

Article 3: Police Regulated Occupations and Businesses**Division 36: Nude Entertainment Business**

(“Nude Entertainment Business and Nude Entertainers”

added 1-11-1978 by O-12259 N.S.)

(Retitled to “Nude Entertainment Business” on 10-30-2000 by O-18876 N.S.)

§33.3601 Purpose and Intent

It is the purpose and intent of this Division to provide for the orderly regulation of the business of *nude entertainment* in The City of San Diego by establishing certain minimum standards for the conduct of this type of business to protect the public order and the general welfare of the residents of The City of San Diego, including the prevention of prostitution, obscenity, lewd acts, money laundering and the infiltration of organized crime and its associated problems, the prevention of the spread of disease, the prevention of the deterioration of neighborhoods, the reduction of crime in and around *adult entertainment businesses*, and the preservation of the quality of urban life in The City of San Diego. It is not the intent of this Division to deny adults access to adult oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult oriented entertainment to their intended market.

(“Citation of Ordinance” repealed; “Purpose and Intent” renumbered from Sec. 33.3602 and amended 10-30-2000 by O-18876 N.S.)

§33.3602 Definitions

For purposes of this Division:

“Adult entertainer” means any person who, at a fixed business location, provides *nude entertainment* or whose performance is distinguished or characterized by an emphasis upon the display of *specified anatomical areas* or *specified sexual activities*. It includes persons who perform dances such as “stage dances,” “lap dances,” “table dances,” and “couch dances,” whether or not the entertainer is *nude*.

“Adult entertainment establishment” includes any business that is characterized by an emphasis on depicting, describing, or showing *specified sexual activities*, or *specified anatomical areas*. It includes any *establishment* regulated in Section 141.0601 of this Code.

(11-2000)

“*Nude*” means being devoid of an opaque covering which covers the genitals, pubic hair, buttocks, perineum, anus or anal region of any person, or any portion of the female breast at or below the areola.

“*Nude entertainment*” means any live performance or activity where a nude person provides services, including, but not limited to, talking, reading, listening, singing, posing, walking, dancing, or wrestling.

“*Nude entertainment business*” means any *establishment* or business operating at a fixed location where (a) any person engages in or operates *nude entertainment*, or (b) there are live performances which are distinguished or characterized by an emphasis upon the display of *specified anatomical areas* or *specified sexual activities*. It includes nightclubs, bars, lingerie modeling studios, and similar commercial *establishments* commonly known as “topless” or “*nude*.”

“*Specified anatomical areas*” means and includes less than completely and opaquely covered human genitals, pubic region, buttocks, anus, female breasts below a point immediately above the top of the areolae, or human male genitals in a discernible turgid state, even if completely and opaquely covered.

“*Specified sexual activities*” means and includes the fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts; sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; masturbation, actual or simulated; or excretory functions as part of or in connection with any of the activities set forth above.

(*Purpose and Intent*” renumbered to Sec. 36.3601; “*Definitions*” renumbered from Sec. 33.3604 and amended 10-30-2000 by O-18876 N.S.)

§33.3603 Permit Required to Operate Nude Entertainment Business

It is unlawful for any *person* to operate or to allow the operation of a *nude entertainment business* without a *police permit*.

(“*Nude Entertainment Business - Police Regulated*” repealed and “*Permit Required to Operate Nude Entertainment Business*” added 10-30-2000 by O-18876 N.S.)

§33.3604 Adult Entertainer Permit Required

It is unlawful for any person to act as an *adult entertainer* without a *police permit*.

(“*Definitions*” renumbered to Sec. 36.3602; “*Nude Entertainment - License Required*” renumbered from Sec. 33.3605, retitled to “*Adult Entertainer Permit Required*” and amended 10-30-2000 by O-18876 N.S.)

§33.3605 Nude Entertainment Business Permit and Nude Entertainer Permit Application Contents

- (a) Each applicant for a *permit* to operate a *nude entertainment business*, or as an *adult entertainer*, shall furnish the following information to the *Chief of Police*:
- (1) The full true name and any other names ever used by the applicant.
 - (2) The current residential address and telephone number of the applicant.
 - (3) Each residential and business address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each such address.
 - (4) Written proof that the applicant is at least eighteen years of age.
 - (5) Applicant's height, weight, color of eyes and hair.
 - (6) Photographs as specified by the *Chief of Police*.
 - (7) Applicant's business, occupation and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.
 - (8) Whether the applicant has ever had any *adult entertainment establishment license* or *permit*, or any *adult entertainment establishment employee license* or *permit*, or any similar *license* or *permit* from any agency or board, or any city, county, state or federal agency, suspended or revoked within five years immediately preceding the date of application, and the reason for the suspension or revocation.
 - (9) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic, and the dates and places of the *convictions*.
 - (10) Fingerprints.
- (b) In addition to furnishing the information required by Section 33.0605(a), an applicant for a *nude entertainment business permit* must furnish the following information:

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- (1) the proposed address and true name or names of the *nude entertainment business* including any fictitious name(s) the business will operate or advertise under;
 - (2) the name and address of the owner and any lessor of the real property upon which or in which the business is to be conducted, and a copy of the lease or rental agreement, and any amendments to it;
 - (3) the full true name and any other names used by the owners and any persons who exercise control over the operation, management, direction or policy of the business, or who are responsible for the daily operation of the business;
 - (4) if the applicant is a corporation, the name of the corporation exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and names and residence addresses of each of its current officers and directors;
 - (5) if the applicant is a partnership, the name and residence addresses of each of the partners, including limited partners;
 - (6) if the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;
 - (7) if one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Section 33.3605 (b)(4);
- (c) In addition to furnishing the information required by Section 33.3605(a), an applicant for an *adult entertainer permit* must furnish the following information:

The name and address of the *nude entertainment establishment* service at which the applicant expects to be employed.

