

(O-2001-2)

ORDINANCE NUMBER O- 18885 (NEW SERIES)

ADOPTED ON NOV 20 2000

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY RENAMING ARTICLE 3 TO "POLICE-REGULATED OCCUPATIONS AND BUSINESSES," AMENDING DIVISION 1 BY AMENDING SECTION 33.0101; ADDING A NEW SECTION 33.0102; AMENDING AND RENUMBERING SECTION 33.0102 TO 33.0103; REPEALING SECTIONS 33.0104 AND 33.0105; ADDING A NEW SECTION 33.0104; AMENDING AND RENUMBERING SECTION 33.0103 TO 33.0105; REPEALING SECTIONS 33.0106 AND 33.0107; ADDING NEW SECTIONS 33.0106, 33.0107, 33.0108 AND 33.0109; AMENDING SECTION 33.0201; REPEALING SECTIONS 33.0202, 33.0204 AND 33.0208; ADDING A NEW SECTION 33.0202; RENAMING DIVISION 3 TO "APPLICATIONS FOR PERMITS," AMENDING DIVISION 3 BY REPEALING SECTION 33.0301; AMENDING AND RENUMBERING SECTION 33.0302 TO 33.0301; ADDING NEW SECTIONS 33.0302 AND 33.0303; AMENDING AND RENUMBERING SECTIONS 33.0303 AND 33.0304 TO 33.0304 AND 33.0305; REPEALING SECTIONS 33.0305 AND 33.0306; ADDING NEW SECTIONS 33.0306 AND 33.0307; REPEALING SECTION 33.0308; AMENDING AND RENUMBERING SECTION 33.0307 TO 33.0308; ADDING NEW SECTION 33.0309; REPEALING SECTION 33.0310; ADDING NEW SECTIONS 33.0310, 33.0311, 33.0312 AND 33.0313; AMENDING DIVISION 4 BY RENAMING THE DIVISION TO "PENALTIES AND REGULATORY ACTION"; REPEALING SECTION 33.0401; ADDING NEW SECTIONS 33.0401, 33.0402, 33.0403, 33.0404, 33.0405 AND 33.0406; AMENDING DIVISION 5 BY RENAMING THE DIVISION TO "APPEAL RIGHTS AND PROCEDURES"; AMENDING SECTIONS 33.0501 AND 33.0502, ADDING NEW SECTIONS 33.0503, 33.0504, 33.0506, 33.0507 AND 33.0508; ALL RELATING TO POLICE-REGULATED BUSINESS REGULATIONS.

WHEREAS, the proposed amendments are intended to make the Municipal Code easier to read; to avoid duplicating definitions in each division; to rely on Chapter III, Article 3, Divisions 1 through 5 for rules which apply to all occupations and businesses governed by Chapter III, Article 3 of the Municipal Code, rather than repeating the rule in each division; to avoid duplicating or conflicting with other regulations governing these occupations and businesses; and, to rely on Division 1 and Chapter I, Article 1, as appropriate, including the severability clause contained in Section 11.0205; and

WHEREAS, the Council of The City of San Diego takes legislative notice of the contents of the San Diego Vice and Licensing Task Force Report (June 1996) and its accompanying oral and documentary evidence as presented before the PS&NS Committee and the Council; and

WHEREAS, the Council of The City of San Diego finds that the regulation of police-regulated occupations and businesses would be more efficient and effective with a permit renewal system, additional regulatory penalties in the form of fines and conditions and by making the appeal hearing before the Public Safety and Neighborhood Services Committee the final administrative remedy; and

WHEREAS, the Council is mindful of the court decisions including *FW/PBS v. Dallas*, 493 U.S. 215 (1990); *Baby Tam and Co. v. City of Las Vegas*, 154 F.3d 1097 (9th Cir. 1998); *Baby Tam and Co. v. City of Las Vegas*, 199 F.3d 111 (9th Cir. 1999); and *4805 Convoy v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999), relating to the permit process for occupations and businesses protected by the First Amendment; and,

WHEREAS, the Council finds that the Police Department needs thirty days to conduct the background investigations into applicants regulated by this Article; and

WHEREAS, thirty days is a reasonable amount of time and thirty days is needed to, among other things required by the Code, obtain criminal background information from the State of California, which involves sending fingerprints to a state agency and waiting for the state agency to send the criminal history to the Police Department; **NOW, THEREFORE,**

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

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

ARTICLE 3

POLICE REGULATED OCCUPATIONS AND BUSINESSES

DIVISION 1

GENERAL PROVISIONS

Section 2. That Chapter III, Article 3, Division 1, of the San Diego Municipal Code be and the same is hereby amended by amending Section 33.0101 to read as follows:

SEC. 33.0101 Certain Businesses and Occupations Police-Regulated; Police Permit Required

(a) The occupations and businesses in The City of San Diego listed in this Article are subject to the City's police power and are classified as "police-regulated."

