

ORDINANCE NUMBER O- 17047 (NEW SERIES)

ADOPTED ON APR 04 1988

AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 2, DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTIONS 42.0400, 42.0401, 42.0402, 42.0403, 42.0404, 42.0405, 42.0406, 42.0407, 42.0408, 42.0409, 42.0410, 42.0411, 42.0412, 42.0413, 42.0414, 42.0415, 42.0416, 42.0417, 42.0418, 42.0419, 42.0420, 42.0421, 42.0422, 42.0423 AND 42.0424 RELATING TO BATHHOUSES.

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

Section 1. That Chapter IV, Article 2, Division 4, of the San Diego Municipal Code be and the same is hereby amended by adding Sections 42.0400, 42.0401, 42.0402, 42.0403, 42.0404, 42.0405, 42.0406, 42.0407, 42.0408, 42.0409, 42.0410, 42.0411, 42.0412, 42.0413, 42.0414, 42.0415, 42.0416, 42.0417, 42.0418, 42.0419, 42.0420, 42.0421, 42.0422, 42.0423 and 42.0424 to read as follows:

SEC. 42.0400 BACKGROUND

As of the beginning of 1988, in excess of seven hundred (700) persons in San Diego County have been diagnosed as persons with AIDS and more than half of these persons have died from this disease. Approximately eighty-two percent (82%) of the persons with AIDS in the County have been identified as homosexual or bisexual men and another approximately eight percent (8%) of AIDS patients are homosexual or bisexual men who are IV drug users.

The available evidence indicates that in this City and County, the principal means of transmission of HIV has been sexual intercourse. From eyewitness accounts, studies and other available information, it has been determined that certain commercial establishments, sometimes referred to as bathhouses, but including other types of business enterprises as well, encourage, facilitate and/or knowingly allow their patrons to engage in sexual practices that pose a significant risk for the transmission of HIV. The bathhouses and other establishments provide an environment that fosters sexual activities that transmit the virus.

The San Diego County Regional Task Force on AIDS has recommended that bathhouses and similar commercial establishments that continue to offer an environment where the sexual practices that transmit HIV are encouraged, facilitated and/or knowingly allowed should be closely regulated. The Department of Health Services agrees that the sexual activities in such establishments should be restricted.

As long as these establishments permit the activities that pose a significant risk for the transmission of HIV, they offer easy accessibility to sexual contact with individuals who are very likely to be carrying the virus. It is the view of the Department of Health Services that the severe health risks posed by such a situation outweigh any potential harm resulting

from restricting the sexual activities occurring in these establishments.

SEC. 42.0401 DEFINITIONS

Whenever in this Chapter the following words of phrases are used, they shall mean:

(a) "Bathhouse" shall mean any establishment having a fixed place of business where any person engages in, conducts or carries on any business of providing Turkish, Russian, Swedish, Finnish, hot air, vapor, electric cabinet, steam sweat, mineral, salt, sauna, fomentation, alcohol, shower, tub or sponge baths, soaking facilities such as a spa or baths of any kind whatsoever. Any establishment carrying on or permitting any combination of massage and bathhouse shall be deemed a massage establishment and not a bathhouse.

"Bathhouse" shall not include hospitals, nursing homes, sanitariums or establishments where a person provides baths pursuant to his or her unrevoked certificate to practice the healing arts under the laws of the State of California. "Bathhouse" shall not include hotels, motels and similar lodging establishments. "Bathhouse" shall not include establishments primarily providing physical fitness services, except where cubicles, rooms or booths are provided for use by individual patrons of such establishments.

(b) "Person" shall mean any natural person, firm, association, club, organization, partnership, business

trust, corporation, company or any other entity whatsoever which is recognized by law as the subject of rights or duties.

SEC. 42.0402 PERMIT REQUIRED

It shall be unlawful for any person to operate, maintain or keep in the incorporated areas of The City of San Diego any bathhouse without an annual permit therefor issued by the San Diego County Department of Health Services. The permit, or any renewal thereof, may be denied if the bathhouse operation as proposed does not comply with the provisions of this chapter, regulations adopted pursuant to this chapter and all other applicable laws, including, but not limited to, applicable building and fire codes.

SEC. 42.0403 APPLICATION FOR PERMIT OR RENEWAL

Any person desiring a permit or renewal thereof required by this chapter shall make application to the San Diego County Department of Health.

SEC. 42.0404 APPLICATION FOR A BATHHOUSE PERMIT

The application for a permit to operate a bathhouse shall set forth the exact nature of the baths to be administered, the proposed place of business and facilities therefor, and the name and address of each applicant. In addition to the foregoing, any applicant for a bathhouse permit shall furnish the following information:

(a) The two previous addresses immediately prior to the present address of applicant.

(b) Written proof that the applicant is over the age of 18 years.

