

ORDINANCE NO.

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING  
CHAPTER 9.13 OF THE CHULA VISTA MUNICIPAL CODE  
REGULATING THE LICENSING AND OPERATIONAL  
STANDARDS FOR SEXUALLY ORIENTED BUSINESSES

WHEREAS, the City of Chula Vista has certain permitting provisions found in Chapter 9.13 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 Council finds that it is necessary and appropriate to amend Chapter 9.13 to add, refine and update the provisions providing licensing and operational standards for adult businesses operating within the City of Chula Vista (“the City”). The public health, safety and welfare of the City and its residents require the enactment of this Ordinance and such operating standards for sexually oriented businesses 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, the protection of the City’s quality of life, and the increased threat of the spread of sexually transmitted diseases and the protection of the peace, welfare and privacy of persons who patronize adult businesses based on the referenced studies and the findings set forth herein. Specifically, the revisions and amendments to Municipal Code Chapter 9.13 included in this Ordinance are essential and necessary to ensure the orderly implementation of adult use regulations within the City by amending and refining various permitting and operating provisions in the Municipal Code to improve the City’s regulation of sexually oriented businesses, and thereby ensure the immediate preservation of the public peace, health, 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); "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; A Methodological Critique of the Linz-Paul Report: A Report to the San Diego City Attorney's Office (2003); Sexually Oriented Businesses: An Insider's View – Testimony of David Sherman before the Michigan House Committee on Ethics and Constitutional Law (2000); Closin' Time: Effective Regulation of Adult Businesses' Hours of Operation, by Scott Bergthold (2000); Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses, by Louis Comus III (2001); Peep Show Establishments, Police Activity, Public Place and Time: A Study of Secondary Effects in San Diego, California, by Daniel Linz *et al.* (2006); and Do Peep-shows "Cause" Crime? A response to Linz, Paul, and Yao, by Richard McCleary *et al.* (2006). 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 has considered and 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); *Center For Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Deja Vu-Everett-Federal Way, Inc. v. City of Federal Way*, 46 Fed.Appx. 409 (9th Cir. 2002); *Clark v. City of Lakewood*, 259 F.3d 996 (9th Cir. 2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Isbell v. City of San Diego*, 450 F.Supp.2d 1143 (S.D. Cal. 2006); *Baby Tam & Co., Inc. v. City of Las Vegas*, 154 F.3d 1097 (9th Cir. 1998) (*Baby Tam I*); *Baby Tam & Co. v. Las Vegas*, 199 F.3d 1111 (9th Cir. 2000) (*Baby Tam II*); *Baby Tam & Co. v. Las Vegas*, 247 F.3d 1003 (9th Cir. 2001) (*Baby Tam III*); *Diamond v. City of Taft*, 215 F.3d 1052 (9th Cir. 2000), *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); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000); *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 from other Circuit Court of Appeals addressing sexually oriented businesses including the following: *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150 (10th Cir. 2006); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 455 Fed.Appx. 541 (6th Cir. 2011); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d

372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Tee & Bee v. City of West Allis*, 936 F.Supp. 1479 (E.D. Wis. 1996); *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *TK's Video, Inc. v. Denton County, Tex.*, 24 F.3d 705 (5th Cir. Tex. 1994); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jacksonville*, 973 F.2d 1255 (5th Cir. 1992), *cert. denied* 507 U.S. 1030 (1993); *International Eateries v. Broward County*, 941 F.2d 1157 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); *N.W. Enterprises, Inc. v. City of Houston*, 372 F.3d 333 (5th Cir. 2004); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); and *N.W. Enterprises, Inc. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003).

4. Decisions from the California state courts 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. 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 this Chapter are reasonably believed to be relevant to said secondary effects. Copies of these cases and documentation relating to secondary effects associated with sexually oriented businesses are on file in connection with Ordinance Nos. 3239 and 3241 which were adopted by the City in November 2012.

G. The City Council also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of Chula Vista, and thus certain

requirements with respect to the ownership, operation and licensing of sexually oriented businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council takes legislative notice of the following: (1) the facts recited in the case of *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems, and (2) the facts and holding of the case of *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374, wherein the Ninth Circuit recognized that off stage performances by performers who also perform nude and/or semi-nude at a sexually oriented establishment can cause the same secondary effects as other activities documented in studies and case law regarding sexually oriented establishments, even if the performer is clothed and the establishment does not serve alcohol.

