

ORDINANCE NO. 89-038

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

MAY 23 1989

ORDINANCE AMENDING SECTIONS 28.10 THROUGH 28.24
OF CHAPTER 28 OF THE SACRAMENTO CITY CODE,
RELATING TO SECONDHAND DEALER PERMITS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO AS FOLLOWS:

SECTION 1.

Sections 28.10 through 28.24 of Chapter 28 of the Sacramento City Code shall be amended to read as follows:

§ 28.10 Unlawful to operate without a permit.

It shall be unlawful and a public nuisance for any person to conduct or operate a business mentioned in section 28.1, or to permit such a business in any establishment operated by such person, unless a permit is first secured as provided by this article.

§ 28.11 Application.

All applications for permit shall be filed with the chief of police on such forms as the chief may prescribe, and shall contain such information as the chief of police shall deem reasonably necessary for the proper processing of the application.

§ 28.12 Application fee.

Every application for a permit shall be accompanied by a non-refundable application fee as established by resolution of the city council. This application fee shall be in addition to any other business license fee or permit fee imposed by resolution of the city council.

§ 28.13 Location of business.

It shall be unlawful for a person to conduct or operate a business mentioned in section 28.1 except in the location specified in the permit. A business for which a permit must be obtained and maintained pursuant to this chapter may only be established and conducted at a location for which such use is authorized under the Comprehensive Zoning Ordinance of the City of Sacramento.

Nothing in this chapter is intended to allow an applicant to operate a business for which a permit is required under this chapter in a location, building or structure that does not comply with the requirements of the Zoning Ordinance, Building Code, or other local, state or federal regulations or laws.

**28.14 Investigation of application
and issuance of permit.**

- (a) The chief of police shall cause such investigation of the application to be made as the chief deems necessary and shall, within thirty (30) days after the return of the secondhand dealer application from the California Department of Justice, deny or issue the permit as applied for or on condition. If the applicant has been convicted of an offense involving stolen property as defined in Business and Professions Code section 21641, the chief of police shall cause such investigation of the application as the chief deems necessary and shall, within sixty (60) days after the return of the secondhand dealer application from the Department of Justice, deny or issue the permit as applied for or on condition. The chief of police may extend the period of investigation for an additional forty-five (45) days upon giving the applicant written notice. Failure of the chief of police to act within the specified time period shall not result in, and shall not entitle the applicant to, issuance of the permit.
- (1) The duties and responsibilities imposed by this chapter upon the chief of police may be assigned or delegated by the chief to such employees or representatives of the Police Department as the chief deems necessary and appropriate.
- (b) The chief of police may deny the permit if the chief finds that the applicant:
- (1) has been convicted of a felony offense involving stolen property within ten (10) years from the date of the application for the permit; or
- (2) has been convicted of a felony offense involving stolen property more than ten (10) years before the date of the application for the permit and
- a) has been convicted of engaging in unlawful fraudulent, unfair or deceptive business practices within ten (10) years from the date of application, or
- b) has been convicted of (i) any felony within ten (10) years from the date of application, or (ii) any misdemeanor involving moral turpitude within ten (10) years from the date of application, which is substantially related to the qualifications, functions, or duties of being a secondhand dealer, or
- c) has violated any law or regulation of the United States, or any state, county, county and city, or city, with respect to being a secondhand dealer within ten (10) years from the date of application, or

~~(b) The chief of police may deny the permit if the chief finds that the applicant:~~

