

ORDINANCE NO. 3241

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
THE CHULA VISTA MUNICIPAL CODE BY AMENDING
CHAPTER 9.13 REGULATING THE LICENSING AND
OPERATIONAL STANDARDS FOR SEXUALLY ORIENTED
BUSINESSES AND REPEALING CHAPTER 9.22

WHEREAS, the City of Chula Vista has certain permitting provisions found in Chapter 9.13 for sexually oriented businesses that are in need of updating and refinement. The City Council takes legislative notice of the full complement of supporting evidence as to the secondary effects of sexually oriented businesses. Accordingly, the City makes the following findings and enactments.

NOW THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

SECTION 1. FINDINGS.

A. The City Council finds that it is necessary and appropriate to amend Chapter 9.13 to add, refine and update the provisions providing licensing and operational standards for adult businesses operating with the City of Chula Vista (“the City”). The public health, safety and welfare of the City and its residents require the enactment of this Ordinance and such operating standards for sexually oriented businesses in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of sexually oriented businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City’s retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of sexually oriented businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize sexually oriented businesses.

B. The City Council finds that the revisions to the City’s Municipal Code implemented by this Ordinance are necessary in order to respond to recent developments within the regulation of adult uses and case law and in order to preserve the City from the potential adverse secondary effects of sexually oriented businesses, including crime, the protection of the City’s retail trade, maintenance of property values, protecting and preserving the quality of the City’s neighborhoods and the City’s commercial districts, the protection of the City’s quality of life, and the increased threat of the spread of sexually transmitted diseases and the protection of the peace, welfare and privacy of persons who patronize adult businesses based on the referenced studies and the findings set forth in Paragraphs A-AA. Specifically, the revisions and amendments to Municipal Code Chapter 9.13 included in this Ordinance are essential and necessary to ensure the orderly implementation of adult use regulations within the City by amending and refining various permitting and operating provisions in the Municipal Code to improve the City’s regulation of sexually oriented businesses, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Chula Vista.

C. On November 1, 2012, the City Council held a public meeting during which it considered the adoption of this Ordinance pursuant to California Government Code § 36937 and the Chula Vista Charter § 311.

D. The City Council, in adopting this ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of Sexually-Oriented Businesses in other cities: Austin, Texas (1986); Indianapolis, Indiana (1984); Garden Grove, California (1991); Seattle, Washington (1989); Houston, Texas (1997); Phoenix, Arizona (1979); Tucson, Arizona (1990); Chattanooga, Tennessee (2003); Los Angeles, California (1977); Whittier, California (1978); Spokane, Washington (2001); St. Cloud, Minnesota (1994); Littleton, Colorado (2004); Oklahoma City, Oklahoma (1986); Dallas, Texas (1997 and 2007); Ft. Worth, Texas (2004); Kennedale, Texas (2005); Greensboro, North Carolina (2003); Amarillo, Texas (1977); Cleveland, Ohio (1977); Newport News, Virginia (1996); Jackson County, Missouri (2008); Louisville, Kentucky (2004); New York, New York Times Square (1994); Beaumont Texas (1982); the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); Dallas, Texas (2007); "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Sexually Oriented Businesses: An Insider's View – Testimony of David Sherman before the Michigan House Committee on Ethics and Constitutional Law (2000); Closin' Time: Effective Regulation of Adult Businesses' Hours of Operation, by Scott Bergthold (2000); Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, by Louis Comus III (2001); Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California, by Daniel Linz *et al.* (2006); and Do Peep-shows "Cause" Crime? A response to Linz, Paul, and Yao, by Richard McCleary *et al.* (2006), the City Council finds that these studies are relevant to the problems addressed by the City in enacting this ordinance to regulate the adverse secondary side effects of sexually oriented businesses, and more specifically finds that these studies provide convincing evidence that:

1. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, traffic, noise, and sexual assault and exploitation.

2. The studies from other cities establish by convincing evidence that sexually oriented businesses that are not regulated with operating standards often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values. Regulations for sexually oriented businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.

E. In developing this ordinance, the City Council is mindful of legal principles relating to regulation of sexually oriented businesses, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment 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 sexually oriented businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of sexually oriented businesses including, but not limited to: *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

1. The City Council has also considered and takes legislative notice of decisions of the Ninth Circuit Court of Appeals cases addressing sexually oriented businesses including but not limited to:

Alameda Books, Inc. v. City of Los Angeles, 631 F.3d 1031 (9th Cir. 2011); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Tollis, Inc. v. County of San Diego*, 505 F.3d 935 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 274; *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004); *Talk of the Town v. Department of Finance and Business Services*, 343 F.3d 1063 (9th Cir. 2003); *Center For Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way*, 46 Fed.Appx. 409 (9th Cir. 2002); *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Isbell v. City of San Diego*, 450 F.Supp.2d 1143 (S.D. Cal. 2006); *Baby Tam & Co., Inc. v. City of Las Vegas*, 154 F.3d 1097 (9th Cir. 1998) (*Baby Tam I*); *Baby Tam & Co. v. Las Vegas*, 199 F.3d 1111 (9th Cir. 2000) (*Baby Tam II*); *Baby Tam & Co. v. Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) (*Baby Tam III*); *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000), *cert. denied* 531 U.S. 1072 (2001); *L.J. Concepts, Inc. v. City of Phoenix*, 215 F.3d 1333 (9th Cir. 2000); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000), *cert. denied* 121 S.Ct. 1189 (2001); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000), *cert. denied* 531 U.S. 1104 (2001); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000); *North v. City of Gilroy*, 78 F.3d 594 (9th Cir. 1996); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993), *cert. denied* 511 U.S. 1030 (1994); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); and *Lydo Ent. v. Las Vegas*, 745 F.2d 1211 (9th Cir. 1984).

2. The City Council has also considered and takes legislative notice of decisions from other Circuit Court of Appeals addressing sexually oriented businesses including the following:

Imaginary Images, Inc. v. Evans, 612 F.3d 736 (4th Cir. 2010); *Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150 (10th Cir. 2006); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 455 Fed.Appx. 541 (6th Cir. Sept. 7, 2011); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Tee & Bee v. City of West Allis*, 936 F.Supp. 1479 (E.D. Wis. 1996); *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *TK's Video, Inc. v. Denton County, Tex.*, 24 F.3d 705 (5th Cir. Tex. 1994); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jacksonville*, 973 F.2d 1255 (5th Cir. 1992), *cert. denied* 507 U.S. 1030 (1993); *International Eateries v. Broward County*, 941 F.2d 1157 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); *N.W. Enterprises, Inc. v. City of Houston*, 372 F.3d 333 (5th Cir. 2004); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); and *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003).

3. The City Council has also considered and takes legislative notice of decisions of State of California courts addressing sexually oriented businesses including:

Madain v. City of Stanton, 185 Cal.App.4th 1277 (2010); *Krontz v. City of San Diego*, 136 Cal.App.4th 1126 (2006); *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal.App.4th 526 (2004); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board and Renee Vicary, Real Party in Interest*, 99 Cal.App.4th 880 (2002); *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *Sundance Saloon, Inc. v. City of San Diego*, 213 Cal.App.3d 807 (1989); *7978 Corporation v. Pitchess*, 41 Cal.App.3d 42 (1974); *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *E.W.A.P., Inc. v. City of Los Angeles*, 56 Cal.App.4th 310 (1997); *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986); *City of National City v. Wiener*, 3 Cal.4th 832 (1992), *cert. denied* 510 U.S. 824; and *People v. Superior Court (Lucero)*, 49 Cal.3d 14 (1989).

F. Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this Chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Chapter are reasonably believed to be relevant to said secondary effects.

G. The City Council also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of Chula Vista, and thus certain requirements with respect to the ownership, operation and licensing of sexually oriented businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council takes legislative notice of the following: (1) the facts recited in the case of *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems, and (2) the facts and holding of the case of *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374, wherein the Ninth Circuit recognized that off stage performances by performers who also perform nude and/or semi-nude at an sexually oriented establishment can cause the same secondary effects as other activities documented in studies and case law regarding sexually oriented establishments, even if the performer is clothed and the establishment does not serve alcohol.

H. Relying on the following, the City finds that sexually oriented businesses in its community may lead to detrimental secondary effects including prostitution and engagement in unlawful sexual activity. The City bases this conclusion on the experiences of Chula Vista, as well as that of other California communities, such as La Habra and Arcadia, which the City has a reasonable basis to believe reflect the experiences of its own community, including numerous police reports and affidavits from those communities, and judicial decisions in the public record:

1. Evidence indicates that some dancers, models, entertainers, performers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in sexually oriented businesses (collectively referred to as “performers”) have been found to engage in sexual activities with patrons of sexually oriented businesses on the site of the sexually oriented business.

2. Evidence has demonstrated that performers employed by sexually 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 sex shows.

3. Evidence indicates that performers at sexually oriented businesses have been found to engage in acts of prostitution with patrons of the establishment.

4. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as locations for engaging in unlawful sexual activity.

5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the City has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at sexually oriented businesses in order to protect the health, safety, and well-being of its citizens. The City finds this is relevant to Chula Vista and the need to regulate the secondary effects of sexually oriented businesses within the community.

6. The public health, safety, welfare, and morals of all persons in the City must be protected by the establishment of standards to diminish the possibility of infection of contagious diseases.

