

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING THE PASADENA MUNICIPAL CODE, TITLE 5, ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH AND SAFETY

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 minimize and control these adverse effects and thereby 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, the City recognizes its constitutional duty to interpret, construe, and amend 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 November 8, 2006, the Planning Commission of the City of Pasadena reviewed the Negative Declaration, the code amendments set forth below, and related amendments to the Zoning Code, and recommended adoption of the Negative Declaration and approval of all of the code amendments to Council; and

WHEREAS, at its regularly scheduled meeting on December 4, 2006, the City Council of the City of Pasadena certified the Negative Declaration.

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 including, but not limited to, *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); and *Gammoh v. City of La Habra*, 395 F.3d 1115 (9th Cir. 2005); *Dream Palace v. Maricopa County*, 384 F.3d 990 (9th Cir. 2004); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Talk of the Town v. City of Las Vegas*, 343 F.3d 1063 (9th Cir. 2003); *Ben's Bar, Inc. v.*

Village of Somerset, 316 F.3d 702 (7th Cir. 2003); *Davis v. Gates*, 1992 U.S. App. LEXIS 22417 (9th Cir. 1992); *Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way*, 46 Fed. Appx. 409 (9th Cir. Aug. 20, 2002); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Jakes, Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *Sensations, Inc. v. City of Grand Rapids*, Nos. 1:06-CV-300; 4:06-CV-60 (W.D. Mich., Oct. 23, 2006); *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville & Davidson County*, 466 F.3d 391 (6th Cir. 2006); *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) ; *Fantasyland Video, Inc. v. County of San Diego*, 373 F. Supp. 2d 1094 (S.D. Cal. 2005); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the City Council finds:

1. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and

property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

2. Sexual acts, including lewd conduct, masturbation, oral and anal sex, occur at unregulated sexually oriented businesses, including those which provide private or semi-private booths or rooms for viewing sexually explicit films or videos or live striptease and sex shows. Regulations in this chapter are designed to prevent criminal activity, including lewd conduct, prostitution, and pandering as well as the potential spread of sexually transmitted diseases and other communicable diseases which result from illegal sexual contact.

3. Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in these findings are reasonably believed to be relevant to said 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 Title 5 of the City of Pasadena’s Municipal Code to add a new Chapter 5.45 to regulate sexually oriented businesses and their employees to prevent the negative secondary effects associated with such enterprises. The new Chapter 5.45 includes the rationale and findings relevant to regulating sexually oriented businesses, definitions of said businesses, and licensing requirements for both the businesses and their employees. The new Chapter 5.45 also includes regulations related to the time, place, and manner of sexually oriented business operations. These regulations include specified hours of operation, interior configuration requirements, and conduct standards.

Ordinance No. _____ is necessary for the immediate preservation of the public peace, health, and safety, and shall take effect upon publication pursuant to Pasadena City Charter Section 510.”

SECTION 2. Pasadena Municipal Code, Title 5 (Business Licenses and Regulations), Article 1 (Generally), is amended to add a new Chapter 5.45 as follows:

“Section

- Preamble
- 5.45.010. Purpose.
- 5.45.020. Definitions.
- 5.45.030. Classifications.
- 5.45.040. Permit Required.
- 5.45.050. Issuance of Permit.
- 5.45.060. Fees.
- 5.45.070. Inspection.
- 5.45.080. Expiration and Renewal of Permit.
- 5.45.090. Suspension.
- 5.45.100. Revocation.

- 5.45.110. Hearing; Permit Denial, Suspension, Revocation; Appeal.
- 5.45.120. Transfer of Permit.
- 5.45.130. Hours of Operation.
- 5.45.140. Regulations Pertaining to Exhibition of Sexually Explicit Films on Premises.
- 5.45.150. Loitering and Exterior Lighting and Monitoring Requirements.
- 5.45.160. Penalties, Remedies, and Enforcement.
- 5.45.170. Applicability of Ordinance to Existing Businesses.
- 5.45.180. Prohibited Conduct.
- 5.45.190. Failure of City to Meet Time Frame Not to Risk Applicant/Permittee Rights.
- 5.45.200. Severability.

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 ordinance adopted to implement this chapter.

5.45.020. Definitions.

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

A. "City Manager" means the City Manager or his/her designee.

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:

1. 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 of said items, or

3. Has a substantial portion of the retail value of its displayed merchandise which consists of said items, or

4. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or

5. 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.”

C. “Adult Cabaret” means 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.

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.

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

F. “City” means the City of Pasadena, California.

G. “Employ, Employee, and Employment” describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. 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.

H. “Establish or Establishment” shall mean and include any of the following:

1. The opening or commencement of any sexually oriented business as a new business;

2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

3. The addition of any sexually oriented business to any other existing sexually oriented business.

I. "Hearing Officer" means the person retained to serve as an independent tribunal to conduct hearings under this chapter.

J. "Influential Interest" means:

1. The actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, or

2. Holding 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. "Permittee" shall mean 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 shall mean the person in whose name the sexually oriented business employee permit has been issued.

L. "Nudity or a State of Nudity" means 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.

M. "Operate or Cause to Operate" shall mean 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. "Person" shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

O. "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. "Regularly" means recurring, attending, or functioning at fixed or uniform intervals.

Q. "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. "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. "Sexual Device" means 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.

T. "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.

U. "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. "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. "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. "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).

