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**ORDINANCE NO.**

**An ordinance of the County of San Bernardino, State of California, amending Chapter 29 of Division 1 of Title 4 of the San Bernardino County Code, relating to adult business non-performer license.**

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

SECTION 1. Chapter 29 of Division 1 of Title 4 of the San Bernardino County Code is amended to read:

**CHAPTER 29: ADULT BUSINESS NON-PERFORMER LICENSE**

**Section**

- 41.2901 Definitions.**
- 41.2902 Purposes.**
- 41.2903 Adult Business Non-Performer License.**
- 41.2904 Investigation and Action on Adult Business Non-Performer License Application.**
- 41.2905 Revocation/Suspension/Denial of Adult Business Non-Performer License.**
- 41.2906 Display of License Identification Cards.**
- 41.2907 Adult Business Non-Performer License Nontransferable.**
- 41.2908 Violations.**
- 41.2909 Regulations Non-Exclusive.**
- 41.2910 Severability.**

**41.2901 Definitions.**

The definitions for this ~~c~~Chapter shall be governed by the definitions found in ~~§~~Section 810.01.030(~~lm~~) of the County Development Code unless otherwise stated.

1 **41.2902 Purpose.**

2 It is the purpose and intent of this ~~c~~Chapter to require certain background checks  
3 on non-performers who work in adult businesses during regular business hours to  
4 promote the health, safety, and general welfare of the County. The goals of these non-  
5 performer employee provisions are: (a) to protect minors by requiring that all non-  
6 performers regularly employed be over the age of 18 years; (b) to assure the correct  
7 identification of persons working in adult businesses; (c) to enable the County Sheriff to  
8 deploy law enforcement resources effectively; and (d) to detect and discourage the  
9 involvement of crime in adult businesses by precluding the employment of non-  
10 performers with certain ~~sex-~~related convictions within a prior time period. It is neither  
11 the intent nor the effect of these regulations to invade the privacy of adult business  
12 employees or to impose limitations or restrictions on the content of any communicative  
13 material. Similarly, it is neither the intent nor the effect of these regulations to restrict or  
14 deny access by adults to communicative materials or to deny access by the distributors  
15 or exhibitors of adult businesses to their intended lawful market. Nothing in these  
16 regulations is intended to authorize, legalize, or permit the establishment, operation, or  
17 maintenance of any business, building, or use which violates any County ordinance or  
18 any statute of the State of California regarding public nuisances, unlawful or indecent  
19 exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or  
20 public display thereof.

21 **41.2903 Adult Business Non-Performer License.**

22 (a) No individual who works as a non-performer in a managerial position in an  
23 adult business shall be employed, hired, engaged, or otherwise retained in an adult  
24 business without first obtaining an ~~a~~Adult ~~b~~Business ~~n~~Non-~~p~~Performer ~~l~~License. Non-  
25 managerial individuals who are not performers do not need a license.

26 (b) Individuals who wish to work as non-performer managers in an adult  
27 business shall file a written, signed, and verified application or renewal application for  
28 an ~~a~~Adult ~~b~~Business ~~n~~Non-~~p~~Performer ~~l~~License on a form provided by the ~~Clerk~~

1 responsible department. Such application shall contain the following information:

2 (1) The applicant's legal name and all used aliases.

3 (2) Date of birth.

4 (3) Driver's license or identification number and state of issuance or  
5 other state identification which confirms the name of the applicant.

6 (4) The license applicant's fingerprints on a Livescan form provided by  
7 the San Bernardino Sheriff's Department. Any fees for fingerprints shall be paid by the  
8 applicant. Fingerprints shall be taken within six months of the date of application.

9 (5) Whether the non-performer employee applicant has pled guilty or  
10 pled nolo contendere or been convicted of an offense classified by this or any other  
11 state as a sex related offense including crimes involving moral turpitude, prostitution, or  
12 obscenity subject to the time periods established in §Subsections 85.21.020(c)(4)(A),  
13 (B), and (C). Any applicant who admits of a recent prior sex related offense as specified  
14 above shall be denied employment in an adult business during the applicable time  
15 period for disqualification called out herein.

16 (6) The name and address of the adult business where the applicant  
17 proposes to work as a non-performer in a managerial capacity.

