

(O-2000-4)

ORDINANCE NUMBER O- 18662 (NEW SERIES)

ADOPTED ON JUL 19 1999

AN EMERGENCY ORDINANCE AMENDING CHAPTER III, ARTICLE 3, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 33.0306; AMENDING CHAPTER III, ARTICLE 3, DIVISION 5 BY AMENDING SECTIONS 33.0501 AND 33.0502; AMENDING CHAPTER III, ARTICLE 3, DIVISION 36, BY AMENDING SECTIONS 33.3606 AND 33.3608, AND AMENDING CHAPTER X, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 101.0304, ALL RELATING TO THE APPLICATION, DENIAL, SUSPENSION, REVOCATION, AND APPEAL PROCESSES FOR ADULT ENTERTAINMENT BUSINESSES OPERATING OR DESIRING TO OPERATE IN THE CITY OF SAN DIEGO.

WHEREAS, a recent Ninth Circuit decision in *Baby Tam & Co. v. City of Las Vegas*, 154 F.3d 1097 (1998), held that cities requiring permits and licenses for adult entertainment businesses protected by the First Amendment must provide those wishing to open an adult entertainment business with prompt judicial review of denials of permits or licenses; and

WHEREAS, that federal decision was followed last month by a San Diego Superior Court judge dismissing criminal charges against an adult entertainment business because the judge found that certain provisions of the Municipal Code regulating the establishment of adult entertainment businesses were unenforceable; and

WHEREAS, in order to comply with the Ninth Circuit's ruling, the City must provide access to the judiciary in a prompt manner, which includes giving an applicant an expeditious administrative decision; and

WHEREAS, minimal procedural changes to the zoning use certificate procedures and police regulated business procedures are needed to bring them into compliance with Federal law; and

WHEREAS, the State of California passed urgency legislation to address this problem on July 1, 1999 (S.B. 1165, Chapter 49, Statute of 1999, adding Section 1094.8 to the Code of Civil Procedure); and

WHEREAS, an emergency exists in that the current procedures regulating where an adult entertainment business can locate, or who can operate such an establishment, are vulnerable to constitutional attack in light of recent court rulings; and

WHEREAS, this vulnerability to constitutional attack also means that other police regulations governing such businesses are also subject to constitutional attack; and

WHEREAS, these regulations were created to minimize the adverse secondary effects in and around these businesses as acknowledged in the following studies: Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1983); Beaumont, Texas (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); Los Angeles, California (1977); and

WHEREAS, there is an immediate threat to property in that these businesses could potentially locate anywhere in the City, including residential areas or within close proximity to each other, negatively impacting property values due to the undesirable secondary effects of these businesses, as described in *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976) and

*City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), and the studies referred to above;  
and

WHEREAS, enactment of these procedures will protect and preserve the constitutional rights of adult entertainment businesses protected by the First Amendment; NOW,  
THEREFORE,

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

Section 1. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code is hereby amended by amending Section 33.0306, to read as follows:

**SEC. 33.0306 Time Allowed for Investigation**

(a) Notwithstanding any other provision of this Article to the contrary, and except as provided for in Section 33.0306(b), if the Chief of Police fails to act on any permit application within sixty calendar days from the date of delivery of a complete application to the Chief, the application is deemed to be approved and the permit shall be issued. The Chief of Police, upon written notification to the applicant, shall be allowed additional time, not to exceed fourteen calendar days, that is reasonably necessary to complete the investigation.

(b) If the Chief of Police fails to act on any permit application from an applicant permitted under Division 33 (Peep Show Establishment) or Division 36 (Nude Entertainment Business and Nude Entertainers) within thirty calendar days from the date of delivery of a complete application to the Chief, the application is deemed to be approved.