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.

6. The public health, safety, and welfare of all persons in the City must be protected by the establishment of standards to diminish the possibility of infection of contagious diseases.

I. The City Council is cognizant of the specific danger from the sexually transmitted disease AIDS, which is currently irreversible and fatal. The City Council takes legislative notice of the HIV/AIDS Epidemiology Report 2010 (“HIV/AIDS Epidemiology Report”) prepared by the Public Health Services Division of the County of San Diego Health and Human Services Agency. According to the HIV/AIDS Epidemiology Report, 14,228 AIDS cases were reported throughout San Diego County since 1981 through December 2009, 328 of which were reported in 2009. The HIV/AIDS Epidemiology Report also indicates that San Diego County has the third highest number of AIDS cases in the state of California. The City also takes legislative notice of the County of Orange Communicable Disease Summary 2000, County of Orange Health Care Agency, issued July 2002 (“Communicable Disease Summary”) and the HIV/AIDS Surveillance Statistics, 2003 also issued by the County of Orange Health Care Agency in October 2004 (“HIV/AIDS Surveillance Study”). The HIV/AIDS Surveillance Study reports that 6,429 cases of AIDS were reported in Orange County between 1981 and 2003. Of those, 237 were reported in 2003 and 162 were also diagnosed in 2003. The HIV/AIDS Surveillance Study further indicates that according to the latest available data (as of December 2001), Orange County has reported more AIDS cases than 25 U.S. states and ranks 28th in number of AIDS cases reported among the 101 metropolitan areas recognized by the Centers for Disease Control and Prevention with 500,000 or more population.

J. Legislative notice is further taken of the Reported Communicable Diseases 2006 prepared by the Department of Public Health, San Bernardino County (“SB Communicable Diseases Report”). According to the SB Communicable Diseases Report, San Bernardino County had 157 reported cases of AIDS: 7.8 cases per 100,000 population. The SB Communicable Diseases Report also reported 8,063 cases of chlamydia (407 cases per 100,000 population); 2,114 cases of gonorrhea (106.8 cases per 100,000 population) and 144 cases of syphilis (7.1 cases per 100,000 population). The City Council takes further legislative notice of the Communicable Disease Report 2011 prepared by the Department of Public Health, County of Riverside (“Riverside Communicable Disease Report”). According to the Riverside Communicable Disease Report, chlamydia is the most commonly reported communicable disease in Riverside County with 8,641 cases reported, a 34% increase in incidence compared to 2010. The Riverside Communicable Disease Report indicates that gonorrhea is the third most frequently reported infectious disease in Riverside County with 891 cases reported and an increase rate of 38.7 cases per 100,000 population. As reported by the Riverside Communicable Disease Report, there were 58 newly diagnosed AIDS cases and 104 newly diagnosed HIV cases in Riverside County. In 2011, prevalence rates for persons living with HIV and AIDS were 66.1 and 141.1 cases per 100,000 population. During 2011, a total of 1,521 persons were living with HIV and 3,247 persons living with AIDS in Riverside County.

K. The City Council has a reasonable basis to conclude that the experiences of San Diego, Orange, San Bernardino and Riverside Counties as to these HIV/AIDS and STD or blood borne diseases are relevant to the experiences of Chula Vista.

L. In considering appropriate operational regulations for sexually oriented businesses, the City Council finds that:

1. Enclosed or concealed booths and dimly lit areas within sexually oriented businesses greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. Requiring all indoor areas to be open to view by management at all times and adequate lighting to be provided reduces the opportunity for, and therefore the incidence of illegal conduct within sexually oriented businesses, and further facilitates the inspection of the interior of the premises thereof by law enforcement personnel.

2. Preventing the exchange of money between performers and patrons also reduces the likelihood of drug and sex transactions occurring in sexually oriented businesses.

3. Requiring separations between performers and patrons precludes them from being within earshot to communicate and thereby reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the sexually oriented business.

M. The City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography in support of this Ordinance including, but not limited to, its recommendations that local governments ban certain features of video booths that facilitate carnal sexual encounters. A copy of the Attorney General's Report on Pornography is available for public review at the City Clerk's office.

