

ORDINANCE NUMBER O- 18887 (NEW SERIES)

ADOPTED ON NOV 20 2000

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 3, DIVISION 15 AND DIVISION 16, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING THE TITLE TO "ENTERTAINMENT ESTABLISHMENTS;" AND AMENDING SECTIONS 33.1501, 33.1600, 33.1638, AND 33.1670; REPEALING SECTIONS 33.1502, 33.1503, 33.1504, 33.1505, 33.1506, 33.1507, 33.1508, 33.1509, 33.1510, 33.1511, 33.1520, 33.1521, 33.1522, 33.1523, 33.1530, 33.1531, 33.1532, 33.1533, 33.1534, 33.1540, 33.1541, 33.1542, 33.1543, 33.1544, 33.1550, 33.1550.6, 33.1550.7, 33.1550.8, 33.1550.9, 33.1550.10, 33.1550.13, 33.1551, 33.1552, 33.1570, AND 33.1636, AND ADDING NEW SECTIONS 33.1502, 33.1503, 33.1504, 33.1505, 33.1506, 33.1507, 33.1508, 33.1509, 33.1510, 33.1511, 33.1512, 33.1513, AND 33.1514, ALL RELATING TO DANCES AND ENTERTAINMENT.

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 1-5 for rules which apply to all 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 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 Public Safety and Neighborhood Services

Committee and the Council; and

WHEREAS, an Entertainment Task Force was formed in 1999 to further study and make recommendations to the Vice Task Force work regarding cabarets and public dances; and

WHEREAS, it is the intent of this ordinance to replace the regulations governing cabarets, public dances, and commercial recreational assemblages with this ordinance; and

WHEREAS, it is the intent of this ordinance to provide flexibility to the police department and to the businesses by creating a permit system that uses conditions, rather than imposing one set of regulations on the entertainment industry, given the variety of entertainment venues; and

WHEREAS, the use of conditions will allow the police department to treat small venues differently than large venues, treat alcohol establishments differently than non-alcohol establishments, and make other accommodations to meet both public safety and business needs; and

WHEREAS, the Council intends that the condition process *not* be used by the Chief of Police to change the mode of operation of a law-abiding business or organization with a history of compliance with all applicable laws; and

WHEREAS, many entertainment venues make important contributions to the City of San Diego by providing a variety of arts and cultural experiences to the people of San Diego, and by providing a healthy environment for young people; and

WHEREAS, some entertainment venues attract gang activity, drug activity, underage drinking, and curfew violations, such as illegal underground parties known as RAVE parties, and

WHEREAS, the City desires to promote arts and culture in the City, and entertainment for and by young people which provides a healthy, crime-free environment for young people;
NOW, THEREFORE,

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

Section 1. That Chapter III, Article 3, Division 15, of the San Diego Municipal Code be and the same is hereby amended by amending the Division title to read as follows:

DIVISION 15

Entertainment Establishments

Section 2. That Chapter III, Article 3, Division 15 and Division 16, of the San Diego Municipal Code be and the same is hereby amended by amending Section 33.1501 to read as follows:

SEC. 33.1501 Purpose and Intent

The Council of the City of San Diego encourages the development of arts and culture in San Diego, and recognizes that many entertainment venues provide a means for such development. The Council of the City of San Diego further recognizes that the variety of entertainment venues in the City provide a rich and diverse cultural experience for the residents of the City and visitors to the City. The Council also recognizes that many non-alcoholic entertainment venues provide a safe place for families and young adults to gather.

The Council of the City of San Diego finds that the operations of *entertainment establishments* present an environment with the demonstrated

potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times, with the attendant adverse public safety impact on the surrounding business and residential community.

Therefore, it is the purpose of this Division to regulate the operations of *entertainment establishments* for the public safety. All *permittees* will be held responsible for controlling patron conduct in and around the *establishments*, making adequate provisions for security and crowd control, protecting the City's youth from criminal activity and minimizing disturbances as a result of the operation of the *entertainment*.

