temporary shelter for the homeless, and which has been certified by the Community Development Department of the City of Los Angeles to meet all applicable requirements as such which are contained in the California Health and Safety Code and the California Administrative Code. **(Added by Ord. No. 161,426, Eff. 8/2/86.)**

SHOWCASE THEATER. **(Added by Ord. No. 148,910, Eff. 11/17/76.)** A theater which meets all of the following criteria:

- (1) seats 90 persons or less;
- (2) is nonprofit and tax-exempt;
- (3) provides live entertainment; and

(4) employs fewer than five persons (exclusive of performers).

SKILLED NURSING CARE HOUSING. Residential housing that is licensed by the California Department of Health and provides acute, intermediate, or long-term skilled nursing care and consists only of guest rooms for its residents. Full time medical services may be provided on the premises. It may be a component of an Eldercare Facility. (Added by Ord. No. 178,063, Eff. 12/30/06.)

SPECIFIC PLAN. A specific plan is a definite statement adopted by ordinance of policies, standards and regulations, together with a map or description defining the locations where such policies, standards and regulations are applicable. (Added by Ord. No. 138,800, Eff. 6/13/69.)

STABLE, PRIVATE. A detached accessory building which has a roof and may have one or more sides and is used in whole or in part for the housing or shelter of an equine or equines owned by the occupants of the premises and not kept for remuneration, hire or sale. (Amended by Ord. No. 157,144, Eff. 11/22/82; Clarified by Ord. No. 157,219, Eff. 12/3/82.)

STABLE, PUBLIC. A stable other than a private stable.

STANDARD HILLSIDE LIMITED STREET — a street (public or private) with a minimum width of 36 feet and paved to a minimum roadway width of 28 feet, as determined by the Bureau of Engineering. (Amended by Ord No. 169,961, Eff. 8/29/94.)

STOCK COOPERATIVE. The same as defined by Section 11003.2 of the California Business and Professions Code. (Added by Ord. No. 153,024, Eff. 1/10/79.)

STORAGE BUILDING FOR HOUSEHOLD GOODS. (Added by Ord. No. 173,979, Eff. 6/29/01.) A building that offers secure self-storage for household goods in individual rooms, compartments, lockers or containers to which clients bring goods for storage and retrieve them any time during normal business hours without any assistance from the operator of the building. For purposes of this definition, storage of these goods may not be in containers, such as boxes, barrels and/or drums set on pallets or racks, or that require the use of forklifts or other similar mechanical equipment for access or mobility. A storage building for household goods does not include the storage of commercial inventory to be sold, displayed, rented or otherwise relocated for sale.

STORY. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the top most story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused underfloor space is more than six feet above grade as defined herein for more than 50% of the total perimeter, or is more than twelve feet above grade as defined herein at any point, such basement, cellar or unused underfloor space shall be considered as a story. (Amended by Ord. No. 131,309, Eff. 4/24/66.)

STREET. Any public thoroughfare other than an alley or walk, except that in those cases where a subdivision has been recorded containing lots which abut only on an alley or walk, said alley or walk may be considered to be a street.

STREET – COLLECTOR. Any street designated as a collector street on an adopted community plan element of the general plan. (Added by Ord. No. 150,799, Eff. 6/5/78.)

STRUCTURE. Anything constructed or erected which is supported directly or indirectly on the earth, but not including any vehicle which conforms to the California State Vehicle Act. (Amended by Ord. No. 107,884, Eff. 9/23/56.)

STRUCTURAL ALTERATIONS. Any change which would prolong the life of the supporting members of a building or structure, such as bearing walls, columns, beams or girders.

SUBSTANDARD HILLSIDE LIMITED STREET — A street which does not meet the minimum requirements of a Standard Hillside Limited Street as defined in Section 12.03. (Amended by Ord. No. 169,961, Eff. 8/29/94.)

SUITE. A group of habitable rooms designed as a unit, and occupied by only one family, but not including a kitchen or other facilities for the preparation of food, with entrances and exits which are common to all rooms comprising the suite. (Added by Ord. No. 138,685, Eff. 7/10/69.)

TEMPORARY GEOLOGICAL EXPLORATORY CORE HOLE. A seismic test hole or exploratory core hole used or intended to be used exclusively for geophysical, geological, and other exploratory testing for oil, natural gas or other hydrocarbon substances. (Amended by Ord. No. 152,744, Eff. 9/10/79.)

TENANT. A person who rents, leases or sub-leases, through either a written or oral agreement, residential real property from another. (Added by Ord. No. 151,432, Eff. 10/12/78.)

TENNIS OR PADDLE TENNIS COURT. A game court designed for the purpose of playing tennis, paddle tennis or similar game, utilizing a concrete slab or other conventionally accepted hard playing surface, an enclosing fence and frequently overhead lighting fixtures. (Added by Ord. No. 151,466, Eff. 10/27/78.)

TOWNHOUSE. A dwelling unit, structurally separated from another dwelling unit or other dwelling units in a building containing two or more dwelling units, and complying with the provisions of Section 91.2305(k)(2) of this Code, and which may be sold jointly with the lot upon which the dwelling unit is situated. Provided, however, that common roofing, flashing, and siding are permitted so as to enclose the airspace resulting from said structural separation. (Added by Ord. No. 141,474, Eff. 2/27/71.)

TRAILER OR AUTOMOBILE TRAILER. A vehicle without motive power, designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons and property, the terms "trailer" and "automobile trailer" shall not include a mobilehome. (Amended by Ord. No. 161,716, Eff. 12/6/86.)

TRANSIENT OCCUPANCY RESIDENTIAL STRUCTURE. A residential building designed or used for one or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms wherein occupancy, by any person by reason of concession, permit, right of access, license, or other agreement is for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. (Added by Ord. No. 167,689, Eff. 5/9/92.)

UNDERFLOOR SPACE. A space between the ground and the floor directly above. (Added by Ord. No. 109,714, Eff. 8/26/57.)

USE. The purpose for which land or a building is arranged, designed or intended or for which either land or a building is or may be occupied or maintained.

UTILITY RENTAL TRAILER. Any non-passenger carrying, box- type open or van designed to be towed by a passenger vehicle, not exceeding 3,500 pounds gross vehicle weight (GVW), and not exceeding 96 inches in total width, nor 72 inches in box width, nor 14 feet in box length. (Added by Ord. No. 148,857, Eff. 10/30/76.)

VEHICLE, COMMERCIAL. Any vehicle, excluding Household Moving Rental Trucks, and Utility Rental Trailers, which when operated upon a highway is required to be registered as a commercial vehicle by the Vehicle Code of the State of California or by any other jurisdiction and which is used or maintained for the transportation of persons for hire, compensation, or profit, or designed, used or maintained primarily for the transportation of property. (Amended by Ord. No. 148,857, Eff. 10/30/76.)

WINDROW COMPOSTING. The process in which compostable material is placed in elongated piles or windrows which are mechanically turned or aerated to encourage decomposition and to reduce odors. (Added by Ord. No. 170,054, 11/13/94.)

WOOD WASTES. Any untreated and/or unpainted wood material such as pallets, plywood and other construction related scrap lumber, stumps and tree trimming. (Added by Ord. No. 170,054, 11/13/94.)

YARD. An open space other than a court, on a lot, unoccupied and unobstructed from the ground upward, except as otherwise provided in this article.

YARD, FRONT. A yard extending across the full width of a lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lot.

YARD, REAR. A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the rear lot line and a line parallel thereto on the lot. (Amended by Ord. No. 121,925, Eff. 6/4/62.)

YARD, SIDE. A yard more than six (6) inches in width between a main building and the side lot line, extending from the front yard or the front lot line where no front yard is required, to the rear yard. The width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the main building.

ZONING ADMINISTRATOR. (Amended by Ord. No. 173,492, Eff. 10/10/00.) The Zoning Administrator shall mean the Chief Zoning Administrator or an Associate Zoning Administrator. The Director may appoint the Zoning Administrator to act as the Director's designee or as a Hearing Officer for the Director.

EXHIBIT "B"

CITY OF LOS ANGELES MUNICIPAL CODE

SEC. 103.01. DEFINITIONS.

(Amended by Ord. No. 175,676, Eff. 1/11/04.)

Applicant means a person who files an application for a permit from the Board.

Board means the Board of Police Commissioners or the Police Permit Review Panel if the Board delegates the authority to the Panel pursuant to Section 102.13.01(d).