1. With respect to booths, these findings include the following: The inside walls of the booth are typically covered with graffiti and messages, usually of a sexual nature and consisting of telephone numbers, names, requests and offers for sex acts, anatomical descriptions, and sketches. Some booths also contain a chart used as an appointment schedule that is utilized to schedule appointments for sex acts that take place in that particular booth. In some instances, this arrangement has been used for the solicitation of prostitutes. Many of these booths are equipped with a hole in the side wall between the booths to allow patrons to engage in anonymous sex including both oral and anal sex acts. Inside the booths, the floors and walls are often wet and sticky with liquid or viscous substances, including semen, urine, feces, used prophylactics, gels, saliva, or alcoholic beverages. The City concludes, based in part on the description of the illicit sexual activity as noted within the Attorney General's Report, that the presence of closed doors and/or any obstruction of the video booth area is likely to lead to the above described secondary effects.

2. Likewise, the City Council recognizes and relies on the findings set forth in the May 1990 study conducted by the City of Tucson in support of this Ordinance including, but not limited to, the following findings with respect to booths: Holes were present in the walls of adjoining booths within sexually oriented entertainment establishments. These holes were used by male patrons to facilitate sex acts with the occupant of the neighboring booth. The Council reasonably believes that the Tucson experience, along with the Attorney General's Report, is relevant to the problems associated with sexually oriented facilities in Chula Vista.

3. The City Council finds that requiring that booths in sexually oriented establishments be configured in such a manner so that there is an unobstructed view from the

manager's station(s) and prohibiting closed, concealed, or unobstructed booths that are occupied by no more than one person at a time reduces the secondary effects associated with closed booths. Specifically, the provisions pertaining to booths are necessary to eliminate the masturbation and sexual activity that are known to occur in closed booths and which present significant health and safety concerns with respect to communicable diseases, including AIDS. A number of courts have held that combating the spread of AIDS and STDs is a significant government interest, and that prohibiting concealed or enclosed booths in a sexually oriented establishment is a narrowly tailored means of serving that interest. *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985); *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002); *Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123 (3rd Cir. 1993); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Doe v. City of Minneapolis*, 898 F.2d 612 (8th Cir. 1990); *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986). The City Council takes further note of the Ninth Circuit's decision in *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982) and its finding that there is no constitutional right to unobserved masturbation in a public place. The City Council also recognizes the California case *Deluxe Theater & Bookstore, Inc. v. City of San Diego*, 175 Cal.App.3d 980 (1985), which found that the right to privacy guaranteed by the California Constitution does not protect the right to unobserved masturbation in a public place. Further, the City takes note of the Eleventh Circuit's validation of a restriction on the size of booths in *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999), including the Court's finding that "[a]mple evidence ... supports the ... finding that illegal and unhealthy activities take place in small rooms at adult entertainment establishments."

N. In recognition of the negative secondary effects generated by live sexually oriented entertainment, a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and precluded direct exchange of monies between performers and patrons at sexually oriented businesses that provide live entertainment including, but not limited to: *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005), amended 402 F.3d 875, *cert. denied* 126 S.Ct. 374; *Tily B. v. City of Newport Beach*, 69 Cal.App.4th 1 (1999); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *BSA, Inc. v. King County*, 804 F.2d 1104 (9th Cir. 1986); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Parker v. Whitfield County*, 463 S.E.2d 116 (Ga. 1995); and *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995). Courts have found that dancers who perform nude or semi-nude on stage at sexually oriented cabarets are the same individuals who then move off stage to offer lap dances, couch dances, or other similar off stage performances. *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005). Therefore, Chula Vista reasonably believes it is necessary to impose distance limitations between performers and patrons and prohibit physical contact between performers and patrons during all performances, whether on or off stage, in order to guard against the documented secondary effects.

O. The City Council believes that prohibiting physical contact between performers and patrons at sexually oriented businesses, requiring separate entrances for performers from those used for patrons, requiring separate restrooms for opposite sexes, prohibiting performers from soliciting payment from patrons, and prohibiting the direct payment to performers by patrons are a reasonable and effective means of addressing the legitimate governmental interests



of preventing prostitution, the spread of sexually transmitted diseases, and drug transactions. The case law and studies serve as a reasonable basis to establish this link.

