# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Ordinance No. 1696 Entitled, "An Ordinance Of The City Council Of The City Of Lodi Repealing And Reenacting Chapter 5.40 Of The Lodi Municipal Code In Its Entirety Relating To The Regulation Of Adult-Oriented Businesses"

**MEETING DATE:** October 18, 2000

**PREPARED BY:** City Clerk

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**RECOMMENDED ACTION:** Following reading by title, it would be appropriate for the City Council to adopt Ordinance No. 1696.

**BACKGROUND INFORMATION:** Ordinance No. 1696 entitled, "An Ordinance Of The City Council Of The City Of Lodi Repealing And Reenacting Chapter 5.40 Of The Lodi Municipal Code In Its Entirety Relating To The Regulation Of Adult-Oriented Businesses" was introduced at the regular City Council meeting of October 4, 2000.

Pursuant to State statute, ordinances may be adopted five days after their introductions following reading by title.

This Ordinance has been approved as to form by the City Attorney.

**FUNDING:** None required.

Susan J. Blackston
City Clerk

Attachment

**APPROVED:** _____
H. Dixon Flynn -- City Manager

ORDINANCE NO. 1696

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI REPEALING AND REENACTING CHAPTER 5.40 OF THE LODI MUNICIPAL CODE IN ITS ENTIRETY RELATING TO THE REGULATION OF ADULT-ORIENTED BUSINESSES

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WHEREAS, the City Council finds that this Ordinance is enacted in order to mitigate the imminent threat posed to the public peace, health, safety and general welfare by Adult-Oriented Businesses. In this regard, the findings set forth in this Ordinance are incorporated herein by reference; and

WHEREAS, the City Council desires to ensure that City is not without adequate enforcement remedies to address violations of this Ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

**SECTION 1. PURPOSE AND FINDINGS.**

(1) **Purpose**. It is the purpose of this Ordinance to regulate Adult-Oriented Businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Adult-Oriented Businesses within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is not the intent nor effect of this Ordinance to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market. In addition, it is not the intent or effect of this Ordinance to condone or legitimize the distribution of obscene material.

(2) **Findings**. The City Council of the City finds and declares that adult businesses, by their nature, generate certain secondary effects unless regulated. These include blight, downgrading of neighborhoods, lowering of property values, and a tendency to attract undesirable persons who may engage in certain types of criminal conduct. Experience in other cities has shown that where adult businesses are concentrated, neighborhoods deteriorate and the areas become less desirable places in which to work and live. To avoid these secondary effects, this Chapter is intended to prevent concentrations of such uses in a single area, and to regulate to the extent permitted by law the manner in which adult businesses are conducted. (Ord. 1550 § 1(1), 1992)

**SECTION 2. OBSCENE MATERIALS.** 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 Council recognizes that state law prohibits the distribution of certain materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities within the City.

**SECTION 3. APPLICATION OF LAWS.** · 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 City ordinance 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.

**SECTON 4. CONFLICTING ORDINANCES REPEALED** All City ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 5. CLASSIFICATION.** Adult-Oriented Businesses are classified as follows:

(1) Adult Arcades;
(2) Adult Bookstores, Adult Novelty Stores, or Adult Video Stores;
(3) Adult Cabarets;
(4) Adult Motels;
(5) Adult Motion Picture Theaters;
(6) Adult Theaters;
(7) Nude Model Studios; and
(8) Sexual Encounter Centers.

## CHAPTER 5.40

## ADULT-ORIENTED BUSINESSES


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## ARTICLE 1

### General Provisions

**SECTION 5.40.010 PURPOSE AND INTENT.** It is the intent of this Chapter to regulate Adult-Oriented Businesses in order to promote the health, safety, and general welfare of the citizens of the City. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials and paraphernalia protected by the First Amendment, or deny access by the distributors, exhibitors, and performers of adult-oriented entertainment to their intended market. In addition, the provisions of this Chapter have neither the purpose nor effect of condoning or legitimizing the distribution of obscene material.

**SECTION 5.40.020 LOCATION OF ADULT-ORIENTED BUSINESSES.** From and after adoption of this Chapter, no person shall establish, conduct or permit to be established or conducted any Adult-Oriented Business within one thousand feet of any church, school, playground, child care center or Adult-Oriented Business.

For the purposes of this Section, the distance between uses shall be measured in a straight line without regard to intervening structures from the closest exterior wall of each business or use.

Adult-Oriented Businesses in existence on the effective date of this Chapter are deemed nonconforming uses, which may continue subject to the provisions of Section 17.69.030.

**SECTION 5.40.030 LICENSES REQUIRED**

(1) It is a violation of this Chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises in the City, the operation of an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid temporary or regular Adult-Oriented Business License issued by the Chief of Police pursuant to this Chapter.

(2) It is a violation of this Chapter for any person who operates an Adult-Oriented Business to employ or permit a person to work for or at the Adult-Oriented Business who does not possess a valid temporary or regular Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter.

(3) It is a violation of this Chapter for any person to obtain employment with or perform work for or at an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid temporary or regular Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter. These provisions shall not apply to persons exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not Nude, Semi-Nude, in a State of Nudity, or in a Semi-Nude Condition.

(4) It is a violation of this Chapter for any person to engage in or participate in any live performance depicting Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business unless the person first obtains and continues to maintain in full force and effect a valid temporary or regular Adult-Oriented Business Employee License issued by the Chief of Police pursuant to this Chapter.

(5) It is a violation of this Chapter to locate an Adult-Oriented Business other than as required by this Chapter.

## ARTICLE 2

## DEFINITIONS

**SECTION 5.40.100 DEFINITIONS.** The definitions contained in this Article shall govern the construction of this Chapter.

