

ORDINANCE NUMBER O- 18716 (NEW SERIES)

ADOPTED ON NOV 22 1999

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 3, DIVISION 3, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING A NEW SECTION 123.0306; BY RENUMBERING CURRENT SECTION 123.0306 TO SECTION 123.0307; AND BY RENUMBERING AND AMENDING CURRENT SECTION 123.0307 TO SECTION 123.0308, RELATING TO A ZONING USE CERTIFICATE FOR ADULT ENTERTAINMENT.

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, 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, 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, San Diego Municipal Code section 101.0304 - Zoning Use Certificate Regulations - was amended to provide an applicant with an expeditious administrative decision; and

WHEREAS, the City Council adopted the Land Development Code, which, upon certification by the California Coastal Commission, will cause San Diego Municipal Code section 101.0304 to be repealed; and

WHEREAS, enactment of these amendments to the Land Development Code will make the zoning use certificate regulations consistent with currently existing zoning use certificate regulations; 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 12, Article 3, Division 3, of the San Diego Municipal Code is amended by adding a new section 123.0306, to read as follows:

**SEC. 123.0306 Decision on a Zoning Use Certificate for Adult Entertainment**

In addition to the requirements identified in Section 123.0305, the following requirements shall apply to Zoning Use Certificates requested for those businesses identified in Sections 141.0601(a)(2) through 141.0601(a)(4), 141.0601(a)(6), 141.0601(a)(9), 141.0601(a)(10) and 141.0601(a)(12) :

(a) Upon receipt of a Zoning Use Certificate application, the City Manager 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 City Manager shall approve or deny the issuance of a

Zoning Use Certificate. If the Zoning Use Certificate is denied, the City Manager shall advise the applicant in writing of the reasons for the denial.

Notwithstanding any other provision of this Division to the contrary, if the City Manager 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 City Manager 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.

Section 2. That Chapter 12, Article 3, Division 3, of the San Diego Municipal Code is amended by renumbering current Section 123.0306 to Section 123.0307 to read as follows:

**SEC. 123.0307 Issuance of a Zoning Use Certificate**

The City Manager shall issue the Zoning Use Certificate when the required fees have been paid and the certificate has been approved.

Section 3. That Chapter 12, Article 3, Division 3, of the San Diego Municipal Code is amended by renumbering and amending current Section 123.0307 to Section 123.0308 to read as follows:

**SEC. 123.0308 Expiration of a Zoning Use Certificate**

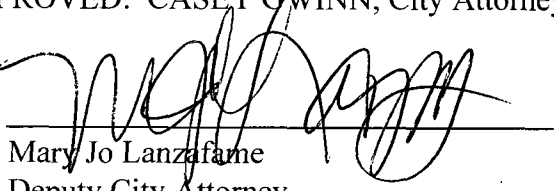
A Zoning Use Certificate expires 180 calendar days after issuance if the business use specified in the certificate has not commenced at the approved location.

Section 4. 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 5. That this ordinance shall take effect and be in force on the date the Land Development Code becomes effective pursuant to Ordinance No. O- **18691** (O-99-116).

APPROVED: CASEY GWINN, City Attorney

By

  
Mary Jo Lanzafame  
Deputy City Attorney

MJL:cdk:pev  
09/24/99  
Or.Dept:CA  
O-2000-27

**STRIKEOUT ORDINANCE**

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

**NEW LANGUAGE: Redlined**

(O-2000-27COR.COPY)

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**SEC. 123.0306 Decision on a Zoning Use Certificate for Adult Entertainment**

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(b) Within fifteen business days after receipt of a complete Zoning Use Certificate application, the City Manager shall approve or deny the issuance of a Zoning Use Certificate. If the Zoning Use Certificate is denied, the City Manager shall advise the applicant in writing of the

reasons for the denial. Notwithstanding any other provision of this Division to the contrary, if the City Manager 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 City Manager 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.

**SEC. ~~123.0306~~123:0307 Issuance of a Zoning Use Certificate**

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