

Introduced by: _____

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF PASADENA AMENDING CHAPTER 5.45
(SEXUALLY ORIENTED BUSINESSES) OF THE PASADENA MUNICIPAL
CODE**

WHEREAS, in 2006, the City Council originally adopted Chapter 5.45 of the Pasadena Municipal Code, which regulates sexually oriented businesses; and

WHEREAS, the City Council wishes to update its regulations for such establishments; and

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, the City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the City Council desires to protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First

Amendment, *see, e.g., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) (“On its face, the Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); and

WHEREAS, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially “adult” nature, *see, e.g., Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store’s “argument that it is not an adult entertainment establishment” to be “frivolous at best”); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in adult retail store was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that “the nonadult video selections appeared old and several of its display cases were covered with cobwebs”); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); and

WHEREAS, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is a sexually oriented business, *see, e.g., East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials.”); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such.”); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase “holding out” to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J., concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

WHEREAS, the City intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve its substantial government interest in protecting the health, safety, and welfare of the community, including by preventing the negative secondary effects of sexually oriented businesses; and

WHEREAS, the City recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the City and the City Council accept as binding the applicability of general principles of criminal and

civil law and procedure and the rights and obligations under the United States and California Constitutions, California Code, and the California Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the California Constitution, but to enact legislation to further the content-neutral governmental interests of the City, to wit, the controlling of secondary effects of sexually oriented businesses; and

WHEREAS, at its regularly scheduled meeting on February 25, 2019, the City Council of the City of Pasadena reviewed the proposed amendments and found that the proposed amendments were exempt from review pursuant to the California Environmental Quality Act, State CEQA Guidelines Section 15061(b)(3).

NOW, THEREFORE, the City Council of the City of Pasadena adopts the following in support of this ordinance:

Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Tollis, Inc. v. County of San Diego*, 505 F.3d 935 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *World Wide Video of Washington, Inc. v.*

City of Spokane, 368 F.3d 1186 (9th Cir. 2004); *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Talk of the Town v. Department of Finance and Business Services*, 343 F.3d 1063 (9th Cir. 2003); *Center For Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way*, 46 Fed. Appx. 409 (9th Cir. 2002); *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Baby Tam & Co., Inc. v. City of Las Vegas*, 154 F.3d 1097 (9th Cir. 1998) (*Baby Tam I*); *Baby Tam & Co. v. Las Vegas*, 199 F.3d 1111 (9th Cir. 2000) (*Baby Tam II*); *Baby Tam & Co. v. Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) (*Baby Tam III*); *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000); *L.J. Concepts, Inc. v. City of Phoenix*, 215 F.3d 1333 (9th Cir. 2000); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *North v. City of Gilroy*, 78 F.3d 594 (9th Cir. 1996); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Topanga Press, Inc. v. City of Los Angeles*, 989 F.2d 1524 (9th Cir. 1993); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Lydo Ent. v. Las Vegas*, 745 F.2d 1211 (9th Cir. 1984); *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982); *3570 East Foothill Boulevard, Inc. v. City of Pasadena*, 912 F. Supp. 1257 (C.D. Cal. 1995); *3570 East Foothill Boulevard, Inc. v. City of Pasadena*, 912 F. Supp. 1268 (C.D. Cal. 1996); *3570 East Foothill Boulevard, Inc. v. City of Pasadena*, 980 F. Supp. 329 (C.D. Cal. 1997); *3570 East Foothill Boulevard, Inc. v. City of Pasadena*, 2006 WL 3020296 (Cal.App. 2 Dist., Oct. 25, 2006); *McClelland v. City of San Diego*, Cal.App.4th, Div. 1, No. D059392, 2012 WL 1205122 (Cal. Ct. App. April 11, 2012); *Madain v. City of Stanton*, 185 Cal.App.4th 1277, 111 Cal.