It is also the intent of this Division to provide options to the *Chief of Police* in regulating the variety of businesses and events which provide *entertainment*. Council finds that the imposition of conditions tailored to the particular *establishment* will allow the business or event to flourish while meeting the City's public safety needs and avoiding unnecessary conditions on existing businesses or organizations which would change the mode of operation of a law-abiding business or organization with a history of compliance with the City laws.

Section 3. That Chapter III, Article 3, Division 15 and Division 16, of the San Diego Municipal Code, be and the same is hereby amended by repealing Sections 33.1502, 33.1503, 33.1504, 33.1505, 33.1506, 33.1507, 33.1508, 33.1509, 33.1510, 33.1511, 33.1520, 33.1521, 33.1522, 33.1523, 33.1530, 33.1530.1, 33.1530.2, 33.1530.3, 33.1530.4, 33.1530.5, 33.1530.6, 33.1530.7, 33.1530.9, 33.1530.10, 33.1530.11, 33.1530.12, 33.1530.13, 33.1530.14, 33.1530.15,

33.1531, 33.1532, 33.1533, 33.1534, 33.1540, 33.1541, 33.1542, 33.1543, 33.1544, 33.1550, 33.1550.6, 33.1550.7, 33.1550.8, 33.1550.9, 33.1550.10, 33.1550.13, 33.1551, 33.1552, 33.1570 and 33.1636.

Section 4: That Chapter III, Article 3, Division 15, of the San Diego Municipal Code and the same is hereby amended by adding new Sections 33.1502, 33.1503, 33.1504, 33.1505, 33.1506, 33.1507, 33.1508, 33.1509, 33.1510, 33.1511, 33.1512, 33.1513, and 33.1514; to read as follows:

SEC. 33.1502 Definitions

For purposes of this Division:

"*ABC License*" means the license issued by the California Department of Alcoholic Beverage Control.

"*Admission Charge*" means any charge for the right or privilege to enter any place of *entertainment* including a minimum service charge, an event charge, a cover charge, a charge for the use of seats and tables, or any other similar charge. It also includes the purchase or presentation of a ticket or token directly or indirectly required as a condition for entrance. It does not include tips, gratuities, voluntary donations, or suggested donations for employees or for any person providing *entertainment*.

"*Conditional use permit*" means any permit issued by the City of San Diego pursuant to Chapter X, Article 1, Division 5, or pursuant to a planned district ordinance, upon which the *Chief of Police* has had a meaningful role in

determining conditions on the *permit* related to the operation of a *public dance, entertainment, or amusement premises*.

"*Dance and dancing*" means movement of the human body, accompanied by music or rhythm.

"*Entertainment*" or "*Entertainment Establishment*" means any single event, a series of events, or an ongoing activity or business, occurring alone, or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing guests or patrons, including:

(a) Presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, musical song or dance acts, plays, concerts, any type of contest; sporting events, exhibitions, carnival, rodeo or circus acts, demonstrations of talent; shows, reviews, any other such activity which may be attended by members of the public.

(b) *Dancing* to live or recorded music.

(c) The presentation of recorded music played on equipment which is operated by an agent or contractor of the establishment, commonly known as "DJ" or "disc jockey."

"*Theater*" means any commercial establishment where regular theatrical performances, such as performances of literary compositions that tell a story, are given, usually on a stage, and usually with ascending row seating or some

arrangement of permanent seating.

SEC. 33.1503 Entertainment Permit Required

(a) It is unlawful for any person to provide or permit any *entertainment* which is open to the public without a *police permit*.

(b) The issuance of a "Special Event Permit" pursuant to Chapter II, ~~Article 2~~, Division **40** of this Code, upon which the *Chief of Police* has had input in determining conditions on the *permit* related to the *entertainment*, satisfies the *entertainment permit* requirement of this Division. A separate *entertainment permit* is not required.

SEC. 33.1504 Exemption from the Permit Requirement

The following types of entertainment and events are exempt from the police permit required by this Division. This exemption does not relieve any of the establishments from complying with all other applicable laws, including the laws related to noise levels, particularly those contained in Chapter V of this Code.

