

ORDINANCE NO. 3778-C.S.

AN ORDINANCE REPEALING AND REPLACING MODESTO MUNICIPAL CODE TITLE 5, CHAPTER 9 PROVIDING DEFINITIONS, PERMITTING REQUIREMENTS, AND OPERATING STANDARDS FOR ADULT-ORIENTED BUSINESSES ALONG WITH ADDING PERMITTING PROVISIONS FOR ADULT PERFORMERS AND NON-PERFORMERS AT ADULT-ORIENTED BUSINESSES; AND AMENDING TITLE 10, CHAPTER 3, ARTICLE 3 REGARDING DEFINITIONS FOR ADULT-ORIENTED BUSINESSES

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MODESTO DOES ORDAIN as follows:

SECTION 1. FINDINGS.

A. The City Council finds that it is necessary and appropriate to amend Chapter 9, in order to amend, add, refine and update the provisions providing: revised definitions; operational standards for adult-oriented businesses; and licensing standards for adult performers and non-performers at adult oriented facilities operating within the City of Modesto (“the City” or “Modesto”). The public health, safety and welfare of Modesto and its residents require the enactment of this Ordinance and such operating standards for adult-oriented businesses in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult-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; (3) protect the City’s retail and commercial trade; (4) minimize the potential for nuisances related to the operation of adult-oriented businesses; and (5) protect the peace, welfare and privacy of persons who own, operate and/or patronize adult-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 developments within the regulation of adult-oriented uses and the evolving case law and in order to preserve the City from the potential adverse secondary effects of adult-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-oriented businesses based on the referenced studies and the findings set forth in Paragraphs A-Z. Specifically, the revisions and amendments to the City’s Municipal Code included in this Ordinance, are essential and necessary to ensure the orderly implementation of adult oriented 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 adult-oriented businesses, and thereby ensure the immediate preservation of the public peace, health, safety and general welfare in the City of Modesto.

C. 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 Adult-Oriented Businesses in other cities: Garden Grove, California (1991); Tucson, Arizona

(1990); Seattle, Washington (1989); Report of the Attorney General's Working Group on the Regulation of Adult-Oriented Businesses, Attorney General, State of Minnesota (1989); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1997); Beaumont, Texas (1982); Regulating Sex Business by William Toner, Report No. 327 Planning Advisory Service of American Society of Planning Officials, Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); Los Angeles, California (1977); New York, New York (1994); Newport News, Virginia (1996); Times Square, New York City (1994); A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Adult-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-Oriented Businesses' Hours of Operation, by Scott Bergthold (2000); Summaries of Key Reports Concerning the Negative Secondary Effects of Adult-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 adult-oriented businesses, and more specifically finds that these studies provide convincing evidence that:

There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult-oriented businesses including, but not limited to, an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish by convincing evidence that adult-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 adult-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.

D. In developing this ordinance, the City Council is mindful of legal principles relating to regulation of adult-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 adult-oriented businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of adult-oriented businesses including, but not limited to: *City of Littleton, Colorado v. Z.J. Gifts D-4*, 541 U.S. 774, 124 S.Ct. 2219, 159 L.Ed.2d 84 (2004); *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap's A.M. ("Kandyland")*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); and *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); decisions of the United States Court of Appeals for the Ninth Circuit, 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; *Dream*

Palace v. County of Maricopa, 384 F.3d 990 (9th Cir. 2004); *World Wide Video v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Baby Tam & Co., Inc. v. City of Las Vegas* (“*Baby Tam I*”), 154 F.3d 1097 (9th Cir. 1998); *Baby Tam & Co., Inc. v. City of Las Vegas* (“*Baby Tam II*”), 199 F.3d 1111 (9th Cir. 2000); *Baby Tam & Co., Inc. v. City of Las Vegas* (“*Baby Tam III*”), 247 F.3d 1003 (9th Cir. 2001); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000); and *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000); several California cases, including but not limited to: *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board of California* (“*Vicary*”), 99 Cal.App.4th 880 (2002); and *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986); and other federal cases, including but not limited to: *Doctor John’s, Inc. v. City of Roy*, 465 F.3d 1150 (10th Cir. 2006); *G.M. Enterprises v. Town of St. Joseph*, 350 F.3d 631 (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); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *TK’s Video, Inc. v. Denton County, Tex.*, 24 F.3d 705 (5th Cir. 1994); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jackson*, 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).

E. Each of the noted negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. Further, the City’s interest in regulating adult-oriented businesses extends to preventing future secondary effects of either current or future adult-oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this Ordinance are reasonably believed to be relevant to said secondary effects.

F. The City Council also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of Modesto, and thus certain requirements with respect to the ownership, operation and licensing of adult-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 oriented 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 adult oriented establishment can cause the same secondary

effects as other activities documented in studies and case law regarding adult oriented establishments, even if the performer is clothed and the establishment does not serve alcohol.

G. Relying on the following, the City finds that adult-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 Modesto, as well as that of other California communities, including the cities of Chula Vista, La Habra, Arcadia and San Bernardino, 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:

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

Evidence has demonstrated that performers employed by adult-oriented businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows.

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

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.

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 adult-oriented businesses in order to protect the health, safety, and well-being of its citizens. The City finds this is relevant to Modesto and the need to regulate the secondary effects of adult-oriented businesses within the community.

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.

H. The City Council is cognizant of the specific dangers from the sexually transmitted disease AIDS, which despite advances in treatment, remains irreversible and fatal. The City Council takes legislative notice of the reports prepared by the California Department of Public Health, the California HIV Surveillance Report – 2021, released May 3, 2023 (“HIV Surveillance Report,”) The HIV Surveillance Report indicates that in Stanislaus County in 2021, there were 254 cases of newly diagnosed HIV cases reported; a total of 4,918 cases of persons living with the HIV infection; and 99 deaths reported. The City also takes legislative notice of the Stanislaus County Community Health Assessment report issued in 2020, which listed the total number of HIV cases reported in the County in 2016 as 707. It was noted that the HIV

prevalence rates for Stanislaus County and California have slowly been rising from 2012 to 2016. The City further takes legislative notice of the San Joaquin County Public Health Services, San Joaquin County Annual STDs and HIV/AIDS Report - 2015 (“SJC Health Status Report”), the Sacramento County HIV Annual Surveillance Report 2015 (“Sacramento HIV Surveillance Report”), Centers for Disease Control HIV Surveillance Report 2021, and the Fresno County Department of Public Health Report, A Summary of HIV/AIDS in Fresno County 2020 (“Fresno County HIVS/AIDS Summary”). The SJC Health Status Report states that the reported HIV cases increased 25% from 2014 to 2015 and that males have a higher burden of the disease. The Sacramento County HIV Surveillance Report indicates that from 2006 to 2015, the total number of newly diagnosed HIV cases increased by 69.7% from 89 cases in 2006 to 151 cases in 2015. From 2006 to 2015, 479 cases were deceased. The Fresno County HIVS/AIDS Summary reports that in 2014, there were 701 people living with HIV, and 1,076 people living with AIDS.