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

(d) Two portrait photographs at least 2" x 2".

(e) Business, occupation or employment of the applicant for the three years immediately preceding the date of the application.

(f) The bathhouse or similar business license history of the applicant; whether such person, in previously operating in this or another county or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.

(g) All criminal convictions except minor traffic violations.

(h) Such other identification and information necessary to discover the truth of the matters hereinbefore specified as required to be set forth in the application.

(i) Nothing contained herein shall be construed to deny to the County Health Officer the right to take fingerprints and additional photographs of the applicant, nor shall anything contained herein be

construed to deny the right of said Health Officer to confirm the height and weight of the applicant.

(j) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation; the names and residence addresses of each of the officers, directors and each stockholder owning more than ten percent (10%) of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners.

SEC. 42.0405 ANNUAL PERMIT APPLICATION FEE

The annual nonrefundable application fee for the permit required by this chapter shall be \$600.00. Delinquent fees shall be collected in accordance with the provisions of Section 65.101 et seq. of San Diego County Code of Regulatory Ordinances.

SEC. 42.0406 FACILITIES NECESSARY

No permit to conduct bathhouse shall be issued unless an inspection by the Director of Health Services reveals that the establishment complies with each of the following minimum requirements:

(a) Construction of rooms used for toilets, tubs, steam baths and showers shall be made waterproof with approved waterproof materials.

(1) For toilet rooms, toilet room vestibules and rooms containing bathtubs, there shall be a

waterproof floor covering, which will be carried up all walls to a height of at least six inches. Floor shall be covered up on base with at least 3/4 inch cover. The walls of all toilet rooms and rooms containing bathtubs shall be finished to a height of six feet from a smooth, nonabsorbant finish surface of Keene cement, tile or similar material.

(2) Steam rooms and shower compartments shall have approved waterproof floors, walls and ceilings.

(3) Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sewer. (Exception: dry heat rooms with wooden floors need not be provided with pitched floors and floor drains.)

(4) A source of hot water shall be available within the immediate vicinity of dry and wet heat rooms to facilitate cleaning.

(b) Toilet facilities shall be provided in convenient locations and every bathhouse shall provide at least one water closet. When five or more employees and patrons of each sex are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each twenty (20) employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets in the toilet facility for males after one water closet has been provided; provided however,

that there shall be at least one water closet for each sixty (60) employees or patrons of the male sex. All toilet rooms shall be equipped with self-closing doors opening in the direction of ingress to the toilet rooms. Toilets shall be designated as to the sex accommodated therein.

(c) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or the vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

(d) All portions of bathhouse establishments and baths shall be provided with adequate light and ventilation by means of windows or skylights with an area of not less than 1/8 of the total floor area, or shall be provided with approved artificial light and a mechanical operating ventilating system. Areas of the bathhouse, other than those areas provided only to individual patrons, shall at all times during bathhouse operation have a direct illumination level of at least fifteen (15) footcandles of light measure thirty (30) inches above the floor. When windows or skylights are used for ventilation, at least $\frac{1}{2}$ of the total required window area shall be operable.

To allow for adequate ventilation, cubicles, rooms and areas provided for patrons' use not served directly by a required window, skylight or mechanical system of

ventilation shall be constructed so that the height of partitions does not exceed seventy-five percent (75%) of the floor-to-ceiling height of the area in which they are located.

SEC. 42.0407 OPERATING REQUIREMENTS

All bathhouse permittees shall comply with the following operating requirements:

(a) Every portion of a public bathhouse, including appliances, apparatus and personnel, shall be kept clean and operated in a sanitary condition.

(b) All employees shall be clean and wear clean outer garments, whose use is restricted to the bathhouse. Provision for separate dressing rooms for each sex must be available on the premises, with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

(c) All bathhouses shall be provided with clean laundered sheets and towels in sufficient quantities and shall be laundered between consecutive uses thereof and stored in an approved sanitary manner. No towels or sheets shall be laundered or dried in any public bathhouse unless such establishment is provided with approved laundry facilities for such laundering and drying. Approved receptacles shall be provided for the storage of soiled linens and paper towels.

(d) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(e) Provide educational programs for patrons in accordance with standards promulgated by the Department of Health Services in consultation with the San Diego County Regional Task Force on AIDS.

SEC. 42.0408 . ISSUANCE OF PERMIT FOR BATHHOUSE

The San Diego County Department of Health Services shall issue a bathhouse permit if all the requirements for a bathhouse described in this chapter are met and shall issue a permit to any person who has applied for a permit to operate a bathhouse unless the County Health Officer finds:

(a) That the operation as proposed by the applicant, if permitted, would not comply with all applicable laws.

(b) That the applicant or any other person who will be directly engaged in the management and operation of a public bathhouse has been convicted of:

(1) An offense involving conduct which requires registration pursuant to Section 290 of the Penal Code.

