

**CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE**

INTERDEPARTMENTAL CORRESPONDENCE

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney, City Attorney's Office

THROUGH: Terry M. Brechtel, City Manager

COPIES TO: File

SUBJECT: Human Display Ordinance

DATE: April 17, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance repeals the current Human Display Ordinance and substitutes in its place an ordinance that bans total and semi-nudity in public places, with certain exceptions. Those exceptions are for persons engaged in expressing a matter of serious literary, artistic, scientific, political or social value; women breast feeding an infant; persons engaged in certain occupations which require patients or customers to be in a state of nudity or semi-nudity; and properly permitted Human Display Establishments. The ordinance requires permits for Human Display Establishments, their managers, and their on-site managers. The ordinance establishes procedures for the application, approval, denial, revocation and appeal of the permits and further requires the Chief of Police to act on an application for a permit within a 30-day period. In the event of denial or revocation of the permit by the Chief of Police, the respondent has the right to appeal, within certain time limits, by Writ of Mandamus to the District Court. The ordinance prohibits certain simulated or actual sexual conduct by the entertainers and prohibits physical touching between the entertainer and the customer while the entertainer is in a state of nudity or semi-nudity. The ordinance requires establishments to have adequate lighting and an unobstructed field of view to each part of said establishment where customers have access. The ordinance further provides that a violation of the ordinance is a Class C Misdemeanor punishable by a fine of up to two thousand dollars. It further provides that after two prior convictions, the third and subsequent convictions are Class A Misdemeanors.

Staff recommends approval of this ordinance.

BACKGROUND

The City first passed an ordinance regulating establishments that featured totally nude entertainment in 1983 with its first Human Display Ordinance. Under that ordinance, entertainers were allowed to be totally nude in establishments that were permitted as Human Display Establishments. In addition to Human Display Permits, these establishments were required to also abide by the Sexually Oriented Business Zoning Ordinance. On May 30, 2000 Paradise Entertainment, Inc. filed suit contesting the constitutionality of the City's Human Display Ordinance. The United States Magistrate Judge, after a hearing, recommended granting a preliminary injunction from enforcing the ordinance. The reason given was because the ordinance was found to grant unfettered discretion to the City in issuing permits because it failed to provide for a time limit for inspections of the premises by other City agencies such as Building Inspections. The revised ordinance addresses this by requiring the inspections to be completed and the Chief of Police to act on an application within 30 days. Since the preliminary injunction was issued, there are now 17 establishments that provide live entertainment that would be subject to the ordinance. At these establishments, there have been 24 arrests for prostitution, 184 arrests for narcotics, numerous arrests for public lewdness and multiple violations of the Texas Alcoholic Beverage Code. In addition, the City Attorney has filed common nuisance cases against two of these establishments.

POLICY ANALYSIS

Passage of the ordinance will allow the City to regulate Human Display Establishments in order to minimize some of the negative secondary effects in and around these types of businesses. As a consequence, this ordinance will help curtail prostitution and other illegal activities and minimize inherent health risks, such as the transmission of diseases, associated with Human Display Establishments. The ordinance will complement the City's Sexually Oriented Business Ordinance.


FINANCIAL IMPACT

There is an anticipated increase in annual revenue of approximately \$21,250.00 due to the license and permit fees. These fees are based on the cost of processing the applications and investigating the applicants.

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COORDINATION

This Council action has been coordinated through the Police Department and the Office of the City Attorney.


ANDREW MARTIN
City Attorney


ALBERT ORTIZ
Chief of Police

Approved:


TERRY BRECHTEL
City Manager