**SECTION 5.40.105 ADULT ARCADE** means any commercial establishment to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

**SECTION 5.40.110 ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE** means a commercial establishment which, as a regular and substantial course of conduct, offers for sale or rental for any form of consideration any one (1) or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, any material in digital format including, but not limited to, compact disc (CD) or digital video disc (DVD), slides, or other visual representations which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or

(2) instruments, devices, or paraphernalia, except for clothing, which are designed for use in connection with Specified Sexual Activities.

The phrase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The business devotes more than twenty-five percent (25%) of its retail inventory (not measured by the number of items but rather by the cost to the business owner of the inventory) to merchandise distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas.

(2) The business devotes more than twenty-five percent (25%) of the retail floor area to merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities and Specified Anatomical Areas.

(3) The retail value of merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities and Specified Anatomical Areas exceeds twenty-five (25%) of the total retail value of inventory offered in each of the following categories: (a) books, (b) magazines, (c) video tapes or any material in digital format including, but not limited to, compact disc (CD) or digital video disc (DVD), for sale or rental, (d) novelties and devices, and (e) on-premises viewing of images, films, and or videos.

(4) Gross revenue derived from merchandise in any category set forth in Paragraph 3 above exceeds (25%) of the total gross revenue for the category.

There is a rebuttable presumption that a business constitutes an Adult Bookstore, Adult Novelty Store or Adult Video Store where the business (1) offers or advertises merchandise that is distinguished or characterized by an emphasis upon Specified Sexual Activities or Specified Anatomical Areas as set forth in Paragraph 3 above <u>and</u> (2) fails to make revenue and inventory related business records available to the City upon reasonable advance notice.

**SECTION 5.40.115 ADULT CABARET** means a nightclub, bar, restaurant, or similar commercial establishment which, as a regular and substantial course of conduct, features:

(1) persons who appear in a State of Nudity or Semi-Nude Condition; or

(2) live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or

(3) films, motion pictures, video cassettes, any material in digital format including, but not limited to, compact disc (CD) or digital video disc (DVD), slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

The phase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to performances or services that are distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

**SECTION 5.40.120 ADULT MOTEL** means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction of description of Specified Sexual Activities or Specified Anatomical Areas; and has any of the following characteristics:

(1) a sign visible from the public right-of-way which advertises the availability of the above-described photographic reproductions; or

(2) offers a sleeping room or rent for a period of time that is less than ten (10) hours; or

(3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

**SECTION 5.40.125 ADULT MOTION PICTURE THEATER** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, for observation by five (5) or more patrons at any one time.

The phrase "regularly shown" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the theater's photographic reproductions that are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

(2) The number of photographic reproductions shown at the theater each month that are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

The proportion of the theater's revenue that is attributable to the showing of photographic reproductions distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

**SECTION 5.40.130 ADULT-ORIENTED BUSINESSES** means any of the following commercial establishments where patrons are permitted or invited: an Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Nude Model Studio, or Sexual Encounter Center.

**SECTION 5.40.135 ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial establishment which as a regular and substantial course of conduct features persons who appear in a State of Nudity or Semi-Nude Condition and/or features live performances which are distinguished or characterized by an emphasis upon the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

The phase "regular and substantial course of conduct" shall be construed with reference to all relevant factors, including but not limited to the following:

(1) The proportion of the business' performances or services that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

(2) The proportion of the business' revenue that is attributable to entertainment that is distinguished or characterized by an emphasis upon the display or depiction of Specified Sexual Activities or Specified Anatomical Areas.

**SECTION 5.40.140 DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON** means the dominant or essential theme of the object described by such phase. For instance, when the phase refers to films "which are distinguished or characterized by an emphasis upon the depiction or description of Specified Sexual Activities or Specified Anatomical Areas," the films so described are those who dominant or predominant character and theme are the depiction or description of the enumerated sexual activities or anatomical areas.

**SECTION 5.40.145 EMPLOYEE** means a person who performs any service on the premises of an Adult-Oriented Business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises of the Adult-Oriented Business to render only repair or maintenance services or to deliver equipment or goods to the Adult-Oriented Business as long as such persons are not Nude, Semi-Nude, in a State of Nudity, or in a Semi-Nude Condition.

**SECTION 5.40.150 ESTABLISHMENT OF AN ADULT-ORIENTED BUSINESS** means and includes any of the following:

(1) The opening or commencement of any Adult-Oriented Business as a new business;

(2) The conversion of an existing business, whether or not an Adult-Oriented Business, to any other Adult-Oriented Business;

(3) The addition of any Adult-Oriented Business to any other existing Adult-Oriented Business; or

(4) The relocation of any Adult-Oriented Business.

**SECTION 5.40.155 FABRIC** means cloth made by weaving or knitting natural or synthetic fibers and filaments.

**SECTION 5.40.160 HOTEL** means a building where lodging and usually meals, entertainment and other various personal services are provided to the public for some form of consideration.

**SECTION 5.40.165 LICENSEE** means a person in whose name a license to operate an Adult-Oriented Business has been issued, as well as the person listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an Adult-Oriented Business.

**SECTION 5.40.170 MOTEL** means a Hotel in which the rooms are accessible from the business parking areas.

**SECTION 5.40.175 NUDE MODEL STUDIO** means any place where a person who appears Semi-Nude, in a State of Nudity, or who displays Specified Anatomical Areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of California or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(1) that has no sign visible from the exterior of the structure and no other advertising that indicates a Nude or Semi-Nude person is available for viewing;

(2) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

(3) where no more than one (1) Nude or Semi-Nude Model is on the premises at any one time.