Rptr. 3d 447, Cal.App.4th, Div. 3 (Cal. Ct. App. 2010); *County of San Diego v. 1560 N. Magnolia Ave., LLC*, Cal.App.4th, Div. 1, No. D052382, 2009 WL 354469 (Cal. Ct. App. 2009); *City of Santa Fe Springs v. Foxz Corp.*, Cal.App. Dist. 2, Div. 1, No. B206517, 2009 WL 41633 (Cal. Ct. App. 2009); *Krontz v. City of San Diego*, 136 Cal.App.4th 1126, 39 Cal. Rptr. 3d 535, Cal.App. 4 Dist., Div. 1 (Cal. Ct. App. 2006); *Kozub v. City of Pomona*, Cal.App. Dist. 2, Div. 2, No. B174501, 2005 WL 1303130 (Cal. Ct. App. 2005); *People ex rel. Delgadillo v. Whitey, Inc.*, Cal.App. Dist. 2, Div. 2, 2005 WL 477967 (Cal. Ct. App. 2005); *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, 22 Cal.Rptr.3d 805, Cal.App. 2 Dist., (Cal. Ct. App. 2004); *LSO, Ltd. v. Stroh*, Cal.App. Dist. 2, Div. 3, 2003 WL 21028332 (Cal. Ct. App. 2003); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board and Renee Vicary, Real Party in Interest*, 99 Cal.App.4th 880, 121 Cal.Rptr.2d 729 (Cal. Ct. App. 2002); *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th, Div. 1 (Cal. Ct. App. 1998); *Sundance Saloon, Inc. v. City of San Diego*, 213 Cal.App. 3d 807 (Cal. Ct. App. 1989); *7978 Corporation v. Pitchess*, 41 Cal.App. 3d 42 (Cal. Ct. App. 1974); *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App. 3d 980 (Cal. Ct. App. 1985); *E.W.A.P., Inc. v. City of Los Angeles*, 65 Cal. Rptr. 2d 325 (Cal. Ct. App. 1997); *City of National City v. Wiener*, 3 Cal.4th 832, 838 P.2d 223 (Cal. 1992); and *Stardust, 3007 LLC v. City of Brookhaven*, 899 F.3d 1164 (11th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Flanigan's Enters., Inc. v. City of Sandy Springs*, 703 F. App'x 929 (11th Cir. 2017); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187

(Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *U.S. v. Baston*, 818 F.3d 651 (11th Cir. 2016); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); and Strip Club-Trafficking Documents, the City Council finds:

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

2. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.

3. Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. The City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in these findings are reasonably believed to be relevant to said secondary effects. The City hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

4. Based on the foregoing, this Ordinance is required for the immediate preservation of the public peace, health, and safety, and shall take effect upon publication as provided in Section 510 of the Pasadena City Charter.

NOW, THEREFORE, the People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding cost of publication will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this ordinance is as follows:

“SUMMARY

Ordinance No. _____ will amend Chapter 5.45 (Sexually Oriented Businesses) of the Pasadena Municipal Code to update the City’s regulations for sexually oriented businesses and their employees to prevent the negative secondary effects associated with such enterprises. The ordinance amends definitions and licensing procedures to update the regulations and conform with court decisions in recent years since the regulations were originally adopted.

Ordinance No. _____ is necessary for the immediate preservation of the public peace, health, and safety, and shall take effect upon publication.”

SECTION 2. Pasadena Municipal Code, Title 5, Chapter 5.45, Section 5.45.010 (Purpose) is amended to read as follows:

“5.45.010. Purpose.

It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material. Findings and rationale supporting this purpose are set forth in the uncodified provisions of the ordinances adopted to implement and to amend this chapter.”

SECTION 3. Pasadena Municipal Code, Title 5, Chapter 5.45, Section 5.45.020 (Definitions) is amended by amending subdivisions (B), (C), (D), and (G)

by adding a new subdivision (I), by re-alphabetizing subsequent subdivisions accordingly, by amending re-alphabetized subdivisions (K), (M), (T), and (U), by repealing former subdivision (Y), and by amending subdivision (AA) to read as follows:

"B. "Adult bookstore or adult video store" means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

1. At least 35% of the establishment's ~~Has a substantial portion of its displayed merchandise which consists of said items;~~ or
2. ~~Has a substantial portion of the wholesale value of its displayed merchandise which consists~~ The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
3. ~~Has a substantial portion of the retail value of its displayed merchandise which consists of said items~~ The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor space" maintained for the display, sale, or rental of said items); or
4. At least 35% of the establishment's ~~Derives a substantial portion of its revenues~~ derive from the sale or rental, for any form of consideration of said items; or
5. The establishment regularly offers for sale or rental at least five hundred (500) of said items ~~Maintains a substantial section of its net floor area for the sale or rental of said items;~~ or
6. ~~Regularly features said items, prohibits access by minors, by reason of age, to its premises, and regularly advertises, on signage visible from a public right-of-way, as providing items that the advertising describes using the term "adult," "xxx," "triple-x," "x-rated," "erotic," "sexual," or a term or terms with similar import;~~ or
7. Maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are

