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ORDINANCE NO. 4378

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 chapter shall be governed by the definitions found in Section 810.01.030(m) of the County Development Code unless otherwise stated.

1 **41.2902 Purpose.**

2 It is the purpose and intent of this 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 adult business non-performer 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 adult business non-performer license on a form provided by the responsible

1 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), (B),
13 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 subdivision (b) of this Section, which is
19 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 chapter by ensuring
26 that the applicant's privacy, confidentiality and/or security interests are protected. The
27 above-mentioned information shall be redacted from any copy of a completed
28 application form made available to any member of the public.

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

13 **41.2904 Investigation and Action on Adult Business Non-Performer License**
14 **Application.**

15 (a) Upon submission of a completed adult business non-performer license
16 application by an individual who wishes to work in a managerial position in an adult
17 business, the responsible department shall immediately stamp the application
18 "received" and in conjunction with County staff, including members of the Sheriff's
19 Department, shall promptly investigate the information contained in the application to
20 determine whether the provisions of Section 41.2903 are satisfied.

21 (b) Investigation shall not be grounds for the County to unilaterally delay in
22 reviewing a completed application. The responsible department's determination of any
23 violation of Section 41.2903 or the existence of any of the grounds set forth in
24 subdivision (f) below shall be made within ten business days from the date the
25 application is filed with the responsible department. In the event the responsible
26 department is unable to complete the investigation within ten business days,
27 responsible department shall promptly notify the applicant. In no case shall the
28 investigation exceed 30 days.

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

9 (d) The responsible department shall grant the application for a non-performer
10 license unless the application is denied based on one or more of the grounds set forth in
11 subdivision (e) of this section.

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

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

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

18 (3) The adult business identified by the applicant is not authorized to
19 operate as a business under the laws of the state or County and/or does not have a
20 valid adult business regulatory permit.

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

25 (5) Failure to comply with the requirements of this chapter.

26 (f) The responsible department shall notify the applicant as follows:

27 (1) The responsible department shall write or stamp "Granted" or
28 "Denied" on the application and date and sign such notation.

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

6 (g) Failure of the responsible department to render a decision on the
7 application within the time frames established by this section shall be deemed to
8 constitute an approval of the non-performer license.

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

20 **41.2905 Revocation/Suspension/Denial of Adult Business Non-Performer**
21 **License.**

22 (a) On determining that grounds exist to deny an original or renewal
23 application for a non-performer license, or suspend or revoke an existing license, the
24 responsible department shall furnish written notice of the proposed action to the
25 applicant.

26 (b) The decision of the responsible department to deny an application for a
27 non-performer license or to suspend or revoke a non-performer license shall be
28 appealable to an appointed hearing officer by filing a written request for a hearing with

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

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

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

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

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

1 (3) Failure to comply with the operating standards of Chapter 84.02 or
2 the requirements of this chapter.

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

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

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

16 **41.2906 Display of License Identification Cards.**

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

22 **41.2907 Adult Business Non-Performer License Nontransferable.**

23 No adult business non-performer license may be sold, transferred, or assigned
24 by any license holder or by operation of law, to any other person, group, partnership,
25 corporation, or any other entity. Any such sale, transfer, or assignment, or attempted
26 sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of the
27 adult business non-performer license, and the license thereafter shall be null and void.

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1 **41.2908 Violations.**

2 (a) Any license holder violating or causing the violation of any of these
3 provisions regulating adult business non-performer licenses shall be subject to license
4 revocation/suspension pursuant to Section 41.2905 above, a fine of not more than
5 \$1,000.00 pursuant to Government Code sections 25132 and 53069.4, and any and all
6 other civil remedies. All remedies provided herein shall be cumulative and not
7 exclusive. Any violation of these provisions shall constitute a separate violation for each
8 and every day during which such violation is committed or continued.

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

12 (c) The restrictions imposed pursuant to this section are part of a regulatory
13 licensing process.

14 **41.2909 Regulations Non-Exclusive.**

15 The provisions of this chapter regulating adult business non-performer
16 employment applications are not intended to be exclusive, and compliance therewith
17 shall not excuse non-compliance with any other regulations pertaining to the adult
18 business licensing provisions as adopted by the County Board of Supervisors.

19 **41.2910 Severability.**

20 This chapter and each section and provision of said chapter hereunder, are
21 hereby declared to be independent divisions and subdivisions and, notwithstanding any
22 other evidence of legislative intent, it is hereby declared to be the controlling legislative
23 intent that if any provisions of said chapter, or the application thereof to any person or
24 circumstance is held to be invalid, the remaining sections or provisions and the
25 application of such sections and provisions to any person or circumstances other than
26 those to which it is held invalid, shall not be affected thereby, and it is hereby declared
27 that such sections and provisions would have been passed independently of such
28 section or provision so known to be invalid. Should any procedural aspect of this

1 chapter be invalidated, such invalidation shall not affect the enforceability of the
2 substantive aspects of this chapter.

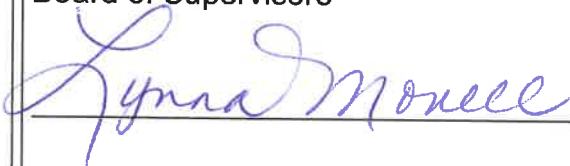
3
4 SECTION 2. This ordinance shall take effect thirty (30) days from the date of
5 adoption.

6 

7 CURT HAGMAN, Chairman
8 Board of Supervisors

9 SIGNED AND CERTIFIED THAT A COPY
10 OF THIS DOCUMENT HAS BEEN DELIVERED
11 TO THE CHAIRMAN OF THE BOARD

12 LYNNA MONELL, Clerk of the
13 Board of Supervisors

14 

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SAN BERNARDINO)

4 I, LYNNA MONELL, Clerk of the Board of Supervisors of the County of San
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
6 Supervisors of said County and State, held on the 7th day of April, 2020 at which
7 meeting were present Supervisors: Robert A. Lovingood, Janice Rutherford, Dawn
8 Rowe, Curt Hagman, Josie Gonzales, and the Clerk, the foregoing ordinance was
9 passed and adopted by the following vote, to wit:

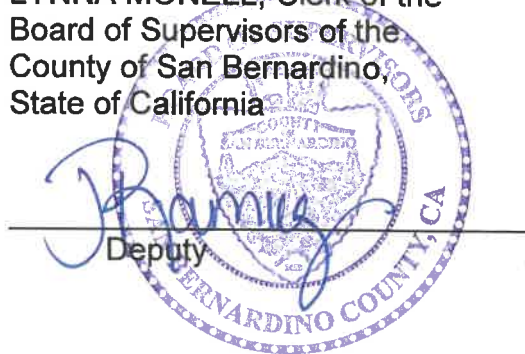
10 AYES: SUPERVISORS: Robert A. Lovingood, Janice Rutherford,
11 Dawn Rowe, Curt Hagman, Josie Gonzales

12 NOES: SUPERVISORS: None

13 ABSENT: SUPERVISORS: None

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
15 seal of the Board of Supervisors this 7th day of April, 2020

16 LYNNA MONELL, Clerk of the
17 Board of Supervisors of the
18 County of San Bernardino,
19 State of California



20 Approved as to Form:

21 MICHELLE D. BLAKEMORE
22 County Counsel

23 By: 
24 KENNETH C. HARDY
25 Supervising Deputy County Counsel

26 Date: 5/7/2020