**SECTION 5.40.180 NUDITY OR A STATE OF NUDITY** means the showing of the human male or female genitals, pubic area, anus, or buttocks with less than a fully opaque fabric covering, the showing of the female breast with less than a fully opaque fabric covering of any part of the areola, or the showing of completely or opaquely covered (by fabric) male genitals in a discernibly turgid state.

**SECTION 5.4O.185 PERSON** means an individual, proprietorship, partnership, corporation, association, or other legal entity.

**SECTION 5.40.190 POLICE CHIEF OR CHIEF OF POLICE** means the Chief of Police of the City of Lodi or the authorized representatives thereof.

**SECTION 5.40.195 SEMI-NUDE OR IN A SEMI-NUDE CONDITION** means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

**SECTION 5.40.200 SEXUAL ENCOUNTER CENTER** means a business or commercial enterprise that, as one of its principal purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, when one or more of the persons is in a State of Nudity or Semi-Nude Condition.

**SECTION 5.40.205 SPECIFIED ANATOMICAL AREAS** means and includes the following:

(1) Less than completely and opaquely covered by fabric, (i) human genitals or pubic region, (ii) human buttocks, (iii) human anus or, (iv) the female breast below a point immediately above the top of the areola;

(2) Human male genitals in a discernibly turgid state, even if completely or opaquely covered by fabric; and

(3) Any device, costume, or covering that simulates any of the body parts included in subdivisions (1) or (2) above.

**SECTION 5.40.210 SPECIFIED CRIMINAL ACTIVITY** means any of the following offenses:

(1) prostitution or promotion of prostitution, dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance involving a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(2) for which:

(a) less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is for a misdemeanor offense;

(b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(c) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

**SECTION 5.40.215 SPECIFIED SEXUAL ACTIVITIES** means and includes any of the following, whether performed directly or indirectly through clothing or other covering:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;

(2) Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated;

(4) Excretory functions as part of or in connection with any of the other activities described in subdivision (1) through (3) above.

**SECTION 5.40.220 TRANSFER OF OWNERSHIP OR CONTROL** of Adult-Oriented Business means and includes any of the following:

(1) the sale, lease, or sublease of the Adult-Oriented Business;

(2) the transfer of securities which constitute a controlling interest in the Adult-Oriented Business, whether by sale, exchange, or similar means; or

(3) the establishment of a trust, gift, or other similar legal device which transfer the ownership or control of the Adult-Oriented Business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

## ARTICLE 3

## ADULT-ORIENTED BUSINESS LICENSES

**SECTION 5.40.300 ADULT-ORIENTED BUSINESS LICENSE REQUIRED**. Every person who proposes to maintain, operate, conduct, or establish an Adult-Oriented Business in the City shall file an application with the Chief of Police on a form provided by the City and shall pay a non-refundable application, investigation, and licensing fee set forth by resolution from time to time by the City Council.

(1) All applicants must be qualified according to the provisions of this Article. The application may request and the applicant shall provide such information including fingerprints as to enable the Chief of Police to determine whether the applicant meets the qualifications established in this Article.

(2) If a person who wishes to operate an Adult-Oriented Business is an individual, the person must sign the application. If a person who wishes to operate an Adult-Oriented Business is other than an individual, each individual who has a ten percent (10%) or greater interest in the Adult-Oriented Business must sign the application. Each applicant must be qualified under this Article and each applicant shall be considered a Licensee if a license is granted.

(3) The completed application for an Adult-Oriented Business License shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(i) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen (18) years of age;

(ii) a partnership, the partnership shall state its complete name, address and the names of all partners whether the partnership is general or limited, and a copy of the partnership agreement, if any;

(iii) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names and capacity of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service or process.

(b) If the applicant intends to operate the Adult-Oriented Business under a name other than that of the applicant, the applicant shall register the fictitious name of the Adult-Oriented Business with the appropriate governmental entity and show written proof of registration of the fictitious name.

(c) Whether the applicant has been convicted of a Specified Criminal Activity and, if so, the Specified Criminal Activity involved, the date, the place, and jurisdiction of each.

(d) Whether the applicant has ever had a license previously issued under this Chapter or its predecessor, or other similar Adult-Oriented Business ordinances from another city or county denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this Chapter, or its predecessor, whose license has previously been denied, suspended or revoked, including the name and location of the Adult-Oriented Business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(e) Whether the applicant holds any other licenses under this Chapter, or its predecessor, or other similar Adult-Oriented Business ordinance from another city or county, and, if so, the names and locations of such other licensed businesses.

(f) The particular Adult-Oriented Business for which the applicant is applying. An applicant must apply separately for each Adult-Oriented Business to be operated, owned, managed, or controlled by the applicant.

(g) The address to which notice of action on the application is to be mailed.

(h) The location of the Adult-Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.

(i) The applicant's mailing address and residential address.

(j) A recent photograph of the applicant.

(k) The applicant's driver's license number, Social Security number, and the applicant's state or federally issued tax identification number.

(l) The names of all Employees, independent contractors, and other persons who will perform at the Adult-Oriented Business, who are required by this Chapter to obtain an Adult-Oriented Business Employee License.

**SECTION 5.40.305 INVESTIGATION AND ACTION ON APPLICATION FOR ADULT-ORIENTED BUSINESS LICENSE.**

(1) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Article. If it is determined that the application is not complete, the applicant shall be notified in writing within ten (10) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have thirty (30) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following the receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with the Chief of Police as set forth herein.

(2) Upon determining that a complete application and the required non-refundable application fee have been submitted, the Chief of Police shall issue a temporary license to the applicant, which shall be valid for thirty (30) business days after the date of issuance.