Section 2. That Chapter III, Article 3, Division 5, of the San Diego Municipal Code is hereby amended by amending Sections 33.0501 and 33.0502 to read as follows:

**SEC. 33.0501 Right of Appeal - Hearing Officer**

(a) Except as provided for in Section 33.0501(b) and (c), any person who has been denied a license or permit, or any person whose license or permit issued pursuant to this Article has been suspended or revoked by action taken by the Chief of Police, may request a hearing conducted by a hearing officer. The request for a hearing must be in writing to the City Manager and must be made within ten calendar days from the date of the action denying, suspending, or revoking the license or permit. Failure to file the request for a hearing in a timely manner shall be grounds to deny a hearing by the hearing officer. Upon receiving a written request for a hearing, the City Manager or his or her delegate shall cause a hearing to be set not less than five nor more than thirty calendar days from the date of receipt of the appeal. The City Manager shall send a written notice of the hearing to the applicant, licensee or permittee by means of registered mail, certified mail, or hand-delivery. The notice shall include the date, time, and place of hearing. The hearing shall be conducted to determine the existence of any facts that constitute grounds for the denial, suspension, or revocation of a license or permit. The hearing shall be conducted by a hearing officer selected 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 that constitute grounds for denial, suspension, or revocation of the license or permit shall be considered un rebutted. The hearing officer may uphold the denial, suspension, revocation, or other decision of the Chief of Police or may allow that which has been denied, reinstate that which has been suspended or revoked, or reverse any other decision of the Chief of Police that is the subject of the appeal. A copy of the decision of the hearing officer specifying findings of fact and the reason for the decision shall be furnished to the applicant, licensee, permittee, or the designated representative. The decision of the hearing officer shall be final ten calendar days from the mailing of the decision of the hearing officer to the parties, except in the event of an appeal as provided in Section 33.0502. Except as to the emergency provisions of Section 33.0401, the effect of a decision by the Chief of Police shall be stayed while an appeal to the hearing officer is pending or until the time for filing such appeal has expired. 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.

(b) Any person who has been denied a permit for a business or occupation regulated under Division 33 or 36 may seek prompt judicial review of the denial of that permit pursuant to the California Code of Civil Procedure. The decision of the Chief of Police to deny the permit is the final administrative

action. Section 33.0501(a) does not apply to the denial of a permit sought under Division 33 or Division 36.

(c) Any person who holds a police permit under Division 33 or 36, and has that permit suspended or revoked, shall have the same appeal rights as those outlined in Section 33.0501(a), except that:

(1) The hearing officer shall issue and mail his or her decision within five calendar days of the completion of the appeal hearing to suspend or revoke the permit; and

(2) The decision of the hearing officer shall be final five calendar days from the mailing of the decision to the parties, and shall be the final administrative remedy; and

(3) There is no appeal to the City Council or any subcommittee thereof; and

(4) The permittee may seek prompt judicial review of the hearing officer's decision pursuant to the California Code of Civil Procedure; and

(5) The effect of the decision of the hearing officer shall be stayed while the permittee seeks prompt judicial review.

**SEC. 33.0502 Right of Appeal to City Council**

The applicant, licensee, permittee, and the Chief of Police shall have the right to appeal the hearing officer's decision pursuant to this Article to the Committee on Public Safety and Neighborhood Services of the City Council. When a permit or license authorized under the provisions of this Article is

granted, denied, suspended, or revoked by a hearing officer, that decision shall be the final administrative remedy unless an appeal to the Committee on Public Safety and Neighborhood Services is filed in writing with the City Clerk within ten calendar days of receipt of the hearing officer's written decision. When an appeal is filed with the City Clerk, it shall be placed on the Committee on Public Safety and Neighborhood Services agenda for the limited purpose of determining whether the Committee will hear the appeal. The Committee will accept an appeal for hearing when any of the following situations are found to exist:

(1) through (5) [No change.]

[No change to last two paragraphs.]

Section 33.0502 does not apply to applicants, licensees, or permittees regulated under Divisions 33 and 36.

Section 3. That Chapter III, Article 3, Division 36, is hereby amended by amending Section 33.3606, to read as follows:

**SEC. 33.3606 Nude Entertainment License**

(a) [No change.]

(b) [No change in text.]

(1) [No change in text.]

(2) [No change in text.]

(3) [No change in text.]

(4) [No change in text.]

(5) [No change in text.]

(6) [No change in text.]

(7) [No change in text.]

(8) [No change in text.]

(9) [No change in text.]

(10) [No change in text.]

(11) [No change in text.]