(2) An offense involving the use of force and violence upon the person of another that amounts to a felony.

(3) An offense involving sexual misconduct with children.

(4) An offense as defined under Sections 311, 647, subdivision (a), 647a, 315, 316 or 318 of the Penal Code of the State of California.

(5) The County Health Officer shall disregard any conviction mentioned in subsections (a), (b), (c) or (d) of this section if he finds that the applicant has fully completed any sentence imposed because of such conviction and has fully complied with any conditions imposed because of such conviction, which conviction has occurred at least three years prior to the date of application and the applicant has not subsequently been convicted of any of the crimes herein mentioned nor has suffered any subsequent felony convictions involving the use of force of violence on the person of another.

SEC. 42.0409 REGISTER TO BE MAINTAINED

The operator of a bathhouse must maintain a register of all persons employed as an employee of a bathhouse, which register shall be available for inspection at all times during regular business hours. The register shall contain the following information for each employee:

(a) Name and residence address.

(b) Social security number and driver's license number, if any.

(c) Employee's height, weight, color of eyes and hair.

(d) Written evidence that the employee is over the age of 18 years.

(e) Business, occupation or employment of the employee for the three years immediately preceding the date of beginning employment with the bathhouse.

(f) The County Health Officer shall have the right to take fingerprints and photographs of an employee and the right to confirm the information contained in the register.

SEC. 42.0410 EMPLOYMENT OF PERSONS UNDER THE AGE OF EIGHTEEN YEARS PROHIBITED.

It shall be unlawful for the owner, proprietor, manager or any other person in charge of any bathhouse to employ any person under the age of 18 years.

SEC. 42.0411 SALE OR TRANSFER

Upon sale, transfer or relocation of a bathhouse, the permit therefor shall be null and void.

SEC. 42.0412 NAME AND PLACE OF BUSINESS - CHANGE OF LOCATION

No person granted a permit pursuant to this chapter shall operate under any name or conduct his business under any designation or in any location not specified in his permit.

SEC. 42.0413 DAILY REGISTER

Every person who engages in or conducts a public bathhouse as herein defined shall keep a daily register, approved in form by the County Health Officer, of the number of patrons admitted, their hour of arrival and their hour of departure. Said daily register shall at all times during business hours be subject to inspection by the Department of Health Services and by the County Health Officer and shall be kept on file for one year.

SEC. 42.0414 LOCKED CUBICLE, ROOM, BOOTH, ETC.

No service enumerated in Section 42.0401(a) of this chapter may be carried on within any cubicle, room or booth or in any area within a bathhouse by whatever designation whatsoever which is fixed with a door capable of being locked.

SEC. 42.0415 PRIVATE ROOMS

No private room, as hereinafter defined, shall be maintained within any bathhouse. "Private room" shall mean any enclosed space large enough for more than one person to enter with a door capable of being locked from the inside, unless one or more of the following applies:

(a) There is an opening no less than five feet for more than six feet above the floor through which the full interior of the enclosure is viewable from the exterior; or

(b) The enclosure is not made available for use by patrons of the establishment; or

(c) No more than one person at a time is allowed to enter the enclosure, the occupancy restriction is conspicuously posted on the entrance to the enclosure and there are no openings between any adjoining enclosures through which physical contact between persons in adjoining enclosures is possible.

SEC. 42.0416 MONITORING AND EXPULSION OF CUSTOMERS

(a) No person shall operate a bathhouse unless employee-monitors are provided for the exclusive and sole purpose of observation of activity on the bathhouse premises. Two monitors shall be provided for any floor or portion of a floor open to patrons, provided, however, that the bathhouse operator may, in the alternative, provide one monitor for each twenty patrons based on the average hourly patronage for the bathhouse during the preceding calendar month, calculated for the hours that the bathhouse is open, provided that at least one monitor shall be on duty at all times that the bathhouse is open. The average number of patrons during each hour shall be calculated from the daily register required by the provisions of Section 42.0413. Such monitors shall survey the entire portion of the bathhouse open to patrons every fifteen minutes.

(b) The bathhouse operator shall immediately expel from the premises any and all persons observed causing the maximum occupancy requirements of this chapter to be violated, any and all persons committing any crime on

the premises or any and all persons engaged in high risk sexual activity on the premises. For the purposes of this chapter, "high risk sexual activity" shall mean:

(1) The placing of the male penis on or into the anus, vagina or mouth of another person;

(2) The placing of the mouth of one person on the anus, vagina or penis of another person;

(3) The contact of feces or urine of one person with any part of the body of another person; or,

(4) The entry of any part of the body of one person into the anus or vagina of another person.

SEC. 42.0417 DISPLAY OF PERMIT

Every person to whom or for whom a permit shall have been granted pursuant to the provisions of this chapter shall display said permit in a conspicuous place in a bathhouse so that the same may be readily seen by persons entering the premises.