(3) Within five (5) business days after receipt of a completed application and the required filing fee, the Chief of Police shall transmit copies of the application and its attachments to appropriate City departments.

(4) Within thirty (30) business days after receipt of a completed application and the required filing fee, the Chief of Police shall complete the investigation, grant or deny the application in accordance with the provisions of this Section, and shall notify the applicant as follows:

(a) If the application is approved, the Chief of Police shall write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application a regular Adult-Oriented Business License.

(b) If the application is denied, the Chief of Police shall write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(c) The document specified in (a) and (b) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(5) The Chief of Police shall approve the issuance of a regular license to an applicant, unless it is determined by a preponderance of the evidence that any of the following findings is true:

(a) An applicant is under eighteen (18) years of age.

(b) An applicant has failed to provide information reasonably necessary for issuance of the license or has knowingly answered a question or request for information falsely on the application form.

(c) An applicant has been denied a license by the City to operate an Adult-Oriented Business within the twelve (12) months preceding the filing of the application or an applicant whose license to operate an Adult-Oriented Business has been revoked within twelve (12) months.

(d) The applicant has been convicted of a Specified Criminal Activity, either within the State of California or in another jurisdiction.

(e) The applicant has, within the past five (5) years, been convicted in an administrative enforcement action or court action of violating an Adult-Oriented Business ordinance.

(6) The regular license, if granted shall expire one (1) year from the date of issuance and may only be renewed by the Licensee filing with the Chief of Police a written request or renewal on a form provided by the City, accompanied by a non-refundable application, investigation and licensing fee set forth by resolution from time to time by the City Council, and a copy of the license to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the regular license. When a renewal request is made less than thirty (30) days before the expiration date, the expiration shall not be stayed. The Chief of Police shall act upon applications for license renewal as provided herein for applications for licenses.

(7) The regular license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the Adult-Oriented Business and the classification of Adult-Oriented Business as set forth in Section 5.40.135 herein, for which the license is issued.

(8) All licenses shall be posted in a conspicuous place at or near the entrance to the Adult-Oriented Business so that all persons entering the Adult-Oriented Business may easily read them at any time.

(9) Within thirty (30) calendar days of any change in the information originally submitted with the license application, all Licensees shall provide the Chief of Police with a written statement supplementing or amending the information required by this Article. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(10) Within thirty (30) calendar days of any change in employee hiring or status, all Licenses shall provide the Chief of Police with a written statement supplementing or amending the information required by this Article. Failure to submit such changes shall be grounds for suspension of the Adult-Oriented Business License.

(11) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within thirty (30) business days after the City's receipt of the application, the applicant may begin operating the Adult-Oriented Business for the single classification of Adult-Oriented Business as set forth in Section 5.40.135 herein, for which the license was sought, subject to compliance with the Development and Performance Standards and Regulations of Article 6 of this Chapter.

**SECTION 5.40.310 TRANSFER OF ADULT-ORIENTED BUSINESS LICENSES.**

(1) It is a violation of this Chapter for a Licensee to operate an Adult-Oriented Business under the authority of an Adult-Oriented Business License at any place other than the address of the Adult-Oriented Business stated in the application upon which the license was issued.

(2) It is a violation of this Chapter for a Licensee to transfer ownership or control of an Adult-Oriented Business License to another person unless and until the transferee first obtains a written amendment to the license from the Chief of Police in accordance with and subject to the application and fee requirements set forth in this Article.

(3) It is a violation of this Chapter for a Licensee to transfer an Adult-Oriented Business License when the Chief of Police has notified the Licensee that the license has been suspended or revoked or that such action is pending.

(4) Any attempt to transfer a license either directly or indirectly in violation of this Section is void, and the license shall be deemed revoked.

## ARTICLE 4

## ADULT-ORIENTED BUSINESS

## EMPLOYEE LICENSE

### SECTION 5.40.400 ADULT-ORIENTED BUSINESS EMPLOYEE LICENSE REQUIRED

(1) No person shall engage in or participate in any live performance depicting Specified Anatomical Areas or involving Specified Sexual Activities in an Adult-Oriented Business, without a valid Adult-Oriented Business Employee License issued by the Chief of Police.

(2) No person shall be employed at an Adult-Oriented Business, except those persons excluded from the license requirements pursuant to Section 5.40.150, without a valid Adult-Oriented Business Employee License issued by the Chief of Police.

(3) Before any applicant may be issued an Adult-Oriented Business Employee License, the applicant shall submit to the Chief of Police on a form to be provided by the City the following information:

(a) The applicant's legal name and any other name including "stage" names or aliases used by the applicant;

(b) Age, date, and place of birth;

(c) Height, weight, hair and eye color;

(d) Present residence address and telephone number;

(e) Present business address and telephone number;

(f) Date, issuing state and number of driver's license or other identification card information;

(g) Social Security number; and

(h) Satisfactory written proof that the individual is at least eighteen (18) years of age.

(4) Attached to the application form shall be the following:

(a) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(b) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(c) A statement whether the applicant has been convicted within the past five (5) years, as of the date of submitting the application, a Specified Criminal Activity as defined in this Chapter and, if so, the Specified Criminal Activity involved, the date, place and jurisdiction of each conviction.

(d) A statement whether the applicant is or has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution, the place or such registration, licensing or legal authorization, and the inclusive dates during which the applicant was so licensed, registered, or authorized.

(5) Every application for an Adult-Oriented Business Employee License, whether for a new license or for a renewal of an existing license, shall be accompanied by a non-refundable application, investigation and license fee as set forth by resolution from time to time by the City Council.