P. In recognition of the negative secondary effects generated by live sexually oriented entertainment establishments, a number of courts have upheld ordinances which require that employees, as well as the owners and managers of such establishments submit background information on criminal convictions related to relatively recent sexual offenses so that a public entity can assess an individual's ability to function responsibly in the sexually oriented business setting. See *TK's Video, Inc. v. Denton County, Tex.*, 24 F.3d 705, 710 (5th Cir. 1994); and see *Club Southern Burlesque, Inc. v. City of Carrollton*, 265 Ga. 528, 532, 457 S.E.2d 816 (1995). This includes not only the applicant for a sexually oriented business license, but individuals who work in sexually oriented businesses during regular business hours such as performers and non-performers where the criminal background check is limited to a period of no more than five (5) years immediately preceding the date of application. See *Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150, 1171 (10th Cir. 2006); *McCrothers Corp. d/b/a Tree City Bar, et al. v. City of Madan*, 728 N.W.2d 124 (2007); *Tee & Bee v. City of West Allis*, 936 F.Supp. 1479, 1487 (E.D. Wis. 1996); *Club Southern Burlesque, Inc.*, 265 Ga. at 532. In this regard, the City Council, in adopting operational standards, recognizes that the requirement for employee disclosure of recent criminal activity is narrowly tailored and imposes no greater restriction on First Amendment freedoms than is necessary to minimize the secondary harms stated in the ordinance. See *TK's Video v. Denton County*, 830 F.Supp. 335, 343 (E.D. Tex. 1993), vacated in part on other grounds, 24 F.3d 705 (5th Cir. 1994). When, as here, the civil disability provision of a sexually oriented business ordinance is tailored to apply to sex-related crimes only, the "relationship between the offense and the evil to be regulated is direct and substantial." *FW/PBS, Inc. v. City of Dallas*, 837 F.2d 1298, 1305 (5th Cir. 1988) and affirmed in part and vacated in part in *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); see also *TK's Video*, 24 F.3d at 711 and see *Déjà Vu of Nashville, Inc. v. Metro Gov't of Nashville and Davidson County*, 274 F.3d at 392 (6th Cir. 2001); *Brownell v. City of Rochester*, 190 F.Supp.2d 472, 494-96 (W.D. N.Y. 2001); *Tee & Bee*, 936 F.Supp. at 1490. Chula Vista adopts the reasoning of courts finding that "Certain employees of unregulated sexually oriented businesses ... engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments" and has a reasonable basis to believe this reasoning is applicable in the Chula Vista community. Further, the "fact that an applicant for a sexually oriented use permit has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance." Hence, "[t]he barring of such individuals from employment in sexually oriented businesses for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within the City." *Dr. John's*, 465 F.3d at 1171 n. 30.

Q. The City Council also finds the establishment of a sexually oriented business regulatory licensing process and operational standards for sexually oriented businesses are legitimate and reasonable means of ensuring that:

1. Operators of and performers at sexually oriented businesses comply with the City's regulations;

2. The recognized adverse secondary impacts of a proposed sexually oriented business are mitigated;

3. Sexually oriented business operators have specific guidelines with respect to the manner in which they can operate a sexually oriented business; and

4. The applications for sexually oriented business regulatory licenses are handled fairly and expeditiously.

R. 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).

S. 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.

T. Licensing and operating standards are a legitimate and reasonable means of ensuring that sexually oriented businesses are conducted in a manner so as to minimize their adverse secondary effects and to help assure that such operators, businesses, licensees and permittees comply with reasonable regulations related to such requirements to minimize and control problems associated with such 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 operational requirements contained in this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected sexually oriented businesses in Chula Vista.

U. The City Council, in adopting operational standards, recognizes that these standards do not preclude reasonable alternative avenues of communication. For example, the closing hours requirement means that sexually oriented businesses are free to operate seven (7) days a week for twenty (20) hours per day. The City Council takes note of the proliferation of sexually oriented material on the Internet, satellite television, direct television, CDs, DVDs, and that these various media provide alternative avenues of communication. Additionally, the City Council takes note that numerous web-based services, such as [www.sugardvd.com](http://www.sugardvd.com) and [www.wantedlist.com](http://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.

