

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: September 17, 1987

TO: Curtis Fitzpatrick
FROM: Joseph M. Battaglino
SUBJECT: Standard for Money Exchange House Ordinance
Reference is made to our conversation regarding the proposed amendment to the San Diego Municipal Code to establish Money

Exchange Houses as a police regulated business. You questioned the factual basis and the standard for establishing a police regulated business for Money Exchange Houses. The purpose of this memorandum is to ascertain the standard for the proposed ordinance as per our discussion.

The applicable standard in a licensing ordinance is strict scrutiny where its operation impinges on the exercise of First Amendment activities. The lesser standard of reasonable relationship applies where the licensing ordinance relates to a business or activity not entitled to First Amendment protection. *Sunset Amusement Co. v. Board of Police Commissioners*, 7 Cal.3d 64, 72 (1972). The petitioner in *Sunset Amusement* argued that operation of the roller skating rink was entitled to First Amendment protection because the "entertainment" or "amusement" of patrons involved rights of free speech and assembly assertedly affected by the licensing ordinance (p. 74). The court responded to petitioner's contention as follows:

Petitioners rely upon *In re Giannini*, supra, 69 Cal.2d 563, 567-572, wherein a majority of this court held that the performance of a non-obscene dance for an audience constitutes a method of expression protected by the First Amendment. It is apparent, however, that Giannini's rationale would be inapplicable to the activities conducted by petitioners herein. Giannini sought to express the principle that "all forms of communication, not merely the expression of concrete and definite ideas, potentially receive First Amendment protection." (P. 569, italics in original.) The key element is, of course, communication. We have difficulty finding that essential

element to exist in the context of a roller skating rink. True, it is inevitable that some patrons of the rink watch the other skaters and are, perhaps, entertained or amused by their activities. And yet it seems inescapable that petitioners' patrons primarily use the facilities for physical exercise and personal pleasure; Giannini's element of communication between an artist or performer and his audience seems entirely lacking. (P. 74).

The reasonable relationship standard was also applied in *Saunders v. City of Los Angeles*, 273 Cal.App.2d 407 (1969) where automobile repair shops were licensed by the Los Angeles Board of Police Commissioners as a business particularly open to fraudulent dealing. The Saunders court in distinguishing the case of *Burton v. Municipal Court*, 68 Cal.2d 684 (1968) holding that the ordinance dealing with motion picture permits was unconstitutional stated: "The holding in *Burton* is limited to situations involving the First Amendment, and does not apply in the case before us in which the right to free speech is not involved. *Saunders v. City Los Angeles*, 273 Cal.App.2d 407, 411-412 (1969).

The Saunders Court in finding the auto repair shop licensing ordinance valid concluded as follows:

The City of Los Angeles, in the exercise of its undoubted police powers, can determine that certain businesses require constant police supervision, and that licenses to conduct such business shall not be issued as a matter of course to every applicant. See *Cooperative Junk Co. v. Police Comrs.* (1918) 38 Cal.App. 676 177 P. 308, (dealing with the junk business). 5 "A legislative body, in the exercise of its police power, has . . . broad discretion to determine both what the public interests are and the measures necessary for the protection of such interests. . . . If reasonable minds might differ as to the reasonableness of the regulation, the law must be upheld. Citations." (*Justesen's Food Stores v. City of Tulare* (1941) 43 Cal.App.2d 616, 621 111 P.2d 424.) 4b The ordinance herein involved deals with a business particularly open to fraudulent dealing. The

ordinary car owner is at the mercy of the repair man both as to the extent of repairs needed and as to their cost. The city council and the board were legitimately concerned that licensees be men of probity. Neither the regulation nor its application to petitioner unduly interfere with petitioner's right to liberty or his pursuit of happiness; they are a legitimate exercise of the police power. (PP. 412-413).

Since no known First Amendment rights are involved in the operation of Money Exchange Houses, the strict scrutiny standard would not apply to the proposed licensing regulation. The test standard is met and the proposed ordinance will ordinarily be upheld if it is reasonably related to promoting the public health, safety, comfort and welfare and if the means adopted to accomplish that promotion are reasonably appropriate to the purpose. *Higgins v. City of Santa Monica*, 62 Cal.2d 24, 30 (1964).

JMB:ifs:520.1

MS-87-10