- ~~(1) has been convicted of a felony offense involving stolen property within ten (10) years from the date of the application for the permit; or~~
- ~~(2) has been convicted of a felony offense involving stolen property more than ten (10) years before the date of the application for the permit and~~
 - ~~a) has been convicted of engaging in unlawful fraudulent, unfair or deceptive business practices within ten (10) years from the date of application, or~~
 - ~~b) has been convicted of (i) any felony within ten (10) years from the date of application, or (ii) any misdemeanor involving moral turpitude within ten (10) years from the date of application, which is substantially related to the qualifications, functions, or duties of being a secondhand dealer, or~~
 - ~~c) has violated any law or regulation of the United States, or any state, county, county and city, or city, with respect to being a secondhand dealer within ten (10) years from the date of application, or~~
- (3) has been convicted of a misdemeanor involving stolen property within five (5) years from the date of the permit application; provided that, no person shall be denied a secondhand dealer license solely on the ground that he or she violated any provision contained in Article IV (commencing with Section 21625) or Article V (commencing with Section 21650) of Division 8 of the Business and Professions Code, or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct; or
- (4) has been convicted of a misdemeanor involving stolen property more than five (5) years from the date of application and
 - a) has been convicted of engaging in unlawful, fraudulent, unfair or deceptive business practices within ten (10) years from the date of application; or
 - b) has been convicted of (i) any felony within ten (10) years from the date of application, or (ii) any misdemeanor involving moral turpitude within five (5) years from the date of application, which is substantially related to the qualifications, functions, or duties of being a secondhand dealer; or

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- c) has violated any law or regulation of the United States, or any state, county, county and city, or city with respect to being a secondhand dealer within ten (10) years from the date of application; or
- (5) has made any material misrepresentation, misstatement or concealment on the permit application, or has failed or refused to provide information requested by the chief of police during the investigation.
- (c) The computation of time begins with the date of conviction, release from confinement, formal release from probation period, or formal release from parole, whichever is the latest date.
- (d) For purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- (e) An offense involving stolen property means a conviction for an attempt to receive stolen property or any other offense involving stolen property as referenced in Business and Professions Code §21641.
- (f) In addition to the grounds specified above, the chief of police may also deny the permit if the chief reasonably determines that the location of the business in the application will violate any law or lawful regulation of the City of Sacramento, the State of California, the United States or any agency thereof. The chief of police may also deny a permit if the chief of police shall reasonably determine that the conduct of such business or activity by the applicant at the location for which application is made will violate any law or lawful regulation of the City of Sacramento, the State of California, the United States or any agency thereof, or is likely to constitute a public nuisance, or by reason of the nature of the activity or subject of the business or the proposed location, can reasonably be expected to be substantially detrimental to the health or safety of the public.
- (g) Upon issuance of any permit, the chief of police may limit the permit by any condition reasonably necessary to achieve the intent and purpose of this chapter. Additionally, each permit issued or renewed pursuant to this chapter shall be deemed subject to the following conditions, regardless of whether said conditions appear in print on the permit issued by the chief of police:
- (1) The business shall be carried on only in the building or buildings designated on the license;
 - (2) The license or a copy thereof, certified by the chief of police, shall be displayed on the premises where it easily can be seen by members of the public.

- (3) The licensee shall not engage in the business of secondhand dealer as defined in Section 21626 of the Business and Professions Code with any minor;
- (4) The licensee shall not engage in any activity which the licensee knows or reasonably should know to be a violation of this article or in violation of Article IV, Chapter 9, Division 8 of the Business and Professions Code;
- (5) The licensee shall not be convicted of an attempt to receive stolen property or any other offense involving stolen property. For purposes of this paragraph, "convicted" means a plea of or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the chief of police is permitted to take following the establishment of a conviction may be taken when the time for appeal has lapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Penal Code Section 1203.4.

**§ 28.15 Referral of application to council;
appeal to council.**

Notwithstanding the provisions of section 28.14, the chief of police in his or her discretion may refer to the city council the application for a permit. In addition, any applicant aggrieved by the decision of the chief of police relating to the issuance or denial of a permit may, within ten days of the written notice of the decision of the chief of police, appeal such decision to the city council by the filing of a notice of appeal with the city clerk. If such appeal is not taken within ten days, the decision of the chief of police shall be final. For purposes of this section, the ten days shall commence to run from the date specified on the written notice of denial issued by the chief of police, and not from the date the notice is actually received by the applicant.

§ 28.16 Hearing--Scheduling.

