

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING PASADENA MUNICIPAL CODE TITLE 17 (ZONING CODE), CHAPTERS 17.50, 17.60, AND 17.80 TO UPDATE DEFINITIONS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

WHEREAS, in 2006, the City Council previously adopted definitions and regulations for sexually oriented businesses as part of the Pasadena Zoning Code; and

WHEREAS, the City Council wishes to update those provisions to correspond with recent updates to its licensing ordinance 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 27, 2019, the Planning Commission of the City of Pasadena reviewed the code amendments set forth below, recommended the finding that the zoning text amendments are exempt from the California Environmental Quality Act (CEQA), recommended adoption of findings for the text amendments, and recommended approval of the amendments to Council; and

WHEREAS, at its regularly scheduled meeting on March 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 1, 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); *Big 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 Sections 17.50.295, 17.60.030, and 17.80.020 of the Pasadena Zoning Code to update the City’s zoning regulations for sexually oriented businesses to prevent the negative secondary effects associated with such enterprises. The ordinance amends definitions and regulations in these sections to align with recent amendments to corresponding licensing regulations and to conform to court decisions 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 30 days after publication.”

SECTION 2. Pasadena Zoning Code, Title 17, Chapter 17.50, Section 17.50.295 (Sexually Oriented Businesses) is amended to read as follows:

“17.50.295 – Sexually Oriented Businesses

- A. **Definitions.** The technical terms and phrases used in this Section shall have the same meanings as set forth for those terms and phrases in Chapter 5.45 of the Pasadena Municipal Code. are defined in Article 8 (Glossary of Specialized Terms and Land Use Types) under “Sexually oriented business (land use).
- B. **Purpose.** It is the purpose of this Section 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 Section 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 Section 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 Section 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 Section.
- C. **Location requirements.** Sexually oriented businesses shall be permitted in only the CG zoning district and shall be subject to the following conditions:
1. No sexually oriented business is allowed in the Lincoln Corridor (CG-1).
 2. No sexually oriented business is allowed within 500 feet of any child day-care center (excluding large and small family day-care homes), park and recreation facility, public or private school, or religious facility (excluding temporary uses), that existed before the establishment of the sexually oriented business.
 3. No sexually oriented business is allowed within 250 feet of a RS or RM district. Measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest point on a lot line of the sexually oriented business premises to the closest point on a lot line of any child day-care center, park and recreation facility, public or private school, religious facility, or parcel in a RS or RM district.
 4. No more than two sexually oriented businesses are allowed within a 250 foot radius, drawn around the proposed use. Measurements shall be made in a straight line in all directions without regard to intervening

structures or objects, from the closest point on the lot line of the proposed sexually oriented business premises to the closest point on the lot line of any other sexually oriented business.

5. No location in the City shall be disqualified by virtue of its proximity to a land use located outside the jurisdictional boundaries of the City.

D. **Nonconforming sexually oriented businesses.** Notwithstanding anything to the contrary in the Pasadena Municipal Code, any sexually oriented business located within the City of Pasadena that is lawfully operating in compliance with Pasadena Municipal Code Chapter 5.45 and the Pasadena Zoning Code on the date that an amendment to Section 17.50.295.C or to the definitions used in Chapter 5.45 and referenced in this Zoning Code becomes effective, which is made a nonconforming use by said amendment, shall be terminated within 12 months of the date that said amendment becomes effective. ~~on the date the foregoing restrictions become effective, which is made a nonconforming use by this provision, shall be terminated within 12 months of the date this provision becomes effective. A nonconforming sexually oriented business may obtain an extension, based upon a showing of financial hardship, of its amortization period upon the approval of a written application filed with the Department no later than 60 days prior to the end of such 12 month amortization period.~~

- ~~1. **Procedure for seeking hardship extension.** An application for a hardship extension shall be filed in writing with the Department, and shall include payment of an application fee, evidence of purchase and/or lease and improvement costs, income earned and lost, depreciation, and costs of relocation. The Department shall determine whether the application is complete within ten days. Within thirty days after determining that the application is complete, the Department shall schedule a hearing on the application before the Hearing Officer, which hearing shall be conducted within 30 days after the Department's receipt of the complete application.~~
- ~~2. **Standards for obtaining hardship extension.** The Hearing Officer shall issue a written decision within ten days after the hearing on the application for a hardship extension, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. A reasonable hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable to recoup its investments, made prior to the effective date of this Ordinance, in its current location unless the hardship extension is granted. An extension under this Section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the Hearing Officer makes all of the following findings or such other findings as are required by law:~~

- a. ~~The applicant has made, prior to the effective date of this ordinance, a substantial investment, including but not limited to lease obligations incurred in an arms-length transaction, in the property or structure on or in which the nonconforming use is conducted;~~
- b. ~~The applicant will be unable to recoup said investment as of the date established for termination of the use;~~
- c. ~~The applicant has made good faith efforts to recoup its investment, including an attempt to assign the lease, sell or use the property in a manner, and for a use, permitted in the location and has been unsuccessful in his efforts.”~~

