

ORDINANCE NUMBER O- 18749 (NEW SERIES)

ADOPTED ON FEB 22 2000

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 1, DIVISION 6, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 141.0601 RELATING TO COMMERCIAL SERVICES USE CATEGORY -- SEPARATELY REGULATED USES, ADULT ENTERTAINMENT BUSINESSES.

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

Section 1. That Chapter 14, Article 1, Division 6, of the San Diego Municipal Code be and the same is hereby amended by amending Section 141.0601, to read as follows:

SEC. 141.0601 Adult Entertainment Businesses

- (a) This section regulates the following adult entertainment businesses.
- (1) Adult body painting studios: Any business that provides the service of applying paint or other substance, whether transparent or nontransparent, to or on a human body whether the body is wholly or partially nude in terms of *specified anatomical areas*.
 - (2) Adult stores: Any business that devotes more than 15 percent of the total display, shelf, rack, table, stand, or *floor* used for the display of merchandise for sale or rent to the display of books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, slides, tapes, records, DVDs, CD-Rom, or other forms of visual or audio representations that are characterized

by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* or instruments, devices, or paraphernalia that are designed for use in connection with *specified sexual activities*.

- (3) Adult cabarets: Any nightclub, bar, restaurant, or similar business that features live performances or features films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by an emphasis on depicting or describing *specified sexual activities* or by exposure of *specified anatomical areas* on more than 7 calendar days within any 56-consecutive-day period.
- (4) Adult out-door theaters: Any *premises* and appurtenant facilities that are primarily used for the presentation of motion pictures, films, theatrical productions, or other forms of visual productions to persons in motor vehicles or on outdoor seats, where 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 on more than 7 calendar days within any 56-consecutive-day period.
- (5) Adult massage businesses: Any premise and appurtenant facilities that are primarily used for massage, alcohol rub, fomentation, body scrub, body shampoo, electric or magnetic treatment, or similar

treatment or manipulation of the human body is administered, unless the treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the State of California.

Adult entertainment businesses do not include massage businesses that provide only specialized massage services that are operated in accordance with Section 141.0613.

- (6) Adult mini-motion picture theaters: Any business with a seating capacity of more than 5 but less than 50 persons where films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown and where the material shown is distinguished or characterized by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* for observation by patrons on more than 7 calendar days within any 56-consecutive-day period.
- (7) Adult model studios: Any business open to the public where 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 and who pay a consideration or gratuity. Adult model studios do not include any school of art that is operated by an individual, firm, association, partnership, corporation, or institution that is authorized under the California Education Code to issue or confer a diploma.

- (8) *Adult motels*: Any *motel* or similar business offering public accommodations that provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions on more than 7 calendar days within any 56-consecutive-day period where the material is distinguished or characterized by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* for observation by patrons.
- (9) *Adult motion picture theaters*: Any business with a seating capacity of 50 or more persons where motion pictures, video cassettes, slides, or similar photographic reproductions are shown on more than 7 calendar days within any 56-consecutive-day period and where the material is distinguished or characterized by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* for observation by patrons.
- (10) *Adult peep show businesses*: Any place to which the public is permitted or invited where devices that display still or moving images are maintained in a peep booth, as defined in Municipal Code Section 33.3302(c), where the images are available for observation for more than 7 calendar days within any 56-consecutive-day period are distinguished or characterized by an emphasis on depicting or describing *specified sexual activities* or *specified anatomical areas*.

- (11) Adult sexual encounter businesses: Any business, other than a hotel, *motel*, or similar business offering public accommodations that 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*. Adult sexual encounter businesses do not include businesses where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of California engages in sexual therapy.
- (12) Adult theaters: Any theater, concert hall, auditorium, or similar business either indoor or outdoor, that regularly features live performances that are distinguished or characterized by an emphasis on *specified sexual activities* or exposure of *specified anatomical areas* for observation by patrons on more than 7 calendar days within any 56-consecutive-day period.
- (b) Adult entertainment businesses are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.
- (1) Adult entertainment businesses shall not be established, enlarged, or undergo a transfer of ownership or control if the *structure* housing the business would be located within 1,000 feet of any of the following:
- (A) Another *structure* housing an adult entertainment business;
 - (B) The *property line* of a residentially zoned property; or

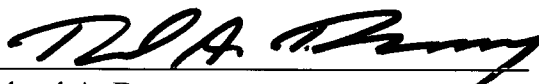
- (C) The *property line* of a *church* except those established in accordance with Section 141.0404(a), a *school*, a *public park*, or a *social service institution*.
- (2) If a *church* other than one established in accordance with Section 141.0404(a), a *school*, a *public park*, a *social service institution*, or a residential zone is established within 1,000 feet of an adult entertainment business, the person possessing ownership or control of the adult entertainment business is permitted to transfer ownership or control within 2 years of the date on which the *school* begins a course of instruction for students, the *church* or *social service institution* is opened for use, the *public park* is dedicated, or the ordinance establishing the residential zone becomes effective. The person acquiring the ownership or control, however, shall be required to discontinue the adult entertainment business within 5 years from the date of the transfer of ownership or control if the business continues to be within 1,000 feet of the uses or properties listed in Section 141.0601(b)(1).
- (3) The public health, safety, and welfare shall be preserved and protected by applying the provisions of this section in the following descending order of importance:
- (A) Proximity to other adult entertainment businesses;
 - (B) Proximity to *schools*;
 - (C) Proximity to *churches*;

- (D) Proximity to *public parks*;
- (E) Proximity to residential zones; and
- (F) Proximity to *social service institutions*.

