

CASE 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,

Defendant and Respondent.

From the Superior Court for Los Angeles County (BC401887)
Hon. Malcolm Mackey, Judge

BRIEF OF RESPONDENT CITY OF LOS ANGELES

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION TWO	Court of Appeal Case Number: B215265
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APPELLANT/PETITIONER: Richard Hopp RESPONDENT/REAL PARTY IN INTEREST: City of Los Angeles	FOR COURT USE ONLY
<p align="center">CERTIFICATE OF INTERESTED ENTITIES OR PERSONS</p> (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
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Date: December 7, 2009

Gabriel S. Dermer

 (TYPE OR PRINT NAME)

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 (SIGNATURE OF PARTY OR ATTORNEY)

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1. INTRODUCTION

This appeal presents a simple question that the trial court correctly answered in the affirmative: can the collecting activities of Plaintiff and Appellant Richard Hopp (“Hopp”), as alleged in his complaint, fall within the secondhand book dealer’s ordinance of Defendant and Respondent City of Los Angeles (the “City”)? Because the answer is yes, and because the City’s ordinance is neither preempted nor unconstitutional, the judgment of the trial court should be affirmed.

2. STATEMENT OF FACTS AND HOPP’S ISSUES ON APPEAL

There are no disputed facts. Hopp is an “avid collector of books.” (Appellant’s Appendix (“App.”) at 1:26). He “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.” (App. at 2:4-8). Hopp “wants to have an ‘exhibitor’s table’ or ‘buying booth’ within the City” at events such as swap meets and flea markets. (App. at 2:9-11). He wants this buying booth or exhibitor’s table to inform and let attendees, and the public, know that he is a collector who purchases books. (App. at 2:12-15). Hopp does not sell what he collects, though he “may recycle and/or donate duplicates or unwanted items.” (App. at 1:27 – 2:1). Finally, Hopp alleges

he “has not engaged in any business nor occupation” as a secondhand book dealer, just that he “merely collects and seeks to reach a larger audience with regard to [his] collecting.” (App. at 2:16-22).

Los Angeles Municipal Code (“LAMC”) section 103.310 regulates secondhand book dealers in the City. Basically, in an effort to limit the dissemination of stolen books, this section requires secondhand book dealers to have a permit from the Board of Police Commissioners or the Police Permit Review Panel,¹ and to record and keep bills of sale available for inspection by police officers. Subsection (a)(1) of said section defines a “secondhand book dealer” as “a person engaging in, conducting, managing or carrying on the business of *buying*, selling, exchanging or otherwise dealing in secondhand books” (emphasis added).

As seen from his issues on appeal (Hopp’s Opening Brief (“Brief”), p. 3), Hopp yet seeks a judicial determination that (A) section 103.310 does not apply to his collecting activities, (B) the City’s ordinance is preempted by state law and (C) the ordinance is unconstitutional.² But as shown, and

¹ Once an application is filed, the Police Permit Review Panel may determine that no permit is required. Hopp does not allege that he has sought or obtained this determination from the Panel.

² Hopp presents a putative fourth “issue,” concerning whether the trial court erred “by considering [issues] which went beyond the pleadings.” It appears that this “issue” is addressed entirely in footnote 3. (Brief, p. 4). The City’s counsel is unclear whether Hopp included this “issue” for any reason other than to accuse counsel of lying. While counsel certainly disagrees with Hopp’s characterization, counsel is also unsure whether the

as found by the trial court, the ordinance may apply to the activity Hopp alleges, and there is nothing about it that is unconstitutional or preempted. Accordingly, the judgment of the trial court should be affirmed.

**3. THE JUDGMENT ON THE PLEADINGS WAS
PROPERLY GRANTED**

**A. Section 103.310 Is Not Limited To Commercial
Enterprises or “Businesses”**

Both sides agree, as they must, that the rules of statutory interpretation are applicable here. And the principles announced in *Day v. City of Fontana* (2001) 25 Cal. 4th 268, 272, to effectuate the purpose of a statute, clearly work in favor of the City’s position.

