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DEPARTMENT OF
POLICE

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May 18, 2001
Ref: 05-16

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

- SUBJECT:**
1. **An Ordinance Amending Chapter 5.04 of Title 5 of the Sacramento City Code, Relating to Adult Related Establishments and Adding Chapter 5.06 to Title 5 of the Sacramento City Code, Relating to Adult Entertainment Businesses.**
 2. **An Ordinance Amending Sections 17.16.010, 17.24.030, 17.24.050 and 17.88.030 of Title 17 (The Zoning Code) Relating to Adult-Entertainment Businesses and Adult-Related Establishments.**

LOCATION AND COUNCIL DISTRICT City wide

RECOMMENDATION

Staff recommends that the Law and Legislation Committee review and forward to the Council with a recommendation for adoption of the two ordinances which:

1. amend the regulations governing adult-entertainment businesses and adult-related establishments currently set forth in Chapter 5.04 of Title 5 of the City Code; and
2. amend certain provisions in Title 17 (the Zoning Code) of the City Code pertaining to adult-entertainment businesses and adult-related establishments.

CONTACT PERSON: Captain Rick Braziel, Special Investigation Division, 264-7500.

FOR COMMITTEE MEETING OF May 29, 2001

SUMMARY

The Sacramento Police Department proposes 1) amending Chapter 5.04 of Title 5 of the Sacramento City Code, relating to adult-related establishments; 2) adding Chapter 5.06 to Title 5 of the City Code, relating to adult-entertainment businesses. The Police Department is also bringing forward related amendments to the provisions of Title 17 (the Zoning code) of the City Code. The Zoning Code amendments are designed to make that code consistent with the proposed amendments to chapters 5.04 and 5.06, and to eliminate certain inconsistencies or ambiguities in the current provisions of the Zoning Code. The Zoning Code amendments were previously reviewed by the Planning Commission, which recommended their adoption.

Chapter 5.04 currently regulates both adult-entertainment businesses and adult-related establishments. The proposed amendments would result in adult-related establishments being regulated in Chapter 5.04, and adult-entertainment businesses being regulated in Chapter 5.06. The primary effects of the amendments to Chapters 5.04 and 5.06, if adopted, would be: 1) to revise the current regulations to reflect recent case law, and statutes, concerning adult entertainment businesses, including amendments to the permitting and licensing processes; 2) the establishment of additional operational requirements and development standards for adult entertainment businesses, including separate and additional requirements for adult entertainment businesses providing live performances; and 3) the extension of the employee permit requirement to adult entertainers. Attachment A provides a more detailed list of the amendments proposed in the attached ordinances.

COMMITTEE/COMMISSION ACTION:

On January 27, 1998, staff presented to the Law and Legislation Committee a proposed ordinance to amend Chapter 5.04 of Title 5 of the Sacramento City Code, relating to adult related establishments and adding Chapter 5.06 to Title 5 of the Sacramento City Code, relating to adult entertainment businesses, such as adult cabarets. During this Law and Legislation Committee hearing, staff was directed to meet with representatives of the adult entertainment industry to discuss the regulations contained in the proposed ordinance, and, where possible, come to a consensus. At the conclusion of those meetings, staff was to return to the Law and Legislation Committee with a list of areas where a compromise was not reached.

On May 18, 1999, staff returned to the Law and Legislation Committee with the revised draft of the Adult Entertainment Ordinance. At the conclusion of the session, the Law and Legislation Committee voted to forward the ordinance to the City Council, with the recommendation that the ordinance be adopted. Since that time, the City completed litigation with Club Fantasy; the ABC administrative action against Club 400 was settled; and per the adult industry representatives request to the Law and Legislation Committee, staff awaited the US Supreme Court's ruling in the City of Erie v. Paps' A.M.

On July 27, 2000, the City Council directed staff to return the proposed Adult Entertainment Ordinance to the Law and Legislation Committee for additional review.

On August 15, 2000, staff returned to the Law and Legislation Committee with the proposed Adult Entertainment Ordinance. The Committee heard and discussed the matter, and then continued it to allow for staff to address certain issues and to meet further with representatives of the adult entertainment industry.

BACKGROUND

The proposed ordinance amending the regulations governing adult entertainment businesses and adult-related establishments was first presented to the Law and Legislation Committee in early 1998. As part of the drafting process, staff reviewed a large number of similar ordinances from cities throughout California, as well as those of cities in other states. Regulations contained in the current draft ordinance are either similar to, or less restrictive than, the regulations found in many of these ordinances. The law governing the regulation of the adult entertainment industry has been set forth on numerous occasions in prior staff reports and will not be repeated here. The current regulations as well as the proposed amendments have been upheld by the courts as reasonable and appropriate time, place and manner restrictions designed to address the adverse secondary effects of adult entertainment businesses.

Deputy City Manager Richard Ramirez, Police Department staff, and city attorneys, have met with representatives of the adult entertainment industry on no fewer than seventeen (17) occasions (ten collectively, five additional with Club Fantasy, and two additional with Club 400 following the May 18, 1999 Law and Legislation Committee session). The majority of the adult entertainment representatives present at the working group meetings were affiliated with adult entertainment businesses in the unincorporated area of the county.

As of February 15, 2000, the **Club 400** (1400 Alhambra Boulevard) ceased to be an adult entertainment business. Prior to the change of format, Club 400 served alcoholic beverages, and was subject to the jurisdiction of the State Alcoholic Beverage Control Board (ABC). In addition to licensing requirements from ABC, Club 400 was subject to a wide range of performance and operational restrictions imposed by ABC, including a prohibition on total nudity (G-string required); minimum stage height (18 inches); and minimum separation requirements between a performer and patron (6 feet).

Club Fantasy (851 Richards Boulevard) is the only adult entertainment business within the City of Sacramento that regularly features live performances which are distinguished by an emphasis on nudity. Club Fantasy serves non-alcoholic beverages ("**Juice Bar**"), thereby avoiding regulation by, and restrictions of, ABC. Currently the City does not impose performance and/or operational restrictions on Club Fantasy.

The current draft of the ordinance does not include certain provisions included in prior drafts that were the subject of substantial controversy and objected to by representatives of the adult entertainment industry, including the restrictions on nudity and the requirement that all performances be provided on a stage.

FINANCIAL CONSIDERATIONS

Enforcement of the regulations contained in the proposed Adult Entertainment Ordinance would be incorporated into the Police Department's existing activities. No additional funding is required. The revenue generated from the performer permit application fee will be minimal and will be used to offset the cost of the application process.

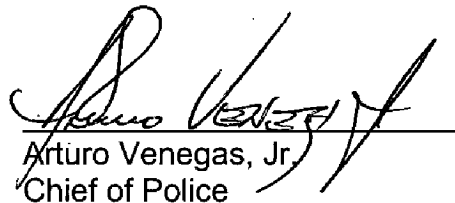
POLICY CONSIDERATIONS

The key policy considerations are whether to amend the existing regulations governing adult-entertainment businesses and adult-related establishments to establish new or additional development standards, operational requirements and conduct regulations; and to amend the current regulations to extend the employee permitting requirement to adult performers. As noted above, the proposed amendments are consistent with regulations found in other California jurisdictions and have been upheld by the courts as reasonable and appropriate time, place and manner restrictions.


ESBD

Not applicable. No goods or services are being purchased.

Respectfully submitted,


Arturo Venegas, Jr.
Chief of Police

Recommendation Approved:


Robert P. Thomas
City Manager

ATTACHMENT A

Summary of Key Amendments Proposed by Ordinances

I. Amendments to Regulations Governing Adult-Entertainment Businesses and Adult-Related Establishments (Currently Set Forth in Chapter 5.04 of Title 5 of the City Code)

1. Treatment of regulation of Adult-Entertainment Businesses and Adult-Related Establishments in two separate chapters of City Code.
2. Minor amendments to definitions for adult-entertainment businesses. See Sec. 5.06.020 (compare to current City Code section 5.04.010).
3. Amendments to provisions relating to application, processing and appeals of decisions regarding adult entertainment business permits. See Secs. 5.06.030-5.06.050, 5.06.160-5.06.180 (compare to current City Code sections 5.04.020-.050, 5.04.090-120, 5.04.160, 5.04.180-190). Amendments primarily reflect procedural changes required by recent case law and statutory amendments.
4. Amendments extending employee permit requirement to adult performers (current regulations require figure models, massage technicians and certain other employees involved in adult-related businesses to have an employee permit). See Secs. 5.06.060-5.06.070, 5.06.110 (compare to current City Code sections 5.04.060-080, 5.04.100-110, 5.04.130, 5.04.170-190, 5.04.220.230).
5. Amendments establishing development standards and operational requirements for all adult entertainment businesses, including sign posting requirements; exterior and interior lighting requirements; noise limits; separate restroom facilities for men and women; a requirement for on-premises manager. See Sec. 5.06.260; 5.06.280A.
6. Amendments establishing additional development standards and operational requirements for adult-entertainment businesses providing live entertainment, including requirements for separate dressing rooms for adult performers; separate entrance/exit for adult performers' use; prohibition on fondling, caressing by or of adult performers on premises; requirement for on-premises manager and security guards. See Secs. 5.06.270, 5.06.280.

