

ORDINANCE NO. 833 N.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
EL PASO DE ROBLES AMENDING CHAPTER 21.31 OF ARTICLE IIA
OF THE MUNICIPAL CODE OF THE CITY OF EL PASO DE ROBLES, CALIFORNIA,
RELATING TO ADULT BUSINESSES
(CODE AMENDMENT 02-004)

WHEREAS, by Ordinance No. 658 N.S. (1993), the City Council of the City of El Paso de Robles (the "City Council") adopted Chapter 21.31 of the El Paso de Robles Municipal Code to establish comprehensive and orderly regulation of adult business uses; and

WHEREAS, there have been numerous changes in the law regarding the regulation of adult businesses since that time requiring certain amendments to Chapter 21.31; and

WHEREAS, the City desires to adopt locational, licensing and operational regulations governing the time, place and manner in which adult businesses may be established and operated within the City; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal laws prohibit the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses 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; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area;

WHEREAS, at its meeting of June 25, 2002, the Planning Commission took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project.
- b. Conducted a public hearing to obtain public testimony on the proposed ordinance.
- c. Recommended that the City Council adopt the proposed ordinance.

WHEREAS, at its meeting of July 16, 2002, the City Council took the following actions regarding this ordinance:

- a. Considered the facts and analysis, as presented in the staff report prepared for this project.
- b. Considered the recommendation of the Planning Commission regarding this code amendment.
- c. Conducted a public hearing to obtain public testimony on the proposed ordinance.

NOW, THEREFORE, BE IT KNOWN that the Paso Robles City Council, based upon the substantial evidence presented at the above referenced public hearing, including oral and written staff reports, finds as follows:

1. The above stated facts of this ordinance are true and correct.
2. This code amendment is consistent with the City's General Plan.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, AS FOLLOWS:

SECTION 1 Chapter 21.31 of the Municipal Code of the City of El Paso de Robles is hereby amended to read as follows:

21.31.010	Purpose and Findings
21.31.020	Definitions
21.31.030	Adult business license requirement
21.31.040	Application Requirements
21.31.050	Development and Performance Standards and Regulations
21.31.060	Location of adult businesses
21.31.070	Additional public hearing notices
21.31.080	Limitations on display of harmful matter in newsracks
21.31.090	Transfer of License
21.31.100	Suspension or Revocation of License
21.31.110	Appeal of Denial, Suspension or Revocation
21.31.120	Judicial Review – Stay pending trial court decision
21.31.130	Enforcement
21.31.140	Severability

21.31.010 Purpose and Findings.

- A. Purpose. The purpose and intent of this chapter is to provide for the comprehensive and orderly regulation of adult business uses. It is recognized that adult businesses possess certain characteristics that can have a detrimental effect upon adjacent areas. It is also recognized that locating adult businesses in the vicinity of facilities frequented by minors will cause the exposure of minors to adult material that, because of their immaturity, may adversely affect them. Therefore, special regulation of these uses is necessary to ensure that any adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods or have an adverse effect on minors.

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 neither the intent nor the 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.

- B. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community contained in findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000) and on studies in other communities including, but not limited to: Phoenix, Arizona (1979); Minneapolis, Minnesota (1980); St. Paul, Minnesota; Houston, Texas (1983); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City, Oklahoma (1986); Cleveland, Ohio (1977); Beaumont, Texas (1982); Tucson, Arizona (1990); Indianapolis, Indiana (1984) the Council finds:

1. Adult businesses are linked to increases in the crime rates in those areas in which they are located and in surrounding areas.
2. Both the proximity of adult businesses to sensitive land uses and the concentration of adult businesses tend to result in blight and deterioration of the areas in which they are located.
3. The proximity and concentration of adult businesses adjacent to residential, recreational, religious, educational uses, as well as their proximity to other adult business uses can have adverse secondary effects on local businesses and residences.
4. There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish convincing evidence that adult businesses that are not regulated as to permissible locations often have a deleterious effect on nearby businesses in residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values.