Upon referral or appeal to the city council, the decision of the chief of police shall be scheduled for an evidentiary hearing. Alternatively, the city council may refer the matter to a hearing examiner to conduct such a hearing pursuant to Article XIX of Chapter 2 of this Code. If the city council refers the matter to a hearing examiner pursuant to this section, the decision of the hearing examiner shall be final and no appeal may be taken thereon to the city council.

§ 28.17 Hearing--Notice.

A copy of the notice of hearing shall be mailed to the applicant. The council may give such additional notice of hearing as it deems appropriate in the particular case.

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§ 28.18 Same--Conduct.

At the date set for hearing, the council shall hear all competent testimony relating to the granting of the permit and may continue the hearing to a fixed date.

§ 28.19 Council action.

The council or hearing examiner may grant the permit subject to such conditions as it deems reasonable under the circumstances or it may deny the issuance of the permit if it finds any of the grounds specified in section 28.14(b) upon which a permit may be denied. The decision of the council or hearing examiner shall be final forthwith.

28.20 License renewal, revocation and suspension.

- (a) A permit issued by the chief of police under this section shall be renewable one (1) year from the date of issue, and annually thereafter, upon filing of a renewal application and payment of a license renewal fee as specified by the chief of police.
- (b) Except as provided for in paragraph (c), the permit shall be subject to forfeiture or suspension by the chief of police, and an application for renewal may be denied if the permit holder:
 - (1) violates any of the conditions imposed on the permit; or
 - (2) the business is deemed to be a public nuisance, the location violates any law or lawful regulation of the City of Sacramento the State of California, the United States or any agency thereof, or the nature of the activity or subject of the business is substantially detrimental to the health and safety of the public.
- (c) Notwithstanding subparagraph (b), no person shall be denied a secondhand dealer license solely on the ground that he or she violated any provision contained in Article IV (commencing with Section 21265) or Article V (commencing with Section 21650) of Chapter 9, Division 8 of the Business and Professions Code, or any provision contained in Chapter contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.
- (d) Secondhand dealer permits issued before the operative date of this chapter shall be renewed pursuant to the provisions of this chapter not later than one year following the operative date of this chapter.
- (e) No permit shall be revoked or suspended by virtue of this section until a hearing has been held by the chief of police. Written notice of the time and place of such hearing shall be served upon the person to whom the permit was granted at least five days prior to the date set for such hearing. Such notice shall contain a brief statement of the grounds to be relied upon

for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing the notice in the United States mail in a sealed envelope, postage prepaid, addressed to such person to be notified at the address as it appears on the permit.

§ 28.21 Same--Appeals.

Any permittee aggrieved by the decision of the chief of police in suspending or revoking a permit may, within ten days after such decision is communicated to the permittee in writing, appeal to the council by filing a written notice thereof with the city clerk. During the pendency of the appeal to the council the permit shall remain in effect. If such an appeal is not taken within ten (10) days, the decision of the chief of police shall be final. If an appeal is filed in a timely manner, the council, shall thereupon hold a hearing on the appeal and may suspend or revoke the permit if it finds any of the grounds specified in section 218.22(b), and its decision thereon shall be final forthwith. As an alternative to holding a hearing, the city council may refer the matter to a hearing examiner pursuant to Article XIX of Chapter 2 of this Code.

§ 28.22 Judicial review.

Judicial review may be had by filing a petition for writ of mandate in accordance with the provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure.

§ 28.23 Application of State Laws.

Nothing in this article shall be deemed to exempt any person from complying with applicable provisions of any other laws.

§ 28.24 Severability.

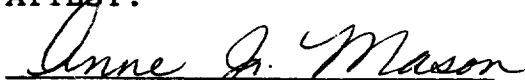
If any part or provision of this this article, or the application thereof, to any person or circumstance, is held invalid, the remainder of the article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this article are severable and are intended to have independent validity.

PASSED FOR PUBLICATION: MAY 16 1989
ENACTED: MAY 23 1989
EFFECTIVE: JUN 22 1989



MAYOR

ATTEST:


ACTING CITY CLERK

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