Business means any occupation, trade, establishment or concern, regardless of form, which provides services, products or entertainment for which a permit is required under this article, whether or not a permit has been granted, sought, applied for, denied, revoked or suspended.

Director of Finance means the Director of Finance for the City of Los Angeles, or his or her deputy.

Employee means any and all persons, including operators, managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of the business, whether or not the person is paid compensation by the business. This definition does not apply to persons incidentally involved with the business, such as persons delivering goods, food and beverages, or performing maintenance or repairs to the business premises.

Entertainer means any person who performs specified sexual activities or displays specified anatomical parts in a business.

Hearing Examiner means any person appointed by the Board to conduct hearings provided by this article.

Manager means any person appointed by an owner, operator or permittee of a business, who manages, directs, administers, or is in charge of the affairs and/or the conduct or operation of a business. This definition includes assistant managers.

Owner means (1) a sole proprietor or person(s) who own or operate a business; (2) all general partners of a partnership that owns or operates a business; (3) all officers of a corporation and all persons who own a controlling interest in a corporation or other limited liability entity that operates a business.

Patron means any individual, other than an employee, present in or at the business premises at any time during the hours of operation. This definition does not apply to persons incidentally involved with the business, such as persons delivering goods, food and beverages, or performing maintenance or repairs to the business premises.

Permittee means any person having a valid permit issued by the Board as required by the Los Angeles Municipal Code.

Premises means the building and real property occupied or used in the operation of the business, or the space in the building occupied by the business if the business does not utilize the entire building in the operation of the business.

Sexually oriented material means any element of sexually oriented merchandise, or any book, periodical, magazine, photograph, drawing, sculpture, motion picture film, video, compact disc, or other written, oral or visual representation, which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical parts.

Sexually oriented merchandise means sexually oriented implements and paraphernalia, such as, but not limited to condoms, lap dance bags, benwa balls, dildos, auto sucks, sexually oriented vibrators, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices that are designed or marketed primarily for the stimulation of or use with the stimulation of human genital organs or for sadomasochistic activity.

Specified anatomical parts means:

1. Less than completely and opaquely covered human genitals, pubic hair, buttocks, natal cleft, perineum, anus, anal region, pubic region, or female breast below a point immediately below the top of the areola; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

1. Actual or simulated: sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, masturbation, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory function in the context of a sexual relationship; or any of the following depicted sexually oriented acts or conduct, whether actual or simulated: anilingus, buggery, coprophilia, coprophagy, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, sapphism, urophilia, zooerastia, zoophilia; or
2. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
3. Use of human or animal ejaculation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks, natal cleft, anal region, anus, or female breast; or
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or
7. The presence of any person who performs a striptease, or appears in attire where specified anatomical parts are either not opaquely covered or minimally covered with bikinis, lingerie, or devices commonly referred to as pasties and G-strings, or any other similar opaque covering.

DIVISION 3

PERMIT APPLICATIONS

Section

103.02 Permit Required.

103.02.1 Permit Applications.

103.03 Public Hearings.

103.04 False Statements.

103.05 Overlapping Business.

103.06 Permits – Duration.

103.06.1 Permits – Renewal.

103.06.2 Temporary Permits.

103.07 Permits – Annual Fee.

103.08 Permits Non-Transferable.

103.09 Permit for Each Location.

103.10 Change of Location.

103.11 Additional Locations.

EXHIBIT "C"

CITY OF LOS ANGELES MUNICIPAL CODE

SEC. 103.02. PERMIT REQUIRED.

(Amended by Ord. No. 175,676, Eff. 1/11/04.)

No person may operate, engage in, conduct or carry on any business without first obtaining a permit issued by the Board of Police Commissioners.

EXHIBIT "D"

CITY OF LOS ANGELES MUNICIPAL CODE

SEC. 103.310. SECONDHAND BOOK DEALERS.

(a) **Definitions.** As used in this section:

1. **"SECONDHAND BOOK DEALER"** means a person engaging in, conducting, managing or carrying on the business of buying, selling, exchanging or otherwise dealing in secondhand books and magazines, secondhand text books or secondhand educational materials.

2. **"SECONDHAND TEXT BOOKS"** or **"SECONDHAND EDUCATIONAL MATERIALS"** means those text books or other materials required or designated by any university, college, school, or other educational institution to be used or which were used by students in studying the courses offered by said institutions. Such text books or other materials voluntarily used by said students in conjunction with those books required or designated by said institutions are included.

(b) **Permit Required.** No person shall engage in, conduct, manage, or carry on the business of secondhand book dealer without a written permit from the Board.

(c) **Change of Location.** A change of location may be endorsed on a permit by the Board upon written application by the permittee accompanied by the change of location fee prescribed in Section 103.12.

(d) **Bills of Sale.** Every secondhand book dealer buying, selling or exchanging or otherwise dealing in secondhand books, secondhand text books or secondhand educational materials or exchanging new text books or new educational materials for secondhand text books or secondhand educational materials, as whole or part payment therefor, shall immediately upon receiving the same, require the seller or other person from whom said secondhand text books or materials are bought, or received in exchange, to execute a bill of sale therefor. Said bills of sale shall be numbered consecutively and shall be kept on file and open during business hours to the inspection of any police officer or representative of the Board.

(e) **Contents of Bill of Sale.** Said bill of sale shall show:

1. **Date.** The date of purchase or receiving in exchange;

2. **Name of Seller.** The name and address of the person selling or exchanging such articles and the name of the educational institution said person is attending or in which he is registered;

3. **Name of Institution.** The name of the educational institution, if any, requiring or designating the use of such textbooks or materials, including the date of the term or semester during which the same were used;

4. **Name of Purchaser.** The name and address of the purchaser or person receiving said secondhand books, secondhand text books or materials, said name and address coinciding with those showing upon the permit issued by the Board and held by said person;

5. **Description.** A description of the secondhand books, secondhand text books or materials purchased by him sufficient in all respect to clearly identify the same.

(f) **Right to Sell.** A secondhand book dealer who purchases or receives in exchange secondhand books, secondhand text books or other secondhand educational materials shall, prior to making such

purchase or exchange, ascertain that the person selling or delivering for exchange any such secondhand books or materials has a legal right to do so.

(g) **Identification of Books.** The secondhand book dealer shall immediately upon purchasing or receiving in exchange any such secondhand books or materials stamp, write, print or otherwise permanently affix to each article so purchased or received the number of the bill of sale covering said articles.

(h) **Signs.** Secondhand book dealers shall maintain on the premises where said business is located a sign plainly printed in the English language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a department of any building, the sign shall be placed at the entrance to said department.

(i) **Exemptions.** This section shall not apply to the receipt or sale of secondhand books, secondhand text books or secondhand educational materials by any person who receives or purchases such books or materials from any other person when such other person has made required reports as fixed by rule or regulation of the Board and shall have held the said books or materials for the length of time therein required.

EXHIBIT "E"

CITY OF LOS ANGELES MUNICIPAL CODE

SEC. 103.311. SECONDHAND DEALERS.

(a) **Definitions.** As used in this article:

1. **"SECONDHAND DEALER"** means a person engaging in, conducting, managing, or carrying on the business of buying, selling, or otherwise dealing in secondhand or rebuilt or reconditioned goods, wares and merchandise. The term does not include secondhand dealer-jewelry, or persons holding permits as auto wreckers or used car dealers or secondhand book dealers. The acceptance, sale or disposal of used automobile tires or automobile batteries taken in part payment for new tires or batteries shall not be deemed to constitute the doing of the business of a secondhand dealer.

2. **"SECONDHAND DEALER – JEWELRY"** means a person engaging in, conducting, managing or carrying on the business of buying, selling, or otherwise dealing in secondhand jewelry, precious and semi-precious stones and metals and imitations thereof, watches, rings, bracelets, and other similar goods, wares and merchandise.

(b) **Permit Required.** No person shall engage in, manage, conduct or carry on the business of a secondhand dealer or a secondhand dealer-jewelry without a written permit from the Board.

(c) **Change of Location.** A change of location may be endorsed on a permit by the Board upon written application by the permittee accompanied by the change of location fee prescribed in Section 103.12.

(d) **Permittee, Responsible for Conduct of Premises.** It shall be the duty of permittee to see that no secondhand goods are sold or purchased by his agent or any other person in or upon the permittee's premises or location other than in the course of permittee's business.

