

12259

O. 77-194
(REVISED)

ORDINANCE NO. _____
(New Series)

JAN 11 1978

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 3,
OF THE SAN DIEGO MUNICIPAL CODE BY ADDING
DIVISION 36, SECTIONS 33.3601 THROUGH 33.3620,
RELATING TO REGULATION OF NUDE ENTERTAINMENT
BUSINESS AND NUDE ENTERTAINERS.

BE IT ORDAINED, by the Council of The City of San Diego,
as follows:

Section 1. That Chapter III, Article 3, of the San Diego
Municipal Code be and the same is hereby amended by adding
Division 36, Sections 33.3601 through 33.3620, to read as
follows:

SEC. 33.3601 CITATION OF ORDINANCE

This division may be cited as the San Diego Nude
Entertainment Business and Nude Entertainers Regulatory
Ordinance.

SEC. 33.3602 PURPOSE AND INTENT

It is the purpose and intent of this division to
provide for the orderly regulation of the business of
nude entertainment and nude entertainers in the City
of San Diego by establishing certain minimum standards
for the conduct of this type of business to protect
the public order and the general welfare of the
residents of the City of San Diego.

SEC. 33.3603 NUDE ENTERTAINMENT BUSINESS--POLICE
REGULATED

The business of nude entertainment is hereby

MICROFILMED

designated as "Police Regulated."

SEC. 33.3604 DEFINITIONS

Whenever used in this division, the following words and phrases shall mean:

(a) "Nude" shall mean devoid of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person, or any portion of the breast at or below the areola thereof of any female person.

(b) "Nude Entertainment Business" shall mean any business where any individual, firm, association, partnership, corporation, or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted, or carried on "nude entertainment," as defined in this division.

(c) "Nude Entertainment" shall mean any activity where a nude person provides services, including, but not limited to, talking, reading, listening, singing, posing, walking, dancing, or wrestling.

(d) "Nude Entertainer" shall mean any person who gives or provides to another person, for any form of consideration whatsoever, "nude entertainment" as defined in this division.

(e) "License" shall mean the business license to operate a nude entertainment business required by this division.

(f) "Permit" shall mean the permit to engage in the activities of a nude entertainer required by this

division.

SEC. 33.3605 NUDE ENTERTAINMENT--LICENSE REQUIRED

It shall be unlawful for any person, association, partnership or corporation to engage in, conduct, carry on, or to permit to be engaged in, conducted or carried on, the operation of a "nude entertainment" business as herein defined, without a license issued pursuant to the provisions of this division for each and every such business. The license required hereby shall be in addition to any business tax license required by this code.

SEC. 33.3606 NUDE ENTERTAINMENT LICENSE

(a) Any person, association, partnership, or corporation desiring to obtain a license to operate a nude entertainment business shall make an application to the Chief of Police or his designated representative. An annual nonrefundable fee of Two Hundred Twenty-five Dollars (\$225) shall accompany the submission of each application to defray, in part, the cost of investigation, inspection and enforcement of this division. The annual non-refundable renewal fee shall be One Hundred Twenty-five Dollars (\$125).

(b) Each applicant for a license to operate a nude entertainment business shall furnish the following information to the Chief of Police:

(1) The full true name and any other names used by the applicant.

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(2) The present address and telephone number of the applicant.

(3) The proposed address of the nude entertainment business.

(4) Each residence and business address of the applicant for the three (3) years immediately preceding the date of the application, and the inclusive dates of each such address.

(5) Written proof that the applicant is at least eighteen (18) years of age.

(6) Applicant's height, weight, color of eyes and hair.

(7) Two photographs of the applicant of a size specified by the Chief of Police taken within six (6) months immediately preceding the date of application. One photograph shall be retained by the Chief of Police and one photograph shall be affixed to the license.

(8) Applicant's business, occupation and employment history for the three (3) years immediately preceding the date of application.

(9) The business license or permit history of the applicant: whether such applicant has ever had any license or permit issued by any agency or board, City, County or State revoked or suspended, or has had any professional or vocational

license or permit revoked or suspended, and the reason therefor.