**SECTION 5.40.405 INVESTIGATION AND ACTION ON APPLICATION FOR ADULT-ORIENTED BUSINESS EMPLOYEE LICENSE.**

(1) Upon receipt of an application for an Adult-Oriented Business Employee License and the required non-refundable application, investigation, and licensing fee, the Chief of Police shall issue a temporary license to the applicant.

(2) The Chief of Police shall determine whether the application contains all of the information required by the provisions of this Article. If it is determined that the application is not complete, the applicant shall be notified in writing within five (5) business days of the date of receipt of the application that the application is not complete and the reasons therefor. The applicant shall have ten (10) calendar days from the date of the notice to submit additional information to render the application complete. The applicant's failure to submit the additional information within this time period renders the application null and void. Within five (5) business days following receipt of a supplemental or amended application, the Chief of Police shall again determine whether the application is complete. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. Once the application is found to be complete, the applicant shall be notified within five (5) business days of that fact. If an applicant submits two (2) consecutive incomplete applications, the applicant shall be notified in writing that a new application must be filed with Chief of Police as set forth herein.

(3) Within fifteen (15) business days after the issuance of the temporary license, the Chief of Police shall grant or deny the application and so notify the applicant as follows:

(a) If the application is approved, the Chief of Police shall write or stamp "Granted" on the application and date and sign such notation. The Chief of Police shall attach to the application an Adult-Oriented Business Employee License.

(b) If the application is denied, the Chief of Police shall write or stamp "Denied" on the application and date and sign such notation. The Chief of Police shall attach to the application a statement of the reasons for denial.

(c) The documents specified in (a) and (b) above shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address specified in the application. All notices given hereunder shall be deemed given upon the date they are deposited in the United States mail or the date upon which personal service is provided.

(4) The Chief of Police shall grant the application unless it is determined by a preponderance of the evidence that any of the following findings is true:

(a) The applicant has failed to provide information reasonably necessary for issuance of the license or has knowingly answered a question or request for information falsely on the application form;

(b) The applicant is under the age of eighteen (18) years;

(c) The applicant has been convicted of a Specified Criminal Activity, whether within the State of California or in another jurisdiction;

(d) The Adult-Oriented Business Employee License is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Chapter; and

(e) The applicant has, within the past five (5) years, been convicted in an administrative enforcement action or court action of violating an Adult-Oriented Business ordinance.

(5) The license, if granted shall expire one (1) year from the date of issuance and may be renewed only by the Licensee filing with the Chief of Police a written request for renewal on a form provided by the City, accompanied by the required fee and a copy of the license to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the license. When a renewal request is made less than thirty (30) days before the expiration date, the expiration shall not be stayed. The Chief of Police shall act upon applications for license renewal as provided herein for applications of initial licenses.

(6) The license, if granted, shall state on its face the name of the person to whom it is granted, and the expiration date. The Chief of Police shall provide each person issued an Adult-Oriented Business Employee Licensee with an identification card containing the name, address, photograph, and license number of the Licensee.

(7) Both the license and the identification card shall be available for inspection at all times during which the Licensee is on the premises of the Adult-Oriented Business.

(8) If the Chief of Police neither grants nor denies a completed application for which the filing fees have been paid, within fifteen (15) business days after its receipt, the applicant may begin the employment for which the license is sought, subject to strict compliance with the Development and Performance Standards and Regulations of Article 6 of this Chapter.

**SECTION 5.40.410 TRANSFER OF ADULT-ORIENTED BUSINESS EMPLOYEE LICENSE.** A Licensee shall not transfer ownership or control of an Adult-Oriented Business Employee License.

## Article 5

## DENIAL, SUSPENSION, AND REVOCATION OF LICENSE

**SECTION 5.40.500 DENIAL AND LICENSE RENEWAL.** When the Chief of Police denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of the denial. If, subsequent to denial, the Chief of Police finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the denial became final.

**SECTION 5.40.505 SUSPENSION OF LICENSE.**

(1) The Chief of Police shall suspend a license for a period not to exceed thirty (30) days if he or she determines that a Licensee or an Employee of a Licensee has:

(a) violated or is not in compliance with any Section of this Chapter; or

(b) refused to all an inspection of the Adult-Oriented Business premises as authorized by this Chapter.

**SECTION 5.40.510 REVOCATION OF LICENSE.**

(1) The Chief of Police shall revoke a license if a cause of suspension in Section 5.40.505 occurs <u>and</u> the license has been suspended within the preceding twelve (12) months.

(2) The Chief of Police shall revoke a license for any of the following causes arising from the acts or omissions of the Licensee, or an Employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business:

(a) a Licensee knowingly gives false, misleading, or fraudulent information in the material submitted during the application process, or in any report or record required to be filed with the City;

(b) a Licensee, Employee, agent, partner, director, stockholder, or manager of an Adult-Oriented Business has knowingly allowed or permitted, and has failed to make reasonable effort to prevent the occurrence of any of the following acts on the premises of the Adult-Oriented Business, or in the case of an Adult-Oriented Business Performer, the performer has engaged in one of the activities described below while on the premises of an Adult-Oriented Business:

(i) any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation, with the exception of Adult Motels unless the Licensee or Employee of the Adult Motel knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view;

(ii) use of the Adult-Oriented Business as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur;

(iii) the occurrence of Specified Criminal Activities, including acts of lewdness, assignation, or prostitution, or acts relating to obscene matter or distribution of harmful matter to minors.

(c) a Licensee knowingly operated, performed or was employed at the Adult-Oriented Business during a period of time when the Licensee's license was suspended.

