

ORDINANCE NO. 12539
(New Series)

O.79-124

JAN 2 1979

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE
BY ADDING SECTIONS 101.1800, 101.1801, 101.1801.1
THROUGH 101.1801.20, 101.1810, 101.1820, 101.1830,
AND 101.1899 RELATING TO REGULATIONS FOR ADULT
ENTERTAINMENT ESTABLISHMENTS.

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

Section 1. That Chapter X, Article 1, Division 1 of the
San Diego Municipal Code be, and it is hereby amended by adding
Sections 101.1800, 101.1801, 101.1801.1 through 101.1801.20,
101.1810, 101.1820, 101.1830 and 101.1899 to read as follows:

REGULATIONS FOR ADULT ENTERTAINMENT ESTABLISHMENTS

SEC. 101.1800 PURPOSE AND INTENT

It is the purpose of this Division to establish reasonable and
uniform regulations to prevent the continued concentration of adult
entertainment establishments, as defined herein, within The City of San
Diego.

It is the intent of this Division that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of adult entertainment establishments.

SEC. 101.1801 DEFINITIONS

It is the purpose of this Section, together with its subsections, to provide clear and concise definitions of those words, terms and phrases most commonly utilized in the regulations and provisions of this Division in order to assist in the uniform interpretation of said regulations and provisions and to insure uniformity in their application.

It is intended that the following words, terms and phrases, whenever used in this Division, shall be construed as defined in the following subsections, unless from the context a different meaning is specifically defined and more particularly directed to the use of such words, terms or phrases.

It is also intended that those definitions and interpretations set forth in Chapter X, Article 1, Division 1, of the Municipal Code, shall be used for purposes of uniformity of interpretation and application of the regulations and provisions of this Division but only where they do not conflict with any definition or interpretation set forth in this Division.

SEC. 101.1801.1 SPECIFIED ANATOMICAL AREAS

As used herein, "specified anatomical areas" shall mean and include any of the following:

- (a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SEC. 101.1801.2 SPECIFIED SEXUAL ACTIVITIES

As used herein, "specified sexual activities" shall mean and include any of the following:

- (a) The fondling or other touching of human genitals, pubic region, buttocks, anus or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- (c) Masturbation, actual or simulated; or

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- (d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

SEC. 101.1801.3 ADULT BOOKSTORE

An establishment that devotes more than 15 percent of the total floor area utilized for the display of books and periodicals to the display and sale of the following:

- (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of 'specified sexual activities' or 'specified anatomical areas'; or
- (b) Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

An adult bookstore does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock-in-trade and does not devote more than 15 percent of the total floor area of the establishment to the sale of books and periodicals.

SEC. 101.1801.4 ADULT MOTION PICTURE THEATER

An establishment, with a capacity of 50 or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons.

SEC. 101.1801.5 ADULT MINI-MOTION PICTURE THEATER

An establishment, with a capacity of more than five but less than 50 persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons.

SEC. 101.1801.6 ADULT MOTION PICTURE ARCADE

Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing

devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas."

SEC. 101.0801.7 ADULT DRIVE-IN THEATER

An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons.

SEC. 101.1801.8 ADULT CABARET

A nightclub, bar, restaurant or similar establishment which regularly features live performances which are distinguished or characterized by an emphasis on "specified sexual activities" or by exposure of "specified anatomical areas" and/or which regularly features films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons.

SEC. 101.1801.9 ADULT MOTEL

A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

SEC. 101.1801.10 ADULT THEATER

A theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances which are distinguished or characterized by an emphasis on "specified sexual activities" or by exposure of "specified anatomical areas" for observation by patrons.

SEC. 101.1801.11 ADULT MODEL STUDIO

Any establishment open to the public where, for any form of consideration or gratuity, figure models who display "Specified Anatomical Areas" are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity.

This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the Education Code of the State of California for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma.