Z. "Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

1. The sale, lease, or sublease of the business;

2. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

AA. "Viewing Room" shall mean 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.

5.45.030. Classification.

The classifications for sexually oriented businesses shall be as follows:

- A. Adult bookstore or adult video store;
- B. Adult cabaret;
- C. Adult motion picture theater;
- D. Semi-nude model studio;
- E. Sexual device shop.

5.45.040. Permit required.

A. Business Permit. It shall be unlawful for any person to operate a sexually oriented business in the City without a valid sexually oriented business permit.

B. Employee Permit. It shall be 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.

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. herein 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 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. 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 setup and configuration of the premises meets the requirements of the applicable regulations. 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.

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.

F. Within 7 days of receipt of a complete application, the City shall post on site and mail to all property owners within 500 feet of the proposed sexually oriented business, public notice of the receipt of a sexually oriented business application.

5.45.050. Issuance of Permit.

A. 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 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 compliance with all requirements of the Pasadena Zoning Ordinance 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 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.

5.45.060. Fees.

A. The initial permit and annual renewal fees for sexually oriented business permits and sexually oriented business employee permits shall be as established by resolution of the City Council.

5.45.070. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit inspectors to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City to authorize reasonable inspections of the permitted premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

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.

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.

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 violated this chapter or has knowingly 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 violated this chapter.

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 violates this chapter or has knowingly 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 to occur in or on the premises of the sexually oriented business.

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.

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. 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.

B. At the hearing, the respondent shall have the opportunity to present all of respondent's 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 shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the permit. The hearing shall take no longer than two days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five days after the hearing.

C. 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 of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer's decision finds that no 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 in writing by certified mail of such action. If the respondent is not yet

permitted, the City Manager shall contemporaneously therewith issue the permit to the applicant.

D. 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 §1094.8.

E. 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, the City Manager shall immediately issue the respondent a Provisional Permit. The Provisional Permit shall allow the respondent 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 appeal or other action to restrain or otherwise enjoin the City's enforcement.

5.45.120. Transfer of Permit.

A permittee shall not transfer his or her permit to another, nor shall a permittee operate a sexually oriented business under the authority of a permit at any place other than the address designated in the sexually oriented business permit application.

5.45.130. Hours of operation.

No sexually oriented business shall be or remain open for business between 1:00 a.m. and 10:00 a.m. on any day.

5.45.140. Regulations pertaining to exhibition of sexually explicit films or videos.

A. A person who operates or causes to be operated 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 150 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 5a. through 5.e. above.

7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a 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 paragraph 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 paragraph 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.

B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

5.45.150. Loitering, exterior lighting, visibility, and monitoring requirements.

A. It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety minutes or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

C. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

5.45.160. Penalties, remedies, and enforcement.

A. Unpermitted operation a misdemeanor. Any person operating a sexually oriented business, as defined in this chapter, without a valid sexually oriented business permit is deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in Title 1, Chapter 1.24, Section 1.24.020 of the Pasadena Municipal Code. Each day that a violation occurs shall constitute a separate offense.

B. Administrative remedies. The City shall have the authority to deny, suspend, or revoke permits pursuant to the standards and procedures set forth in this chapter.

C. Injunction. The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to prevent, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the City, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by

other provisions of this chapter, or any of the laws in force in the City or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

D. Nuisance. Any premises, building, dwelling, or other structure in which a sexually oriented business, as defined in this chapter, is repeatedly operated or maintained in violation of the provisions of this chapter shall constitute a public nuisance and shall be subject to civil abatement proceedings initiated by the City of Pasadena in a court of competent jurisdiction. Each day that a violation is permitted to exist or occur shall constitute a separate operation or maintenance of the violation.

5.45.170. Applicability of chapter to existing businesses.

All sexually oriented businesses and sexually oriented business employees lawfully existing and operating (or employed) on the effective date of this chapter are hereby granted a *De Facto* Temporary Permit to continue operation or employment for a period of ninety days following the effective date of this chapter, for the purpose of allowing preexisting sexually oriented businesses and their employees time to meet the licensing and interior configuration requirements of this chapter. Notwithstanding the *De Facto* Temporary Permit provided by the previous sentence, preexisting sexually oriented businesses and sexually oriented business employees shall comply §5.45.130 and §§5.45.180(A), (C), (D), and (E) on and after the effective date of this chapter.

5.45.180. Prohibited conduct.

It is unlawful for a sexually oriented business permittee to knowingly violate the following regulations or to knowingly 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, 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 patron or customer 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.

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 allow a person under the age of eighteen years on the premises of a sexually oriented business.

F. A sign in a form, to be prescribed by the City Manager, and summarizing the provisions of subsections A. through E., shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

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.

5.45.200. Severability.

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

SECTION 3. Pasadena Municipal Code, Title 5, Chapters 5.52 (Model Studios) and 5.73 (Picture Arcades) are hereby repealed. Any provision(s) in the Pasadena Municipal Code specifically in conflict with any provision in this ordinance is hereby repealed.

SECTION 4. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary.

SECTION 5. This ordinance shall take effect upon publication pursuant to Pasadena City Charter Section 510.

Signed and approved this _____ day of _____, 2006.

Bill Bogaard
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 _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Date Published:

Jane L. Rodriguez, CMC
City Clerk

APPROVED AS TO FORM:



Theresa E. Fuentes
Deputy City Attorney

TEF Ordinances/Resolutions/Adult use chapter 5.45 ordinance