(3) When the Chief of Police revokes a license, the revocation shall continue for one (1) year, and the Licensee shall not be issued an Adult-Oriented Business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

**SECTION 5.40.515 SUSPENSION OR REVOCATION HEARING.** On determining that grounds for license revocation or suspension exist, the Chief of Police shall furnish written notice of the proposed suspension or revocation to the Licensee. Such notice shall set forth the time and place of a hearing to be conducted by a hearing officer appointed pursuant to Lodi Municipal Code Chapter 2.34, and the grounds upon which the hearing is based, the pertinent Code sections at issue, and a brief summary of the facts in support of the suspension or revocation. The notice shall be mailed, postage prepaid, to the last known address of the Licensee, or shall be delivered to the Licensee personally, at least ten (10) working days prior to the hearing date. At the hearing, all parties shall have the right to offer testimonial, documentary, and tangible evidence on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence upon which reasonable persons are accustomed to rely in the conduct of serious matters may be admitted. Any hearing under this Section may be continued for a reasonable time for the convenience of a party or witnesses.

Notice of the hearing officer's decision shall be mailed to the applicant or Licensee no later than seven (7) days after the hearing. If the hearing officer finds and determines that there are grounds for disciplinary action, the Chief of Police shall do either of the following:

(1) suspend the license for a specified period of time not to exceed three (3) months for the first offense;

(2) Revoke the license for the second offense.

**SECTION 5.40.520 APPEAL.** All decisions of the Chief of Police to issue, renew, deny, suspend or revoke a licensee are final within thirty (30) calendar days. After any denial, or a suspension or revocation, the applicant or licensee may seek prompt judicial review of such decision pursuant to California Code of Civil Procedure Section 1094.8 in any court of competent jurisdiction as provided by law. Notwithstanding the applicant's or licensee's right to initiate judicial review, the City shall, upon the written request of an aggrieved applicant or licensee, within three (3) business days of its receipt of the request, file an action with a court of competent jurisdiction seeking declaratory and injunctive relief, including temporary and preliminary relief, as to the propriety of the denial, revocation, or suspension.

If the City denies an initial or renewal application and the aggrieved applicant commences a legal action to determine the validity of the denial or makes a written request in the manner set forth herein that the City commence such actions, then the City shall issue a temporary license. This temporary license shall remain in effect only until the court in which the action is pending renders a judicial decision on application for a temporary restraining order, a motion for preliminary injunction, etc., as to the propriety of the denial.

If, upon request, the City files such action seeking judicial review or the aggrieved applicant or licensee files the action, the City's revocation or suspension of the license will be stayed pending a judicial decision on the propriety of the denial based upon an application for temporary restraining order, a motion for preliminary injunction or other form of judicial review, whichever is earliest.

Any temporary license issued pursuant to this Chapter shall not grant any vested rights on the holder of the temporary license.

**SECTION 5.40.525 CONFIDENTIALITY.** The City deems confidential license applications required by Articles 3 and 4 above and all information contained therein. Absent an order from a court of competent jurisdiction, the City shall not disclose for public view the applications or the information contained therein.

## Article 6

## Development and Performance

## Standards and Regulations

**SECTION 5.40.600 PROHIBITION AGAINST MINORS IN AN ADULT-ORIENTED BUSINESS.** It shall be unlawful for any Licensee, operator, or other person in charge of any Adult-Oriented Business to permit to enter, or remain within the Adult-Oriented Business, any person who is not at least eighteen (18) years of age or to provide service for which this Chapter requires a license, to any person who is not at lease eighteen (18) years of age.

**SECTION 5.40.605 CONCEALING SPECIFIED SEXUAL ACTIVITIES AND SPECIFIED ANATOMICAL AREAS FROM PUBLIC VIEW.**

(1) No Adult-Oriented Business shall be operated in any manner that permits observation of any material or activities depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window, or other opening. No exterior door or window on the premises shall be propped open or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

(2) The exterior appearance of buildings housing Adult-Oriented Businesses shall not be inconsistent with the external appearance of commercial structures already constructed or under construction within the immediate neighborhood so as to cause blight, deterioration, or substantially diminish or impair property values in the neighborhood where such business is located.

**SECTION 5.40.610 POSTING NOTICES REQUIRED TO MINORS.** No person under the age of eighteen (18) years shall be permitted within the Adult-Oriented Business at any time. The building entrance to an Adult-Oriented Business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the Community Development Director or his or her designee.

**SECTION 5.40.615 INDOOR AREAS OPEN TO VIEW BY MANAGEMENT.** All indoor areas of the Adult-Oriented Business where patrons or members of the public are permitted, excluding rest rooms, shall be open to view by management at all times.

**SECTION 5.40.620 SECURITY GUARDS.** Adult-Oriented Businesses shall employ security guards in order to maintain the public peace and safety, based on the following standards:

(1) Adult-Oriented Businesses featuring live entertainment shall employ at least one (1) security guard at all times while business is open. If the occupancy limit of the Adult-Oriented Business is greater than thirty-five (35) persons, an additional security guard shall be on duty.

(2) Security guards shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of this Chapter. Security guards shall be uniformed in such manner so as to be readily identifiable as a security guard and shall be duly licensed as a security guard as required by applicable state law. No security guard required pursuant to this Section shall act as a door person, ticket seller, ticket taker, admittance person, entertainer or performer, or sole occupant of the manager's station while acting as a security guard.

**SECTION 5.40.625 REGISTER AND LICENSE NUMBER OF EMPLOYEES.** Every Licensee of an Adult-Oriented Business that provides live entertainment depicting Specified Anatomical Areas or involving Specified Sexual Activities must maintain a register of all past and current persons so performing at the Adult-Oriented Business and their license numbers. Such register shall be available for inspection during regular business hours by any police officer of the City.