II. Amendments to Zoning Code

1. Minor amendments to definitions to be consistent with amended definitions set forth in Chapters 5.04 and 5.06. See Sec. 17.16.010 (proposed ordinance and current City Code).
2. Amendments to eliminate ambiguities and potential inconsistencies in defining "sensitive uses" as to which locational requirements apply, and to provide definitions of "sensitive uses." See Secs. 17.24.050-24 (proposed ordinance and current City Code).
3. Amendments to rules governing determining whether locational requirements have been satisfied, required by recent case law. See 17.24.050-24-b.

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING SECTIONS 17.16.010, 17.24.030, 17.24.050 AND SECTION 17.88.030 OF TITLE 17 (THE ZONING CODE) RELATING TO ADULT-ENTERTAINMENT BUSINESSES AND ADULT-RELATED ESTABLISHMENTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 17.16.010 of Title 17 of the City Code is amended as follows:

- a. The definition of and related provisions under "Adult Entertainment" in Section 17.16.010 are deleted.
- b. The definition of "Adult-entertainment business" is added to Section 17.16.010 to read as follows:

"Adult-entertainment business" means "adult-entertainment business" as defined in Chapter 5.06 of Title 5 of the City Code.

- c. The definition of and related provisions under "Adult-related establishment" in Section 17.16.010 are deleted.
- d. The definition of "Adult-related establishment" is added to Section 17.16.010 to read as follows:

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"Adult-related establishment" means "adult-related establishment" as defined in Chapter 5.04 of Title 5 of the City Code.

SECTION 2.

Section 17.24.030 of Title 17 of the City Code is amended as follows:

- a. The use of "Adult Entertainment" is deleted from the matrix in Table 17.24.030A.
- b. The use of "Adult-Entertainment Business" is added to the matrix in Table 17.24.030A, to read as follows:

Table 17.24.030A

USE	R E	R 1	R 1 A	R 1 B	R 2	R 2 A	R 2 B	R 3	R 3 A	R 4	R 5	R M X	R 0	0 B
Adult-Entertainment Business														

- c. The use of "Adult Entertainment" is deleted from the matrix in Table 17.24.030B.

Table 17.24.030B

USE	E C	H C	S C	C 1	C 2	C 3	C 4	M1	M 1 (S)	M2	M 2 (S)	M I P	M R D	H	S P X	T C	A	A O S	F	A R P-F
Adult-Entertainment Business					22	22	22	22	22/20	22	22/20									

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SECTION 3.

Section 17.24.050 of Title 17 of the City Code is amended as follows:

- a. Footnote 22 of Section 17.24.050 is amended to read as follows:
22. Adult-Entertainment Businesses is a permitted use in this zone, subject to compliance with the locational standards set forth below; and subject further, to compliance with the permitting requirements, development and operational standards and other requirements set forth in Chapter 5.06 of Title 5 of the City Code.
- a. **Locational Requirements:** No permit shall be issued or approved for an adult-entertainment business unless the proposed location satisfies all of the following locational requirements:
 - i) proximity to adult-entertainment businesses or adult-related establishments: No adult-entertainment business shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each such use, of any other adult-entertainment business or an adult-related establishment.
 - ii) proximity to agricultural or residential zones or residential uses: No adult-entertainment business shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each of the affected parcels, of any existing agricultural zone, residential zone or residential use.
 - iii) proximity to certain specified uses: No adult-entertainment business shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each parcel containing such use, of any existing park, church, school, gymnasium for children, roller skating rink or ice skating rink. For purposes of this requirement, the following definitions shall apply:

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Church: The term "church" means a structure or place which is used primarily for religious worship and related religious activities.

School: The term "school" means any child or day care facility; or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

Park: The term "park" means a public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land within the City which is under the control, operation or management of the City, State, County or other public entity.

- b. **Relevant date for determining compliance with locational requirements:** For purposes of determining whether the locational requirements set forth above are met, the following rules shall apply:

- i) For purposes of the locational requirements, the relevant date shall be the date of the filing of a completed application under Chapter 5.06 of Title 5, and except as provided in subsection ii) below, only those uses lawfully established at the time of the filing of a completed application under Chapter 5.06 of Title 5 shall be considered

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for purposes of determining whether the locational requirements are met.

- ii) For further purposes of the locational requirements, a location for which a completed application for an Adult-Entertainment Business permit has been filed pursuant to Chapter 5.06 of Title 5 shall be considered to be the site of an established Adult-Entertainment Business from the date that the completed application is filed until the application is approved or denied.

SECTION 4.

Footnote 24 of Section 17.24.050 of Title 17 of the City Code (Ordinance No. 2550, 4th Series, as amended) is amended to read as follows:

24. A Special Permit shall be required to establish an Adult-Related Establishment in this zone. This requirement shall be in addition to compliance with the permitting requirements, development and operational standards and other requirements set forth in Chapter 5.04 of Title 5 of the City Code.

- a. **Locational Requirements:** In addition to the other requirements for approval of a special permit, no special permit shall be issued or approved for an adult-related establishment unless the proposed location satisfies all of the following locational requirements:

- i) proximity to adult-entertainment businesses or adult-related establishments: No adult-related establishment shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each such use, of any other adult-entertainment business or an adult-related establishment.
- ii) proximity to agricultural and residential zones and residential uses: No adult-related establishment shall be established or located within one thousand (1,000) feet, measured from

the nearest property lines of each of the affected parcels, of any existing agricultural or residential zone or residential use.

- iii) proximity to certain uses: No adult-related establishment shall be established or located within one thousand (1,000) feet, measured from the nearest property lines of each parcel containing such use, of any park, church, school, gymnasium for children, roller skating rink or ice skating rink. For purposes of this requirement, the following definitions shall apply:

Church: The term "church" means a structure or place which is used primarily for religious worship and related religious activities.

School: The term "school" means any child or day care facility; or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college or university.

Park: The term "park" means a public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land within the City which is under the control, operation or management of the City, State, County or other public entity.

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b. **Relevant date for determining compliance with locational requirements:** For purposes of determining whether the locational requirements set forth above are met, the following rules shall apply:

- i) For purposes of the locational requirements, the relevant date shall be the date that the application for a special permit is determined or deemed to be complete, and only those uses lawfully established as of the date that the application is determined or deemed to be complete shall be considered for purposes of determining whether the locational requirements are met.
- ii) For further purposes of the locational requirements, a location for which a completed application for an Adult Entertainment Business permit has been filed under Chapter 5.06 of Title 5 or a location for which a completed application for a special permit for an Adult-Related Establishment has been filed shall be considered to be the site of an established Adult-Entertainment Business or an established Adult-Related Establishment from the date that the completed application is filed until the application is approve, withdrawn or denied.

SECTION 5.

Subsection 11 of Section 17.88.030 is amended to read as follows:

11. Nonconforming Adult Entertainment Uses. The following regulations shall apply to nonconforming adult entertainment uses as defined in Chapter 17.16 of this title, in addition to the requirements of this chapter. All adult bookstores, adult novelty stores, adult video stores, adult cabarets, adult motion picture theaters, adult arcades and adult hotel-motels legally established or in legal existence prior to December 6, 1983, (Ord. 83-145) shall be deemed nonconforming and may continue to operate subject to the

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provisions of this chapter. No legally established adult bookstores, adult novelty stores, adult video stores, adult cabarets, adult motion picture theaters, adult arcades or adult hotel-motels shall be deemed nonconforming solely by virtue of the subsequent creation or expansion of any use or zone designated in Section 17.24.050(22)(a)(i) or (ii) of this title.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

ATTEST:

MAYOR

CITY CLERK

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ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING CHAPTER 5.04 OF TITLE 5 OF THE SACRAMENTO CITY CODE, RELATING TO ADULT-RELATED ESTABLISHMENTS, INCLUDING BATHHOUSES, MASSAGE SERVICES, AND ESCORT SERVICES, AND TO MASSAGE TECHNICIANS AND ESCORTS; AND ADDING CHAPTER 5.06 TO TITLE 5 OF THE SACRAMENTO CITY CODE, RELATING TO ADULT-ENTERTAINMENT BUSINESSES, INCLUDING ADULT ARCADES, ADULT BOOKSTORES, ADULT NOVELTY STORES, ADULT VIDEO STORES, ADULT CABARETS, ADULT HOTELS/MOTELS, ADULT THEATERS, AND MODELING STUDIOS, AND TO ADULT PERFORMERS AND FIGURE MODELS.

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

- A. The City Council adopts this ordinance for the primary purposes of updating and bringing current the City's regulations regarding Adult-Entertainment Businesses with changes in the Adult-Entertainment industry, changes in the law, both statutory and judicial, concerning the regulation of the Adult-Entertainment industry, and changes and developments in Sacramento and the Sacramento region. The City last amended its regulations in 1990, and since that time there have been a number of developments, including developments in the law and in the practices of the Adult-Entertainment industry, that warrant the amendments associated with this Ordinance. Because of a history of problems associated with the Adult-Entertainment industry, the City of Sacramento has regulated the industry for several decades, and finds it necessary to continue to do so.
- B. The City Council, in adopting this ordinance, and amending the existing City regulations regarding Adult-Entertainment Businesses, takes legislative notice of the

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existence and content of the hearings, studies, reports and analyses undertaken and considered at the time the City Council adopted the current regulations regarding Adult-Entertainment Businesses, which were contained in several ordinances, including City Ordinance Nos. 83-100, 83-145, 86-077 and 90-013. Those documents reveal that Sacramento has had a lengthy history of secondary effects and problems associated with the Adult-Entertainment industry, problems that the Council finds continue to exist or have the potential to continue to exist.