(a) *Entertainment* sponsored by any agency of The City of San Diego, the County of San Diego, the various Boards of Education, or of any other political subdivision of the State of California, or any non-profit organization, such as Girl Scouts, Boy Scouts, Little League, Boys and Girls Club, whose primary objective is the sponsoring and control of youth activities and child welfare. If the event is a dance, the following requirements must be met:

(1) No person eighteen years of age or older may be admitted as a guest, unless such person is a bona fide student at, or member of, the sponsoring agency or organization;

(2) No *alcoholic beverages* may be served, consumed or permitted on the *premises*;

(3) Chaperones from the sponsoring agency are present on the *premises* at the rate of two adults, who are at least twenty-five years of age or older, for every one hundred guests; and

(4) The event must finish by 12:00 a.m. and the *premises* and the adjoining parking lots must be promptly vacated by all the guests.

(b) *Entertainment* sponsored by a City authorized business improvement district when

(1) the business improvement district is created pursuant to and is abiding by state law, Streets and Highways Code sections 36500 and 36600, et. seq., and in compliance with agreements between the business improvement district and the City;

(2) the event is for the purpose of improving the business district of the business improvement district; and

(3) the business improvement district is the *responsible person* for the event.

(c) *Entertainment* limited to the use of a radio, music recording

machine, juke box, television, video games, video programs, or recorded music by an *establishment*;

(d) *Entertainment* provided for members and their guests at a private club having an established membership when admission is not open to the public.

For purposes of this Section, private club means corporations or associations operated solely for objects of national, social, fraternal, patriotic, political, or athletic nature, membership in which is by application and for which regular dues are charged, and the advantages of which club belong to members, and the operation of which is not primarily for monetary gain;

(e) *Entertainment* provided for invited guests at a private event such as a wedding reception, banquet, or celebration where there is no *admission charge*.

(f) *Entertainment* conducted in connection with a regularly established recreation or theme park;

(g) *Entertainment* conducted by or sponsored by any bona fide club, organization, society or association which is exempt from taxation pursuant to Internal Revenue Code section 501(c)(3), when all proceeds, if any arising from such *entertainment* are used exclusively for the benevolent purposes of such club, society or association;

(h) Performances by the students at educational institutions as defined by the Education Code where such performances are part of an educational or instructional curriculum or program;

- (i) *Theaters;*
- (j) Motion picture theaters not providing live entertainment;
- (k) Dance lessons, theatrical and performing arts lessons;
- (l) Book readings, book signings, poetry recitations, and any other similar entertainment consisting of the spoken word, including plays;
- (m) Fund-raisers for a political cause;
- (n) *Entertainment* consisting of ambient or incidental music provided for the guests by musicians such as a piano player, harpist, strolling violinist, mariachi band, guitarist or band. If there is an *admission charge* required to observe such *entertainment*, it will not be considered incidental.

(o) Any establishment, venue or assemblage of 49 persons or less, as described in the maximum occupancy load, provided that all the following conditions exist:

- (1) There is no admission charge.
- (2) The premises is not licensed and used for the sale of *alcoholic beverages*, such as a bar or restaurant which has an ABC license and serves *alcoholic beverages*.
- (3) Customer dancing is not allowed.
- (4) The entertainment ceases between the hours of 2:00 a.m. and 6:00 a.m.
- (p) For any of the following police-regulated businesses and

occupations:

- (1) "*nude entertainment*," regulated under Division 36 of this Article;
- (2) "*casino parties*," regulated under Division 41 of this Article;
- (3) "*commercial amusement establishments*," regulated under Division

16 of this Article;

- (4) "*peep show establishments*," regulated under Division 33 of this

Article;

- (5) "*bingo*," regulated under Division 34 of this Article;
- (6) "*cardrooms*," regulated under Division 39 of this Article.