I. The City Council is cognizant of the specific danger from the sexually transmitted disease AIDS, which is currently irreversible and fatal. The City Council takes legislative notice of the HIV/AIDS Epidemiology Report 2010 ("HIV/AIDS Epidemiology Report") prepared by the Public Health Services division of the County of San Diego Health and Human Services Agency. According to the HIV/AIDS Epidemiology Report, 14,228 AIDS cases were reported throughout San Diego County since 1981 through December 2009, 328 of which were reported in 2009. The HIV/AIDS Epidemiology Report also indicates that San Diego County has the third highest number of AIDS cases in the state of California. The City also takes legislative notice of the County of Orange Communicable Disease Summary 2000, County of Orange Health Care Agency, issued July 2002 ("Communicable Disease Summary") and the HIV/AIDS Surveillance Statistics, 2003 also issued by the County of Orange Health Care Agency in October 2004 ("HIV/AIDS Surveillance Study"). The HIV/AIDS Surveillance Study reports that 6,429 cases of AIDS were reported in Orange County between 1981 and 2003. Of those, 237 were reported in 2003 and 162 were also diagnosed in 2003. The HIV/AIDS Surveillance Study further indicates that according to the latest available data (as of December 2001), Orange County has reported more AIDS cases than 25 U.S. states and ranks 28th in number of AIDS cases reported among the 101 metropolitan areas recognized by the Centers for Disease Control and Prevention with 500,000 or more population.

J. The City is also concerned with preventing the spread of other sexually transmitted diseases such as syphilis, gonorrhea and chlamydia and hepatitis B. The Communicable Disease Summary further indicates that between 1996 and 2000, 1,053 cases of syphilis were reported, 345 cases of acute hepatitis B were reported, and 18,948 cases of chlamydia were reported in Orange County. The City also takes legislative notice of the STD Fact Sheet of sexually transmitted diseases reported in San Diego County between 1994 and 2008, prepared by the County of San Diego Health and Human Services Agency ("STD Fact Sheet"). According to the STD Fact Sheet, 1,710 cases of syphilis were reported throughout the San Diego County between 1994 and 2008, 334 of which were reported in 2008. With respect to gonorrhea, 31,223 cases of gonorrhea were reported between 1994 and 2008, 2,018 of which were reported in 2008. The number of cases of chlamydia reported within San Diego County dramatically exceeds the number of reported cases of syphilis and gonorrhea: 137,096 cases were reported between 1994 and 2008, 14,074 of which were reported in 2008. It should also be noted that according to the AIDS Status Report, numerous studies have shown that sexually transmitted diseases such as syphilis, gonorrhea and chlamydia facilitate the transmission of HIV.

The City Council has a reasonable basis to conclude that the experiences of San Diego and Orange Counties as to these HIV/AIDS and STD or blood borne diseases are relevant to the experiences of Chula Vista, which is located in the midst of this large urban area.

K. In considering appropriate operational regulations for sexually oriented businesses, the City Council finds that:

1. Enclosed or concealed booths and dimly lit areas within sexually oriented businesses greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. Requiring all indoor areas to be open to view by management at all times and adequate lighting to be provided reduces the opportunity for, and therefore the incidence of illegal conduct within sexually oriented businesses, and further facilitates the inspection of the interior of the premises thereof by law enforcement personnel.

2. Preventing the exchange of money between performers and patrons also reduces the likelihood of drug and sex transactions occurring in sexually oriented businesses.

3. Requiring separations between performers and patrons precludes them from being within earshot to communicate and thereby reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the sexually oriented business.

L. The City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography in support of this ordinance including, but not limited to, its recommendations that local governments ban certain features of video booths that facilitate carnal sexual encounters. A copy of the Attorney General's Report on Pornography is available for public review at the city clerk's office.

1. With respect to booths, these findings include the following: The inside walls of the booth are typically covered with graffiti and messages, usually of a sexual nature and consisting of telephone numbers, names, requests and offers for sex acts, anatomical descriptions, and sketches. Some booths also contain a chart used as an appointment schedule that is utilized to schedule appointments for sex acts that take place in that particular booth. In some instances, this arrangement has been used for the solicitation of prostitutes. Many of these booths are equipped with a hole in the side wall between the booths to allow patrons to engage in anonymous sex including both oral and anal sex acts. Inside the booths, the floors and walls are often wet and sticky with liquid or viscous substances, including semen, urine, feces, used prophylactics, gels, saliva, or alcoholic beverages. The City concludes, based in part on the description of the illicit sexual activity as noted within the Attorney General's Report, that the presence of closed doors and/or any obstruction of the video booth area is likely to lead to the above described secondary effects.

2. Likewise, the City Council recognizes and relies on the findings set forth in the May 1990 study conducted by the City of Tucson in support of this ordinance including, but not limited to, the following findings with respect to booths: Holes were present in the walls of adjoining booths within sexually oriented entertainment establishments. These holes were used by male patrons to facilitate sex acts with the occupant of the neighboring booth. The Council reasonably believes that the Tucson experience, along with the Attorney General's Report, is relevant to the problems associated with sexually oriented facilities in Chula Vista.

3. The City Council finds that requiring that booths in sexually oriented establishments be configured in such a manner so that there is an unobstructed view from the manager's station(s) and prohibiting closed, concealed, or unobstructed booths that are occupied by no more than one person at a time reduces the secondary effects associated with closed booths. Specifically, the provisions pertaining to booths are necessary to eliminate the

masturbation and sexual activity that are known to occur in closed booths and which present significant health and safety concerns with respect to communicable diseases, including AIDS. A number of courts have held that combating the spread of AIDS and STDs is a significant government interest, and that prohibiting concealed or enclosed booths in a sexually oriented establishment is a narrowly tailored means of serving that interest. *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002); *Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123 (3rd Cir. 1993); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Doe v. City of Minneapolis*, 898 F.2d 612 (8th Cir. 1990); *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986). The City Council takes further note of the Ninth Circuit's decision in *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982) and its finding that there is no constitutional right to unobserved masturbation in a public place. The City Council also recognizes the California case *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985), which found that the right to privacy guaranteed by the California Constitution does not protect the right to unobserved masturbation in a public place. Further, the city takes note of the Eleventh Circuit's validation of a restriction on the size of booths in *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999), including the Court's finding that "[a]mple evidence ... supports the ... finding that illegal and unhealthy activities take place in small rooms at adult entertainment establishments."

M. In recognition of the negative secondary effects generated by live sexually oriented entertainment, a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and precluded direct exchange of monies between performers and patrons at sexually oriented businesses that provide live entertainment including, but not limited to: *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374; *Tily B. v. City of Newport Beach*, 69 Cal.App.4th 1 (1999); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *BSA, Inc. v. King County*, 804 F.2d 1104 (9th Cir. 1986); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Parker v. Whitfield County*, 463 S.E.2d 116 (Ga. 1995); and *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995). Courts have found that dancers who perform nude or semi-nude on stage at sexually oriented cabarets are the same individuals who then move off stage to offer lap dances, couch dances, or other similar off stage performances. *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005). Therefore, Chula Vista reasonably believes it is necessary to impose distance limitations between performers and patrons and prohibit physical contact between performers and patrons during all performances, whether on or off stage, in order to guard against the documented secondary effects.

N. The City Council believes that prohibiting physical contact between performers and patrons at sexually oriented businesses, requiring separate entrances for performers from those used for patrons, requiring separate restrooms for opposite sexes, prohibiting performers from soliciting payment from patrons, and prohibiting the direct payment to performers by patrons are a reasonable and effective means of addressing the legitimate governmental interests of preventing prostitution, the spread of sexually transmitted diseases, and drug transactions. The case law and studies serve as a reasonable basis to establish this link.

O. In recognition of the negative secondary effects generated by live sexually oriented entertainment establishments, a number of courts have upheld ordinances which require that employees, as well as the owners and managers of such establishments submit background information on criminal convictions related to relatively recent sexual offenses so that a public entity can assess an individual's ability to function responsibly in the sexually oriented business setting. See *TK's Video, Inc. v. Denton County, Tex.*, 24 F.3d 705, 710 (5th Cir. 1994); and see *Club Southern Burlesque, Inc. v. City of Carrollton*, 265 Ga. 528, 532, 457 S.E.2d 816 (1995). This includes not only the applicant for an sexually oriented business license, but individuals who work in sexually oriented businesses during regular business hours as performers and non-performers where the criminal background check is limited to a period of no more than five (5) years immediately preceding the date of application. See *Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150, 1171 (10th Cir. 2006); *McCrothers Corp. d/b/a Tree City Bar, et al. v. City of Madan*, 728 N.W.2d 124 (2007); *Tee & Bee v. City of West Allis*, 936 F.Supp. 1479, 1487 (E.D. Wis. 1996); *Club Southern Burlesque, Inc.*, 265 Ga. at 532. In this regard, the City Council, in adopting operational standards, recognizes that the requirement for employee disclosure of recent criminal activity is narrowly tailored and imposes no greater restriction on First Amendment freedoms than is necessary to minimize the secondary harms stated in the ordinance. See *TK's Video v. Denton County*, 830 F.Supp. 335, 343 (E.D. Tex. 1993), vac'd-in part on other grounds, 24 F.3d 705 (5th Cir. 1994). When, as here, the civil disability provision of a sexually oriented business ordinance is tailored to apply to sex-related crimes only, the "relationship between the offense and the evil to be regulated is direct and substantial." *FW/PBS, Inc. v. City of Dallas*, 837 F.2d 1298, 1305 (5th Cir. 1988) and affirmed in part and vacated in part in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); see also *TK's Video*, 24 F.3d at 711 and see *Déjà Vu of Nashville, Inc. v. Metro Gov't of Nashville and Davidson County*, 274 F.3d at 392 (6th Cir. 2001); *Brownell v. City of Rochester*, 190 F. Supp.2d 472, 494-96 (W.D.N.Y. 2001); *Tee & Bee*, 936 F.Supp. at 1490. Chula Vista adopts the reasoning of courts finding that "Certain employees of unregulated sexually oriented businesses . . . engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments" and has a reasonable basis to believe this reasoning is applicable in the Chula vista community. Further, the "fact that an applicant for an sexually oriented use permit has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance." Hence, "[t]he barring of such individuals from employment in sexually oriented businesses for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within the City." *Dr. John's* at 1171 n. 30.