V. The City Council recognizes that adult devices (*i.e.* adult novelties and/or adult related products) such as dildos, fur-lined handcuffs, leather whips, anal beads, and devices that are physical representations of human genital organs, are not speech and enjoy no First Amendment protections. *See Ford v. State of Texas*, 753 S.W.2d 451, 452-453 (1988); *Sewell v. State of Georgia*, 233 S.E.2d 187, 188-189 (1977); *Chamblee Visuals, LLC v. City of Chamblee*, 506 S.E.2d 113, 115 (1998); and *Red Bluff Drive-In, Inc. v. Vance*, 648 F.2d 1020 (5th Cir. 1981).

W. It is not the intent of the City Council of Chula Vista 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.

X. 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”).

Y. 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.

Z. The City Council finds that licensing and operational standards are a legitimate and reasonable means of accountability to ensure that operators and performers and non-performers employed at sexually oriented facilities comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

AA. The licensing and operation provisions adopted herein are necessary in order to protect the public health, safety and welfare by providing a mechanism to address the adverse secondary effects associated with the establishment and operation of unregulated or under-regulated sexually oriented businesses.

## **SECTION 2. AMENDMENT OF MUNICIPAL CODE CHAPTER 9.13**

1. Section 9.13.020 (Definitions), subsection X, of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code is hereby repealed and replaced as follows:

X. “Sexually oriented business” means:

1. A business establishment or concern that as a regular and substantial course of conduct operates as an “adult bookstore or adult video store,” “adult cabaret,” “adult motion picture theater,” “adult model studio,” “adult retail store,” “adult arcade,” or “adult motel or hotel.”

2. A business establishment or concern which as a regular and substantial course of conduct offers, sells or distributes “sexually oriented material” or “sexually oriented merchandise,” or which offers to its patrons materials, products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas” but not including those uses or activities which are preempted by state law.

3. For purposes of the Bayfront Specific Plan and the Eastlake II Planned Community District, the term “cabaret” shall have the same meaning as the term “sexually oriented business” as defined at paragraphs 1 and 2 above.

2. The definition for “Chief of Police” is added to Section 9.13.020 (Definitions), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code as follows (and the letter designations for the remainder of Section 9.13.020 (Definitions) of Chapter 9.13 is hereby revised accordingly and the phrase “or his/her designee” after the phrase “Chief of Police” is hereby stricken throughout the subject Ordinance, except under Section 9.13.020 (Definitions)):

M. “Chief of Police” means the Chief of Police of the City of Chula Vista or his/her designee.

3. Section 9.13.030 (License required) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection B. is hereby repealed and replaced with the following:

B. License applicants shall file a written, signed and verified application in person at the City’s Development Services counter on a form provided by the City’s Director of Development Services or his or her designee (“the Director”). Such

application shall contain the following information and be accompanied by the following documents:

4. Section 9.13.030 (License required) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection C. is hereby repealed and replaced with the following:

C. The completed application shall be accompanied by a nonrefundable application fee. The amount of such fees shall be as set forth in the master fee schedule of the City adopted by resolution of the City Council.

5. Section 9.13.040 (Issuance of license) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsections A. and B. are hereby repealed and replaced with the following:

A. Upon the filing of a completed application for a sexually oriented business regulatory license, the Director shall immediately write or stamp the application "Received" and, in conjunction with City staff, shall promptly investigate the information contained in the application to determine whether a sexually oriented business regulatory license shall be granted. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application, nor is it grounds to extend the time period to conduct a hearing pursuant to this section.

B. Within 21 days after the filing of a completed sexually oriented regulatory permit application, including payment of the required application fee, the investigation shall be completed. The Director shall promptly notice a public hearing with notice of such hearing to be made pursuant to California Government Code Sections 65091 and 65905. Said public hearing shall be conducted within 15 days of the expiration of the completed investigation period.

6. Section 9.13.040 (Issuance of license) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection I.4. is hereby repealed and replaced with the following:

4. The required application fees have been paid.

7. Section 9.13.050 (Inspections) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code is hereby repealed and replaced with the following:

Licensees, operators and employees of a sexually oriented business shall permit representatives of the police department, fire department, development services department and other City departments to inspect the adult business for the purpose of insuring compliance with the laws and operating standards applicable to adult businesses at any time it is occupied or open for business. Such inspections shall be conducted in a reasonable manner.