(e) **Advertising Restrictions.** No permittee shall advertise any goods for sale when such goods are not actually for sale at the premises at the time the advertisement is inserted in the newspaper or medium.

Within 24 hours after the sale of any goods that have been advertised for sale, the permittee shall withdraw or cancel any advertisement relative to such goods.

(f) **Hold-Order.** A police officer may place a hold-order upon property acquired by the permittee in the course of his business, for a period of 90 days, and upon release of such property, may require the permittee to keep a record of the disposition of such property. It shall be unlawful for any person to dispose of any property contrary to any hold-order issued by a police officer.

(g) **Holding Period.** Property acquired in the course of permittee's business shall be reported and held for such period of time as is fixed by rule and regulation of the Board.

(h) **Violation.** No permittee shall clean, alter, repair or otherwise change the appearance, melt, destroy, sell, export or otherwise dispose of any article, goods, wares, merchandise, waste materials, junk or things obtained in the course of his business until such articles have been held for the period required by the Board.

(i) **Exemption.** (Added by Ord. No. 158,621, Eff. 2/20/84.) Any person engaging in, conducting, managing, selling, exchanging, displaying or offering for sale or exchange, secondhand personal property at a swap meet is exempt from Subsections (a) through (h), inclusive, of this section, and any rules and

regulations promulgated by the Board pursuant to said subsections, but is subject to the following provisions and conditions:

1. **Definitions.** As used in this subsection:

a. **"Swap Meet"** means any event where secondhand goods are offered or displayed for sale or exchange and

(1) A fee is charged for the privilege of offering or displaying secondhand goods for sale or exchange; or

(2) A fee is charged to prospective buyers for admission to the area where secondhand goods are offered or displayed for sale or exchange.

b. **"Swap Meet Operator"** means any individual, partnership, corporation, business association or other person or entity which sponsors, controls, manages or otherwise conducts a swap meet.

c. **"Swap Meet Vendor"** means any individual, partnership, corporation, business association or other person or entity which sells, exchanges, displays, or offers for sale or exchange, any secondhand goods at a swap meet.

2. **Permit Required.** No person or entity shall operate a swap meet without a written permit from the Board, except that a permit shall not be required for any event sponsored by and for the exclusive benefit of any community chest, fund, foundation, association or corporation organized and operated solely for religious or charitable purposes provided that no portion of any admission fee charged swap meet vendors or prospective purchasers, or the receipts from the sale or exchange of new or secondhand goods, inures to the benefit of any shareholder, officer, employee, person or entity organizing, sponsoring or conducting such event.

a. No permit shall be issued which will permit the sale or display of firearms, flammables, and hash pipes or other manipulative instruments relating to the use or consumption of drugs or their derivatives.

b. No permit shall be issued unless the swap meet operator has first obtained a business tax registration certificate.

c. No permit shall be issued for a swap meet requiring a conditional use pursuant to Section 12.24 of this Code until such conditional use has been obtained.

d. When the Board has determined that the cost of police investigation services will be increased because of the operation of a swap meet, the Board may require the swap meet operator to make payment into the general fund of the City of Los Angeles an amount calculated at the current hourly rate of a Detective II for each hour of investigation on a weekday and 150% of the current hourly rate of a Detective II for each hour of investigation on a Saturday, Sunday or holiday involving the swap meet, or up to a maximum of 16 hours per day of swap meet operation, plus 23.1% of such amount for administrative costs. The swap meet operator shall pay the amount due to the Office of Finance within 30 days after the bill is mailed to the swap meet operator by the Board. (Amended by Ord. No. 173,300, Eff. 6/30/00, Oper. 7/1/00.)

e. A permit shall be issued, denied or revoked pursuant to the provisions of this chapter; however, the Board shall place no other conditions on the operation of a swap meet permitted pursuant to Section 12.24 of this Code other than those permitted by this subsection.

f. Each swap meet operator, prior to each swap meet, shall verify to the Police Department that each swap meet vendor has consented to an inspection by a police officer of all goods under such vendor's control at the swap meet before permitting such vendor to participate in the swap meet. Failure on the part of the swap meet operator to verify the above information is grounds for the Police Department to close the swap meet. (Added by Ord. No. 161,524, Eff. 8/17/86.)

1 ROCKARD J. DELGADILLO, City Attorney (SBN 125465x)
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6 Attorneys for Defendant CITY OF LOS ANGELES

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**
10

11
12 RICHARD HOPP, an individual

13 Plaintiff,

14 vs.

15 CITY OF LOS ANGELES, a Municipal
16 Corporation

17 Defendant.
18
19

CASE NO. BC 401 887

[Assigned to Hon. Malcolm H. Mackey,
Dept. 55]

REPLY OF DEFENDANT TO PLAINTIFF'S
OPPOSITION TO MOTION FOR JUDGMENT
ON THE PLEADINGS

Hearing

Date: March 3, 2009

Time: 8:30 a.m.

Dept: 55

20 Defendant City of Los Angeles (the "City") respectfully submits this Reply to the
21 Opposition filed by Plaintiff Richard Hopp ("Hopp") to the City's Motion for Judgment on the
22 Pleadings (the "Motion").

23 **1. INTRODUCTION AND SUMMARY OF ARGUMENT**

24 By its Motion, the City has shown that Hopp may be required to obtain a secondhand
25 book dealer's permit to engage in his very public collecting activities. The 17-page Opposition,
26 which does not comply with California Rules of Court 3.1113(d) and (f), does nothing to alter
27 this fact. Nonetheless, Hopp yet claims that he is a "collector" (*i.e.*, that he does not *sell* books),
28 so he is not a "business" and is therefore not required to comply with the City's police permit

1 regulations or even apply for a permit.¹ In making his argument, Hopp ignores the plain
2 meaning, and the obvious intention, of Municipal Code section 103.310 – to curtail the
3 dissemination of stolen books.²

4 It is folly to equate “business” with “selling” in the ordinance’s context because the
5 ordinance itself does not equate a secondhand book dealer with a secondhand book seller.
6 Rather, section 103.310 defines a secondhand book dealer as “*a person engaging in ... the*
7 *business of buying ... or otherwise dealing in secondhand books.*” (Emphasis added). If the
8 ordinance was aimed at producing revenue, or only at a person’s livelihood or occupation, it
9 would have said so. Viewed as a regulation giving police the opportunity to curtail crime, the
10 ordinance, as written, makes imminent sense.

11 Moreover, Hopp’s activities as alleged in the complaint plainly fall into the definition of
12 a secondhand book dealer; because Hopp *is* in the “business” of collecting books. He actively
13 promotes and advertises his secondhand book buying “activities” within publications, websites
14 and at various locations, including flea markets, swap meets and trade shows. Accordingly, he
15 needs to apply for a secondhand book dealer’s permit.

16 Lastly, Hopp has not shown the City’s ordinance is preempted, because it is not. As
17 Hopp has failed to state facts sufficient to constitute a cause of action against the City, the
18 Motion for Judgment on the Pleadings should be granted.

19 **2. HOPP IS ENGAGED IN A BUSINESS UNDER THE ORDINANCE – THE**
20 **BUSINESS OF COLLECTING**

21 **a. The Fact That Hopp Does Not Sell Secondhand Books Is Irrelevant**

22 The Complaint alleges that Hopp “actively promotes, advertises, and campaigns his
23 collecting and hobby activities within publications, websites, and at various events and
24

25 ¹ Since filing the Motion, counsel for the City has learned that should Hopp, or any applicant, apply for a
26 permit, the Police Permit Review Panel may in fact determine that no permit is required.

27 ² It is worth noting that the permit requirement does not serve as the City’s punishment or judgment on
28 Hopp or any other applicant; rather, the permit requirement serves to prevent any party from becoming a
“legal fence.”

1 locations, including, but not limited to, exhibitions, festivals, meetings, flea markets, swap
2 meets, trade shows, garage sales, and collector meetings,” (Complaint at 2:4-8), and that he
3 “wants to have an ‘exhibitor’s table’ or ‘buying booth’ within the City of Los Angeles at various
4 events” such as swap meets and flea markets. (Complaint at 2:9-11).

