

(O-83-76)

ORDINANCE NUMBER O- 15835 (New Series)

Adopted on OCT 25 1982

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 18 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 101.1801.3, AND 101.1899 REGARDING ADULT ENTERTAINMENT.

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

Section 1. That Chapter X, Article 1, Division 18 of the San Diego Municipal Code be, and it is hereby amended by amending Sections 101.1801.3 and 101.1899 to read as follows:

SEC. 101.1801.3 ADULT ENTERTAINMENT ESTABLISHMENT

An adult entertainment establishment is any place of business at which one or more of the following activities is conducted.

A. ADULT BOOKSTORE

An establishment that devotes more than 15 percent of the total display, shelf, rack, table, stand or floor area utilized for the display of books and periodicals to the display and sale of the following:

1. 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

2. 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.

B. 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. For purposes of this subsection and subsections C, D, E, F, G and H, a "substantial portion of the total presentation time" shall mean the presentation of films or shows described above for viewing on more than seven days within any 56-consecutive-day period.

C. 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.

D. 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, in which a substantial portion of the total presentation time of the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

E. 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, in which a substantial portion of the total presentation time of the material being presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons.

F. ADULT CABARET

A nightclub, bar, restaurant or similar establishment which during a substantial portion of the total presentation time features live performances which are distinguished or characterized by an emphasis on "specified sexual activities" or by exposure of "specified anatomical areas" and/or 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.

G. 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, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

H. 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, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on "specified sexual activities" or by exposure of "specified anatomical areas"

for observation by patrons.

I. ADULT MODEL STUDIO

(No amendment to this subsection.)

J. SEXUAL ENCOUNTER ESTABLISHMENT

(No amendment to this subsection).

K. BODY PAINTING STUDIO

(No amendment this this subsection).

L. MASSAGE ESTABLISHMENT

(No amendment to this subsection.)

M. OTHER BUSINESSES

Any business not otherwise herein defined or identified which involves "specified sexual activities" or display of "specified anatomical areas."

N. ADULT ENTERTAINMENT ESTABLISHMENT  
ADVERTISING

Any business not herein defined as an "adult entertainment establishment" which advertises by any sign on the premises or elsewhere, the availability of any merchandise, service, display, show or film which involves "specified sexual activity" or the display of "specified anatomical areas." The provisions of this subsection shall not apply to establishments advertising shows or films during the presentation thereof if the establishment is not, by definition, an adult entertainment establishment.

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.

The provisions of this section are hereby made specifically applicable to the proximity provisions of Section 101.1810, and the public health, safety and general welfare shall be preserved and protected by applying those provisions in the following descending order of importance:


1. Proximity to other adult entertainment establishments;
2. Proximity to schools;
3. Proximity to churches;
4. Proximity to public parks;
5. Proximity to residential zones;
- and 6. Proximity to social welfare institutions.

Section 2. Nothing herein shall repeal or otherwise affect the validity or enforceability of any provision of Ordinance Nos. 12539 (New Series), 15509 (New Series), and 15810 (New Series), which provisions are consistent with the provisions of this ordinance. Any act in violation of any provision of the aforementioned ordinances, which act is in violation of any provision of this ordinance, shall constitute a continuing violation, the enforceability of which shall not be affected in any way by the enactment of this ordinance. No business shall obtain or acquire any nonconforming rights under the provisions of Municipal Code Section 101.0303, if said business is conducted in violation of any provision of Ordinance Nos. 12539 (New Series), 15509 (New Series), or 15810 (New Series), or which conduct or act is in violation of the provisions of this

ordinance.

Section 3. 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  
9/22/82  
o-83-76  
Or.Dept:Clerk  
Form=none

NEW LANGUAGE - Underlined  
OLD LANGUAGE - Crossed Out

SEC. 101.1801.3 ADULT ENTERTAINMENT ESTABLISHMENT

An adult entertainment establishment is any place of business at which one or more of the following activities is conducted.

A. ADULT BOOKSTORE

An establishment that devotes more than 15 percent of the total display, shelf, rack, table, stand or floor area utilized for the display of books and periodicals to the display and sale of the following:

1. 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

2. 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.

B. 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. For purposes of this subsection and subsections C, D, E, F, G and H, a "substantial portion of the total presentation time" shall mean the presentation of films or shows described above for viewing on more than seven days within any 56-consecutive-day period.

C. 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.

D. 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~~ in which a substantial portion of the total presentation time of the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

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E. 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~~ in which a substantial portion of the total presentation time of the material being presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons.

F. ADULT CABARET

A nightclub, bar, restaurant or similar establishment which ~~regularly~~ during a substantial portion of the total presentation time 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.

G. 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, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

H. 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, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on "specified sexual activities" or by exposure of "specified anatomical areas" for observation by patrons.

I. ADULT MODEL STUDIO

(No amendment to this subsection.)

J. SEXUAL ENCOUNTER ESTABLISHMENT

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N. ADULT ENTERTAINMENT ESTABLISHMENT  
ADVERTISING

Any business not herein defined as an "adult entertainment establishment" which advertises by any sign on the premises or elsewhere, the availability of any merchandise, service, display, show or film which involves "specified sexual activity" or the display of "specified anatomical areas." The provisions of this subsection shall not apply to establishments advertising shows or films during the presentation thereof if the establishment is not, by definition, an adult entertainment establishment.

SEC. 101.1899 SEVERABILITY

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The provisions of this section are hereby made specifically applicable to the proximity provisions of Section 101.1810, and the public health, safety and general welfare shall be preserved and protected by applying those provisions in the following descending order of importance:

1. Proximity to other adult entertainment establishments;
2. Proximity to schools; 3. Proximity to churches; 4. Proximity to public parks; and 5. Proximity to residential zones; and 6. Proximity to social welfare institutions.

OCT 25 1982

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

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 Raymond G. Portecove, 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

OCT 05 1982

OCT 25 1982

, and on \_\_\_\_\_

~~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 Raymond G. Portecove, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-15835 Adopted \_\_\_\_\_

OCT 25 1982

CERTIFICATE OF PUBLICATION

CITY OF SAN DIEGO  
12th floor, 202 C St.  
San Diego, CA 92101  
  
ATTN: PONTECORVO

IN THE MATTER OF

NO.

ORDINANCE NO. O-15835

**ORDINANCE NO. O-15835**  
**(New Series)**  
**AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 18 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 181.181.1, AND 181.189 REGARDING ADULT ENTERTAINMENT.**  
The present ordinance defines "Adult Bookstore" to include sites of 15 percent or more of floor area for adult publications. The amendment expands the definition to include, as an adult bookstore, one that uses more than 15 percent of the display, rack, table, stand or floor area for adult publications and materials.  
The amendment also provides a definition of "substantial portion of the total presentation time" as that term is used in the regulation of adult theaters and other similar activities.  
The amendment also adds a definition of "adult entertainment establishment" based on advertising of adult material.  
The amendment adds an expression of legislative intent regarding severability of the provisions of the Adult Entertainment Ordinance.  
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" Street, San Diego, CA 92101.  
Introduced on OCTOBER 5, 1982  
Passed and adopted by the Council of The City of San Diego on OCTOBER 25, 1982  
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 MARV BELL L. PONTECORVO, Deputy  
Published November 5, 1982

I, Charlene Casselman, 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

ORDINANCE NO. O-15835  
(New Series)

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:

November 8, 1982

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

Dated at San Diego, California this 8th day of Nov, 1982.

Charlene Casselman

(Signature)

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