- C. The City Council takes further notice of the following studies concerning the adverse secondary side effects of Adult-Entertainment Businesses in other cities: Dallas, Texas (1997), Newport News, Virginia (1996), New York City (1994), Oklahoma City (1992), Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); St. Paul, Minnesota (1988), Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1983); Beaumont, Texas, (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Whittier California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); Los Angeles, California (1977). The City Council finds that these studies are relevant to the problems addressed by the City in the current regulations governing Adult-Entertainment Businesses, as well as to the amendments enacted by this ordinance, to regulate the adverse secondary side effects of Adult-Entertainment Businesses, and more specifically finds that these studies provide convincing evidence that concentration of Adult-Entertainment Businesses tends to result in the blighting and deterioration of the areas in which they are located.
- D. Based on the foregoing, the City Council of the City of Sacramento finds and determines that continuation of the special regulation of Adult-Entertainment Businesses is necessary to ensure that their adverse secondary side effects will not contribute to an increase in crime rates or to the blighting or deterioration of the areas in which they are located or surrounding areas. The need for such special regulations is based upon the recognition that Adult-Entertainment Businesses have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances, or located in direct proximity to sensitive uses such as parks, schools, and churches, thereby having a deleterious effect upon the adjacent areas. It is the purpose and intent of these special regulations to prevent and continue to prevent the concentration of Adult-Entertainment Businesses and to mitigate their objectionable operational characteristics and thereby prevent and continue to prevent such adverse secondary side effects.

- E. In developing the amendments provided by this Ordinance, and consistent with its development of the original regulations and amendments, the City Council has been mindful of legal principles relating to regulation of Adult-Entertainment Businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendments of the United States and California Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of Adult-Entertainment Businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of Adult-Entertainment Businesses, including but not limited to: Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976) (Reh. denied 429 U.S. 873); Renton v. Playtime Theaters, 475 U.S. 41 (1986) (Reh. denied 475 U.S. 1132); FW/PBS, Inc. v Dallas, 493 U.S. 215 (1990); Barnes v. Glenn Theater, 501 U.S. 560 (1991); United States Court of Appeals 9th Circuit decisions, including but not limited to: Colacurcio v. City of Kent, 98 Daily Journal DAR 12449 (1998), Topanga Press, et al. v. City of Los Angeles, 989 F.2d 1524 (1993); several California cases including but not limited to: Tily B., Inc. v. City of Newport Beach (1998) 69 Cal.App.4th 1; City of National City v. Wiener (1993) 3 Cal.4th 832; People v. Superior Court (Lucero) (1989) 49 Cal.3d 14; and City of Vallejo v. Adult Books, et al., (1985) 167 Cal.App.3d 1169; and other federal cases including Lakeland Lounge v. City of Jacksonville (5th Cir. 1992) 973 F.2d 1255, Hang On, Inc. v. Arlington (5th Cir. 1995) 65 F.3d 1248, Mitchell v. Commission on Adult Entertainment (3rd Cir. 1993) 10 F. 3d 123, International Eateries v. Broward County (11th Cir. 1991) 941 F.2d 1157, and Star Satellite v. City of Biloxi (5th Cir. 1986) 779 F.2d 1074; and the additional cases cited within this Ordinance.
- F. Consistent with its previous findings, the City Council of the City of Sacramento continues to find that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City of Sacramento, and thus certain requirements with respect to the ownership and operation of Adult-Entertainment Businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council also takes legislative notice of the facts recited in the case of Kev, Inc. v. Kitsap County, 793 F.2d 1053 (1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems.
- G. Consistent with its prior findings, the City Council again finds the following, in part based upon its understanding of the documents and judicial decisions in the public record:

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- (1) Evidence indicates that performers at Adult-Entertainment Businesses have been found to engage in acts of prostitution with patrons of the establishment;
 - (2) Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as a location for engaging in unlawful sexual activity;
 - (3) The City has a substantial interest in adopting regulations that will reduce, to the greatest extent possible, the possibility for the occurrence of prostitution and casual sex acts at Adult-Entertainment Businesses.
- H. As it has found previously, the City Council again finds that zoning, licensing and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in the community of Sacramento and to help assure that all operators of Adult-Entertainment Businesses comply with reasonable regulations and are located in places that minimize the adverse secondary effects that naturally accompany the operation of such businesses.
- I. It is not the intent of the City Council of the City of Sacramento in enacting this ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City of Sacramento recognizes that state law prohibits the distribution of obscene materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities in the City of Sacramento.
- J. Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use that violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter or the exhibition or public display thereof.
- K. While the City Council desires to protect the rights conferred by the United States Constitution and the California Constitution upon Adult-Entertainment Businesses, it does so in a manner that ensures the continued and orderly development of property within the City.

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- L. As it has found previously, the Council finds that the presence of enclosed or concealed booths, rooms, and dimly-lit areas within Adult-Entertainment Businesses greatly increases the potential for misuse of the premises, including unlawful conduct of a type that facilitates transmission of disease. Requirements that all indoor areas be open to view by management at all times and that adequate lighting be provided are necessary in order to reduce the opportunity for, and therefore the incidence of, illegal conduct within Adult-Entertainment Businesses, and to facilitate the inspection of the interior of the premises by law enforcement personnel.

SECTION 2.

Chapter 5.06, pertaining to adult-entertainment businesses, adult performers and figure models, is added to Title 5 of the City Code to read as follows:

CHAPTER 5.06. ADULT-ENTERTAINMENT BUSINESSES, ADULT PERFORMERS AND FIGURE MODELS

Section 5.06.010 Legislative purpose.

It is the purpose of this ordinance to regulate adult-entertainment businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials or communicative conduct, including adult-entertainment business products and adult entertainment communicative conduct. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to adult entertainment business products or adult entertainment communicative conduct protected by the First Amendment, or to deny access by the distributors and exhibitors of adult entertainment business products or adult entertainment communicative conduct to their intended market or audience. It is neither the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

5.06.020 Definitions.

For the purpose of this chapter, the following words and phrases are defined as follows:

Adult-entertainment business. "Adult-entertainment business" means any of the following:

(i) **Adult arcade.** "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any time, and where a substantial portion of the images so displayed are distinguished or characterized by an emphasis on matters depicting or describing specified sexual activities.

(ii) **Adult bookstore, adult novelty store or adult video store; adult products:** "Adult bookstore, adult novelty store or adult video store" means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, compact discs (CDS), slides, or other visual representations that are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, or

(b) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

The items described in subsections (a) and (b) shall be referred to collectively as "adult products."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of products depicting, describing or relating to specified sexual activities or specified anatomical areas and still be categorized as adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration of the specified products that are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

(iii) **Adult cabaret.** "Adult cabaret" means a nightclub, restaurant, or similar business establishment that: (1) regularly features live performances

that are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or (2) regularly features persons who appear in a state of nudity.

(iv) Adult hotel/motel. "Adult hotel/motel" means a hotel or motel or similar business establishment offering public accommodations for any form of consideration that, (1) provides patrons with closed-circuit television transmissions, films, computer generated images, motion pictures, video cassettes, slides, compact discs (CDS) or other photographic reproductions a substantial portion of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and (2) rents, leases, or lets any room for less than a six (6) hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

(v) Adult motion picture theater. "Adult motion picture theater" means a building or portion thereof or area, open or enclosed, used for the presentation of motion pictures or other images in which a substantial portion of the total presentation time is devoted to the presentation of motion pictures distinguished or characterized by their emphasis on matters depicting, describing or relating to specified sexual activities, for observation by patrons or customers.

(vi) Adult theater. "Adult theater" means a theater, concert hall, auditorium, or similar establishment that, for any form of consideration, regularly features live performances that are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.

(vii) Modeling studio. "Modeling studio" means a business that provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who display specified anatomical areas to be observed, drawn, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration. Modeling studio does not include schools maintained pursuant to standards set by the State Board of Education. Modeling studio further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, that does not provide, permit, or make available specified sexual activities.

Adult-entertainment business operator. "Adult-entertainment business operator" (hereinafter "operator") means a person who supervises, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the activities at an adult-entertainment business.

Adult performer. "Adult performer" means a person who engages in or participates in any live performance displaying specified anatomical areas or depicting or involving specified sexual activities in an adult-entertainment business.

Bar. "Bar" means any commercial establishment licensed by the State Department of Alcoholic Beverage Control to serve any alcoholic beverages for consumption on the premises.

Chief of Police. The chief of police of the City of Sacramento or authorized representative.

City Manager. The city manager of the City of Sacramento or authorized representative.

Distinguished or characterized by an emphasis upon. "Distinguished or characterized by an emphasis upon" means and refers to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "that are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas. See Pringle v. City of Covina, 115 Cal.App.3. 151 (1981).

Figure Model. "Figure model" means any person who, for pecuniary compensation, consideration, hire or reward, displays specified anatomical areas in a modeling studio to be observed, sketched, painted, drawn, sculptured, photographed or otherwise depicted.

Nudity or in a state of nudity. "Nudity" or "in a state of nudity" means the showing of the human male or female genitals, pubic area, anus, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering below a horizontal line across the top of the areola at the areola's highest point, or the showing of the covered male genitals in a discernible turgid state.

Operate an Adult-Entertainment Business. "Operate an adult-entertainment business" means the supervising, inspecting, directing, organizing, controlling or in any other way being responsible for or in charge of activities at an adult-entertainment business.

Permittee. "Permittee" means the person to whom an adult-entertainment business permit is issued.

Person. "Person" means any individual, partnership, firm, association, joint stock company, corporation, limited liability company or combination of individuals of whatever form or character.

Regularly Features. "Regularly features" with respect to an adult theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances that are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occur on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period; or four (4) or more occasions within one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.

Specified anatomical areas. "Specified anatomical areas" shall include:

- (i) Less than completely and opaquely covered (i) human genitals or pubic region, including anus; (ii) buttocks; and (iii) female breast below a point immediately above the top of the areola; and
- (ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities. "Specified sexual activities" shall include the following:

- (i) Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following depicted sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or

- (ii) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
- (iii) Use of human or animal masturbation, sodomy, oral copulation, coitus, ejaculation; or
- (iv) Fondling or touching of nude human genitals, pubic region, buttocks, anus or female breasts; or,
- (v) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or,
- (vi) Erotic or lewd touching, fondling or other contact with an animal by a human being; or,
- (vii) Human excretion, urination, menstruation, vaginal or anal irrigation.

5.06.030 Permit required for operation of an adult-entertainment business providing live performances displaying specified anatomical areas or depicting or involving specified sexual activities.

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises the operation of an adult-entertainment business that provides live performances displaying specified anatomical areas or depicting or involving specified sexual activities unless the person first obtains and continues to maintain in full force and effect a permit (hereinafter "adult-entertainment business permit") from the City of Sacramento as required herein.

5.06.040 Application for permit for an adult-entertainment business involving live performances.

A. Any person desiring to obtain an adult-entertainment business permit to operate an adult-entertainment business for which a permit is required pursuant to 5.06.030 shall apply to the chief of police on a form provided by the police department. Before submitting the application a non-refundable fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of the investigation and report required by this chapter. The department of finance shall issue a receipt to the applicant showing that such permit application fee has been paid. The

applicant shall provide the receipt or a copy thereof to the chief of police at the time of applying for a permit under this section.

B. The application to the chief of police shall set forth the following information:

1. The full and true name and any other names of each person with an ownership interest in the adult-entertainment business and of each person who will operate the adult-entertainment business;
2. The present address and telephone number and driver's license number, if any, of the applicant and any operator;
3. The two previous addresses immediately prior to the present address of the applicant and any operator;
4. Written proof that the applicant and any operator is at least eighteen (18) years of age;
5. The height, weight, color of eyes and hair of the applicant and any operator;
6. Five (5) color portrait photographs at least 2" x 2" of the applicant and any operator;
7. The business license or tax certificate history of the applicant and any operator, including whether the person while previously operating in this or another city, county or state under license, has had a license revoked or suspended, the reason(s) therefor, and the person's business activity or occupation subsequent to the suspension or revocation;
8. All criminal convictions of any person with an ownership interest and any operator of offenses specified in Section 5.06.100 within five (5) years of the date of application;

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9. The name and address of the lessor of the real property on which the business is to be conducted, and a copy of the lease agreement or other documentation to establish that the owner and/or landlord of the premises consents to the establishment of an adult-entertainment business on the premises;
10. Detailed plans of the site and building as they will be operated; and
11. Such other identification and information necessary to discover the truth of the matters hereinabove specified as required to be set forth in the application.

C. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown on its articles of incorporation, together with the names and residence addresses of each of the officers, directors, and each stockholder holding more than ten percent (10%) of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and the residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply.

D. The chief of police shall take fingerprints and additional photographs of the applicant and any operator, and shall confirm the height and weight of the applicant and any operator.

E. The application for a permit does not authorize conducting an adult-entertainment business until a permit has been granted. The issuance of a business operations tax certificate pursuant to Chapter 3.08 of Title 3 of the Sacramento City Code shall not authorize conducting an adult-entertainment business until the necessary adult-entertainment business permit required by Section 5.06.030 has been lawfully granted.

5.06.050 Corporate applicants; exemption.

The provisions of Section 5.06.040B(4), (5) and (7) and D. shall not apply to require any corporate applicant to provide such information as to the corporation; provided, however, that such information shall be provided for any operator.

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5.06.060 Adult performer permits and figure model permits.

A. No person shall engage in or participate in any live performance depicting or displaying specified anatomical areas or involving specified sexual activities in an adult-entertainment business unless the person first obtains and continues in full force and effect an adult-entertainment business performer permit (hereinafter "adult performer permit") and complies with all requirements of this chapter and other applicable laws.

B. No person shall act as a figure model in a modeling studio unless the person first obtains and continues in full force and effect a figure model permit (hereinafter "figure model permit") and complies with all requirements of this chapter and other applicable laws. a figure model permit is first obtained.

C. The issuance of a business operations tax certificate pursuant to Chapter 3.08 of Title 3 of the Sacramento City Code shall not authorize any person to perform any act for which an adult performer permit or figure model permit is required until the necessary permit has been lawfully approved.

5.06.070 Application for adult performer permit or figure model permit.

A. An application for an adult performer permit or figure model permit shall be made to the chief of police on a form provided by the city clerk. Prior to submitting an application a non-refundable fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of investigation and report required by this chapter. The department of finance shall issue a receipt to the applicant showing that a permit application fee has been paid. The applicant shall provide the receipt or a copy thereof to the chief of police at the time of applying for a permit under this section.

B. The application to the chief of police shall set forth the following information:

1. Name, residence address and telephone number of the applicant, and two previous addresses immediately prior to the present address;
2. Driver's license number, if any, of the applicant;
3. Applicant's height, weight, color of eyes and hair;

4. Five (5) color portrait photographs of the applicant at least 2" x 2";
5. Written evidence that the applicant is at least eighteen (18) years of age;
6. The name and address of the adult-entertainment business(es) where the applicant is to be employed or is to perform, if known, and the name of the owner(s) of the business(es);
7. The names and address of any adult-entertainment businesses where the applicant previously engaged in or participated in live performances displaying specified anatomical areas or depicting or involving specified sexual activities or acted as a figure model;
8. Whether the applicant has been convicted of any offense specified in Section 5.06.100 within five (5) years of the date of application; and
9. The adult performer or figure model permit or license history of the applicant; whether applicant has had a license revoked or suspended, the reason therefor and the applicant's business activity or occupation subsequent to the suspension or revocation.

C. The chief of police shall take fingerprints and a photograph of the applicant and shall confirm the information submitted.

5.06.080 Verification of application.

Every application for a permit under this chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

5.06.090 Investigation and recommendations; temporary permit.

A. Upon receiving an application for an adult-entertainment business permit, the chief of police shall:

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1. Stamp the application as received on the date of receipt, and determine whether the application is complete. If the chief of police determines that the application is incomplete or has been completed improperly, the chief of police shall promptly notify the applicant of that fact and, on request of the applicant, grant the applicant an extension of time of ten (10) days or less to complete the application properly. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time;
2. Within ten (10) days of the date of filing of a complete application, refer the application to the building inspections division, the planning division and the fire department; and
3. Within a reasonable period, not exceeding forty-five (45) days after the filing of a complete application, investigate the application and recommend approval or denial to the city manager. A failure to make a recommendation within the specified time period shall not be considered a recommendation for approval or denial.

B. Within ten (10) days of the date of filing of a complete application, and if the chief of police determines that i) on the face of the application, there is no basis for denial of the permit under Section 5.06.100 due to prior criminal convictions, based solely upon the information provided by the applicant in the application; and ii) the location of the proposed adult-entertainment business conforms with all requirements of the Zoning Ordinance, the city manager shall issue a temporary permit authorizing operation of the adult-entertainment business while the chief of police investigates the application and the city manager determines whether to issue or deny a regular permit.

C. The building inspections division, the planning division and the fire department shall inspect the premises and make separate recommendations to the city manager, within thirty (30) days after the filing of the completed application.

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5.06.100 Issuance of permit for an adult-entertainment business.

A. The city manager shall act on the application for an adult-entertainment business permit within sixty days (60) days after the date of filing of a completed application, and shall issue a regular permit if all requirements for an adult-entertainment business described in this chapter are met, unless the city manager finds:

1. That the operation as proposed by the applicant, if permitted, will not comply with all applicable laws, including, but not limited to, the Zoning Ordinance and the locational requirements set forth therein, and the building, health, housing and fire codes of the City of Sacramento.
2. That the applicant or any operator has been convicted of any of the following offenses or convicted of an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) and (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered; provided, however, that the city manager shall issue a permit to any person convicted of any of the crimes described above if (a) the person is otherwise qualified for a permit; and (b) the longer of the following time periods has passed:
 - a. Five (5) years from date of the conviction; or
 - b. Five (5) years from release from confinement; or
 - c. Five (5) years from formal release from probation period; or

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- d. Five (5) years from formal release from parole.
3. That the applicant has knowingly made a material misrepresentation in the application.
4. That the applicant or any operator has had a permit for an adult-entertainment business or adult-related establishment denied or revoked for cause by this city or any other city or county within the last five (5) years.
5. That the applicant or operator is not at least 18 years of age.
6. That the applicant has not paid the required fee to the department of finance.

B. Notice of decision. Not later than five (5) days after the date of the decision of the city manager, notice of the decision shall be sent to the applicant postage prepaid at the address shown in the application and shall state whether the decision of the city manager was to grant or deny the permit.

C. Upon issuance of a temporary permit or a regular permit, or if the city manager neither grants nor denies the regular permit within sixty (60) days after the date a complete application is filed, the applicant may begin operating the adult-entertainment business for which the permit was sought, subject to strict compliance with the locational requirements of the Zoning Ordinance and the development and operational standards and requirements set forth in this chapter. Notwithstanding that applicant begins operating the adult-entertainment business under this section prior to the city manager's decision, the city manager may subsequently deny the application for a permit. In the event of a denial, the applicant shall cease operating the adult-entertainment business within ten (10) days unless the applicant timely appeals the decision denying the permit pursuant to Section 5.06.120. If a timely notice of appeal is filed, the applicant may continue operating the adult-entertainment business while the appeal is pending.

5.06.110 Issuance of adult performer permit or figure model permit.

A. The chief of police shall act on the adult performer permit or figure model application within sixty (60) days after the filing of a complete application. Pending the decision on the application, the applicant who has filed a complete application shall be entitled to perform as an adult performer or figure model, and the chief of police shall issue

a temporary permit for this purpose; provided that no temporary permit shall be issued to a person who has applied for, and had denied within the past one year, an adult performer permit or figure model permit.

B. The chief of police shall issue the permit if all requirements for the permit are met, unless the chief of police finds:

1. That the applicant has been convicted of any of the following offenses or convicted of an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) or (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may hereafter be amended or renumbered; provided, however, that the chief of police shall issue a permit to any person convicted of any of the crimes described above if (a) the person is otherwise qualified for a permit; and (b) the longer of the following time periods has passed:
 - a. Five (5) years from date of the conviction; or
 - b. Five (5) years from release from confinement; or
 - c. Five (5) years from formal release from probation period; or
 - d. Five (5) years from formal release from parole.
2. That the applicant has knowingly made a material misrepresentation in the application.
3. That the applicant has had an adult performer permit or figure model permit denied or revoked for cause by this city or any other city or county within the last five (5) years.

4. That the applicant is not at least eighteen (18) years of age.
5. That the applicant has not paid the required fee to the department of finance.

B. Notice of decision. The decision shall be in writing and mailed to the applicant postage prepaid, within five (5) days after the chief of police's decision. If the permit is denied, the applicant shall cease activities as an adult performer or figure model within ten (10) days unless the applicant timely appeals the decision denying the permit pursuant to Section 5.06.120. If a timely notice of appeal is filed, the applicant may continue acting as an adult performer or figure model while the appeal is pending.

5.06.120 Administrative Appeals: Issuance or Denial of Permit

- A. Adult-entertainment business permits. Any applicant aggrieved by the decision of the city manager relating to the issuance or denial of a permit for an adult-entertainment business may, within ten (10) days after the date of mailing of the decision to the applicant, appeal the decision to the city council by filing a written notice of appeal with the city clerk. Pending a decision on the appeal, and if a temporary permit has been issued, the appellant may continue to operate the adult-entertainment business. If an appeal is not filed within ten (10) days, the decision of the city manager shall be final.
- B. Adult performer permits or figure model permits. Any applicant aggrieved by the decision of the chief of police relating to the issuance or denial of any adult performer permit or figure model permit may, within ten (10) days after the date of mailing of the decision to the applicant, appeal the decision to the city council by filing a written notice of appeal with the city clerk. Pending a decision on the appeal, the appellant may continue to perform as an adult performer or figure model pursuant to the temporary permit. If an appeal is not filed within ten (10) days, the decision of the chief of police shall be final.
- C. Hearing on appeal. An appeal pursuant to subsection (a) or (b) shall be set for hearing by the council at a date not later than thirty (30) days after the filing of the notice of appeal. The notice of hearing shall be mailed to the applicant at least ten (10) days prior to the date set for the hearing. The council may continue its hearing on the appeal from time to time; provided, however, that the decision on the appeal shall issue no later than thirty (30) days after the original date set for hearing. The council shall hear all relevant

evidence from competent persons relating to the granting or denial of the permit. It may return the matter to the city manager or chief of police for further information or further investigation. The council may affirm, reject or modify the decision of the city manager or chief of police.

- D. Appointment of hearing examiner. The city council may employ the procedure specified in the City Code for the appointment of a hearing officer to hear and decide the appeal.

5.06.130 Term and renewal of adult-entertainment business permits.

A. An adult-entertainment business permit shall expire one year from the date of issuance of the permit, unless sooner suspended or revoked.

B. A permit that has not been suspended or revoked may be renewed for the period specified in subsection A above on written application to the chief of police. Applications for renewal shall be acted on as provided in this chapter for permit applications. Before submitting the renewal application a non-refundable renewal fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of reviewing the renewal application. The application shall be filed at least thirty (30) days but not more than sixty (60) days prior to the expiration date of the current valid permit. When a timely and complete application for renewal is filed, the expiration of the permit shall be stayed until a decision on the renewal application is issued. When the application for renewal is filed less than thirty (30) days before the expiration date, the expiration of the permit shall not be stayed.

C. An adult-entertainment business lawfully operating as a conforming use pursuant to an adult-entertainment business permit is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the adult-entertainment business permit, of a use or a zone not consistent with the locational requirements set forth in the Zoning Code, and a renewal application shall not be denied on that ground.

5.06.140 Term and renewal of adult performer permits and figure model permits.

A. An adult performer permit or figure model permit shall expire one year from the date of issuance of the permit, unless sooner suspended or revoked.

B. A permit that has not been suspended or revoked may be renewed for the period specified in subsection A above on written application to the chief of police. Applications for renewal shall be acted on as provided in this chapter for permit

applications. Before submitting the renewal application a non-refundable renewal fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of reviewing the renewal application. The application shall be filed at least ten (10) days but not more than sixty (60) days prior to the expiration date of the current valid permit. When a timely and complete application for renewal is filed, the expiration of the permit shall be stayed until a decision on the renewal application is issued. When the application for renewal is filed less than ten (10) days before the expiration date, the expiration of the permit shall not be stayed.

5.06.150 Name and place of business--change of location.

No person granted a permit for an adult-entertainment business shall operate the adult-entertainment business under any name or at any location not specified in the permit.

5.06.160 Suspension or revocation of adult-entertainment business permits, adult performer permits, and figure model permits.

A. An adult-entertainment business permit may be suspended or revoked by the city manager in accordance with the procedures and standards of this section. An adult performer permit or figure model permit may be suspended or revoked by the chief of police in accordance with the procedures and standards of this section

B. The city manager or chief of police shall hold a hearing prior to the suspension or revocation of a permit. On determining that grounds for permit suspension or revocation exist, the city manager or chief of police shall furnish written notice of the proposed suspension or revocation to the permittee. The notice shall set forth the time and place of a public hearing to be held prior to the suspension or revocation, the ground or grounds upon which the proposed suspension or revocation is based, the pertinent code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the permittee, or shall be delivered to the permittee personally, at least ten (10) days prior to the hearing.

C. Adult-entertainment business permit. An adult-entertainment business permit required pursuant to Section 5.06.030 may be suspended or revoked or be subjected to other appropriate disciplinary action, if any of the following causes arises from the acts or omissions of the permittee, or an operator of the adult-entertainment business:

1. The building, structure, equipment, or location used by the adult-entertainment business fails to comply with all applicable building, fire, electrical, plumbing, health, and

zoning requirements of the City of Sacramento, all applicable State and federal requirements of a similar nature that are customarily enforced by the City, and all provisions of these regulations and this code relating to adult-entertainment businesses, including the adult-entertainment business development and operational standards.

2. The permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the City.

3. The permittee or operator of an adult-entertainment business has knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the adult-entertainment business:

- a. Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.
- b. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation occur.
- c. Any conduct constituting a criminal offense that requires registration under Section 290 of the California Penal Code.
- d. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318, or subdivision (b) of Section 647 of the California Penal Code.
- e. Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 through 313.4.

4. Failure to abide by any disciplinary action previously imposed.

5. Failure to comply with any of the requirements for operation of adult-entertainment businesses set forth in this chapter.

D. Adult Performer and Figure Model Permits. The chief of police may suspend or revoke an adult performer permit or figure model permit for conviction of any of the crimes specified in Section 5.06.110 or for engaging in one of the activities described in Section 5.06.160(C)(3) while on the premises of an adult-entertainment business.

E. After holding the hearing in accordance with the provisions of this section, if the city manager or chief of police finds and determines that there are grounds for disciplinary action, based upon the severity of the violation, the city manager or chief of police shall impose one of the following:

1. A warning;
2. Conditions upon the permit;
3. Suspension of the permit for a specified period not to exceed six months.
4. Revocation of the permit.

5.06.170 Administrative Appeals: Suspension or Revocation of Permit

A. Adult-entertainment business permits. Any permittee aggrieved by the decision of the city manager relating to the suspension or revocation of an adult-entertainment business permit, or other discipline imposed, may within ten (10) days after the date of mailing of the decision to the permittee, appeal to the city council by filing a written notice of appeal with the city clerk. If an appeal is not filed within ten (10) days, the decision of the city manager shall be final. If a timely notice of appeal is filed, the decision of the city manager shall be stayed until the decision on appeal is issued. No fee shall be charged for an appeal.

B. Adult performer or figure model permits. Any permittee aggrieved by the decision of the chief of police relating to the suspension or revocation of, or the imposition of a condition or restriction upon, any adult performer or figure model permit may, within ten (10) days after the date of mailing of the

decision to the permittee, appeal the decision to the city council by filing a written notice of appeal with the city clerk. If an appeal is not filed within ten (10) days, the decision of the chief of police shall be final. If a timely notice of appeal is filed, the decision of the chief of police shall be stayed until the decision on appeal is issued. No fee shall be charged for an appeal.

- C. Hearing on appeal. An appeal pursuant to subsection (a) or (b) shall be set for hearing by the council at a date not later than thirty (30) days after the filing of the notice of appeal. The notice of hearing shall be mailed to the applicant at least ten (10) days prior to the date set for the hearing. The council may continue its hearing on such appeal from time to time provided, however, that the decision on the appeal shall issue no later than thirty (30) days after the original date set for hearing. The council shall hear all relevant evidence from competent persons relating to suspension or revocation of, or other discipline imposed upon, the permit. It may return the matter to the city manager or chief of police for further information or further investigation. The council may affirm, reject or modify the decision of the city manager or chief of police.
- D. Appointment of hearing examiner. The city council may employ the procedure specified in the City Code for the appointment of a hearing officer to hear and decide the appeal.

5.06.180 Judicial review: Stay pending trial court decision.

A. General: Judicial review of any final administrative decision after appeal under this chapter issuing, denying, suspending or revoking, or imposing other discipline upon, an adult-entertainment business permit, adult performer permit or figure model permit may be had pursuant to Code of Civil Procedure Section 1094.8. The city clerk shall provide written notice of the time limits referenced in Code of Civil Procedure Section 1094.8 to the appellant when transmitting the decision.

B. Stay pending expiration of period for filing a judicial challenge: A final administrative decision issuing, denying, suspending or revoking, or imposing other discipline upon, an adult-entertainment business permit, adult performer permit or figure model permit, whether temporary or regular, shall be stayed for a period of twenty-one (21) days after the decision becomes final, and the adult-entertainment business, adult performer or figure model shall be entitled to operate pursuant to the permit during the twenty-one (21) day time period.

C. Stay pending court decision on judicial challenge: Upon the timely filing of a request for judicial review pursuant to Code of Civil Procedure Sec. 1094.6 or 1094.8, the administrative decision issuing, denying, suspending or revoking, or imposing other discipline upon an adult-entertainment business permit, adult performer permit or figure model permit, whether temporary or regular, shall be stayed until the request for judicial review is dismissed or until a decision on the merits is issued by the trial court. The adult-entertainment business, adult performer or figure model shall be entitled to operate during the stay.

5.06.190 Register of adult performers and figure models.

A. The operator of a modeling studio shall maintain on the premises a register of all persons employed as or acting as figure models and their permit numbers.

B. The operator of an adult-entertainment business that provides live entertainment depicting or displaying specified anatomical areas or involving specified sexual activities shall maintain a register on the premises of all persons performing on the premises and their permit numbers.

C. The register required by subsections A and B shall include models and performers then modeling or performing on the premises as well as all models and performers who have modeled or performed on the premises during the previous six months. The register shall remain confidential, except that it shall be available for inspection by law enforcement personnel or the County health officer immediately upon demand at all times during regular business hours.

5.06.200 Adult performer and figure model identification card.

The chief of police shall provide to each adult performer and figure model granted a temporary or regular permit an identification card containing the name, photograph and permit number of the adult performer or figure model. The identification card shall remain confidential, except that an adult performer or figure model shall deposit his or her identification card with the on-site manager of an adult-entertainment business while the adult performer or figure model is working on the premises. The on-site manager shall make the identification cards available for inspection by law enforcement personnel or the County health officer at all times while the adult-entertainment business is open for business.

5.06.210 Employment of persons under the age of eighteen (18) years prohibited.

It shall be unlawful for the permittee or operator of an adult-entertainment business to employ, or permit to perform services or entertainment on the premises, any person who is under the age of eighteen (18) years.

5.06.220 Display of permit.

Every adult-entertainment business granted a permit shall display the permit in a conspicuous place within the adult-entertainment business at all times during business hours.

5.06.230 Business operations tax.

Nothing in this title shall relieve the owner of any adult-entertainment business, or any adult performer or any figure model, from paying the applicable business operations tax pursuant to Chapter 3.08 of Title 3 of the Sacramento City Code. The issuance of a business operations tax certificate shall not authorize conducting an adult-entertainment business, or performing as an adult performer in an adult-entertainment business, or acting as a figure model in a modeling studio, until the necessary temporary or regular permit required by Sections 5.06.030 or 5.06.060 has been lawfully granted.

5.06.240 Transfer of adult-entertainment business permit.

A. Upon sale, transfer or relocation of an adult-entertainment business, the permit therefor shall be void unless permission to transfer is first obtained pursuant to this section; provided, however, that upon the death or incapacity of the permittee, the establishment may continue in business for a reasonable period of time to allow for an orderly transfer of the permit pursuant to this section. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and upon such attempt the permit shall be deemed revoked.

B. No adult-entertainment business permit shall be transferable as to location or person, except with the written consent of the city manager. An application for transfer shall be in writing and contain the same information required for an initial permit application. Prior to submitting the application to the chief of police, the applicant shall pay a non-refundable fee, established by resolution of the city council, to the department of finance. The department of finance shall issue a receipt to the applicant showing that the permit transfer application fee has been paid. The applicant shall provide the receipt or a copy thereof to the chief of police with the permit transfer application.

C. No adult-entertainment business permit may be transferred after the city manager has notified the permittee that the permit has been or may be suspended or revoked.

D. An application to transfer shall be approved if the city manager determines that the transferee would be entitled to the issuance of an adult-entertainment business permit under this chapter; provided, however, that an application for transfer at the same location shall not be denied if the only ground for denial is that the location of the business no longer meets the locational criteria set forth in the City's Zoning Ordinance.

5.06.250 Employment of adult performer and figure models.

A. No permittee or operator of a modeling studio shall allow or permit a person to act as a figure model for the studio unless the person possesses a valid figure model permit under the provisions of this chapter. It shall be the responsibility of the permittee and the operator to ensure that each person employed or acting as a figure model shall have first obtained a valid permit pursuant to this chapter.

B. No permittee or operator of an adult-entertainment business shall employ and/or allow any person to engage in or participate in any live performance displaying or depicting specified anatomical areas or involving specified sexual activities unless that person possesses a valid adult performer permit under the provisions of this chapter. It shall be the responsibility of the permittee and the operator to ensure that each person acting as an adult performer shall have first obtained a valid permit pursuant to this chapter and shall comply with all other requirements of this chapter.

C. No permittee or operator of an adult-entertainment business shall employ at an adult-entertainment business, or permit to provide services or entertainment at an adult-entertainment business, any person who has been convicted of an offense specified in Section 5.06.110B, where the offense occurred at any adult-related establishment or any adult-entertainment business owned, controlled or operated by the permittee or operator.

5.06.260 Development standards.

The following development standards and requirements shall apply to adult-entertainment businesses, including those providing live entertainment depicting or displaying specified anatomical areas or involving specified sexual activities:

A. Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the Fire Department and building regulations and standards adopted by the City of Sacramento.

B. No adult-entertainment business shall be operated in any manner that permits the observation of any material or activities depicting, displaying, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

C. All off-street parking areas and premise entries of the adult-entertainment business shall be illuminated from dusk to closing hours of operation with a lighting system that provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually-oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

D. The premises within which the adult-entertainment business is located shall provide sufficient sound-absorbing insulation so that noise generated inside the premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

E. The building entrance to an adult-entertainment business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the city manager.

F. All indoor areas of the adult-entertainment business within which patrons are permitted, except restrooms, shall be open to view by the management at all times.

G. Any adult-entertainment business that is an "adult arcade" shall comply with the requirements of Chapter 5.96 of the City Code, as it currently exists or as it may be amended from time to time.

H. All interior areas of an adult-entertainment business other than an adult arcade shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

<u>Area</u>	<u>Foot-Candles</u>
Bookstores and other retail establishments	20
Theaters and cabarets	5 (except during performances)
Motels/Hotels	20 (in public areas)
Modeling studios	20

I. The adult-entertainment business shall provide and maintain a male restroom facility to be used by male patrons, employees and adult performers, and a female restroom facility to be used by female patrons, employees and adult performers. Male patrons, employees and adult performers shall be prohibited from using the restroom(s) for females and female patrons, employees and adult performers shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from any adult products. Restrooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an adult-entertainment business that deals exclusively with sale or rental of adult products that are not used or consumed on the premises, such as an adult bookstore, adult novelty store, or adult video store, and that does not provide restroom facilities for its patrons or the general public.

5.06.270 Adult-entertainment businesses providing live entertainment.

The following additional requirements shall pertain to adult-entertainment businesses providing live entertainment depicting or displaying or involving specified anatomical areas or involving specified sexual activities:

A. The adult-entertainment business shall provide separate dressing room facilities for adult performers that are exclusively dedicated to the adult performers' use, and to which no patron shall be admitted.

B. The adult-entertainment business shall provide an entrance/exit for adult performers that is separate from the entrance/exit used by patrons.

C. No adult performer, either before, during or after performances, shall fondle or caress any patron and no patron shall fondle or caress any adult performer either before, during or after performances by the adult performer. This subsection shall only apply to physical contact on the premises of the adult-entertainment business.

5.06.280 Management and security requirements.

A. There shall be present on the premises of an adult-entertainment business at all times while the business is open a manager who shall be in charge of all of the activities on the premises and who shall be responsible to ensure compliance with all requirements set forth in this chapter.

B. An adult-entertainment business shall employ security guards in order to maintain the public peace and safety, based upon the following standards:

1. An adult-entertainment business featuring live entertainment shall provide at least one (1) security guard at all times while the business is open. If the occupancy limit of the premises is greater than seventy-five (75) persons, an additional security guard shall be on duty.
2. Security guard(s) shall be charged with preventing violations of law and enforcing patrons' compliance with the requirements of this chapter. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a manager, door person, ticket seller, ticket taker, admittance person, or perform any duties other than surveillance of the premises, the adult performers, and the patrons to prevent violations of law and enforce compliance with the requirements of this chapter while acting as a security guard. Security guards shall report any violation of law immediately to the responsible manager on the premises at the time the violation or threatened violation occurs, and shall prepare a written report outlining the violation or threatened violation observed. Copies of all written reports required by this section shall be maintained on the premises along with the register of adult performers required by Section 5.06.190, and shall be available for inspection by law enforcement personnel at all times during regular business hours.

5.06.290 Persons under the age of eighteen (18) years prohibited on premises of adult-entertainment business.

It shall be unlawful for the permittee or operator of an adult-entertainment business to permit to enter, or remain within, the adult-entertainment business, any person who is under the age of eighteen (18) years.

5.06.300 Violation of Section 5.06.270 not a crime.

Notwithstanding the provisions of Title 1 of this Code, no criminal penalty shall be imposed on any person or entity for violating the provisions of Section 5.06.270. Violators of Section 5.06.270 shall be subject to administrative penalties as described in Title 1 and revocation or suspension of an adult-entertainment business permit and/or adult performer permit.

5.06.310 Conditions of adult-entertainment business permit.

The requirements set forth in this chapter shall be deemed conditions imposed upon every adult-entertainment business permit approved, and failure to comply with every such requirement shall be grounds for suspension or revocation of the permit issued pursuant to these regulations.

5.06.320 Applicability to existing adult-entertainment businesses, adult performers and figure models.

A. General: The provisions of this chapter shall apply to all adult-entertainment businesses, and all owners or operators thereof, and all adult performers and figure models, whether such business or activity was in operation before or after the effective date of this chapter; provided, however, that all such businesses, and all owners or operators thereof, and persons shall have one hundred eighty (180) days from the effective date of this chapter to comply with the provisions of this chapter and adult performers and figure models shall have sixty (60) days from the effective date of this chapter to comply with provisions of this chapter. Any person who has filed a timely application for a permit within said time limit shall not be subject to the provisions of this chapter relating to possession or display of a permit until a permit is issued or denied.

Exception: Temporary exemption from permit requirements for lawfully existing adult-entertainment businesses with adult-related establishment permit: The owner(s) and operator(s) of lawfully existing adult-entertainment businesses providing live entertainment depicting or displaying specified anatomical areas or involving specified sexual activities that were lawfully established on the effective date of this chapter shall not be required to

obtain an adult-entertainment business permit pursuant to Section 5.06.030 of this chapter within one hundred eighty (180) days, if the owner(s) and operator(s) have an adult-related establishment permit for the facility pursuant to Chapter 5.04 as it existed prior to the effective date of this chapter; and provided further that the owner(s) and operator(s) shall obtain a permit pursuant to this Chapter prior to the date on which the adult-related establishment permit expires or would have expired.

B. Variance from separation requirements: The chief of police may authorize a variance from the separate entrance/exit requirements of Section 5.06.270(B) for an adult-entertainment business lawfully existing on the effective date of this chapter if the chief finds that the alternative method of separation and/or entrance and exit provides adequate safety for adult performers entering or exiting the premises. The chief of police shall make a decision on the variance within thirty (30) days after the owner or operator of the business submits a written request for variance describing in detail the variance requested. No variance from the separation requirements of Section 5.06.290(C) shall be authorized.

C. Failure to obtain permits; violation of chapter: Failure to apply for and obtain a permit within the time period specified in subsection A and thereafter continuing to operate an adult-entertainment business for which a permit is required pursuant to Section 5.06.030 without a permit shall constitute a violation of this chapter.

5.06.330 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

In particular, the City Council hereby declares that it would have adopted the development and operational provisions of this chapter, even in the absence of the permit issuance provisions of this chapter. Further, the City Council hereby declares that it would have adopted the permit issuance provisions relating to adult performers even in the absence of the permit issuance provisions for adult-entertainment businesses. In the event a court of competent jurisdiction renders a decision invalidating any permit issuance provisions contained herein, any adult-entertainment business that operates in the City shall be deemed to be operating under a *de facto* permit subject to all requirements of this chapter that have not been invalidated.

SECTION 3.

Section 5.04.010 of Title 5 of the City Code is amended to read as follows::

5.04.010 Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Adult-Related Establishment. "Adult-Related Establishment" means a bathhouse, escort bureau, massage establishment, out call massage service, or sexual encounter center, as defined by this section. "Adult-related establishment" shall also include any other business or establishment that does not constitute an adult-entertainment business within the meaning of Chapter 5.06 that has available for or offers any patron, for pecuniary compensation, consideration, hire or reward, services or activities that involve "specified sexual activities" or the display of "specified anatomical areas."

Adult-Related Establishment Operator. "Adult-Related Establishment Operator" (hereinafter "operator") means a person who supervises, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the conduct or the activities of an adult-related establishment.

Bathhouse. "Bathhouse" means an establishment whose primary business is to provide, for pecuniary compensation, consideration, hire or reward, access to any kind of bath facility, including but not limited to showers, saunas and hot tubs.

Chief of Police. The chief of police of the City of Sacramento or authorized representative.

City Manager. The city manager of the City of Sacramento or authorized representative.

Escort. "Escort" means a person who, for pecuniary compensation, consideration, hire or reward, (i) escorts or accompanies others to or about social affairs, entertainment or places of amusement, or (ii) keeps company with others about any place of public resort or within any private quarters.

Escort Bureau. "Escort Bureau" means a business that, for pecuniary compensation, consideration, hire or reward furnishes or offers to furnish escorts.

Massage. "Massage" means any method of pressure or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external surfaces of the body with hands or with any object or appliance.

Massage Establishment. "Massage Establishment" means an establishment whose primary business is the offering of massage in exchange for a fee or other consideration. This does not include gymnasiums, schools maintained pursuant to standards set by the State Board of Education, reducing salons, athletic clubs or other establishment that offer massage as an incidental or accessory service.

Massage Establishment/Out Call Massage Service Operator. "Massage Establishment/Out Call Massage Service Operator" (hereinafter "operator") means a person who supervises, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the conduct of the activities of an out call massage service or within a massage establishment.

Massage Technician. "Massage Technician" means any person who for pecuniary compensation, consideration, hire or reward, engages in the practice of massage as herein defined.

Operate an Adult-Related Establishment. "Operate an Adult-Related Establishment" means the supervising, inspecting, directing, organizing, controlling or in any way being responsible for or in charge of the conduct of activities of an adult-related establishment or activities within an adult-related establishment.

Out-Call Massage Service. "Out-Call Massage Service" means any business, not licensed as a massage establishment under the provisions of this chapter, wherein the primary function of such business is to engage in or carry on massage for pecuniary compensation, consideration, hire or reward not at a fixed location, but at a location designated by the customer or client.

Permittee. "Permittee" means the person to whom an adult-related establishment permit is issued.

Person. "Person" means any individual, copartnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

Recognized School of Massage. "Recognized School of Massage" means any school or institution of learning that:

- (i) Teaches the theory, ethics, practice, profession, and work of massage; and
- (ii) Requires a resident course of study to be given before the student shall be furnished with a diploma or certificate of learning; and
- (iii) Has been approved pursuant to Section 94311(d) of the Education Code of the State of California, or, if said school is not located in California, has complied with the standards commensurate with those required in said Section 94311(d).
- (iv) Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or courses of massage technician not approved by the California State Department of Education shall not be deemed a "recognized school."

Sexual Encounter Center. "Sexual Encounter Center" means a business that provides two (2) or more persons, for pecuniary compensation, consideration, hire or reward, with a place to assemble for the purpose of engaging in "specified sexual activities" or displaying "specified anatomical areas." "Sexual encounter center" does not include hotels or motels, or a studio or similar facility owned, operated or maintained by an individual artist or group of artists, and that does not provide, permit or make available "specified sexual activities."

Specified Anatomical Areas. "Specified Anatomical Areas" shall include:

- (i) Less than completely and opaquely covered (i) human genitals or pubic region; (ii) buttocks; and (iii) female breast below a point immediately above the top of the areola; and
- (ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified Sexual Activities." "Specified Sexual Activities" shall include the following:

- (i) Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the

context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following depicted sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or

(ii) Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or

(iii) Use of human or animal masturbation, sodomy, oral copulation, coitus, ejaculation; or,

(iv) Fondling or touching of nude human genitals, pubic region, buttocks or female breasts; or,

(v) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or,

(vi) Erotic or lewd touching, fondling or other contact with an animal by a human being; or,

(vii) Human excretion, urination, menstruation, vaginal or anal irrigation.

SECTION 4.

Section 5.04.050 of Title 5 of the City Code is amended to read as follows:

5.04.050 Additional permits required.

A. No person shall give a massage for a fee or any other form of consideration unless a massage technician's permit is first obtained.

B. No person shall act as an escort unless an escort permit is first obtained.

The issuance of a business operations tax certificate pursuant to Chapter 3.08 of the Sacramento City Code shall not authorize giving of a massage or acting as an escort, until the necessary regulatory permit has been lawfully granted.

SECTION 5.

Section 5.04.060 of Title 5 of the City Code is amended to read as follows:

5.04.060 Application for massage technician or escort permit.

A. An application for a massage technician or escort permit shall be made to the chief of police on a form provided by the city clerk. Prior to submitting such application a non-refundable fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of investigation and report required by this title. The department of finance shall issue a receipt to the applicant showing that such permit application fee has been paid. The issuance of such a receipt shall not authorize the giving of a massage or acting as an escort, until the necessary regulatory permit has been lawfully granted. The applicant shall provide the chief of police with the receipt or a copy thereof at the time of applying for a permit under this section.

B. The application to the chief of police shall set forth the following information:

1. Name, residence address and telephone number of the applicant;
2. Driver's license number, if any, of the applicant;
3. Applicant's height, weight, color of hair and eyes;
4. Five (5) portrait photographs of the applicant at least 2" x 2";
5. Written evidence that the applicant is at least eighteen (18) years of age;
6. The name and address of the adult-related establishment where the applicant is to be employed and the name of the owner of that establishment;
7. The names and address of any establishments where the applicant was previously employed as a massage technician, or escort;
8. Whether the applicant has been convicted of any offense specified in Section 5.04.100 within five (5) years of the date of the application; and

9. The massage, escort, or similar business license history of the applicant; whether such person has had such license revoked or suspended, the reason therefor and the business activity or occupation subsequent to such suspension or revocation.

C. In addition to the information required above, an applicant for a massage technician permit shall provide the name and address of the recognized school of massage attended, the date attended, and a copy of the diploma or certificate of graduation awarded the applicant.

D. The chief of police shall take fingerprints and a photograph of the applicant and shall confirm the information submitted.

SECTION 6.

Section 5.04.080 of Title 5 of the City Code is amended to read as follows:

5.04.080 Investigations and recommendations.

A. Upon receiving an application for an adult-related establishment permit, the chief of police shall:

1. Within a reasonable period, not exceeding ninety (90) days of the filing of the application, investigate the application and recommend approval or denial to the city manager; and
2. Within 10 days, refer the application to the division of building inspections and the fire department.

The division of building inspections and the fire department shall inspect the premises and make separate recommendations to the city manager, within thirty (30) days of the filing of the application.

B. Upon receiving an application for a massage technician or escort permit, the chief of police shall investigate the application and recommend approval or denial to the city manager within 60 days.

SECTION 7.

Section 5.04.090 of Title 5 of the City Code is amended to read as follows:

5.04.090 Issuance of massage technician or escort permit.

A. The city manager shall act on the massage technician or escort application within ninety (90) days of the filing thereof, and shall issue the permit if all requirements for such permit are met, unless the city manager finds:

1. That the applicant has been convicted of any of the following offenses or convicted of an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b), and (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may hereafter be amended or renumbered.

The city manager shall issue a permit to any person convicted of any of the crimes described in subsection A of this section if (a) the person is otherwise qualified; and (b) the longer of the following time periods has passed:

- a. Five (5) years from date of the conviction; or,
- b. Five (5) years from release from confinement; or,
- c. Five (5) years from formal release from probation period; or,
- d. Five (5) years from formal release from parole.

2. That the applicant has knowingly made a material misrepresentation in the application.
3. That the applicant has had a massage technician or escort permit denied or revoked for cause by this city or any other city or county within the last five (5) years.
4. That the applicant is not at least eighteen (18) years of age.
5. That the applicant has not paid the required fee to the department of finance.

B. Notice of Decision. Such decision shall be in writing and mailed to the applicant, postage prepaid, within five (5) days of the city manager's decision.

SECTION 8.

Paragraph B, Section 5.04.110 of the City Code is amended to read as follows:

5.04.110 Appeals.

B. Massage technician or escort permits. Any applicant aggrieved by the decision of the city manager relating to the issuance or denial of any massage technician or escort permit may, within ten (10) days after the date of mailing of the decision to the applicant, appeal such decision to the city council by the filing of a written notice thereof with the city clerk. If such appeal is not filed within ten (10) days, the decision of the city manager shall be final.

Except as Paragraph B is amended above, the provisions of Section 5.04.110 shall remain the same.

SECTION 9.

Section 5.04.130 of Title 5 of the City Code is amended to read as follows:

5.04.130 Term and renewal of massage technician or escort permits.

A. The term of a massage technician or escort permit shall expire on September 30 next following the issuance of the permit, unless sooner suspended or revoked. Fees for the issuance of the permit shall not be prorated.

B. A permit that has not been suspended or revoked may be renewed for the period specified in subparagraph (A) above, on written application to the chief of police. The application shall be filed at least ninety (90) days but not more than one-hundred-twenty (120) days prior to the expiration date of the current valid permit. The applicant shall follow all of the procedures and provide all of the information required by Section 5.04.060 of this chapter, and verify the application according to Section 5.04.070 of this chapter. The chief of police and city manager shall process the application according to Sections 5.04.080 and 5.04.090 of this chapter.

SECTION 10.

Section 5.04.170 of Title 5 of the City Code is amended to read as follows:

5.04.170 Revocation or suspension of massage technician or escort permit.

After following the procedure in Section 5.04.160(B), the city manager may revoke or suspend a massage technician or escort permit for conviction of any of the crimes specified in Section 5.04.100. The decision of the city manager shall be in writing and shall be mailed postage prepaid to the massage technician or escort.

SECTION 11.

The caption of Section 5.04.180 of Title 5 of the City Code is amended to read as follows:

Section 5.04.180 Appeals of suspension or revocation of adult-related establishment permit or massage technician or escort permit.

SECTION 12.

Section 5.04.210 of Title 5 of the City Code is amended to read as follows:

5.04.210 Register of massage technicians and escorts.

A. The operator of a massage establishment or an out-call massage service shall maintain a register of all persons employed as massage technicians and their permit numbers.

B. The operator of an escort service shall maintain a register of all persons employed as escorts and their permit numbers.

C. The operator of an adult-related establishment other than an escort service, a massage establishment or an out-call massage service, shall maintain a register of all persons employed on the premises, the title of the position of each employee, and as to those employees required to have permits pursuant to this chapter, their permit numbers.

D. The register required by subsections (a), (b), and (c) shall be available for inspection at all times during regular business hours.

SECTION 13.

Section 5.04.220 of Title 5 of the City Code is amended to read as follows:

5.04.220 Massage technician and escort identification card.

A. The chief of police shall provide each massage technician and escort granted a permit with an identification card containing the name, photograph and permit number of the massage technician or escort.

B. A massage technician shall carry the identification card at all times during the hours of operation of the massage establishment or out-call massage service.

C. An escort shall carry the identification card at all times while providing escort services.

SECTION 14.

Section 5.04.270 of Title 5 of the City Code is amended to read as follows:

5.04.270 Business Operations Tax

Nothing in this title shall relieve the owner of any adult-related establishment or any massage technician or escort from paying the applicable business operations tax pursuant to Chapter 3.08 of Title 3 of the Sacramento City Code. The issuance of a business tax certificate shall not authorize conducting an adult-related establishment, the giving of a massage, or acting as an escort, until the necessary regulatory permit has been lawfully granted.

SECTION 15.

Paragraph B of Section 5.04.280 of Title 5 of the City Code is amended to read as follows:

- B. Massage technician and escort permits shall not be transferable.

Except as Paragraph B is amended above, the provisions of Section 5.04.280 shall remain the same.

SECTION 16.

Section 5.04.290 of Title 5 of the City Code is amended to read as follows:

5.04.290 Employment of massage technicians and escorts.

A. No permittee or operator of a massage establishment or out-call massage service shall allow or permit a person to administer a massage for such establishment or service unless said person possesses a valid massage technician's permit under the provisions of this chapter. It shall be the responsibility of the permittee and the operator to ensure that each such person employed as a massage technician shall first have obtained a valid permit under this chapter.

B. No permittee or operator of an escort service shall allow or permit a person to act as an escort for such service unless said person possesses a valid escort permit under the provisions of this chapter. It shall be the responsibility of the permittee and the operator to ensure that each such person employed as an escort shall first have obtained a valid permit pursuant to this chapter.

C. No permittee or operator of an adult-related establishment shall employ at an adult-related establishment any person who has been convicted of an offense specified in Section 5.04.090(A)(1), where the offense occurred at the adult-related establishment or any adult-related establishment owned, controlled or operated by the permittee or operator.

SECTION 17.

Section 5.04.310 of Title 5 of the City Code is amended to read as follows:

5.04.310 Applicability to existing adult-related establishments other than massage establishments and out call massage services, and to escorts.

The provisions of this chapter shall apply to all escort services, introductory services, and any other adult-related establishments, as defined, and all owners or operators thereof and all escorts whether such business or activity was in operation before or after the effective date of this ordinance; provided, however, that all such businesses and persons shall have sixty (60) days from said date to comply with the provisions of this chapter. Any person who has filed a timely application for a permit within said time limit shall not be subject to the provisions of this chapter relating to possession or display of a permit until a permit is issued or denied to the applicant.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

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DATE ADOPTED: _____

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