SEC. 101.1801.12 SEXUAL ENCOUNTER ESTABLISHMENT

An establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate or consort in connection with "specified sexual activities" or the exposure of "specified anatomical areas." This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State of California engages in sexual therapy.

For the purposes of this Division, SEXUAL ENCOUNTER CENTER shall include MESSAGE or RAP PARLOR and other similar establishments.

SEC. 101.1801.13 BODY PAINTING STUDIO

Any establishment or business which provides the service of applying paint or other substance whether transparent or non-transparent to or on the human body when such body is wholly or partially nude in terms of "specified anatomical areas."

SEC. 101.1801.14 MASSAGE PARLOR

An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the State of California. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

SEC. 101.1801.15 GENERAL MOTION PICTURE THEATER

A building or part of a building intended to be used for the specific purposes of presenting entertainment as defined herein, or displaying motion pictures, slides or closed circuit television pictures before an individual or assemblage of persons, whether such assemblage be of a public, restricted or private nature, except a home or private dwelling where no fee, by way of an admission charge, is charged; provided, however, that any such presentations are not distinguished or characterized by an emphasis on the depiction or description of 'specified sexual activities' or 'specified anatomical areas' in that any such depiction or description is only incidental to the plot or story line.

A General Motion Picture Theater does not include any establishment that is defined by SEC. 101.1801.4, 101.1801.5, 101.1801.6, or 101.1801.7.

SEC. 101.1801.16 LEGITIMATE OR LIVE THEATER

A theater, concert hall, auditorium or similar establishment which, for any fee or consideration, regularly features live performances which are not distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" in that any such depiction or description is only incidental to the primary purpose of the performance.

SEC. 101.1801.17 GENERAL BOOKSTORE

An establishment engaged in the buying, selling and/or trading of new and/or used books, manuscripts and periodicals of general interest. A general bookstore does not include an establishment that is encompassed by the definition of ADULT BOOKSTORE -- SEC. 101.1801.3.

SEC. 101.0801.18 SCHOOL

An institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery

school, kindergarten, elementary school, junior high school, senior high school or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

SEC. 101.1801.19 ESTABLISHING AN ADULT ENTERTAINMENT BUSINESS

As used herein, the "establishing" of an adult entertainment business shall mean and include any of the following:

- (a) The opening or commencement of any such business as a new business;
- (b) The conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein;
- (c) The addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or
- (d) The relocation of any such business.

SEC. 101.1801.20 TRANSFER OF OWNERSHIP OR CONTROL

As used herein, the "transfer of ownership or control" of an adult entertainment business shall mean and include any of the following:

- (a) The sale, lease or sublease of such business;
- (b) The transfer of securities which constitute a controlling interest in such business, whether by sale, exchange or similar means; or
- (c) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of such business, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

SEC. 101.1810 PROHIBITION

No person shall cause or permit the establishment, substantial enlargement or transfer of ownership or control of any of the following establishments if such establishment is within 1,000 feet of another such business or within 600 feet of any school within The City of San Diego.

An establishment listed in this section shall not be permitted to be established, enlarged or transferred unless the provisions of the zone in which the site or proposed site is located permits such a use.

- A. Adult Bookstore
- B. Adult Motion Picture Theater
- C. Adult Mini-Motion Picture Theater
- D. Adult Arcade
- E. Adult Drive-In Theater
- F. Adult Cabaret
- G. Adult Motel
- H. Adult Theater
- I. Adult Model Studio
- J. Sexual Encounter Center
- K. Body Painting Studio
- L. Massage Parlor
- M. Any other business which involves "specified sexual activities" or display of "specified anatomical areas."

SEC. 101.1820 MEASURE OF DISTANCE

The distance between any two adult entertainment businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any adult entertainment business and any school shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment business to the closest property line of the school.