(10) All criminal convictions, except traffic violations, and a statement of the dates and places of such conviction.

(11) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its Articles of Incorporation or Charter, together with the State and date of incorporation and names and residence addresses of each of its current officers and directors, and of each stockholder holding more than five percent (5%) of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the provisions of this section pertaining to corporate applicants shall apply. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. Such person shall complete and sign all application forms required of an individual under this division, but only one application fee shall

be charged.

(12) The name and address of the owner and lessor of the real property upon or in which the business is to be conducted, and a copy of the lease or rental agreement.

(13) Such other identification and information as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

(14) The Chief of Police may require the applicant to furnish fingerprints when needed for the purpose of establishing identification.

(c) The Chief of Police shall have a reasonable time, not to exceed thirty (30) days, in which to investigate the application and the background of the applicant.

(d) A license shall be issued within thirty (30) days of receipt of the application to any applicant who has furnished all of the information required by this section in the application for such license, unless:

(1) The applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application for the license; or

(2) The applicant, if an individual, or in the case of an applicant which is a corporation or partnership, any of its officers, directors, holders of five percent (5%) or more of the corporation's

stock, or partners, has within five (5) years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of any of the following offenses: 266i, 315, 316, or subdivision (b) of Section 647 of the California Penal Code; an offense which requires registration as a sex offender with the Chief of Police under Penal Code Section 290; any offense involving the unlawful sale of a controlled substance specified in the California Health and Safety Code; any offense in another state which, if committed in this state would have been punishable as one or more of the heretofore mentioned offenses; any offense involving the use of force or violence upon the person of another; any offense involving theft, embezzlement or moral turpitude; or any statute, ordinance or regulation pertaining to the same or similar business operation; or

(3) The applicant has allowed or permitted acts of unlawful sexual misconduct or other unlawful activities to be committed within previous business operations; or

(4) The operation of the business as proposed, if permitted, would not comply with all applicable building, fire, health and zoning laws; or

(5) The applicant has had a similar type of license previously revoked for good cause within one (1)

year immediately preceding the date of the filing of the application and can show no material changes in circumstances since such revocation; or

(6) The applicant is under eighteen (18) years of age.

SEC. 33.3607 NUDE ENTERTAINER--PERMIT REQUIRED

It shall be unlawful for any person to engage in the business of acting or act as a nude entertainer without a permit issued pursuant to the provisions of this division.

SEC. 33.3608 NUDE ENTERTAINER PERMIT

(a) Any person desiring to obtain a permit to act as a nude entertainer shall make application to the Chief of Police, or his designated representative. An annual nonrefundable fee of Twenty Dollars (\$20) shall accompany the submission of each application to defray, in part, the cost of investigation and examination as required by this division. The annual nonrefundable renewal fee shall be Fifteen Dollars (\$15).

(b) Each applicant for a permit to act as a nude entertainer shall furnish the following information to the Chief of Police:

(1) The full true name and any other names used by the applicant;

(2) The present address and telephone number of the applicant;

(3) Each residence and business address of the applicant for the three (3) years immediately preceding the date of the application, and the inclusive dates of each such address;

(4) Written proof that the applicant is at least eighteen (18) years of age;

(5) Applicant's height, weight, color of eyes and hair;

(6) Two photographs of the applicant of a size specified by the Chief of Police taken within the last six (6) months immediately preceding the date of application. One photograph shall be retained by the Chief of Police and one photograph shall be affixed to the permit;

(7) Applicant's business, occupation and employment history for the three (3) years immediately preceding the date of application;

(8) The business license or permit history of the applicant: whether such applicant has ever had any license or permit issued by any agency or board, City, County or State revoked or suspended, or has had any professional or vocational license or permit revoked or suspended, and the reason therefor;

(9) All criminal convictions, except traffic violations, and a statement of the dates and places of such convictions;

(10) The establishment or business locations, if any, at which the applicant expects to be employed.

(11) Such other identification and information as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.

(12) The Chief of Police may require the applicant to furnish fingerprints when needed for the purpose of establishing identification.

(c) The Chief of Police shall have a reasonable time, not to exceed thirty (30) days, in which to investigate the application and background of the applicant.

