

ORDINANCE NUMBER O- **19549** (NEW SERIES)

DATE OF FINAL PASSAGE **NOV 03 2006**

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3, DIVISION 33, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 33.3310, 33.3311, 33.3324 AND REPEALING SECTION 33.3326, RELATING TO PEEP SHOW ESTABLISHMENTS.

WHEREAS, in 2000, the City Council of the City of San Diego made various amendments to regulations governing police regulated businesses, including peep show booth establishments, and

WHEREAS, those changes did not include a provision requiring doors and locking mechanisms, and did not affect the "open booth" requirement, and

WHEREAS, various peep show booth establishment permittees subsequently sued the City challenging the legality of the open booth requirement and the hours of operation, in the case entitled *Mercury Booths, Inc. v. City of San Diego* and consolidated Cases, No. 00CV2461 BTM, and

WHEREAS, Plaintiffs ultimately dismissed the lawsuit in exchange for the City's agreement to modify the Peep Show Establishment Ordinance, and

WHEREAS, the agreement included a modification of the peep show ordinance to require doors, and locking mechanisms on peep show booths, and

WHEREAS, the agreement further required modifying the hours of operation to require closure between 2:00 a.m. and 6:00 a.m. on weekdays, and 4:00 a.m. and 6:00 a.m. on weekends and holidays, and

WHEREAS, section 33.3326 is no longer necessary, as agreement required compliance some time ago, and

WHEREAS, it is not the intent of this ordinance to excuse compliance with any other laws, but to delete unnecessary language contained in section 33.3326; NOW, THEREFORE,

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

Section 1. That Chapter 3, Article 3, Division 33 of the San Diego Municipal Code is amended by amending Sections 33.3310 and 33.3311, relating to Peep Show Establishments as follows:

§33.3310 Peep Show Booth Minimum Size and Occupancy Load

- (a) Except as provided in Section 33.3326, it is unlawful for any *person* to operate a *peep show establishment* unless the floor area of the interior of the viewing area of each *peep show booth* is a maximum of fifteen square feet.
- (b) A *peep show booth* shall not contain seating accommodations *designed* for use by more than one person at any one time. This subsection is regulatory only.
- (c) The *responsible person* shall not allow more than one person in a *peep show booth* at any one time. This subsection is regulatory only.
- (d) It is unlawful for any person to enter or remain in any *peep show booth* that is occupied by another person.
- (e) Each *peep show booth* shall have an interlock mechanism on its door which prevents activation of the *peep show device* unless the *peep show booth* door is closed and locked.

- (f) The *responsible person* on the premises must be able to open the door to the *peep show booth* at all times and the *responsible person* must open the door upon the request of a *peace officer* when that officer is inspecting the premises, investigating criminal activity, or investigating violations of this Code.

§33.3311 Peep Show Booth Entrances and Walls

The entrance to each *peep show booth* shall face a primary continuous aisle as described in Section 33.3309, and shall have a door. The entire viewing area of the *peep show booth* must be visible from the primary continuous aisle when the door is open.

The walls, and door of a *peep show booth* shall extend downward no further than eighteen inches above the floor.

- §33.3324** It is unlawful for any person to operate a peep show booth or peep show device between the hours of 2:00 a.m. and 6:00 a.m. on weekdays and 4:00 a.m. and 6:00 a.m. on weekends and holidays. Permit holders shall not be granted an after-hours permit pursuant to Division 8.

Section 2. That Chapter 3, Article 3, Division 33 of the San Diego Municipal Code is hereby amended by repealing Section 33.3326, relating to Peep Show Establishments.

Section 3. 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 4. That this ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

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

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O-2006-119

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San
Diego, at this meeting of OCT 24 2006.

ELIZABETH S. MALAND
City Clerk

By Elizabeth S. Maland
Deputy City Clerk

Approved: 11-3-06
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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