**SECTION 5.40.630 INSPECTION.**

(1) An applicant or Licensee shall permit representatives of the Police Department, Health Department, Fire Department, Planning Department, or other City departments or agencies to inspect the premises of an Adult-Oriented Business for the purpose of ensuring compliance with the law, at any time the Adult-Oriented Business is occupied or open for business.

(2) It is a violation of this Chapter for a person who operates an Adult-Oriented Business or that person's agent or Employee to refuse to permit such lawful inspection of the Adult-Oriented Business at any time it is open for business.

**SECTION 5.40.635 RESTROOM FACILITIES.** The Adult-Oriented Business shall provide and maintain separate restroom facilities for male patrons and Employees, and female patrons and Employees. Male patrons and Employees shall be prohibited from using the restroom(s) for females, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms shall be free from any Adult Material. Restroom shall not contain television monitors or other motion picture or video projection, recording, or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an Adult-Oriented Business which deals exclusively with the sale or rental of Adult Material which is not used or consumed on the premises, such as an Adult Bookstore or Adult Video Store, and which does not provide restroom facilities to its patrons or the general public.

The foregoing requirements of this Article shall be deemed conditions of Adult-Oriented Business License approvals and failure to comply with every such requirement shall be grounds for revocation of the license.

**SECTION 5.40.640 ADDITIONAL REGULATIONS FOR ADULT ARCADE.** Any Adult-Oriented Business, which is also an Adult Arcade, shall comply with the following provisions:

(1) The interior of the Adult-Oriented Business shall be configured in such a manner that there is an unobstructed view from a manager station of every area of the Adult-Oriented Business to which any patron is permitted access for any purpose, excluding restrooms. If the Adult-Oriented Business has two (2) or more manager stations designated, then the interior of the Adult-Oriented Business shall be configured in such a manner that there is an unobstructed view from at least one (1) of the manager stations of each area of the Adult-Oriented Business to which any patron is permitted access.

(2) It shall be the duty to the Licensee to ensure that the view area required by paragraph (1) of this Section is at times unobstructed by any doors, walls, merchandise, display racks, or other materials while the Adult-Oriented Business is open to patrons.

(3) No viewing room or booth may be occupied by more than one (1) person at any time.

(4) The walls or partitions between viewing rooms or booths shall be maintained in good repair at all times, with no holes between any two (2) such rooms such as would allow viewing from one (1) booth into another or such as to allow physical contact of any kind between the occupants of any two (2) such booths or rooms.

(5) Customers, patrons, or visitors shall not be allowed to stand idly by in the vicinity of any such video booths, or to remain in the common area of such Adult-Oriented Businesses, other than the restrooms, unless actively engaged in shopping for or reviewing the products available or on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.

(6) The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. Presence of human excrement, urine, semen, or saliva in any such booths shall be evidence of improper maintenance and inadequate sanitary controls.

**SECTION 5.40.645 ADDITIONAL REGULATIONS RELATING TO LIVE ENTERTAINMENT NOT CONDUCTED IN VIEWING BOOTH.** The following additional requirements shall pertain to Adult-Oriented Businesses providing live entertainment not conducted in viewing booths depicting Specified Anatomical Areas or involving Specified Sexual Activities, except for business regulated by the California Department of Alcoholic Beverage Control.

(1) No person shall perform live entertainment for patrons of an Adult-Oriented Business except upon a stage at least twenty-four (24) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons. Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this Section. Performer shall mean any person who is an employee or independent contractor of the Adult-Oriented Business, or any person who, with or without compensation or other form of consideration, perform live entertainment for patrons of an Adult-Oriented Business.

(2) The Adult-Oriented Business shall provide separate dressing room facilities for performers, which are exclusively dedicated to the performers' use.

(3) The Adult-Oriented Business shall provide an entrance/exit for performers which is separate from the entrance/exit used by patrons.

(4) The Adult-Oriented Business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such access is not physically feasible, the Adult-Oriented Business shall provide a minimum three-(3) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers which is capable of preventing any physical contact between patrons and performers.

(5) No performers, either before, during, or after performances, shall have physical contact with any patron and no patron shall have physical contact with any performer either before, during, or after performances by such performer. This paragraph shall only apply to physical contact anywhere on or within the premises of the Adult-Oriented Business, including off-street parking areas.

(6) No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or accept gratuity from any patron.

(7) No owner or other person with managerial control over an Adult-Oriented Business shall permit any person on the premises of the Adult-Oriented Business to engage in a live showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This paragraph may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

**SECTION 5.40.650 ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

(1) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an Adult Motel.

(2) It is a violation of this Chapter when, as a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have an Adult-Oriented Business License, the person rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, rents or sub-rents the same sleeping room again.

(3) For purposes of paragraphs (1) and (2) of this Section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

**SECTION 5.40.655 ADDITIONAL REGULATIONS RELATING TO THE EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.** A person who operates or causes to be operated an Adult-Oriented Business, other than an Adult Motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

(1) Upon application for an Adult-Oriented Business License, the application shall be accompanied by a diagram of the premises showing a plan hereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of premises to an accuracy of plus or minus six (6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was first prepared.

(2) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the Chief of Police.

(3) It is the duty of the Licensee of the Adult-Oriented Business to ensure that at least one licensed Employee is on duty and situated in each manager's station at all times that any patron is present inside the Adult-Oriented Business.

(4) The interior of the Adult-Oriented Business shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the Adult-Oriented Business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment. If the Adult-Oriented Business has two (2) or more designated manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the Adult-Oriented Business to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required by this Section must be by direct line of sight from the manager's station.