P. The City Council also finds the establishment of a sexually oriented business regulatory licensing process and operational standards for sexually oriented businesses are legitimate and reasonable means of ensuring that:

1. Operators of and performers at sexually oriented businesses comply with the City's regulations;
2. The recognized adverse secondary impacts of a proposed sexually oriented business are mitigated;

3. Sexually oriented business operators have specific guidelines with respect to the manner in which they can operate a sexually oriented business; and

4. The applications for sexually oriented business regulatory licenses are handled fairly and expeditiously.

Q. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of sexually oriented businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (*i.e.*, Penal Code § 313 *et seq.*). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995).

R. While the City Council is obligated to protect the rights conferred by the United States Constitution to sexually oriented businesses, it does so in a manner that ensures the continued and orderly use and development of property within the City and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of sexually oriented businesses.

S. Licensing permits, locational restrictions and operating standards are a legitimate and reasonable means of ensuring that sexually oriented businesses are conducted in a manner so as to minimize their adverse secondary effects and to help assure that such operators, businesses, licensees and permittees comply with reasonable regulations related to such requirements to minimize and control problems associated with such businesses and thereby protect the health, safety, and welfare of Chula Vista residents, protect citizens from increased crime, preserve the quality of life, and preserve the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The zoning and operational requirements contained in this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected sexually oriented businesses in Chula Vista.

T. The City Council, in adopting operational standards, recognizes that these standards do not preclude reasonable alternative avenues of communication. For example, the closing hours requirement means that sexually oriented businesses are free to operate seven (7) days a week for twenty (20) hours per day. The City Council takes note of the proliferation of sexually oriented material on the Internet, satellite television, direct television, CDs, DVDs, and that these various media provide alternative avenues of communication. Additionally, the City Council takes note that numerous web-based services, such as www.sugardvd.com and www.wantedlist.com, deliver adult videos and DVDs directly to customers' homes via the mail. The City Council recognizes the following review of one of these web-based services: "SugarDVD has made it so easy to rent and view adult movies, you may never leave your house again ... SugarDVD is discreet with quick turnaround times and a massive selection ... SugarDVD offers six rental plans, catering to the casual porn viewer and diehards who can never get enough hard-core fare." (*Hustler Magazine*, January 2006.) The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet.

(*Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); *see also U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied* 519 U.S. 820 [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions].) The Internet brings with it a virtually unlimited additional source of adult oriented sexual materials available to interested persons in every community with a mere keystroke. A sexually oriented business no longer has to be “actually” physically located in a city to be available in the community.

U. The City Council recognizes that adult devices (i.e. adult novelties and/or adult related products) such as dildos, fir-lined handcuffs, leather whips, anal beads, and devices that are physical representations of human genital organs, are not speech and enjoy no First Amendment protections. (*See Ford v. State of Texas*, 753 S.W.2d 451, 452-453 (1988); *Sewell v. State of Georgia*, 233 S.E.2d 187, 188-189 (1977); *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113, 115 (1998); and *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir. 1981).)

V. The City Council has also determined that a closing hours requirement promotes the reduction of deleterious secondary effects from sexually oriented facilities and reasonably relies on prior court decisions on the need for closing hours including *Center for Fair Public Policy v. Maricopa County* (“*Maricopa*”), 336 F.3d 1153 (9th Cir. 2003); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F.Supp. 1428 (M.D. Fla. 1997); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *National Amusements Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Mitchell v. Comm’n on Adult Enter. Est. of the State of Delaware*, 10 F.3d 123 (3rd Cir. 1993); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); and *City of Colorado Springs v. 2354 Inc.*, 896 P.2d 272 (1995). The City Council also takes legislative notice of (a) the Report of the Attorney General’s Working Group on the Regulation of Sexually-Oriented Businesses, Minnesota (1989), which concluded that surrounding communities are negatively impacted by 24-hour-a-day or late night operation of sexually oriented businesses; and (b) the analysis presented by Scott Bergthold in his report, *Closin’ Time: Effective Regulation of Adult Businesses’ Hours of Operation* (2000). Additionally, the City Council takes legislative notice of *Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California*, by Daniel Linz *et al.* (2004) and *Do Peep-shows “Cause” Crime? A response to Linz, Paul, and Yao*, by Richard McCleary *et al.* (2006). Based on these cases, reports and analyses, as well as the findings of this ordinance, the City Council has a reasonable basis to believe and does conclude that the hours of operation provision is necessary in light of the fact that sexually oriented businesses have been found to accompany and aggravate crime and to deplete police time and resources in the late night and early morning hours.

W. It is not the intent of the City Council of Chula Vista in enacting this ordinance or any provision thereof to condone or legitimize the distribution of obscene material, and the City

and its Council recognize that state law prohibits the distribution of obscene materials and expect and encourage law enforcement officials to enforce state obscenity statutes against such illegal activities in Chula Vista.

X. The City Council does not intend to regulate in any area preempted by California law including, but not limited to, regulation of obscene speech, nor is it the intent of the City Council to preempt regulations of the state Alcoholic Beverage Control Department (“ABC”).

Y. 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 other City ordinance in any respect, 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.

Z. The City Council finds that licensing and operational standards are a legitimate and reasonable means of accountability to ensure that operators and performers and non-performers employed at sexually oriented facilities comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

AA. The licensing and operation provisions adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to address the adverse secondary effects associated with the establishment and operation of unregulated or under-regulated sexually oriented businesses.

SECTION 2. AMENDMENT OF MUNICIPAL CODE CHAPTER 9.13 (LIVE ENTERTAINMENT LICENSING AND REGULATIONS).

Chapter 9.13 of the Chula Vista Municipal Code, entitled “Live Entertainment Licensing and Regulations” is hereby repealed in its entirety and amended in its entirety to read as follows:

**CHAPTER 9.13
SEXUALLY ORIENTED BUSINESSES AND SEXUALLY ORIENTED LICENSING
FOR DESIGNATED INDIVIDUALS**

Sections:

- 9.13.010. Purpose.
- 9.13.020. Definitions.
- 9.13.030. License required.
- 9.13.040. Issuance of license.
- 9.13.050. Inspection.
- 9.13.060. Intentionally omitted.
- 9.13.070. Suspension or revocation of a sexually oriented business license.
- 9.13.080. Appeal procedures.
- 9.13.090. Transfer of sexually oriented regulatory license.
- 9.13.100. Operating standards.
- 9.13.110. Violations.

- 9.13.120. Applicability of Chapter to existing businesses.
9.13.130. Regulations non-exclusive.

9.13.010 Purpose.

It is the purpose of this Chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

9.13.020 Definitions.

For purposes of this Chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

A. “*Adult arcade*” shall mean a business establishment to which the public is permitted or invited and where coin, card or slug operated or electronically, electrically or mechanically controlled devices, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing “specified sexual activities” or “specified anatomical areas.” Such devices shall be referred to as “adult arcade devices.”

B. “*Adult Bookstore*” 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: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.”

C. “*Adult booth/individual viewing area*” shall mean a partitioned or partially enclosed portion of a sexually oriented business used for any of the following purposes:

1. Where a live or taped performance is presented or viewed, where the performances and/or images displayed or presented are distinguished or characterized by their emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas;” or

2. Where “adult arcade devices” are located.

D. “*Adult Cabaret*” means a business establishment (whether or not serving alcoholic beverages) that features “adult live entertainment.”

E. “*Adult cabaret dancer*” shall mean any person who is an employee of an “adult cabaret” who, with or without any compensation or other form of consideration, performs live entertainment and whose performance on a regular and substantial basis focuses on or emphasizes the adult cabaret dancer’s breasts, genitals, and/or buttocks, but does not involve exposure of “specified anatomical areas” or depicting or engaging in “specified sexual activities.” “Adult cabaret dancer” does not include a patron.

F. “*Adult hotel/motel*” shall mean a “hotel” or “motel” (as defined in the Municipal Code) that is used for presenting on a regular and substantial basis images through closed circuit television, cable television, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices that are distinguished or characterized by the emphasis on matter depicting or describing or relating to “specified sexual activities” or “specified anatomical areas.”

G. “*Adult live entertainment*” shall mean any physical human body activity, whether performed or engaged in, alone or with other persons including, but not limited to, singing, walking, speaking, dancing, acting, posing, simulating, wrestling or pantomiming, in which: (1) the performer (including, but not limited to, topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar performers) exposes to public view, without opaque covering, “specified anatomical areas;” and/or (2) the performance or physical human body activity depicts, describes, or relates to “specified sexual activities” whether or not the specified anatomical areas are covered.

H. “*Adult Model Studio*” means a business establishment which provides for any form of consideration, the services of a live human model, who, for the purposes of sexual stimulation of patrons, displays “specified anatomical areas” to be observed, sketched, photographed, filmed, painted, sculpted, or otherwise depicted by persons paying for such services. “Adult model studio” does not include schools maintained pursuant to standards set by the Board of Education of the State of California including the following:

1. A college, junior college, or university supported entirely or partly by taxation; or
2. By 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.

I. “*Adult motion picture theater*” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five persons for any form of consideration.

J. “*Adult oriented material*” shall mean accessories, paraphernalia, books, magazines, laser discs, compact discs, digital video discs, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, holograms or electronically generated images or devices including computer software, or any combination thereof that is distinguished or characterized by its emphasis on matter depicting, describing or relating to

“specified sexual activities” or “specified anatomical areas.” “Adult oriented material” shall include “sexually oriented merchandise.”

K. “*Adult retail store*” shall mean a business establishment having as a regular and substantial portion of its stock in trade, “sexually oriented material.”

L. “*Characterized by*” means describing the essential character or quality of an item. As applied in this Chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

M. “*City*” means the City of Chula Vista, California.

M. “*Employee*” describes and pertains to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employees shall include “cabaret dancers,” “performers” and “non-performers.” Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

O. “*Establish*” or “*Establishment*” means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. The addition of any sexually oriented business to any other existing sexually oriented business;
4. The relocation of any “sexually oriented business;” or
5. Physical changes that expand the square footage of an existing “sexually oriented business” by more than ten percent (10%).