~~regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas."~~ a commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet wherein image-producing devices are regularly maintained to show images characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

- C. ~~"Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or other similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude. that~~ regularly offers live semi-nude conduct. No establishment shall avoid classification as an adult cabaret by offering nude conduct.
- D. ~~"Adult motion picture theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration. to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas" are regularly shown.~~

* * *

- G. ~~"Employ, employee, and employment" describe and pertain to any person who performs any service works or engages in activity for pay on the premises of a sexually oriented business, on a full-time, part-time, temporary, or contract basis, regardless of whether or not the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.~~

* * *

- I. "Floor space" means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.
- I.J. ~~"Hearing officer" means the person retained to serve as an independent tribunal to conduct hearings under this chapter.~~
- J.K. ~~"Influential interest" means: 1. ——— T the actual power to operate the sexually oriented business or control or influence the operation,~~

management or policies of the sexually oriented business or legal entity which operates the sexually oriented business. An individual is deemed to have an "influential interest" if he or she (1) is the on-site general manager of the sexually oriented business, (2) owns a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or; or2. — Holding (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

~~K.L.~~ "Permittee" means a person in whose name a permit to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business permit. In the case of an "employee," it means the person in whose name the sexually oriented business employee permit has been issued.

~~L.M.~~ "Nudity or a state of nudity" nude conduct means the showing of the human male or female genitals, pubic area, vulva, ~~or anus, anal cleft or cleavage~~ with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this article, a "fully opaque covering" must be non-flesh colored, shall not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex), and shall not simulate the appearance of the anatomical area that it covers.

~~M.N.~~ "Operate or cause to operate" means to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or permittee of the business.

~~N.O.~~ "Person" means individual, proprietorship, partnership, corporation, association, or other legal entity.

~~O.P.~~ "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the permittee, as described in the application for a sexually oriented business permit.

~~P.Q.~~ "Regularly" means recurring, attending, or functioning at fixed or uniform intervals.

Q.R. "Semi-nude or state of semi-nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

R.S. "Semi-nude model studio" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

1. By a college, junior college, or university supported entirely or partly by taxation;
2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
3. In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing, and
 - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

S.T. "Sexual device" means any three-dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast or nipple, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended designed for protection against sexually transmitted diseases or for preventing pregnancy.

T.U. "Sexual device shop" means a commercial establishment; ~~that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to their premises by reason of age.~~

1. where more than 100 sexual devices are regularly made available for sale or rental; or
2. where sexual devices are regularly made available for sale or rental and the establishment regularly gives special prominence to sexual devices (e.g., by using lighted display cases for sexual devices, having a room or discrete area of the establishment significantly devoted to

sexual devices, positioning sexual devices near cash registers or similar points of sale, hosting events focused on sexual devices, or holding itself out to the public as a place that focuses on sexual devices).

This definition shall not be construed to include any pharmacy or establishment primarily dedicated to providing medical products.

U.V. "Sexually oriented business" means an "adult bookstore or adult video store," an "adult cabaret," an "adult motion picture theater," a "semi-nude model studio," or a "sexual device shop."

V.W. "Specified anatomical areas" means and includes:

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

W.X. "Specified criminal activity" means any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

1. Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;
2. Prostitution, keeping a place of prostitution, pimping, or pandering;
3. Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;
4. Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;
5. Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
6. Any offense in another jurisdiction that, had the predicate act(s) been committed in California, would have constituted any of the foregoing offenses.

X.Y. "Specified sexual activity" means any of the following:

1. Intercourse, oral copulation, masturbation or sodomy; or
2. Excretory functions as a part of or in connection with intercourse, oral copulation, masturbation, or sodomy.

~~Y.~~ "Substantial" means ~~at least thirty five percent of the specified item(s).~~

AA. "Viewing room" means the room, or booth, ~~or area~~ where a patron of a sexually oriented business would ordinarily be positioned while watching a

film, videocassette, digital video disc, or other video reproduction on an image-producing device."

SECTION 4. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.040 (Permit required) is amended to read as follows:

"5.45.040. Permit required.