(b) All police-regulated occupations and businesses, and all *persons* conducting or proposing to engage in a police-regulated occupation or business, are subject to any investigation and regulation required by this Article as a prerequisite to the granting of a *police permit* to conduct the occupation or

business.

(c) It is a misdemeanor for any *person* to operate a business or engage in an occupation regulated by this Article without a *police permit*. The *police permit* is in addition to any other *license* or *permit* required under any other provisions of the San Diego Municipal Code, including the business tax certificate in Chapter III, Article 1, or any *license* or *permit* required by law.

(d) It is not a defense in any proceeding brought under this Article that a *license* or *permit* was issued under some other provision of law, nor shall the issuance of a *permit* under this Article be a defense to a *violation* under other sections of this Code.

Section 3. That Chapter III, Article 3, Division 1, of the San Diego Municipal Code be and the same is hereby amended by adding a new Section 33.0102 to read as follows:

SEC. 33.0102 Separate Permits Required

(a) A separate police permit is required for each police-regulated business activity carried on at a specific location, except for Secondhand Dealers. Secondhand Dealers are only required to obtain one permit per dealer; however, a copy of the permit must be posted in accordance with this Division.

(b) Unless otherwise stated, any *person* desiring to operate a police-regulated business and to act in a police-regulated occupation must obtain *permits* to do both.

Section 4. That Chapter III, Article 3, Division 1, of the San Diego Municipal Code be

and the same is hereby amended by amending and renumbering Section 33.0102 to 33.0103 to read as follows:

SEC. 33.0103 Inspections and Authority of Peace Officers or Police Employees

(a) The *Chief of Police* shall make, or cause to be made, regular inspections of all police-regulated businesses. Any *peace officer* shall have free access to any police-regulated business during normal operating hours. It is unlawful for any *permittee* or *employee* to prevent or hinder any *peace officer* from conducting an inspection.

(b) Any police code compliance officer assigned by the *Chief of Police* to conduct inspections shall have free access to any police-regulated business during normal operating hours. It is unlawful for any *permittee* or *employee* to prevent or hinder any police code compliance officer from conducting an inspection.

(c) The right of reasonable inspection to enforce the provisions of this Article is a condition of the issuance of a *police permit*. The applicant or *permittee* shall acknowledge this right of inspection at the time of application. Refusal to acknowledge this right of inspection is grounds for denial of the application. The right of inspection includes the right to require identification from *responsible persons* or *employees* on the *premises*. The refusal to allow inspection upon reasonable demand or the refusal to show identification by *responsible persons* or *employees* is grounds for the suspension, revocation, or

other regulatory action against the *police permit*.

Section 5. That Chapter III, Article 3, Division 1, of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 33.0104 and 33.0105.

Section 6. That Chapter III, Article 3, Division 1 of the San Diego Municipal Code be and the same is hereby amended by adding a new Section 33.0104, to read as follows:

SEC. 33.0104 Police Code Compliance Officer Arrest Authorization

Pursuant to Penal Code section 836.5, a police code compliance officer is authorized to arrest without a warrant whenever he or she has reasonable cause to believe that the person to be arrested has committed a misdemeanor in his or her presence that is a violation of a statute or ordinance the police code compliance officer has the duty to enforce.

Section 7. That Chapter III, Article 3, Division 1, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.0103 to 33.0105, to read as follows:

SEC. 33.0105 Posting of Permits

Except as otherwise provided by this Code, all *police permits* must be kept and posted in the following manner:

(a) Any *permittee* engaged in business at a fixed place of business shall keep the *police permit* posted in a conspicuous place upon the *premises* where business is conducted together with the *permit* or a copy of the *permit* for any *person* required to be licensed under the provisions of this Article who is engaged in a police-regulated occupation on the business *premises*.

(b) Any *person* engaged in business in the City of San Diego, but not operating from a fixed place of business, shall keep his or her *police permit* upon their *person* at all times while engaging in such business.

(c) When requested, each *permittee* shall exhibit the *police permit* to any *peace officer*, or any individual who (1) is doing business with the *permittee* or, (2) is considering doing business with the *permittee*, or (3) is seeking employment with the *permittee*.

Section 8. That Chapter III, Article 3, Division 1, of the San Diego Municipal Code be and is hereby amended by repealing Sections 33.0106 and 33.0107.

Section 9. That Chapter III, Article 3, Division 1, of the San Diego Municipal Code be and is hereby amended by adding new Sections 33.0106, 33.0107, 33.0108, and 33.0109, to read as follows:

SEC. 33.0106 Name of Business

It is unlawful for any *permittee* to operate any police-regulated business or engage in any police-regulated occupation under any name or designation other than the name or designation on the *police permit*. This Section does not preclude the use of stage names by dancers or escorts licensed under Divisions 28 and 36.

