

CHAPTER 9

ADULT ENTERTAINMENT BUSINESSES REGULATED

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10-9-1: **PURPOSE:** In adopting this chapter, it is recognized that certain types of adult related establishments possess certain objectionable operational characteristics which will have adverse effects upon the character of the areas in which they do business and adjacent neighborhoods. It is further recognized that locating adult related establishments in close proximity to facilities frequented by minors will cause the exposure of minors to adult material which may adversely affect such minors. In addition, it is recognized that substantial numbers of citizens of the City are offended by the public display of sexually oriented material. Special regulation of adult related uses is, therefore, necessary to insure that these adverse effects of adult related uses will not contribute to the blighting or downgrading of zones in which they are permitted or of surrounding neighborhoods; will not adversely affect minors; and will not offend the citizens of the City who do not wish to be exposed to sexually oriented material. (Ord. 1408, 25 Nov 1986)

10-9-2: **EFFECT:** All applicable provisions of this title shall apply to the regulation of adult related establishments unless in conflict with the provisions of this chapter.

This chapter does not and shall not be interpreted as legalizing or condoning the production, presentation, sale, advertisement, dissemination or distribution of matter which is obscene as defined and regulated by applicable state and local laws; nor shall this chapter be interpreted as legalizing or condoning participation in management, production, presentation or exhibition of obscene live conduct in any public place or any place exposed to the public view as defined and regulated by applicable state and local law. (Ord. 1408, 25 Nov 1986)

10-9-3: **DEFINITIONS:** As used in this chapter, the terms identified by Section 10-9-3 (A) through (N) shall be ascribed the meanings indicated.

ADULT BOOKSTORE: An establishment whose primary business is to offer for sale any one or more of the following:

- a. Books, magazines, periodicals, or other printed matter, or photographs, films, motion picture, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas," or,

- b. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities." This definition does not include a bona fide pharmacy.

ADULT HOTEL OR MOTEL: A hotel or motel or similar establishment offering public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT MOTION PICTURE THEATER: An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown and in which any portion of the total presentation time is devoted to the showing of material which is characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT RELATED ESTABLISHMENT: "Adult Related Establishment" means a bathhouse, escort bureau, introductory service, massage establishment, out-call massage service, modeling studio or sexual encounter center, as defined by this chapter. "Adult Related Establishment" shall also include adult arcade, adult bookstore, adult motion picture theater, adult hotel or motel, adult theater or cabaret or any other business or establishment which has available or offers any patron, for pecuniary compensation, consideration, hire or reward, services or entertainment or activities which involve the display "specified anatomical areas," or in which "specified sexual activity" occurs.

ADULT THEATER: A theater, concert hall, auditorium or similar establishment which, for any form of consideration, features live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

BATHHOUSE: "Bathhouse" means an establishment whose primary business is to provide, for pecuniary compensation, consideration, hire or reward, access to any kind of bath facility, including but not limited to, showers, saunas and hot tubs.

CABARET: An establishment that serves food and/or alcoholic beverages and features live entertainment depicting "specified sexual activities" or "specified anatomical areas."

ESCORT SERVICES: In relation to escort services, the following terms shall be ascribed the following meanings:

- 1. "Escort Bureau" means an establishment which, for pecuniary compensation, consideration, hire or reward, furnishes or offers to furnish escorts.
- 2. "Escort" means a person who, for pecuniary compensation, consideration, hire or reward, either

escorts or accompanies others to or about social affairs, entertainment or places of amusement, or keeps company with others about any place of public resort or within any private quarters.

ESTABLISHMENT: For the purposes of this chapter, certain other terms and words are defined as follows:

1. The "establishment" of an adult related establishment shall mean and include any of the following:
 - a. The opening or commencement of any such establishment as a new business;
 - b. The conversion of an existing business, whether or not an adult related establishment, or any of the adult related establishments defined herein;
 - c. The addition of any of the adult related establishments defined herein to any other existing adult related establishment; and
 - d. The relocation of any such establishment.

INTRODUCTORY SERVICE: "Introductory Service" means a business which, for pecuniary compensation, consideration, hire or reward helps persons to meet or become acquainted with others for social purposes. For purposes of this section, "others" include personnel of the introductory service.