(“*Nude Entertainment - License Required*” renumbered to Sec. 36.3604 and retitled; “*Nude Entertainment License*” renumbered from Sec. 33.3606, retitled to “*Nude Entertainment Business Permit and Nude Entertainer Permit Application Contents*” and amended 10–30–2000 by O–18876 N.S.)

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§33.3606 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a *nude entertainment business* is deemed an applicant for a *nude entertainment business permit* and each must provide the information required in Section 33.3605.

(“Nude Entertainment License” renumbered to Sec. 36.3605 and retitled; “Corporate Officers and Partners Deemed Applicants” added 10-30-2000 by O-18876 N.S.)

§33.3607 Designation of Responsible Managing Officer, Signature on Applications

An applicant who is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

(“Nude Entertainer — Permit Required” repealed and “Designation of Responsible Managing Officer, Signature on Applications” added 10-30-2000 by O-18876 N.S.)

§33.3608 Grounds for Denial of Nude Entertainment Business Permit or Adult Entertainer Permit

In addition to the grounds for denial stated in Section 33.0305(a)-(e), 33.0305(f)(3) and 33.0305(g), an application for a *nude entertainment business permit* or *adult entertainer’s permit* shall be denied for any of the following reasons:

- (a) The applicant has within five years immediately preceding the date of the filing of the application *been convicted* of any of the following offenses:
 - (1) any offense described in California Penal Code sections 266h, 266i, 315, 316, 318, 653.22, or 647(a) or (b);
 - (2) any offense described in California Penal Code, Part One, Title 9, Chapters 7.5 and 7.6.
- (b) The applicant has within five years immediately preceding the date of the filing of the application *been convicted* of a charge of violating any lesser included or lesser related offense, including California Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

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- (c) The applicant has *been convicted* of any offense which requires registration as a sex offender under California Penal Code section 290.

(“Nude Entertainer Permit” repealed and “Grounds for Denial of Nude Entertainment Business Permit or Adult Entertainer Permit” added 10–30–2000 by O–18876 N.S.)

§33.3609 **Nude Entertainment Businesses — Operating Requirements**

- (a) It is unlawful for any *person* to allow any person below the age of eighteen years upon the *premises* of any *nude entertainment business*.
- (b) It is unlawful for any *responsible person* to allow a *nude entertainment establishment* to be open for business between 2 a.m. and 6 a.m. Permittees shall not be granted an after-hours *permit* pursuant to Division 8.
- (c) *Responsible persons* shall not permit or allow any *person* who is *nude* to be within six feet of any patron. This subsection is regulatory only.
- (d) During any performance, *responsible persons* shall not allow any *adult entertainer* to intentionally touch any patron, or any patron to intentionally touch any *adult entertainer*, whether or not the *adult entertainer* is *nude*. This subsection is regulatory only.
- (e) *Responsible persons* shall not allow any *nude* person on the *premises*, other than *adult entertainers* who are performing. This subsection is regulatory only.
- (f) *Responsible persons* shall not allow any *person* to touch, caress, or fondle the *specified anatomical areas* of any other *person*. This subsection is regulatory only.

This subsection does not apply to persons in restrooms, or to *employees* in locker or changing rooms not open to the public or open to public view.

(“Operative Date — Nude Entertainers” repealed and “Nude Entertainment Businesses — Operating Requirements” added 10–30–2000 by O–18876 N.S.)

§33.3610 **Adult Entertainer Operating Requirements**

- (a) While *nude*, an *adult entertainer* shall not be within six feet of a patron. This subsection is regulatory only.

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- (b) An *adult entertainer* shall not intentionally touch any patron during any performance, or allow any patron to intentionally touch the *adult entertainer* whether *nude* or not. This subsection is regulatory only.
- (c) An *adult entertainer* shall not touch, caress, or fondle the *specified anatomical areas* of any *person*, or allow any *person* to touch, caress, or fondle the *specified anatomical areas* of the *adult entertainer*. This subsection is regulatory only.
- (d) *Adult entertainers* must notify the *Chief of Police* of any change in their business or residential address within fifteen calendar days of the change. (*“Nude Entertainment Businesses — Operating Requirements” repealed and “Adult Entertainer Operating Requirements” added 10–30–2000 by O–18876 N.S.*)

§33.3611 Exemptions

The provisions of this Division shall not apply to the following:

- (a) Any theater, concert hall, or similar *establishment* which is primarily devoted to theatrical performances. Any *establishment* that regularly features live performances, which are distinguished or characterized by an emphasis on specified anatomical areas or specified sexual activities, cannot obtain this exemption. Any establishment which operated pursuant to an exemption from police regulation prior to November 30, 2000, or which operated without a *nude entertainment permit* because of court adjudication prior to November 30, 2000, may continue to operate in its exempt status, subject to any other requirements in place prior to November 30, 2000.
- (b) Any studio which is operated by any state college or university or public community college or school wherein the *persons*, firm, association, partnership, or corporation operating it have met the requirements established in Division 21 of the California Education Code for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma or honorary diploma.
- (c) Any *premises* where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in Section 33.3611(b).

(*“Name of Business” repealed and “Exemptions” added 10–30–2000 by O–18876 N.S.*)