SEC. 33.0107 Chief May Require Security Guards

Whenever authorized by this Article, the *Chief of Police* may require a police-regulated business to employ security guards to provide crowd control. The *Chief of Police* will consider the following factors in determining the number of security guards that will be sufficient:

- (a) the nature of the event;
- (b) the number in attendance;
- (c) the ages of the patrons;
- (d) the potential for disorderly conduct;
- (e) the nature of the surrounding neighborhood;
- (f) the likelihood of interference from other sources or businesses in the area;
- (g) the history of the *permittee* for maintaining order and complying with all laws; and
- (h) any other factors reasonably related to safety.

The *Chief of Police* may require security guards to be readily identifiable by their attire.

SEC. 33.0108 Mail Notice from City Authorized

Unless otherwise stated, whenever written notice from the City is required under this Article, it is sufficient to mail the notice via first class mail to the most recent address provided by the *person*. Such mail is presumed delivered five days after its postmark date.

SEC. 33.0109 Selling or Peddling by Weight; Certificate of Scales; Testing Required

The City may not issue a *permit* to buy, sell, offer for sale, or peddle any goods, wares or merchandise in the City that are bought or sold by weight, unless the applicant for the *permit* has at the time of application filed a certificate from

the County Sealer of Weights and Measures of San Diego County, California, stating that said County Sealer of Weights and Measures has examined and tested the scales proposed to be used by the applicant, and has found them to be accurate.

DIVISION 2

Definitions

Section 10. That Chapter III, Article 3, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 33.0201 to read as follows:

SEC. 33.0201 Definitions

All defined terms in this Article appear in italics. For purposes of this Article:

"*Alcoholic beverages*" means alcohol, spirits, wine or beer, which contain one-half of one per cent or more of alcohol by volume and which are fit for beverage purposes either alone or diluted, mixed or combined with other substances.

"*Been convicted*" or "*conviction*" includes a finding of guilty, or entry of a plea of guilty, or a plea of nolo contendere or "no contest." *Been convicted* or *conviction* includes any offense in another state punishable as one of the disqualifying offenses.

"*Chief of Police*," means the Chief of Police of The City of San Diego, or any member of the Police Department of The City of San Diego designated by the *Chief of Police* to carry out the provisions of this Article, including those assigned

to the Vice Section of the Police Department to investigate potential violations and enforce this Article.

"*City Manager*" means the City Manager of The City of San Diego or any person employed by the City and designated by the *City Manager* to carry out the provisions of this Article.

"*Employee*" means a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

"*Establishment*" includes any person or business entity which owns, operates or conducts an activity or enterprise which is subject to regulation under this Article, and shall also include the building or structure or portion of the building or structure or an exterior or outdoor situs upon which regulated activity occurs. The term also includes other meanings assigned by law and it shall be given as broad an interpretation as is possible to effectuate the regulatory purposes and intent of this Article.

"*Permit*," "*police permit*," or "*license*" are synonymous and each means a permit issued by, or under the authority of, the *Chief of Police* that authorizes a particular business or activity to operate, or authorizes an individual to engage in a regulated occupation.

"*Permittee*" means a *person* who holds a *permit* issued under this Article.

"*Person*" has the same meaning as in Municipal Code section 11.0210.

"*Police Officer*" or "*Peace Officer*," means the same as "*Peace Officer*" as defined in California Penal Code, Part 2, Title 3, Chapter 4.5, and includes police code compliance officers when that police code compliance officer has been assigned by the *Chief of Police* to assist in, or be responsible for, the regulation of the occupations and businesses and enforcement of this Article.

"*Premises*" includes any structure or portion of the structure or exterior or outdoor situs or area in close proximity to the police-regulated business which is under the lawful control of a *responsible person*. The term also includes other meanings assigned by law and it shall be given as broad an interpretation as is possible to effectuate the regulatory purposes and intent of this Article.

"*Responsible Person*" has the same meaning as in Municipal Code section 11.0210. It also includes a *permittee* and each *person* upon whom a duty, requirement or obligation is imposed by this Article, or who is otherwise responsible for the operation, management, direction, or policy of a police-regulated business. It also includes an *employee* who is in apparent charge of the *premises*.

"*Violation*" means an act or omission, or an attempt to act, which contravenes any of the provisions of this Article or other provisions of law, without regard to whether or not criminal proceedings are instituted against any *person*.

Section 11. That Chapter III, Article 3, Division 2, of the San Diego Municipal Code

be and the same is hereby amended by repealing Sections 33.0202, 33.0204 and 33.0208.

Section 12. That Chapter III, Article 3, Division 2, of the San Diego Municipal Code be and is hereby amended by adding a new Section 33.0202 to read as follows:

SEC. 33.0202 Conviction Complete When

A *conviction* is complete upon entry of judgment upon a finding of guilty, or upon entry of a plea of guilty, or upon entry of a plea of nolo contendere or "no contest," regardless of the pendency of any appeal, or expungement pursuant to California Penal Code section 1203.4 or 1203.4a.

Section 13. That Chapter III, Article 3, of the San Diego Municipal Code be and the same is hereby amended by changing the name of Division 3 to "Applications for Permits."

Section 14. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.0301.

