

ORDINANCE NO. _____

SECOND READING AND ADOPTION

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
TITLE 19 OF THE CHULA VISTA MUNICIPAL CODE
REGULATING PLANNING AND ZONING

WHEREAS, the City of Chula Vista has certain permitting provisions found in Title 19 for sexually oriented businesses that are in need of updating and refinement. The City Council takes legislative notice of the full complement of supporting evidence as to the secondary effects of sexually oriented businesses. Accordingly, the City makes the following findings and enactments.

NOW THEREFORE the City Council of the City of Chula Vista does hereby ordain as follows:

SECTION 1. FINDINGS.

A. The City of Chula Vista has certain provisions found in Title 19 relating to planning and zoning for sexually oriented businesses that are in need of refinement. The City Council finds that it is necessary and appropriate to amend Title 19 to add, refine and update the provisions relating to planning and zoning standards for adult businesses operating within Chula Vista. The public health, safety and welfare of the City and its residents require the enactment of this Ordinance in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of sexually oriented businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City's retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of sexually oriented businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize sexually oriented businesses.

B. The City Council finds that the revisions to the City's Municipal Code implemented by this Ordinance are necessary in order to respond to recent developments within the regulation of adult uses and case law and in order to preserve the City from the potential adverse secondary effects of sexually oriented businesses, including crime, the protection of the City's retail trade, maintenance of property values, protecting and preserving the quality of the City's neighborhoods and the City's commercial districts, and the protection of the City's quality of life, based on the referenced studies and the findings set forth herein. Specifically, the revisions and amendments to Municipal Code Title 19 included in this Ordinance are essential and necessary to ensure the orderly land use regulation as to sexually oriented businesses uses within the City and thereby protect the public peace, safety and general welfare in the City of Chula Vista.

C. On July 8, 2014, the City Council held a public meeting during which it considered the adoption of this Ordinance.

D. The City Council, in adopting this Ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary side effects of sexually oriented businesses in other cities: Austin, Texas (1986); Indianapolis, Indiana (1984); Garden Grove, California (1991); Seattle, Washington (1989); Houston, Texas (1997); Phoenix, Arizona (1979); Tucson, Arizona (1990); Chattanooga, Tennessee (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 and 2007); Ft. Worth, Texas (2004); Kennedale, Texas (2005); Greensboro, North Carolina (2003); Amarillo, Texas (1977); Cleveland, Ohio (1977); Newport News, Virginia (1996); Jackson County, Missouri (2008); Louisville, Kentucky (2004); New York, New York Times Square (1994); Beaumont, Texas (1982); the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, by Louis Comus III (2001). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this Ordinance to regulate the adverse secondary side effects of sexually oriented businesses, and more specifically finds that these studies provide convincing evidence that:

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, traffic, noise, and sexual assault and exploitation.

2. The studies from other cities establish by convincing evidence that sexually oriented businesses that are not regulated with operating standards often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values. Regulations for sexually oriented businesses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.

E. In developing this Ordinance, the City Council is mindful of legal principles relating to regulation of sexually oriented businesses, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of sexually oriented businesses. The City Council takes legislative notice of the:

1. Decisions of the United States Supreme Court regarding local regulation of sexually oriented businesses 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); *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).

2. Decisions of the Ninth Circuit Court of Appeals addressing sexually oriented businesses including but not limited to: *Alameda Books, Inc. v. City of Los Angeles*, 631 F.3d 1031 (9th Cir. 2011); *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), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 274; *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); *Talk of the Town v. Department of Finance and Business Services*, 343 F.3d 1063 (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); *Isbell v. City of San Diego*, 450 F.Supp.2d 1143 (S.D. Cal. 2006); *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000), *cert. denied* 531 U.S. 1072 (2001); *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), *cert. denied* 121 S.Ct. 1189 (2001); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000), *cert. denied* 531 U.S. 1104 (2001); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *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), *cert. denied* 511 U.S. 1030 (1994); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); and *Lydo Ent. v. Las Vegas*, 745 F.2d 1211 (9th Cir. 1984).

3. Decisions of the State of California addressing sexually oriented businesses including: *Madain v. City of Stanton*, 185 Cal.App.4th 1277 (2010); *Krontz v. City of San Diego*, 136 Cal.App.4th 1126 (2006); *Lacy Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal.App.4th 526 (2004); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board and Renee Vicary, Real Party in Interest*, 99 Cal.App.4th 880 (2002); *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *Sundance Saloon, Inc. v. City of San Diego*, 213 Cal.App.3d 807 (1989); *7978 Corporation v. Pitchess*, 41 Cal.App.3d 42 (1974); *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *E.W.A.P., Inc. v. City of Los Angeles*, 56 Cal.App.4th 310 (1997); *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986); *City of National City v. Wiener*, 3 Cal.4th 832 (1992), *cert. denied* 510 U.S. 824; and *People v. Superior Court (Lucero)*, 49 Cal.3d 14 (1989).

