

(O-2001-4)

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

ADOPTED ON \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER III, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 8 ENTITLED AAFter-HOURS PERMITS® AND SECTIONS 33.0801, 33.0802, 33.0803, 33.0804, 33.0805, 33.0806, 33.0807, 33.0808, 33.0809, 33.0810, 33.0811, 33.0812, 33.0813, 33.0814, 33.0815, 33.0816, AND 33.0817, RELATING TO AN AFTER-HOURS PERMIT.

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 through 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 & Neighborhood Services Committee and the Council; NOW, THEREFORE,

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

Section 1. That Chapter III, Article 3, of the San Diego Municipal Code be and the same is hereby amended by adding Division 8 entitled AAfter-Hours Permits® and Sections 33.0801,

33.0802, 33.0803, 33.0804, 33.0805, 33.30806, 33.0807, 33.0808, 33.0809, 33.0810, 33.0811, 33.0812, 33.0813, 33.0814, 33.0815, 33.0816, and 33.0817, to read as follows:

## **DIVISION 8**

### **AFTER-HOURS PERMITS**

#### **SEC. 33.0801 Purpose and Intent**

The Council of the City of San Diego finds that the operation of *entertainment venues* between the hours of 2:00 a.m. and 6:00 a.m. present an environment with the demonstrated potential for excessive noise generation and disorderly conduct by patrons, with the attendant adverse public safety impact on the surrounding business and residential community, and may be detrimental to the quality of life in the community.

The Council also finds that allowing *entertainment venues* to remain open after 2:00 a.m. may reduce the noise and disorderly conduct associated with the two o'clock closing hour.

Therefore, it is the purpose and intent of this Division to regulate after-hours activities for the public safety by establishing minimum standards for conducting after-hours business, including a minimum distance requirement between businesses and residences. It is the intent of this Division to allow businesses to seek a waiver of the distance requirement from the *Chief of Police*. Once a waiver is obtained, it is the intent of this Division that the waiver be thereafter granted to the business unless the business changes its mode of operation or if the public safety becomes adversely affected.

#### **SEC. 33.0802 Definitions**

For purposes of this Division:

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

"*Entertainment venue*" means any commercial establishment or assemblage that (1) features, allows, or provides live entertainment, is open to the general public, and is a police-regulated business, or (2) is a public dance and a police-regulated business.

#### **SEC. 33.0803 Permit Required for After-Hours Business**

It is unlawful for any *entertainment venue* to be open between 2:00 a.m. and 6:00 a.m. without a *police permit*.

Any business or occupation regulated under Divisions 28, 33 or 36 of this Article is not eligible for an after-hours *permit*.

#### **SEC. 33.0804 Contents of Application for an After-Hours Permit**

An applicant for an after-hours *permit* shall meet the application requirements set forth in Divisions 1, 2 and 3 of this Article.

#### **SEC. 33.0805 Grounds for Denial of After-Hours Permit**

In addition to the grounds for denial of any police-regulated business *permit* stated in Section 33.0305, an application for an after-hours *permit* must be denied for any of the following reasons:

(a) Issuance of the after-hours *permit* conflicts with the applicant's *ABC license*, the applicant's *conditional use permit*, the applicant's *police permit*, this Code, or any local, state or federal law.

(b) Except as provided in Section 33.0806, the establishment is less than 300 feet from any single-family or multi-family residence, other than commercial hotels, motels and similar establishments for temporary lodging. The distance shall be measured in a straight line, without regard to intervening structures, between the closest structural wall of the residence and the closest property line of the establishment.

(c) The business located on the premises has operated in violation of law or this Code during the preceding twelve months.

#### **SEC. 33.0806 Waiver of Minimum Distance Requirement**

The *Chief of Police* may waive the requirements of Section 33.0805(b) if the applicant provides written evidence that either: (1) the households within 300 feet of premises are aware of the application of the after-hours *permit* and have no objection to the grant of the *permit*; or (2) reasonable attempts were made to notify them and there was no response by the households. The *Chief of Police* may grant the waiver over an objection if, after investigating the *premises* and the affected area, the *Chief of Police* is satisfied that the objection is unreasonable. A new waiver must be obtained if there is: (1) a change in the mode of operation of the business, or (2) a change in ownership, or (3) a change in the conditions or status of the *permittee's ABC license*.