5 It is of no moment that Hopp does not sell what he collects. Despite this, Hopp attempts
6 to make much of Municipal Code section 103.01’s definition of “business,” *i.e.*, “any
7 occupation, trade, establishment or concern, regardless of form, which provides services,
8 products or entertainment for which a permit is required.” (Opp. at 5:21 – 6:28) This definition,
9 obviously broader than occupation or livelihood, supports the view that *regardless of form*,
10 Hopp’s provision of services, *i.e.*, his book buying at flea markets, swap meets and trade shows
11 and advertised elsewhere, can very well be a business for the purpose of requiring a police
12 permit. Again, this is consistent with section 103.310’s reference to “buying ... or otherwise
13 dealing in secondhand books” as a person operating a business for their livelihood would
14 certainly sell books, and not only buy or otherwise deal with them.³

15 The City is cognizant of the fact that the word “business” *may* refer to one’s occupation
16 or employment (Opp. at 7:1 - 8:3); however, such a limiting definition is not found in the
17 ordinance and makes no sense in its context. *See Day v. City of Fontana* (2001) 25 Cal. 4th 268,
18 272.⁴ And given that section 103.01 states that a business may be *any* “concern, *regardless of*
19 *form*,” it is most implausible to state it must be referring to for profit commercial activity.

20 Similarly, Hopp disingenuously states that the City seeks to define “business” in the
21 broadest possible sense. (Opp. at 8:7-8). The Motion only assumes the truth of facts alleged in
22 the Complaint, and is simply based thereon and limited thereto. Hopp presents various
23

24 ³ Similarly, Hopp suggests an inconsistency with Section 103.02 (Opp. at 7:8-13). That section, read in
25 the context of the previous section’s definition of business, simply means that no person may operate a
26 business for which a permit is required without first obtaining a permit. There is absolutely no
inconsistency.

27 ⁴ *Day* also states that words should be given their “usual and ordinary meaning.” For this reason,
28 Hopp’s discussion of Black’s Law Dictionary is inapposite. Yet even Black’s contains a definition of
business consistent with the City’s position: “Enterprise in which person engaged shows willingness to
invest time and capital on future outcome.” *Black’s Law Dictionary* (6th ed. 1990).

hypothetical scenarios in his Opposition to ostensibly undermine the ordinance's application to him. However, because the Motion is one for judgment on the pleadings, the only factual scenario at issue is the one set forth in Hopp's complaint. Put another way, *Hopp's* secondhand book buying activities, actively promoted and advertised within publications, websites and at various locations, including flea markets, swap meets and trade shows, fall within the definition of secondhand book dealer in section 103.310.

b. The City's Ordinance Does Not Purport To Apply To *All* People Who Buy Books – There Is No Slippery Slope

The Complaint, Motion (and ordinance) *do not* address all “those who collect books as a hobby” and no absurd circumstances⁵ would result should the motion be granted. (Opp. at 10:18-23). If a person wants to buy one book, or even 1,000 books, or exchange books with a friend, such isolated (and private) incidents are not indicative of a person carrying on the business of buying secondhand books. In addition, a very good chance exists that the City would never become aware of such a person's activities. But Hopp, who publicly and “actively promotes, advertises, and campaigns his collecting and hobby activities within publications, websites, and at various events and locations, including, but not limited to, exhibitions, festivals, meetings, flea markets, swap meets, trade shows, garage sales, and collector meetings,” is in the business of collecting and has obviously come to the City's attention, or vice versa.

Moreover, Hopp's publicity, promotion and advertisement illustrate the rationale and need that underlie the police permit regulation, as the book thief for whom the ordinance is designed to curtail may see Hopp's advertisements and elect to dispose of his stolen books by selling them to Hopp. *See In re Holmes* (1921) 187 Cal. 640, 645 (secondhand book dealings are proper subject of regulation under the police powers of a municipality). Indeed, prohibiting the police from so regulating may well serve to insulate the thieves by making Hopp a “legal fence.” Again, the fact that Hopp collects secondhand books, but does not sell them, is a non sequitur.

⁵ In fact, as will be shown, the opposite is true, at least as concerns the carte blanche that would be given to book thieves looking to unload their stolen books.

1 **c. This Is A Police Permit Issue, Not A Business Tax Issue**

2 Similarly, Hopp alleges that the City's "entire statutory scheme is clearly intended to
3 provide for regulation of various business operations ..." (Opp. at 8:14-17). He cites to
4 businesses such as dance halls, escort halls, massage parlors and pawnbrokers in support of his
5 position that he, a person who only collects, is not a business. One has nothing to do with the
6 other, of course, because if any of those "businesses" actively promoted and advertised their
7 activities but did not accept a penny for the services furnished, they would be akin to Hopp and
8 likely still require the appropriate permit.

9 This is also the reason that Hopp's discussion of the City's business tax is inapposite.
10 The City's business taxes are based upon revenue, *see, e.g.*, LAMC § 21.00(a) (defining "gross
11 receipts"). Admittedly, there is no revenue to, or money made by, the buyer of secondhand
12 books. In fact, one would think that business tax and police permit issues are often interrelated,
13 as most dance halls, escort halls, massage parlors, pawnbrokers and secondhand book dealers
14 are operated for profit. But the fact that Hopp would not owe any business tax has nothing to do
15 with his maintaining of a police permit designed to curtail the dissemination of stolen property.

16 **d. Hopp Is A Secondhand Book Dealer**

17 Likewise, it is not necessary or proper to define "dealer," alone, as Hopp attempts to do
18 (Opp. at 9:17- 10:11). The ordinance defines the phrase "secondhand book dealer" as "a person
19 engaging in, conducting, managing or *carrying on the business of buying*, selling, exchanging
20 or otherwise dealing in secondhand books." (LAMC § 103.310(a), emphasis added). The
21 definition of the word dealer cannot be excised from the entirety of the definition of secondhand
22 book dealer.

23 Finally, Hopp's discussion of secondhand dealers (Opp. at 11:4-12:2) is also inapposite
24 and contradicted by the ordinance itself. Section 103.311(a) contains the definition of
25 "secondhand dealer" and states *inter alia*: "The term [*i.e., secondhand dealer*] **does not include**
26 secondhand dealer-jewelry, or persons holding permits as auto wreckers or used car dealers or
27 **secondhand book dealers**" (emphasis added). Though again, the City does not seek to punish
28 secondhand book dealers or secondhand dealers or regulate them for the sake of regulation; the

1 City's police seek to curtail the dissemination of stolen property by monitoring the people to
2 whom the thief sells. *See, e.g., Holmes*, 187 Cal. at 645 (regulating secondhand books); *see also*
3 Bus. & Prof. Code § 21625 (regulating tangible personal property).

4 In sum, Hopp actively and publicly carries on the business of buying secondhand books;
5 accordingly, he is a secondhand book dealer.

6 **3. THE ORDINANCE IS NOT PREEMPTED**

7 **a. State Law Does Not Address Secondhand Books**

8 Hopp argues that the City's ordinance has been "expressly preempted" by state law.⁶
9 (Opp. at 13:24). The City's Motion explained that there is no preemption issue because state
10 law only concerns "tangible personal property," defined in Business and Professions Code
11 section 21627(a) as property that "includes, but is not limited to, all secondhand tangible
12 personal property which bears a serial number or personalized initials or inscription or which ...
13 bears evidence of having had a serial number or personalized initials or inscription." Tangible
14 personal property may also include "tangible personal property, new or used, including motor
15 vehicles, received in pledge as security for a loan by a pawnbroker." Bus. & Prof. Code §
16 21627(b)(1).

17 As explained, the secondhand books addressed by the City's ordinance, do not bear
18 individual serial numbers or personalized initials or secure loans by pawnbrokers. And there is
19 no reference to secondhand books or non personalized property anywhere in the state's statutory
20 scheme. Secondhand books, therefore, are *non-tangible* personal property, and are not regulated
21 by state law. Accordingly, there is absolutely no express (or implied) preemption.

22 **b. The Ordinance Does Not Conflict With State Law Does And It Is Not** 23 **Preempted**

24 Yet even if secondhand books were regulated by the state, there is nothing in state law
25 that would preempt the subject ordinance. *See Malish v. City of San Diego* (2000) 84 Cal. App.
26

27 ⁶ Though Hopp argues the City's ordinance is preempted, the City is not aware, and Hopp has not
28 alleged, that he has applied for a permit with the police commission as required by Business and
Professions Code section 21641(a).