Again, section 103.310 defines a “secondhand book dealer” as “a person engaging in, conducting, managing or carrying on the business of buying, selling, exchanging or otherwise dealing in secondhand books.” (App. at 48). Giving each word meaning, the ordinance does not limit secondhand book dealers to those who are in business *selling* secondhand books, as people could certainly be in the business of *buying or otherwise dealing* with these books and be covered by section 103.310. So, a person

cited Reporter’s Transcript is without error. In any event, a review of the record, including the entire Reporter’s Transcript, demonstrates that the City’s argument was premised on, and limited to, the allegations set forth in the Complaint.

in the business of buying or otherwise dealing in secondhand books is, by definition, a “secondhand book dealer” under the ordinance.

Accordingly, Hopp places emphasis on the ordinance’s choice of the word “business” and argues that as a collector or hobbyist he cannot be a “business.” (*See, e.g.*, Brief, p.7). By doing so, however, Hopp ignores both the plain meaning and obvious intention of LAMC section 103.310: to curtail the dissemination of stolen books.³ This can be seen by the simple fact that section 103.310 does not seek to regulate “businesses” at all. It is a police permit ordinance seeking to regulate persons engaged in, conducting, managing or carrying on the “business of” buying, selling, exchanging or otherwise dealing in secondhand books.

As *Day* suggests, it is necessary to understand what “business of buying etc.” means in the context of the ordinance. A critical place to look in this regard is LAMC section 103.01, which sets forth general definitions relative to the City’s police permit ordinances. (App. at 39). Business, states section 103.01, “means any occupation, trade, establishment or concern, regardless of form, which provides services, products or entertainment for which a permit is required...”

³ It is worth noting that the permit requirement does not serve as the City’s punishment or judgment on Hopp or any other applicant; rather, the permit requirement serves to curtail crime and prevent any party from becoming a “legal fence.”

Under this definition, “business” is not limited to selling, or to an occupation, or even to commercial activity as Hopp suggests. Indeed, the definition of section 103.01 makes clear that “business of” is *not* used strictly in the commercial, or for profit, sense; rather it may refer to any concern, in the sense of a task or objective, regardless of form, which provides a service, product *or* entertainment. This is entirely consistent with the reference in section 103.310 to “buying ... or otherwise dealing in secondhand books.” For a commercial business would buy *and* sell books, and not “buy or otherwise” deal with them. Here, the word business cannot be limited to an “occupation;” it must refer to, among other things, function or a particular field of endeavor, or an affair or matter.⁴

Hopp criticizes the City’s “use” of a standard dictionary definition of business, notwithstanding the fact the City primarily relied on the definition provided by LAMC section 103.01. For this reason, and because words should be given their “usual and ordinary meaning,” *Day*, 25 Cal.4th at 272, Hopp’s discussion of Black’s Law Dictionary is not persuasive (Brief, p. 9). 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). This is precisely what Hopp alleges he does: he invests time and

⁴ See, for example, “business” at Merriam-Webster’s Online Dictionary (www.merriam-webster.com/dictionary/business).

capital in actively promoting and advertising – to as large an audience as possible – the fact that he purchases books for his personal use. (*See, generally, Complaint, App. at 1*).

B. Section 103.310 May Cover the Collecting Activities

Alleged by Hopp

Hopp’s complaint alleged he “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,” and that he “wants to have an ‘exhibitor’s table’ or ‘buying booth’ within the City of Los Angeles at various events” such as swap meets and flea markets. It is of no moment that Hopp does not sell what he collects.