(12) [No change in text.]

(13) [No change in text.]

(14) [No change in text.]

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

(d) A license shall be issued within thirty calendar 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) [No change in text.]

(2) [No change in text.]

(3) [No change in text.]

(4) [No change in text.]

(5) [No change in text.]

(6) [No change in text.]



Section 4. That Chapter III, Article 3, Division 36, of the San Diego Municipal Code is hereby amended by amending Section 33.3608, to read as follows:

**SEC. 33.3608 Nude Entertainer Permit**

(a) and (b) [No change.]

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

(d) A permit shall be issued within thirty calendar 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) through (4) [No change.]

(e) [No change.]

Section 5. That Chapter X, Article I, Division 3 of the Municipal Code is hereby amended by amending Section 101.0304, to read as follows:

**SEC. 101.0304 Zoning Use Certificate**

(a) [No change in text.]

(b) [No change in text.]

(c) [No change in text.]

(d) [No change in text.]

(e) [No change in text.]

(f) DETERMINATION

(1) An application of a Zoning Use Certificate may be approved or denied by the Zoning Administrator in accordance with "Process One." If the proposed use does not conform with the zone's use regulations, does not constitute a nonconforming use in the general regulations, Sections 101.0301 and 101.0303 of the Municipal Code, or is otherwise prohibited by law, then the Zoning Use Certificate shall not be approved.

(2) In addition to section 101.0304.F.1, the following regulations shall only apply to those businesses regulated under Section 101.1801.3.A through 101.1801.3.F and 101.1801.3.H of the Municipal Code.

A. Upon receipt of a Zoning Use Certificate application, the Zoning Administrator shall promptly investigate the information provided in the application, which may include inspecting the proposed location of the business to determine whether the proposed site complies with all applicable zoning regulations.

B. Within fifteen business days after receipt of a complete Zoning Use Certificate application, the Zoning Administrator shall approve or deny the issuance of a Zoning Use Certificate. If the Zoning Use Certificate is denied, the Zoning Administrator shall advise the applicant in writing of the reasons for the denial. Notwithstanding any other provision of this Section to the contrary, if the Zoning Administrator fails to act on the Zoning Use Certificate application within the time proscribed, the application shall be deemed

to have been approved and the Zoning Use Certificate shall be issued.

C. The decision by the Zoning Administrator to approve or deny the issuance of a Zoning Use Certificate shall be the final administrative action and the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(g) [No change in text.]

(h) [No change in text.]

Section 6. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 7. That this emergency ordinance requires six votes for passage and shall take effect and be in force on the day of its adoption by the Council of The City of San Diego in accordance with Charter sections 16 and 17.

Section 8. This ordinance expires on the effective date of ordinance number O- 18663, once the effective date is known. The City Clerk is instructed to insert the ordinance number and effective date, once known.

APPROVED: CASEY GWINN, City Attorney

By Mary T. Ndesca  
Mary T. Ndesca  
Deputy City Attorney

MJL:MTN:cdk:jrp  
07/13/99  
Or.Dept:City Attorney  
O-2000-4

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: ~~Struck Out~~**

**NEW LANGUAGE: Underlined**

(O-2000-4)

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

ADOPTED ON \_\_\_\_\_

AN EMERGENCY ORDINANCE AMENDING CHAPTER III, ARTICLE 3, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 33.0306; AMENDING CHAPTER III, ARTICLE 3, DIVISION 5 BY AMENDING SECTIONS 33.0501 AND 33.0502; AMENDING CHAPTER III, ARTICLE 3, DIVISION 36, BY AMENDING SECTIONS 33.3606 AND 33.3608, AND AMENDING CHAPTER X, ARTICLE 1, DIVISION 3, BY AMENDING SECTION 101.0304, ALL RELATING TO THE APPLICATION, DENIAL, SUSPENSION, REVOCATION, AND APPEAL PROCESSES FOR ADULT ENTERTAINMENT BUSINESSES OPERATING OR DESIRING TO OPERATE IN THE CITY OF SAN DIEGO.