P. “*Floor space*” means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

Q. “*Influential interest*” in a sexually oriented business means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or any legal entity which operates the sexually oriented business (an “operator” is deemed to have an influential interest in the sexually oriented business); (2) possession or control of any right, title or interest in or to thirty percent (30%) or more of the ownership of a sexually oriented business or of any legal entity with ownership or management authority of a sexually oriented business, including any security interest therein with rights of ownership or management authority upon default; or (3) holding an office (*e. g.*, president, vice president, secretary, treasurer, managing member, managing director,

etc.) in a legal entity which operates or has a thirty percent (30%) or more ownership interest in the sexually oriented business.

R. “*Licensee*” means a person in whose name a regulatory license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business regulatory license.

S. “*Non-performer*” shall mean a person who is an employee of a sexually oriented business, but does not satisfy the definition of a “performer,” who works in the sexually oriented business during regular business hours. This shall not include after hours workers providing janitorial, trash or similar after hours services.

T. “*Operator*” means any person on the premises of a sexually oriented business who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

U. “*Performer*” shall mean a person who is an employee of an adult business or any other person who, with or without any compensation or other form of consideration, provides “adult live entertainment” for patrons of a “sexually oriented business.”

V. “*Person*” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

W. “*Premises*” means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business regulatory license.

X. “*Sexually oriented business*” means:

1. A business establishment or concern that as a regular and substantial course of conduct operates as an “adult bookstore or adult video store,” “adult cabaret,” “adult motion picture theater,” “adult model studio,” “adult retail store,” adult arcade,” or “adult motel or hotel.”

2. A business establishment or concern which as a regular and substantial course of conduct offers, sells or distributes “sexually oriented material” or “sexually oriented merchandise,” or which offers to its patrons materials, products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” but not including those uses or activities which are preempted by state law.

Y. “*Sexually oriented merchandise*” shall mean sexually oriented implements, paraphernalia, or novelty items such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices which are designed or marketed

primarily for the stimulation of human genital organs or sado-masochistic activity or distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

Z. “*Specified Anatomical Areas*” means and includes:

1. Less than completely and opaquely covered: human genitals; pubic region; buttock; and female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

AA. “*Specified Criminal Activity*” means any of the following specified crimes for which (a) less than two (2) years have elapsed since the date of conviction or the date release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor; or (b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the conviction is a felony; or (c) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any 24-month period.

1. Rape offenses set forth in California Penal Code § 261;
2. Pimping or soliciting offenses set forth in California Penal Code § 266(h);
3. Pandering offenses set forth in California Penal Code § 266(i);
4. Any offense described in California Penal Code §§ 311 (311(a) Obscene Matter) and 313 (Harmful Matter);
5. Lewd, indecent, or obscene conduct offenses set forth in California Penal Code §§ 314, 647(a) or 647(d);
6. Gambling or prostitution offenses set forth in California Penal Code §§ 315, 316, 318 or 647(b);
7. Sex offenses requiring registration under California Penal Code § 290;
8. An offense involving the unlawful possession for sale, sales, furnishing or giving of, or transportation of a controlled substance, including, but not limited to, the following offenses described in California Health and Safety Code §§ 11054, 11055, 11056, 11057, 11058, 11171, 11351, 11351.5, 11352, 11357.5, 11359, 11360, 11375, 11378, 11378.5, or 11379; or
9. Any offense in another jurisdiction that, had the predicate act(s) been committed in California, would have constituted any of the foregoing offenses.

BB. *“Specified sexual activities”* shall mean and include any of the following, irrespective of whether performed directly or indirectly through clothing or other covering:

1. Intentional presentation of human genitals in a state of sexual stimulation or arousal; and/or
2. Acts of human masturbation, sexual stimulation or arousal; and/or
3. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or
4. Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; and/or
5. Human excretion, urination, menstruation, vaginal or anal irrigation; and/or
6. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

CC. *“Transfer of Ownership or Control”* of a sexually oriented business means any of the following:

1. The sale, lease, or sublease of the business;
2. The transfer of an interest which constitute an “influential interest” in the business, whether by sale, exchange, assignment, pledge or similar means; or
3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business.

9.13.030 License required.

A. All sexually oriented businesses are subject to the sexually oriented business regulatory license requirements of this Chapter as well as all other applicable ordinances of the City and laws of the State of California. It shall be unlawful for any person to establish, operate, engage in, conduct, or carry on any sexually oriented business within Chula Vista unless the person first obtains, and continues to maintain in full force and effect, a sexually oriented business regulatory license as herein required. Any occurrence of the “establishment” of a sexually oriented business as defined in this Chapter, shall require a new application for a sexually oriented business regulatory license. The sexually oriented business regulatory license shall be subject to the development and operational standards of this Chapter and the requirements of the zoning or other land use provisions applicable to where the facility is located.

B. License applicants shall file a written, signed and verified application in person at the City’s Development Services counter on a form provided by the City’s Director of

Development Services or his or her designee (“the Director”). Such application shall contain the following information and be accompanied by the following documents:

1. If the license applicant is an individual, the individual shall state his or her legal name, including any aliases, and address, and shall submit satisfactory written proof that he or she is at least eighteen (18) years of age.

2. If the license applicant is a partnership, the partners shall state the partnership’s complete name, address, the names of all partners, and whether the partnership is general or limited; and shall attach a copy of the partnership agreement, if any.

3. If the license applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the State of California, the names and capacities of all officers and Directors, the name of the registered corporate agent, and the address of the registered office for service of process.

4. A signed and verified statement that the applicant has not pled guilty or nolo contendere or been convicted of specified criminal activities.

5. The license applicant shall provide a list of all performers and non-performers, which includes the performer’s/non-performer’s legal name, and mailing address, and satisfactory written proof that each performer/non-performer is at least eighteen (18) years of age. If the sexually oriented business regulatory license is granted, the licensee shall maintain this list with current and updated information and shall make this list available for inspection upon reasonable notice.

6. Each non-performer working in a managerial capacity and each performer shall provide the license applicant with a signed and verified statement that the non-performer/performer has not pled guilty or pled nolo contendere or been convicted of a specified criminal activity.

7. Each person with an influential interest in the sexually oriented business or in a legal entity with an influential interest in the sexually oriented business shall sign the application for a license as an applicant. All persons who sign the application must also provide names, aliases, addresses, and date of birth.

8. If the license applicant intends to operate the sexually oriented business under a name other than that of the license applicant, the license applicant shall file the fictitious name of the sexually oriented business and show proof of registration of the fictitious name.

9. A description of the type of sexually oriented business for which the license is requested and the proposed address where the sexually oriented business will operate, plus the names and addresses of the owners and lessors of the sexually oriented business site.

10. The address to which notice of action on the application is to be mailed.

11. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the sexually oriented business. The sketch or diagram need not be professionally prepared but must be oriented to the north or some other designated street or object and 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.

12. A diagram of the off-street parking areas and entries to the premises of the sexually oriented business, also showing the location of the lighting system required by this Chapter.

C. The completed application shall be accompanied by a non-refundable application fee. The amount of such fees shall be set by resolution of the City Council.

D. The completeness of an application for a sexually oriented business regulatory license shall be determined by the Director or within five (5) City business days of its submittal. If the Director determines that the license application is incomplete, the Director shall immediately notify in writing the license applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Such writing shall be deposited in the U.S. mail, postage prepaid, immediately upon determination that the application is incomplete. Within five (5) City business days following the receipt of an amended application or supplemental information, the Director shall again determine whether the application is complete in accordance with the provisions set forth above. Evaluation and notification shall occur as provided herein until such time as the application is found to be complete.

E. The fact that a license applicant possesses other types of state or city licenses does not exempt the license applicant from the requirement of obtaining a sexually oriented business regulatory license under this Chapter.

9.13.040 Issuance of license.

A. Upon the filing of a completed application for a sexually oriented business regulatory license, the Director shall immediately write or stamp the application "Received" and, in conjunction with City staff, shall promptly investigate the information contained in the application to determine whether a sexually oriented business regulatory license shall be granted. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application, nor is it grounds to extend the time period to conduct a hearing pursuant to this section.

B. Within twenty-one (21) days after the filing of a completed sexually oriented regulatory permit application, the investigation shall be completed. The Director shall promptly notice a public hearing with notice of such hearing to be made pursuant to California Government Code §§ 65091 and 65905. Said public hearing shall be conducted within fifteen (15) days of the expiration of the completed investigation period.

C. In reaching a decision on the application, the Director shall not be bound by the formal rules of evidence in the California Evidence Code.

D. The Director shall issue the written decision on the application for a sexually oriented business regulatory license within four (4) City business days after the public hearing required by this section. The failure of the Director to render any decision within the time frames established in any part of this section shall be deemed to constitute an approval, subject to compliance with all operational standards of Section 9.13.100 and all City zoning requirements, including those found in Section 19.58.024 of this Code, and shall be subject to appeal to the City Council, pursuant to Section 9.13.080. The decision of the Director shall be hand delivered or mailed to the applicant at the address provided in the application, and shall be provided in accordance with the requirements of this code.

E. Notwithstanding any provisions in this section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this section or may request a continuance regarding any decision or consideration by the City of the pending application. Extensions of time sought by applicants shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on applications.

F. The Director shall grant or deny the application in accordance with the provisions of this section, and so notify the applicant as follows:

1. The Director shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.

2. If the application is denied, the Director shall attach to the application a statement of the reasons for the denial.

3. If the application is granted, the Director shall attach to the application a sexually oriented business regulatory license.