1 4th 725. Somewhat surprisingly, Hopp attempts to dismiss the entirety of the Motion's analysis
2 of *Malish* by stating the City's reliance is "misplaced" because *Malish* "invalidated the local
3 ordinance to the extent such was inconsistent with state law." (Opp. at 16:1-6). A truism, to be
4 sure, but Hopp does not address, because he cannot, the fact that the aspects of San Diego's
5 permit system consistent with state law (and analogous to the City's requirements) were upheld
6 and not deemed preempted. As the *Malish* Court stated: "the City's local permit system is a
7 proper means of enforcing local regulatory ordinances that are not inconsistent with state
8 regulatory statutes." *Id.* at 730.

9 Specifically, Hopp argues that the City's identification requirement is preempted. (Opp.
10 at 15:7 – 16). Section 103.310 (g) simply requires that the purchased secondhand book refer to
11 the bill of sale for said book. There is nothing in the state's statutes that conflict with this
12 requirement (likely because state laws refer to items already with serial numbers). Accordingly,
13 it is not preempted.

14 Similarly, Hopp argues that the City's exemption contained in section 103.310(i) is
15 preempted. In reality this subsection states that the section shall not apply to the receipt of
16 secondhand books from any other person where such person "has made required reports as fixed
17 by rule or regulation of the Board..." If anything, this is duplicative of Business and
18 Professions Code section 21629 that exempts tangible personal property acquired from another
19 secondhand dealer provided he states in writing a description of the property and other
20 requirements. As explained in *Malish*, the City may duplicate state law because the Legislature
21 expressly authorized such local legislation. *Malish, supra*, 84 Cal. App. 4th at 736 (citing Bus.
22 & Prof. Code §§ 21637 and 21638).

23 **c. The City Neither Regulates, Nor Purports To Regulate, Individuals Or**
24 **Entities Outside Of The City**

25 Somewhat ignoring the fact that the Motion is one for judgment on the pleadings, Hopp
26 suggests that the ordinance is invalid as it may affect "transient citizens." (Opp. at 16:10-24).
27 As explained, the City's ordinance does not purport to regulate all people, transient or otherwise.
28 By its terms, it only regulates secondhand book dealers. In addition, there is no Constitutional

1 issue as the City's entire Municipal Code, including the ordinance at issue, only deals with acts
2 or omissions "within the territorial limits of the City of Los Angeles and that territory outside of
3 this City over which the City has jurisdiction or control by virtue of the Constitution, Charter or
4 any law, or by reason of ownership or control of property." LAMC § 11.00(g).

5 In sum, state law does not regulate secondhand books, yet even if it did, the City's
6 ordinance is valid and not preempted.

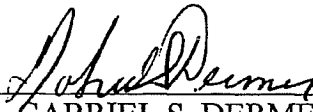
7 **4. CONCLUSION**

8 The City of Los Angeles again respectfully requests that this Court find Los Angeles
9 Municipal Code section 103.310 to be valid and enforceable, and applicable to Mr. Hopp's
10 actively and publicly advertised and promoted secondhand book buying activities, and grant the
11 City's Motion for Judgment on the Pleadings.

12
13 Respectfully submitted,

14 DATED: February 20, 2009

15 ROCKARD J. DELGADILLO, City Attorney
16 LAURIE RITTENBERG, Assistant City Attorney
17 GABRIEL S. DERMER, Deputy City Attorney

18 By 
19 GABRIEL S. DERMER

20 Deputy City Attorney
21 Attorneys for Defendant CITY OF LOS ANGELES
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PROOF OF SERVICE via E-MAIL & REGULAR MAIL

Hopp v. City of Los Angeles
LASC Case No. BC 401887

I am employed by the Office of the Los Angeles City Attorney located in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 North Main Street – Room 916, CHE, Los Angeles, California 90012.

On February 20, 2009, I served the foregoing documents described as:

REPLY OF DEFENDANT TO PLAINTIFF'S OPPOSITION TO MOTION
FOR JUDGMENT ON THE PLEADINGS

[X] BY E-MAIL to: mail@BC401887.info and also by placing [] the original [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Hopp
POB 3601
Van Nuys, CA 91407 Tel: 818/ 902-0532
Fax 670-7841

[X] MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[] BY PERSONAL SERVICE - () I delivered by hand, or () I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

[] BY OVERNIGHT COURIER - I caused the above-referenced document(s) to be delivered via: [DHL], an overnight courier service, for delivery to the above-addressee(s).

[] BY FACSIMILE - I caused the above-referenced document(s) to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

[] Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[X] State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 20, 2009, at Los Angeles, California.


GABRIEL S. DERMER

FILED
LOS ANGELES SUPERIOR COURT

MAR 03 2009

JOHN A. CLARKE CLERK
RECEIVED

BY E. VERNER, DEPUTY
JAN 5 2009

FILED
LOS ANGELES SUPERIOR COURT

JAN 30 2009

JOHN A. CLARKE CLERK
BY NANCY ALVAREZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

RICHARD HOPP, an individual

Plaintiff,

vs.

CITY OF LOS ANGELES, a Municipal
Corporation

Defendant.

CASE NO. BC 401 887

[Assigned to Hon. Malcolm H. Mackey,
Dept. 55]

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

Hearing
Date: March 3, 2009
Time: 8:30 a.m.
Dept: 55

The motion of Defendant City of Los Angeles for judgment on the pleadings as to the entire complaint of Plaintiff Richard Hopp came on for hearing in Department 55 of this Court on March 3, 2009. Gabriel S. Dermer, Deputy City Attorney, appeared on behalf of Defendant City of Los Angeles. Plaintiff Richard Hopp appeared *in pro per* and with DAVID A. CORRIE.

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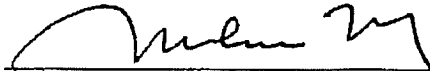
[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

1 Having read and considered the motion, the memoranda and the request for judicial
2 notice, and having heard argument of counsel,
3

4 IT IS ORDERED THAT:

- 5 1. The request for judicial notice is granted;
6 2. The motion for judgment on the pleadings is granted as to entire complaint
7 without leave to amend; and
8 3. Judgment shall be entered in favor of defendant.
9

10
11 Date: MAR 03 2009



12 Judge of the Superior Court

13 MALCOLM H. MACKEY
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PROOF OF SERVICE
Hopp v. City of Los Angeles
LASC Case No. BC 401887

I am employed by the Office of the Los Angeles City Attorney located in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 North Main Street - CHE, 9th Floor, Room 916, California 90012.

On January 30, 2009, I served the foregoing documents described as:

[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS

on the interested parties in this action by placing [] the original [X] a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Hopp
POB 3601
Van Nuys, CA 91407
Tel: 818/902-0532
Fax 670-7841

[X] MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

[] BY PERSONAL SERVICE - () I delivered by hand, or () I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

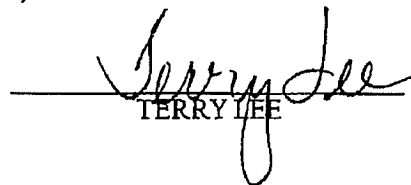
[] BY OVERNIGHT COURIER - I caused the above-referenced document(s) to be delivered via: [DHL], an overnight courier service, for delivery to the above-addressee(s).

[] BY FACSIMILE - I caused the above-referenced document(s) to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

[] Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

[X] State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 30, 2009, at Los Angeles, California.


TERRY LEE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/03/09

DEPT. 55

HONORABLE MALCOLM MACKEY

JUDGE

E. VERNER

DEPUTY CLERK

HONORABLE
#11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. GOMEZ, C/A

Deputy Sheriff

S. BROCK, CSR

Reporter

8:30 am

BC401887

Plaintiff
Counsel

DAVID A. CORDIER (X)

RICHARD HOPP (X)
VS
CITY OF LOS ANGELES

Defendant
Counsel

GABRIEL S. DERMER (X)

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, CITY OF LOS ANGELES, FOR
JUDGMENT ON THE PLEADINGS.

CASE MANAGEMENT CONFERENCE.

Matter comes on calendar for Defendant's Motion for
Judgment on the Pleadings filed January 30, 2009.
Opposition filed February 18, 2009. Reply filed
February 20, 2009.

Motion for Judgment on the Pleadings is argued and
granted, as fully reflected in the notes of the
official court reporter and incorporated by reference
herein.

Order Granting Motion for Judgment on the Pleadings
signed and filed this date.

The Motion for Judgment on the Pleadings having been
granted, the Case Management Conference this date is
placed off calendar, as moot.

Moving party/prevailing party to give notice.