**SEC. 33.0306 Time Allowed for Investigation**

(a) Notwithstanding any other provision of this Article to the contrary, and except as provided for in Section 33.3036(b), if the Chief of Police ~~shall fail~~ fails to act on any license permit application within sixty ~~(60)~~ calendar days from the date of its delivery of a complete application to him the Chief, said the application ~~shall be~~ is deemed to ~~have been~~ be approved and the license permit shall be issued; ~~provided, however, that~~ The Chief of Police, upon written notification to the applicant, shall be allowed ~~such~~ additional time, not to exceed fourteen ~~(14)~~ calendar days, ~~as may~~ that is reasonably be necessary to complete the investigation.

(b) If the Chief of Police fails to act on any permit application from an applicant permitted under Division 33 (Peep Show Establishment) or Division 36 (Nude Entertainment Business and Nude Entertainers) within thirty calendar days from the date of delivery of a complete application to the Chief, the application is deemed to be approved.

**SEC. 33.0501 Right of Appeal - Hearing Officer**

(a) Except as provided for in Section 33.0501(b) and (c), Any person who has been denied a license or permit, or any person whose license or permit issued pursuant to this Article has had been suspended or revoked by action taken by the Chief of Police, ~~to suspend or revoke,~~ may request a hearing conducted by a hearing officer ~~selected by the City Manager.~~ The request for a hearing must be in writing to the City Manager and must be made within ten ~~(10)~~ calendar days from the date of the action denying, suspending, or revoking the license or permit. Failure to file the request for a hearing in a timely manner shall be grounds to deny a hearing by the hearing officer. Upon receiving a written request for a hearing, the City Manager or his or her delegate shall cause a hearing to be set not less than five ~~(5)~~ nor more than thirty ~~(30)~~ calendar days from the date of receipt of the appeal, ~~and The City Manager shall set forth in writing and send~~ shall send a written notice of the hearing to the applicant, licensee or permittee by means of registered mail, certified mail, or hand - delivery. ~~notice of the hearing which 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 hearing.~~ The notice shall include the date, time, and place of hearing. The hearing shall be conducted to determine the existence of any facts that constitute grounds for the denial, suspension, or revocation of a license or permit. 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 ~~that~~ 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~~ that constitute grounds for denial, suspension or revocation of the license or permit shall be considered un rebutted. The hearing officer may uphold the denial, suspension, revocation, or other decision of the Chief of Police or may allow that which has been denied, reinstate that which has been suspended or revoked, or reverse any other decision of the Chief of Police ~~which~~ that is the subject of the appeal. A copy of the decision of the hearing officer specifying findings of fact and the reason for the decision shall be furnished to the applicant, ~~or~~ licensee, permittee, or the designated representative. The decision of the hearing officer shall be final ten ~~(10)~~ calendar days from the ~~action~~ mailing of the decision of the hearing officer to the parties, except in the event of an appeal as provided in Section 33.0502. Except as to the emergency provisions of Section 33.0401, the effect of a decision by the Chief of Police shall be stayed while an appeal to the hearing officer is pending or until the time for filing such appeal has expired. 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.

(b) Any person who has been denied a permit for a business or occupation regulated under Division 33 or 36 may seek prompt judicial review of the denial of that permit pursuant to the California Code of Civil Procedure. The decision of the Chief of Police to deny the permit is the final administrative action. Section 33.0501(a) does not apply to the denial of a permit sought under Division 33 or Division 36.

(c) Any person who holds a police permit under Division 33 or 36, and has that permit suspended or revoked, shall have the same appeal rights as those outlined in Section 33.0501(a), except that:

(1) The hearing officer shall issue and mail his or her decision within five calendar days of the completion of the appeal hearing to suspend or revoke the permit; and

(2) The decision of the hearing officer shall be final five calendar days from the mailing of the decision to the parties, and shall be the final administrative remedy; and

(3) There is no appeal to the City Council or any subcommittee thereof; and

(4) The permittee may seek prompt judicial review of the hearing officer's decision pursuant to the California Code of Civil Procedure; and

(5) The effect of the decision of the hearing officer shall be

stayed while the permittee seeks prompt judicial review.