- A. Business Permit. It is unlawful for any person to operate a sexually oriented business in the city without a valid sexually oriented business permit.
- B. Employee Permit. It is unlawful for any person to be an "employee," as defined in this chapter, of a sexually oriented business in the city without a valid sexually oriented business employee permit, except that a person who is a permittee under a valid sexually oriented business permit shall not be required to also obtain a sexually oriented business employee permit. It shall be unlawful for any person who operates a sexually oriented business to employ a person at the establishment who does not have a valid sexually oriented business employee permit.
- C. Application. An applicant for a sexually oriented business permit or a sexually oriented business employee permit shall file in person at the finance department a completed application made on a form provided by the city. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business permit in person on behalf of the business. The application shall be signed as required by subsection D of this section and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection C, accompanied by the appropriate licensing fee:
 - 1. The applicant's full legal name and any other names used by the applicant in the preceding five years;
 - 2. Current business address or another mailing address for the applicant;
 - 3. Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency;
 - 4. If the application is for a sexually oriented business permit, the business name, location, legal description, mailing address and phone number of the sexually oriented business;

5. If the application is for a sexually oriented business permit, the name and business address of the statutory agent or other agent authorized to receive service of process;
 6. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable;
 7. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance, or
 - b. Been subject to a court order of closure or padlocking;
 8. An application for a sexually oriented business permit shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall 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 inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this chapter shall submit a diagram indicating that the set-up and configuration of the premises meets the requirements of the applicable regulations. The city manager may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. The information provided pursuant to this Section 5.45.040 shall be supplemented in writing by certified mail, return receipt requested, to the city manager within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.
 9. If the application is for a sexually oriented business employee permit, the name and address of the establishment where the applicant intends to use the employee permit.
- D. Signature. A person who seeks a sexually oriented business employee permit under this section shall sign the application for a permit. If a person who seeks a sexually oriented business permit under this section is an individual, he shall sign the application for a permit as applicant. If a person who seeks a sexually oriented business permit is other than an individual,

each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a permit as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a permittee if a permit is granted.

- E. The information provided by an applicant in connection with an application for a permit under this chapter shall be maintained by the office of the city manager on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order.”

SECTION 5. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.050 (Issuance of permit) is amended to read as follows:

“5.45.050. Issuance of permit.

- A. Sexually Oriented Business Permit. Upon the filing of a completed application for a sexually oriented business permit, the city manager shall immediately issue a temporary permit to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business permit. The temporary permit shall expire upon the final decision of the city to deny or grant an annual permit. Within ~~twenty~~thirty days of the filing of a completed sexually oriented business permit application, the city manager shall either issue a permit to the applicant or issue a written notice of intent to deny a permit to the applicant. The city manager shall issue a permit unless:
1. An applicant is less than eighteen years of age.
 2. An applicant has failed to provide information required by this chapter for issuance of a permit or has falsely answered a question or request for information on the application form.
 3. The permit application fee required by this chapter has not been paid.
 4. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter or is not in a location where a sexually oriented business is allowed to operate under compliance with all requirements of the Pasadena Zoning Ordinance Code and Pasadena Municipal Code.
 5. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or

- b. Been subject to an order of closure ~~or padlocking~~.
- 6. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.
- B. Employee Permit. Upon the filing of a completed application for a sexually oriented business employee permit, the city manager shall immediately issue a temporary permit to the applicant if the applicant seeks licensure to work in a permitted sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee permit. The temporary permit shall expire upon the final decision of the city to deny or grant an annual permit. Within ~~twenty~~ thirty days of the filing of a completed sexually oriented business employee permit application, the city manager shall either issue a permit to the applicant or issue a written notice of intent to deny a permit to the applicant. The city manager shall issue a permit unless:
 - 1. The applicant is less than eighteen years of age.
 - 2. The applicant has failed to provide information as required by this chapter for issuance of a permit or has falsely answered a question or request for information on the application form.
 - 3. The permit application fee required by this chapter has not been paid.
 - 4. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure ~~or padlocking~~.
 - 5. The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.
- C. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the permit issued to the permittee(s), the expiration date, and, if the permit is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's permit on his or her person or on the premises where the permittee is then working or performing."

SECTION 6. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.080 (Expiration and renewal of permit) is amended to read as follows:

“5.45.080. Expiration and renewal of permit.

- A. Each permit shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such permit may be renewed only by making application and payment of a fee as provided in this chapter. When a renewal permit is issued, it shall become effective the day after the previous permit expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.
- B. Application for renewal of an annual permit should be made at least ninety (90) days before the expiration date of the current annual permit, and when made less than ninety days before the expiration date, the expiration of the current permit will not be affected.”