F. The negative secondary effects from sexually oriented businesses 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 Ordinance, 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 this Ordinance are reasonably believed to be relevant to said secondary effects. The City again refers to the record of cases and documentation relating to secondary effects associated with sexually oriented businesses which remain on file in

connection with Ordinance Nos. 3239 and 3241 which were adopted by the City in November 2012.

G. Locational criteria are a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and thereby protect the health, safety, and welfare of the City's residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in Chula Vista and a sufficient and reasonable number of alternative locations for adult businesses are provided by this Ordinance. The City Council takes legislative notice of the United States Supreme Court decision in *Renton* that requires that adult businesses be provided a reasonable opportunity to open and operate. The City Council also takes legislative notice of the Ninth Circuit's decisions in *Topanga Press*, *Lim* and *Isbell* with respect to availability of sites for adult businesses and finds that under the distance and locational restrictions imposed by this Ordinance there are sufficient sites available for adult businesses within Chula Vista.

H. Relying on the following, the City finds that sexually oriented businesses in its community may lead to detrimental secondary effects including prostitution and engagement in unlawful sexual activity. The City bases this conclusion on the experiences of Chula Vista, as well as that of other California communities, such as La Habra and Arcadia, which the City has a reasonable basis to believe reflect the experiences of its own community, including numerous police reports and affidavits from those communities, and judicial decisions in the public record:

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

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

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

4. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as locations for engaging in unlawful sexual activity.

5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the City has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at sexually oriented businesses in order to protect the health, safety, and

well-being of its citizens. The City finds this is relevant to Chula Vista and the need to regulate the secondary effects of sexually oriented businesses within the community.

I. The City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography. A copy of the Attorney General's Report on Pornography is available for public review at the City Clerk's office.

J. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of sexually oriented businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (*i.e.*, Penal Code § 313 *et seq.*). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995).

K. While the City Council is obligated to protect the rights conferred by the United States Constitution to sexually oriented businesses, it does so in a manner that ensures the continued and orderly use and development of property within the City and diminishes, to the greatest extent feasible, those undesirable adverse secondary effects which the above mentioned studies have shown to be associated with the operation of sexually oriented businesses.

L. Zoning and locational restrictions are a legitimate and reasonable means of helping to reduce the secondary effects from sexually oriented businesses and thereby protect the health, safety, and welfare of Chula Vista residents, protect citizens from increased crime, preserve the quality of life, and preserve the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The zoning and locational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected sexually oriented businesses in Chula Vista.

M. The City Council in recognizing that these standards do not preclude reasonable alternative avenues of communication and notes that the proliferation of sexually oriented material on the Internet, satellite television, direct television, CDs, DVDs, all provide alternative avenues of communication. Additionally, the City Council takes note that numerous web-based services, such as www.sugardvd.com and www.wantedlist.com, deliver adult videos and DVDs directly to customers' homes via the mail. The City Council recognizes the following review of one of these web-based services: "SugarDVD has made it so easy to rent and view adult movies, you may never leave your house again ... SugarDVD is discreet with quick turnaround times and a massive selection ... SugarDVD offers six rental plans, catering to the casual porn viewer and diehards who can never get enough hard-core fare." (*Hustler Magazine*, January 2006.) The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the

Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); *see also U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied* 519 U.S. 820 [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions]. The Internet brings with it a virtually unlimited additional source of adult oriented sexual materials available to interested persons in every community with a mere keystroke. A sexually oriented business no longer has to be “actually” physically located in a city to be available in the community.

N. It is not the intent of the City Council in enacting this Ordinance or any provision thereof to condone or legitimize the distribution of obscene material, and the City and its Council recognize that state law prohibits the distribution of obscene materials and expect and encourage law enforcement officials to enforce state obscenity statutes against such illegal activities in Chula Vista.

O. The City Council does not intend to regulate in any area preempted by California law including, but not limited to, regulation of obscene speech, nor is it the intent of the City Council to preempt regulations of the state Alcoholic Beverage Control Department (“ABC”).

