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**CONFORMED COPY**  
OF ORIGINAL FILED  
Lcs Angeles Superior Court

**FEB 18 2009**

John A. Clarke, Executive Officer/Cler

By Raul Sanchez, Dept

5 Plaintiff 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, )  
13 vs. ) OPPOSITION TO MOTION FOR  
14 City Of Los Angeles, a ) JUDGMENT ON THE PLEADINGS;  
Municipal Corporation ) PROOF OF SERVICE  
15 Defendant. )  
16 ) Judge: Malcolm H. Mackey  
) Division: 55  
) 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

1 activities, and have threatened him with arrest if he does not  
2 comply.<sup>1</sup>

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

11 City notes that since the word "business" appears to be the  
12 linchpin underlying Hopp's position that he is not subject to  
13 regulation by City's ordinance (i.e. he is merely a collector and  
14 not engaged in business); that the definition of the word  
15 "business" is fundamental to the statutory construction of the  
16 ordinance. City then proceeds to refer to a standard dictionary  
17 for a definition of the word "business" despite the fact that the  
18 word is also defined (albeit in more restrictive terms) in a  
19 respected legal dictionary. Despite its reference to a standard  
20 dictionary, City also acknowledges that the word "business" is  
21 defined within its own statutory scheme to wit: "Business means  
22 any occupation, trade, establishment, or concern, regardless of  
23

24  
25 Since documents and ephemera are not books, to the extent Hopp were  
26 required to obtain a permit for collecting books, City would likely demand  
27 that he also obtain a secondhand dealer's permit. The secondhand dealer's  
28 permit is applicable to a persons who are in the business of dealing in  
29 secondhand or rebuilt or reconditioned goods, wares, and merchandise. See,  
30 LAMC §103.3311(a)(1). See discussion, infra.

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1 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](http://www.merriam-webster.com/dictionay/business)).<sup>3</sup>

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 <sup>3</sup> 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**  
7 **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.<sup>4</sup> As discussed, supra, by definition  
24 "Business means any occupation, trade, establishment, or concern,  
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26 <sup>4</sup> 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.<sup>5</sup> 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

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27  
28 <sup>5</sup> 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 form 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 in  
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' 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 stat 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 in  
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

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1 City's reliance of *Malish v. City of San Diego* (2000) 84  
2 Cal. App. 4th 725 is misplaced. First and foremost, although  
3 *Malish* upholds local regulation generally, it invalidated the  
4 local ordinance to the extent such ordinance was inconsistent  
5 with state law. *Malish v. City of San Diego*, supra at p. 737-  
6 738.

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

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

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26 <sup>6</sup> Although City's ordinance is presumed to apply only to those who engage in  
27 the regulated conduct within City's territorial limits, a strict reading of  
28 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.**

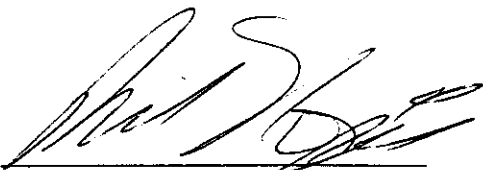
9           California's Constitutional provides: "A county or city may  
10 make and enforce within its limits all local, police, sanitary,  
11 and other ordinances and regulations not in conflict with general  
12 laws." California Constitution, Article XI, Section 7.

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