8. Section 9.13.070 (Suspension or revocation of a sexually oriented business license) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection E. is hereby added as follows:

E. The Licensee shall be responsible for payment of the required fee(s) as set forth in the master fee schedule of the City adopted by resolution of the City Council.

9. Section 9.13.080 (Appeal procedures) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection A. is hereby repealed and replaced with the following:

A. After approval, denial, suspension or revocation of a license, any affected person may appeal the decision to the City Council in writing within 10 days after the written decision. At the time of filing an appeal, the applicant shall pay the required fee(s) as set forth in the master fee schedule of the City adopted by resolution of the City Council.

10. Section 9.13.090 (Transfer of sexually oriented business regulatory license) of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection C. is hereby repealed and replaced with the following:

C. In the event of a transfer of a sexually oriented business, the transferee shall complete an application for a sexually oriented business license and provide all information specified in CVMC 9.13.030 to the Director. The transferee shall be considered an applicant as provided in this chapter and the transfer shall only become effective if the proposed transferee satisfies the conditions set forth in CVMC 9.13.040, including payment of the required nonrefundable application fee. If the application is granted, the sexually oriented business license shall be transferred to the new owner. (Ord. 3241 § 2, 2012).

11. Section 9.13.100 (Operating Standards), Subsections J.3 and J.4 of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code is hereby repealed and replaced as follows:

J.3. As to off stage performances, no performer or adult cabaret dancer shall perform "adult live entertainment" off stage. As to an adult cabaret dancer performing off stage, a distance of at least six feet (6') shall be maintained between the adult cabaret dancer and the patron(s) at all times. During off stage performances, no adult cabaret dancer shall have physical contact with any patron, and no patron shall have physical contact with any adult cabaret dancer. Off stage performances may only be conducted in the main public assembly area of the sexually oriented business. Any location being used for off stage performances shall not be obscured by any door, curtain, wall, two way mirror or other device which would prohibit a person from seeing the entire area where the off stage performance is occurring. At all times, a manager station(s) shall be

maintained to ensure a clear line of sight into any area of the sexually oriented business where off-stage performances are conducted.

J.4. In addition, while on the premises, no performer or adult cabaret dancer shall have physical contact with a patron and no patron shall have physical contact with a performer or adult cabaret dancer, which includes, but is not limited to, the touching of the clothed or unclothed genitals, pubic area, buttocks, cleft of the buttocks, perineum, anal region, or female breast with any part or area of any other person's body. Patrons shall be advised of the no touching requirements by signs and, if necessary, by employees of the establishment. This prohibition does not extend to incidental touching.

12. Section 9.13.100 (Operating Standards), subsection J.13 of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code is hereby added as follows:

J.13. Except as otherwise provided in this Chapter, patrons shall not be permitted in any area of an adult cabaret other than bathrooms unless there is a clear line of sight between the area and a manager's station.

13. Section 9.13.100 (Operating Standards), subsection M of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code is hereby added as follows:

M. *Regulation of adult booth/individual viewing areas.*

1. No adult booth/individual viewing area shall be occupied by more than one individual at a time.

2. Each adult booth/individual viewing area within the sexually oriented business shall be visible from a continuous and accessible main aisle in a public portion of the establishment, and shall not be obscured by any door, curtain, wall, two way mirror or other device which would prohibit a person from seeing the entire interior of the adult booth/individual viewing area from the main aisle. Any sexually oriented business may have more than one manager station in order to ensure compliance with this regulation. At all times, the manager station(s) shall be maintained to ensure a clear line of sight into the interior of the adult/booth individual viewing area. Further, no one shall maintain any adult booth/individual viewing area in any configuration unless the entire interior wherein the picture or entertainment that is viewed is visible from the manager station(s). The entire body of any patron in any adult booth/individual viewing area must be visible from the main aisle and the manager station(s) without the assistance of mirrors or any other device.

3. No doors are permitted on an adult booth/individual viewing area. No partially or fully enclosed adult booth/individual viewing areas or partially or fully concealed adult booth/individual viewing areas shall be maintained.

4. No holes or other openings shall be permitted between adult booths/individual viewing areas. Any such hole or opening shall be repaired within twenty-four (24) hours using “pop” rivets to secure metal plates over the hole or opening to prevent patrons from removing the metal plates.

5. No beds, couches or chairs with a sitting area greater than twenty-four inches (24”) wide shall be permitted in an adult booth/individual viewing area.

14. Section 9.13.140 (Sexually oriented business performer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection C.9. is hereby repealed and replaced as follows:

9. The license applicant’s fingerprints on a Livescan form provided by the Chula Vista Police Department and two color two-by-two-inch photographs clearly showing the applicant’s face. The applicant shall pay the required fee(s) for photographs and fingerprint processing, as set forth in the master fee schedule of the City adopted by resolution of the City Council. Fingerprints and photographs shall be taken within six months of the date of application.

15. Section 9.13.140 (Sexually oriented business performer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection E. is hereby repealed and replaced as follows:

E. The completed application shall be accompanied by a nonrefundable application fee or nonrefundable license renewal fee. The amount of such fees shall be as set forth in the master fee schedule of the City adopted by resolution of the City Council.

16. Section 9.13.140 (Sexually oriented business performer license), subsection F of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code is hereby repealed and replaced as follows:

F. The completeness of an application shall be determined within 24 business hours. The Chief of Police or his/her designee must be available during normal working hours Monday through Friday to accept sexually oriented business performer applications. If the Chief of Police determines that the application is incomplete, the Chief of Police shall immediately inform the applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Upon receipt of a completed sexually oriented business performer application and payment of the license fee specified in Section E above, the Chief of Police shall immediately issue a temporary license which shall expire of its own accord thirty (30) City business days from the date of issuance and shall only be extended as provided in Section 9.13.150.

17. Section 9.13.150 (Investigation and action on application for sexually oriented business performer license), subsections B and C of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code are hereby repealed and replaced as follows:



B. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application. The Chief of Police's decision to grant or deny the adult business performer license shall be made within thirty (30) City business days from the date the temporary license was issued and in no case shall the decision to grant or deny the license application be made after the expiration of the temporary license. In the event the Chief of Police or his/her designee is unable to complete the investigation within thirty (30) City business days, he/she shall promptly notify the license applicant and extend the temporary license for up to ten (10) additional City business days. In no case shall the investigation exceed twenty (40) City business days, nor shall the decision to grant or deny the license application be made after the expiration of the temporary license.

C. The Chief of Police shall render a written decision to grant or deny the license within the foregoing thirty (30) City business day time period set forth in section 9.13.150(B). Said decision shall be mailed first class postage prepaid, hand delivered to the applicant, or emailed to the applicant (if the applicant approved email notification in his/her application), within the foregoing thirty (30) City business day period or forty (40) City business day period if extended pursuant to Section 9.13.150(B), at the address provided by the applicant in the application.

18. Section 9.13.150 (Investigation and action on application for sexually oriented business performer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection H. is hereby repealed and replaced as follows:

H. Each sexually oriented business performer license, other than the temporary license described in CVMC [9.13.140](#), shall expire one year from the date of issuance and may be renewed only by filing with the Chief of Police a written request for renewal, accompanied by a nonrefundable license renewal fee and a copy of the license to be renewed. The amount of such fees shall be as set forth in the master fee schedule of the City adopted by resolution of the City Council. If said application conforms to the previously approved application and there has been no change with respect to the license holder being convicted of any crime classified by this or any other state as a sex related offense, the Chief of Police or his/her designee shall renew the license for one year. Any plea to or conviction of a sex related offense requires the renewal application to be set for hearing before the Chief of Police in accordance with the provisions of this section. The request for renewal shall be made at least 30 days before the expiration date of the license. Applications for renewal shall be acted upon as provided herein for action upon applications for license. The Chief of Police's denial of a renewal application is subject to the hearing provisions of CVMC [9.13.160](#). (Ord. 3241 § 3, 2012).

19. Section 9.13.150 (Investigation and action on application for sexually oriented business performer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection I. is hereby added as follows:

I. A change of the present and/or proposed business address(es) and telephone number(s) of the establishments at which the applicant intends to work shall be allowed, upon approval of the Chief of Police and payment of the required fees as set forth in the master fee schedule in the City adopted by resolution of the City Council.

20. Section 9.13.160 (Revocation/suspension/denial of sexually oriented business performer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection B. is hereby repealed and replaced as follows:

B. On determining that grounds for denial of a license exist, the Chief of Police shall furnish written notice of the proposed action to the applicant/license holder. The decision of the Chief of Police shall be appealable to the City Manager by filing a written request for a hearing with the City Clerk within 15 days following the day of mailing of the Chief of Police's decision and paying the required fee(s) as set forth in the master fee schedule of the City adopted by resolution of the City Council. All such appeals shall be filed with the City Clerk and shall be public records. The City Manager shall issue a notice which shall set forth the time and place of a hearing before the City Manager or a designated hearing officer which is within 30 days from the date the appeal was filed and the ground or grounds upon which the hearing is based, the pertinent Chula Vista Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant/license holder, or shall be delivered to the license holder personally, at least 10 days prior to the hearing date.

21. Section 9.13.200 (Sexually oriented business nonperformer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection B.4. is hereby repealed and replaced as follows:

4. The license applicant's fingerprints on a Livescan form provided by the Chula Vista Police Department. The applicant shall pay the required fees for fingerprint processing, as set forth in the master fee schedule of the City adopted by resolution of the City Council. Fingerprints shall be taken within six months of the date of application.

22. Section 9.13.200 (Sexually oriented business nonperformer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection E. is hereby added as follows:

E. The completed application shall be accompanied by a nonrefundable application fee or nonrefundable license renewal fee. The amount of such fees shall be as set forth in the master fee schedule of the City adopted by resolution of the City Council.

23. Section 9.13.210 (Investigation and action on sexually oriented business nonperformer license applications), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection H. is hereby repealed and replaced as follows:

H. Each sexually oriented business nonperformer license shall expire one year from the date of issuance and may be renewed only by filing with the Chief of Police a written request for renewal, accompanied by a nonrefundable license renewal fee and a copy of the license to be renewed. The amount of such fees shall be as set forth in the master fee schedule of the City adopted by resolution of the City Council. If said application conforms to the previously approved application and there has been no change with respect to the applicant having been convicted of any specified criminal activity, the Chief of Police or his/her designee shall renew the applicant's nonperformer license for one year. The renewal application shall be made at least 30 days before the expiration date of the license. Applications for renewal shall be acted upon as provided herein for action upon an initial application for a nonperformer license. The Chief of Police's denial of a renewal application is subject to the hearing provisions of CVMC 9.13.220.

24. Section 9.13.210 (Investigation and action on sexually oriented business nonperformer license applications), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection I. is hereby added as follows:

I. A change of the name and address of the sexually oriented business where the applicant proposes to work as a nonperformer in a managerial capacity shall be allowed, upon approval of the Chief of Police and payment of the required fees as set forth in the master fee schedule in the City adopted by resolution of the City Council.

25. Section 9.13.220 (Revocation/suspension/denial of sexually oriented business nonperformer license), of Chapter 9.13 (Sexually Oriented Businesses and Sexually Oriented Licensing for Designated Individuals) of the Chula Vista Municipal Code, Subsection B. is hereby repealed and replaced as follows:

B. The decision of the Chief of Police to deny, suspend or revoke a nonperformer license shall be appealable to the City Manager by filing a written request for a hearing with the City Clerk within 15 days following the day of mailing of the Chief of Police's decision and paying the required fee(s) as set forth in the master fee schedule of the City adopted by resolution of the City Council. All such appeals shall be filed with the City Clerk and shall be public records. The City Manager shall issue a notice which shall set forth the time and place of a hearing before the City Manager or a designated hearing officer which is within 30 days from the date the appeal was filed and the ground or grounds upon which the hearing is based, the pertinent Chula Vista Municipal Code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the applicant or shall be delivered to the applicant personally, at least 10 days prior to the hearing date.

### **SECTION 3. 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 4. 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 5. EFFECTIVE DATE**

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

**SECTION 6. 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

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Kelly G. Broughton, FASLA  
Development Services Director

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Glen R. Googins  
City Attorney