**SEC. 33.0502 Right of Appeal to City Council**

The applicant, licensee, permittee, and the Chief of Police shall have the right to appeal the hearing officer's decision pursuant to this Article to the Committee on Public Safety and Neighborhood Services of the City Council. When a permit or license authorized under the provisions of this Article is granted, denied, suspended, or revoked by the a hearing officer, that decision shall be the final administrative remedy unless an appeal to the Committee on Public Safety and Neighborhood Services is filed in writing with the City Clerk within ten ~~(10)~~ calendar days of receipt of the hearing officer's written decision. When an appeal is filed with the City Clerk, it shall be placed on the Committee on Public Safety and Neighborhood Services agenda for the limited purpose of determining whether the Committee will hear the appeal. The Committee will accept an appeal for hearing when any of the following situations are found to exist:

(1) through (5) [No change.]

[No change to last two paragraphs.]

Section 33.0502 does not apply to applicants, licensees, or permittees regulated under Divisions 33 and 36.

**SEC. 33.3606 Nude Entertainment License**

(a) [No change.]

(b) [No change in text.]



~~1-~~ (1) [No change in text.]

~~2-~~ (2) [No change in text.]

~~3-~~ (3) [No change in text.]

~~4-~~ (4) [No change in text.]

~~5-~~ (5) [No change in text.]

~~6-~~ (6) [No change in text.]

~~7-~~ (7) [No change in text.]

~~8-~~ (8) [No change in text.]

~~9-~~ (9) [No change in text.]

~~10-~~ (10) [No change in text.]

11. (11) [No change in text.]

~~12-~~ (12) [No change in text.]

~~13-~~ (13) [No change in text.]

~~14-~~ (14) [No change in text.]

(c) The Chief of Police shall have a reasonable time, not to exceed ~~sixty (60)~~ thirty calendar days, in which to investigate the application and the background of the applicant.

(d) A license shall be issued within ~~sixty (60)~~ thirty calendar 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-~~ (1) [No change in text.]

~~2-~~ (2) [No change in text.]

3- (3) [No change in text.]

4- (4) [No change in text.]

5- (5) [No change in text.]

6- (6) [No change in text.]

**SEC. 33.3608 Nude Entertainer Permit**

(a) and (b) [No change.]

(c) The Chief of Police shall have a reasonable time, not to exceed ~~sixty (60)~~ thirty calendar days, in which to investigate the application and the background of the applicant.

(d) A permit shall be issued within ~~sixty (60)~~ thirty calendar 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) through (4) [No change.]

(e) [No change.]

**SEC. 101.0304 Zoning Use Certificate**

A- (a) [No change in text.]

B- (b) [No change in text.]

C- (c) [No change in text.]

D- (d) [No change in text.]

E- (e) [No change in text.]

F- (f) DETERMINATION

(1) An application of a Zoning Use Certificate may be

approved or denied by the Zoning Administrator in accordance with "Process One." If the proposed use does not conform with the zone's use regulations, or does not constitute a nonconforming use in the general regulations, Sections 101.0301 and 101.0303 of the Municipal Code or is otherwise prohibited by law, then the Zoning Use Certificate shall not be approved.

(2) In addition to section 101.0304.F.1, the following regulations shall only apply to those businesses regulated under Section 101.1801.3.A through 101.1801.3.F and 101.1801.3.H of the Municipal Code.

A. Upon receipt of a Zoning Use Certificate application, the Zoning Administrator shall promptly investigate the information provided in the application, which may include inspecting the proposed location of the business to determine whether the proposed site complies with all applicable zoning regulations.

B Within fifteen business days after receipt of a complete Zoning Use Certificate application, the Zoning Administrator shall approve or deny the issuance of a Zoning Use Certificate. If the Zoning Use Certificate is denied, the Zoning Administrator shall advise the applicant in writing of the reasons for the denial. Notwithstanding any other provision of this Section to the contrary, if the Zoning Administrator fails to act on the Zoning Use Certificate application within the time proscribed, the application shall be deemed to have been approved and the Zoning Use Certificate shall be issued.

C. The decision by the Zoning Administrator to approve or deny the issuance of a Zoning Use Certificate shall be the final administrative action and the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

G. (g) [No change in text.]

H. (h) [No change in text.]