SECTION 3. Pasadena Zoning Code, Title 17, Chapter 17.60, Section 17.60.030 (Concurrent Permit Processing), Table 6-1 (Review Authority) is amended by repealing the row concerning Sexually Oriented Business Hardship Extension decisions, as follows:

TABLE 6-1 – REVIEW AUTHORITY					
Type of Decision	Role of Review Authority (1)				
	See Section	Director/Zoning Administrator/ Hearing Officer	DC/HPC (2)	BZA/Planning Commission (2)	City Council

Sexually Oriented Business Hardship Extension	17.50.295.D	(HO) Decision		(BZA) Appeal	Appeal/CFR (5)

SECTION 4. Pasadena Zoning Code, Title 17, Chapter 17.80, Section 17.80.020 (Definitions) is amended by amending the definition of “Hearing Officer” and by amending the definition of “Sexually Oriented Business (land use)” to read as follows (additions marked with underlining, deletions marked with strikethrough text):

“17.80.020 – Definitions

* * *

Hearing Officer.

The person appointed to perform the duties prescribed by this Zoning Code related to conducting public hearings and making decisions on applications including Conditional Use Permits, Expressive Use Permits, Hillside Development Permits, Sign Exceptions, Sexually Oriented Business Application for Hardship Extension, and Variances.

* * *

Sexually Oriented Business (land use).

The term “sexually oriented business” shall have the same meaning, including any related terms and phrases, as set forth in Chapter 5.45 of the Pasadena Municipal Code, as may be amended from time to time. The following terms and phrases are defined for the purpose of Section 17.50.295 (Sexually Oriented Businesses).

1. ~~**Adult Bookstore or Adult Video Store.** 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:~~
 - a. ~~Has a substantial portion of its displayed merchandise which consists of said items; or~~
 - b. ~~Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items; or~~
 - c. ~~Has a substantial portion of the retail value of its displayed merchandise which consists of said items; or~~
 - d. ~~Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or~~
 - e. ~~Maintains a substantial section of its net floor area for the sale or rental of said items; or~~
 - f. ~~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~~
 - g. ~~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."

2. ~~**Adult Cabaret.** A nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.~~
3. ~~**Adult Motion Picture Theater.** 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.~~
4. ~~**Characterized by.** The essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.~~
5. ~~**Establish or Establishment.** Any of the following:
 - a. ~~The opening or commencement of any sexually oriented business as a new business;~~
 - b. ~~The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or~~
 - c. ~~The addition of any sexually oriented business to any other existing sexually oriented business.~~~~
6. ~~**Nudity or a State of Nudity.** The showing of the human male or female genitals, pubic area, vulva, 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.~~
7. ~~**Operate or Cause to Operate.** To cause to function or to put or keep in a state of doing business.~~
8. ~~**Operator.** 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.~~
9. ~~**Person.** An individual, proprietorship, partnership, corporation, association, or other legal entity.~~
10. ~~**Premises.** 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.~~

- ~~11. **Regularly.** Recurring, attending, or functioning at fixed or uniform intervals.~~
- ~~12. **Semi-Nude or State of Semi-Nudity.** 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.~~
- ~~13. **Semi-Nude Model Studio.** 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:
 - ~~a. By a college, junior college, or university supported entirely or partly by taxation;~~
 - ~~b. 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~~
 - ~~c. In a structure:
 - ~~i. 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~~
 - ~~ii. Where, in order to participate in a class a student must enroll at least three days in advance of the class.~~~~~~
- ~~14. **Sexual Device.** Any three dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.~~
- ~~15. **Sexual Device Shop.** 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.~~

16. ~~**Sexually Oriented Business.** 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.”~~
17. ~~**Specified Anatomical Area.** Any of the following:~~
- a. ~~Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; or~~
 - b. ~~Human male genitals in a discernibly turgid state, even if completely and opaquely covered.~~
18. ~~**Specified Criminal Activity.** 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:~~
- a. ~~Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;~~
 - b. ~~Prostitution, keeping a place of prostitution, pimping, or pandering;~~
 - c. ~~Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;~~
 - d. ~~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;~~
 - e. ~~Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or~~
 - f. ~~Any offense in another jurisdiction that, had the predicate acts been committed in California, would have constituted any of the foregoing offenses.~~
19. ~~**Specified Sexual Activity.** Any of the following:~~
- a. ~~Intercourse, oral copulation, masturbation or sodomy; or~~
 - b. ~~Excretory functions as a part of or in connection with intercourse, oral copulation, masturbation, or sodomy.~~
20. ~~**Substantial.** At least thirty-five percent of the items so modified.~~
21. ~~**Transfer of Ownership or Control.** Any of the following:~~
- a. ~~The sale, lease, or sublease of the sexually oriented business;~~
 - b. ~~The transfer of securities which constitute an influential interest in the sexually oriented business, whether by sale, exchange, or similar means; or~~
 - c. ~~The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the sexually oriented business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.~~

~~22. **Viewing Room.** The room, 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.”~~

SECTION 5. 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 6. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 7. This ordinance shall take effect 30 days after publication.

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