18 (c) The information provided above in sSubdivision (b) of this Section, which  
19 is personal, private, confidential or the disclosure of which could expose the applicant to  
20 the risk of harm, will not be disclosed under the California Public Records Act. Such  
21 information includes, but is not limited to, the applicant's mailing address, date of birth,  
22 age, and driver's license number. The Board of Supervisors in adopting the application  
23 system set forth herein has determined in accordance with Government Code §section  
24 6255 that the public interest in disclosure of the information set forth above is  
25 outweighed by the public interest in achieving compliance with this cChapter by  
26 ensuring that the applicant's privacy, confidentiality and/or security interests are  
27 protected. The above-mentioned information shall be redacted from any copy of a  
28 completed application form made available to any member of the public.

1 (d) The ~~Clerk or his or her designee~~ responsible department must be  
2 available during normal working hours Monday through Friday to accept aAdult  
3 bBusiness nNon-pPerformer lLicense applications. The ~~Clerk or his or her designee~~  
4 responsible department shall determine if an application is complete within five business  
5 days after receipt of the results of the Livescan application. If the ~~Clerk~~ responsible  
6 department determines that the application is incomplete, the ~~Clerk~~ responsible  
7 department shall immediately inform the applicant of such fact and the reasons therefor,  
8 including identifying any additional information necessary to render the application  
9 complete. Upon receipt of a completed aAdult bBusiness nNon-pPerformer lLicense  
10 application in which the applicant denies any conviction of a misdemeanor or felony  
11 constituting a specified criminal activity as specified in §Section 41.2903(b)(5), the ~~Clerk~~  
12 ~~or his or her designee~~ responsible department shall permit temporary employment of  
13 such applicant in an adult business that possesses a valid aAdult bBusiness  
14 rRegulatory pPermit.

15 **41.2904 Investigation and Action on Adult Business Non-Performer License**  
16 **Application.**

17 (a) Upon submission of a completed aAdult bBusiness nNon-pPerformer  
18 lLicense application by an individual who wishes to work in a managerial position in an  
19 adult business, the ~~Clerk or his or her designee~~ responsible department shall  
20 immediately stamp the application "rReceived" and in conjunction with County staff,  
21 including members of the Sheriff's Department, shall promptly investigate the  
22 information contained in the application to determine whether the provisions of §Section  
23 41.2903 are satisfied.

24 (b) Investigation shall not be grounds for the County to unilaterally delay in  
25 reviewing a completed application. The ~~Clerk's~~ responsible department's determination  
26 of any violation of §Section 41.2903 or the existence of any of the grounds set forth in  
27 sSubdivision (f) below shall be made within ten business days from the date the  
28 application is filed with the ~~Clerk~~ responsible department. In the event the ~~Clerk~~

1 responsible department is unable to complete the investigation within ten business  
2 days, ~~he or she~~ responsible department shall promptly notify the applicant. In no case  
3 shall the investigation exceed 30 days.

4 (c) The ~~Clerk~~ responsible department shall render a written decision to grant  
5 or deny the non-performer license within the foregoing ten-day time period set forth in  
6 sSubdivision (b) of this sSection. Said decision shall be mailed first class postage  
7 prepaid or hand delivered to the applicant, within the foregoing ten-day period, or 30-  
8 day period if extended pursuant to sSubdivision (b) of this sSection, at the address  
9 provided by the applicant in the application. Notice of such decision shall also be  
10 mailed first class postage prepaid or hand delivered to the owner or management of the  
11 adult business(es) identified on the applicant's application.

12 (d) The ~~Clerk~~ responsible department shall grant the application for a non-  
13 performer license unless the application is denied based on one or more of the grounds  
14 set forth in sSubdivision (e) of this sSection.

15 (e) The ~~Clerk~~ responsible department shall deny the application of a non-  
16 performer for a license to work in a managerial capacity at an adult business, or  
17 suspend or revoke an existing license, based on any of the following grounds:

18 (1) The applicant/license holder has made a false, misleading, or  
19 fraudulent statement of material fact in the application for a non-performer license.

20 (2) The applicant is under 18 years of age.

21 (3) The adult business identified by the applicant is not authorized to  
22 operate as a business under the laws of the state or County and/or does not have a  
23 valid aAdult bBusiness rRegulatory pPermit.

24 (4) The non-performer work applicant has pled guilty, or pled nolo  
25 contendere or been convicted of an offense classified by this or any other state as a sex  
26 related offense including crimes involving moral turpitude, prostitution, or obscenity  
27 subject to the time periods established in §Subsections 85.21.020(c)(4)(A), (B), and (C).

28 (5) Failure to comply with the requirements of this cChapter.

1 (f) The ~~Clerk~~responsible department shall notify the applicant as follows:

2 (1) The ~~Clerk~~responsible department shall write or stamp "Granted" or  
3 "Denied" on the application and date and sign such notation.