SEC. 33.1505 Hours of Operation

All *entertainment establishments* shall be closed and all patrons shall vacate the *premises* between 2:00 a.m. and 6:00 a.m., unless the *permittee* also has an after-hours *permit* issued pursuant to Chapter III, Article 3, Division 8. The *Chief of Police* may require additional hours of closure as a condition on the *permit*. It is unlawful for any *responsible person* to fail to abide by the hours of closure.

SEC. 33.1506 Disturbing the Peace; Disorderly Conduct

The *responsible person* shall make reasonable efforts to prevent the admission of any *person* whose conduct is described in Penal Code section 415 (fighting, loud noise, offensive words in public places) or 647 (disorderly conduct) at the *premises* or on any parking lot or similar facility used by the

establishment. The *responsible person* shall make reasonable efforts to remove persons exhibiting such conduct from the *establishment*.

SEC. 33.1507 Reasonable Passageway Required

It is unlawful for any *responsible person* to fail to provide a reasonable passageway through any part of a room used by patrons and entertainers for their ingress and egress.

SEC. 33.1508 Observation of Noise Abatement Laws Required

The *responsible person* shall observe all laws applicable to noise abatement, including those contained in Chapter V of this Code.

SEC. 33.1509 Disorderly Conduct Within 100 Feet Prohibited

The *responsible person* shall control the conduct of patrons so as to prevent or minimize disorderly or unlawful conduct upon the *establishment* and within 100 feet of the *establishment*. The 100-foot distance shall be measured in a straight line from the property line of the licensed *establishment*.

SEC. 33.1510 Orderly Dispersal Required

The *responsible person* shall cause the orderly dispersal of individuals from the vicinity of the *establishment* at closing time, and shall not allow them to congregate in the vicinity in a disorderly fashion.

SEC. 33.1511 Alcoholic Beverage on Premises

(a) It is unlawful for any *person* to bring an *alcoholic beverage* onto the *premises* unless such action is allowed by the *permittee's ABC license*.

(b) It is unlawful for any *responsible person* to allow any *person* to bring an *alcoholic beverage* onto the *premises* unless such action is allowed by the *permittee's ABC license*.

SEC. 33.1512 Chief of Police Authority Where There is Immediate Threat to Public Safety

(a) The *Chief of Police* may require a *permittee* or *responsible person* to close down operations and disperse all patrons for the remainder of its daily operation whenever conduct by disorderly patrons reaches a magnitude that presents an immediate threat to the public safety and well-being of the patrons and general public in the vicinity.

(b) It is unlawful for any *person* to fail to comply with any directive issued by the *Chief of Police* under authority of Section 33.1512(a).

SEC. 33.1513 Conditions on Entertainment Permits

(a) The *Chief of Police* may impose conditions relating to the operation of the *entertainment* on the *police permit*. Conditions may relate to:

- (1) the days, hours and location of operation;
- (2) whether separate entrances, exits, and restroom facilities on the *premises*, or other similar restrictions designed to prevent minors from obtaining alcohol are required;
- (3) the age of *persons* allowed on *premises*;
- (4) whether licensed security guards are required, and if so, how many;
- (5) whether the *Chief of Police* must receive advance notice of the date

of a particular event if that event is not held as part of the regularly scheduled events of the business; and

(6) other similar conditions related to public safety and welfare;

(b) Conditions shall be based on specific and articulable facts reasonably related to insuring public safety, including the protection of minors from alcohol and other criminal activity.

(c) Conditions will be listed on the *permit*.

(d) Conditions may not be imposed unless the *Chief of Police* has considered the input of the *permittee* on the appropriateness of the conditions.

(e) The *Chief of Police* may not impose conditions that conflict with any local, state or federal law, or that conflict with the permittee's *ABC License*.