Section 15. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.0302 to 33.0301 to read as follows:

DIVISION 3

Applications for Permits

SEC. 33.0301 Chief of Police Authority to Investigate

The *Chief of Police* shall investigate an applicant's fitness:

- (a) to conduct the occupation, business, or game of skill specified in the application; or,
- (b) to determine whether the place at which it is proposed that the

occupation, business, or game of skill is to be conducted is suitable or proper; or,

(c) to determine whether the occupation, business, or game of skill is a lottery, a form of gambling, or may be used to promote gambling, conduct a lottery, or conduct any illegal activity.

Section 16. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by adding new sections 33.0302 and 33.0303 to read as follows:

SEC. 33.0302 Duty to Complete Applications; Incomplete Applications; Single Occasion Event Applications

(a) Every applicant shall submit a complete application to the *Chief of Police*.

(b) If an applicant files an incomplete application, that application will not be accepted by the *Chief of Police*. The application will be returned to the applicant and marked "Incomplete - Application Rejected" no later than five business days after receipt by the *Chief of Police*. The rejection of an application under this Section is not appealable.

(c) An application for a single occasion event must be submitted thirty calendar days prior to the event. Any application submitted less than thirty calendar days prior to the single occasion event (1) may be rejected if the background investigation cannot be completed; and (2) will be subject to a penalty fee of an additional 100 percent of the application fee. Any application submitted within three business days of the event will be automatically rejected.

SEC. 33.0303 Time Allowed for Investigation; Temporary Status for Performers

(a) The *Chief of Police* shall have thirty calendar days to investigate the applicant. Unless otherwise stated, if the *Chief of Police* fails to act on any complete *permit* application within thirty calendar days from the date of its delivery to the *Chief of Police*, the application will be deemed approved and the *permit* shall be issued.

(b) Except for applications submitted to obtain *permits* under Chapter III, Article 3, Divisions 33 and 36 of this Code, or for any other business or occupation protected by the First Amendment, upon written notification to the applicant, the *Chief of Police* is allowed up to fourteen additional calendar days to investigate an applicant.

(c) Performers engaged in an activity protected by the First Amendment, including those governed by Division 36 (Nude Entertainment), may perform in a temporary status during the 30-day investigation period or until their application for a *permit* is denied, whichever comes first. If the application for a *permit* is granted, their temporary status expires and the applicant may perform as a *permittee*. During the temporary status period, the performer must abide by all laws including this Code, applicable to a *permittee*.

Section 17. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Sections 33.0303 and 33.0304 to 33.0304 and 33.0305 to read as follows:

SEC. 33.0304 Applicant and Employees to Furnish Fingerprints and Photographs

For the purpose of investigation and for regulation of the occupation or business during the time it is licensed, applicants, *responsible persons*, managers, or *employees* may be required to furnish their fingerprints and photographs.

Fingerprints must be taken by a governmental agency. The *Chief of Police* shall forward the fingerprints to the Identification Division of the State of California, Department of Justice, or the Federal Bureau of Investigation, for identity confirmation and criminal histories.

SEC. 33.0305 Permit Issuance and Grounds for Denial

Except as otherwise provided in this Code, upon completion of the investigation of an applicant, the *Chief of Police* shall issue a *permit* unless:

- (a) the applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application; or
- (b) the applicant is under eighteen years of age, unless the particular business or occupation has a different age requirement pursuant to state or federal law, in which case the state or federal law controls the age requirement; or
- (c) the applicant has had a similar type of *license* or *permit* previously denied, suspended for a total of six months, or revoked, within five years immediately preceding the date of the filing of the application, and the applicant can show no material changes in circumstances since such denial, suspension, or revocation; or

(d) the applicant has refused to consent to inspection pursuant to Section 33.0103; or

(e) the applicant is within any of the following categories:

(1) within five years immediately preceding the date of application, the applicant has *been convicted* of a felony crime in any jurisdiction involving the following offenses: theft, fraud, violence, sale of a controlled substance as specified in Sections 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or any moral turpitude offense;

(2) within three years immediately preceding the date of application, the applicant has *been convicted* of any offense listed in Section 33.0305(e)(1) that has been made the subject of Section 17(b) of the California Penal Code;

(3) within five years immediately preceding the date of application, the applicant has *been convicted* of any offense involving deceptive trade practices or other illegal business practices reasonably and narrowly related to the nature of conduct of the business for which the application is made;

(4) in addition to the other categories, if the applicant is applying for a *permit* to engage in a business regulated under Divisions 9, 11, 32 or 43 of this Article, within five years immediately preceding the date of the application, the applicant has *been convicted* of any offense involving theft or fraud, including the receipt of stolen property, or any financial crime including money laundering and embezzlement.

(f) the applicant has failed to provide proof of any application requirement as set forth in the Division regulating the business or occupation the applicant desires to engage in.

Section 18. That Chapter III, Article 3, Division 3 of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 33.0305 and 33.0306.

