AN ORDINANCE 2015-12-03-1020

AMENDING CHAPTER 15, HEALTH, OF THE CITY CODE OF SAN ANTONIO, TEXAS, BY ADOPTING SECONDHAND/REFURBISHED MATTRESS CONSUMER PROTECTION REGULATIONS AND PROVIDING FOR PENALTIES, PUBLICATION AND AN EFFECTIVE DATE.

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WHEREAS, Prior to September 1, 2015, secondhand bedding sales were governed under Texas Administrative Code Chapter 205, Subchapter A, Bedding Rules. Under those regulations, if you sold, manufactured, distributed/wholesaled, or imported bedding products into the state of Texas, and/or you renovated, or germicidally treated used bedding, you were required to register through Texas Department of State Health Services, Regulatory Licensing Unit. Failure to register, properly treat and/or display untreated/unlabeled products resulted in administrative penalties. Complaints and inspections regarding this industry were regulated under the Texas Department of State Health Services; and

WHEREAS, in the last legislative session, the bedding laws of the state of Texas were abolished effective September 1, 2015; and

WHEREAS, this legislative action created a void in secondhand/refurbished mattress consumer protection regulations; and

WHEREAS, the Development Services Department received a City Council Request from Councilman Warrick requesting recommendations to address this concern; and Development Services presented its recommendations to the Neighborhoods and Livability Council Committee on October 19, 2015. This Committee recommended that the proposed ordinance be forwarded to the full City Council for consideration for adoption. **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter, 15, *Health*, of the City Code of San Antonio, Texas, is hereby amended by adding the underlined (added) language and deleting the stricken (~~deleted~~) language:

SECTION 2. Chapter 15, Health, is amended by adding Sections 15-233-15-250 to read as follows:

Secs. 15-233-15-250. Reserved.

SECTION 3. Chapter 15, Health, is amended by adopting a new Article X. Secondhand/Refurbished Mattress Consumer Protection Regulations to read as follows:

Article X. Secondhand/Refurbished Mattress Consumer Protection Regulations

Sec. 15-260. Definitions

City means the City of San Antonio.

Department means the Development Services Department.

Director means the Director of the Development Services Department.

Germicide means a substance or agent that kills germs, especially pathogenic microorganisms; a disinfectant.

Germicidal Treatment Provider means any person performing germicidal treatment methods of cleaning. Each Germicidal Treatment Provider is required to be permitted as detailed in this Article.

Mattress means large pad for supporting the reclining body, used as or on a bed, consisting of a quilted or similarly fastened case, usually of heavy cloth, that contains hair, straw, cotton, foam rubber, etc., or a framework of metal springs. As used in this Article, a mattress includes the box springs.

Mattress Retailer means any person selling or renting secondhand or refurbished mattress as defined in this Article. Each Mattress Retailers is required to be permitted as detailed in this Article.

Person means an individual, association, corporation, or any other business entity.

Refurbish means to make neat, clean, or complete, as by renovating, re-equipping, or restoring. The term necessarily includes removing and replacing original parts with non-original, used, second-hand parts.

Sanitary means a condition of good order and cleanliness that precludes the probability of disease transmission.

Secondhand means previous use in any manner other than previous use as a floor model.

Sec. 15-261. Scope and Intent of Article. To provide consumer protection regulations for the sale or rental of secondhand or refurbished mattresses and germicidal treatment of such mattresses. For purposes of this Article, both secondhand as well as refurbished mattresses must receive germicidal treatment prior to sale or rental.

Sec. 15-262. Duties and Powers of the Director. The Director is hereby authorized and directed to enforce the provisions of this Article with the Health Department consultation and collaboration, as appropriate, and shall have the authority to render interpretations of this Article and to adopt policies and procedures in order to clarify and administer the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this Article. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this Article.

Sec. 15-263. Permitting Requirements.