G. The Director shall grant the application and issue the sexually oriented business regulatory license upon findings that the proposed business meets, or will meet, all of the development and operational standards and requirements of this Chapter, unless the application is denied based upon one or more of the criteria set forth in subsection (I) of this section.

H. If the Director grants the application, the applicant may begin operating the sexually oriented business for which the license was sought, subject to strict compliance with the development and operational standards and requirements of this Chapter. The licensee shall post the license conspicuously in the premises of the sexually oriented business.

I. The Director shall deny the application if the applicant fails to establish any of the following:

1. The sexually oriented business complies with the City's zoning requirements as to its underlying zoning designation and other locational requirements.

2. The sexually oriented business complies with the development, operational or performance standards found in this Chapter.

3. The license applicant is at least eighteen (18) years of age.
4. The required application fees have been paid.
5. The applicant, each non-performer working in a managerial capacity and each performer has not pled guilty or pled nolo contendere or been convicted of a specified criminal activity.
6. The application complies with section 9.13.030.

J. A permittee, applicant or substantially related entity wherein the new application is made by an individual or previous entity exercising management or oversight or control of the sexually oriented business, cannot re-apply for a sexually oriented business regulatory license for a particular location within one (1) year from the date of prior denial.

K. Any affected person may appeal the decision of the Director in writing within ten (10) days in accordance with the provisions of Municipal Code § 9.13.080.

9.13.050 Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit City staff and/or its agents to inspect, from time to time, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter.

9.13.060 Intentionally omitted.

9.13.070 Suspension or revocation of a sexually oriented business license.

A. On determining that grounds for license suspension or revocation exist, the Director 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 and the ground or grounds upon which the hearing is based, the pertinent Municipal Code Sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the licensee, or shall be delivered to the licensee personally, at least ten (10) days prior to the hearing date. Hearings pursuant to this section shall be noticed in accordance with California Government Code §§ 65091 and 65905 and conducted by the Director or his/her designee which may include a third party hearing officer. Hearings pursuant to this section shall be conducted in accordance with procedures established by the Director but, at a minimum, shall include the following:

1. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel.
2. The Director shall not be bound by the formal rules of evidence.
3. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness at the request of the licensee. Extensions of time or

continuances sought by a licensee shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on license suspensions or revocations.

4. The Director's decision may be appealed in accordance with Municipal Code § 9.13.080.

B. A license may be suspended or revoked based on the following causes arising from the acts or omissions of the licensee, or an employee, partner, operator or manager of the licensee:

1. The building, structure, equipment, or location used by the sexually oriented business fails to comply with all provisions of these regulations and this section relating to sexually oriented businesses, including the sexually oriented business operational standards contained in section 9.13.100 and the zoning requirements of section 19.58.024, and all other applicable building, fire, electrical, plumbing, health, and zoning requirements of the Chula Vista Municipal Code.

2. The licensee has failed to obtain or maintain all required City licenses or permits with respect to the business or the premises.

3. The licensee has made any false, misleading, or fraudulent statement of material fact in the application for a sexually oriented business license.

4. The license is being used to conduct an activity different from that for which it was issued.

5. That an employee of the sexually oriented business has been convicted of two (2) or more specified criminal activities that occurred on the licensed premises within a twelve (12) month period and was employee of the sexually oriented business at the time the offenses were committed.

6. That the use for which the approval was granted has ceased to exist, has been suspended or has not been active for six (6) months or more.

7. That the transferee/new owner of a sexually oriented business or sexually oriented business regulatory license failed to comply with the requirements of this Chapter.

8. The licensee, operator, or manager has knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of a specified criminal activity on the premises of the sexually oriented business, or has been convicted of a specified criminal activity. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

9. An act or omission in violation of any of the requirements of this Chapter if such act or omission is with the knowledge, authorization, or approval of the licensee or is as a

result of the licensee's negligent supervision of the employees of the sexually oriented business. This includes the allowance of activities that are or become a public nuisance which includes the disruptive conduct of business patrons whether on or immediately off the premises where such patrons disturb the peace, obstruct traffic, damage property, engage in criminal conduct, violate the law and otherwise impair the free enjoyment of life and property.

C. After holding the hearing in accordance with the provisions of this section, if the Director finds and determines that there are grounds for suspension or revocation, the Director shall impose one of the following:

1. Suspension of the license for a specified period not to exceed six (6) months; or
2. Revocation of the license.

The Director shall render a written decision that shall be hand delivered or overnight mailed to the licensee within five (5) days of the public hearing.

D. In the event a license is revoked pursuant to this section, another sexually oriented business regulatory license to operate a sexually oriented business shall not be granted to the licensee or an entity related to the licensee within twelve (12) months after the date of such revocation.

9.13.080 Appeal procedures.

A. After approval, denial, suspension or revocation of a license, any affected person may appeal the decision to the City Council in writing within ten (10) days after the written decision.

B. Consideration of an appeal of the decision shall be at a public hearing, notice of which shall be given pursuant to California Government Code §§ 65091 and 65905 and which hearing shall occur within thirty (30) days of the filing or initiation of the appeal.

C. The City Council action on the appeal of the decision shall be by a majority vote of the members present and upon the conclusion of the de novo public hearing, the City Council shall grant or deny the appeal. The City Council's decision shall be final and conclusive and shall be rendered in writing within four (4) City business days of the hearing, such written decision to be mailed to the party appealing the Director's decision.

D. In reaching its decision, the City Council shall not be bound by the formal rules of evidence.

E. Notwithstanding any provisions in this section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this section or may request a continuance regarding any decision or consideration by the City of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on applications.

F. Failure of the City Council to render a decision to grant or deny an appeal of a license denial within the time frames established by this section shall be deemed to constitute an approval of the sexually oriented business regulatory license.

G. The time for a court challenge to a decision of the City Council is governed by California Code of Civil Procedure § 1094.8.

H. Notice of the City Council's decision and its findings shall include citation to California Code of Civil Procedure § 1094.8.

I. Any applicant or licensee whose license has been denied pursuant to this section shall be afforded prompt judicial review of that decision as provided by California Code of Civil Procedure § 1094.8.

9.13.090 Transfer of sexually oriented business regulatory license.

A. A license holder shall not operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address of the a sexually oriented business stated in the application for the license.

B. In the event of a transfer of ownership of the sexually oriented business, the new owner shall be fully informed of the requirements of this chapter, including the operational and development standards herein.

C. In the event of a transfer of a sexually oriented business, the transferee shall complete an application for a sexually oriented business license and provide all information specified in Section 9.13.030 to the Director. The transferee shall be considered an applicant as provided in this chapter and the transfer shall only become effective if the proposed transferee satisfies the conditions set forth in Section 9.13.040. If the application is granted, the sexually oriented business license shall be transferred to the new owner.

9.13.100 Operating standards.

A. *Hours of operation.* It shall be unlawful for any owner, operator, manager or employee of a sexually oriented business to allow such sexually oriented business to remain open for business, or to license any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 2:00 a.m. and 6:00 a.m. of any day excepting here from an "adult hotel/motel."

B. *On-site manager.* All sexually oriented businesses shall have a responsible person who shall be at least 18 years of age and shall be on the premises to act as manager at all times during which the business is open. No performer may serve as the manager. The individual(s) designated as the on-site manager shall provide his/her name to the Chief of Police to receive all complaints and be given by the owner and/or operator the responsibility and duty to address and immediately resolve all violations taking place on the premises. An individual cannot serve as an on-site manager if he/she has pled guilty or pled nolo contendere or been convicted of a specified criminal activity.

C. *Interior of premises.* No exterior door or window on the premises of a sexually oriented business shall be propped or kept open at any time while the business is open and any exterior windows shall be covered with opaque coverings at all times.

D. *Displays of sexually oriented materials.* All displays of materials characterized or distinguished on matters describing or relating to “specified sexual activities” or “specified anatomical areas,” as defined in this code, shall be completely screened from public view as viewed from adjacent sidewalks or public rights-of-way.

E. *Signs.* All sexually oriented businesses shall comply with the following sign requirements, in addition to those provided elsewhere in this Code. Should a conflict exist between the requirements of other provisions of the Code and this subsection, the more restrictive shall prevail.

If a sexually oriented business does not serve alcohol, it shall post a notice prior to entry to the area of public assembly and within ten feet (10') of every entrance used by customers for access to the establishment, stating that persons below the age of eighteen (18) years of age are prohibited from entering onto the premises or within the confines of the sexually oriented business. This notice shall be posted on a wall in a place of prominence. The dimensions of the notice shall be no less than six inches (6") by six inches (6"), with a minimum typeface of 25 points. If the sexually oriented business serves alcohol, it shall comply with all notice and posting requirements of the Alcoholic Beverage Control Department.

F. *Exterior lighting requirements.* All exterior areas, including parking lots, of the sexually oriented business shall be illuminated at a minimum of 1.50 foot candle, maintained and evenly distributed at ground level with appropriate devices to screen, deflect or diffuse the lighting in such manner as to prevent glare or reflected light from creating adverse impacts on adjoining and nearby public and private properties and to avoid night pollution. Inoperable and/or broken lights shall be replaced within twenty-four (24) hours.

G. *Interior lighting requirements.* All interior areas of the sexually oriented business excepting therefrom adult hotels/motels shall be illuminated at a minimum of 1.00 foot candle, maintained and evenly distributed at floor level. Inoperable and/or broken lights shall be replaced within twenty-four (24) hours, excepting herefrom an adult hotel/motel.

H. *Regulation of public restroom facilities.* If the sexually oriented business provides restrooms for patron use, it shall provide separate restroom facilities for male and female patrons. The restrooms shall be free from sexually oriented material. Only one (1) person shall be allowed in each restroom at any time, unless otherwise required by law, in which case the sexually oriented business shall employ a restroom attendant of the same sex as the restroom users who shall be present in the public portion of the restroom during operating hours. The attendant shall insure that no person of the opposite sex is permitted into the restroom, and that not more than one (1) person is permitted to enter a restroom stall, unless otherwise required by law, and that the restroom facilities are used only for their intended sanitary purposes. Access to restrooms for patron use shall not require passage through an area used as a dressing area by performers.

I. *Trash.* All interior trash cans shall be emptied into a single locked trash bin lined with a plastic bag or with individually bagged trash at least once a day. At least four (4) times a day, the front and rear exteriors of any sexually oriented business, along with the parking lot, shall be inspected for trash and debris and any trash and debris found shall be immediately removed and placed into a single locked trash bin lined with a plastic bag.

J. *Sexually oriented business offering adult live entertainment - additional operating requirements.* The following additional requirements shall apply to sexually oriented businesses providing adult live entertainment:

1. No person shall perform adult live entertainment for patrons of a sexually oriented business except upon a permanently fixed stage at least eighteen inches (18") above the level of the floor, and surrounded with a three foot (3') high barrier or by a fixed rail at least thirty inches (30") in height. No patron shall be permitted on the stage while the stage is occupied by a performer(s) and/or adult cabaret dancer(s). This provision shall not apply to an individual viewing area where the performer is completely separated from the area in which the performer is viewed by an individual by a permanent, floor to ceiling, solid barrier.

2. No performer or adult cabaret dancer shall be within six feet (6') of a patron, measured horizontally, while the performer or adult cabaret dancer is performing adult live entertainment. While on stage, no performer or adult cabaret dancer shall have physical contact with any patron, and no patron shall have physical contact with any performer or adult cabaret dancer.

3. As to off stage performances, no performer or adult cabaret dancer shall perform "adult live entertainment" off stage. As to an adult cabaret dancer performing off stage, a distance of at least six feet (6') shall be maintained between the adult cabaret dancer and the patron(s) at all times. During off stage performances, no adult cabaret dancer shall have physical contact with any patron, and no patron shall have physical contact with any adult cabaret dancer.

4. In addition, while on the premises, no performer or adult cabaret dancer shall have physical contact with a patron and no patron shall have physical contact with a performer or adult cabaret dancer, which physical contact involves the touching of the clothed or unclothed genitals, pubic area, buttocks, cleft of the buttocks, perineum, anal region, or female breast with any part or area of any other person's body either before or after any adult live entertainment or off stage performances by such performer or adult cabaret dancer. Patrons shall be advised of the no touching requirements by signs and, if necessary, by employees of the establishment. This prohibition does not extend to incidental touching.

5. Patrons shall be advised of the separation and no touching requirements by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size. And, if necessary, patrons shall also be advised of the separation and no touching requirements by employees of the establishment.

6. All employees of the sexually oriented facility, except therefrom performers while performing on the fixed stage, while on or about the premises or tenant space, shall wear at a minimum an opaque covering which covers their specified anatomical areas.

7. Patrons shall not throw money to performers, place monies in the performers' costumes or otherwise place or throw monies on the stage. If patrons wish to pay or tip performers, payment or tips may be placed in containers. Patrons shall be advised of this requirement by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size. If necessary, patrons shall also be advised of the tipping and gratuity requirements by employees of the sexually oriented business.

8. The sexually oriented business shall provide dressing rooms for performers, that are separated by gender and exclusively dedicated to the performers' use and which the performers shall use. Same gender performers may share a dressing room. Patrons shall not be permitted in dressing rooms.

9. The sexually oriented business shall provide an entrance/exit to the establishment for performers that is separate from the entrance/exit used by patrons, which the performers shall use at all times.

10. The sexually oriented business shall provide access for performers between the stage and the dressing rooms that is completely separated from the patrons. If such separate access is not physically feasible, the sexually oriented business shall provide a minimum three foot (3') wide walk 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 and the patrons must also be three feet (3') away from the walk aisle. Nothing in this section is intended to exempt the sexually oriented business from compliance with the provisions of Title 24 of the California Code of Regulations pertaining to handicapped accessibility.

11. All sexually oriented businesses featuring live entertainment shall employ security guards in order to maintain the public peace and safety, based upon the following standards:

a. Provide at least one security guard at all times while the business is open.

b. If the occupancy limit of the premises is greater than 21 persons, an additional security guard shall be on duty.

c. Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Security guard(s) 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 and bonded as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

d. Between the hours of 8:00 p.m. and thirty (30) minutes after the established closing time of the facility, security guard(s) shall regularly patrol the parking lot and adjacent outdoor areas of the facility to maintain order therein and prevent any illicit or nuisance activity.

e. Security guard(s) shall be regularly posted at the doors used by the performers when said doors are in use.

f. The sexually oriented business shall provide a security system that visually records and monitors all parking lot areas as well as all entrances and exits to or from the facility. The recordings shall have sufficient definition/fidelity to allow for identification of persons entering or exiting the premises. These recordings shall be retained on site for 30 days and shall be made available within 24 hours if requested by a member of the City police department or other police officer for a legitimate law enforcement purpose.

K. *Adult motion picture theater additional operating requirements.* The following additional requirements shall apply to adult motion picture theaters:

1. If the theater contains a hall or auditorium area, the area shall comply with each of the following provisions:

a. Have individual, separate seats, not couches, benches, or the like, to accommodate the maximum number of persons who may occupy the hall or auditorium area;

b. Have a continuous main aisle alongside the seating areas in order that each person seated in the hall or auditorium area shall be visible from the aisle at all times; and

c. Have a sign posted in a conspicuous place at or near each entrance to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number shall not exceed the number of seats within the hall or auditorium area.

L. Employment of and services rendered to persons under the age of eighteen (18) years prohibited; twenty-one (21) if liquor is served.

1. *Employees.* Employees of a sexually oriented business must be at least eighteen (18) years of age. It shall be unlawful for any person with influential interest, manager or other person in charge of any sexually oriented business to employ, contract with, or otherwise retain any services in connection with the sexually oriented business with or from any person who is not at least eighteen (18) years of age. If liquor is served at the sexually oriented business, employees of the sexually oriented business must be at least twenty-one (21) years of age. If liquor is served at the sexually oriented business, it shall be unlawful for any person with influential interest, manager or other person in charge of any sexually oriented business to employ, contract with, or otherwise retain any services in connection with the sexually oriented business with or from any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons seeking to contract with, be employed by, or otherwise service the sexually oriented business.

2. *Patrons.* Patrons of a sexually oriented business must be at least eighteen (18) years of age. It shall be unlawful for any person with influential interest, manager or other person in charge of any sexually oriented business to permit to enter or remain within the sexually oriented business any person who is not at least eighteen (18) years of age. If liquor is served at the sexually oriented business, patrons must be at least twenty-one (21) years of age. If liquor is served at the sexually oriented business, it shall be unlawful for any person with influential interest, manager or other person in charge of any sexually oriented business to permit to enter or remain within the sexually oriented business any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons entering the sexually oriented business.

3. *X-rated movies.* The selling, renting and/or displaying of x-rated movies, videotapes, digital video discs (DVDs), compact discs (CDs) and laser discs shall be restricted to persons over eighteen (18) years of age. If an establishment that is not otherwise prohibited from providing access to the establishment to persons under eighteen (18) years of age sells, rents, or displays movies, videos, DVDs, CDs or laser discs that have been rated "X" or rated "NC-17" by the motion picture rating industry ("MPAA"), or which have not been submitted to the MPAA for a rating, and which consist of images that are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, said movies, videos, DVDs, CDs, and laser discs shall be located in a specific section of the establishment where these items are not visible to persons under the age of eighteen (18) and from which persons under the age of eighteen (18) shall be prohibited.

9.13.110 Violations.

A. Any owner, operator, manager or employee of a sexually oriented business violating or permitting, counseling, or assisting the violation of any of these provisions regulating sexually oriented businesses shall be subject to any and all civil remedies, including license revocation. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in section 9.13.110A, any sexually oriented business that is operating in violation of these provisions regulating sexually oriented businesses is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation.

C. The restrictions imposed pursuant to this section constitute a licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the Chula Vista Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

9.13.120 Applicability of Chapter to existing businesses.

A. *Licensing Requirements.* Any sexually oriented businesses operating in the City prior to the effective date of this Chapter must apply for a license under this Chapter.

B. *Interior Configuration Requirements.* Any preexisting sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 9.13.100 shall have ninety (90) days from the effective date of this Chapter to conform its premises to said requirements.

C. *Other Requirements.* Except as provided for in subsections 9.13.120(A.) and (B.), sexually oriented businesses shall comply with this Chapter on the date that it takes effect.

9.13.130 Regulations non-exclusive.

The provisions of sections 9.13.010 to 9.13.120 of this Chapter regulating sexually oriented businesses are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other provisions of the Municipal Code and/or any other regulations pertaining to the operation of businesses as adopted by the City.

SECTION 3. AMENDMENT OF CODE.

Chapter 9.13 of the Chula Vista Municipal Code is further amended by adding the following sections titled “Sexually Oriented Business Performer License:”

SEXUALLY ORIENTED BUSINESS PERFORMER LICENSE

Sections:

- 9.13.140. Sexually oriented business performer license.
- 9.13.150. Investigation and action on application for sexually oriented business performer license.
- 9.13.160. Revocation/suspension/denial of sexually oriented business performer license.
- 9.13.170. Display of license identification cards.
- 9.13.180. Sexually oriented business performer license nontransferable.
- 9.13.190. Violations.
- 9.13.200. Sexually oriented business non-performer license.
- 9.13.210. Investigation and action on sexually oriented business non-performer license application.
- 9.13.220. Revocation/Suspension/Denial of sexually oriented business non-performer license.
- 9.13.230. Violations
- 9.13.240. Severability.

9.13.140 Sexually oriented business performer license.

A. No performer/adult cabaret dancer shall be employed, hired, engaged, or otherwise retained in an adult business to participate in or give any live performance displaying “specified anatomical areas” or “specified sexual activities” without first having a valid sexually oriented business performer license issued by the City.

B. The Chief of Police or his/her designee shall grant, deny, and renew sexually oriented business performer licenses in accordance with these regulations.

C. License applicants shall file a written, signed, and verified application or renewal application on a form provided by the Chief of Police. Such application shall contain the following information:

1. The license applicant's legal name and any other names (including "stage names" and aliases) used by the applicant.
2. Principal place of residence.
3. Age, date and place of birth.
4. Height, weight, hair and eye color, and tattoo descriptions and locations.
5. Each present and/or proposed business address(es) and telephone number(s) of the establishments at which the applicant intends to work.
6. Driver's license or identification number and state of issuance.
7. Social security number.
8. Satisfactory written proof that the license applicant is a least eighteen (18) years of age.
9. The license applicant's fingerprints on a Livescan form provided by the Chula Vista police department and two color two by two inch photographs clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant. Fingerprints and photographs shall be taken within six (6) months of the date of application.
10. Whether the license applicant has pled guilty or nolo contendere or been convicted of a specified criminal activity.
11. If the application is made for the purpose of renewing a license, the license applicant shall attach a copy of the license to be renewed.

D. The information provided above in subsection C of this section which is personal, private, confidential or the disclosure of which could expose the applicant to the risk of harm will not be disclosed under the California Public Records Act or the open government ordinance. Such information includes, but is not limited to, the applicant's residence address, telephone number, date of birth, age, driver's license and social security number. The City Council in adopting the application and licensing and/or permit system set forth herein has determined in accordance with Government Code § 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality or security interests are protected. The City Clerk shall cause the same to be redacted from any copy of a completed application form made available to any member of the public, the above-mentioned information.

E. The completed application shall be accompanied by a non-refundable application fee and an annual license fee. The amount of such fees shall be as set forth in the schedule of fees established by resolution from time to time by the City Council.

F. The completeness of an application shall be determined within 24 business hours. The Chief of Police or his/her designee must be available during normal working hours Monday through Friday to accept sexually oriented business performer applications. If the Chief of Police determines that the application is incomplete, the Chief of Police shall immediately inform the applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Upon receipt of a completed sexually oriented business performer application and payment of the license fee specified in Section E above, the Chief of Police shall immediately issue a temporary license which shall expire of its own accord ten (10) business days from the date of issuance and shall only be extended as provided in section 9.13.150.

G. This temporary sexually oriented business performer license shall authorize a performer/adult cabaret dancer to commence performance at a sexually oriented business establishment that possesses a valid sexually oriented business regulatory license authorized to provide live entertainment.

H. The fact that a license applicant possesses other types of state or city permits or licenses does not exempt the license applicant from the requirement of obtaining a sexually oriented business performer license.

9.13.150 Investigation and action on application for sexually oriented business performer license.

A. Upon submission of a completed application, payment of license fees, and issuance of a temporary sexually oriented business performer license pursuant to section 9.13.140, the Chief of Police shall immediately stamp the application "Received" and in conjunction with City staff, including members of the police department, shall promptly investigate the information contained in the application to determine whether the license applicant should be issued a sexually oriented performer business performer license.

B. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application. The chief of police's decision to grant or deny the adult business performer license shall be made within ten (10) business days from the date the temporary license was issued and in no case shall the decision to grant or deny the license application be made after the expiration of the temporary license. In the event the Chief of Police is unable to complete the investigation within ten (10) business days, he/she shall promptly notify the license applicant and extend the temporary license for up to ten (10) additional business days. In no case shall the investigation exceed twenty (20) days, nor shall the decision to grant or deny the license application be made after the expiration of the temporary license.

C. The Chief of Police shall render a written decision to grant or deny the license within the foregoing ten (10) day time period set forth in section 9.13.150(B). Said decision shall be mailed first class postage prepaid or hand delivered to the applicant, within the foregoing

ten (10) day period or twenty (20) day period if extended pursuant to section 9.13.150(B), at the address provided by the applicant in the application.

D. The Chief of Police shall notify the applicant as follows:

1. The Chief of Police shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.

2. If the application is denied, the Chief of Police shall attach to the application a statement of the reasons for the denial. Such notice shall also provide that the license applicant may appeal the denial to the City Manager. The City Manager or a designated hearing officer shall conduct a hearing as described in section 9.13.160(B).

3. If the application is granted, the Chief of Police shall attach to the application a sexually oriented business performer license.

4. The application, as acted upon, and the license, if any, shall be placed in the United States mail, first class postage prepaid, or hand delivered, addressed to the license applicant at the residence address stated in the application in accordance with the time frames established herein.

E. The Chief of Police shall grant the application and issue the license unless the application is denied based on one of the grounds set forth in subsection F of this section.

F. The Chief of Police shall deny the application based on any of the following grounds:

1. The license applicant has made false, misleading, or fraudulent statement of material fact in the application for a sexually oriented business performer license.

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

3. The sexually oriented business performer license is to be used for performing in a business prohibited by laws of the state or city or a business that does not have a valid sexually oriented business regulatory license.

4. The license applicant, has pled guilty, nolo contendere or been convicted of a specified criminal activities.

G. Failure of the Chief of Police to render a decision on the license within the time frames established by this section shall be deemed to constitute an approval.

H. Each sexually oriented business performer license, other than the temporary license described in section 9.13.140, shall expire one (1) year from the date of issuance and may be renewed only by filing with the Chief of Police a written request for renewal, accompanied by the annual license fee and a copy of the license to be renewed. If said application conforms to the previously approved application and there has been no change with respect to the license holder being convicted of any crime classified by this or any other state as a sex related offense,

the chief or police or his/her designee shall renew the license for one (1) year. Any plea to or conviction of a sex related offense requires the renewal application to be set for hearing before the Chief of Police in accordance with the provisions of this section. The request for renewal shall be made at least thirty (30) days before the expiration date of the license. Applications for renewal shall be acted upon as provided herein for action upon applications for license. The chief of police's denial of a renewal application is subject to the hearing provisions of Municipal Code Section 9.13.160.

9.13.160 Revocation/suspension/denial of sexually oriented business performer license.

A. On determining that grounds for denial of a license, license revocation or suspension exist, the Chief of Police or his/her designee shall furnish written notice of the proposed action to the applicant/license holder. Such notice shall set forth the time and place of a hearing before the City Manager or a designated hearing officer and the ground or grounds upon which the hearing is based, the pertinent Chula Vista Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant/license holder, or shall be delivered to the license holder personally, at least ten (10) days prior to the hearing date.

B. On determining that grounds for denial of a license exist, the Chief of Police shall furnish written notice of the proposed action to the applicant/license holder. The decision of the Chief of Police shall be appealable to the City Manager by filing a written request for a hearing with the City Clerk within fifteen (15) days following the day of mailing of the Chief of Police's decision and paying the fee for appeals provided under this code. All such appeals shall be filed with the City Clerk and shall be public records. The City Manager shall issue a notice which shall set forth the time and place of a hearing before the City Manager or a designated hearing officer which is within thirty (30) days from the date the appeal was filed and the ground or grounds upon which the hearing is based, the pertinent Chula Vista Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant/license holder, or shall be delivered to the license holder personally, at least ten (10) days prior to the hearing date.

C. The applicant shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. The City Manager or designated hearing officer shall not be bound by the formal rules of evidence. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness at the request of the license holder. Extensions of time or continuances sought by a license holder/appellant shall not be considered delay on the part of the city or constitute failure by the City to provide for prompt decisions on license suspensions or revocations.

D. A license may be revoked, based on any of the following causes arising from the acts or omissions of the license holder:

1. The license holder has made any false, misleading, or fraudulent statement of material fact in the application for a performer license.

2. The license holder has pled guilty, nolo contendere or been convicted of a specified criminal activity.

3. Failure to comply with the requirements of this Chapter.

E. After holding the hearing in accordance with the provisions of this section, if the City Manager or designated hearing officer finds and determines that there are grounds for revocation or suspension, the City Manager or designated hearing officer shall revoke or suspend the license. After holding the hearing in accordance with the provisions of this section on the denial of a license, the City Manager or designated hearing officer shall decide to sustain the decision, modify the decision or order the decision stricken and issue such order as the City Manager or designated hearing officer finds is supported by the entire record. The City Manager or designated hearing officer shall render a written decision that shall be hand delivered or overnight mailed to the applicant/license holder within four (4) business days of the hearing. The City Manager or designated hearing officer's failure to render such a decision within this time frame shall constitute an approval or reinstatement of the license.

F. In the event a license is revoked pursuant to this section, another sexually oriented business performer license shall not be granted to the license holder within twelve (12) months after the date of such revocation.

G. The decision of the City Manager or designated hearing officer shall be final.

H. The time for a court challenge to a decision of the City Manager or designated hearing officer is governed by California Code of Civil Procedure § 1094.8.

I. Notice of the City Manager's or designated hearing officer's decision and his/her findings shall include citation to California Code of Civil Procedure § 1094.8.

J. Any applicant or license holder whose license has been denied, suspended, or revoked, pursuant to this section shall be afforded prompt judicial review of that decision as provided by California Code of Civil Procedure § 1094.8.

9.13.170 Display of license identification cards.

The Chief of Police shall provide each performer/adult cabaret dancer required to have a license pursuant to this Chapter with an identification card containing the name, address, photograph, and license number of such performer/adult cabaret dancer. Every performer/adult cabaret dancer shall have such card available for inspection at all times during which he or she is on the premises of the sexually oriented business at which he or she performs.

9.13.180 Sexually oriented business performer license nontransferable.

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

9.13.190 Violations.

A. Any license holder violating or causing the violation of any of these provisions regulating sexually oriented business performer licenses shall be subject to license revocation/suspension pursuant to section 9.13.160 above, a fine of not more than one thousand dollars (\$1,000.00) pursuant to Government Code §§ 36900 and 36901, and any and all other civil remedies. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in section 9.13.160, any violation of any of these provisions regulating sexually oriented business performer licenses is hereby declared to constitute a public nuisance and may be abated or enjoined.

C. The restrictions imposed pursuant to this section are part of a regulatory licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the Chula Vista Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

9.13.200 Sexually oriented business non-performer license.

A. No individual who works as a non-performer in a managerial position in a sexually oriented business shall be employed, hired, engaged, or otherwise retained in a sexually oriented business without first obtaining a sexually oriented business non-performer license.

B. Individuals who wish to work as non-performer managers in a sexually oriented business shall file a written, signed, and verified application or renewal application for a sexually oriented business non-performer license on a form provided by the Chief of Police. Such application shall contain the following information:

1. The applicant's legal name and all used aliases.
2. Date of birth.
3. Driver's license or identification number and state of issuance or other state identification which confirms the name of the applicant.
4. The license applicant's fingerprints on a Livescan form provided by the Chula Vista police department. Any fees for fingerprints shall be paid by the applicant. Fingerprints shall be taken within six (6) months of the date of application.
5. Whether the applicant has pled guilty or pled nolo contendere or been convicted of a specified criminal activity.
6. The name and address of the sexually oriented business where the applicant proposes to work as a non-performer in a managerial capacity.

C. The information provided above in subsection B of this section which is personal, private, confidential or the disclosure of which could expose the applicant to the risk of harm will not be disclosed under the California Public Records Act. Such information includes, but is not limited to, the applicant's mailing address, date of birth, age, driver's license number and social security number. The City Council in adopting the application system set forth herein has determined in accordance with Government Code § 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this Chapter by ensuring that the applicant's privacy, confidentiality and/or security interests are protected. The City Clerk shall cause the above-mentioned information to be redacted from any copy of a completed application form made available to any member of the public.

D. The Chief of Police or his/her designee must be available during normal working hours Monday through Friday to accept sexually oriented business non-performer applications. The Chief of Police or his/her designee shall determine if an application is complete within five (5) business days. If the Chief of Police determines that the application is incomplete, the Chief of Police shall immediately inform the applicant of such fact and the reasons therefore, including any additional information necessary to render the application complete. Upon receipt of a completed sexually oriented business non-performer application in which the applicant denies any conviction of a misdemeanor or felony constituting a specified criminal activity, the Chief of Police or his/her designee shall permit temporary employment of such applicant in a sexually oriented business that possesses a valid sexually oriented business regulatory license.

9.13.210 Investigation and action on sexually oriented business non-performer license application.

A. Upon submission of a completed sexually oriented business non-performer license application by an individual who wishes to work in a managerial position in a sexually oriented business, the Chief of Police or his/her designee shall immediately stamp the application "Received" and in conjunction with City staff, including members of the police department, shall promptly investigate the information contained in the application to determine whether the provisions of Section 9.13.200 are satisfied.

B. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application. The Chief of Police's determination of any violation of Section 9.13.200 or the existence of any of the grounds set forth in section F below shall be made within ten (10) business days from the date the application is filed with the Chief of Police. In the event the Chief of Police is unable to complete the investigation within ten (10) business days, he/she shall promptly notify the applicant. In no case shall the investigation exceed thirty (30) days.

C. The Chief of Police shall render a written decision to grant or deny the non-performer license within the foregoing ten (10) day time period set forth in section B above. Said decision shall be mailed first class postage prepaid or hand delivered to the applicant, within the foregoing ten (10) day period, or thirty (30) day period if extended pursuant to section B above, at the address provided by the applicant in the application. Notice of such decision shall also be mailed first class postage prepaid or hand delivered to the owner or management of the sexually oriented business(es) identified on the applicant's application.

D. The Chief of Police shall grant the application for a non-performer license unless one or more of the grounds set forth in subsection E of this section is satisfied.

E. The Chief of Police shall deny the application of a non-performer for a license to work in a managerial capacity at a sexually oriented business, or suspend or revoke an existing license, based on any of the following grounds:

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

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

3. The sexually oriented business identified by the applicant is not authorized to operate as a business under the laws of the state or city and/or does not have a valid sexually oriented business regulatory license.

4. The applicant has pled guilty, or pled nolo contendere or been convicted of a specified criminal activity.

5. Failure to comply with the requirements of this Chapter.

F. The Chief of Police shall notify the applicant as follows:

1. The Chief of Police shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.

2. If the application for a non-performer license is denied, the Chief of Police shall attach to the application a statement of the reasons for the denial. Such notice shall also provide that the applicant may appeal the denial to the City Manager. The City Manager or a designated hearing officer shall conduct a hearing as described in section 9.13.220.

G. Failure of the Chief of Police or his/her designee to render a decision on the application within the time frames established by this section shall be deemed to constitute an approval of the non-performer license.

H. Each license holder must annually renew his/her license with the Chief of Police or his/her designee by a written application for a license renewal. If said application conforms to the previously approved application and there has been no change with respect to the applicant having been convicted of any specified criminal activity, the Chief of Police or his/her designee shall renew the applicant's non-performer license for one (1) year. The renewal application shall be made at least thirty (30) days before the expiration date of the license. Applications for renewal shall be acted upon as provided herein for action upon an initial application for a non-performer license. The Chief of Police's denial of a renewal application is subject to the hearing provisions of section 9.13.220.

9.13.220 Revocation/Suspension/Denial of sexually oriented business non-performer license.

A. On determining that grounds exist to deny an original or renewal application for a non-performer license, or suspend or revoke an existing license, the Chief of Police or his/her designee shall furnish written notice of the proposed action to the applicant. Such notice shall set forth the time and place of a hearing before the City Manager or a designated hearing officer and the ground or grounds upon which the hearing is based, the pertinent Chula Vista Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant, or shall be delivered to the applicant personally, at least ten (10) days prior to the hearing date.

B. The decision of the Chief of Police to deny, suspend or revoke a non-performer license shall be appealable to the City Manager by filing a written request for a hearing with the City Clerk within fifteen (15) days following the day of mailing of the Chief of Police's decision and paying the fee for appeals provided under this code. All such appeals shall be filed with the City Clerk and shall be public records. The City Manager shall issue a notice which shall set forth the time and place of a hearing before the City Manager or a designated hearing officer which is within thirty (30) days from the date the appeal was filed and the ground or grounds upon which the hearing is based, the pertinent Chula Vista Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant or shall be delivered to the applicant personally, at least ten (10) days prior to the hearing date.

C. The applicant shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. The City Manager or designated hearing officer shall not be bound by the formal rules of evidence. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness at the request of the applicant. Extensions of time or continuances sought by an applicant/appellant shall not be considered delay on the part of the city or constitute failure by the City to provide for prompt decisions on denial of a non-performer license.

D. After holding the hearing in accordance with the provisions of this section, if the City Manager or designated hearing officer finds and determines that there are grounds to deny or revoke a non-performer license, the City Manager or designated hearing officer shall deny or revoke the license. After holding the hearing in accordance with the provisions of this section on renewal of a non-performer license, the City Manager or designated hearing officer shall decide to sustain the decision, modify the decision or order the decision stricken and issue such order as the City Manager or designated hearing officer finds is supported by the entire record. The City Manager or designated hearing officer shall render a written decision that shall be hand delivered or overnight mailed to the applicant and any sexually oriented business that the applicant has identified on his/her application within four (4) working days of the hearing. The City Manager or designated hearing officer's failure to render such a decision within this time frame shall constitute approved renewal of the applicant's non-performer license.

E. If an application is denied pursuant to this section, the applicant may reapply for managerial work with a sexually oriented business twelve (12) months after the date of such denial.

F. The decision of the City Manager or designated hearing officer shall be final.

9.13.230 Violations.

A. Any license holder violating or causing the violation of any of these provisions regulating sexually oriented business non-performer licenses shall be subject to license revocation/suspension pursuant to section 9.13.220 above, a fine of not more than one thousand dollars (\$1,000.00) pursuant to Government Code §§ 36900 and 36901, and any and all other civil remedies. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

B. In addition to the remedies set forth in section 9.13.220, any violation of any of these provisions regulating sexually oriented business non-performer licenses is hereby declared to constitute a public nuisance and may be abated or enjoined.

C. The restrictions imposed pursuant to this section are part of a regulatory licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the Chula Vista Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

9.13.240 Severability.

This Chapter and each section and provision of said Chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Chapter.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

The City Council has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that this proposed activity is not a "Project" as defined under section 15378 of the State CEQA Guidelines because it will not result in a physical change to the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the action proposed is not subject to CEQA.

SECTION 5. REPEAL OF CHAPTER 9.22.

Chapter 9.22 of the Chula Vista Municipal Code, entitled "Regulation of Sexually Explicit Material" is hereby repealed in its entirety.

SECTION 6. SEVERABILITY.

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

SECTION 7. EFFECTIVE DATE.


This Ordinance shall take effect and be in force on the thirtieth day after its final passage.


SECTION 8. PUBLICATION.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by


Glen R. Googins
City Attorney

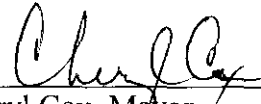

Glen R. Googins
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 20th day of November 2012, by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan, Castaneda, Ramirez and Cox

NA YS: Councilmembers: None

ABSENT: Councilmembers: None


Cheryl Cox, Mayor

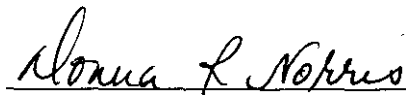
ATTEST:


Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3241 had its first reading at a Special meeting held on the 1st day of November 2012 and its second reading and adoption at a regular meeting of said City Council held on the 20th day of November 2012; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

December 5, 2012
Dated


Donna R. Norris, CMC, City Clerk