SECTION 7. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.090 (Suspension) is amended to read as follows:

“5.45.090. Suspension.

- A. The city manager shall issue a written notice of intent to suspend a sexually oriented business permit for a period not to exceed thirty days if the sexually oriented business permittee has knowingly or recklessly violated this chapter or has knowingly or recklessly allowed an employee to violate this chapter.
- B. The city manager shall issue a written notice of intent to suspend a sexually oriented business employee permit if the employee has knowingly or recklessly violated this chapter.”

SECTION 8. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.100 (Revocation) is amended to read as follows:

“5.45.100. Revocation.

- A. The city manager shall issue a written notice of intent to revoke a sexually oriented business permit or a sexually oriented business employee permit, as applicable, if the permittee knowingly or recklessly violates this chapter or has knowingly or recklessly allowed an employee to violate this chapter three or more times within a twelve-month period.

- B. The city manager shall issue a written notice of intent to revoke a sexually oriented business permit or a sexually oriented business employee permit, as applicable, if:
1. The permittee has knowingly given false information in the application for the sexually oriented business permit or the sexually oriented business employee permit; or
 2. The permittee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business; or
 3. The permittee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business; or
 4. The permittee knowingly or recklessly operated the sexually oriented business during a period of time when the permit was finally suspended or revoked; or
 5. The permittee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business; or
 6. The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the sexually oriented business; or
 7. The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or
 8. The licensee has knowingly or recklessly allowed three (3) or more violations of this chapter within a twelve-month period.
- C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the permit, provided that, if any conviction which serves as a basis of a permit revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- D. When, after the notice and hearing procedure described in this chapter, the city revokes a permit, the revocation shall continue for two years and the permittee shall not be issued a sexually oriented business permit or sexually oriented business employee permit for two years from the date revocation becomes effective.”

SECTION 9. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.110 (Hearing—Denial, revocation, and suspension—Appeal) is amended to read as follows:

“5.45.110. Hearing—Denial, revocation, and suspension—Appeal.

- A. When the city manager issues a written notice of intent to deny, suspend, or revoke a permit, the city manager shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or permittee (~~respondent~~) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the city manager for the ~~respondent~~applicant or permittee. The notice shall ~~specify a date, not less than ten days nor more than twenty days after the date the notice is issued, on which the hearing officer shall conduct a hearing on the city manager’s written notice of intent to deny, suspend, or revoke the permit. also set forth the following:~~ The applicant or permittee shall have ten days after the delivery of the written notice to submit, at the office of the city manager, a written request for a hearing. If the applicant or permittee does not request a hearing within said ten days, the city manager’s written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth day after it is issued.
- B. If the applicant or permittee (hereafter, “petitioner”) does make a written request for a hearing within said ten days, then the city manager shall, within ten days after the submission of the request, send a notice to the petitioner indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten days nor more than twenty days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed.
- BC. At the hearing, the ~~respondent~~ petitioner shall have the opportunity to present all of ~~respondent’s~~ relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the city manager’s witnesses. The city manager may also be represented by counsel, present evidence and witnesses, and cross-examine any of the petitioner’s witnesses and shall bear the burden of proving the grounds for denying, suspending, or revoking the permit. The hearing shall take no longer than ~~two~~ one days, unless extended at the request of the ~~respondent~~ petitioner to meet the requirements of due process and proper administration of justice. The petitioner shall have the burden of proving by a preponderance of the evidence that there is no substantive evidence to support the city manager’s licensing decision. The hearing officer shall issue a final written decision, including specific reasons

for the decision pursuant to this chapter, to the respondent petitioner within five days after the hearing.

CD. If the decision is to deny, suspend, or revoke the permit, the decision shall not become effective until the thirtieth day after it is rendered, and the decision shall include a statement advising the respondent petitioner of the right to appeal such decision to a court of competent jurisdiction. If the hearing officer's decision finds that there is no substantial evidence to support the city manager's licensing decision, grounds exist for denial, suspension, or revocation of the permit, the hearing officer shall, contemporaneously with the issuance of the decision, order the city manager to immediately withdraw the intent to deny, suspend, or revoke the permit and to notify the respondent petitioner in writing by certified mail of such action. If the respondent petitioner is not yet permitted, the city manager shall contemporaneously therewith issue the permit to the applicant.

DE. If any court action challenging the hearing officer's decision is initiated, the city shall comply with all of the requirements of California Code of Civil Procedure Section 1094.8.