4 (2) If the application for a non-performer license is denied, the ~~Clerk~~  
5 responsible department shall attach to the application a statement of the reasons for the  
6 denial. Such notice shall also provide that the applicant may appeal the denial to a  
7 designated hearing officer. The designated hearing officer shall conduct a hearing as  
8 described in ~~§~~Section 41.2905.

9 (g) Failure of the ~~Clerk or his or her designee~~responsible department to  
10 render a decision on the application within the time frames established by this ~~s~~Section  
11 shall be deemed to constitute an approval of the non-performer license.

12 (h) Each license holder must annually renew his or her license with the ~~Clerk~~  
13 ~~or his or her~~responsible department designee by a written application for a license  
14 renewal. If said application conforms to the previously approved application and there  
15 has been no change with respect to the applicant having been convicted of any crime  
16 classified by this or any other state as a sex related offense, the ~~Clerk or his or her~~  
17 ~~designee~~responsible department shall renew the applicant's availability for work in an  
18 adult business during regular business hours for one year. The renewal application  
19 shall be made at least 30 days before the expiration date of the license. Applications for  
20 renewal shall be acted upon as provided herein for action upon an initial application for  
21 a non-performer license. The ~~Clerk's~~responsible department's denial of a renewal  
22 application is subject to the provisions of ~~§~~Section 41.2905.

23 **41.2905 Revocation/Suspension/Denial of Adult Business Non-Performer**  
24 **License.**

25 (a) On determining that grounds exist to deny an original or renewal  
26 application for a non-performer license, or suspend or revoke an existing license, the  
27 ~~Clerk or his or her designee~~responsible department shall furnish written notice of the  
28 proposed action to the applicant.

1 (b) The decision of the Clerk-responsible department to deny an application  
2 for a non-performer license or to suspend or revoke a non-performer license shall be  
3 appealable to an appointed hearing officer by filing a written request for a hearing with  
4 the Clerk-responsible department within 15 days following the day of mailing of the  
5 Clerk's responsible department's decision. All such appeals shall be filed with the Clerk  
6 responsible department and shall be public records. The Clerk-responsible department  
7 shall issue a notice which shall set forth the time and place of a hearing before an  
8 appointed hearing officer which is within 30 days from the date the appeal was filed and  
9 the ground or grounds upon which the hearing is based, the pertinent San Bernardino  
10 County Code sections, and a brief statement of the factual matters in support thereof.  
11 The notice shall be mailed, postage prepaid, addressed to the last known address of the  
12 applicant/license holder or shall be delivered to the applicant/license holder personally,  
13 at least ten days prior to the hearing date.

14 (c) At the hearing the applicant/license holder shall have the right to offer  
15 testimonial, documentary, and tangible evidence bearing upon the issues and may be  
16 represented by counsel. The hearing officer shall not be bound by the formal rules of  
17 evidence. Any hearing under this sSection may be continued for a reasonable time for  
18 the convenience of a party or a witness at the request of the applicant. Extensions of  
19 time or continuances sought by an applicant/license holder shall not be considered  
20 delay on the part of the County or constitute failure by the County to provide for prompt  
21 decisions on denial of a non-performer license.

22 (d) The application of a non-performer to work in an adult business may be  
23 denied, or such license may be suspended or revoked based on any of the following  
24 causes arising from the acts or omissions of the applicant/license holder:

25 (1) The applicant/license holder has made any false, misleading, or  
26 fraudulent statement of material fact in the application for work as a non-performer in an  
27 adult business during regular business hours.

28 (2) The applicant/license holder has pled guilty, pled nolo contendere

1 or been convicted of an offense classified by this or any other state as a sex related  
2 offense including crimes involving moral turpitude, prostitution, or obscenity and subject  
3 to the time periods established in §Subsections 85.21.020(c)(4)(A), (B), and (C).

4 (3) Failure to comply with the operating standards of Chapter 84.02 or  
5 the requirements of this cChapter.

6 (e) After holding the hearing in accordance with the provisions of this  
7 sSection, if the hearing officer finds and determines that there are grounds to deny an  
8 application, or revoke or suspend a non-performer license, the hearing officer shall take  
9 such action. The hearing officer shall render a written decision that shall be hand  
10 delivered or overnight mailed to the applicant/license holder and any adult business that  
11 the applicant/license holder has identified on his or her application within four working  
12 days of the hearing. The hearing officer's failure to render such a decision within this  
13 time frame shall constitute approval of the application or reinstatement of the license.

14 (f) If an application is denied pursuant to this sSection, the applicant may  
15 reapply for managerial work with an adult business 12 months after the date of such  
16 denial.