(a) In General. Any Mattress Retailer and any Germicidal Treatment Provider in the City of San Antonio (City) must be permitted through the Department and pay a biennial fee as provided for in this Article. Each business location must be separately permitted to conduct the service it provides that is regulated under this Article: 1) sell or rent secondhand or refurbished mattresses; and/or 2) provide germicidal treatments services. Conducting business without obtaining required permit(s) is a violation under this Article.

(b) Permitting Application Requirements.

(1) Application for an initial permit or renewal must be made through the Department on an approved application form which may be obtained from the Department.

(2) A separate application is required to be completed and submitted for each specific business location regardless of common ownership resulting in individual permits for each location.

(3) The appropriate permitting fee, payable to the Department, must accompany each application.

(4) Additional information that may be required includes:

(A) Explanation of the germicidal treatment method to be applied to secondhand and refurbished mattresses;

(B) Any other information the Department may determine is necessary.

(c) Permitting Miscellaneous Regulations.

(1) The permitting requirement does not apply to a custom upholstery business that does not sell or rent secondhand or refurbished mattresses.

(2) A person selling or renting secondhand or refurbished mattresses and also applying germicidal treatment methods must receive separate permits from the Department to conduct each business.

Sec. 15-264. Germicidal Treatment Requirements.

(a) General Requirements. Germicidal treatment is required on all secondhand or refurbished mattresses by a permitted Germicidal Treatment Provider using a method identified below before they may be sold or rented to consumers.

(b) Treatment Methods.

1) **Chemical spray.**

(A) Only those products specifically approved by the Health Department may be used as a germicidal treatment method.

(B) Mechanical, compressed air, hand pump, or electric sprayers must be used and they must be of the continuous spray type. No intermittent spray devices are allowed.

(C) Chemicals must be in liquid form. Aerosol sprays shall not be used.

(D) Liquid sprays must include a simple but positive means of detection or verification by means of an ultra-violet lamp unit.

(E) Liquid sprays requiring premixing or dilution shall not be approved.

(F) Spray area must be in such a location as to be protected from wind.

(G) Manufacturers' specifications such as amount of coverage, operator safety precautions, and other warning labels must be followed.

2) **Dry Heat.**

(A) A minimum temperature of 230 degrees Fahrenheit for a period of one hour 15 minutes, within a closed chamber is required for proper germicidal treatment. The minimum temperature may be reduced to 205 degrees Fahrenheit for a period of one hour and 30 minutes for foam products which may be damaged at 230 degrees Fahrenheit.

(B) The dry heat chamber shall be equipped with a recording clock to accurately record the time and temperature. The clock shall be attached on the outside of the chamber and the heat bulb sending unit must be installed within the chamber at the furtherest point practical from the entry of the heat.

(C) The chamber and automatic circulating heat devices shall maintain equal and uniform temperatures in all sections of the chamber.

(D) All mattresses shall be spaced within the chamber to allow not less than four inches on all sides of each article for full circulation of heat or air.

3) **Steam.**

(A) Treatment by the steam method shall consist of steam under pressure of 15 pounds per square inch maintained for 30 minutes or a pressure of 20 pounds per square inch maintained for 20 minutes.

(B) An alternate method may consist of two applications of streaming steam, maintained for a period of one hour each, to be applied at intervals of not less than six nor more than 24 hours.

4) **Other Methods.** Any other method of germicidal treatment may be used provided such proposed method is in accordance with National or model standards relating to germicidal treatment, it is in compliance with the intent and purpose of this Article, and it provide equal or greater protection to the public than those specifically listed in 1) through 3). The Director of the Health Department is required to evaluate any proposed written request to conduct germicidal treatments in a method outside those specifically mentioned in this Article and sign any written approval, detailing a finding that the method proposed is in accordance with this subsection.

Sec. 15-265. Notice, Storage, Labeling and Records Requirements.

(a) Germicide Treatment Provider Notice. Any person providing germicidal treatment services shall, after performing such services, attach a label as described in this section.