EF. The following shall apply to any sexually oriented business that is in all respects lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the city manager: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of the denial, suspension, or revocation of a temporary permit or annual permit, the city manager shall immediately issue the respondent petitioner a provisional permit. The provisional permit shall allow the respondent petitioner to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's petitioner's appeal or other action to restrain or otherwise enjoin the city's enforcement. While a provisional permit is in effect, the provisional permittee shall comply with all regulations set forth in section 5.45.070, section 5.45.130, section 5.45.140, section 5.45.150 and section 5.45.180, and any violations thereof shall be subject to the provisions of section 5.45.160."

SECTION 10. Pasadena Municipal Code, Title 5, Chapter 5.45, Section 5.45.140 (Regulations pertaining to exhibition of sexually explicit films or videos) is amended to read as follows:

“5.45.140. Regulations pertaining to operation of adult arcade or adult motion picture theater.

- A. A person who operates or causes to be operated an adult arcade or adult motion picture theater ~~a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas~~ shall comply with the following requirements.
1. Each application for a sexually oriented business permit shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The city manager may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
 2. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
 3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
 4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the permitted premises.

5. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - a. That the occupancy of viewing rooms less than ~~450~~ 100 square feet is limited to one person;
 - b. That sexual activity on the premises is prohibited;
 - c. That the making of openings between viewing rooms is prohibited;
 - d. That violators will be required to leave the premises;
 - e. That violations of these regulations are unlawful.
 6. It shall be the duty of the operator to enforce the regulations articulated in subsections (A)(5)(a) through (A)(5)(e) of this section.
 7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two square feet of floor area. If the premises has two or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this subsection must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
 8. It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- B. It shall be unlawful for a person having a duty under ~~this section~~ subsections (A)(1) through (A)(8) to knowingly or recklessly fail to fulfill that duty.
 - C. No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.
 - D. No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.
 - E. No person shall knowingly or recklessly make any hole or opening between viewing rooms."

SECTION 11. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.180 (Prohibited conduct) is amended to read as follows:

“5.45.180. Prohibited conduct.

It is unlawful for a sexually oriented business operator or permittee to knowingly or recklessly violate the following regulations or to knowingly or recklessly allow an employee or any other person to violate the following regulations.

- A. It shall be a violation of this chapter for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity, ~~regardless of whether such public nudity is expressive in nature.~~
- B. It shall be a violation of this chapter for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from any all patrons and or customers and on a stage at least eighteen inches from the floor in a room of at least one thousand square feet.
- C. It shall be a violation of this chapter for any employee who ~~regularly~~ appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.
- D. It shall be a violation of this chapter for any person to enter or remain in, or on, the premises of a sexually oriented business while in the possession of, consuming, using, or under the influence of, any alcoholic beverage or illegal drugs. It shall be a violation of this chapter for a sexually oriented business permittee to knowingly or intentionally permit any such person to enter or remain upon the premises of the sexually oriented business.
- E. It shall be a violation of this chapter for any person to knowingly or recklessly allow a person under the age of eighteen years to be or remain on the premises of a sexually oriented business.
- F. No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the sexually

oriented business, unless an operator of the sexually oriented business is present in the same room.

FG. A sign in a form, to be prescribed by the city manager, and summarizing the provisions of subsections A through E of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.”

SECTION 12. Pasadena Municipal Code, Title 5, Chapter 5.45, Section

5.45.190 (Failure of City to meet deadline not to risk applicant/permittee rights) is repealed.

~~5.45.190. Failure of city to meet deadline not to risk applicant/permittee rights.~~

~~In the event that a city official is required to act or to do a thing pursuant to this chapter within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or permittee. If the act required of the city official under this chapter, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the city of an applicant or permittee's application for sexually oriented business permit or a sexually oriented business employee's permit (including a renewal), the permit shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city's action has passed.~~

SECTION 13. The City Council hereby declares that, should any section, paragraph, sentence, phrase, term or word of this ordinance, hereby adopted, be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this ordinance irrespective of any such portion declared invalid.

SECTION 14. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 15. This ordinance shall take effect upon publication pursuant to Pasadena City Charter Section 510.

Signed and approved this _____ day of _____, 2019.

Terry Tornek
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date Published:

Mark Jomsky, CMC
City Clerk

APPROVED AS TO FORM:



Theresa E. Fuentes
Assistant City Attorney