(d) A permit shall be issued within thirty (30) days of receipt of the application to any applicant who has furnished all of the information required by this section in the application for such permit, unless:

(1) The applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application for the permit; or

(2) The applicant has within five (5) years immediately preceding the date of the filing of the application been convicted of any of the following offenses: 266i, 315, 316, or subdivision (b) of Section 647 of the California Penal Code; an offense

which requires registration as a sex offender with the Chief of Police under Penal Code Section 290; any offense involving the unlawful sale of a controlled substance specified in the California Health and Safety Code; any offense in another state which if committed in this state would have been punishable as one or more of the heretofore mentioned offenses; any offense involving the use of force or violence upon the person of another; any offense involving theft, embezzlement, or moral turpitude; or any statute, ordinance or regulation pertaining to the same or similar business operation; or

(3) The applicant has had a similar type of permit previously revoked for good cause within one (1) year immediately preceding the date of the filing of the application and can show no material changes in circumstances since such revocation; or

(4) The applicant is under eighteen (18) years of age.

(e) A permit to act as a nude entertainer does not authorize the operation of a nude entertainment business. Any person obtaining a permit to act as a nude entertainer who desires to operate a nude entertainment business must separately apply for a license therefor. A person who

applies for a license to operate a nude entertainment business and who desires to act as a nude entertainer within said business, who pays the fee required by Section 33.3606 of this division, shall not be required to pay the fee required in this section.

SEC. 33.3609 OPERATIVE DATE--NUDE ENTERTAINERS

All persons operating or employed as nude entertainers at the time this division becomes effective shall obtain a Nude Entertainer Permit within thirty (30) days of the effective date of this division.

SEC. 33.3610 NUDE ENTERTAINMENT BUSINESSES--OPERATING REQUIREMENTS

No person, association, partnership, or corporation shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried on the operation of a nude entertainment business unless each and all of the following requirements are met:

- (a) Each person employed or acting as a nude entertainer shall have a valid permit issued pursuant to the provisions of this division, and it shall be unlawful for any owner, operator, responsible managing employee, manager or permittee in charge of or in control of a nude business to employ or permit any person to act as a nude entertainer who is not in

possession of a valid, unrevoked Nude Entertainer Permit.

(b) The possession of a valid Nude Entertainment Business License does not authorize the possessor to perform services for which a Nude Entertainer Permit is required.

(c) It shall be unlawful for any employee, owner, operator, responsible managing employee, manager or permittee of a nude entertainment business to allow any person below the age of eighteen (18) years upon the premises or within the confines of any nude entertainment business.

(d) Nude entertainment services shall be conducted or carried on only between the hours of 6 a.m. and 2 a.m. of the following day.

SEC. 33.3611 NAME OF BUSINESS

No person licensed to do business as herein provided shall operate under any name or conduct his business under any designation not specified in his license.

SEC. 33.3612 CHANGE OF LOCATION

A change of location of a licensed nude entertainment business shall be approved by the Chief of Police provided all applicable provisions of this division are complied with and a nonrefundable change of location fee of Fifteen Dollars (\$15) has been paid to the Chief of Police, and the new location complies with all applicable zoning, health, fire and safety codes.

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SEC. 33.3613 SALE OR TRANSFER

Thirty (30) days after the sale or transfer of any interest in a nude entertainment business, any license heretofore issued shall be null and void. A new application shall be made by any person, firm, or entity desiring to own or operate the nude entertainment business. A fee of Twenty Dollars (\$20) shall be payable for each such application involving the sale or transfer of any interest in an existing nude entertainment business. The provisions of Section 33.3606 of this division shall apply to any person, association, partnership, or corporation applying for a nude entertainment business license for premises previously used as such businesses.

SEC. 33.3614 INSPECTION

The Police Department shall make reasonable and periodic inspections of the foyer, hallways, restrooms and other areas used or intended for use in common by customers of each and every nude entertainment business in the City of San Diego during hours of the business operation for the purpose of determining that there is compliance with the provisions of this division and the laws of the State of California.