(b) Retail Notices. Any person engaged in the sale or rental of secondhand and/or refurbished mattresses shall provide notices to the public at all retail locations providing such services. Notices shall be as follows:

1) A 20"x20" (minimum) sign at the front entrance(s) identifying in writing (minimum 100 pt type in English) that the location sells and/or rents secondhand and/or refurbished mattresses. Other languages may be used in addition to English on separate signs.

2) A label prominently displayed on each secondhand or refurbished mattress in English identifying it as such and providing confirmation of compliance with germicidal treatment. Other languages may be used in addition to English, but shall be presented on separate labels. No person shall remove the label or position, arrange or display a mattress in such a manner as to obstruct the view of the label from the purchaser and/or Department representatives.

3) Each retail location shall provide written notification to the customer advising that they are purchasing and/or renting (as applicable), secondhand and/or refurbished sanitized mattresses. Each retail location shall retain signed customer confirmation acknowledging that they understand they are purchasing or renting secondhand and/or refurbished sanitized mattresses.

(c) Secondhand and Refurbished Mattresses Segregation Requirements.

1) Persons engaged in the sale and/or germicidal treatment of such mattresses shall keep same separate and apart from new mattresses.

2) Secondhand and refurbished mattresses which have not been germicidally treated and properly labeled, shall not be displayed on the sales floor.

(d) Label Requirements:

1) A secondhand or refurbished mattress label shall be attached to the secondhand or refurbished mattress and be at least 12 square inches and state, plainly stamped or printed in red ink on all white material:

i. "SECONDHAND OR REFURBISHED MATTRESS – SANITIZED" in capital letters at least one-fourth inch high;

ii. that the secondhand or refurbished mattress has been germicidally treated by a method either listed in this Article or approved by the Director of the Health Department;

iii. the method of germicidal treatment applied;

iv. the date the secondhand or refurbished mattress was germicidally treated;

v. the name and address of the person for whom the secondhand or refurbished mattress was germicidally treated;

vi. the germicidal treatment permit identification number assigned by the Department; and

vii. shall be in a form and contain any other information prescribed by the Department with input from the Health Department.

2) Making any false or misleading statement on any label required by this Article is unlawful; further, removing, defacing, altering, or positioning any label or statement thereon for the purpose of defeating the provisions of this Article is unlawful except that the label may be removed by the consumer.

(e) **Records**. Records must be kept for a period not less than two years from the point of sale, rental and time of germicidal treatment.

1) Any person engaged in the sale or rental of secondhand and/or refurbished mattresses shall keep records of acknowledgements as required under 15-266 (b) 3) above.

2) Records verifying germicidal treatment and other information as required by the Director of the Development Services Department shall be kept by both the retailer of secondhand/refurbished mattresses and the germicidal treatment provider and must be provided to the City within a reasonable time of a request to verify compliance. A copy of such treatment received by the retailer shall suffice to comply with this section. The Development Services Department may require, at the expense of the person, that an independent audit of the records of the person be conducted with the results of such audit provided to both parties.

3) Each person required to obtain a Germicidal Treatment Permit shall:

i. conspicuously post a copy of the permit on the premises of the person's business near the treatment device; and

ii. keep accurate records describing mattresses treated, date of treatment, method of treatment, and the name and address of the owner of each item.

Sec. 15-266. Permitting Fees.

(a) **Secondhand/refurbished Mattress Retailer Permit:** The initial permit fee for the first two year term is a fixed $220, regardless of time in actual operation. Subsequent permit fees shall be adjusted based upon the number of secondhand/refurbished mattresses sold and rented during the previous two-year period. Should operations cease prior to two years, any subsequent new permit fee shall follow the graduated fee schedule listed below. Calculation for permit fee purposes is based separately upon all such business locations held under the same ownership.

The graduated fee schedule is as follows:

1) for less than 2,000 such mattresses sold and rented, the fee is $220;

2) 2,000 to 9,999 such mattresses sold and rented, the fee is $330;
3) 10,000 to 19,999 such mattresses sold and rented, the fee is $440;
4) 20,000 to 29,999 such mattresses sold and rented, the fee is $660;
5) 30,000 to 49,999 such mattresses sold and rented, the fee is $880;
6) 50,000 to 100,000 such mattresses sold and rented, the fee is $1,320; and
7) over 100,000 such mattresses sold and rented, the fee is $1,320 plus $.03 for each additional mattress.