As explained, Hopp’s allegation that he is not engaged in a commercial “business” is not determinative. For though the word “business” may certainly refer to one’s occupation or employment, such a definition is not found in the ordinance and makes no sense in its context, that of being in the business of buying secondhand books. *See Day, 25 Cal. 4th at 272.*

**C. This Is A Police Permit Issue, Not A Business Tax
Issue**

In addition to Hopp's attempt to make much of LAMC section 103.01's definition of "business," (*i.e.*, any occupation, trade, establishment or concern, regardless of form, which provides services, products or entertainment for which a permit is required) he argues that the "entire statutory scheme is clearly intended to provide for regulation of various business operations." (Brief, p. 9). As noted, the definition of "business" used in the ordinances is obviously broader than occupation or livelihood, and it supports the finding that *regardless of form*, Hopp's provision of services, *i.e.*, his book buying at flea markets, swap meets and trade shows and advertised elsewhere, may require a police permit further to LAMC section 130.310.

Similarly, Hopp cites to businesses such as dance halls, escort halls, massage parlors and pawnbrokers in support of his position that he, a person who only collects, is not a business. One has nothing to do with the other, of course, because if any of those "businesses" actively promoted and advertised their activities but did not accept a penny for the services furnished, they would be akin to Hopp and still require the appropriate regulatory permit.

This is also the reason that Hopp's discussion of the City's business tax is inapposite. The City's business taxes are based upon revenue, *see*,

e.g., LAMC § 21.00(a) (defining “gross receipts”). Admittedly, there is no revenue to, or money made by, a buyer of anything, including secondhand books. But the fact that Hopp would not owe any business tax has nothing to do with his maintaining of a police permit designed to curtail the dissemination of stolen property.

What Hopp does not recognize is the fact that the ordinances – and certainly section 103.310 – do not equate police permits with commercial businesses. Indeed, it would be safe to assume that the police would regulate escort halls and pawnbrokers whether they were “commercial” or not.

Similarly, Hopp suggests an inconsistency with LAMC section 103.02 (Brief, p. 8). That section, read in the context of section 130.01’s definition of “business” (“any occupation, trade, establishment or concern, regardless of form, which provides services, products or entertainment for which a permit is required”), simply means that no person may operate a “business” without first obtaining a permit. There is absolutely no inconsistency.

Likewise, Hopp’s reliance on *Union League Club v. Johnson* (1941) 18 Cal. 2d 275 and *Los Angeles v. Cohen* (1954) 124 Cal. App. 2d 225 (Brief, p. 9) is wholly misplaced. The issue in both cases was *taxation*: a retail sales tax in *Union League Club* and a license tax in *Cohen*. Conversely, this case only concerns a police permit, and not any form of

taxation. To wit, the entire quotation from *Union League Club*, selectively cited by Hopp, declares that the word “business,” “*as used in a law imposing a license-tax on businesses, trades, professions, and callings, 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*, 18 Cal. 2d at 278 (emphasis added).

It is clear that the ordinance’s insertion of the word “business of” is not a limiting reference to “occupation.” A person carrying on *the function of buying* secondhand books is a secondhand book dealer under the ordinance. Hopp is a secondhand book dealer under the ordinance. In addition to conforming to the words themselves, this makes imminent sense in terms of the policy underlying such police permit regulations.

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

Second-hand goods, wares, and merchandise have always been deemed the proper subjects of police regulation by municipalities; and the grant by the constitution in article XI, section 11 thereof, to municipalities ‘to make and enforce all

such local, police, sanitary and other regulations as are not in conflict with general laws,' is very broad and liberal. 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. It is a matter of common knowledge that public libraries all over the country are continually subjected to the depletion of their shelves through loss of books which find their destination in second-hand stores, and that precautions against such loss may be observed in the equipment and administration of every well-appointed public library in the land.

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

As discussed, then, it is of no moment that Hopp actively and publicly collects, but does not sell, secondhand books. The ordinance does not contain a requirement that one sell secondhand books because the thief the ordinance is designed to curtail does not care who ultimately purchases

the books. It is sufficient that he sees Hopp (or anyone else) at a “buying booth” at the flea market – or a website – and, as such, can easily dispose of the stolen items. There is no reason to believe that, in the years since the Court decided *In re Holmes*, police regulation of the business of Hopp’s secondhand book buying is any less necessary and proper.