SEC. 42.0418 INSPECTIONS

The Department of Health Services shall from time to time, and at least once a month, make an inspection of each bathhouse for the purpose of determining that the provisions of this chapter are complied with.

SEC. 42.0419 PERMIT NOT TRANSFERABLE

No bathhouse permit shall be transferred from person to person or from one location to another.

SEC. 42.0420 UNLAWFUL ACTIVITIES

It shall be unlawful for any person to give or administer any bath or baths as defined herein, or to give or administer any of the other things mentioned in this chapter, which violate the provisions of this chapter or the regulations adopted pursuant to this chapter or which violate any state or local laws or ordinances. Any violation of this provision shall be deemed grounds or revocation of the permit granted hereunder.

SEC. 42.0421 HEALTH AND SANITATION REQUIREMENTS AND REGULATIONS

Every bathhouse shall be maintained and operated in a clean and sanitary manner. All bathhouses shall comply with all applicable building, health, zoning and fire laws of The City of San Diego. In addition, the Director of the Department of Health Services may, after a noticed public hearing, adopt and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this chapter. All bathhouse operators holding a valid permit shall be given written notice of the public hearing, including a copy of the proposed regulations, at least ten days prior to the date of the hearing. In addition, notice of the public

hearing and a summary of the proposed regulations shall be published in an appropriate newspaper of general circulation one time at least ten days prior to the public hearing. The rules and regulations shall include reasonable requirements to protect the health and safety of bathhouse patrons, including reasonably necessary requirements for educational programs and other measures for the prevention and control of the spread of Acquired Immune Deficiency Syndrome (AIDS) and other infectious or communicable diseases.

SEC. 42.0422 VIOLATIONS

Every person who violates any provision of this chapter is guilty of a misdemeanor.

SEC. 42.0423 DENIAL, SUSPENSION OR REVOCATION OF PERMIT

Any permit issued pursuant to this chapter may be suspended or revoked by the San Diego County Department of Health Services on proof of violation by the permittee of any provisions of state law, this chapter, City ordinances or in any case where the Director of Health Services determines the bathhouse is being managed, conducted or maintained without regard for the public health, or the health of patrons or customers, or without due regard to proper sanitation of hygiene. Where a permit is denied or a permit renewal is denied, or where a permit is suspended or revoked by the San Diego County Department of Health Services, such denial,

suspension, or revocation may be appealed by the permit applicant or permittee to the San Diego County Deputy Director of Environmental Health Services and then to the City Manager. The decision of the City Manager shall be final.

SEC. 42.0424 SEVERABILITY

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

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 Mary Kay Jackson
Mary Kay Jackson
Deputy City Attorney

MKJ:mrh
03/17/88
Or.Dept:Risk.Mgmt.
O-88-156
Form=o.none

Passed and adopted by the Council of The City of San Diego on APR 04 1988,
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR,
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.

(Seal)

By Jana M. Martin, 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

MAR 22 1988

APR 04 1988

, 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 Jana M. Martin, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-17047 Adopted APR 04 1988

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
1988 APR 28 PM 12:04
SAN DIEGO, CALIF.

CITY OF SAN DIEGO
202 C STREET, 2ND FLOOR
SAN DIEGO, CA 92101
ATTN: TENA MARTIN

IN THE MATTER OF
AN ORDINANCE AMENDING CHAPTER IV, ARTICLE 2, DIVISION
4, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTIONS
42.0400, 42.0401, 42.0402, 42.0403, 42.0404, 42.0405,
42.0406, 42.0407, 42.0408, 42.0409, ET AL . . .
RELATING TO BATHHOUSES.

NO.

ORDINANCE NUMBER O-17047 (NEW SERIES)

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An ordinance amending the San Diego Municipal Code by adding to Chapter IV, Article 2 a new Division 4 entitled "Regulation of Bathhouses." Because the County Health Department has declared that the sexual activities that occur in bathhouses contribute significantly to the spread of AIDS, this ordinance strictly regulates the physical premises of establishments defined as bathhouses, activities occurring in bathhouses and also requires that permits be obtained from County Health to operate bathhouses. Issuance of permits and inspections will be done by the County Health Department.

Introduced on MAR 22 1988
Passed and adopted by the Council of The City of San Diego on APR 24 1988

AUTHENTICATED BY: MAUREEN O'CONNOR
Mayor of The City of San Diego, California
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California
By Tena M. Martin, Deputy
Pub. April 20

106695

THOMAS D. KELLEHER

I, _____, 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 NUMBER O-17047 (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:

APRIL 20

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

Dated at San Diego, California this 20 day of APRIL, 19 88.



(Signature)

28 lines x .98 = 54.98

2 1/2 x 2 x 10.78 = 53.90