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

SECTION 2. AMENDMENT OF MUNICIPAL CODE TITLE 19 (PLANNING AND ZONING), SECTION 19.04 (DEFINITIONS)

The following Definitions found in Section 19.04 (Definitions) of Title 19 (Planning and Zoning) of the Chula Vista Municipal Code are hereby repealed:

- 19.04.007 – adult bookstores
- 19.04.007A – adult motion picture theater
- 19.04.007B – adult mini-motion picture theater
- 19.04.035 – body painting studio
- 19.04.047 – cabaret
- 19.04.051 – coin-operated adult entertainment facility
- 19.04.155 – model studio
- 19.04.205 – sexual encounter studio
- 19.04.205.1 – sexually explicit material

19.04.270 – specified anatomical areas

19.04.271 – specified sexual activity

SECTION 3. AMENDMENT OF MUNICIPAL CODE TITLE 19 (PLANNING AND ZONING), SECTION 19.04 (DEFINITIONS)

Section 19.04.063 (Definitions) of Title 19 (Planning and Zoning) is hereby repealed and replaced with:

19.04.063 Dancehall and Dance Floor

“Dance floor” shall mean a defined floor area located within a business establishment designed for the purpose of dancing by patrons of the establishment.

19.04.200.1 School

“School” means any child or day care facility, or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

19.04.169 Park

“Park” means the land and easements owned or leased by the City of Chula Vista which, by ordinance, resolution, regulation or agreement, is dedicated to or operated by the City for purposes of sports and public recreation. The term shall include the buildings, parking lots, streets and sidewalks within the territorial boundaries establishing the park.

19.04.050.1 Religious Institution

“Religious Institution” means an institution that people regularly attend to participate in or hold religious services and incidental religious education, but not including private schools as defined in this section.

19.04.065 Day Spa

“Day Spa” means a business which provides a variety of services for the purpose of improving health, beauty and relaxation through personal care treatments. Treatments may include foot and body massage; facials; waxing; body wraps; salt scrubs; manicures; pedicures; aromatherapy; moxibustion; ear candling; and guasha (scraping), or other similar treatments.

SECTION 4. AMENDMENT OF MUNICIPAL CODE TITLE 19 (PLANNING AND ZONING), SECTION 19.58 (USES)

Section 19.58.024 (Uses – Sexually Oriented Businesses) of Title 19 (Planning and Zoning) is hereby repealed and replaced with:

19.58.024 Sexually Oriented Businesses.

A. Sexually oriented businesses shall be defined for purposes of this Chapter as set forth in Chapter 9.13.

B. Location Requirements.

1. A sexually oriented business shall only be located in the C-T zone or in a zone identified in the Bayfront Specific Plan, the Eastlake I, Eastlake Business Center II and Eastlake II Sectional Planning Areas (SPA) as allowing such businesses. If a specific plan/planned community district allows a use conditionally (*i.e.*, upon the issuance of a conditional use permit), this CUP requirement shall be satisfied by the sexually oriented business if such business has a valid sexually oriented business regulatory license as provided for in Chapter 9.13.

2. A sexually oriented business shall not be located within 500 feet of residentially zoned territory, which is located upon the same street or streets, or within 500 feet of residentially zoned or residentially used properties as measured along street rights-of-way from the proposed location to the boundary line of said residentially zoned or used properties, or within 500 feet measured radially of any building site containing a school, park or religious institution.

3. A sexually oriented business shall not be located within 1,000 feet of another sexually oriented business.

C. Specific Standards – View of Interior from Public Way. All building openings, entries and windows from sexually oriented businesses shall be located, covered or screened in such a manner as to prevent a view into the interior from any public or semipublic area, including public sidewalks, streets, arcades, hallways or passageways, of 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 Chapter 9.13. Further, such businesses may not have window displays which in any way present, depict, illustrate or describe any such sexually oriented material.

SECTION 5. AMENDMENT OF MUNICIPAL CODE TITLE 19 (PLANNING AND ZONING), SECTION 19.40 (USES)

Section 19.40.020, subsection N is hereby repealed and replaced with:

19.40.020 Permitted Uses

N. Sexually-oriented businesses, subject to the provisions of CVMC 19.58.024.

SECTION 6. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.

City Council has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the proposed activity is not a “Project” as defined under section 15378 of the State CEQA Guidelines because the adoption of this ordinance, will not result in a physical change to the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the proposed activity is not subject to CEQA. Notwithstanding the forgoing, City Council has further determined that there is also no possibility that the proposed activity will have a significant effect on the environment; therefore, pursuant to Section 15061(b)(3) of the State CEQA Guidelines the activity is exempt from the provisions of CEQA.

SECTION 7. SEVERABILITY.

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

SECTION 8. EFFECTIVE DATE.

This Ordinance shall take effect and be in force on the 30th day after its final passage.

SECTION 9. PUBLICATION.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Kelly Broughton
Development Services Director

Glen R. Googins
City Attorney