MASSAGE ESTABLISHMENT: An establishment where massage, alcoholic rub, fomentation, electric or magnetic treatment or similar treatment or manipulation of the human body is administered in exchange for any form of consideration for the purpose of providing any service during which time "specified anatomical areas" are displayed or "specified sexual activity" occurs.

1. "Outcall Service Activity" means any establishment or business which provides an outcall service which consists of individuals leaving the premises upon request or by appointment to visit other premises for a period of time for the purpose of providing any service during which time "specified anatomical areas" are displayed or "specified sexual activity" occurs.
2. "Massage Technician" means any person who, for pecuniary compensation, consideration, hire or reward, engages in the practice of massage.

MODELING SERVICES: In relation to modeling services, the following terms shall be ascribed the following meanings:

1. "Modeling Studio" means an establishment which provides for pecuniary compensation, consideration, hire or reward, figure models who display "specific anatomical areas" to be observed, sketched,

photographed, painted, sculpted or otherwise depicted by persons who pay such consideration.

2. "Figure Model" means any persons who, for pecuniary compensation, consideration, hire or reward, poses to be observed, sketched, painted, drawn, sculpted, photographed or otherwise depicted.

PERSON: "Person" includes any person, firm, partnership, association, corporation, company or organization of any kind.

PUBLIC PARK: "Public Park" means a park, playground, swimming pool or athletic field within the City which is under the control, operation or management of the City Parks and Recreation Department.

RELIGIOUS INSTITUTION: "Religious Institution" means a building which is used primarily for religious worship and related religious activities.

SCHOOL: "School" means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or a special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

SEXUAL ENCOUNTER CENTER: "Sexual Encounter Center" means an establishment which provides two or more persons, for pecuniary compensation, consideration, hire or reward, with a place to assemble for the purpose of engaging in "specified sexual activities" or displaying "specified anatomical areas". "Sexual Encounter Center" does not include hotels or motels.

SPECIFIED ANATOMICAL AREAS: "Specified Anatomical Areas" shall include:

1. Less than completely and opaquely covered: (a) human genitals or pubic regions; (b) buttocks; or (c) female breasts below a point immediately above the top of areola; and,
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES: "Specified Sexual Activities" shall include the following:

1. Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical or stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship; or

2. Clearly depicted human genitals in a state of sexual stimulation, as arousal or tumescence; or
3. Use of human or animal masturbation, sodomy, oral copulation, coitus, or ejaculation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks, or female breasts; or
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
6. Erotic or lewd touching, fondling or other contact with an animal by a human being; or
7. Human excretion, urination, menstruation or vaginal or anal irrigation; or
8. Any of the following depicted sexually oriented acts or conduct: necrophilia, pederasty, pedophilia or zoerasty. (Ord. 1408, 25 Nov 1986)

10-9-4: **EXEMPTIONS:** The provisions of this chapter shall not be applicable to or include the following:

- (A) Hospital, nursing homes, sanitariums, or persons working in any such establishments.
- (B) Any licensed or certificated medical practitioner, chiropractor, massage therapist, massage technician, acupuncturist, physical therapist or similar professional person licensed or certificated by the State of California including those persons who have completed a course of study and hold a certificate of completion from a state approved school which teaches the theory, ethics, practices, profession and work of massage.
- (C) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or Certificate of Registration issued by the State of California.
- (D) Modeling schools or classes maintained pursuant to standards established by the State Board of Education of the State of California; or
- (E) Any recognized school of massage which: (i) teaches the theory, ethics, practice, profession and work of massage; and (ii) requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been approved pursuant to Section 94311(d) of the Education Code, or, if said school is not located in California, has complied with the standards commensurate with those specified in said Section 94311(d). A "recognized school of massage" as those terms are used above, shall not include a school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or courses of massage technician not approved by the California State Department of Education. (Ord. 1408, 25 Nov 1986)

10-9-5: **HOME OCCUPATIONS:** No adult related establishment as defined in this chapter shall be permitted as a home occupation under any zoning classification. (Ord. 1408, 25 Nov 1986)