After the initial granting of a waiver, if there is an objection, the Chief will consider any changes to the mode of operation made by the business or any adverse affects the business is having on public safety in determining whether or not to renew the waiver.

### **SEC. 33.0807 Age Requirements**

It is unlawful for any *responsible person* or *employee* to allow any *person* under the age of 18 to be on the *premises* unless one of the provisions of Section 58.0102(c) (curfew restrictions) apply. However, if the establishment has an *ABC license*, the ABC's age regulation controls.

### **SEC. 33.0808 Disturbing the Peace; Disorderly Conduct**

It is unlawful for any *responsible person* or *employee*:

(a) to admit onto the *premises* any *person* whose conduct is described in Penal Code section 415 (disturbing the peace) or 647 (disorderly conduct); or

(b) to allow any person exhibiting the conduct described in subsection (a) to remain on the *premises* or on any parking lot or similar facility used by the *premises*.

### **SEC. 33.0809 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. 33.0810 Observation of Noise Abatement Laws Required**

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

**SEC. 33.0811 Disorderly Conduct Within 100 Feet Prohibited**

*Responsible persons* shall control the conduct of patrons so as to prevent or minimize disorderly or unlawful conduct upon the *premises* or within 100 feet of the *premises*. The 100-foot distance shall be measured in a straight line from the nearest edge of the building or property line of the licensed *premises*.

**SEC. 33.0812 Orderly Dispersal Required**

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

**SEC. 33.0813 Nude Entertainment Prohibited**

It is unlawful for any *responsible person* to allow on the *premises* any entertainment described in Division 36, Nude Entertainment.

**SEC. 33.0814 Security Guards May Be Required**

In accordance with Division 1 of this Article, the *Chief of Police* may require the permit holder to employ a sufficient number of licensed security guards to provide crowd control.

**SEC. 33.0815 Chief's Authority Where There Is Immediate Threat to Public Safety**

(a) The *Chief of Police* may require any business with an after-hours *permit* 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 the authority of Section 33.0815(a).

**SEC. 33.0816 Conditions on After-Hours Permits**

(a) The *Chief of Police* may impose conditions related to after-hour activities on all *permits* issued under this Division. Conditions shall be based on specific and articulated facts reasonably related to ensuring public safety, including noise control and maintaining the peace in the surrounding area.

Conditions may relate to:

- (1) the days and hours of operation;
- (2) the age of persons permitted on *premises*;
- (3) whether licensed security guards are required, and if so, how many;
- (4) whether the *Chief of Police* must receive advance notice of a particular after-hours event if after-hours events are not held as part of the regularly scheduled events of the business; and
- (5) other similar conditions related to public safety and welfare.

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

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

(d) 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*.

(e) Unless otherwise stated on the *permit*, the conditions are subject to change only at the time of renewal at the request of the *permittee*. At the time of renewal, the *Chief of Police* may order the removal or modification of any condition as requested. Nothing in Section 33.0816(f) 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 or to comply with any change in the law.

(f) Imposition, suspension or revocation of any particular condition not agreed to by the *permittee* is appealable through the procedures set forth in Division 5.

### **SEC. 33.0817 Duration of Validity of Permit**

Any after-hours *permit* issued on or before \_\_\_\_\_, shall be valid for one year after the date it was issued. To obtain a new *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. The applicant will be required to pay regulatory fees.

Section 2. The City Clerk is instructed to insert the effective date of this ordinance, once known, in the blank space in Municipal Code section 33.0817.

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. 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  
Deputy City Attorney

MTN:cdk:pev:smf:jp:jrl  
07/03/00  
Or.Dept:Police  
O-2001-4

**STRIKE OUT ORDINANCE**

**NEW LANGUAGE - REDLINED**

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