

ORDINANCE NUMBER O- 20114 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 15 2011

AN ORDINANCE AMENDING CHAPTER 3, ARTICLE 3,  
DIVISION 15 OF THE SAN DIEGO MUNICIPAL CODE BY  
AMENDING SECTIONS 33.1502 AND 33.1504, ALL  
RELATING TO ENTERTAINMENT ESTABLISHMENTS.

WHEREAS, the San Diego Police Department (Department) is responsible for issuing permits and regulating industries involving a variety of businesses; and

WHEREAS, these are collectively referred to as Police Regulated Businesses; and

WHEREAS, the Department inspects and regulates these businesses to ensure there is no criminal activity or other violations that would have a negative impact on the quality of life of the surrounding community; and

WHEREAS, the Department is mandated by the San Diego Municipal Code to be cost recoverable in its regulation of these businesses; and

WHEREAS, in an effort to implement the City's comprehensive fee policy (Council Policy 100-05), the Department recently reviewed its entertainment fees and proposed updates to the rates; and

WHEREAS, during this process the Department was directed to meet with representatives from the Mayor's office, Council offices, the City Attorney's Office, the Independent Budget Analyst, and restaurant and entertainment business stakeholders to discuss creating a new tier for "limited" or "exempt" entertainment venues that would fall outside police regulation; and

WHEREAS, those meetings resulted in a proposal to add an additional exemption from police regulation to the exemptions that currently exist for an Entertainment Permit in section 33.1504 of the San Diego Municipal Code; NOW, THEREFORE,

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

Section 1. That Chapter 3, Article 3, Division 15 of the San Diego Municipal Code is amended by amending sections 33.1502 and 33.1504 to read as follows:

**§ 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*.

“*Bona fide restaurant*” means an eating establishment where a minimum percentage of its food sales are 50% of gross receipts.

“*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.

**§ 33.1503 Entertainment Permit Required**

[No change in text.]

**§ 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 *entertainment* and events from complying with all other applicable laws, including the laws related to noise levels, particularly those contained in Chapter V of this Code.

(a) through (p) [No change in text.]

(q) Any establishment that is a *bona fide restaurant* provided all of the following conditions exist:

- (1) There is no *admission charge*.
- (2) There is no required purchase or donation (such as minimum drink order).
- (3) The establishment is closed and all customers have vacated the premises between 11:00 pm and 8:00 am.
- (4) Customer *dancing* is not allowed.

[Editors Note - Section 33.1504(q) shall be effective until March 31, 2013, at which time section 33.1504 (q) shall be automatically repealed unless an extension is approved by a majority vote of the City Council.]

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

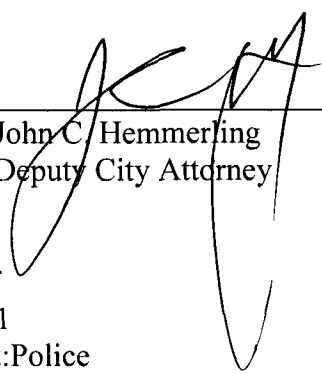
Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

Section 4. Section 33.1504(q) shall be effective on JAN 14 2012 and shall remain in effect until March 31, 2013 and shall automatically be repealed unless a later enacted ordinance extends that date.

Section 5. The Clerk is instructed to put the effective date, once known, into Section 4 of this ordinance. The Clerk is further instructed to remove subsection 33.1504(q) from the Municipal Code on April 1, 2013, including the Editors Note, unless an extension has been approved by Council.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

  
\_\_\_\_\_  
John C. Hemmerling  
Deputy City Attorney

JCH:jdf  
10/21/11  
Or.Dept:Police

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of ~~DEC 6~~ **2011**

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 12-15-11  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

**STRIKEOUT ORDINANCE**

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

**NEW LANGUAGE: Double Underline**

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JCH:jdf  
10/21/11  
Or.Dept:Police