It is folly to equate “business of” with “selling” in the ordinance’s context because the ordinance itself does not equate a secondhand book dealer with a secondhand book seller. If the ordinance was aimed at producing revenue, or at a person’s livelihood or occupation, it would have said so. Viewed as a regulation giving police the opportunity to curtail crime, the ordinance, as written, makes imminent sense.

**D. The City’s Ordinance Does Not Purport To Apply To
All People Who Buy Books – There Is No Slippery
Slope**

Hopp argues that the City sought to define “business” in the broadest possible sense. (Brief, p. 9). On the contrary, the City assumed the truth of facts alleged in the complaint, and based its motion for judgment on the pleadings thereon. It is Hopp who presents various hypothetical scenarios, ostensibly to undermine the ordinance’s potential application to him (Brief, p.12). But based on the *only* relevant factual scenario as set forth in Hopp’s complaint, *i.e.*, that he actively promotes and advertises his secondhand book buying activities within publications, websites and at various

locations, including flea markets, swap meets and trade shows, Hopp's conduct may fall within the definition of secondhand book dealer in section 103.310.

Hopp's complaint (App. at 1), the City's motion (App. at 15) and section 103.310 *do not* address all "those who collect books as a hobby" and no absurd circumstances⁵ would result from the judgment of the trial court. (Brief, p. 11). 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, it would seem 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

⁵ In fact, the opposite is true, at least as concerns the *carte blanche* that would be given to book thieves looking to unload their stolen books.

advertisements and elect to dispose of his stolen books by selling them to Hopp. *See, e.g., Holmes*, 187 Cal. at 645. Indeed, prohibiting the police from so regulating may well serve to insulate the thieves by making Hopp a “legal fence.”

E. Hopp Is A Secondhand *Book Dealer*

Likewise, Hopp’s discussion of the isolated word “dealer” is unnecessary and improper. (Brief, p. 11). The entire phrase “secondhand book dealer” is defined in the ordinance as “a person engaging in, conducting, managing or carrying on the business of buying, selling, exchanging or otherwise dealing in secondhand books.” LAMC § 103.310(a). The definition of the word dealer cannot be excised from the entirety of the definition of “secondhand book dealer.”

Finally, Hopp’s discussion of secondhand dealers is also inapposite and contradicted by the ordinance itself. LAMC section 103.311(a) contains the definition of “secondhand dealer” and states *inter alia*: “The term [*i.e., secondhand dealer*] **does not include** secondhand dealer-jewelry, or persons holding permits as auto wreckers or used car dealers or ***secondhand book dealers***” (emphasis added). Again, the City does not seek to punish secondhand book dealers (or secondhand dealers) and regulate them for the sake of regulation; the City’s police seek to curtail the dissemination of stolen property by monitoring the people to whom the thief sells. *See, e.g., Holmes*, 187 Cal. at 645 (regulating secondhand

books); *see also* Bus. & Prof. Code § 21625 (regulating tangible personal property).

In sum, Hopp alleges he actively and publicly carries on the business of buying secondhand books; as such, he may be a secondhand book dealer under LAMC section 103.310. Accordingly, the judgment of the trial court should be affirmed.

F. THE ORDINANCE IS NOT PREEMPTED

i. The State Does Not Regulate Secondhand Books

The state laws concerning secondhand goods generally are found in Chapter 9, Division 8, Article 4 (section 21625 *et seq.*) of the Business and Professions Code.⁶ A “secondhand dealer” means 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*. Bus. & Prof. Code § 21626(a) (emphasis added). “Tangible Personal Property” is defined in Business and Professions Code section 21627(a) as property that “includes, but is not limited to, all secondhand tangible personal property *which bears a serial number* or personalized initials or inscription or which ... bears evidence of having had a serial number or personalized initials or

⁶ Similar provisions regulating pawnbrokers may be found in Financial Code sections 21200 *et seq.* Business and Professions Code section 21625 states that it is the “intent of the Legislature in enacting this article to curtail the dissemination of stolen property.”

inscription” (emphasis added). Tangible personal property may also include “tangible personal property, new or used, including motor vehicles, received in pledge as security for a loan by a pawnbroker.” Bus. & Prof. Code § 21627(b)(1).