SEC. 33.3615 EXEMPTIONS

This division shall not apply to the following:

- (a) Any theater, concert hall, or similar establishment which is primarily devoted to theatrical performances.

(b) Any studio which is operated by any state college or university or public community college or school wherein the persons, firm, association, partnership, or corporation operating it have met the requirements established in Division 21 of the California Education Code for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma or honorary diploma.

(c) Any premises where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in subdivision (b) of this section.

(d) Any premises which are licensed pursuant to the provisions of the California Business and Professions Code relating to the sale and use of alcoholic beverages.

SEC. 33.3616 SUSPENSION OR REVOCATION OF LICENSE
OR PERMIT

In the event that any person holding a license or permit issued pursuant to this division shall violate or cause or permit to be violated any of the provisions of this division, or any provisions of any other ordinance or law relating to or regulating said business or occupation, or shall conduct or carry on such business or occupation in an unlawful manner or is convicted of any of those crimes contained in Section 33.3606(d)(2), the

Chief of Police may, in addition to other penalties provided by ordinance, suspend or revoke the license or permit after the licensee or permittee has been given the opportunity for a hearing as described in Section 33.3617.

SEC. 33.3617 HEARING

Any person who has been denied a license or permit or any person whose license or permit issued pursuant to this division has been suspended or revoked, may request a hearing conducted by the City Manager's Office. The request for a hearing must be in writing and must be made within ten (10) calendar days from the date of the decision denying, suspending or revoking the license or permit. Upon receiving a written request for a hearing, the City Manager or his delegate shall call a hearing and shall set forth in writing and send to the applicant, licensee or permittee by means of registered mail, certified mail or hand delivery, notice that within a period of not less than five (5) nor more than fourteen (14) days from the date of the posting of said notice, a hearing shall be conducted to determine the existence of any facts which constitute grounds for the denial, suspension or revocation of a license or permit. The notification shall include the date, time and place of the hearing. The hearing shall be conducted by a hearing officer, appointed by the City Manager. The applicant, licensee or permittee may have the assistance

of counsel or may appear by counsel and shall have the right to present evidence. In the event the applicant, licensee or permittee, or counsel representing the applicant, licensee, or permittee fails to appear at the hearing, the evidence of the existence of facts which constitute grounds for denial, suspension or revocation of the license or permit shall be considered un rebutted. A copy of the decision of the hearing officer specifying findings of fact and the reasons for the decision shall be furnished to the applicant, licensee or permittee. The hearing officer shall inform the party against whom the decision is rendered of his right to appeal pursuant to Section 33.3619 of this division.

SEC. 33.3618 STAY OF SUSPENSION OR REVOCATION

The effect of a decision by the hearing officer shall be stayed while an appeal to the City Council is pending or until the time for filing such appeal has expired.

SEC. 33.3619 APPEAL

Within ten (10) days after receipt of the decision of the hearing officer, upholding or reversing the decision of the Chief of Police denying, suspending or revoking a license or permit, any party affected by the decision may file with the City Clerk a written request for a public hearing before the City Council. Upon the filing of such a request, the City Clerk shall within fourteen (14) days thereafter set the matter for a hearing and

shall notify the appellant of the date, time and place of such hearing at least five (5) days before the hearing date. At the hearing, any person may present evidence in opposition to, or in support of, appellant's case. At the conclusion of the hearing, the City Council shall either grant or deny the appeal; the decision of the City Council shall be final. *

SEC. 33.3620 CONSTITUTIONALITY

If any section, subsection, sentence, clause or phrase of this division is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this division. The Council hereby declares that it would have adopted the division and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By Eugene P. Gordon
Eugene P. Gordon
Deputy City Attorney

EPG:rc:503.9
4/8/77 5/19/77
Or. Dept.: Police

12259

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

JAN 11 1978

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Lowery	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fred Schnaubelt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Gade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Larry Stirling	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jess Haro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Rita Andrews, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 20 1977

, and on

JAN 11 1978

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Rita Andrews, Deputy.

Office of the City Clerk, San Diego, California

Ordinance
Number

12259

Adopted

JAN 11 1978