1 ROCKARD J. DELGADILLO, City Attorney (SBN 125465x)
2 LAURIE RITTENBERG, Assistant City Attorney (SBN 106683)
3 GABRIEL S. DERMER, Deputy City Attorney (SBN 229424)
4 200 N. Main Street, City Hall East, 9th Floor, Rm. 916
5 Los Angeles, CA 90012
6 Telephone (213) 473-6850
7 Facsimile (213) 473-6818

8 Attorneys for Defendant CITY OF LOS ANGELES

FILED
LOS ANGELES SUPERIOR COURT

MAR 12 2009

JOHN A. CLARKE, CLERK
BY *Raul Sanchez* DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RICHARD HOPP, an individual

Plaintiff,

vs.

CITY OF LOS ANGELES, a Municipal
Corporation

Defendant.

CASE NO. BC 401 887

[Assigned to Hon. Malcolm H. Mackey,
Dept. 55]

NOTICE OF ENTRY OF ORDER AND
JUDGMENT

TO PLAINTIFF AND TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that, on March 3, 2009, the Court granted Defendant City of
Los Angeles' motion for judgment on the pleadings and entered judgment in favor of Defendant.
A copy of the Court's Order Granting Defendant's Motion for Judgment on the Pleadings,
signed March 3, 2009, and the minute order of said date are attached hereto.

DATED: March 12, 2009

ROCKARD J. DELGADILLO, City Attorney
LAURIE RITTENBERG, Assistant City Attorney
GABRIEL S. DERMER, Deputy City Attorney

By *Gabriel S. Dermer*

GABRIEL S. DERMER

Deputy City Attorney

Attorneys for Defendant CITY OF LOS ANGELES

FILED
LOS ANGELES SUPERIOR COURT
MAR 03 2009
JOHN A. CLARKE, CLERK
RECEIVED
BY JAN ORTIZ, DEPUTY

FILED
LOS ANGELES SUPERIOR COURT
JAN 30 2009
JOHN A. CLARKE, CLERK
BY NANCY ALVAREZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

RICHARD HOPP, an individual
Plaintiff,
vs.
CITY OF LOS ANGELES, a Municipal
Corporation
Defendant.

CASE NO. BC 401 887

[Assigned to Hon. Malcolm H. Mackey,
Dept. 55]

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

Hearing
Date: March 3, 2009
Time: 8:30 a.m.
Dept: 55

The motion of Defendant City of Los Angeles for judgment on the pleadings as to the entire complaint of Plaintiff Richard Hopp came on for hearing in Department 55 of this Court on March 3, 2009. Gabriel S. Dermer, Deputy City Attorney, appeared on behalf of Defendant City of Los Angeles. Plaintiff Richard Hopp appeared *in pro per* and with DAVID A. CORDIER.

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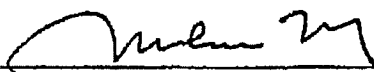
[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

1 Having read and considered the motion, the memoranda and the request for judicial
2 notice, and having heard argument of counsel,
3

4 IT IS ORDERED THAT:

- 5 1. The request for judicial notice is granted;
6 2. The motion for judgment on the pleadings is granted as to entire complaint
7 without leave to amend; and
8 3. Judgment shall be entered in favor of defendant.
9

10
11 Date: MAR 03 2009


12 Judge of the Superior Court

13 MALCOLM H. MACKEY
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 03/03/09

DEPT. 55

HONORABLE MALCOLM MACKOY

JUDGE

E. VERNER

DEPUTY CLERK

HONORABLE
#11

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

L. GOMEZ, C/A

Deputy Sheriff

S. BROCK, CSR

Reporter

8:30 am

BC401887

Plaintiff
Counsel

DAVID A. CORDIER (X)

RICHARD HOPP (X)

VS

Defendant
Counsel

GABRIEL S. DERMER (X)

CITY OF LOS ANGELES

NATURE OF PROCEEDINGS:

MOTION OF DEFENDANT, CITY OF LOS ANGELES, FOR
JUDGMENT ON THE PLEADINGS.

CASE MANAGEMENT CONFERENCE.

Matter comes on calendar for Defendant's Motion for
Judgment on the Pleadings filed January 30, 2009.
Opposition filed February 18, 2009. Reply filed
February 20, 2009.

Motion for Judgment on the Pleadings is argued and
granted, as fully reflected in the notes of the
official court reporter and incorporated by reference
herein.

Order Granting Motion for Judgment on the Pleadings
signed and filed this date.

The Motion for Judgment on the Pleadings having been
granted, the Case Management Conference this date is
placed off calendar, as moot.

Moving party/prevaling party to give notice.

PROOF OF SERVICE
RICHARD HOPP v. CITY OF LOS ANGELES
LASC CASE NO. BC 401887

I am employed as a paralegal/legal secretary by the Office of the Los Angeles City Attorney located in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 North Main Street - 916 City Hall East, Los Angeles, California 90012.

On March 12, 2009, I served the foregoing documents described as:

NOTICE OF ENTRY OF ORDER AND JUDGMENT

on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Richard Hopp
POB 3601
Van Nuys, CA 91407

David A. Cordier, Esq.
466 Foothill Boulevard, Suite 308
La Cañada, CA 91011

☒ MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I caused such envelope to be deposited in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

☐ BY PERSONAL SERVICE - I caused such envelope(s) to be delivered by hand to the above addressee(s).

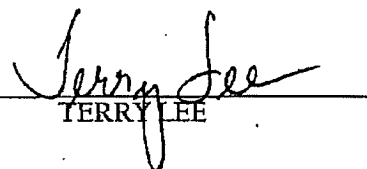
☐ BY OVERNIGHT COURIER - I caused the above-referenced document(s) to be delivered via: [UPS], an overnight courier service, for delivery to the above-addressee(s).

☐ BY FACSIMILE - I caused the above-referenced document(s) to be transmitted to the offices of the addressee via facsimile machine, on the date specified above. The facsimile machine I used was in compliance with Rule 2003(3) and the transmission was reported as complete without error. Pursuant to Rule 2008(e), I caused a copy of the transmission report to be properly issued by the transmitting facsimile machine.

☐ Federal - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒ State - I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 12, 2009, at Los Angeles, California.


TERRY LEE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Richard Hopp Post Office Box 3601 Van Nuys, California 91407-3601 TELEPHONE NO.: (818) 902-0532 FAX NO (Optional): (818) 670-7841 E-MAIL ADDRESS (Optional): Mail@BC401887.INFO ATTORNEY FOR (Name): Plaintiff in Propria Persona		FOR COURT USE ONLY ORIGINAL FILED APR 08 2009 CIVIL APPEALS ROOM 111
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Central District-Stanley Mosk Building		
PLAINTIFF/PETITIONER: Richard Hopp DEFENDANT/RESPONDENT: City of Los Angeles		
☒ NOTICE OF APPEAL ☐ CROSS-APPEAL (UNLIMITED CIVIL CASE)		CASE NUMBER: BC401887 [Dept. 55]
Notice: Please read <i>Information on Appeal Procedures for Unlimited Civil Cases</i> (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

1. NOTICE IS HEREBY GIVEN that (name): **Richard Hopp**
 appeals from the following judgment or order in this case, which was entered on (date): **March 3rd, 2009**

- ☐ Judgment after jury trial
☐ Judgment after court trial
☐ Default judgment
☐ Judgment after an order granting a summary judgment motion
☐ Judgment of dismissal under Code of Civil Procedure sections 581d, 583.250, 583.360, or 583.430
☐ Judgment of dismissal after an order sustaining a demurrer
☐ An order after judgment under Code of Civil Procedure section 904.1(a)(2)
☐ An order of judgment under Code of Civil Procedure section 904.1(a)(3)-(13)
☒ Other (describe and specify code section that authorizes this appeal):

Judgment after order granting motion for judgment on the pleadings per CCP 904.1(a)(1).

2. For cross-appeals only:
- Date notice of appeal was filed in original appeal:
 - Date superior court clerk mailed notice of original appeal:
 - Court of Appeal case number (if known):

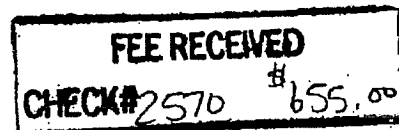
Date: April 8, 2008

Richard Hopp

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)



CASE NAME:

Richard Hopp v. City of Los Angeles

CASE NUMBER:

BC401887 [Dept. 55]

NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

PROOF OF SERVICE



Mail



Personal Service

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My residence or business address is (specify):
6320 Van Nuys Boulevard, Suite 502, Van Nuys, California 91401

3. I mailed or personally delivered a copy of the *Notice of Appeal/Cross-Appeal (Unlimited Civil Case)* as follows (complete either a or b):

- a. ☒ Mail. I am a resident of or employed in the county where the mailing occurred.