Books do not bear serial numbers or personalized initials (as would jewelry, for example), and, certainly as a general matter, do not secure loans by pawnbrokers. Books are not like motor vehicles or any other tangible personal property as defined by the state. In fact, there is *no* reference to secondhand books or non-personalized property anywhere in the state’s statutory scheme. Secondhand books, therefore, which are considered *non-tangible* personal property, are not covered by the state statute. Accordingly, there can be *no* conflict with state law and the City’s ordinance is proper and not preempted.

Yet even if books *were* covered by the state statutory scheme, there is nothing in state law that would preempt the subject ordinance.⁷ In fact, the issues that would be relevant to the instant matter have previously been addressed in the City’s favor in *Malish v. City of San Diego* (2000) 84 Cal. App. 4th 725.

⁷ Hopp does not allege that he has applied for a permit with the Police Commission as required by Business and Professions Code section 21641(a).

**ii. Even if The State Regulated Secondhand Books,
the City's Ordinance Would Not Be Preempted**

“State preemption of local legislation is established by article XI, section 7 of the California Constitution, which provides that ‘[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.’ In *Sherwin-Williams*, this court identified three types of conflict that cause preemption: ‘A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication. Local legislation is contradictory to general law when it is inimical thereto.’ A local ordinance is preempted by a state statute only to the extent that the two conflict.” *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal. 4th 1232, 1242- 43 (citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 898; other citations omitted). Because local legislation can be valid even where it may address the same issues as state legislation, the issue here is how state laws would govern secondhand book buyers.

**iii. The City's Ordinance is Valid Under the
Analysis Set Forth in *Malish***

In *Malish*, the plaintiff (Malish), a licensed pawnbroker, filed an action against the City of San Diego seeking a declaratory judgment that certain city ordinances regulating pawnbrokers were preempted by state

law. The court relied upon sections 21636, 21637 and 21638 of the Business and Professions Code that expressly recognize and authorize local regulation of pawnbrokers and other secondhand dealers in holding that the challenged ordinances were preempted by state law *only* to the extent they exceeded the scope of local regulation permitted by those statutory provisions. *Malish, supra*, 84 Cal. App. 4th at 729. Accordingly, the court held that ordinances providing for local permits, reasonable police inspection during normal business hours, grounds for denial of a local permit, and recording regulations did not conflict with state law and were not preempted.

**iv. The City May Require Secondhand Book
Dealers to Have a Permit**

The first ordinance *Malish* addressed was San Diego Municipal Code section 33.0101, an introductory section entitled "Certain Businesses and Occupations Police Regulated; Police Permit Required." *Malish* contended "section 33.0101 is inconsistent with the legislative intent to establish uniform, statewide, state-administered regulations because it conflicts with the provisions of the Business and Professions Code and the Financial Code governing the terms and conditions under which local authorities must issue a state license to engage in pawnbroker business at a particular address in the City." *Malish, supra*, 84 Cal. App. 4th at 729-730. Noting that local governments are authorized under Business and

Professions Code section 21638 to enact as well as enforce ordinances regulating pawnbrokers, the *Malish* Court concluded “the City’s local permit system is a proper means of enforcing local regulatory ordinances that are not inconsistent with state regulatory statutes.” *Id.* at 730.

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

v. Police Inspections are Constitutional and Permitted

Malish also challenged San Diego Municipal Code section 33.0102,⁸ relating to police inspection rights. He contended this section effectively conditioned the issuance of his local permit on unrestricted police access to his business and that the ordinance conflicted with the legislative goal of uniform statewide regulation. *Malish, supra*, 84 Cal. App. 4th at 731. In reply, the Court held that section 33.0102 “does not give the police unrestricted access to Malish’s business...but rather restricts the police to *reasonable* inspection during normal business hours. The ordinance does not conflict with state law.” *Id.* (emphasis in original).