5. The locational requirements established by this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in the City of El Paso de Robles, and a sufficient reasonable number of appropriate locations for adult businesses are provided by this Ordinance.
6. Evidence indicates that some dancers, models and entertainers, and other persons who publicly perform sexual activities or publicly display specified anatomical areas in adult businesses have been found to engage in sexual activities with patrons of adult businesses on the site of the adult business.
7. Evidence demonstrates 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 a location for engaging in unlawful sexual activity. Offering and providing such space encourages such activities, which creates unhealthy conditions.
8. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
9. As a result of the above, and the increase in incidents of sexually transmitted diseases, the City has a substantial interest in adopting regulations that will reduce, to the greatest extent possible, the possibility for the occurrence of prostitution and casual sex acts in adult businesses. At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, gonorrhea, syphilis, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
10. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
11. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the adult business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult business, fully in possession and control of the premises and activities occurring therein.
12. The City Council, in adopting operational standards, recognizes that these standards do not preclude reasonable alternative avenues of communication. The City Council takes note of the proliferation of adult material on the Internet and its availability as an alternative avenue of communication. 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, 329 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) (rejecting 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 emergence of the Internet brings with it a virtually unlimited additional source of adult oriented sexual material available to interested persons in every community with a mere keystroke. An adult business no longer has to be “actually” physically located in a city to be available in the community.

13. Possible harmful effects may be caused by the exposure of adult businesses to children and minors. The City Council desires to minimize and control the adverse secondary side effects associated with the operation of adult businesses and thereby protect the health, safety, and welfare of its citizens, protect the citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, deter the spread of urban blight and protect against the spread of communicable and sexually transmitted diseases.
14. The City Council does not intend to proscribe the communication of erotic messages or any other communicative element or activity, but rather only to prevent or reduce the secondary impacts associated with such public nudity.

21.31.020 Definitions.

1. "Adult bookstore" means any establishment selling or renting books, magazines, periodicals or other printed matter, photographs, films, motion pictures, slides, tapes, video cassettes, compact discs (CDs), digital video discs (DVDs), records or any other forms of visual or audio representation, twenty-five percent or more of which, by number, are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
2. "Adult business" means any adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult motion picture arcade, adult cabaret, adult hotel or motel, adult theater, adult model studio, body painting studio, and any other business involving specified sexual activities or display of specified anatomical areas.
3. "Adult cabaret" means any nightclub, bar, restaurant or similar establishment which, as a preponderance of the entertainment presented, features:
 - a. Live performances which are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas; and/or
 - b. Films, motion pictures, video cassettes, slides, compact discs (CDs), digital video discs (DVDs) or other photographic reproductions whose dominant or predominant character and theme is the depiction of specified sexual activities or specified anatomical areas for observation by patrons.
4. "Adult hotel or motel" means a hotel or motel wherein material is presented which is distinguished or characterized by more than an incidental or occasional portrayal of matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
5. "Adult mini-motion picture theater" means any establishment with a capacity of up to five persons where, for any form of consideration, films, motion pictures, video cassettes, compact discs (CDs), digital video discs (DVDs), slides or similar photographic reproductions are shown, in which twenty-five percent or more of the total presentation time is devoted to the showing of material whose dominant or predominant character and theme is the depiction of specified sexual activities or specified anatomical areas for observation by patrons.
6. "Adult model studio" means any establishment open to the public where for any form of consideration or gratuity, human models who display specified anatomical areas are provided to be observed, sketched, drawn, painted, sculpted, photographed or otherwise depicted by persons other than the proprietor paying such consideration or gratuity. This provision shall not apply to any school of art, film, association, partnership, corporation or institution which meets the requirements established in the Education Code of the State of California for the issuance or conferring of a diploma.