- (1) I enclosed a copy in an envelope and

- (a) ☒ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (b) ☐ placed the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

- (2) The envelope was addressed and mailed as follows:

(a) Name of person served: Gabriel S. Dermer, Deputy City Attorney

(b) Address on envelope:

200 North Main Street, Suite 916
Los Angeles, California 90012

(c) Date of mailing: April 8th, 2008

(d) Place of mailing (city and state): Van Nuys, California 91401

- b. ☐ Personal delivery. I personally delivered a copy as follows:

(1) Name of person served:

(2) Address where delivered:

(3) Date delivered:

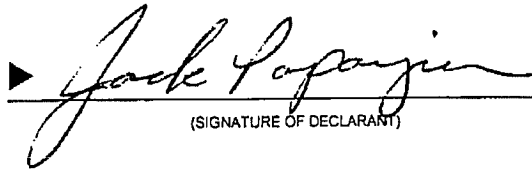
(4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: April 8th, 2009

Jack Papazian

(TYPE OR PRINT NAME)

► 

(SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard Hopp Post Office Box 3601 Van Nuys, California 91407-3601 TELEPHONE NO.: (818)902-0532 FAX NO. (Optional): (818) 670-7841 E-MAIL ADDRESS (Optional): Mail@BC401887.INFO ATTORNEY FOR (Name): Plaintiff/Appellant in Propria Persona		FOR COURT USE ONLY ORIGINAL FILED APR 16 2009 CIVIL APPEALS ROOM 111
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, California 90012 BRANCH NAME: Central District - Stanley Mosk Building		
PLAINTIFF/PETITIONER: Richard Hopp DEFENDANT/RESPONDENT: City of Los Angeles		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		
RE: Appeal filed on (date): April 8, 2009		Superior Court Case Number: BC401887 [Dept. 55] Court of Appeal Case Number (if known): B215265 [Div. P]
Notice: Please read Information on Appeal Procedures for Unlimited Civil Cases (form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

RECORD OF THE DOCUMENTS FILED IN THE TRIAL COURT

1. I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the trial court (check a, b, c, d, or e and fill in any required information):
- a. ☐ A clerk's transcript under rule 8.122 (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) ☐ I will pay the trial court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I am asking that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have attached the following document (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Application for Waiver of Court Fees and Costs (form FW-001) to prepare and file this application.)
- b. ☒ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, Fourth, and Fifth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134 (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)
- e. ☐ A settled statement under rule 8.137. (You must complete item 2b(3) below and attach to your proposed statement on appeal copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.137(b)(3).)

RECORD OF ORAL PROCEEDINGS IN THE TRIAL COURT

2. I elect to proceed:
- a. ☐ WITHOUT a record of the oral proceeding in the trial court. I understand that without a record of the oral proceeding in the trial court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether the trial court made an error.
- b. ☒ WITH the following record of the oral proceeding in the trial court:
- (1) ☒ A reporter's transcript under rule 8.130 (You must fill out the reporter's transcript section on page 3 of this form.)
- (2) ☐ An agreed statement (Check and complete either (a) or (b) below.)
- (a) ☐ I have attached an agreed statement to this notice.
- (b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. (You must attach a copy of this stipulation to this notice.) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) ☐ A settled statement under rule 8.137 (You must attach the motion required under rule 8.137(a) to this form.)

Page 1 of 3

CASE NAME: Richard Hopp v. City of Los Angeles

CASE NUMBER: BC401887

NOTICE DESIGNATING CLERK'S TRANSCRIPT

You must complete this section if you checked item 1.a. above indicating that you elect to use a clerk's transcript as the record of the documents filed in the trial court.

3. **Required documents.** The clerk will automatically include the following items in the clerk's transcript:

- a. Notice of appeal
- b. Notice designating record on appeal (*this document*)
- c. Judgment or order appealed from
- d. Notice of entry of judgment (*if any*)
- e. Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
- f. Ruling on one or more of the items listed in e.
- g. Register of actions or docket

4. **Additional documents.** If you want any documents from the trial court proceeding in addition to the items listed above to be included in the clerk's transcript, you must identify those documents here.

I would like the clerk to include in the transcript the following documents from the trial court proceeding (*You must identify each document you want included by its title and provide the date it was filed, if you know it.*):

Document Title and Description	Date of Filing
h.	
i.	
j.	

☐ See additional pages

5. **Exhibits to be included in clerk's transcript.** I would like the clerk to include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the trial court (*for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit and indicate whether or not the court admitted the exhibit into evidence*):

Exhibit Number	Description	Admitted (Yes/No)
a.		
b.		
c.		

☐ See additional pages

6. **Record of administrative proceeding to be transmitted to the reviewing court.** I would like the clerk to transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the trial court (*give the title and date or dates of the administrative proceeding*):

Title of Administrative Proceeding	Date or Dates
------------------------------------	---------------

CASE NAME: Richard Hopp v. City of Los Angeles

CASE NUMBER: BC401887

NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the trial court. Please remember that you must pay for the cost of preparing the reporter's transcript.

7. ☐ I request that the reporter(s) provide my copy of the reporter's transcript in computer-readable format. (Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

8. ☒ **Proceedings.** I would like the following proceedings in the trial court to be included in the reporter's transcript (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and, if you know it, the name of the court reporter who recorded the proceedings.):

Date	Department	Full/Partial Day	Description of Proceedings	Reporter's Name
a. 3-3-09	55	Partial Day	Judgment on the Pleadings	Sheila G. Brock
b.			[FILED CONCURRENTLY WITH NOTICE OF LODGING CERTIFIED COPY OF REPORTER'S TRANSCRIPT PROCEEDINGS DATED MARCH 3rd, 2009.]	
c.				
d.				
e.				
f.				
g.				
h.				
i.				
j.				

☐ See additional pages

Date: April 16, 2008

Richard Hopp

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I live in the county of Los Angeles, State of California.
I am over the age of 18 and not a party to the within action; my
business address is: 6320 Van Nuys Boulevard, Suite 503, Van
Nuys, California 91401.

On April 16, 2009, I served the documents entitled:
**APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL; PROOF OF
SERVICE** on the interested parties in this action by placing a
true copy thereof enclosed in a sealed envelope addressed as
follows:

Honorable Malcolm H. Mackey
Los Angeles Superior Court
111 North Hill Street
Department 55
Los Angeles, California 90012

Mr. Gabriel S. Dermer, Deputy City Attorney
Business and Complex Litigation Division
Office of the City Attorney
200 North Main Street, Suite 916
Los Angeles California 90012

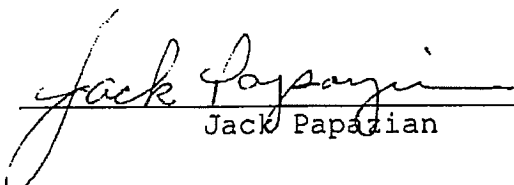
Mr. David A. Cordier, Esq.
466 Foothill Boulevard, #300
La Canada, California 91011

Ms. Lisa-Jayne Rosengren, Esq.
6203 Van Nuys Boulevard
Van Nuys, California 91401

By US Mail - I deposited such envelope in the US Mail at Van
Nuys, California.

I declare under penalty of perjury under the law of the
State of California that the above is true and correct.

Executed on April 16, 2009, at Van Nuys, California.



Jack Papazian

1 Richard Hopp
Post Office Box 3601
2 Van Nuys, California 91407
Telephone: (818) 902-0532
3 Fax: (818) 670-7841
E-mail: MAIL@BC401887.INFO

ORIGINAL FILED

APR 24 2009

CIVIL APPEALS
ROOM 111

5 Plaintiff and Appellant,
Richard Hopp in Propria Persona

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
9 CENTRAL JUDICIAL DISTRICT

11 Richard Hopp,) Case No.: BC401887
12 Plaintiff/Appellant,)
13 vs.) (Court of Appeal Case Number
14 City Of Los Angeles, a) B215265)
Municipal Corporation) (Hon. Malcolm Mackey, Div. 55)
15 Defendant/Respondent.) NOTICE OF LODGING CERTIFIED COPY
16) OF REPORTER'S TRANSCRIPT
17) PROCEEDINGS; PROOF OF SERVICE
18) [FILED CONCURRENTLY WITH
19) APPELLANT'S NOTICE DESIGNATING
20) RECORD ON APPEAL DATED APRIL 16,
21) 2009.]