(f) Notwithstanding Section 33.1513(a), if the applicant has an *ABC license* or a *conditional use permit* issued since January 1, 1993 upon which the *Chief of Police* has had meaningful input in determining conditions on the *permit* related to the operation of the *entertainment*, including the ages of the patrons, and there has been no change in the manner or type of entertainment offered, those conditions will be the conditions of the *police permit* issued under authority of this Division. Nothing in this subsection is intended to prevent the *Chief of Police* from imposing any condition related to the age of patrons inside an *ABC establishment* if the *ABC license* does not address that issue. The intent of this subsection is to allow the sale and service of food to minors in a bona fide public

eating place (*ABC license* types 41, 47, and various club licensed premises) with reasonable conditions placed on the *permit* to prevent curfew violations and protect the minors from alcohol and other criminal activity.

(g) Unless otherwise stated on the *permit*, a *permit's* conditions are subject to change only (1) at the time of renewal of the *permit* and at the request of the *permittee*, or (2) in conjunction with a modification of the same conditions on an *ABC license* or *conditional use permit*. At the time of renewal, the *Chief of Police* may order the removal or modification of any condition as requested. Nothing in Section 33.1513(f) or (g) is intended to prevent the *Chief of Police* from modifying any condition in conjunction with regulatory action taken against the *permittee* pursuant to Division 4 of this Article.

(h) Imposition, suspension or revocation of any particular condition is appealable through the procedures set forth in Division 5 of this Article.

(i) The Chief of Police may not use the conditions to suppress or regulate speech in any manner contrary to the First Amendment.

SEC. 33.1514 Duration of Validity of Permit

Any *public dance*, cabaret, or commercial recreational assemblage *permit* issued on or before NOV 20 2000, shall be valid for one year from the date it was issued, with the exception of a single event, subject to any conditions or restrictions existing at the time it was issued. To obtain a renewed *permit*, an application for renewal shall be submitted to the *Chief of Police*. At the time the

application for renewal is submitted, the *Chief of Police* may impose conditions on the permit in accordance with this Division.

DIVISION 16

Commercial Amusement Establishment and Assemblages and Devices

Section 5. That Chapter III, Article 3, Division 16, of the San Diego Municipal Code be and the same is hereby amended by amending Section 33.1600 to read as follows:

**33.1600 Commercial Amusement Establishments and Commercial
Recreational Assemblages -- Regulated**

(a) Purpose and Intent -- The Council of the City of San Diego finds that commercial amusement establishments present an environment with the demonstrated potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times, with an attendant adverse public safety impact on the surrounding business and residential community. Therefore, it is the purpose and intent of this Division to regulate commercial amusement establishments not otherwise specifically regulated in this Article as police regulated businesses, and to require the operators as a condition of the issuance of a *permit* to be responsible for patron conduct upon and in the vicinity of the establishment and to make adequate provisions for security, crowd control and patron conduct so as to curb and minimize disturbances as a result of the operation of the *premises*.

(b) Definitions - The term "commercial amusement establishment"

shall refer to any business establishment to which the general public is invited to participate in games of skill or chance, and which charges an admission fee or playing charge. Such establishments include, but are not limited to the following illustrative types of amusement businesses: arcades, bowling alleys, pool rooms, billiard parlors, shooting galleries, skating rinks, and the like.

(c) Regulation - It shall be unlawful to operate a commercial amusement establishment without a police *permit*. Such *permit* issued pursuant to this Division shall be issued pursuant to the conditions specified herein, whether of general application, or of specific application to a particular type of amusement.

(d) The issuance of a police *permit* to operate a commercial amusement establishment shall authorize the conduct of any amusement business or combination thereof specifically regulated under this Division, with the proviso that the operator or other responsible person, as defined in this Article, shall comply with all requirements applicable to each category of regulated amusement located at the premises and the requirements of Section 33.1670.

SEC. 33.1601 NO CHANGE IN TEXT.

SEC. 33.1601.1 NO CHANGE IN TEXT.

SEC. 33.1601.2 NO CHANGE IN TEXT.

SEC. 33.1601.3 NO CHANGE IN TEXT.

SEC. 33.1610 NO CHANGE IN TEXT.

SEC. 33.1610.1 NO CHANGE IN TEXT.

SEC. 33.1610.2 NO CHANGE IN TEXT.

SEC. 33.1610.3 NO CHANGE IN TEXT.