Section 19. That Chapter III, Article 3, Division 3 of the San Diego Municipal Code be and is hereby amended by adding new Sections 33.0306 and 33.0307, to read as follows:

SEC. 33.0306 Denial of Permit in Writing

If the *permit* is denied, the notification and reasons therefor shall be set forth in writing and shall be sent immediately to the applicant by means of registered mail or certified mail, or shall be hand-delivered to the applicant.

SEC. 33.0307 Application and Regulatory Fees

It is the policy of The City of San Diego that the cost of investigating and processing an application for a *police permit* is to be borne by the applicant. To this end, unless otherwise specified, all applications shall be accompanied by a non-refundable application fee, which will cover the cost of investigating and processing the application. Any *person* who desires to obtain a business *permit* and an occupational *permit* (for example, a *massage establishment permit* and a *massage therapist permit*) shall pay only one application fee if the applications are submitted concurrently.

It is the policy of The City of San Diego that the cost of inspecting, regulating, and enforcing laws relating to police-regulated businesses be borne by the *permittees* in the form of regulatory fees. To this end, unless otherwise specified, regulatory fees shall be paid according to the schedule set in the City Clerk's Composite Rate Book.

Section 20. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.0308.

Section 21. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by amending and renumbering Section 33.0307 to 33.0308 to read as follows:

SEC. 33.0308 Term of Permit and Renewal

(a) Any *permit* issued shall be valid for a period of one year from the date of issuance, except as to *permits* for occasional events and alarms which shall be valid only for the specified duration.

(b) Except as provided in Section 33.0308(e), (f), (g) and (i), each *permit* may be renewed annually upon payment of the regulatory fee specified in the City Clerk's Composite Rate Book and the submission of a renewal form.

(c) If a completed renewal form is not received on the date required, the *permittee* has ten calendar days in which to submit the renewal form and pay the regulatory fee without any penalty.

(d) If the renewal form is received within less than thirty but more than ten calendar days after the due date, an additional \$25 plus ten percent of the

regulatory fee is due in order to complete the renewal.

(e) If a renewal is not complete with all fees and penalties paid within thirty calendar days after the due date, the *permit* expires and business operations, occupations, or activities allowed by the *permit* must cease. A *permittee* must then begin the application process as a new applicant.

(f) Any changed circumstance which would have been grounds for denial of the application is grounds for denying the *permittee* a renewed *permit*.

(g) Failure to disclose any material circumstance, whether or not such circumstance would have been grounds for denial under Section 33.0305, is grounds for denying the *permittee* a renewed *permit*.

(h) A *permittee* may appeal the refusal to renew a *permit* as provided in Division 3.

(i) Under no circumstances may a *permit* be renewed if an action to revoke the *permit* is in progress or has been taken. If a *permittee* succeeds in having the revocation action overturned, the *permittee* must pay the regulatory fees for the time, if any, the *permittee* was allowed to operate during the appeal process.

(j) If the *permittee* meets the criteria in this Section, a renewed *permit* shall be issued by the *Chief of Police* and sent to the *permittee*.

Section 22. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by adding new Section 33.0309, to read as follows:

SEC. 33.0309 Effect of Granting Permit

The granting of a police permit does not relieve the applicant from obtaining all appropriate permits or approvals required by The City of San Diego, or state or federal law.

The granting of a permit does not relieve a *permittee* from the *permittee's* obligation to comply with all applicable local, state, and federal laws, including those related to building, zoning, and fire, and other public safety regulations.

The granting of a police permit does not vest any development rights in the property or business.

Section 23. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.0310.

Section 24. That Chapter III, Article 3, Division 3, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.0310, 33.0311, 33.0312 and 33.0313, to read as follows:

SEC. 33.0310 Change of Location

A change of location of a police-regulated business that operates from a fixed location requires a new application and new *police permit*.

SEC. 33.0311 Notice of Change of Ownership

In the event of a change of ownership, a new application must be submitted and approved before a *permit* is issued in the name of the new owner. Thirty calendar days after the sale or transfer of any interest to any *person*, the *permit* shall be null and void, and all police-regulated activity must cease until a

new *permit* is issued to the new owner.

SEC. 33.0312 Notice of Change of Employers

Any person engaged in a police-regulated occupation must notify the *Chief of Police* of any change of employment within fifteen calendar days of changing to the new employer.

SEC. 33.0313 Responsible Persons; Managers

If the *permittee* is not directly involved in the day-to-day management of the police-regulated business, or if the *permittee* has other managers in addition to him or herself, the *permittee* shall provide the names of all such managers and *responsible persons* to the *Chief of Police*. In the event of a change in such *persons*, the *permittee* shall notify the *Chief of Police* within thirty calendar days of such a change.

Section 25. That Chapter III, Article 3, Division 4, of the San Diego Municipal Code be and the same is hereby amended by renaming the Division to read as follows:

DIVISION 4

Penalties and Regulatory Action

Section 26. That Chapter III, Article 3, Division 4 of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.0401.

Section 27. That Chapter III, Article 3, Division 4 of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.0401, 33.0402, 33.0403, 33.0404, 33.0405, and 33.0406, to read as follows:

SEC. 33.0401 Regulatory and Penal Nature of Laws

(a) Any requirement of this Article is both regulatory and penal in nature, except as to those sections or subsections specifically designated as regulatory only by use of the phrase "regulatory only." Regulatory provisions are enforceable through the issuance, denial, suspension, placing conditions upon, or revocation of the *permit*, and through the issuance of verbal or written warnings, and notices of violation. Penal provisions are enforceable through criminal proceedings. Injunctive remedies are applicable to either.

(b) The specific designation of a provision as regulatory only does not preclude any other section of the San Diego Municipal Code from being penal or regulatory in nature, nor does it otherwise impair the meaning or effect of Chapter I, Article 1, Division 2 of this Code.

(c) Regulatory action may be taken based on an act, omission, or attempt to act, that contravenes the applicable provisions of this Article or of any other provision of law, without regard to whether a criminal complaint is filed or, if a criminal complaint is filed, without regard to the pendency of any proceeding, *conviction* or appeal. The regulatory and penal enforcement of any provision of this Article may proceed separately and independently of each other, and the selection of one method shall not preclude other enforcement methods or proceedings, including injunctive relief, when appropriate.

SEC. 33.0402 Criminal Penalties

In addition to any other penalties provided by law, any *person* violating any section of this Article is guilty of a misdemeanor which, upon *conviction* is punishable by a fine not to exceed \$1,000, or by imprisonment in the County Jail for not more than six months or both. This Section does not apply to any section of this Article deemed "regulatory only."

SEC. 33.0403 Regulatory Penalties

(a) In addition to any other penalties provided by law, any *permittee* who does any of the following is subject to regulatory action by the *Chief of Police* against his or her *police permit*:

(1) Violates or allows the *violation* of any section of this Article, any law or regulation pertaining to the business, or violates any condition imposed on the *permit*;

(2) Engages in conduct outside of the City which, if committed in this City, would be grounds for regulatory action;

(3) Is convicted of any crime which would have been grounds for denying the application for the *police permit*;

(4) Fails to take corrective action after timely written notice of an observed *violation*;

(5) Negligently fails to supervise the business resulting in a pattern of *violations* described by patrons, *employees*, or both;

(6) Manifests an inability to properly perform the duties

relating to the police-regulated activity as evidenced by the commission or omission of an act or series of acts.

(b) Regulatory action includes the following:

- (1) Issuance of a verbal warning;
- (2) Issuance of a written warning;
- (3) Issuance of a notice of *violation*;
- (4) Placing conditions upon the *permit* which are reasonably

related to any *violation*. Unless otherwise stated as part of the condition, all such conditions expire when the *permit* expires, excluding any time stayed during an appeal;

- (5) Suspension of the *police permit*;
- (6) Revocation of the *police permit*;
- (7) Denial of an application for a *police permit*; or
- (8) Denial of an application for renewal of a *police permit*;

(c) In lieu of suspension, the *permittee* and *Chief of Police* may negotiate a civil penalty according to the procedure contained in the Police Department's Vice Administration Manual relating to *permit* applications, denials, and penalties. Failure to pay the civil penalty as negotiated will result in reinstatement of the suspension.

(d) The *Chief of Police* may take regulatory action consistent with the severity of the *violation*, or the frequency of the *violations*, regardless of whether the *permittee* has suffered administrative penalties in the past.

SEC. 33.0404 Notice of Regulatory Action

(a) Whenever regulatory action is taken against a *police permit* as described in Sections 33.0403 (b)(4) through (b)(8), the *Chief of Police* shall send a notice to the *permittee* identifying the Code section(s) violated, describing the circumstances of the *violation*, and explaining the consequences of a failure to correct the *violation*, if appropriate.

(b) Whenever a written warning is issued, the *permittee* shall be afforded an opportunity to meet with the *Chief of Police* regarding the written warning.

SEC. 33.0405 Evidence to be Used in Regulatory Action

(a) Whenever regulatory action against a *permittee* is based on a *violation* of law or this Article by an *employee* that occurs on the *premises* or during the course of employment, it is sufficient to show that a *responsible person* caused or condoned the *violation*, or failed to take reasonable corrective action after timely written notice of the *violation*.

(b) Whenever regulatory action against a *permittee* is based upon a *violation* of law or this Article occurring on the *premises* by a patron, it is sufficient to show that a *responsible person* caused or condoned the *violation* or failed to take reasonable corrective action after timely written notice of the *violation*.

SEC. 33.0406 Urgency Action

The *Chief of Police* may take immediate action with respect to a *police permit*, if a subsequent hearing is provided, where there is an urgent need to take immediate action to protect the public from injury or harm, or where a *police permit* was issued based on material misrepresentations in the application and the *police permit* would not have been issued but for the material misrepresentations.

Section 28. That Chapter III, Article 3, Division 5 of the San Diego Municipal Code be and the same is hereby amended by renaming the Division to read as follows:

DIVISION 5

Appeal Rights and Procedures

Section 29. That Chapter III, Article 3, Division 5 of the San Diego Municipal Code be and the same is hereby amended by amending Sections 33.0501 and 33.0502, to read as follows:

SEC. 33.0501 Right of Appeal to Hearing Officer; Time Limits

(a) Except as provided in Sections 33.0506 and 33.0507, any *person* who has been denied a *permit*, has had conditions placed on the *permit* as a result of regulatory action against the *permittee*, has had conditions placed on the *permit* which the *permittee* did not agree to, or any *person* who has regulatory action taken by the *Chief of Police* against the *permit* as described in Sections 33.0403(b)(4) through (8), may request a hearing conducted by a hearing officer selected by the *City Manager*.

(b) 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 receipt of the notice of action denying, suspending, revoking or placing conditions on the *permit*.

(c) Upon receiving a written request for a hearing, or upon the granting of a hearing pursuant to Section 33.0501(f), the *City Manager* shall set a hearing not less than five nor more than thirty calendar days from the date of receipt of the appeal or from the granting of the hearing.

(d) The *City Manager* shall notify the applicant or *permittee* of the date, time and place of the hearing by means of registered mail, certified mail or hand delivery.

(e) Except as provided in Section 33.0501(f), failure to file the request for a hearing within the ten calendar day period shall result in the denial of a hearing by the *City Manager*.

(f) The appellant may request that the hearing be granted despite noncompliance with the ten-day filing rule. The appellant must demonstrate good cause for noncompliance in writing. The *City Manager* must forward the written request to a hearing officer, who will decide whether a hearing should be granted. The *Chief of Police* shall be afforded the opportunity to set forth his or her position in writing on this issue to the hearing officer.

(g) Any requests for a hearing that occur after thirty calendar days from receipt of the notice of regulatory action will not be forwarded to a hearing officer and must be denied by the *City Manager*.

SEC. 33.0502 Conduct of the Appeal Hearing

(a) A hearing shall be conducted to determine the existence of any facts that constitute grounds for the denial, suspension, placing conditions upon or revocation of the *permit*.

(b) The applicant or *permittee* may have the assistance of counsel or may appear by counsel and shall have the right to present evidence.

(c) If the applicant or *permittee*, or counsel representing the applicant or *permittee*, fails to appear at the hearing, the appeal is abandoned and the action of the *Chief of Police* is final.

Section 30. That Chapter III, Article 3, Division 5, of the San Diego Municipal Code be and the same is hereby amended by adding new Sections 33.0503, 33.0504, 33.0505, 33.0506, 33.0507 and 33.0508, to read as follows:

SEC. 33.0503 Appeal Hearing Decision

(a) The hearing officer may uphold the denial, suspension, revocation or other decision of the *Chief of Police*, may allow that which has been denied, reinstate that which has been suspended or revoked, reverse or modify any other decision of the *Chief of Police* that is the subject of the appeal.

(b) A copy of the decision of the hearing officer specifying findings of fact and the reasons for the decision shall be furnished to the applicant, *permittee*, or the designated representative and the *Chief of Police* within thirty calendar days of the hearing. If the hearing officer determines the complexity of the case requires additional time in which to render a decision, the time in which to render

the decision is automatically extended another thirty calendar days.

This subsection does not apply to *permittees* governed by Section 33.0507.

(c) The decision of the hearing officer shall be final ten calendar days from the action of the hearing officer, except

(1) in the event of an appeal brought under Section 33.0505; or

(2) if the *permittee* is governed by Section 33.0507.

(d) Except as to the emergency provisions of Section 33.0406, 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.

(e) (1) The decision of the hearing officer shall be the final administrative remedy, unless an appeal to the Committee on Public Safety and Neighborhood Services (or its successor committee) is made in writing with the City Clerk within ten calendar days of receipt of the hearing officer's written decision.

(2) However, if the hearing involves an applicant or *permittee* of a business or occupation that is a First Amendment protected business or occupation, including businesses and occupations governed by Chapter III, Article 3, Divisions 33 and 36 of this Code, the decision of the hearing officer is the final administrative remedy.

(f) In decisions involving businesses and occupations protected by the First Amendment, including businesses and occupations governed by Chapter III, Article 3, Divisions 33 and 36 of this Code, the effect of a decision by the hearing

officer is stayed pending judicial review of the hearing officer's decision, or until the time to file for such review has expired. If judicial review of the hearing officer's decision is sought, the effect of the decision by the hearing officer is stayed until the judicial review is complete. In decisions involving the denial of a *police permit*, if the decision of the hearing officer is to uphold the denial, the denial remains in effect until otherwise modified or overturned by a court of competent jurisdiction.

SEC. 33.0504 Limits on Hearing Officer's Power

A hearing officer has no power:

- (1) to declare an ordinance or statute unenforceable on the basis of it being unconstitutional unless an appellate court has made a determination that the ordinance or statute is unconstitutional;
- (2) to declare an ordinance or statute unconstitutional;
- (3) to declare an ordinance or statute unenforceable on the basis of its being preempted by another ordinance or statute, unless an appellate court has made a determination that the ordinance or statute is preempted; or
- (4) to declare an ordinance or statute preempted by another ordinance or statute.

SEC. 33.0505 Right of Appeal to the Committee on Public Safety and Neighborhood Services; Procedure; Decisions

- (a) The applicant, *permittee*, and the *Chief of Police* have the right to appeal a hearing officer's decision to the Public Services and Safety Committee of

the City Council (or its successor committee).

(b) The effect of a decision by the hearing officer shall be stayed while an appeal to the Committee on Public Safety and Neighborhood Services (or its successor committee) is pending or until the time for filing such appeal has expired.

(c) When an appeal is filed with the City Clerk, it shall be placed on the Committee on Public Safety and Neighborhood Services (or its successor committee) agenda for the limited purpose of determining whether the Committee will hear the appeal.

(d) The Committee may accept an appeal for hearing when any of the following situations are found to exist:

(1) The appellant was denied the opportunity to make a full and complete presentation to the hearing officer.

(2) New evidence is now available that was not available at the time of the hearing officer's hearing.

(3) The hearing officer's decision was arbitrary because no evidence was presented to the hearing officer that supports the decision.

(4) The appeal presents a City-wide issue on which guidance of the Committee on Public Safety and Neighborhood Services (or its successor committee) is required and the matter is of City-wide significance.

(5) The hearing officer's decision is in conflict with adopted Council policy or the Municipal Code.

(e) The Committee on Public Safety and Neighborhood Services (or its successor committee) shall rely upon the record of the proceedings before the hearing officer and the written appeal. No oral presentations shall be made to the Committee on Public Safety and Neighborhood Services (or its successor committee) by proponents or opponents of the appeal.

(f) A vote on a motion to set the appeal for hearing shall not constitute a vote on the merits of the appeal.

(g) If at least three members of the Committee vote in favor of hearing the appeal, the Chair to the Committee on Public Safety and Neighborhood Services (or its successor committee) shall set the appeal for hearing before the Committee.

(h) A majority vote of the Committee is required to overturn the decision of the hearing officer.

(i) The decision of the Committee to grant or deny the appeal is the final administrative remedy.

(j) Section 33.0505 does not apply to applicants or *permittees* who are seeking to engage in, or are engaged in, a business or occupation protected by the First Amendment. This includes the businesses and occupations regulated in Divisions 33 (*peep show establishments*) and 36 (*nude entertainment*).

SEC. 33.0506 Review for Denials of Permits to Engage in First Amendment Activity

Any *person* who has been denied a *police permit* for a business or occupation that is a First Amendment protected business or occupation, as defined in *FW/PBS v. City of Dallas*, 493 U.S. 215 (1990) or other controlling case law, shall have prompt judicial review of the decision to deny the *permit*.

The decision to deny such *permit* is the final administrative action for the applicant, who may then immediately seek writ review in Superior Court pursuant to local court rules, the California Rules of Court, and the Code of Civil Procedure. The businesses and occupations regulated in Divisions 33 (*peep show establishments*) and 36 (*nude entertainment*) are governed by this Section.

SEC. 33.0507 Review for Regulatory Action Taken Against Permit Holders Engaged in First Amendment Activity.

Any person who holds a *police permit* for a business or occupation that is protected by the First Amendment, and who has had regulatory action taken against them, shall have the same appeal rights as those contained in Sections 33.0501 through 33.0503, except that:

(a) The hearing officer shall issue and mail his or her decision within fifteen calendar days of the completion of the appeal hearing to suspend or revoke the *permit*. The time to render a decision may not be extended unless all parties agree to such an extension; and

(b) 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

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

(d) Either party may seek prompt judicial review of the hearing officer's decision pursuant to the California Code of Civil Procedure; and

(e) If the *permittee* seeks judicial review, the effect of the decision of the hearing officer shall be stayed while the *permittee* seeks prompt judicial review. If no judicial review is sought, the effect of the decision of the hearing officer is final as soon as the final date for seeking such review has passed.

SEC. 33.0508 Other Administrative Appeals Not Applicable

The appeal hearings contained in this Division are the only administrative appeal hearings which apply to police-regulated businesses. The appeal process provided for in Section 22.0101 of this Code does not apply to police-regulated businesses.

Section 31. The City Clerk is instructed to delete the reference to Section 33.0101 contained in Section 33.3001, of this Code.

Section 32. The City Clerk is instructed to delete references to Section 33.0104 contained in Sections 33.3918, 33.4004, and 33.4306 of this Code.

Section 33. 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 34. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Mary T. Nuesca
Mary T. Nuesca
Deputy City Attorney

MTN:cdk:pev:jp:jrl

09/13/00

Or.Dept:Police

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