(5) It shall be the duty of the Licensee to ensure that the view area specified in this Section remains unobstructed at all times by any doors, curtains, partitions, walls, merchandise, display racks or other materials.

(6) It shall be the duty of the Licensee to ensure that no patron is permitted to access to any area of the Adult-Oriented Business which has been designated as an area in which patrons will not be permitted pursuant to paragraph (1) of this Section.

(7) No viewing room may be occupied by more than one (1) person at any time.

(8) The Adult-Oriented Business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level.

(9) It shall be the duty of the Licensee to ensure that the illumination required by this Section is maintained at all times that any patron is present in the premises.

(10) No openings of any kind shall exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The Licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The Licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The Licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48) inches of the floor.

(15) It is a violation of this Chapter for a person having a duty under this Section to knowingly fail to fulfill that duty.

**SECTION 5.40.660 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.**

(1) A Nude Model Studio shall not employ any person under the age of eighteen (18) years.

(2) It is a violation of this Chapter for a person under the age of eighteen (18) years to appear Semi-Nude or in a State of Nudity in or on the premises of a Nude Model Studio. It is a defense to prosecution under this Section if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.

(3) It is a violation of this Chapter for a person to appear in a State of Nudity, or knowingly allow another to appear in a State of Nudity in an area of a Nude Model Studio premises which can be viewed from the public right of way.

(4) A Nude Model Studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**SECTION 5.40.665 ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.**

(1) It is a violation of this Chapter for a person knowingly and intentionally, in an Adult-Oriented Business, to appear in a Semi-Nude condition unless the person is an Employee who, while Semi-Nude, is upon a stage at least twenty-four (24) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest areas occupied by patrons.

(2) It is a violation of this Chapter for an Employee or performer while Semi-Nude in an Adult-Oriented Business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any Employee.

(3) It is a violation of this Chapter for an Employee or performer, while Semi-Nude, to touch a patron or the clothing of a patron.

## ARTICLE 7

## ENFORCEMENT

**SECTION 5.40.700 SEPARATE OFFENSE FOR EACH DAY.** Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof and, shall be punished accordingly.

**SECTION 5.40.705 PUBLIC NUISANCE.** Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to Chapter 15.30 of the City Code.

**SECTION 5.40.710 CRIMINAL PENALTIES.** Any person who violates, causes, or permits another person to violate any provision of this Chapter commits an infraction. Any person convicted of an infraction shall be subject to a fine to the maximum amount permitted by state law. Any person twice convicted of an infraction for repeat violations of the same provision within a one (1) year period, may be charged with a misdemeanor upon being issued a citation for the repeated violation of the same provision. Any person convicted of a misdemeanor shall be subject to punishment to the maximum permitted by state law.

Pursuant to Government Code Section 36900(a), the City Attorney may prosecute these violations in the name of the People of the State of California.

**SECTION 5.40.715 CIVIL INJUNCTION.** The violation of any provision of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

**SECTION 5.40.720 ADMINISTRATIVE REMEDIES.** In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies, as set forth by City ordinance.

**SECTION 5.40.725 REVOCATION OF LICENSE.** In addition to the remedies set forth above, violation of the provisions of this Chapter constitutes grounds for the revocation of an Adult-Oriented Business License and/or Adult-Oriented Business Employee License.

## ARTICLE 8

## MISCELLANEOUS PROVISIONS

**SECTION 5.40.800 REGULATIONS NONEXCLUSIVE.** The provisions of this Chapter regulating Adult-Oriented Businesses are not intended to be exclusive and compliance therewith shall not excuse noncompliance with any other regulations pertaining to the operation of businesses as adopted by the Lodi City Council.

**SECTION 5.40.805 TIME LIMIT FOR FILING APPLICATION FOR LICENSE.** All persons who possess a valid business license heretofore issued for the operation of an Adult-Oriented Business and all persons required by this Chapter to obtain an Adult-Oriented Employee License, must apply for and obtain such license within ninety (90) days of the effective date of this Chapter. Failure to do so and continued operation of an Adult-Oriented Business, or the continued employment of persons by or at Adult-Oriented Businesses after such time without a valid license shall constitute a violation of this Chapter.

**SECTION 5.40.810 HOURS OF OPERATION.** No adult business as defined herein with the exception of adult newsracks shall remain open between the hours of two a.m. and eight a.m., and all patrons, customers, and visitors shall be excluded therefrom during those hours.

**SECTION 5.40.815 OUTCALL ADULT-ORIENTED BUSINESSES PROHIBITED.** All operation of Adult-Oriented Businesses involving Specified Sexual Activities or Specified Anatomical Areas as defined herein, or the presentation of any live nude, semi-nude or topless entertainment shall be conducted completely on licensed premises otherwise in compliance with this Chapter. No out-call Adult-Related Business, services or entertainment involving Specified Sexual Activities or Specified Anatomical Areas shall be permitted.

**SECTION 7 - NO MANDATORY DUTY OF CARE**. This Ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**SECTION 8 - SEVERABILITY**. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

**SECTION 9.** All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

**SECTION 10.** This Ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in full force and take effect on January 1, 2001.

Approved this 18th day of October, 2000

STEPHEN J. MANN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1696 was introduced at a regular meeting of the City Council of the City of Lodi held October 4, 2000 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held October 18, 2000 by the following vote:

| | | |
|---|---|---|
| AYES: | COUNCIL MEMBERS – | Hitchcock, Land, Nakanishi, Pennino and Mayor Mann |
| NOES; | COUNCIL MEMBERS – | None |
| ABSENT: | COUNCIL MEMBERS – | None |
| ABSTAIN: | COUNCIL MEMBERS – | None |

I further certify that Ordinance No. 1696 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney