

**ORDINANCE NO. 38-2002**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE, CALIFORNIA, TO COUNTER ADVERSE SECONDARY EFFECTS OF CERTAIN SPECIFIED USES**

**WHEREAS**, for all of the reasons set forth herein, the City Council of the City of Elk Grove ("City") desires to adopt comprehensive locational, licensing operational and performance standards for the establishment and operation of Adult-Oriented Businesses within the City; and

**WHEREAS**, Adult-Oriented Businesses require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the residents of the City; and

**WHEREAS**, the City Council finds that Adult-Oriented Businesses are frequently used for unlawful sexual activities, including prostitution; and

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of Adult-Oriented Businesses in order to protect the health and well-being of the residents of Elk Grove; and

**WHEREAS**, licensing is a legitimate and reasonable means of accountability to ensure that operators of Adult-Oriented Businesses comply with reasonable regulations and to ensure that operators of Adult-Oriented Businesses do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

**WHEREAS**, there is convincing documented evidence that Adult-Oriented Businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

**WHEREAS**, it is recognized that Adult-Oriented Businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

**WHEREAS**, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of City residents; protect the residents from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, the City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of City; and

**WHEREAS**, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of Adult-Oriented Businesses; and

**WHEREAS**, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal laws prohibit the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City; and

**WHEREAS**, the California State Legislature has recognized the authority of municipalities to regulate Adult-Oriented Business by providing in Government Code section 65850.4 that: "The legislative body of any county or city may regulate, pursuant to a content neutral ordinance, the time, place, and manner of operation of sexually oriented businesses, when the ordinance is designed to serve a substantial governmental interest, does not unreasonably limit alternative avenues of communication, and is based on narrow, objective, and definite standards. The legislative body is entitled to rely on the experiences of other counties and cities and on the findings of court cases in establishing the reasonableness of the ordinance and its relevance to the specific problems it addresses, including the harmful secondary effects that the business may have on the community and its proximity to churches, schools, residences, establishments dispensing alcohol, and other sexually oriented businesses."

**WHEREAS**, the City currently lacks any ordinance which adequately addresses the adverse secondary effects associated with Adult-Oriented Businesses; and

**WHEREAS**, Government Code section 36937(b) authorizes the City Council, by a four-fifths vote of its members, to adopt an urgency ordinance for the immediate preservation of the public peace, health, and safety; and

**WHEREAS**, the City Council finds that this Ordinance is enacted in order to mitigate the imminent threat posed to the public peace, health, safety and general welfare by Adult-Oriented Businesses. In this regard, the findings set forth in this Ordinance are incorporated herein by reference; and

**WHEREAS**, the City Council desires to ensure that City is not without adequate enforcement remedies to address violations of this Ordinance.

**NOW, THEREFORE**, the Council of the City of Elk Grove does hereby ordain as follows:

**SECTION 1. FINDINGS.**

- (1) Based on evidence concerning adverse secondary effects of Adult-Oriented Businesses on the community as presented in hearings and in reports made

available to and reviewed by the City Council, and on findings documented in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991) and on studies conducted by other cities, including but not limited to, Cattaraugus County, New York (1998), Cleburne, Texas (1997), Houston, Texas (1997), Newport News, VA (1996), Garden Grove California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); St. Paul, Minnesota (1987), Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis,, Indiana (1984), Beaumont, Texas (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); and Los Angeles, California (1977), and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the City Council finds that these studies are relevant to the problems addressed by the City in enacting this Ordinance and further finds that these studies provide convincing evidence that:

- (a) Adult-Oriented Businesses are linked to increases in crime rates in those areas in which they are located and in surrounding areas.
- (b) Both the proximity of Adult-Oriented Businesses to sensitive land uses and the concentration of Adult-Oriented Businesses tend to result in the blighting and deterioration of the areas in which they are located.
- (c) The proximity and concentration of Adult-Oriented Businesses adjacent to residential, recreational, religious, educational, and other Adult-Oriented Business uses can have adverse secondary effects on local businesses and residences including causing other businesses and residences to move elsewhere.
- (d) There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by Adult-Oriented Businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, violence against persons and property and sexually transmitted diseases.
- (e) The studies from other cities establish convincing evidence that Adult-Oriented Businesses which are not regulated as to permissible locations often have a deleterious effect on nearby businesses in residential areas causing, among other secondary effects, an increase in crime and a decrease in property values.

- (2) Based on the foregoing, the City Council of the City of Elk Grove finds and determines that special regulation of Adult-Oriented 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 special regulations is based upon the recognition that Adult-Oriented 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, churches, thereby having a deleterious effect upon the adjacent areas. It is the purpose and intent of these special regulations to prevent the concentration of Adult-Oriented Businesses and thereby prevent such adverse secondary side effects.
- (3) The locational requirements established by this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected Adult-Oriented Businesses in the City of Elk Grove, and a sufficient reasonable number of appropriate locations for Adult-Oriented Businesses are provided by this ordinance.
- (a) The City Council has considered (i) the number of sites that actually are part of the relevant real estate market, (ii) the percentage of acreage theoretically available within the City, (iii) the number of sites available for the simultaneous operation of adult businesses, (iv) the City's community needs and goals, (v) the number of available sites in other, comparable communities, (vi) the City's population, (vii) the demand versus the supply of potential sites and (viii) the possible chilling effect of locational and operation limitations and provisions on prospective business owners. Study and analysis of these factors reveals that the number of commercially available sites, including available acreage, within the City for simultaneous operation of Adult-Oriented Businesses, exceeds the demand for Adult-Oriented Businesses in the City.
- (b) The City Council also recognizes that Elk Grove is, to a large extent, a commuter community; adults frequently travel at least 20 to 30 miles outside the City for entertainment venues or to make retail purchases and located within 30 to 45 minutes driving time are existing facilities offering Adult-Oriented goods and services.
- (c) The City Council also takes note of the proliferation of adult material on the Internet and Cable Television and their availability as alternative avenues of communication. The City Council considers and relies on published decisions examining the proliferation of communications on the

Internet. *Reno v. American Civil Liberties Union* (1997 521 U.S. 844 (the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet); see also: *Anheuser-Busch v. Schmoke*, 101 F.3d 325, 329 (4<sup>th</sup> Cir. 1996)(rejecting First Amendment challenge to Baltimore ordinance restricting alcohol advertisements on billboards and acknowledging that the Internet is an available channel of communication); *U.S. v. Hockings*, 129 F.3d 1069 (9<sup>th</sup> Cir. 1997); and *U.S. v. Thomas*, 74 F.3d 701 (6<sup>th</sup> Cir. 1996)(recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions). The emergence of the Internet provides a virtually unlimited additional source of Adult-Oriented sexual material available to persons without regard to geographic boundaries. An adult business no longer needs to be actually physically located within a city to be available to the community.

- (4) The City Council also finds that the locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of Elk Grove, and thus certain requirements with respect to the ownership and operation of Adult-Oriented Businesses are in the public interest; and that in addition to the findings and studies conducted in other cities regarding the increase in crime rates, decreases in property values, and the blighting of areas in which such Adult-Oriented 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 (9<sup>th</sup> Cir. 1986), and other sources, regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems and also finds the following, in part based upon its understanding of the documents and judicial decisions in the public record:
- (a) Evidence indicates that some dancers, models, and performers, and other persons who publicly perform Specified Sexual Activities or publicly display Specified Anatomical Areas in Adult-Oriented Businesses (collectively referred to as “Performers”) have been found to engage in sexual activities with patrons of Adult-Oriented Businesses on the site of the Adult-Oriented Businesses.
  - (b) Evidence demonstrates that Performers employed by Adult-Oriented Businesses have been found to offer and provide private shows to patrons, who, for a price, are permitted to observe and participate with the Performers in live shows.
  - (c) Evidence indicates that Performers at Adult-Oriented Businesses have been found to engage in prostitution with patrons of the establishments.

- (d) Evidence indicates that fully enclosed booths, individual viewing areas, and other rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as a location for unlawful sexual activity.
- (e) Adult-Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the Adult-Oriented Businesses. In addition, there is presently no mechanism to make the owners of these establishments responsible for the unlawful activities that occur in their establishments.
- (f) That Adult-Oriented Businesses are vulnerable to organized crime involvement underscoring the importance of preventing illegal conduct at such establishments, including gambling, prostitution and other sexual abuse and the distribution of controlled substances.
- (g) Certain employees of Adult-Oriented Businesses defined herein as Adult Theaters and Adult Cabarets engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (h) Sexual acts, including masturbation, and oral and anal sex, occur at Adult-Oriented Businesses, especially those that provide private or semi-private booths or cubicles for viewing films, videos, or live shows which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- (i) Offering and providing private or semi-private booths or cubicles for viewing films, videos, or live shows which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas creates unhealthy and unsanitary conditions.
- (j) Persons frequent certain Adult Theaters, Adult Arcades, and other Adult-Oriented Businesses for the purpose of engaging in sex within the premises of such Adult-Oriented Businesses.
- (k) At least fifty (50) communicable diseases may be spread by activities occurring in Adult-Oriented Businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
  - (i) Sexually transmitted diseases infect approximately 12 million persons each year.

- (ii) Since 1981 to the present, there have been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States. Since 1981, 774,467 AIDS cases, nearly two-thirds of which were sexually transmitted, have been reported.
- (iii) An estimated one-third of those living with HIV are aware of their status but are not in treatment and an estimated one-third of those living with HIV have not been tested and are not aware of their status
- (iv) California has the second highest number of cumulative AIDS cases in the nation with 123,819 cases reported as of December 2001.
- (v) Since 1981 to the present, there have been an increasing number of persons testing positive for the HIV antibody in Sacramento County, California. The estimated number of people living with AIDS in Sacramento County was approximately 1,200 in 2000.
- (vi) In the United States, over 35,600 cases of syphilis were reported by health officials in 1999 and more cases occur than come to the attention of health officials. There is a 2 to 5 fold-increased risk of acquiring HIV infection when syphilis is present.
- (vii) Chlamydia is the most frequently reported infectious disease in the United States with 526,653 cases reported in 1997 and an estimated 3 million cases occurring annually
- (viii) The number of cases of chlamydia in Sacramento County increased from 316.6 per 100,000 population in 1996 to 383.5 per 100,000 population in 2000. Sacramento County's chlamydia incidence rate is twice as high as statewide rates.
- (ix) Gonorrhea is second only to chlamydia infection in the number of cases report to the CDC with 324,901 cases reported in 1997.
- (x) The rate of gonorrhea in Sacramento County was 108 per 100,000 population in 2002. The Sacramento County rate is twice as high as the statewide rate.
- (xi) The Surgeon General of the United States in his report of October 22, 1986, and other reports, have advised the American public that

AIDS and HIV infection may be transmitted through sexual conduct, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her unborn child.

- (xii) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (xiii) Among the published recommendations for preventing AIDS is avoiding unprotected or unsafe activities with multiple partners or sex industry workers.
- (l) Numerous studies and reports have determined that semen is found in the areas of Adult-Oriented Businesses where persons view films that depict or describe Specified Sexual Activities or Specified Anatomical Areas.
- (m) Sanitary conditions in some Adult-Oriented Businesses are unhealthy in part because the activities conducted therein are unhealthy and also in part, because of the unregulated nature of the activities and the failure of the owners and operators of Adult-Oriented Businesses to self-regulate those activities and maintain the Adult-Oriented Businesses in a healthy and sanitary manner.
- (n) As a result of the factors above, and the continuing incidence of sexually transmitted diseases, the City has a substantial interest in adopting regulations which will reduce, to the greatest extent possible, the possibility for the occurrence of prostitution and unlawful sex acts at Adult-Oriented Businesses.
- (o) A reasonable licensing procedure is an appropriate mechanism to place the burden of reasonable self-regulation on the owners and operators of the Adult-Oriented Businesses. Such a licensing procedure will place a heretofore nonexistent incentive on operators to see that Adult-Oriented Businesses are operated in a manner consistent with the health, safety, welfare of its patrons and employees, as well as the residents of Elk Grove.
- (p) It is an appropriate exercise of the City's police powers in promoting the public health, safety, and welfare to require reasonable assurances that the licensee is the actual operator of the Adult-Oriented Business, fully in possession and control of the premises and activities occurring thereon.



- (q) That reasonable licensing and disclosure requirements imposed on owners, operators, and employees of Adult-Oriented Business also further the substantial governmental interest in monitoring City's workforce, ensuring that only duly authorized persons own and operate such establishments, and, ensuring that such establishments do not employ minors.
- (r) Requiring licensees of Adult-Oriented Businesses to keep information regarding current and past employees and Performers will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witness or suspects and by preventing minors from working in such establishments.
- (s) Requiring the disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the Adult-Oriented Businesses, where such information is substantially related to the significant governmental interest in the operation of Adult-Oriented Businesses, will aid in preventing the spread of sexually transmitted diseases.
- (t) It is desirable in the prevention of the spread of communicable diseases and sexually-related crimes such as prostitution, to obtain a limited amount of information regarding certain employees who may engage in the conduct that this Ordinance is designed to prevent or who are likely to be witnesses to the conduct this Ordinance is designed to prevent.
- (u) The fact that an applicant for a license required by this Ordinance has been convicted of a sexually related crime and is barred from owning, operating, managing, performing at or being employed by an Adult-Oriented Business for a period of five years serves as a deterrent to and prevents conduct that leads to the transmission of sexually transmitted diseases and the occurrence of crimes that this Ordinance seeks to protect against. Further, requiring person to disclose such information facilitates the performing of background checks.
- (v) There is a high incidence of recidivism with respect to sexual crimes, and a prior conviction of a sexual crime evidences a lack of commitment to enforcement of prohibitions with respect to sexual offenses.
- (w) That regulating the hours of operation of Adult-Oriented Businesses furthers the substantial governmental interests of preserving the peace and quiet of the surrounding community. *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123, 131-139 (3d Cir. 1993); *Lady J. Lingerie, Inc.*

*v. City of Jacksonville*, 973 F.Supp. 1428 (M.D.Fla. 1997) and *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11<sup>th</sup> Cir. 1999); and *City of Colorado Springs v. 2354 Inc.*, 896 P.2d 272 (Col. 1995).

- (x) That the presence of security guards and surveillance equipment in and near Adult-Oriented Business will deter the occurrence of the secondary effects of Adult-Oriented Businesses described herein.
  - (y) That the reasonable regulation of certain contact, including the direct exchange of money and physical contact, between Adult-Oriented Business Employees and patrons prevents the negotiation for narcotics transfers and sexual favors and deters prostitution.
  - (z) That the reasonable regulation of the interior configuration of certain Adult-Oriented Businesses, including requiring separation between entertainers and patrons through specified stage heights, physical barriers, specified ingress and egress, and specified dressing facilities, prevents Adult-Oriented Business Employees and patrons from negotiating for and transacting narcotics transfers and sexual favors and deters prostitution.
  - (aa) Enclosed or concealed booths and dimly-lit areas' within Adult-Oriented Businesses greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. Requirements that all indoor areas be open to view by management at all times, and that adequate lightning be provided are necessary in order to reduce the opportunity for, and therefore the incidence of illegal conduct within Adult-Oriented Businesses, and to facilitate the inspection of the interior of the premises thereof by law enforcement personnel. Additionally, removal of doors on private and semi-private booths and cubicles in Adult-Oriented Businesses advances a substantial governmental interest in curbing the illegal and unsanitary activity occurring therein.
- (5) The City Council also recognizes the potential harm to minors associated with the adverse side effects of Adult-Oriented Businesses and the importance of maintaining a community that is safe and secure for minors.
- (6) The City's police powers encompass the power to enact zoning, licensing, and other regulations to protect the public health, safety, and welfare. Zoning, licensing, and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in City and to help assure that all owners and operators of Adult-Oriented Businesses comply with reasonable

regulations to minimize adverse secondary effects which accompany the operation of such businesses.

- (7) In developing this Ordinance, the City Council has been mindful of legal principles relating to regulation of Adult-Oriented 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-Oriented Businesses. In this regard, the City Council has considered decisions of the United States Supreme Court regarding local regulation of Adult-Oriented Businesses, including but not limited to: *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976); *City of Renton v. Playtime Theaters*, 475 U.S. 41 (1986); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v. Glenn Theater*, 501 U.S. 560 (1991); *City of Erie v. Paps A.M.* (2000) 529 U.S. 277; *City of Los Angeles v. Alameda Books, Inc.*, \_\_\_ U.S. \_\_\_ [122 S.Ct. 1728] (2002). The City Council has also considered decisions by state and federal courts, including but not limited to: *Tily B. v. City of Newport Beach*, 69 Cal.App.4<sup>th</sup> 1 (1998); *City of National City v. Wiener*, 3 Cal.4<sup>th</sup> 832 (1992); *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989); *City of Vallejo v. Adult Books, et al.*, 167 Cal.App.3d 1169 (1985); *Pringle v. City of Covina*, 115 Cal.App.3d 151 (1981); *Topanga Press, et al. v. City of Los Angeles*, 989 F.2d 1524 (9<sup>th</sup> Cir. 1993); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9<sup>th</sup> Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9<sup>th</sup> Cir. 1998); *Baby Tam & Co., Inc. v. City of Las Vegas*, 154 F.3d 1097 (9<sup>th</sup> Cir. 1998); *Baby Tam & Co., Inc. v. City of Las Vegas*, 199 F.3d 1111 (9<sup>th</sup> Cir. 2000); *Baby Tam & Co., Inc. v. City of Las Vegas*, 247 F.3d 1003 (9<sup>th</sup> Cir. 2001); *Diamond v City of Taft*, 215 F.3d 1052 (9<sup>th</sup> Cir. 2000); *City of Lakeland Lounge v. City of Jacksonville, Miss.*, 973 F.2d 1255 (5<sup>th</sup> Cir. 1992), *Mitchell v. Commission on Adult Entertainment Establishments of State of Delaware*, 10 F.3d 123 (3<sup>rd</sup> Cir. 1993), *Hang On, Inc. v. Arlington*, 65 F.3d 1248 (5<sup>th</sup> Cir. 1995), *International Eateries of America, Inc. v. Broward County*, 941 F.2d 1157 (11<sup>th</sup> Cir. 1991); *Hart Book Stores, Inc. v. Edmisten*, 612 F.2d 821 (4<sup>th</sup> Cir. 1979), *Star Satellite v. City of Biloxi*, 779 F.2d 1074 (5<sup>th</sup> Cir. 1986), *Steakhouse, Inc. v. City of Raleigh, North Carolina*, 166 F.3d 634 (4<sup>th</sup> Cir. 1999) and finds that time, place, and manner restrictions established by this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected Adult-Oriented Businesses in City.
- (8) In developing this Ordinance, the City Council has reviewed and is mindful of the findings and experiences of other nearby communities including those recited in Sacramento City Ordinance No. 2001-040, Citrus Heights Ordinance Nos. 99-05 & 99-06, Galt Ordinance No. 2000-04, and Lodi Ordinance No. 1696.

- (9) In prohibiting public nudity in Adult-Oriented Businesses, the City Council does not intend to proscribe the communication of erotic messages or any other communicative element or activity, but rather only to prohibit public nudity due to the secondary impacts associated with such public nudity at Adult-Oriented Businesses.
- (10) The City Council also finds, as a wholly independent basis, that it has a substantial public interest in preserving societal order and morality, and that such interest is furthered by a prohibition on public nudity.
- (11) While the City Council desires to protect the rights conferred by the United States Constitution to Adult-Oriented Businesses, it does so in a manner that ensures the continued and orderly development of property within the City and diminishes, to the greatest extent feasible, those undesirable secondary effects which the aforementioned studies have shown to be associated with the development and operation of Adult-Oriented Businesses.
- (12) The City declares that the restrictions imposed pursuant to this ordinance are part of a regulatory licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the City of Elk Grove Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities. The City Council adopts these limitations only as a condition of issuance and maintenance of an Adult-Oriented Business permit issued pursuant to the City Code.

## **SECTION 2. OBSCENE MATERIALS.**

It is not the intent of the City Council in enacting this Ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City Council recognizes that state law prohibits the distribution of certain materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities within the City.

## **SECTION 3. APPLICATION OF LAWS.**

Nothing in this Ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which 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.

## **SECTION 4. LOCATIONAL REQUIREMENTS.**

The City Council hereby amends the Elk Grove Zoning Code by deleting Title 1, Chapter 25, sections 130-03.5, 130-03.6, 130-03.7, 130-03.9, 130-54.03, 130-106.5, 130-143.8, 130-157.5, 130-171.4, and 130-171.5; Title 2, Chapter 30, Table IV, section K, lines 24, 25, 26, and 27 and Title 3, Chapter 25, sections 325-50 and 325-51 in their entirety and by adding the following sections:

### **Title 1, Chapter 25: General Terminology and Definitions**

#### **Article 1: Definitions**

**130-03.5 Adult Arcade** means any commercial establishment to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, computer, or other image-producing devices are maintained to show images to four (4) or fewer persons per machine at any one time, and where, as a regular and substantial course of conduct, the images so displayed are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas. The phrase “regular and substantial course of conduct” shall be construed with reference to all relevant factors, including but not limited to the following:

- (a) The proportion of the business’ displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.
- (b) The proportion of the business’ revenue that is attributable to displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

**130-03.51 Adult Bookstore (including Adult Novelty Store or Adult Video Store)** means a commercial establishment which, as a regular and substantial course of conduct, 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, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; or,

- (b) Instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with Specified Sexual Activities.
- (c) The phrase “regular and substantial course of conduct” shall be construed with reference to all relevant factors, including but not limited to the following:
  - (i) The business devotes more than twenty-five percent (25%) of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.
  - (ii) The business devotes more than twenty-five percent (25%) of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.
  - (iii) The retail value of merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas exceeds twenty-five (25%) of the total retail value of inventory offered in each of the following categories: (A) books, (B) magazines, (C) video tapes or any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), for sale or rental, (D) novelties and devices, and (E) on-premises viewing of images, films, and or videos.
  - (iv) Gross revenue derived from merchandise in any category set forth in Paragraph (iii) above exceeds (25%) of the total gross revenue for the category.

There is a rebuttable presumption that a business constitutes an adult bookstore, adult novelty store or adult video store where the business (A) offers or advertises merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas as set forth in Paragraph (iii) above and (B) fails to make revenue and inventory related business records available to the City upon twenty-four (24) hours advance notice.

**130-03.52 Adult Cabaret** means a nightclub, bar, restaurant, or similar commercial establishment which, as a regular and substantial course or conduct, features:

- (a) Persons who appear in a State of Nudity or Semi-Nude Condition; or
- (b) Live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or
- (c) Films, motion pictures, video cassettes, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides or other

photographic reproductions which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(d) The phrase “regular and substantial course of conduct” shall be construed with reference to all relevant factors, including but not limited to the following:

(i) The proportion of the business’ performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(ii) The proportion of the business’ revenue that is attributable to performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

**130-03.6 Adult Motel (Including Adult Hotel)** means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or other photographic reproductions which, as a regular and substantial course of conduct, are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; and has any of the following characteristics:

(a) a sign visible from the public right of way which advertises the availability of the above-described photographic reproductions; or

(b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(c) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

**130-03.7 Adult Motion Picture Theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, for observation by five (5) or more patrons at any one time.

The phrase “regularly shown” shall be construed with reference to all relevant factors, including but not limited to the following:

- (a) The proportion of the theater's photographic reproductions that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.
- (b) The number of photographic reproductions shown at the theater each month that are distinguished or characterized by an emphasis upon depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.
- (c) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

**130-03.71 Adult-Oriented Businesses** means any of the following commercial establishments where patrons are permitted or invited: an Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Nude Model Studio, or Sexual Encounter Center.

**130-03.72 Adult Theater** means a theater, concert hall, auditorium, or similar commercial establishment which as a regular and substantial course of conduct features persons who appear in a State of Nudity or Semi-Nude Condition and/or features live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

- (a) The proportion of the business' performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.
- (b) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

**130-03.54.03 Distinguished or Characterized by An Emphasis Upon** means the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "which 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, description, showing, or simulation of the enumerated sexual activities or anatomical areas.



**130-67.1 Fabric** means cloth made by weaving or knitting natural or synthetic fibers and filaments, and for the purposes of this definition, includes paper, metallic or plastic materials but excludes any material directly painted on a body.

**130-126.21 Nude Model Studio** means any place where a person: (i) appears Semi-Nude, in a State of Nudity, or displays Specified Anatomical Areas; and (ii) is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of California or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- (a) That has no sign visible from the exterior of the structure and no other advertising that indicates a person is a State of Nudity or a Semi-Nude Condition is available for viewing;
- (b) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
- (c) Where no more than one (1) Nude or Semi-Nude model is on the premises at any one time.

**130-126.22 Nudity or 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 fabric covering, the showing of the female breast with less than a fully opaque fabric covering of any part of the areola, or the showing of completely or opaquely covered (by Fabric) male genitals in a discernibly turgid state.

**130-157.1 Semi-Nude or in a Semi-Nude Condition** means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks and areola of the female breast as well as portions of the body covered by supporting straps or devices.

**130-157.2 Sexual Encounter Center** means a business or commercial enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, when one or more of the persons is in a State of Nudity or Semi-Nude Condition. The definition of sexual encounter center does not include an establishment where a medical practitioner, physiologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

**130-157.3 Sexually Oriented Business** means an Adult-Oriented Business.

**130-171.4 Specified Anatomical Areas** means and includes the following:

- (a) Less than completely and opaquely covered by fabric: (i) human genitals or pubic region; (ii) human buttocks; (iii) human anus; or (iv) the female breast below a point immediately above the top of the areola;
- (b) Human male genitals in a discernibly turgid state, even if completely or opaquely covered by Fabric; and
- (c) Any device, costume, or covering that simulates any of the body parts included in subdivisions (a) or (b) above.

**130-171.5 Specified Sexual Activities** means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

- (a) The fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast;
- (b) Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated;
- (d) Excretory functions as part of or in connection with any of the other activities described in subdivision (a) through (b) above.

## **Title 2, Chapter 30: Industrial Land Use Zones**

### **Article 2: Industrial Use Tables.**

Line 24, Section K, of Table IV, shall be amended to reflect that “Adult-Oriented Business” shall be permitted in zones M-1 and M-2 subject to special condition 25 of section 230-13, and lines 25 to 27, inclusive, shall be amended to read “deleted.”

## **Title 3, Chapter 25: Industrial Development Standards**

### **Article 5: Adult Land Use Regulations**

**325-50 Purpose.** It is the purpose of this ordinance to regulate Adult-Oriented Businesses in order to promote the health, safety, and general welfare of the residents of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Adult-Oriented Businesses within 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, including adult-oriented materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult-oriented

entertainment to their intended market. In addition, it is not the intent or effect of this ordinance to condone or legitimize the distribution of obscene material.

**325-51 Classification.**

Adult-Oriented Businesses are classified as follows:

- (a) Adult Arcades;
- (b) Adult Bookstores (including Adult Novelty Stores or Adult Video Stores);
- (c) Adult Cabarets;
- (d) Adult Motels (including Adult Hotels);
- (e) Adult Motion Picture Theaters;
- (f) Adult Theaters;
- (g) Nude Model Studios; and
- (h) Sexual Encounter Centers.

**325-52 Distance Requirements.** Adult Orientated Businesses are permitted subject to compliance with all of the following conditions:

(a) Such use is situated more than one thousand (1,000) feet from any other Adult-Oriented Business whether in the City, in an adjoining city, or within an unincorporated area.

(b) Such use is located more than five hundred (500) feet from any of the following uses whether in the City, in an adjoining city, or within an unincorporated area:

(i) Land zoned for single family, duplex or multi-family residences;

(ii) Any public or private educational facility including but not limited to child day care facilities, libraries, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, secondary schools, continuation schools, special education schools. This category of uses does not include vocational or professional institutions of higher education including but not limited to community or junior colleges, colleges and universities;

(iii) Any public park, or recreational area, or property zoned, planned, or otherwise designated for such use by city action, including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball or tennis courts, or

other similar public land within the City which is under the control, operation, or management of the City or park and recreation authorities; or

(iv) A church, synagogue, mosque, temple or building or portion of a building or structure which is regularly used for religious worship or related religious activities.

(c) Such use is situated in either a M-1 or M-2 land use zone.

(d) The distance between the Adult-Oriented Business and the zone described in sections (a) or (b) shall be made in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the building or structure, in which the Adult-Oriented Business is located to the boundary of the property on which the building, structure, or use, or portion of the building structure, or use, described in sections (a) or (b) is located.

(e) No more than one classification of Adult-Oriented Business shall be permitted within a single structure unless such structure is divided so that the perimeters of the individual Adult-Oriented Businesses are separated by more than one thousand (1,000) feet at their closest point.

### **325-53 Non-conforming Use Based Upon Distance Requirements.**

(a) Notwithstanding the provisions of section 325-52 of this Chapter, the use of land for an Adult-Oriented Business which is subject to a distance separation requirement from other specified uses that was legally established, but has been rendered nonconforming as a result of an incompatible use being established within the prescribed distance separation requirement, may continue subject to all of the following restrictions:

(i) Such use shall not be expanded or extended in any way either on the same or adjoining land;

(ii) The use, including the classification of Adult-Oriented Business, shall not be changed except to a use which conforms to the regulations and zoning applicable to such land;

(iii) If such use is discontinued for a period of more than ninety (90) days, it shall not thereafter be reestablished;

(iv) If the Adult-Oriented Business License, required by Title 4, Chapter 61, section 4.61.005 of the City's Code for such use is revoked, such use shall not thereafter be reestablished;

(b) The initial conformity of a use shall be determined as of the date a completed application for an Adult-Oriented Business License is received by the City for the specified use on the subject property.

(c) The foregoing provisions shall supersede the non-conforming use provisions of Title 1, Chapter 20, sections 120-20 and 120-28, of this Code and shall apply to Adult-Oriented Businesses.

### **325-54 Other Non-conforming Use**

(a) Any Adult-Oriented Business that was lawfully operating on October 16, 2002 or that is lawfully operating on land annexed into the City after October 16, 2002, that is in violation of this Chapter, shall be deemed a non-conforming use.

(b) The nonconforming use shall be permitted to continue for a period not exceeding (i) one (1) year from October 16, 2002 or (ii) one (1) year from the date the land is annexed into the City, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use.

(c) The owner or operator of a nonconforming Adult-Oriented Business use may apply under the provisions of this section to the Planning Director for an extension of time within which to terminate the nonconforming use.

(i) An application for an extension of time within which to terminate a use made nonconforming by the provisions of this section, may be filed by the owner of the real property upon which such nonconforming Adult-Oriented Business use is operated, or by the operator of the use. The application must be filed with the Planning Director at least ninety (90) days, but no more than one hundred eighty (180) days, prior to the time established in this section for termination of such nonconforming Adult-Oriented Business use.

(ii) The written application for extension shall state the grounds for requesting an extension of time. The filing fee for such application shall be the same as that for a variance as is set forth in the schedule of fees established by resolution from time to time by the City Council

(iii) Either the Planning Commission or a hearing officer appointed by the City Manager, shall hear the application. The matter shall be set for hearing within thirty (30) business days of receipt of the application. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious matters. Any hearing under this section may be continued for a reasonable time for the convenience of a party or witness. Unless all parties stipulate, the decision of the Planning Commission or hearing officer shall be rendered prior to the termination date of the non-conforming use.

The decision shall be final and subject to judicial review pursuant to Code of Civil Procedure section 1094.8.

(iv) An extension under this section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the City Planning Commission or a hearing officer makes all of the following findings or such other findings as are required by law:

- (A) The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming Adult-Oriented Business use is conducted, such property or structure cannot be readily converted to another use, and such investment was made prior to the (i) effective date of this Chapter or (ii) the date the land was annexed into the City.
- (B) The applicant will be unable to recoup said investment as of the date established for the termination of the use.
- (C) The applicant has made good faith efforts to recoup the investment and to relocate the use to a location in conformance with this Chapter.

The Planning Director or his or her designee may require an applicant to provide additional written documentation from specified licensed professionals as necessary. Such information may include, but not be limited to the following: (1) a statement showing that the original value of the building or structure within which the Adult-Oriented Business is operated; (2) a statement showing that repair and maintenance costs on the building for a period of twenty four consecutive months prior to the termination date, does not exceed twenty-five (25%) of the current replacement cost of the nonconforming use; or (3) a statement showing the percentage of value of the building or structure attributable to the Adult-Oriented Business use occurring therein.

## **SECTION 5. ADULT-ORIENTED BUSINESS REGULATIONS .**

**The City Council hereby amends the Elk Grove Municipal Code by deleting Title 4, Chapter 6, sections 4.06.091 and 4.06.212; Title 4, Chapter 34, sections 4.34.010, 4.34.020 and 4.34.035; and Title 4, Chapter 54, Article 4, sections 4.54.150 to 4.54.185, inclusive, in their entirety; and by adding Title 4, Chapter 6, section 4.06.046, Title 4, Chapter 34, section 4.34.010 and Title 4, Chapter 61 as follows:**

### **Chapter 6 – General Business Licenses**

**Sec. 4.06.046 Same – Adult-Oriented Businesses.** Adult-Oriented Businesses are exempt, but shall be licensed pursuant to Title 4, Chapter 61, of this Code.

### **Chapter 34 – Adult-Related Establishments**

**Sec. 4.34.010 Same – Adult-Related Establishment.** “Adult-related establishment” means a bathhouse, escort bureau, introductory service, message establishment, out-call massage service, or modeling studio as defined by this Chapter. “Adult-related establishment” does not include an “Adult-Oriented Business” as defined in Title 4, Chapter 61 of this Code.

### **Chapter 61 – Adult-Oriented Businesses**

#### **Article 1 GENERAL PROVISIONS**

#### **Sec. 4.61.000 Purpose and Intents.**

It is the intent of this Chapter to regulate Adult-Oriented Businesses in order to promote the health, safety, and general welfare of the residents of the City. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials and paraphernalia protected by the First Amendment, or denying access by the distributors, exhibitors, and Performers of adult-oriented entertainment to their intended market. In addition, the provisions of this Chapter have neither the purpose nor effect of condoning or legitimizing the distribution of obscene material.

#### **Sec. 4.61.005 Licenses and Registration Required.**

(a) It is a violation of this Chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the City, the operation of an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business License issued by the Chief of Police pursuant to this Chapter.

(b) It is a violation of this Chapter for any person who operates an Adult-Oriented Business to employ or permit a person to work for or at the Adult-Oriented Business who does not possess a valid Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter.

(c) It is a violation of this Chapter for any person to obtain employment with or perform, work for or at an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter. These provisions shall not apply to persons exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance

services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not Nude, Semi-Nude, in a State of Nudity, or in a Semi-Nude Condition.

(d) It is a violation of this Chapter for any person to engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter.

#### **Sec. 4.61.010 Classification.**

Adult-Oriented Businesses are classified as follows:

- (a) Adult Arcades;
- (b) Adult Bookstores (including Adult Novelty Stores or Adult Video Stores);
- (c) Adult Cabarets;
- (d) Adult Motels (including Adult Hotels);
- (e) Adult Motion Picture Theaters;
- (f) Adult Theaters;
- (g) Nude Model Studios; and
- (h) Sexual Encounter Centers.

### **Article 2 DEFINITIONS**

#### **Sec. 4.61.100 Definitions.**

The definitions contained in this Section shall govern the construction of this Chapter.

(a) **Adult Arcade** means any commercial establishment to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, computer, or other image-producing devices are maintained to show images to four (4) or fewer persons per machine at any one time, and where, as a regular and substantial course of conduct, the images so displayed are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas. The phrase "regular and substantial



course of conduct” shall be construed with reference to all relevant factors, including but not limited to the following:

(i) The proportion of the business’ displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(ii) The proportion of the business’ revenue that is attributable to displays that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(b) **Adult Bookstore (including Adult Novelty Store or Adult Video Store)** means a commercial establishment which, as a regular and substantial course of conduct, offers for sale or rental for any form of consideration any one or more of the following:

(i) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; or,

(ii) Instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with Specified Sexual Activities.

(iii) The phrase “regular and substantial course of conduct” shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The business devotes more than twenty-five percent (25%) of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(B) The business devotes more than twenty-five percent (25%) of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(C) The retail value of merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas exceeds twenty-five (25%) of the total retail value of inventory offered in each of the following categories: (1) books, (2) magazines, (3) video tapes or any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), for sale or rental, (4) novelties and devices, and (5) on-premises viewing of images, films, and or videos.

(D) Gross revenue derived from merchandise in any category set forth in Paragraph C above exceeds (25%) of the total gross revenue for the category.

There is a rebuttable presumption that a business constitutes an adult bookstore, adult novelty store or adult video store where the business (1) offers or advertises merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas as set forth in Paragraph C above and (2) fails to make revenue and inventory related business records available to the City upon twenty-four (24) hours advance notice.

(c) **Adult Cabaret** means a nightclub, bar, restaurant, or similar commercial establishment which, as a regular and substantial course or conduct, features:

(i) Persons who appear in a State of Nudity or Semi-Nude Condition; or

(ii) Live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or

(iii) Films, motion pictures, video cassettes, any material in digital format (including, but not limited to, compact disc (CD) or digital video disc (DVD)), slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.

(iv) The phrase “regular and substantial course of conduct” shall be construed with reference to all relevant factors, including but not limited to the following:

(A) The proportion of the business’ performances or services that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(B) The proportion of the business’ revenue that is attributable to performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(d) **Adult Motels (including Adult Hotels)** means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or other photographic reproductions which, as a regular and substantial course of conduct, are distinguished or characterized by an emphasis upon the

depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas; and has any of the following characteristics:

- (i) a sign visible from the public right of way which advertises the availability of the above-described photographic reproductions; or
- (ii) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (iii) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

(e) **Adult Motion Picture Theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, any materials in digital format (including, but not limited to, compact disc (CD) or digital video disk (DVD)), slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, for observation by five (5) or more patrons at any one time.

The phrase “regularly shown” shall be construed with reference to all relevant factors, including but not limited to the following:

- (i) The proportion of the theater’s photographic reproductions that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.
- (ii) The number of photographic reproductions shown at the theater each month that are distinguished or characterized by an emphasis upon depiction, description, showing, or simulation of Specified Sexual Activities or Specified Anatomical Areas.
- (iii) The proportion of the business’ revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

(f) **Adult-Oriented Businesses** means any of the following commercial establishments where patrons are permitted or invited: an Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Nude Model Studio, or Sexual Encounter Center.

(g) **Adult Theater** means a theater, concert hall, auditorium, or similar commercial establishment which as a regular and substantial course of conduct features persons who appear in a State of Nudity or Semi-Nude Condition and/or features live performances which are

distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

The phrase “regular and substantial course of conduct” shall be construed with reference to all relevant factors, including but not limited to the following:

(i) The proportion of the business’ performances or services that are distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(ii) The proportion of the business’ revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the depiction, description, showing, or simulation Specified Sexual Activities or Specified Anatomical Areas.

(h) **Distinguished or Characterized by An Emphasis Upon** means the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films “which 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, description, showing, or simulation of the enumerated sexual activities or anatomical areas.

(i) **Employee** means a person who performs any service on the premises of an Adult-Oriented Business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not in a State of Nudity or in a Semi-Nude Condition.

(j) **Establishment of an Adult-Oriented Business** means and includes any of the following:

(i) The opening or commencement of any Adult-Oriented Business as a new business;

(ii) The conversion of an existing business, whether or not an Adult-Oriented Business, to any other Adult-Oriented Business;

(iii) The addition of any Adult-Oriented Business to any other existing Adult-Oriented Business; or

(iv) The relocation of any Adult-Oriented Business.

(k) **Fabric** means cloth made by weaving or knitting natural or synthetic fibers and filaments, and for the purposes of this definition, includes paper, metallic or plastic materials but excludes any material directly painted on a body.

(l) **Hotel** means a building or group of buildings containing guestrooms offering transient lodging accommodations to the general public and incidental services that are customarily provided by a hotel, for the convenience of hotel guests, such as food service, recreational facilities, retail services, and banquet, reception and meeting rooms.

(m) **Licensee** means: (i) a person in whose name a license to operate an Adult-Oriented Business has been issued, as well as the person listed as an applicant on the application for a license; and (ii) in the case of an employee, a person in whose name a license has been issued authorizing employment in an Adult-Oriented Business.

(n) **Motel** means an establishment otherwise defined as a hotel with at least twenty-five (25) percent of all rooms having direct access to the parking areas without the necessity of persons passing through a main lobby of the building.

(o) **Nude Model Studio** means any place where a person: (1) appears Semi-Nude, in a State of Nudity, or displays Specified Anatomical Areas; and (2) is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of California or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(i) That has no sign visible from the exterior of the structure and no other advertising that indicates a person is a State of Nudity or a Semi-Nude Condition is available for viewing;

(ii) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

(iii) Where no more than one (1) Nude or Semi-Nude model is on the premises at any one time.

(p) **Nudity or 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 fabric covering, the showing of the female breast with less than a fully opaque fabric covering of any part of the areola, or the showing of completely or opaquely covered (by Fabric) male genitals in a discernibly turgid state.

(q) **Person** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(r) **Police Chief or Chief of Police** means the Chief of Police of the City of Elk Grove or the authorized representatives thereof.

(s) **Semi-Nude or in a Semi-Nude Condition** means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks and areola of the female breast as well as portions of the body covered by supporting straps or devices.

(t) **Sexual Encounter Center** means a business or commercial enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, when one or more of the persons is in a State of Nudity or Semi-Nude Condition. The definition of sexual encounter center does not include an establishment where a medical practitioner, physiologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(u) **Specified Anatomical Areas** means and includes the following:

(i) Less than completely and opaquely covered by fabric: (A) human genitals or pubic region; (B) human buttocks; (C) human anus; or (D) the female breast below a point immediately above the top of the areola;

(ii) Human male genitals in a discernibly turgid state, even if completely or opaquely covered by Fabric; and

(iii) Any device, costume, or covering that simulates any of the body parts included in subdivisions (i) or (ii) above.

(v) **Specified Criminal Activity** means the following offenses within the State of California, or 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

(w) **Specified Sexual Activities** means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

(i) The fondling or other erotic touching of human genitals, pubic area, buttocks, anus, or female breast;

(ii) Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation, or sodomy;

(iii) Masturbation, actual or simulated;

(iv) Excretory functions as part of or in connection with any of the other activities described in subdivision (i) through (ii) above.

(x) **Transfer of Ownership or Control of Adult-Oriented Business** means and includes any of the following:

- (i) The sale, lease, or sublease of the Adult-Oriented Business;
- (ii) The transfer of securities which constitute a controlling interest in the Adult-Oriented Business, whether by sale, exchange, or similar means; or
- (iii) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the Adult-Oriented Business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### **Article 3 ADULT-ORIENTED BUSINESS LICENSES**

**Sec. 4.61.100 Adult-Oriented Business License Required.** Every person who proposes to maintain, operate, conduct, or establish an Adult-Oriented Business in the City shall file an application with the Chief of Police on a form provided by the City and shall pay a non-refundable application, investigation, and licensing fee set forth in the schedule of fees established from time to time by the City Council.

(a) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information including fingerprints as to enable the Chief of Police to determine whether the applicant meets the qualifications established in this Chapter .

(b) If a person who wishes to operate an Adult-Oriented Business is an individual, the person must sign the application. If a person who wishes to operate an Adult-Oriented Business is other than an individual, each individual who has a twenty percent (20%) or greater ownership interest in the Adult-Oriented Business must sign the application. Each applicant must be qualified under this Chapter and each applicant shall be considered a Licensee if a license is granted.

(c) The completed application for an Adult-Oriented Business License shall contain the following information and shall be accompanied by the following documents:

- (i). If the applicant is:
  - (A) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen (18) years of age;
  - (B) a partnership, the partnership shall state its complete name, address, and the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any;

(C) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service or process.

(ii) If the applicant intends to operate the Adult-Oriented Business under a name other than that of the applicant, the applicant shall register the fictitious name of the Adult-Oriented Business with the appropriate governmental entity and show written proof of registration of the fictitious name.

(iii) Whether the applicant has been convicted of a Specified Criminal Activity and, if so, the Specified Criminal Activity involved, the date, place, and jurisdiction of each.

(iv) Whether the applicant has ever had a license previously issued under this Chapter or its predecessor, or other similar Adult-Oriented Business ordinances from another city or county, denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or majority stockholder of a corporation that is licensed under this Chapter, or its predecessor, whose license has previously been denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(v) Whether the applicant holds any other licenses under this Chapter, or its predecessor, or other similar Adult-Oriented Business ordinance from another city or county, and, if so, the names and locations of such other licensed businesses.

(vi) The particular Adult-Oriented Business for which the applicant is applying. An applicant must apply separately for each Adult-Oriented Business to be operated, owned, managed, or controlled by the applicant.

(vii) The address to which notice of action on the application is to be mailed.

(viii) The location of the Adult-Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.

(ix) The applicant's mailing address and residential address.

(x) A recent photograph of the individual applicant.

(xi) The applicant's driver's license number, Social Security number, and the applicant's state or federally issued tax identification number to the extent the applicant has been issued these items.



(xii) The names of all Employees, independent contractors, and other persons who will work, be employed or perform at the Adult-Oriented Business, who are required by this Chapter to obtain an Adult-Oriented Business Employee License.

(xiii) A sketch or diagram showing interior configuration of the premises, including a statement of the total floor area occupied by the Adult-Oriented Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(xiv) A certificate and straight-line drawing, prepared within 30 days prior to application, depicting, without regard to intervening structures or objects, the distance from the closest exterior wall of the building or structure, in which the Adult-Oriented Business is located, to the boundary of the property on which is located a building, structure or use, or portion of the building, structure or use, described in, and within the distance specified in, section 325-52 of the City's Zoning Code.

(xv) A diagram of the off-street parking areas and premises entries of the Adult-Oriented Business and showing the location of the lighting system.

(d) Every application for a license under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

(e) The fact that an applicant possesses other types of state, county or City permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business License.

#### **Sec. 4.61.105 Investigation and Action on Application for Adult-Oriented Business License.**

(a) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within ten (10) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have thirty (30) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein.

(b) Within three (3) business days after the Chief of Police determines that the application is complete and the required non-refundable application fee has been submitted, the

Chief of Police shall issue a temporary license to the applicant, which shall be valid for the time period during which the license application is being processed, which time period shall not exceed thirty (30) business days from the date the application has been deemed complete. A temporary license issued pursuant to this subsection shall not grant any vested rights on the holder of the temporary license.

(c) Within five (5) business days after receipt of a completed application and the required filing fee, the Chief of Police shall transmit copies of the application and its attachments to appropriate City departments.

(d) Within thirty (30) business days after receipt of a completed application and the required filing fee, the Chief of Police shall complete the investigation, grant or deny the application in accordance with the provisions of this Chapter, and shall notify the applicant as follows:

(i) If the application is approved, the Chief of Police shall write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business License.

(ii) If the application is denied, the Chief of Police shall write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(iii) The documents specified in paragraphs (i) and (ii) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(e) The Chief of Police shall approve the issuance of a license to an applicant, unless it is determined by a preponderance of the evidence that any of the following findings is true:

(i) That the operation as proposed by the applicant, if permitted, will not comply with all applicable laws, including, but not limited to the locational requirement set forth in the City's Zoning Code, the provisions of Chapter 61 of this Code, and the building, health, housing and fire codes of the City.

(ii) That the applicant has been convicted of a Specified Criminal Activity 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:

- (1) Five years from date of the conviction; or
- (2) Five years from release from confinement; or
- (3) Five years from formal release from probation period; or

(4) Five years from formal release from parole.

(iii) That the applicant has knowingly made a material misrepresentation in the application;

(iv) That the applicant or any operator has had a license for an Adult-Oriented Business revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter;

(v) That the applicant is not at least eighteen (18) years of age;

(vi) That the applicant has not paid the required fee.

(e) The license, if granted, shall expire one (1) year from the date of issuance and may only be renewed by the Licensee filing with the Chief of Police: (i) a written request for renewal on a form provided by the City; (ii) a non-refundable application, investigation, and licensing fee set forth in the schedule of fees established from time to time by the City Council; and (iii) a copy of the license to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the license. When a renewal request is made less than thirty (30) days before the expiration date, the expiration shall not be stayed. The Chief of Police shall act upon applications for license renewal as provided herein for applications for licenses.

(f) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the Adult-Oriented Business and the single classification of Adult-Oriented Business as set forth herein, for which the license is issued.

(g) All licenses shall be posted in a conspicuous place at or near the entrance to the Adult-Oriented Business so that they may be easily read at any time by all persons entering the Adult-Oriented Business.

(h) Within thirty (30) calendar days of any change in the information originally submitted with the license application, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(i) Within thirty (30) calendar days of any change in Employee hiring or status, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Chapter. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(j) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within thirty (30) business days after its receipt, the applicant may begin operating the Adult-Oriented Business for the single classification of Adult-Oriented Business as set forth herein, for which the license was sought, subject to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police

from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

**Sec. 4.61.110 Transfer of Adult-Oriented Business Licenses.**

(a) It is a violation of this Chapter for a Licensee to operate an Adult-Oriented Business under the authority of an Adult-Oriented Business License at any place other than the address of the Adult-Oriented Business stated in the application upon which the license was issued.

(b) It is a violation of this Chapter for a Licensee to Transfer Ownership or Control of an Adult-Oriented Business License to another person unless and until the transferee first obtains a written amendment to the license from the Chief of Police in accordance with and subject to the application and fee requirements set forth in this Chapter.

(c) It is a violation of this Chapter for a Licensee to transfer an Adult-Oriented Business License when the Chief of Police has notified the Licensee that the license has been suspended or revoked or that such action is pending.

(d) Any attempt to transfer a license either directly or indirectly in violation of this Chapter is void, and the license shall be deemed revoked.

**Article 4**  
**ADULT-ORIENTED BUSINESS**  
**EMPLOYEE LICENSE**

**Sec. 4.61.200 Adult-Oriented Business Employee License Required.**

(a) No person shall engage in or participate in any live performance distinguished or characterized by the performance, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business, without a valid Adult-Oriented Business Employee License issued by the Chief of Police.

(b) All Employees of an Adult-Oriented Business shall have a valid Adult-Oriented Business Employee License issued by the Chief of Police.

(c) Before any applicant may be issued an Adult-Oriented Business Employee License, the applicant shall submit to the Chief of Police on a form to be provided by the City the following information:

- (i) The applicant's legal name and any other name including "stage" names or aliases used by the applicant;
- (ii) Age, date, and place of birth;
- (iii) Height, weight, hair and eye color;
- (iv) Present residence address and telephone number;

- (v) Present business address and telephone number;
  - (vi) Date, issuing state and number of driver's license or other identification card information if applicable;
  - (vii) Social Security number; and,
  - (viii) Satisfactory written proof that the individual is at least eighteen (18) years of age.
- (d) Attached to the application form shall be the following:
- (i) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
  - (ii) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously obtained or is seeking to obtain an Adult-Oriented Business Employee License in this City or any other county, city, state, or country, and whether such applicant has ever had a license, permit, or authorization to do business in an Adult-Oriented Business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
  - (iii) A statement whether the applicant has been convicted within the past five (5) years, as of the date of submitting the application, of a Specified Criminal Activity as defined in this Chapter and, if so, the Specified Criminal Activity involved, the date, place and jurisdiction of each conviction.
- (e) Every application for a license under this Chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.
- (f) Every application for an Adult-Oriented Business Employee License, whether for a new license or for a renewal of an existing license, shall be accompanied by a non-refundable application, investigation and license fee as set forth in the schedule of fees established from time to time by the City Council.
- (g) The fact that an applicant possesses other types of state, county or City permits or licenses does not exempt the applicant for the requirement of obtaining an Adult-Oriented Business License.

**Sec. 4.61.205 Investigation and Action on Application for Adult-Oriented Business Employee License.**

(a) Upon receipt of an application for an Adult-Oriented Business Employee License and the required non-refundable application, investigation, and licensing fee, the Chief of Police shall issue a temporary license to the applicant.

(b) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified in writing within five (5) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have ten (10) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein

(c) Within fifteen (15) business days after the issuance of the temporary license, the Chief of Police shall grant or deny the application and so notify the applicant as follows:

(i) If the application is approved, the Chief of Police shall write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business Employee License.

(ii) If the application is denied, the Chief of Police shall write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(iii) The documents specified in (i) and (ii) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(d) The Chief of Police shall grant the application unless it is determined by a preponderance of the evidence that any of the following findings is true:

(i) That the applicant has been convicted of a Specific Criminal Activity; 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:

- (1) Five years from date of the conviction; or
- (2) Five years from release from confinement; or
- (3) Five years from formal release from probation period; or
- (4) Five years from formal release from parole.

(ii) That the applicant has knowingly made a material misrepresentation in the application.

(iii) That the applicant has had an Adult-Oriented Business Employee License revoked for cause by this City or any other city or county within the last five years except as provided in this Chapter.

(iv) That the applicant is not at least eighteen (18) years of age.

(v) That the applicant has not paid the required fee

(e) The license, if granted shall expire one (1) year from the date of issuance and may be renewed only by the Licensee filing with the Chief of Police: (i) a written request for renewal on a form provided by the City; (ii) the required fee; and (iii) a copy of the license to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the license. When a renewal request is made less than thirty (30) days before the expiration date, the expiration shall not be stayed. The Chief of Police shall act upon applications for license renewal as provided herein for applications for initial licenses.

(f) The license, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Chief of Police shall provide each person issued an Adult-Oriented Business Employee License with an identification card containing the name, address, photograph, and license number of the Licensee.

(g) Both the license and identification card shall be available for inspection at all times during which the Licensee is on the premises of an Adult-Oriented Business.

(h) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin employment at an Adult-Oriented Business, subject to strict compliance with the provisions of this Chapter for a period of 12 months subject to the renewal provisions as set forth in this Chapter. Notwithstanding the foregoing, nothing shall prevent the Chief of Police from either granting or denying a completed application pursuant the terms of this Chapter even if more than thirty days has elapsed since the receipt of a completed application.

**Sec. 4.61.210 Transfer of Adult-Oriented Business Employee License.** A Licensee shall not transfer ownership or control of an Adult-Oriented Business Employee License.

**Article 5**  
**DENIAL, SUSPENSION, AND REVOCATION OF LICENSE**

**Sec. 4.61.300 Denial of License.** When the Chief of Police denies application for a license or the application for a renewal of a license, other than due to the failure to pay the required fees, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the Chief of Police finds that the basis for denial has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date denial became final and the applicant is otherwise qualified to obtain a license.

**Sec. 4.61.305 Suspension or Revocation of License.**

(a) A Licensee may be subject to suspension or revocation of his or her License, or be subject to other appropriate remedial action, including the imposition of additional conditions, for any of the following causes arising from the acts or omissions of the Licensee, or an employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business:

(i) The Licensee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a License, or in any report or record required to be filed with the City.

(ii) The Licensee, employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business has engaged in or 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-Oriented 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 openly occur.

(C) Any conduct constituting a criminal offense which 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.

(F) Any conduct prohibited by this Chapter.

(iii) The Licensee failed to abide by any lawful condition previously imposed by an authorized City official.



(iv) The Licensee failed to abide by any applicable provision of this Chapter.

(b) After holding a hearing in accordance with the provisions of this Chapter, if the Chief of Police finds and determines that there are grounds for action, the Chief of Police shall impose one of the following:

(i) A warning;

(ii) Suspension of the License for a specified period not to exceed six months;

(iii) Revocation of the License.

(iv) The Chief of Police shall revoke a License if the License has been suspended within the proceeding twelve (12) months.

(d) When the Chief of Police revokes a License, the revocation shall continue for one (1) year, and the Licensee shall not be issued an Adult-Oriented Business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may apply for and be granted a new license if at least ninety (90) days have elapsed since the date the revocation became effective and the applicant is otherwise qualified for a license.

**Sec. 4.61.305 Suspension or Revocation Hearing.** On determining that grounds for license revocation or suspension exist, the Chief of Police shall furnish written notice of the proposed suspension or revocation to the Licensee. Such notice shall set forth the time and place of a hearing to be conducted by a hearing officer appointed by the City Manager, and the grounds upon which the hearing is based, the pertinent Code sections at issue, and a brief summary of the facts in support of the suspension or revocation. The notice shall be mailed, postage prepaid, to the last know address of the Licensee, or shall be delivered to the Licensee personally, at least ten (10) working days prior to the hearing date. At the hearing, all parties shall have a right to offer testimonial, documentary, and tangible evidence on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence upon which reasonable persons are accustomed to rely in the conduct of serious matters may be admitted. Any hearing under this Chapter may be continued for a reasonable time for the convenience of a party or witness. Notice of the hearing officer's decision shall be mailed to the applicant or Licensee no later than seven (7) days after the hearing. If the hearing officer determines that grounds for revocation or suspension exist, the Chief of Police shall take action as listed in section 4.61.305(b) within fourteen (14) days of the hearing.

**Sec. 4.61.310 Appeal.**

(a) All decisions of the Chief of Police to issue, renew, deny, suspend or revoke a license are final within thirty (30) calendar days. After denial of an application, or a suspension or revocation, the applicant or licensee may seek prompt judicial review of such decision in any court of competent jurisdiction as provided by law, including judicial review pursuant to Section 1094.8 of the California Code of Civil Procedure. Notwithstanding the applicant's or licensee's right to initiate judicial review, the City shall, upon the written request of an aggrieved applicant

or licensee, within three (3) business days of its receipt of the request, file an action with a court of competent jurisdiction seeking declaratory and injunctive relief, including temporary and preliminary relief, as to the propriety of the denial, revocation, or suspension.

(b) If, upon request, the City files such action seeking judicial review or the aggrieved applicant or licensee files the action, the City's revocation or suspension will be stayed pending a judicial decision on the merits by a court of competent jurisdiction.

(c) If the City denies an initial or renewal application and the aggrieved applicant commences a legal action to determine the validity of the denial or makes a written request in the manner set forth herein that the City commence such action, the City shall issue a temporary license if the court has not rendered a decision on the merits within the earlier of twenty (20) calendar days after the matter is submitted to the court or fifty (50) calendar days of the filing of the action. This temporary license shall remain in effect only until the court in which the action is pending renders its decision on the merits as to the propriety of the denial.

**Sec. 4.61.315 Confidentiality.** The City deems confidential license applications required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the applications or the information contained therein.

## **Article 6**

### **DEVELOPMENT AND PERFORMANCE STANDARDS AND REGULATIONS**

**Sec. 4.61.400 Prohibition Against Minors in an Adult-Oriented Business.** It shall be unlawful for any Licensee, operator, or other person in charge of any Adult-Oriented Business to permit to enter, or remain within the Adult-Oriented Business, any person who is not at least eighteen (18) years of age or to provide any service for which this Chapter requires a license, to any person who is not at least eighteen (18) years of age.

**Sec. 4.61.405 Concealing Specified Sexual Activities and Specified Anatomical Areas from Public View.** No Adult-Oriented Business shall be operated in any manner that permits the observation of any material or activities depicting or describing 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.

**Sec. 4.61.410 Posting Notices Relating to Minors.** The building entrance to an Adult-Oriented 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 Planning Director or his or her designee.

**Sec. 4.61.415 Indoor Areas Open to View by Management.** All indoor areas of the Adult-Oriented Business where patrons or members of the public are permitted, excluding rest rooms and non-public areas of Adult Motels, shall be open to view by management at all times.

**Sec. 4.61.420 Building Requirements.** The premises and grounds of all Adult-Oriented Businesses shall comply with the following;

(a) Maximum occupancy load, fire exits, aisles, parking and fire equipment shall be regulated, designed and provided in accordance with the fire department and building regulations and standards adopted by the City.

(b) The premises within which the Adult-Oriented 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.

(c) All interior areas of the Adult-Oriented Business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

(i) Adult Bookstores – 20 foot-candles;

(ii) Adult Theaters, Adult Motion Picture Theaters and Adult Cabarets – 5 foot-candles (except during performances, at which times lighting shall be at least 1.25 foot-candles);

(iii) Adult Arcades - 10 foot-candles;

(iv) Adult Motels – 20 foot-candles (in public areas)

(v) Nude Model Studios - 20 foot-candles.

(d) All off-street parking areas and premise entries of the Adult-Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of at least 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 Adult-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.

(e) The exterior of the Adult-Oriented Business shall be equipped with a security system that visually records and monitors all off-street parking areas provided for the Adult-Oriented Business during all times that the business is open or occupied for business.

(i) The surveillance equipment utilized shall provide continuous recording for at least a 24-hour period, with all recording maintained for a minimum of 72 hours.

(ii) Immediately upon request, the surveillance recording for all or any portion of the previous 72-hour period shall be made available to the Chief of Police, or his or her designated representative. Such recordings shall be utilized only for purposes of investigation of

an alleged violation of a local, state or federal law, or the enforcement thereof. Except as necessary to enforce a local, state or federal law, the City deems confidential the surveillance recordings required by this Chapter and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public review the surveillance recordings or the information contained therein.

(iii) Signs shall be posted in the parking area, near the entrances to the premises, and at a conspicuous location inside the premises in such a manner as to notify the public that the exterior of the premises is subject to recorded surveillance.

(f) The exterior portions of the building shall be painted in a single achromatic color unless the Adult-Oriented Business is a part of a commercial multi-unit center and the exterior portions of each individual unit in the commercial center, including the exterior portion of the business, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center. Nothing in this provision shall be construed to require the painting of an otherwise unpainted exterior portion of an Adult-Oriented Business.

(g) No exterior signage shall contain photographs, silhouettes, drawings, images or pictorial representations in any manner, depicting or making linguistic reference to nudity, specified anatomical areas, specified sexual activity, or any device or paraphernalia designed for use in connection with specified sexual activity.

**Sec. 4.61.425 Hours of Operations.** An Adult-Oriented Business shall be open for business only between the hours of 10 a.m. and 12 a.m./midnight on any particular day.

**Sec. 4.61.430 Security Guards.** Adult-Oriented Business shall employ security guards in order to maintain the public peace and safety, based upon the following standards:

(a) Adult-Oriented Businesses shall provide at least one (1) security guard at all times while the business is open. If the occupancy limit of the Adult-Oriented Business is greater than thirty-five (35) persons, an additional security guard shall be on duty.

(b) Security guards shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. 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 Chapter shall act as a door person, ticket seller, ticket taker, admittance person, entertainer or performer, or sole occupant of the manager's station while acting as a security guard.

(c) 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 Chapter shall be maintained on the premises and shall be available for inspection by law enforcement personnel at all times during regular business hours.

**Sec. 4.61.435 Register and License Number of Employees.** Every Licensee of an Adult-Oriented Business that provides live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities must maintain a register of all past and current persons so performing at the Adult-Oriented Business and their license numbers. Such register shall be available for inspection during regular business hours by any police officer of the City.

**Sec. 4.61.440 Inspection.**

(a) When the Chief of Police, the Planning Director, and/or Code Enforcement Officers have reasonable cause to believe that violations of this Title and/or other provisions of the Zoning Code are occurring on the premises where an Adult-Oriented Business is operating, they, and/or their authorized representatives, may conduct a reasonable inspection of the public areas of and areas otherwise open to plain view on or within, the premises or the Adult-Oriented Business to the extent allowed by law and during the business hours of the Adult-Oriented Business

(b) It is a violation of this Chapter for a person who operates an Adult-Oriented Business or that person's agent or Employee to refuse to permit such lawful inspection of the Adult-Oriented Business at any time it is open for business.

**Sec. 4.61.445 Restroom Facilities.** The Adult-Oriented Business shall provide and maintain separate restroom facilities for male patrons and Employees, and female patrons and Employees. Male patrons and Employees shall be prohibited from using the restroom(s) for females, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. Female patrons and Employees 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 material. Restrooms shall not contain television monitors or others motion picture or video projection, recording, or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an Adult-Oriented Business which deals exclusively with the sale or rental of Adult Material which is not used or consumed on the premises, such as an Adult Bookstore or Adult Video Store, and which does not provide restroom facilities to its patrons or the general public.

**Sec. 4.61.450 Additional Regulations Relating to Live Entertainment.** The following additional requirements shall pertain to Adult-Oriented Businesses providing live entertainment distinguished or characterized by the depiction, description, showing or simulation of Specified Anatomical Areas or involving Specified Sexual Activities, except for businesses regulated by the California Department of Alcoholic Beverage Control.

(a) No person shall perform live entertainment for patrons of an Adult-Oriented Business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least six (6) feet from the nearest area occupied by patrons. Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this Chapter. Performer shall mean any person who is an Employee or independent contractor of the Adult-Oriented Business, or any person who, with or without compensation or other form of consideration, performs live entertainment for patrons of an Adult-Oriented Business.

(b) The Adult-Oriented Business shall provide separate dressing room facilities for performers which are exclusively dedicated to the performers' use.

(c) The Adult-Oriented Business shall provide an entrance/exit for performers which is separate from the entrance/exit used by patrons.

(d) The Adult-Oriented Business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the Adult-Oriented Business shall provide a minimum three (3) foot wide aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers.

(e) No performers, either before, during, or after performances, shall have physical contact with any patron and no patron shall have physical contact with any performer either before, during or after performances by such performer. This paragraph shall only apply to physical contact anywhere on or within the premises of the Adult-Oriented Business, including off-street parking areas.

(f) No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or accept gratuity from any patron.

(g) No owner or other person with managerial control over an Adult-Oriented Business shall permit any person on the premises of the Adult-Oriented Business to engage in a live showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This paragraph may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

#### **Sec. 4.61.455 Additional Regulations for Adult Motels.**

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an Adult Motel.

(b) It is a violation of this Chapter for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an Adult-Oriented Business License to rent or sub-rent the same sleeping room to another person more the two (2) times in a period of time that is less than ten (10) hours.

(c) For purposes of paragraphs (a) and (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

**Sec. 4.61.460 Additional Regulations Relating to the Exhibition of Sexually Explicit Films, Videos or Live Entertainment in Viewing Rooms.**

A person who operates or causes to be operated an Adult-Oriented Business, including an Adult Arcade and other than an Adult Motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

(a) Upon application for an Adult-Oriented Business License, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of premises to an accuracy of plus or minus six (6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.

(b) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the Chief of Police.

(c) It is the duty of the Licensee of the Adult-Oriented Business to ensure that at least one licensed Employee is on duty and situated in each manager's station at all times that any patron is present inside the Adult-Oriented Business.

(d) The interior of the Adult-Oriented Business shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the Adult-Oriented Business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment. If the Adult-Oriented Business has two (2) or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the Adult-Oriented Business to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required by this Section must be by direct line of sight from the manager's station.

(e) It shall be the duty of the Licensee to ensure that the view area specified in this Section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

(f) It shall be the duty of the Licensee to ensure that no patron is permitted access to any area of the Adult-Oriented Business which has been designated as an area in which patrons will not be permitted pursuant to paragraph (a) of this section.

- (g) No viewing room may be occupied by more than one (1) person at any time.
- (h) No viewing room shall have any door, curtain, shutter, or any other device blocking or capable of blocking, wholly or partially, the entrance to the viewing booth.
- (i) The Adult-Oriented Business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level.
- (j) It shall be the duty of the Licensee to ensure that the illumination required by this Section is maintained at all times that any patron is present in the premises.
- (k) No openings of any kind shall exist between viewing rooms or booths.
- (l) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (m) The Licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (n) The Licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (o) The Licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
- (p) The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, or saliva in any such booths shall be evidence of improper maintenance and inadequate sanitary controls.
- (q) Customers, patrons, or visitors shall not be allowed to loiter in the vicinity of any such video booths, or remain in the common area of such Adult-Oriented Business, other than the restrooms, unless actively engaged in shopping for or reviewing the products available or on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.
- (r) It is a violation of this Chapter for a person having a duty under this Section to knowingly fail to fulfill that duty.

**Sec. 4.61.465 Additional Regulations for Nude Model Studios.**

- (a) A Nude Model Studio shall not employ any person under the age of eighteen (18) years.



(b) It is a violation of this Chapter for a person under the age of eighteen (18) years to appear Semi-Nude or in a State of Nudity in or on the premises of a Nude Model Studio. It is a defense to prosecution under this Section if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(c) A Nude Model Studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**Sec. 4.61.470 Additional Regulations Concerning Public Nudity.**

(a) It is a violation of this Chapter for a person knowingly and intentionally, in an Adult-Oriented Business, to appear in a State of Nudity or to engage in, perform or simulate Specified Sexual Activities.

(b) It is a violation of this Chapter for a person knowingly or intentionally, in a public area of an Adult-Oriented Business, to appear in a Semi-Nude condition unless the person is an Employee or performer who, while Semi-Nude, is upon a stage at least eighteen (18) above the level of the floor which is separated by a distance of at least six (6) feet from the nearest areas occupied by patrons.

(c) It is a violation of this Chapter for an Employee or performer while Semi-Nude in an Adult-Oriented Business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any Employee.

(d) It is a violation of this Chapter for an Employee or performer in an Adult-Oriented Business, while Semi-Nude, to knowingly and intentionally, touch a patron or the clothing of a patron.

**Sec. 4.61.475 Prohibition of Sexual Encounter Centers.** A sexual encounter center is not a permitted use.

**Article 7  
ENFORCEMENT**

**Sec. 4.61.500 Separate Offense for Each Day.** Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

**Sec. 4.61.505 Public Nuisance.** Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the Municipal Code of the City of Elk Grove.

**Sec. 4.61.510 Infractions.** Any person who violates, causes, or permits another person to violate any provision of this Chapter commits an infraction. Any person convicted of an infraction shall be subject to a fine to the maximum amount permitted by state law. Any person twice convicted of an infraction for repeat violations of the same provision within a one (1) year

period, may be charged with a misdemeanor upon being issued a citation for the repeated violation of the same provision since, rather than simply a violation of a provisions of this Chapter, such repeat violations evidence a disregard of municipal authority. Any person convicted of a misdemeanor shall be subject to punishment by fine or imprisonment to the maximum permitted by state law.

Pursuant to Government Code section 36900(a), the City Attorney may prosecute these violations in the name of the People of the State of California.

**Sec. 4.61.515 Civil Injunction.** The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause for injunctive relief.

**Sec. 4.61.520 Administrative Remedies.** In addition to the remedies set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies, as set forth in the Municipal Code of the City of Elk Grove.

**Sec. 4.61.525 Revocation of License.** In addition to the remedies set forth above, violation of the provisions of this Chapter constitutes grounds for the revocation of an Adult-Oriented Business License and/or Adult-Oriented Business Employee License.

#### **SECTION 6. Regulations Nonexclusive.**

The provisions of this Ordinance regulating Adult-Oriented Businesses are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to the operation of businesses as adopted by the Elk Grove City Council.

#### **SECTION 7. Severability.**

If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective. In the event a court of competent jurisdiction renders a decision invalidating the license issuance process contained Title 4, Chapter 61, of the City Code, any Adult-Oriented Businesses that operate in the City shall be deemed to be operating under *de facto* licenses subject to the locational and operational requirements of the City Zoning Code and the Title 4, Chapter 61, of the City Code. The *de facto* license shall be subject to the remaining provisions of the Ordinance that have not been invalidated.

#### **SECTION 8. No Mandatory Duty of Care.**

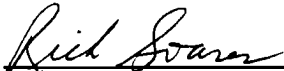
This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards

persons and property within or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

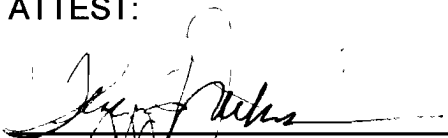
**SECTION 9. Effective Date.**

This Ordinance is enacted as an urgency measure pursuant to Government Code section 36937(b) and shall take effect immediately upon the date of adoption.

The foregoing Urgency Ordinance was approved and enacted at a duly held special meeting of the City Council held on this 16<sup>th</sup> day of October.

  
\_\_\_\_\_  
RICK SOARES, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
PEGGY JACKSON,  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**AYES:** Soares, Briggs, Scherman,  
Leary, Cooper  
**NOES:** None  
**ABSTAIN:** None  
**ABSENT:** None

**EFFECTIVE DATE: OCTOBER 16, 2002**