17 (g) The decision of the hearing officer shall be final and no further  
18 administrative appeal is available.

19 **41.2906 Display of License Identification Cards.**

20 The Clerk-responsible department shall provide each individual required to have  
21 a license pursuant to this cChapter with an identification card containing the name,  
22 address, photograph, and license number of such individual. Every individual required  
23 to have the license shall have such card available for inspection at all times during  
24 which he or she is on the premises of the adult business.

25 **41.2907 Adult Business Non-Performer License Nontransferable.**

26 No Aadult Bbusiness Non-Performer License may be sold, transferred, or  
27 assigned by any license holder or by operation of law, to any other person, group,  
28 partnership, corporation, or any other entity. Any such sale, transfer, or assignment, or

1 attempted sale, transfer, or assignment shall be deemed to constitute a voluntary  
2 surrender of the aAdult bBusiness nNon-pPerformer lLicense, and the license thereafter  
3 shall be null and void.

4 **41.2908 Violations.**

5 (a) Any license holder violating or causing the violation of any of these  
6 provisions regulating aAdult bBusiness nNon-pPerformer lLicenses shall be subject to  
7 license revocation/suspension pursuant to §Section 41.2905 above, a fine of not more  
8 than \$1,000.00 pursuant to Government Code ~~§§sections 36900 and 36904 25132 and~~  
9 53069.4, and any and all other civil remedies. All remedies provided herein shall be  
10 cumulative and not exclusive. Any violation of these provisions shall constitute a  
11 separate violation for each and every day during which such violation is committed or  
12 continued.

13 (b) In addition to the remedies set forth in §Section 41.2905, any violation of  
14 any of these provisions regulating Adult Business Non-Performer Licenses is hereby  
15 declared to constitute a public nuisance and may be abated or enjoined.

16 (c) The restrictions imposed pursuant to this §section are part of a regulatory  
17 licensing process.

18 **41.2909 Regulations Non-Exclusive.**

19 The provisions of this cChapter regulating adult business non-performer  
20 employment applications are not intended to be exclusive, and compliance therewith  
21 shall not excuse non-compliance with any other regulations pertaining to the adult  
22 business licensing provisions as adopted by the County Board of Supervisors.

23 **41.2910 Severability.**

24 This cChapter and each section and provision of said cChapter hereunder, are  
25 hereby declared to be independent divisions and subdivisions and, notwithstanding any  
26 other evidence of legislative intent, it is hereby declared to be the controlling legislative  
27 intent that if any provisions of said cChapter, or the application thereof to any person or  
28 circumstance is held to be invalid, the remaining sections or provisions and the

1 application of such sections and provisions to any person or circumstances other than  
2 those to which it is held invalid, shall not be affected thereby, and it is hereby declared  
3 that such sections and provisions would have been passed independently of such  
4 section or provision so known to be invalid. Should any procedural aspect of this  
5 ~~c~~Chapter be invalidated, such invalidation shall not affect the enforceability of the  
6 substantive aspects of this ~~c~~Chapter.

7  
8 SECTION 2. This ordinance shall take effect thirty (30) days from the date of  
9 adoption.

10  
11 \_\_\_\_\_  
CURT HAGMAN, Chairman  
Board of Supervisors

12  
13 SIGNED AND CERTIFIED THAT A COPY  
14 OF THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD

15 LYNNA MONELL, Clerk of the  
16 Board of Supervisors

17  
18 \_\_\_\_\_  
19 STATE OF CALIFORNIA )  
20 ) ss.  
21 COUNTY OF SAN BERNARDINO )

22 I, LYNNA MONELL, Clerk of the Board of Supervisors of the County of San  
23 Bernardino, State of California, hereby certify that at a regular meeting of the Board of  
24 Supervisors of said County and State, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 at  
which meeting were present Supervisors: \_\_\_\_\_

25 \_\_\_\_\_,  
26 and the Clerk, the foregoing ordinance was passed and adopted by the following vote,  
to wit:

27 AYES: SUPERVISORS:

28 NOES: SUPERVISORS:

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ABSENT: SUPERVISORS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Board of Supervisors this \_\_\_\_ day of \_\_\_\_\_, 2020

LYNNA MONELL, Clerk of the  
Board of Supervisors of the  
County of San Bernardino,  
State of California

\_\_\_\_\_  
Deputy

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Approved as to Form:

MICHELLE D. BLAKEMORE  
County Counsel

By: \_\_\_\_\_  
KENNETH C. HARDY  
Supervising Deputy County Counsel

Date: \_\_\_\_\_