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 Plaintiff/Appellant herein lodges, with the Court in the
21 above-captioned action, the record of the oral proceeding:

- 22 1. Reporter's transcript dated March 3rd, 2009. 12 pages.

24 Dated: April 16, 2009

25 By: 

26 Richard Hopp, Plaintiff
27 in Propria Persona
28

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I live in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 6320 Van Nuys Boulevard, Suite 503, Van Nuys, California 91401.

On April 16, 2009, I served the documents entitled: **NOTICE OF LODGING CERTIFIED COPY OF REPORTER'S TRANSCRIPT PROCEEDINGS; PROOF OF SERVICE; PROOF OF SERVICE** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Honorable Malcolm H. Mackey
Los Angeles Superior Court
111 North Hill Street
Department 55
Los Angeles, California 90012

Mr. Gabriel S. Dermer, Deputy City Attorney
Business and Complex Litigation Division
Office of the City Attorney
200 North Main Street, Suite 916
Los Angeles California 90012

Mr. David A. Cordier, Esq.
466 Foothill Boulevard, #300
La Canada, California 91011

Ms. Lisa-Jayne Rosengren, Esq.
6203 Van Nuys Boulevard
Van Nuys, California 91401

By US Mail - I deposited such envelope in the US Mail at Van Nuys, California.

I declare under penalty of perjury under the law of the State of California that the above is true and correct.

Executed on April 16, 2009, at Van Nuys, California.


Jack Papazian

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 55

HON. MALCOLM H. MACKEY, JUDGE

4
5 RICHARD HOPP,

6 PLAINTIFF,

7 VS.

8 CITY OF LOS ANGELES,

9 DEFENDANT.
10

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) CASE NO: BC401887
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11
12 REPORTER'S TRANSCRIPT OF PROCEEDINGS

13 TUESDAY, MARCH 3, 2009
14
15

16 APPEARANCES:

17 FOR PLAINTIFF: DAVID A. CORDIER, ESQ.
18 440 WESTERN AVENUE, SUITE 203
19 GLENDALE, CALIFORNIA 91201

20 FOR DEFENDANT:

21 ROCKARD J. DELGADILLO
22 GABRIEL S. DERMER, DEPUTY CITY ATTORNEY
23 200 N. MAIN STREET, 9TH FLOOR
24 CITY HALL EAST, ROOM 916
LOS ANGELES, CALIFORNIA 90012

25 ALSO PRESENT: RICHARD HOPP
26

27 REPORTED BY:
28 SHEILA G. BROCK, CSR NO. 10025
OFFICIAL COURT REPORTER

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION P	Court of Appeal Case Number: B215265
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard Hopp Post Office Box 3601 Van Nuys, California 91401	Superior Court Case Number: BC401887 [Dept. 55]
TELEPHONE NO.: (818) 902-0532 FAX NO. (Optional): (818) 670-7841 E-MAIL ADDRESS (Optional): INFO@BC401887.INFO ATTORNEY FOR (Name): Appellant in Propria Persona	FOR COURT USE ONLY COURT OF APPEAL - SECOND DIST. FILED APR 29 2009 JOSEPH A. LANE Clerk O. CARBONE Deputy Clerk
APPELLANT/PETITIONER: Richard Hopp	
RESPONDENT/REAL PARTY IN INTEREST: City of Los Angeles	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Richard Hopp

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. ☒ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of Interest (Explain):
(1) Richard Hopp	Plaintiff/Appellant
(2) Malcolm H. Mackey	Judicial Officer (Judge)
(3) David A. Cordier	Associated Counsel for Plaintiff/Appellant
(4) Lisa-Jayne Rosengren	Associated Counsel for Plaintiff/Appellant
(5) Gabriel S. Dermer	Attorney for Defendant/Respondent

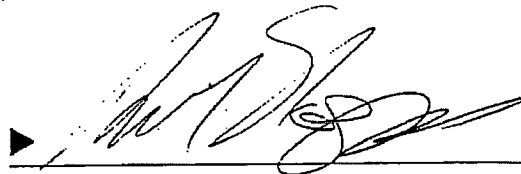
☒ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 27, 2009

Richard Hopp

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

1 Attachment 2b

2

3 PARTY

NATURE OF INTEREST

4 City of Los Angeles

Defendant/Respondent

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RICHARD HOPP
vs.
CITY OF
LOS ANGELES
COURT OF APPEAL
B215265

-2-

CERTIFICATE OF INTERESTED ENTITIES OR PERSON; PROOF OF SERVICE;
PROOF OF SERVICE

148

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I live in the county of Los Angeles, State of California.
I am over the age of 18 and not a party to the within action; my
business address is: 6203 Van Nuys Boulevard, Van Nuys,
California 91401; Telephone (818) 994-5575.

On April 27, 2009, I served the documents entitled:
CERTIFICATE OF INTERESTED ENTITIES OR PERSON; PROOF OF SERVICE
on the interested parties in this action by placing a true copy
thereof enclosed in a sealed envelope addressed as follows:

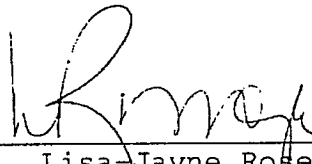
Honorable Malcolm H. Mackey
Los Angeles Superior Court
111 North Hill Street
Department 55
Los Angeles, California 90012

Mr. Gabriel S. Dermer, Deputy City Attorney
Business and Complex Litigation Division
Office of the City Attorney
200 North Main Street, Suite 916
Los Angeles California 90012

By US Mail - I deposited such envelope in the US Mail at Van
Nuys, California.

I declare under penalty of perjury under the law of the
State of California that the above is true and correct.

Executed on April 27, 2009, at Van Nuys, California.



Lisa-Jayne Rosengren

FILED
LOS ANGELES SUPERIOR COURT

DEC 23 2008

JOHN A. CLARKE, CLERK
BY RAUL SANCHEZ, DEPUTY

1 Richard Hopp
2 Post Office Box 3601
3 Van Nuys, California 91407
4 Telephone: (818) 902-0532
5 Fax: (818) 670-7841

6 Plaintiff Richard Hopp
7 in Propria Persona

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
9 CENTRAL JUDICIAL DISTRICT

10
11 Richard Hopp,

12 Plaintiff,

13 vs.

14 City Of Los Angeles, a
15 Municipal Corporation

16 Defendant.

) Case No.: BC401887

)
) NOTICE OF ASSOCIATION OF
) COUNSEL; PROOF OF SERVICE

)
)
) Judge: Malcolm H. Mackey
) Division: 55

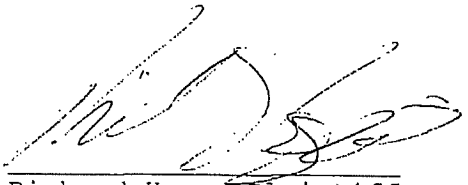
17 TO THE CLERK OF THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
18 RECORD:

19 Notice of hereby given, Plaintiff, Richard Hopp, hereby
20 associates:

- 21 1. David A. Cordier, Esq.
22 466 Foothill Boulevard, #300
23 La Canada, California 91011
24 Telephone number (818) 553-3669
- 25 2. Mr. Frank Bacon, Esq.
26 10153 1/2 Riverside Drive, PMB-320
27 Toluca Lake, California 91602
28 Telephone number (818) 761-5000
3. Lisa-Jayne Rosengren, Esq.
6203 Van Nuys Boulevard
Van Nuys, California 91401
Telephone number (818) 994-5575

1 as co-counsel of record together with Richard Hopp. All
2 correspondences and notices in this action shall be delivered to
3 all co-counsels and Plaintiff Richard Hopp.

4
5 Date: December 16, 2008

6
7
8 By: 

9 Richard Hopp, Plaintiff
10 in Propria Persona
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I live in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 6320 Van Nuys Boulevard, Suite 502, Van Nuys, California 91401.

Mr. Gabriel S. Dermer, Deputy City Attorney
Business and Complex Litigation Division
Office of the City Attorney
200 N Main St Ste 916
Los Angeles CA 90012-4110

I declare under penalty of perjury under the law of the State of California that the above is true and correct.



Jack Papazian