10-9-6: **ZONES FOR ADULT RELATED ESTABLISHMENTS:** Adult related establishments are permitted only in areas with a "C" zoning classification. No such establishment shall be permitted to be established in any area outside such zoning classification. (Ord. 1408, 25 Nov 1986)

10-9-7: **LOCATION OF ADULT RELATED ESTABLISHMENTS WITHIN "C" ZONES:** Within the zones in which adult related establishments are permitted, no such business shall be established in the following locations:

- (A) Within five hundred feet of any area zoned for residential use.
- (B) Within five hundred feet of any other adult entertainment business.
- (C) Within one thousand feet of any public park, religious institution or school. (Ord. 1408, 25 Nov 1986)

10-9-8: **MEASUREMENT OF DISTANCE:** The distance between any two adult related establishments shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any adult related establishment and any residential zone, religious institution, school or public park shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential zone, religious institution, school or public park to the closest exterior structural wall of such adult related establishment. (Ord. 1408, 25 Nov 1986)

10-9-9: **VARIANCES:**

- (A) Any property owner or his authorized agent may apply to the Planning Commission for a variance from Section 10-9-7 herein. The Planning Commission, after a hearing, may issue a variance permit if the following findings are made:
 - 1. That the applicant has met the conditions required for variances from the zoning ordinance pursuant to Government Code Section 65906 and 10-3-6 of this Code.
 - 2. That the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this chapter will be observed.
 - 3. That the establishment of an adult related establishment in the area will not be contrary to the City's General Plan or any program of neighborhood conservation, nor will it interfere with any program of redevelopment.
 - 4. That all applicable provisions of state and local law will be observed.
- (B) The procedure for obtaining and receiving a variance permit shall be the same as that provided in Sections 10-3-7, et. seq., of this Code with, among other matters, the same notice requirements, the same right of appeal to the City Council, and the same fees payable by the applicant. However, notice of such variance request shall be given to all property owners on the assessment rolls within a

radius of five hundred feet or one thousand feet of such requested location as appropriate pursuant to Section 10-9-6 herein.

10-9-10: **APPLICABILITY OF THIS CHAPTER AND DISCONTINUANCE OF NONCONFORMING BUSINESSES:** This chapter shall apply to the establishment of all adult related establishments upon the effective date of the adoption of this chapter by the City Council. Adult related establishments which are in existence prior to the effective date of this chapter and are made nonconforming by reason of the provisions of this chapter shall be subject to the following regulations:

- (A) Such adult related establishments shall not be enlarged, increased or extended to occupy a greater area.
- (B) Upon the substantial destruction of the building, or portion of the building, in which such adult related establishment exists, the business shall be considered terminated and may not be resumed. For the purposes of this subsection, "substantial destruction" means damage by fire or water or other causes to the extent of more than fifty percent of the building's assessed value.
- (C) If such business is discontinued for a continuous period of more than six months for any reason, said adult related establishment shall be considered terminated and may not be re-established.
- (D) Such adult related establishment shall be terminated within two years from the effective date of this chapter. A variance from this provision may be obtained if such business continues to be in noncompliance with the requirements of this chapter, upon the finding that the business is obligated by written lease entered into before the effective date of this chapter for a period exceeding two years from such effective date, or that the activity involves investment of money in a leasehold or improvements such that a longer period is necessary to prevent undue financial hardship. For the purpose of this subsection, an option to renew a lease shall not be evidence that a business is obligated by a written lease for a period beyond the current term of the lease. The variance procedure and fees shall be the same as provide in Sections 10-3-6, et. seq., and 10-9-9 of this Code.
- (E) Nonconforming adult related establishments shall, within thirty days from the effective date of this chapter, comply with all other applicable provisions of this code. (Ord. 1408, 25 Nov 1986)

10-9-11: **PUBLIC DISPLAY OF CERTAIN MATTER PROHIBITED:** Any material which has as its primary or dominant theme matter depicting, illustrating, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this chapter shall be located, covered or screened in such a manner as to prevent a view by the public. Further, such businesses may not have signs, graphics or window displays which in any way present, depict, illustrate or describe such material when such material has as its purpose or effect sexual arousal, gratification or affront. (Ord. 1408, 25 Nov 1986)