The *Malish* Court also noted that “section 33.0102’s inspection provision is consistent with Business and Professions Code section 21636,

⁸ Renumbered to 33.0103.

which requires secondhand dealers to hold and produce personal property ‘for inspection by any peace officer or employee designated by the chief of police or sheriff.’” *Malish, supra*, 84 Cal. App. 4th at 731 (citing Bus. & Prof. Code § 21636(a) and (b)).

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

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

vi. The City May Duplicate State Law

Malish also addressed San Diego’s ordinance requiring pawnbrokers to keep certain records (section 33.1101). The ordinance was deemed invalid to the extent that it required Malish to keep more records than

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

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

Here, section 103.310 obligates secondhand book dealers to ascertain the person selling has the right to do so, and to record the name of the seller and a description of the book. Assuming, *arguendo*, that Business and Professions Code section 21628 applied here, secondhand book dealers would have to do everything the City requires *plus* obtain a certification and legible fingerprint from the seller. Because the City

requires *less* than the state, the ordinance cannot be deemed invalid.

Malish, supra, 84 Cal. App. 4th at 736; Bus. & Prof. Code §§ 21637 and 21638.

Hopp argues that the City's identification requirement is preempted. (Brief, p. 16). LAMC section 103.310(g) simply requires that the purchased secondhand book refer to the bill of sale for said book. There is nothing in the state's statutes that conflict with this requirement (presumably because state law deals with items already identifiable by their serial numbers). Accordingly, it is not preempted.

Similarly, Hopp argues that the City's exemption contained in section 103.310(i) is preempted. In reality this subsection states that the section shall not apply to the receipt of secondhand books from any other person where such person "has made required reports as fixed by rule or regulation of the Board..." If anything, this is duplicative of Business and Professions Code section 21629 that exempts tangible personal property acquired from another secondhand dealer provided he states in writing a description of the property and other requirements. As explained in *Malish*, the City may duplicate state law because the Legislature expressly authorized such local legislation. *Malish, supra*, 84 Cal. App. 4th at 736 (citing Bus. & Prof. Code §§ 21637 and 21638).

In sum, the City's secondhand book ordinance cannot be preempted by the state as the state statutes address serialized and personalized

property, and do not address non-tangible secondhand books. However, as shown, there is nothing material in Municipal Code section 103.310 that would be preempted *even if* secondhand books were covered by the state's statutory scheme.

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

vii. The City Neither Regulates, Nor Purports To Regulate, Individuals Or Entities Outside Of The City

Hopp suggests that the ordinance is invalid as it may affect "transient citizens." (Brief, p. 17). As explained, the City's ordinance does not purport to regulate all people, transient or otherwise. By its terms, it only regulates secondhand book dealers. In addition, there is no Constitutional infirmity as the City's entire Municipal Code, including the ordinance at issue, regulates acts or omissions "within the territorial limits of the City of Los Angeles and that territory outside of this City over which the City has jurisdiction or control by virtue of the Constitution, Charter or


any law, or by reason of ownership or control of property.” LAMC § 11.00(g).

Because state law does not regulate secondhand books, the City’s ordinance is valid and not preempted. For this reason, as well as those discussed above, the ordinance is constitutionally sound.

4. CONCLUSION

This Court should affirm the trial court’s order granting the motion for judgment on the pleadings because Los Angeles Municipal Code section 103.310 is valid and enforceable, and may be applicable to Hopp’s alleged book buying activities.

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CERTIFICATE OF WORD COUNT
Cal. Rules of Court, Rule 8.204(c)(1)

The text of this brief consists of 5,065 words as counted by the Microsoft Office Word word-processing program used to generate this brief.

DATED: December 7, 2009

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PROOF OF SERVICE

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 December 7, 2009, I served the foregoing documents described as:

BRIEF OF RESPONDENT CITY OF LOS ANGELES

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

SEE ATTACHED SERVICE LIST

- [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.
- [X] BY PERSONAL SERVICE - I caused such envelope(s) to be delivered by hand to the above addressee(s).

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

Executed on December 7, 2009, at Los Angeles, California.


TERRY LEE

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