(b) **Germicidal Treatment Permit:** $110 each fixed for a two-year term and any subsequent biennial renewal.

Sec. 15-267. Enforcement of Law.

(a) The Department and the Health Department are responsible for enforcement of this Article.

(b) Each person required to be permitted under this Article shall provide sale and rental data for separate business locations to determine compliance with this Article when requested by the Department.

(c) Each person required to be permitted as a Germicidal Treatment Provider under this Article shall maintain each business location in a sanitary condition.

(d) Each person required to be permitted as a Germicidal Treatment Provider under this Article shall allow, during normal business hours, an authorized representative or representatives of the Department and/or Health Department to conduct an announced or unannounced inspection of their place of business for purposes of determining compliance with this Article and regulations.

(e) Each person required to be permitted under this Article shall allow an authorized representative or representatives of the Department and/or Health Department to copy records and take photographs of mattresses and premises during inspections.

(f) **City Authority to Deny, Suspend or Revoke Permits**

1) An application for permit issuance or renewal will be denied by the Director of the Department if the applicant fails or refuses to provide a complete application, pay the appropriate fee, or provide requested information.
2) An application for permit renewal may be denied by the Director of the Department if the applicant has failed to make acceptable progress implementing corrective actions to comply with this Article and/or to remedy previous violations of the Article.
3) A permit may be suspended or revoked by the Director of the Department if the permit holder violates this Article. Such decision shall be based on and supported by evidence of violation. Notice of suspension or revocation shall be sent to the last known address of the permit holder detailing a time of no more than 10 working days from the time of receipt to contest such action through a hearing before the Director. Once notified within that time period, the Director shall conduct a hearing within a reasonable time and either affirm or overrule the action taken. Should action be affirmed after the hearing, a permit holder may appeal the final decision of the Director, which shall be in writing and contain the reason for the suspension or revocation. Notice of

appeal must be filed with a court of proper jurisdiction within 10 working days of the Director's final decision; otherwise, the appeal is waived. The permit shall be suspended or revoked only for the location where the violation occurred.

Sec. 15-268. Penalty for violation.

A violation under this Article is a strict liability offense and any person violating any of its provisions shall be deemed guilty of a misdemeanor. Each such person shall be deemed guilty of a separate offense for each day or portion thereof during which any violation of any of the provisions of this Article are committed, continued or permitted. Each violation may be punishable by a fine not less than one hundred dollars ($100.00) nor more than two thousand dollars. ($2,000.00).

SECTION 4. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, or any appendix, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision in this Ordinance be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 5. Funds generated by this Ordinance shall be deposited into the General Fund (Fund 11001000), Internal Order 261000000007 and General Ledger GL 4203020.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. No other provision of the City Code is amended by this Ordinance. All other provisions remain in effect.

SECTION 8. The City Clerk for the City of San Antonio is directed to publish notice of this Ordinance in a newspaper published in the City of San Antonio, Texas, as required by Article 2, Section 17 of the City Charter of San Antonio, Texas.

SECTION 9. The publishers of the City Code of San Antonio are authorized to amend the City Code to reflect the changes adopted in this Ordinance, to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

SECTION 10. This Ordinance is effective March 1, 2016.

PASSED AND APPROVED this 3rd day of December, 2015.

M A Y O R
Ivy R. Taylor

Attest:

Leticia M. Vacek, City Clerk

Approved As To Form:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**17**
Date:	12/03/2015
Time:	09:27:59 AM
Vote Type:	Motion to Approve
Description:	An Ordinance amending Chapter 15 of the City Code of San Antonio, Texas, by adopting secondhand/refurbished mattress consumer protection regulations and providing for penalties, publication and an effective date. [Erik Walsh, Deputy City Manager; Roderick Sanchez, Director, Development Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				