SEC. 101.1830 EXCEPTIONS

- A. A person possessing ownership or control of an adult entertainment business which is within 1,000 feet of another such business or within 600 feet of any school on the effective date of this ordinance shall be permitted to transfer such ownership or control within two years of said effective date. The person acquiring such ownership or control, however, shall be required to discontinue said adult entertainment business within five years from the date of said transfer of ownership or control if such business continues to be within 1,000 feet of another such business or within 600 feet of any school.
- B. A person possessing ownership or control of an adult entertainment business which is not within 1,000 feet of another such business and is not within 600 feet of any school on the effective date of this ordinance shall be subject to the provisions of Paragraph "A." of this Section, if a school is established within 600 feet of an establishment regulated by the provisions of SEC. 101.1810. The two-year period established by Paragraph "A." of this Section shall commence to run from the date on which the school begins a course of instruction for students.

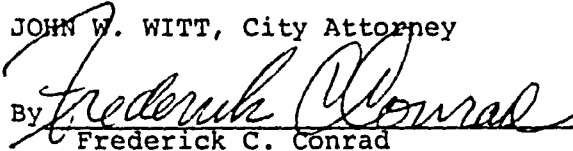
C. Notwithstanding any other provision of the Municipal Code to the contrary, the provisions of this Division shall be applicable to all land within The City of San Diego, including all Planned Districts now in existence or hereafter established.

SEC. 101.1899 SEVERABILITY

If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.

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 
Frederick C. Conrad
Chief Deputy City Attorney

FCC:clh
11/6/78
Or.Dept.:Planning

12539

Passed and adopted by the Council of The City of San Diego on JAN 2 1979
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bill Lowery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fred Schnaubelt	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
James H. Cook Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 E. H. Cook, 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 12 1978

JAN 2 1979

~~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 E. H. Cook, Deputy.

Office of the City Clerk, San Diego, California	
Ordinance Number <u>12539</u>	Adopted <u>JAN 2 1979</u>

Handwritten mark

ATTORNEY(S)

San Diego, City of
12th Floor, City Admin. Bldg.
202 C St.
San Diego, Ca 92101
Attn: Earnest H. Cook

RECEIVED
CITY CLERK
30 JAN 30 PM 2:46
SAN DIEGO, CALIF.

CERTIFICATE OF PUBLICATION

No. 12539

IN THE MATTER OF

ADULT ENTERTAINMENT ESTABLISHMENTS

SYNOPSIS OF ORDINANCE NO. 12539
(New Series)

AN ORDINANCE AMENDING CHAPTER X, ARTICLE I, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTIONS 101.1250, 101.1251, 101.1251.1 THROUGH 101.1251.2, 101.1252, 101.1253, 101.1254, AND 101.1255 RELATING TO REGULATIONS FOR ADULT ENTERTAINMENT ESTABLISHMENTS.

An ordinance providing for regulation of the location of adult entertainment establishments. Adult entertainment establishments are identified and defined to be those whose stock in trade, services, or activities involve specified sexual activities or the display of specified anatomical areas. Any adult entertainment establishment, the operation of which commences after the effective date of the ordinance, must be no closer than 1,000 feet to another such establishment, or within 600 feet of a school. An adult entertainment establishment which does not comply with the spacing requirements may continue to operate but may not be transferred except within the first two years after the effective date of the ordinance and must cease to operate five years after the transfer.

A complete copy of the ordinance is available for inspection in the office of the City Clerk of the City of San Diego, 12th Floor, City Administration Building, 202 "C" St., San Diego, CA 92101.
Introduced on December 12, 1978.
Passed and adopted by the Council of The City of San Diego on January 2, 1979.

AUTHENTICATED BY:
PETE WILSON,
Mayor of The City of San Diego, California.
CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.
By EARNEST H. COOK, Deputy.

REAL
Published January 16, 1979. 00-12539

I PATRICIA M. SPAULDING, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

SYNOPSIS OF ORDINANCE NO. 12539

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to-wit:

January 16, 1979

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 24th day of Jan., 1979.

Patricia M. Spaulding
(Signature)

6 1/4" x 37.94