SEC. 33.1615 NO CHANGE IN TEXT.

SEC. 33.1615.1 NO CHANGE IN TEXT.

SEC. 33.1615.2 NO CHANGE IN TEXT.

SEC. 33.1620 NO CHANGE IN TEXT.

SEC. 33.1635 NO CHANGE IN TEXT.

Section 6. That Chapter III, Article 3, Division 16, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 33.1636.

SEC. 33.1637 NO CHANGE IN TEXT.

Section 7. That Chapter III, Article 3, Division 16, of the San Diego Municipal Code be and the same is hereby amended by amending Section 33.1638 to read as follows:

SEC. 33.1638 Prohibited Conduct

It is unlawful for any *responsible person* in any commercial amusement establishment licensed herein, to operate any gambling game or to permit any lewd conduct or obscene material in or about or in connection with the general operation of such premises, or to permit the sale or consumption of any alcoholic beverage on *premises* not specifically licensed for such sale or consumption or to harbor, admit or receive or to permit to be or remain in or about such place any lewd person of either sex, any intoxicated or disorderly

person or any person under the influence of intoxicating liquors, or any person whose conduct while present in said premises creates a violation of any of the provisions of the Code of this City or the State of California, or which in any way materially interferes with the proper management or control of such commercial premises. This subsection is an administrative licensing regulation only and not subject to criminal penalty.

SEC. 33.1641 NO CHANGE IN TEXT.

SEC. 33.1645.1 NO CHANGE IN TEXT.

SEC. 33.1650 NO CHANGE IN TEXT.

SEC. 33.1660 NO CHANGE IN TEXT.

Section 8. That Chapter III, Article 3, Division 16, of the San Diego Municipal Code be and is hereby amended by amending Section 33.1670, to read as follows:

SEC. 33.1670 Responsibility for Patron Conduct

(a) As a condition of the issuance of a police *permit* to operate a commercial amusement establishment, the owner or operator or other *responsible person* shall: 1) Observe all laws applicable to noise abatement, particularly those contained in Chapter 5 of this Code; 2) Control the conduct of patrons so as to prevent or minimize the incidence of disorderly or unlawful conduct by such patrons upon the *premises* or immediately adjacent thereto and within a distance of 100 feet measured in a straight line from the nearest edge of the building or property line of the licensed *premises*; 3) Cause the orderly

dispersal of persons from the vicinity of the regulated *premises* at closing time and not allow them to congregate in a disorderly fashion. The repeated failure of the management of the regulated premises to take reasonable steps to control patron conduct or to take adequate precautions to curb such disorders or conduct during the hours of operation of the *premises* or at closing time after written notice of such violation has been provided to management shall be grounds for the suspension or revocation of the *permit* issued under this Division. It shall be competent to show that three or more written notices were sent to the management within a one-year period outlining the nature of the violations and those acts or omissions on the part of management which contributed to the patron misconduct, or which represented the failure of management to take reasonable steps to prevent or minimize such disturbances.

(b) The Chief of Police shall be further authorized to require the employment of a sufficient number of security personnel to provide crowd control during the event and dispersal at the conclusion thereof, based on the nature of the event, the number in attendance, the ages of the patrons, the potential for disorderly conduct, the nature of the surrounding neighborhood and the likelihood of interference from other sources or businesses in the area, and such other factors as the Chief of Police may determine to be particularly applicable to the regulated event or premise.

(c) The Chief of Police is hereby authorized to cause a regulated

commercial amusement establishment to close down operations and disperse all patrons for the remainder of the daily operation whenever disorderly patron conduct shall reach a magnitude as to present a clear threat to the public safety and well-being of the patrons and general public in the vicinity.

(d) This section is regulatory only.

Section 9. The City Clerk is instructed to insert the effective date of this ordinance, once known, in the blank space in Municipal Code section 33.1515.

Section 10. 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 11. 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:jp
10/09/00
Or.Dept:Police
Aud.Cert:
O-2001-7
Form=o&t.frm