Section 2. 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 3. Except in the Coastal Overlay Zone, this ordinance shall take effect and be in force on the thirtieth day from and after its passage. Within the Coastal Overlay Zone, this ordinance shall be in force and effect on the date it is effectively certified by the California Coastal Commission as a City of San Diego Local Coastal Program amendment.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

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NEW LANGUAGE: Redlined

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SEC. 141.0601 Adult Entertainment Establishments ~~Businesses~~

(a) This section regulates the following adult entertainment establishments ~~businesses~~.

- (1) Adult body painting studios: Any establishment ~~or business~~ that provides the service of applying paint or other substance, whether transparent or nontransparent, to or on a human body whether the body is wholly or partially nude in terms of *specified anatomical areas*.
- (2) Adult bookstores: Any establishment ~~business~~ that devotes more than 15 percent of the total display, shelf, rack, table, stand, or *floor* used for the display of books and periodicals to ~~merchandise for sale or rent~~ to the display and sale of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, ~~DVDs, CD-Rom~~ or other forms of visual or audio representations that are characterized by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* or

instruments, devices, or paraphernalia that 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.

- (3) Adult cabarets: Any nightclub, bar, restaurant, or similar establishment ~~business~~ that features live performances or features films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by an emphasis on depicting or describing *specified sexual activities* or by exposure of *specified anatomical areas* on more than 7 calendar days within any 56-consecutive-day period.
- (4) Adult drive-in-out-door theaters: Any ~~premises~~ and appurtenant facilities that are primarily used for the presentation of motion pictures, films, theatrical productions, or other forms of visual productions to persons in motor vehicles or on outdoor seats, where 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 on more than 7 calendar days within any 56-consecutive-day period.
- (5) Adult massage establishments ~~businesses~~: Any establishment where ~~premise and appurtenant facilities that are primarily used for~~ massage, alcohol rub, fomentation, ~~body scrub, body shampoo,~~ electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless the treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the State of California.

~~Adult massage establishments do not include athletic clubs, health clubs, schools, gymnasiums, reducing salons, spas, or similar establishments where massage or similar manipulation of the human body is offered as an incidental or accessory service. Adult entertainment establishment businesses do not include massage establishments-businesses that provide only specialized massage services that are operated in accordance with Section 141.0613.~~

- (6) Adult mini-motion picture theaters: Any establishment-business with a seating capacity of more than 5 but less than 50 persons where films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown and where the material shown is distinguished or characterized by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* for observation by patrons on more than 7 calendar days within any 56-consecutive-day period.
- (7) Adult model studios: Any establishment-business open to the public where 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 and who pay a consideration or gratuity. Adult model studios do not include any school of art that is operated by an individual, firm, association, partnership, corporation, or institution that is authorized under the California Education Code to issue or confer a diploma.
- (8) Adult *motels*: Any *motel* or similar establishment-business offering public accommodations that provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions

on more than 7 calendar days within any 56-consecutive-day period where the material is distinguished or characterized by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* for observation by patrons.

- (9) Adult motion picture theaters: Any establishment-business with a seating capacity of 50 or more persons where motion pictures, video cassettes, slides, or similar photographic reproductions are shown on more than 7 calendar days within any 56-consecutive-day period and where the material is distinguished or characterized by an emphasis upon depicting or describing *specified sexual activities* or *specified anatomical areas* for observation by patrons.
- (10) Adult peep show establishments-businesses: Any place to which the public is permitted or invited where devices that display still or moving images are maintained in a peep booth, as defined in Municipal Code Section 33.3302(c), where the images displayed-on-are-available-for-observation-for more than 7 calendar days within any 56-consecutive-day period are distinguished or characterized by an emphasis on depicting or describing *specified sexual activities* or *specified anatomical areas*.
- (11) Adult sexual encounter establishments-businesses: Any establishment business, other than a hotel, *motel*, or similar establishment-business offering public accommodations that 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*. Adult sexual encounter establishments-businesses do not include establishments-businesses where a medical practitioner,

psychologist, psychiatrist, or similar professional person licensed by the State of California engages in sexual therapy.

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(b) Adult entertainment establishments ~~businesses~~ are permitted as a limited use in the zones indicated with an "L" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(1) Adult entertainment establishments ~~businesses~~ shall not be established, enlarged, or undergo a transfer of ownership or control if the *structure* housing the establishment ~~business~~ would be located within 1,000 feet of any of the following:

- (A) Another *structure* housing an adult entertainment establishment ~~business~~;
- (B) The *property line* of a residentially zoned property; or
- (C) The *property line* of a *church* except those established in accordance with Section 141.0404(a), a *school*, a *public park*, or a *social service institution*.

(2) If a *church* other than one established in accordance with Section 141.0404(a), a *school*, a *public park*, a *social service institution*, or a residential zone is established within 1,000 feet of an adult entertainment establishment ~~business~~, the person possessing ownership or control of the adult entertainment establishment ~~business~~ is permitted to transfer ownership or control within 2 years of the date on

which the *school* begins a course of instruction for students, the *church* or *social service institution* is opened for use, the *public park* is dedicated, or the ordinance establishing the residential zone becomes effective. The person acquiring the ownership or control, however, shall be required to discontinue the adult entertainment establishment-business within 5 years from the date of the transfer of ownership or control if the business continues to be within 1,000 feet of the uses or properties listed in Section 141.0601(b)(1).

- (3) The public health, safety, and welfare shall be preserved and protected by applying the provisions of this section in the following descending order of importance:
- (A) Proximity to other adult entertainment establishments-businesses;
 - (B) Proximity to *schools*;
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 - (D) Proximity to *public parks*;
 - (E) Proximity to residential zones; and
 - (F) Proximity to *social service institutions*.

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