



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: September 6, 2006 REPORT NO.: 06-121

ATTENTION: Honorable Mayor and City Council
Docket of September 12, 2006

SUBJECT: Amendments to the Regulation of Peep Show Establishments in San
Diego, Municipal Code Division 33

REFERENCE:

REQUESTED ACTION: Amend the Municipal Code regulating peep show establishments

STAFF RECOMMENDATION: Approve the proposed amendment

SUMMARY:

On November 20, 2000, the City adopted Ordinance No. 0-18890 N.S. effective December 20, 2000, which amended the existing definitions in SDMC 33.3302 to read as follows:

“Peep show booth” means any room, or partitioned area of any room, in which a peep show device is located. “Peep show booth” does not include adult motion picture theaters or adult mini motion picture theaters as defined in Section 141.0601 of this Code.

“Peep show establishment” means any place to which the public is permitted or invited where one or more peep show devices are maintained.

“Peep show device” means any device, which displays still or moving images, which are distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas.” “Peep show device” does not include televisions, videotape machines, or other image producing devices, located within hotels, motels or similar commercial lodging establishments, which are licensed as such.

The ordinance also added a new section 33.3324 (“Hours Restriction”) “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.

In addition, the ordinance amended certain provisions pertaining to the construction and configuration of peepshow booths (Visibility Requirements) including the minimum size, occupancy load, entrances and booth support.

The peep show industry sued the City regarding the above changes. The parties continue to disagree about the proper characterization of a peep show establishment, as well as the applicability and constitutionality of the Hours Restriction and the Visibility Requirements under the relevant decision of the Supreme Courts of the United States and the State of California, including the interpretation and application of the various constitutional tests set forth in the most recent case United States Supreme Court case, City of Los Angeles v. Alameda Books Inc., and the California Supreme Court case, People v. Glaze.

Nevertheless, the parties agreed to compromise and settle their differences. A settlement agreement was reached and the City agreed not to enforce the hours restriction so long as peep show establishments are closed to patrons 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. The City also agreed to not enforce the visibility requirements as long as the peep show booths are enclosed with a door that extends downward no further than eighteen inches above the floor and faces a primary continuous aisle as described in SDMC 33.3309. The peep show industry agreed to bring its peep show establishments into compliance with the visibility requirements within six months from the effective date of the settlement. The industry also agreed that no later than six months from the effective date of the settlement they would install interlock mechanisms on its peep show booths, which prevent activation of the device unless the peep show door is closed and locked. 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 either inspecting the premises, investigating criminal activity or investigating violations of the Code.

The attached ordinance has been updated to include the issues contained in the settlement agreement. Section 33.3310 (e) & (f) have been added to include the interlock mechanism issue.

The first portion of Section 33.3311 has been deleted regarding the removal of doors. Section 33.3324 has been modified to include the Hours Restrictions on weekends and holidays.

FISCAL CONSIDERATIONS: None

PREVIOUS COUNCIL and/or COMMITTEE ACTION: November 20, 2000, the City adopted Ordinance No. 0-18890 N.S. effective December 20, 2000, amending the existing ordinance regulating peep show establishments.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): Peep Show Industry
within the City of San Diego.

William M. Lansdowne
Chief of Police
Police Department

Jill Olen
Deputy Chief Operating Officer