I. The City is also concerned with preventing the spread of other sexually transmitted diseases such as syphilis, gonorrhea, chlamydia and hepatitis B. The City takes legislative notice of the California Department of Public Health, STDs in California by Disease, County, Year, and Sex, indicates that in 2021, Stanislaus County reported 2,413 cases of chlamydia, 954 cases of gonorrhea, and 378 cases of Primary and Secondary Syphilis and Early Latent Syphilis. Merced County reported 1,101 cases of chlamydia, 490 cases of gonorrhea, and 96 cases of Primary and Secondary Syphilis and Early Latent Syphilis; San Joaquin County reported 4,235 cases of chlamydia, 1,749 cases of gonorrhea, 360 cases of Primary and Secondary Syphilis and Early Latent Syphilis; Fresno reported 6,451 cases of chlamydia, 2,705 cases of gonorrhea, 447 cases of Primary and Secondary Syphilis and Early Latent Syphilis; and Sacramento reported 7,659 cases of chlamydia, 3,523 cases of gonorrhea, 723 cases of Primary and Secondary Syphilis and Early Latent Syphilis. The City also takes legislative notice of the California Department of Public Health, Chronic Hepatitis B Report 2016, which indicates that in Stanislaus County there were a total of 155 reported cases; in Merced County there were 118 reported cases; in San Joaquin County there were 379 reported cases; in Fresno County there were 465 reported cases; and, in Sacramento County there were 1,653 reported cases. 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 the Stanislaus, San Joaquin, Merced, Fresno, and Sacramento Counties as to these HIV/AIDS, STD, and/or blood borne diseases are relevant to the experiences of Modesto.

J. In considering appropriate operational regulations for adult-oriented businesses, the City Council finds that:

Enclosed or concealed booths and dimly lit areas within adult-oriented businesses greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. 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 adult-oriented businesses, and further facilitates the inspection of the interior of the premises thereof by law enforcement personnel.

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

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 adult-oriented business.

K. 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 online at: <https://www.ojp.gov/ncjrs/virtual-library/abstracts/attorney-generals-commission-pornography-final-report>.

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.

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 adult entertainment establishments. These holes were used by male patrons to facilitate sex acts with the occupant of the neighboring booth. The City Council reasonably believes that the Tucson experience, along with the Attorney General's Report, is relevant to the problems associated with adult facilities in Modesto.

The City Council finds that requiring that adult booths 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 an adult use 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 adult 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."

L. In recognition of the negative secondary effects generated by live adult 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 adult-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, 1997 FED App. 0066P (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 adult 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). The lewd conduct of such performers was also documented at the totally nude facility called the Flesh Club in the City of San Bernardino where the evidence revealed lewd conduct including intercourse between performers and customers, quotations of price lists for different sex acts, regular contact between nude breasts of performers and faces of customers, and allowing patrons to peer into the females genitalia. This proposed Ordinance precludes this type of extreme "off-stage" activity, along with its companion noted secondary effects of prostitution and/or illegal drug transactions. Therefore, Modesto 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.

M. The City Council believes that prohibiting physical contact between performers and patrons at adult-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.

N. In recognition of the negative secondary effects generated by live adult 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 adult-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 adult-oriented business permit, but individuals who work in adult-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 Mandan*, 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 to be narrowly tailored and to impose 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), vacated *in part on other grounds*, 24 F.3d 705 (5th Cir. 1994). When, as here, the civil disability provision of an adult-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 377, 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. Modesto adopts the reasoning of courts finding that "Certain employees of unregulated adult-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 Modesto community. Further, the "fact that an applicant for an adult 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 adult-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*, 465 F.3d at 1171 n. 30.

O. The City Council also finds the establishment of an adult-oriented business regulatory licensing process and operational standards for adult-oriented businesses are legitimate and reasonable means of ensuring that:

Operators of and performers at adult-oriented businesses comply with the City's regulations;

The recognized adverse secondary impacts of a proposed adult-oriented business are mitigated;

Adult-oriented business operators have specific guidelines with respect to the manner in which they can operate an adult-oriented business; and

The applications for adult-oriented business regulatory permits are handled fairly and expeditiously.

P. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult-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 California 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).

Q. While the City Council is obligated to protect the rights conferred by the United States Constitution to adult-oriented businesses, it does so in a manner that ensures the continued and orderly 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 adult-oriented businesses.

R. Licensing permits and operating standards are a legitimate and reasonable means of ensuring that adult-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 Modesto 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 operational requirements contained in this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult-oriented businesses in Modesto.

S. 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 adult-oriented businesses are free to operate seven (7) days a week for seventeen (17) hours per day. The City Council takes note of the proliferation of adult 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.sugarinstant.com, formerly sugarDVD.com, deliver adult videos and DVDs directly to customers' homes via the mail and subscription-based streaming services. The City Council recognizes the following review of one of these web-based services: "Sugarinstant has made it so easy to rent and view adult movies, you may never leave your house again ... Sugarinstant is discreet with quick turnaround times and a massive selection ... Sugarinstant 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, 117 S.Ct. 2329, 138 L.Ed.2d 874 (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 (1996) [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions].) The emergence of 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. An adult-oriented business no longer has to be “actually” physically located in a city to be available in the community.

T. The City Council recognizes that adult devices (*i.e.* adult oriented novelties and/or adult related products) such as dildos, fur-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).)

U. The City Council has also determined that a closing hours requirement promotes the reduction of deleterious secondary effects from adult 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), affirmed in part, reversed in part by *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *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 adult-oriented businesses; and (b) the analysis presented by Scott Bergthold in his report, *Closin’ Time: Effective Regulation of Adult-Oriented 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 adult-oriented businesses have been found to accompany and aggravate crime and to deplete police time and resources in the late night hours.

V. It is not the intent of the City Council of Modesto 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 Modesto.

W. 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 Department of Alcoholic Beverage Control (“ABC”).

X. Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

Y. 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 adult 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.

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 adult use businesses.

SECTION 2. ADULT-ORIENTED BUSINESSES, DEFINITIONS

Title 5, Chapter 9 of the Modesto Municipal Code is renamed, “Adult-Oriented Businesses”. Article 1 of Title 5, Chapter 9 is repealed and replaced as set forth below.

TITLE 5 **CHAPTER 9**

Article 1. General Provisions

- 5-9.101 Purpose.
- 5-9.102 Definitions.
- 5-9.103 Permits required.

5-9.101 Purpose. It is the purpose and intent of this Chapter to regulate the operations of adult-oriented businesses, which tend to have judicially recognized adverse secondary effects on the community, including, but not limited to, increases in crime in the vicinity of adult-oriented businesses; increases in vacancies in residential and commercial areas in the vicinity of adult-oriented businesses; interference with residential property owners’ enjoyment of their properties when such properties are located in the vicinity of adult-oriented businesses as a result of increases in crime, litter, noise, and vandalism; and the deterioration of neighborhoods. Special regulation of these businesses is necessary to prevent these adverse secondary effects and the blighting or degradation of the neighborhoods in the vicinity of adult-oriented businesses while at the same time protecting the First Amendment rights of those individuals who desire to own, operate, or patronize adult-oriented businesses.

It is, therefore, the purpose of this Chapter to establish reasonable and uniform operational standards for adult-oriented businesses.

5-9.102 Definitions. In addition to any other definitions contained in the Municipal Code, the following words and phrases shall, for the purpose of this Chapter, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with any current provisions of the Municipal Code, these definitions shall prevail.

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.”

“Adult booth/individual viewing area” shall mean a partitioned or partially enclosed portion of an adult-oriented business used for any of the following purposes:

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

Where “adult arcade devices” are located.

“Adult-oriented business” is synonymous with “adult entertainment business” and shall mean:

A business establishment or concern that as a regular and substantial course of conduct operates as an adult retail store, adult motion picture theater, adult arcade, adult cabaret, adult motel or hotel, adult modeling studio; or

A business establishment or concern which as a regular and substantial course of conduct offers, sells or distributes “adult-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.

“Adult cabaret” shall mean a business establishment (whether or not serving alcoholic beverages) that features “Adult live entertainment.”

“Adult cabaret dancer” shall mean any person who is an employee or independent contractor of an “Adult cabaret” or “Adult business” and who, with or without any compensation or other form of consideration, performs as a sexually oriented dancer, exotic dancer, stripper,

go-go dancer or similar dancer 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.

"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."

"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.

"Adult modeling studio" shall mean 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 modeling studio" does not include schools maintained pursuant to standards set by the Board of Education of the State of California.

"Adult motion picture theater" shall mean a business establishment, with or without a stage or proscenium, where, on a regular and substantial basis and for any form of consideration, material is presented through films, motion pictures, video cassettes, slides, laser disks, digital video disks, holograms, virtual reality devices, or similar electronically-generated reproductions that is characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult-oriented material" shall mean accessories, paraphernalia, books, magazines, laser disks, compact discs, digital video disks, 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."

"Adult retail store" shall mean a business establishment having as a regular and substantial portion of its stock in trade, "Adult-Oriented material."

“Establishment of an adult-oriented business” shall mean any of the following:

The opening or commencement of any “adult-oriented business” (as defined above) as a new business;

The conversion of an existing business, whether or not an “adult-oriented business,” to any “adult-oriented business;”

The addition of any “adult-oriented business” to any other existing “adult-oriented business;”

The relocation of any “adult-oriented business;” or

Physical changes that expand the square footage of an existing “adult-oriented business” by more than ten percent (10%).

“Non-performer” shall mean a person who is an employee or independent contractor of an adult-oriented business who works in that adult-oriented business during regular business hours. This shall not include after-hours workers providing janitorial, trash or similar after hours services.

“Owner/permit holder” shall mean any of the following: (1) the sole proprietor of an adult-oriented business; (2) any general partner of a partnership that owns and operates an adult-oriented business; (3) the owner of a controlling interest in a corporation or L.L.C. that owns and operates an adult-oriented business; or (4) the person designated by the officers of a corporation or the members of an L.L.C. to be the permit holder for an adult-oriented business owned and operated by the corporation.

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

“Religious facility” shall mean a structure or facility that is used primarily for religious worship and related religious activities.

Q. “School” shall mean any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and/or which is maintained pursuant to standards set by the Board of Education of the State of California. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education under the jurisdiction of the California Department of Education. For the purposes of this Chapter, “school” does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

R. “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.”

S. “Specified anatomical areas” shall mean and include any of the following:

Less than completely and opaquely covered, and/or simulated to be reasonably anatomically correct, even if completely and opaquely covered human:

genitals, pubic region;

buttocks, anus; or

female breasts below a point immediately above the top of the areola; or

Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

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

Human genitals in a state of sexual stimulation or arousal; and/or

Acts of human masturbation, sexual stimulation or arousal; and/or

Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or

Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; and/or

Human excretion, urination, menstruation, vaginal or anal irrigation; and/or

Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

5-9.103. Permits required.

All adult-oriented businesses are subject to the adult-oriented business regulatory permit requirements, the adult-oriented business performer permit requirements, the adult-oriented business non-performer permit and/or other permit requirements of this Chapter as well as all other applicable ordinances of the City and the laws of the State of California.

It shall be unlawful for any person to establish, operate, engage in, conduct, or carry on any adult-oriented business within Modesto unless the person first obtains, and continues to maintain in full force and effect all required permits, including but not limited to an adult-oriented business regulatory permit.

Any occurrence of the “establishment of an adult-oriented business,” as defined in this Chapter, shall require a new application for an adult-oriented business regulatory permit and any other applicable permits under this Chapter.

All permit requirements under this Chapter shall be subject to the development and operational standards of this Chapter and the underlying zone where the facility is located.

SECTION 3. ADULT ORIENTED BUSINESS OPERATING STANDARDS AND ADULT-ORIENTED BUSINESS REGULATORY PERMIT

The prior provisions found in Title 5, Chapter 9, Article 2 are repealed and replaced as set forth below.

TITLE 5
CHAPTER 9

Article 2: Adult-Oriented Business Operating Standards and Adult-Oriented Business Regulatory Permit

Sections

- | | |
|---------|---|
| 5-9.201 | Operating standards. |
| 5-9.202 | Adult-oriented business regulatory permit required. |
| 5-9.203 | Applications. |
| 5-9.204 | Investigation and action on application. |
| 5-9.205 | Basis for permit denial. |
| 5-9.206 | Transfer of adult-oriented business regulatory permit. |
| 5-9.207 | Suspension or revocation of permit. |
| 5-9.208 | Appeal procedures. |
| 5-9.209 | Violations. |
| 5-9.210 | Applicability of chapter to existing adult-oriented businesses. |
| 5-9.211 | Regulations non-exclusive. |

5-9.201 Operating standards.

Hours of operation. It shall be unlawful for any owner, operator, manager, employee or independent contractor of an adult-oriented business to allow such adult-oriented business to remain open for business, or to permit any employee, independent contractor or performer 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 12:00 a.m. (i.e. midnight) and 8:00 a.m. of any day excepting therefrom an “adult-oriented hotel/motel” and excepting therefrom an adult-oriented business that has been issued a license from the California Department of Alcoholic Beverage Control (“ABC”) in which case the hours of operation on the ABC license shall govern.

Exterior lighting requirements. All exterior areas, including parking lots, of the adult-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.

Interior lighting requirements. All interior areas of the adult-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 therefrom an “adult hotel/motel.”

Regulation of adult booth/individual viewing area.

No adult booth/individual viewing area shall be occupied by more than one individual at a time.

Each adult booth/individual viewing area within the adult-oriented business shall be visible from a continuous and accessible main aisle in a public portion of the establishment, and shall not be obscured by any door, curtain, wall, two-way mirror or other device which would prohibit a person from seeing the entire interior of the adult booth/individual viewing area from the main aisle. Any adult-oriented business may have more than one manager station in order to ensure compliance with this regulation. At all times, the manager station(s) shall be maintained to ensure a clear line of sight into the interior of the adult/booth individual viewing area. Further, no one shall maintain any adult booth/individual viewing area in any configuration unless the entire interior wherein the picture or entertainment that is viewed is visible from the manager station(s). The entire body of any patron in any adult booth/individual viewing area must be visible from the main aisle and the manager station(s) without the assistance of mirrors or any other device.

No doors are permitted on an adult individual viewing area. No partially or fully enclosed adult booth/individual viewing areas or partially or fully concealed adult booth/individual viewing areas shall be maintained.

No holes or other openings shall be permitted between adult booths/individual viewing areas. Any such hole or opening shall be repaired within twenty-four (24) hours using “pop” rivets to secure metal plates over the hole or opening to prevent patrons from removing the metal plates.

No beds, couches, or chairs with a sitting area greater than twenty-four inches (24”) wide shall be permitted in an adult booth/individual viewing area.

On-site manager. All adult-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.

Interior of premises. No exterior door or window on the premises of an adult-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.

Displays of adult 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.

Signs. All adult-oriented businesses shall comply with the following sign requirements, in addition to those of the Modesto Municipal Code. Should a conflict exist between the requirements of the Modesto Municipal Code and this subsection, the more restrictive shall prevail.

If an adult-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 adult-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 adult-oriented business serves alcohol, it shall comply with all notice and posting requirements of the Alcoholic Beverage Control Department.

Regulation of public restroom facilities. If the adult-oriented business provides restrooms for patron use, it shall provide separate restroom facilities for male and female patrons. The restrooms shall be free from adult material. Only one (1) person shall be allowed in each restroom at any time, unless otherwise required by law, in which case the adult-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.

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 adult-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.

Adult-oriented business offering adult live entertainment – additional operating requirements. The following additional requirements shall apply to adult-oriented businesses providing adult live entertainment:

No person shall perform adult live entertainment for patrons of an adult-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.

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.

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.

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, independent contractors, performers, or adult cabaret dancers of the establishment. This prohibition does not extend to incidental touching.

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 or independent contractors of the establishment.

All employees and independent contractors of the adult-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.

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 or independent contractors of the adult-oriented business.

The adult-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.

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

The adult-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 adult-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 adult-oriented business from compliance with the provisions of Title 24 of the California Code of Regulations pertaining to handicapped accessibility.

All adult-oriented businesses featuring live entertainment shall employ security guards licensed by the state in order to maintain the public peace and safety, based upon the following standards:

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

Provide a minimum of two (2) security personnel or bouncers for each 100 patrons to be on duty at all times during the hours that performances occur.

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.

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.

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

The adult-oriented business shall provide a security system that visually records and monitors all parking lot areas.

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

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

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;

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

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.

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

Employees/independent contractors. Employees and independent contractors of an adult-oriented business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employees, or other person in charge of any adult-oriented business to employ, contract with, or otherwise retain any services in connection with the adult-oriented business with or from any person who is not at least eighteen (18) years of age. If liquor is served at the adult-oriented business, employees and independent contractors of the adult-oriented business must be at least twenty-one (21) years of age. If liquor is served at the adult-oriented business, it shall be unlawful for any owner, operator, manager, partner, director,

officer, shareholder with a ten percent (10%) or greater interest, employee, or other person in charge of any adult-oriented business to employ, contract with, or otherwise retain any services in connection with the adult-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 adult-oriented business.

Patrons. Patrons of an adult-oriented business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employee, independent contractor, or other person in charge of any adult-oriented business to permit to enter or remain within the adult-oriented business any person who is not at least eighteen (18) years of age. If liquor is served at the adult-oriented business, patrons must be at least twenty-one (21) years of age. If liquor is served at the adult-oriented business, it shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten percent (10%) or greater interest, employee, independent contractor, or other person in charge of any adult-oriented business to permit to enter or remain within the adult-oriented business any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons entering the adult-oriented business.

X-rated movies. The selling, renting and/or displaying of X-rated movies, videotapes, digital video disks (DVDs), compact disks (CDs) and laser disks 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 disks 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 disks 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.

Inspections. Each owner, operator, manager, employee or independent contractor of an adult-oriented business or other person in charge of an adult-oriented business shall permit representatives of the police department, health department, fire department, community development department, business license division and other city departments, to inspect the adult-oriented business for the purpose of insuring compliance with the laws and operating standards applicable to adult-oriented businesses at any time it is occupied or open for business. Such inspections shall be conducted in a reasonable manner.

5-9.202 Adult-oriented business regulatory permit required. Every person who proposes to maintain, operate or conduct an adult-oriented business in the City of Modesto shall file an application with the Police Chief upon a form provided by the City of Modesto and shall pay a filing fee, as established by resolution adopted by the City Council from time to time, which shall not be refundable.

5-9.203 Applications.

All applications for an adult-oriented business regulatory permit shall include the following information:

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

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

If the 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 California, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered agent for service of process.

If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with a ten (10) percent or greater interest in the business entity shall sign the application.

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

A description of the type of adult-oriented business for which the permit is requested and the proposed address where the adult-oriented business will operate, plus the names and addresses of the owners and lessors of the adult entertainment business site.

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

The names of all employees, independent contractors, and other persons who will perform and are required to obtain an Adult-Oriented Business Performer Permit under Article 3 of this Chapter.

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

A certificate and straight-line drawing prepared within thirty (30) days prior to application depicting the building and the portion thereof to be occupied by the adult-oriented business, and: (1) the property line of any other adult-oriented business within five hundred (500) feet of the primary entrance of the adult-oriented business for which a permit is requested; and (2) the property lines of any religious facility, school, park, residential zone or use within three hundred (300) feet of the primary entrance of the adult-oriented business.

A diagram of the off-street parking areas and premises entries of the adult-oriented business showing the location of the lighting system required by Section 5-9.201(b).

If the Police Chief determines that the applicant has completed the application improperly, the Police Chief shall promptly notify the applicant of such fact and on request of the applicant, grant the applicant an extension of time of ten (10) days or less to complete the application properly. In addition, the applicant may request an extension, not to exceed ten (10) days, of the time for the Police Chief to act on the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining an adult-oriented business regulatory permit.

5-9.204 Investigation and action on application.

Upon receipt of a completed application and payment of the application and permit fees, the Police Chief shall immediately stamp the application as received and promptly investigate the information contained in the application to determine whether the applicant shall be issued an adult-oriented business regulatory permit.

Within thirty (30) days of receipt of the completed application, the Police Chief shall complete the investigation, grant or deny the application in accordance with the provisions of this section, and so notify the applicant as follows:

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

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

If the application is granted, the Police Chief shall attach to the application an adult entertainment business regulatory permit.

The application as granted or denied and the permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.

The Police Chief shall grant the application and issue the adult-oriented business regulatory permit upon findings that the proposed business meets the locational criteria of

Section 10-3.303; and that the applicant has met all of the operational standards set forth in 5-9.201, unless the application is denied for one or more of the reasons set forth in Section 5-9.205. The permittee shall post the permit conspicuously in the adult-oriented business premises.

If the Police Chief grants the application or if the Police Chief neither grants nor denies the application within thirty (30) days after it is stamped as received (except as provided in Section 5-9.203(i)), the applicant may begin operating the adult-oriented business for which the permit was sought, subject to strict compliance with the operating standard.

5-9.205 Basis for permit denial.

The Police Chief shall deny the application for any of the following reasons:

The building, structure, equipment, or location used by the business for which an adult-oriented business regulatory permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of the City and State of California, or with the zoning requirements of the Modesto Municipal Code or the operational standards of this Chapter.

The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for an adult entertainment business regulatory permit.

An applicant is under eighteen (18) years of age.

The required application fee has not been paid.

5-9.206 Transfer of adult-oriented business regulatory permit.

A permittee shall not operate an adult-oriented business under the authority of an adult-oriented business regulatory permit at any place other than the address of the adult-oriented business stated in the application for the permit.

A permittee shall not transfer ownership or control of an adult-oriented business or transfer an adult-oriented business regulatory permit to another person unless and until the transferee obtains an amendment to the permit from the Police Chief stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Police Chief in accordance with Sections 5-9.202 and 5-9.203, accompanies the application with a transfer fee in an amount set by resolution of the City Council, the Police Chief determines in accordance with Section 5-9.204 that the transferee would be entitled to the issuance of an original permit and where the City's zoning provisions continue to allow for an adult-oriented use at that business address.

No permit may be transferred when the Police Chief has notified the permittee that the permit has been or may be suspended or revoked.

Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

5-9.207 Suspension or revocation of adult-oriented business regulatory permit.

On determining that grounds for permit suspension or revocation exist, the Police Chief shall furnish written notice of the proposed suspension or revocation to the permit holder. 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 permit holder, or shall be delivered to the permit holder 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 Police Chief 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 Police Chief or his/her designee but, at a minimum, shall include the following:

All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel.

The Police Chief or his/her designee 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 permit holder. Extensions of time or continuances sought by a permit holder shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on permit suspensions or revocations.

The Police Chief's or his/her designee's decision may be appealed in accordance with Section 5-9.209.

A permit may be suspended or revoked based on the following causes arising from the acts or omissions of the permit holder, or an employee, independent contractor, partner, director, or manager of the permit holder:

The building, structure, equipment, or location used by the adult-oriented business fails to comply with all provisions of these regulations and this Section relating to adult-oriented businesses, including the adult-oriented business operational standards contained herein of Title 5, Chapter 9 and the zoning requirements of Section 10-3.303, Title 10, Chapter 3, Article 3, of the Modesto Municipal Code.

The permit holder has failed to obtain or maintain all required City licenses.

The permit holder has made any false, misleading, or fraudulent statement of material fact in the application for an adult-oriented business permit.

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

That an individual employed by, or performing in, the adult-oriented business (whether classified as an employee or independent contractor) has been convicted of two (2) or more sex-related offenses that occurred in or on the permitted premises within a twelve (12) month period and was employed by, or performing in, the adult-oriented business at the time the offenses were committed.

That the use for which the approval was granted has ceased to exist or has been suspended for six (6) months or more.

That the transferee/new owner of an adult-oriented business or adult-oriented business permit failed to comply with the requirements of this Chapter or is unable to meet the requirements to hold a permit.

The permit holder, partner, director, or manager has knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the adult-oriented business; or a permittee has been convicted of violating any of the following state laws on the premises of the adult-oriented business:

Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.

Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.

The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of sections 315, 316, 318 or subdivision (b) of the Section 647(b) of the California Penal Code.

Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors including, but not limited to sections 311 through 313.4.

Any act constituting a felony involving the sale, use, possession, or possession for sale of any controlled substance specified in sections 11054, 11055, 11056, 11057, or 11058 of the California Health & Safety Code.

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 permit holder or is as a result of the permit holder's negligent supervision of the employees or independent contractors of the adult-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.

After holding the hearing in accordance with the provisions of this section, if the Police Chief or his/her designee finds and determines that there are grounds for suspension or revocation, the Police Chief or his/her designee shall impose one of the following:

Suspension of the permit for a specified period not to exceed six (6) months; or

Revocation of the permit.

The Police Chief or his/her designee shall render a written decision that shall be hand delivered or overnight mailed to the permit holder within five (5) days of the public hearing.

In the event a permit is revoked pursuant to this section, another adult-oriented business permit to operate an adult-oriented business shall not be granted to the permittee or an entity related to the permittee within twelve (12) months after the date of such revocation.

5-9.208 Appeal procedures.

After approval, denial, suspension, or revocation of an adult-oriented business regulatory permit, any affected person may appeal the decision to the City Council in writing within ten (10) days after the written decision.

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.

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 Police Chief's decision.

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

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.

Failure of the City Council to render a decision to grant or deny an appeal of a permit denial within the time frames established by this Section shall be deemed to constitute an approval of the adult-oriented business regulatory permit.

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

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

Any applicant or permit holder whose permit 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.

5-9.209 Violations.

Any owner, operator, manager, employee or independent contractor of an adult-oriented business violating or permitting, counseling, or assisting the violation of any of these provisions regulating adult-oriented businesses shall be subject to any and all civil remedies, including revocation of its adult-oriented business regulatory permit. 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.

In addition to the remedies set forth in subsection (a) above, any adult-oriented business that is operating in violation of these provisions regulating adult-oriented businesses is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation.

Notwithstanding any other provision of the Modesto Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

5-9.210 Applicability of chapter to existing adult-oriented businesses.

Licensing requirements. Any adult-oriented business operating in the City prior to the effective date of this Chapter must apply for a permit under this Chapter.

Interior configuration requirements. Any pre-existing adult-oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of Section 5-9.201 shall have ninety (90) days from the effective date of this Chapter to conform its premises to said requirements

5-9.211 Regulations non-exclusive. The provisions of this Chapter regulating adult-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 Council of Modesto.

SECTION 4. ADULT-ORIENTED BUSINESS PERFORMER PERMIT

The prior provisions found in Title 5, Chapter 9, Article 2 regulating adult-oriented business performer permits are hereby revised and renumbered into Article 3 and former Article 3 is repealed and replaced as set forth below.

TITLE 5 **CHAPTER 9**

Article 3: Adult-Oriented Business Performer Permit

Sections

5-9.301	Purpose.
5-9.302	Adult-oriented business performer permit.
5-9.303	Investigation and action on adult-oriented business performer permit.
5-9.304	Revocation/suspension/denial of adult-oriented business performer permit.
5-9.305	Display of identification cards.
5-9.306	Adult-oriented business performer permit non-transferable.
5-9.307	Violations.
5-9.308	Regulations non-exclusive.

5-9.301 **Purpose.** It is the purpose and intent of this Chapter to provide for the licensing of adult-oriented business performers in order to promote the health, safety, and general welfare of the City. The goals of the performer licensing provisions are (1) to protect minors by requiring that all performers be over the age of eighteen (18) years; (2) to assure the correct identification of persons performing in adult-oriented businesses; (3) to enable the City to deploy law enforcement resources effectively; and (4) to detect and discourage the involvement of crime in adult-oriented businesses by precluding the licensing of performers with certain sex related convictions within a prior time period. It is neither the intent nor the effect of these regulations to invade the privacy of performers or to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adult-oriented businesses to communicative materials or to deny access by the distributors or exhibitors of adult-oriented businesses to their intended lawful market. Nothing in these regulations is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

The definitions contained in Chapter 5-9.102 of the Modesto Municipal Code, shall govern for purposes of these regulations.

5-9.302 **Adult-oriented business performer permit.**

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

The Police Chief or his/her designee shall issue, deny, and renew adult-oriented business performer permits in accordance with these regulations.

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

The permit applicant's legal name and any other names (including "stage names" and aliases) used by the applicant.

Principal place of residence.

Age, date, and place of birth.

Height, weight, hair and eye color, and tattoo descriptions and locations.

Each present and/or proposed business address(es) and telephone number(s) of the establishments at which the applicant intends to work.

Driver's license or identification number and state of issuance.

Social security number.

Satisfactory written proof that the permit applicant is a least eighteen (18) years of age.

The permit applicant's fingerprints on a Livescan form provided by the Modesto 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.

Whether the permit applicant has pled guilty or nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two 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 misdemeanor; or (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction to the date of conviction, whichever is the later date, if the conviction is a felony; or (c) less than five 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 twenty-four (24) month period.

If the application is made for the purpose of renewing a permit, the permit applicant shall attach a copy of the permit to be renewed.

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 permit, 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.

The completed application shall be accompanied by a non-refundable application fee and an annual permit 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.

The completeness of an application shall be determined within six (6) business hours by the Police Chief. The Police Chief or his/her designee must be available during normal working hours Monday through Friday to accept adult-oriented business performer applications. If the Police Chief determines that the application is incomplete, the Police Chief 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 adult-oriented business performer application and payment of the permit fee specified in Section e. above, the Police Chief shall immediately issue a temporary permit 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 5-9.303(b).

This temporary adult-oriented business performer permit shall authorize a performer to commence performance at an adult-oriented business establishment that possesses a valid adult-oriented business permit authorized to provide live entertainment.

The fact that a permit applicant possesses other types of state or City permits or licenses does not exempt the permit applicant from the requirement of obtaining an adult-oriented business performer permit.

5-9.303 Investigation and action on application for adult-oriented business performer permit.

Upon submission of a completed application, payment of permit fees, and issuance of a temporary adult-oriented business performer permit, the Police Chief 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 permit applicant should be issued an adult-oriented business performer permit.

Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application. The Police Chief's decision to issue or deny the adult-oriented business

performer permit shall be made within ten (10) business days from the date the temporary permit was issued and in no case shall the decision to issue or deny the permit application be made after the expiration of the temporary permit. In the event the Police Chief is unable to complete the investigation within ten (10) business days, he/she shall promptly notify the permit applicant and extend the temporary permit 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 permit application be made after the expiration of the temporary permit.

The Police Chief shall render a written decision to issue or deny the permit within the foregoing ten (10) day time period set forth above. 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 b. above, and sent to the address provided by the applicant in the application.

The Police Chief shall notify the applicant as follows:

The Police Chief shall write or stamp “Issued” or “Denied” on the application and date and sign such notation.

If the application is denied, the Police Chief shall attach to the application a statement of the reasons for the denial. Such notice shall also provide that the permit 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 5-9.304.

If the application is issued, the Police Chief shall attach to the application an adult-oriented business performer permit.

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

The Police Chief shall issue the permit unless the application is denied based on one of the grounds set forth in subsection f. of this section.

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

The permit applicant has made false, misleading, or fraudulent statements of material fact in the application for an adult-oriented business performer permit.

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

The adult-oriented business performer permit 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 adult-oriented business regulatory permit.

The permit applicant, has pled guilty, nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two 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 misdemeanor, or (b) less than five 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 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 twenty-four (24) month period.

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

Each adult-oriented business performer permit, other than the temporary permit described in Section 5-9.302(f), shall expire one (1) year from the date of issuance and may be renewed only by filing with the Police Chief a written request for renewal, accompanied by the annual permit fee and a copy of the permit to be renewed. If said application conforms to the previously approved application and there has been no change with respect to the permit holder being convicted of any crime classified by this or any other state as a sex related offense, the Police Chief or his/her designee shall renew the permit 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 Police Chief 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 permit. Applications for renewal shall be acted upon as provided herein for action upon applications for permit. The Police Chief's denial of a renewal application is subject to the hearing provisions of Section 5-9.304.

5-9.304 Revocation/suspension/denial of adult-oriented business performer permit.

On determining that grounds for denial of a permit, permit revocation or suspension exist, the Police Chief or his/her designee shall furnish written notice of the proposed action to the applicant/permit 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 Modesto 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/permit holder, or shall be delivered to the permit holder personally, at least ten (10) days prior to the hearing date.

On determining that grounds for denial of a permit exist, the Police Chief shall furnish written notice of the proposed action to the applicant/permit holder. The decision of the Police Chief 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 Police Chief'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 Modesto 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/permit holder, or shall be delivered to the permit holder personally, at least ten (10) days prior to the hearing date.

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 permittee. Extensions of time or continuances sought by a permittee/appellant shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on permit suspensions or revocations.

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

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

The permittee has pled guilty, nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two 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 misdemeanor, or (b) less than five 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 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 twenty-four (24) month period.

Failure to comply with the operating standards of Chapter 9, Article 2 or the requirements of this Chapter.

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 permit. After holding the hearing in accordance with the provisions of this Section on the denial of a permit, 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/permit holder 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 an approval or reinstatement of the permit.

In the event a permit is revoked pursuant to this section, another adult-oriented business performer permit shall not be granted to the permittee within twelve (12) months after the date of such revocation.

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

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.

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.

Any applicant or permit holder whose permit 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.

5-9.305 Display of identification cards. The Police Chief shall provide each adult-oriented business performer required to have a permit pursuant to this Chapter with an identification card containing the name, address, photograph, and permit number of such performer. Every performer shall have such card available for inspection at all times during which he or she is on the premises of the adult-oriented business at which he or she performs.

5-9.306 Adult-oriented business performer permit non-transferable. No adult-oriented business performer permit may be sold, transferred, or assigned by any permittee 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 adult-oriented business performer permit, and the permit thereafter shall be null and void.

5-9.307 Violations.

Any permittee violating or causing the violation of any of these provisions regulating adult-oriented business performer permits shall be subject to permit revocation/suspension pursuant to Section 5-9.304 above, a fine of not more than one thousand dollars (\$1,000.00) pursuant to California 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.

In addition to the remedies set forth in Section a., above, any violation of any of these provisions regulating adult-oriented business performer permits is hereby declared to constitute a public nuisance and may be abated or enjoined.

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

5-9.308 Regulations non-exclusive. The provisions of this Chapter regulating adult-oriented business performer permits are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other regulations pertaining to the licensing provisions as adopted by the City Council of Modesto.

SECTION 5. ADULT-ORIENTED BUSINESS NON-PERFORMER PERMIT

The prior provisions found in Title 5, Chapter 9, Article 4 (Miscellaneous Provisions) are hereby repealed and replaced with Article 4 (Adult-Oriented Business Non-Performer Permit) as set forth below.

TITLE 5 **CHAPTER 9**

Article 4: Adult-Oriented Business Non-Performer Permit

Sections:

- | | |
|---------|---|
| 5-9.401 | Purpose. |
| 5-9.402 | Adult-oriented business non-performer permit. |
| 5-9.403 | Investigation and action on adult-oriented business non-performer permit. |
| 5-9.404 | Denial of adult-oriented business non-performer permit. |
| 5-9.405 | Violations. |
| 5-9.406 | Regulations non-exclusive. |

5-9.401 Purpose. It is the purpose and intent of this Chapter to require certain background checks on non-performers who work in adult-oriented businesses during regular business hours to promote the health, safety, and general welfare of the City. The goals of these non-performer employee provisions are (1) to protect minors by requiring that all non-performers regularly employed be over the age of eighteen (18) years; (2) to assure the correct identification of persons working in adult-oriented businesses; (3) to enable the City to deploy law enforcement resources effectively; and (4) to detect and discourage the involvement of crime in adult-oriented businesses by precluding the employment of non-performers with certain sex related convictions within a prior time period. It is neither the intent nor the effect of these regulations to invade the privacy of adult-oriented business employees or to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adult-oriented businesses to communicative materials or to deny access by the distributors or exhibitors of adult-oriented businesses to their intended lawful market. Nothing in these regulations is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

The definitions contained in Chapter 5-9.102 of the Modesto Municipal Code, shall govern for purposes of these regulations.

5-9.402 Adult-oriented business non-performer permit.

No individual who works as a non-performer in an adult-oriented business shall be employed, hired, engaged, or otherwise retained in an adult-oriented business without first submitting to a background check as provided below.

Individuals who wish to work as non-performers in an adult-oriented business shall file a written, signed, and verified application or renewal application on a form provided by the Police Chief. Such application shall contain the following information:

The employee applicant's legal name and all used aliases.

Date of birth.

Driver's license or identification number and state of issuance or other state identification which confirms the name of the applicant.

The permit applicant's fingerprints on a Livescan form provided by the Modesto Police Department. Any fees for fingerprints shall be paid by the applicant. Fingerprints shall be taken within one (1) month of the date of application.

Whether the non-performer employee applicant has pled guilty or pled nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two (2) 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 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 twenty-four (24) month period. Any applicant who admits of a recent prior sex related offense as specified above shall be denied employment in an adult-oriented business during the applicable time period for disqualification called out herein.

The information provided above in subsection b. of this Section which is personal, private, confidential, or the disclosure of which could expose the non-performer employee 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.

The Police Chief or his/her designee must be available during normal working hours Monday through Friday to accept adult-oriented business non-performer employee applications. The Police Chief or his/her designee shall determine if an application is complete within five (5) business days. If the Police Chief determines that the application is incomplete, the Police Chief 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 adult-oriented business non-performer employee application in which the applicant denies any recent conviction of a sexual offense as specified in Section 5-9.402(b)(v) above, the Police Chief or his/her designee shall permit temporary employment of such applicant in an adult-oriented business that possesses a valid adult-oriented business permit.

5-9.403 Investigation and action on adult-oriented business non-performer permit.

Upon submission of a completed non-performer work application, by an individual who wishes to work in an adult-oriented business during regular business hours, the Police Chief 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 non-performer employee applicant may be permitted to work in an adult-oriented business pursuant to the disqualifying terms of Section 5-9.402 above.

Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application. The Police Chief's determination of any violation of Section 5-9.402 shall be made within ten (10) business days from the date the non-performer employment application is filed with the Police Chief. In the event the Police Chief is unable to complete the investigation within ten (10) business days, he/she shall promptly notify the non-performer employment applicant. In no case shall the investigation exceed thirty (30) days.

The Police Chief shall render a written decision to authorize or preclude a non-performer employee's employment in a validly permitted adult-oriented business during regular business hours 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, 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 any adult-oriented business a non-performer employee has applied to for employment within the time frame specified above for notification to the applicant.

The Police Chief shall notify the applicant as follows:

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

If the application for work in an adult-oriented business during regular business hours is denied, the Police Chief 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 5-9.404.

The Police Chief shall issue the application for non-performer work in an adult-oriented business unless the application is denied based on one of the grounds set forth in subsection f. of this section.

The Police Chief shall deny the application of a non-performer to work in an adult-oriented business based on any of the following grounds:

The non-performer work applicant has made a false, misleading, or fraudulent statement of material fact in the application for work in a validly permitted adult-oriented business during regular business hours.

The non-performer work applicant is under eighteen (18) years of age.

The non-performer seeks work in a business prohibited by laws of the state or city or in a business that does not have a valid adult-oriented business permit.

The non-performer work applicant has pled guilty, or pled nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two (2) 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 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 twenty-four (24) month period.

Failure of the Police Chief or his/her designee to render a decision on the application of a non-performer for work in an adult-oriented business within the time frames established by this Section shall be deemed to constitute an approval of the non-performer work application.

Each non-performer work applicant must annually renew his/her work application, with the Police Chief or his/her designee by a written request for work 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 crime classified by this or any other state as a sex related offense, the Police Chief or his/her designee shall renew the applicant's availability for work in an adult-oriented business during regular business hours 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 Police Chief 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 permit. Applications for renewal shall be acted upon as provided herein for action upon an initial application for non-performer work in an adult-oriented business during regular business hours.

The Police Chief's denial of a renewal application is subject to the hearing provisions of Section 5-9.404.

5-9.404 Denial of adult-oriented business non-performer permit.

On determining that grounds exist to deny work to a non-performer in an adult-oriented business during regular business hours, the Police Chief or his/her designee shall furnish written notice of the proposed action to the applicant. The decision of the Police Chief 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 Police Chief'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 Modesto 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 permit holder personally, at least ten (10) days prior to the hearing date.

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 permittee. 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 an employment application of a non-performer employee.

The application/request of a non-performer to work in an adult-oriented business may be revoked, based on any of the following causes arising from the acts or omissions of the applicant:

The applicant has made any false, misleading, or fraudulent statement of material fact in the application for work as a non-performer in an adult-oriented business during regular business hours.

The applicant has pled guilty, pled nolo contendere or been convicted of an offense classified by this or any other state as a sex related offense and (a) less than two (2) 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 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 twenty-four (24) month period.

Failure to comply with the operating standards of Chapter 9, Article 2 or the requirements of this Chapter.

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 a non-performer work in an adult-oriented business during regular business hours, the City Manager or designated hearing officer shall deny the applicant work in an adult-oriented business establishment. After holding the hearing in accordance with the provisions of this Section on renewal of a work application, 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 adult-oriented business where the applicant is working 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 work during regular business hours in a validly permitted adult-oriented business.

If the continuing work of a non-performer is denied pursuant to this section, the applicant may reapply for work with an adult-oriented business twelve (12) months after the date of such denial.

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

5-9.405 Violations. Any violation of any of these provisions regulating adult-oriented business non-performer work applications is hereby declared to constitute a public nuisance and may be abated or enjoined.

5-9.406 Regulations non-exclusive. The provisions of this Chapter regulating adult-oriented business non-performer employment applications are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other regulations pertaining to the adult-oriented business licensing provisions as adopted by the City Council of Modesto.

SECTION 6. ESCORT PERMIT

The prior provisions found in Title 5, Chapter 9, Article 2 regulating escorts and figure models are hereby revised and renumbered into Article 5 as set forth below.

TITLE 5 **CHAPTER 9**

Article 5: Escort Permit

Sections:

- | | |
|---------|--|
| 5-9.501 | Additional permits: escort. |
| 5-9.502 | Application for escort permit. |
| 5-9.503 | Issuance and denial of permit; appeal. |

5-9.504 Revocation or suspension of permit.
5-9.505 Term of permit.

5-9.501 Additional permits: escort.

No person shall act as an escort unless an escort permit is first obtained. For purposes of this Article “escort” shall mean a person who for pecuniary compensation, monetary or other consideration, hire or reward, (1) escorts or accompanies others to or about social affairs, entertainment, or places of amusement, or (2) keeps company with others about any place or public resort or within any private quarters.

The issuance of a business license pursuant to the Modesto Municipal Code shall not authorize acting as an escort until the necessary regulatory permit has been lawfully granted.

5-9.502 Application for escort permit.

An applicant for an escort permit shall make an application under penalty of perjury to the Police Chief or his authorized representative upon a form provided by the City of Modesto. A nonrefundable fee, as established by resolution adopted by the City Council from time to time, shall be paid to the City of Modesto to reimburse the City for the cost of the investigation. A copy of the receipt issued by the City of Modesto Finance Department shall accompany the application. The permit fee required under this section is in addition to any other license or permit fee required by the Modesto Municipal Code.

The application for permit does not authorize the applicant to act as an escort until such permit has been granted.

Every application submitted to the Police Chief shall include the following information:

The applicant’s full name, any other names used, date of birth, California driver’s license number or California identification number, social security number, present residence address, telephone number, gender, height, weight, color of hair, and color of eyes.

Previous two (2) residence addresses of the applicant and the inclusive dates at each address.

The applicant’s business, occupation, and employment history for five (5) years preceding the date of application and inclusive dates of same.

The permit history of the applicant; whether such person ever had any escort or adult performer permit or license issued to him or her by any other public entity in this state; the date of issuance of any such permit or license, whether any such permit or license has ever been revoked or suspended; and if any such license or permit has been revoked or suspended, the reason therefor.

All convictions for any crimes involving conduct which requires registration under any state law similar to and including California Penal Code § 290, or of conduct which is a violation of the provisions of any state laws similar to and including, California Penal Code §§ 243.4, 261, 261.5, 262, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 309, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 313.1, 314, 315, 316, 318, 647(a), 647(b), 647(d), or 647.6.

Any offense requiring registration under provisions of Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered.

Whether such person is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.

Written proof that the applicant is at least eighteen (18) years of age.

A complete set of fingerprints.

A current photograph.

Authorization for the City of Modesto, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application.

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 number, 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.

5-9.503 Issuance and denial of permit; appeal.

The Police Chief or his authorized representative shall have thirty (30) days from the date the application is accepted as complete in which to investigate the application and

background of the applicant. Upon completion of the investigation, the Police Chief or his designated representative shall approve or deny the permit. The Police Chief may refuse to issue the escort permit for any of the following reasons, which reasons will be set forth fully in writing and delivered to the applicant:

The applicant has been convicted of any of the offenses enumerated in paragraphs (c)(5) and (6) of Section 5-9.602, or convicted of an offense outside the State of California that would have constituted any of the described offenses if committed within the State of California. A permit may be issued to any person convicted of any of the crimes described if such conviction occurred more than five (5) years prior to the date of the application.

The applicant has been licensed or registered in any state as a prostitute.

Any false statements made in the initial application for the escort or “figure model” permit.

That the applicant has had an escort permit denied or revoked for cause by this City within the last five (5) years.

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

That the applicant has not paid the required fee to the City of Modesto Finance Department.

Any refusal to issue a permit pursuant to this section or the suspension, or revocation of a permit is appealable to the City Council in accordance with the provisions of Chapter 4 of Title 1 of the Modesto Municipal Code. After the denial of any such appeal, the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction pursuant to California Code of Civil Procedure Section 1094.5. The court shall promptly review the action taken by the City Council.

5-9.504 Revocation or suspension of permit.

After following the procedure in Section 5-9.304, the Police Chief may revoke or suspend the escort permit for conviction of any crimes specified in Section 5-9-.502 (c)(v) and (vi). The decision of the Police Chief shall be in writing and shall be emailed postage prepaid to the escort.

5-9.505 Term of permit.

Permits issued under the provisions of the section shall be valid for a period of one (1) year from the date of issuance and shall be renewable annually.

An application for renewal for an escort permit shall be accompanied by a nonrefundable filing fee, as established by resolution adopted by the City Council from time to time.

SECTION 7. ZONING, DEFINITIONS ADULT-ORIENTED BUSINESSES

Title 10 (Zoning Regulations), Chapter 3 (Land Use Regulations), Article 3 of the Modesto Municipal Code currently entitled “Adult Entertainment Businesses” is renamed as “Adult-Oriented Businesses”. The prior definitions found at Section 10-3.302 of Title 10, Chapter 3, Article 3 are repealed and replaced as set forth below.

TITLE 10 **CHAPTER 3**

Article 3: Adult-Oriented Businesses

10-3.302 – Definitions. In addition to any other definitions contained in the Municipal Code, the following words and phrases shall, for the purpose of this Article, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with any current provisions of the Municipal Code, these definitions shall prevail for purposes of this Article.

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 booth/individual viewing area” shall mean a partitioned or partially enclosed portion of an adult-oriented business used for any of the following purposes:

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

Where “adult arcade devices” are located.

C. “Adult-oriented business” is synonymous with “adult entertainment business” and shall mean:

A business establishment or concern that as a regular and substantial course of conduct operates as an adult retail store, adult motion picture theater, adult arcade, adult cabaret, adult motel or hotel, adult modeling studio; or

A business establishment or concern which as a regular and substantial course of conduct offers, sells or distributes “adult-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.

D. “Adult cabaret” shall mean 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 or independent contractor of an “Adult cabaret” or “Adult business” and who, with or without any compensation or other form of consideration, performs as a sexually oriented dancer, exotic dancer, stripper, go-go dancer or similar dancer 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. “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.”

“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.

“Adult modeling studio” shall mean 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 modeling studio” does not include schools maintained pursuant to standards set by the Board of Education of the State of California.

“Adult motion picture theater” shall mean a business establishment, with or without a stage or proscenium, where, on a regular and substantial basis and for any form of consideration, material is presented through films, motion pictures, video cassettes, slides, laser disks, digital video disks, holograms, virtual reality devices, or similar electronically-generated reproductions that is characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

“Adult-oriented material” shall mean accessories, paraphernalia, books, magazines, laser disks, compact discs, digital video disks, 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.”

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

“Church” as used in this Article shall mean a structure which is used primarily for religious worship and religious related activities and shall be synonymous with the definition of “religious facility”.

“Establishment of an adult-oriented business” shall mean any of the following:

The opening or commencement of any “adult-oriented business” (as defined above) as a new business;

The conversion of an existing business, whether or not an “adult-oriented business,” to any “adult-oriented business;”

The addition of any “adult-oriented business” to any other existing “adult-oriented business;”

The relocation of any “adult-oriented business;” or

Physical changes that expand the square footage of an existing “adult-oriented business” by more than ten percent (10%).

“Non-performer” shall mean a person who is an employee or independent contractor of an adult-oriented business who works in that adult-oriented business during regular business hours. This shall not include after-hours workers providing janitorial, trash or similar after hours services.

“Owner/permit holder” shall mean any of the following: (1) the sole proprietor of an adult-oriented business; (2) any general partner of a partnership that owns and operates an adult-oriented business; (3) the owner of a controlling interest in a corporation or L.L.C. that owns and operates an adult-oriented business; or (4) the person designated by the officers of a corporation or the members of an L.L.C. to be the permit holder for an adult-oriented business owned and operated by the corporation.

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

“Religious facility” shall mean a structure or facility that is used primarily for religious worship and related religious activities.

Q. “School” shall mean any institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and/or which is maintained pursuant to standards set by the Board of Education of the State of California. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education under the jurisdiction of the California Department of Education. For the purposes of this Chapter, “school” does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

“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.”

“Specified anatomical areas” shall mean and include any of the following:

Less than completely and opaquely covered, and/or simulated to be reasonably anatomically correct, even if completely and opaquely covered human:

genitals, pubic region;

buttocks, anus; or

female breasts below a point immediately above the top of the areola; or

Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

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

Human genitals in a state of sexual stimulation or arousal; and/or

Acts of human masturbation, sexual stimulation or arousal; and/or

Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or

Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; and/or

Human excretion, urination, menstruation, vaginal or anal irrigation; and/or

Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

SECTION 8. 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 9. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof is held for any reason to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, the remaining sections, subsections, paragraphs, sentences, clauses, and phrases shall not be affected thereby.

The City Council hereby declares that it would have adopted these sections and the Ordinance to which they are a part regardless of the fact that one or more sections, subsections, paragraphs, sentences, clauses, or phrases may be determined to be unconstitutional, invalid, or ineffective.

SECTION 10. EFFECTIVE DATE.

This Ordinance shall be effective thirty (30) days after its adoption, and the City Clerk shall certify the adoption of this Ordinance and cause the same to be published in the manner prescribed by law.

SECTION 11. PUBLICATION.

At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in the Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this Ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 23rd day of April 2024, by Council Member Ricci, who moved its introduction and passage to print, which motion being duly seconded by Council Member Williams, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Escutia-Braaton, Ricci, Williams, Wright, Mayor Zwahlen

NAYS: Councilmembers: None

Absent: Councilmembers: None

APPROVED: _____
SUE ZWAHLEN, Mayor

ATTEST:

BY: _____
DIANE NAYARES-PEREZ, City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: _____
JOSE M. SANCHEZ, City Attorney

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7th day of May 2024, Councilmember Wright moved its final adoption, which motion being duly seconded by Mayor Zwahlen, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Alvarez, Bavaro, Ricci, Williams, Wright, Mayor Zwahlen

NOES: Councilmembers: None

ABSENT: Councilmembers: Escutia-Braaton,

APPROVED: _____
SUE ZWAHLEN, MAYOR

ATTEST: _____
DIANE NAYARES-PEREZ, City Clerk

Effective Date: June 6, 2024