7. "Adult motion picture arcade" means any place to which the public is permitted or invited wherein coin or token-operated, or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine, at any one time, and where the dominant or predominant character or theme of the images so displayed is depiction of specified sexual activities or specified anatomical areas.
8. "Adult motion picture theater" means any establishment, with the capacity of six or more persons where, for any form of consideration, films, motion pictures, slides, tapes, CDs, DVDs or any other form(s) of visual or audio representation, twenty-five percent of which, by number, are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.
9. "Adult theater" means any theater, concert hall, auditorium or similar establishment, either indoor or outdoor in nature, which for any form of consideration and as a preponderance of the entertainment presented, features live performances whose dominant or predominant character and theme is emphasized on specified sexual activities or exposure of specified anatomical areas for observation by patrons.
10. "Body painting studio" means any establishment or business which provides the service of applying paint or any other substance, whether transparent or not, to or on the human body when such body is wholly or partially nude in terms of specified anatomical areas.
11. "Massage parlor" means any place where for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs. This excludes all medical and dental practitioners and any state-licensed masseuse operating as or in conjunction with a medical or dental office, chiropractor, beauty salon, health gym or other health-related business.
12. "Nude, Nudity, or State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
13. "Public parks and public facilities" means all public parks, recreational fields, libraries, community centers and government buildings such as city hall, the post office, county offices, police and fire stations but does not include publicly owned land leased for private commercial purposes.
14. "Public or private educational facilities" means any institution of learning whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education, including any nursery school, kindergarten, elementary school, junior high school, senior high school, community or junior college, four-year college or university, or any special institution of learning under the jurisdiction of the State Department of Education. It shall also mean any public or private daycare or preschool provider with greater than six children.
15. "Religious institutions" means any buildings that are used primarily for religious worship and related religious activities.
16. "Residentially zoned properties" means property in the R-A, R-2, R-3, R-4, R-3-O zones (with or without planned development overlay). It includes residential zoning designations in the County outside of City Limits.
17. "Specified anatomical areas" means and includes any of the following:
 - a. Less than complete and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point above the top of the areola; or

- b. Human male genitals in a discernibly turgid state, even if completely or opaquely covered; or
 - c. Any device, costume, or covering that simulates any of the body parts included in subdivisions (a) or (b) above.
18. "Specified sexual activities" means and includes any of the following:
- a. The fondling or touching of human genitals, pubic regions, buttocks, anus or female breasts; or
 - b. Sex acts, normal or perverted, actual or simulated, including but not limited to, intercourse, oral copulation or sodomy; or
 - c. Masturbation, actual or simulated; or
 - d. Excretory functions as part of, or in connection with, any of the activities set forth in subsections 1 through 3 of this section.
19. "Youth-oriented facilities" means any facility used primarily by youths (under eighteen years of age) for physical or social activities and operated by a profit or nonprofit organization such as boys and girls clubs, private recreational fields, miniature golf courses, water slides, video arcades and other recreational facilities.

21.31.030 Adult business license requirement

- A. In order to establish and operate an adult business within the areas permitted under the provisions of this chapter, an adult business license must be obtained from the Planning Commission. The following rules shall apply:
- 1. The Planning Commission shall issue or deny the adult business license to the applicant after a public hearing, which shall be held within thirty (30) days from receipt of a complete application and the applicable fees.
 - 2. Failure of the Planning Commission to approve or deny the license application within the thirty (30) days shall result in the license being granted.
 - 3. If the application is denied, the Planning Commission shall notify the applicant and explain the reason(s) for denial. Notification shall be sent by certified United States mail, return receipt requested, to the address provided on the license application, which shall be considered the correct address. Each applicant has the burden to furnish any change of address to the Planning Commission, by certified United States mail, return receipt requested.
 - 4. In the event that an application is denied, the applicant may seek review of such action by the City Council in accordance with Section 21.31.120.
 - 5. In the event that the applicant does not prevail on its appeal to the City Council, it may seek judicial review pursuant to Section 21.31.130.
- B. Prior to approving an application for an adult business license, the Planning Commission shall make the following findings:
- 1. The adult business will be located in an area permitted by the City's Zoning Code; and
 - 2. The size and shape of the site proposed for the use is adequate to allow the full development of the proposed use in a manner not detrimental to the particular area; and
 - 3. The traffic generated by the proposed use will not impose an undue burden upon the streets and highways in the area; and
 - 4. That the conduct of entertainment, as proposed by the applicant, if a license is granted, will comply with all applicable laws, including, but not limited to, all city, county and state regulations; and

5. The applicant has not knowingly made any false, misleading or fraudulent statement of facts in the license application, or any other document required by the city in conjunction therewith.
- C. As used in this Chapter, the establishment of an adult business means and includes any of the following:
1. The opening or commencement of any adult business as a new business;
 2. The conversion of an existing business, whether or not an adult business, to an adult business;
 3. The addition of any adult business to any other existing business; or
 4. The relocation of any adult business.

21.31.040 Application Requirements

- A. In addition to the submittal requirements for an adult business license, the following must be submitted prior to an application being deemed complete:
1. The name, permanent address and fingerprints of applicant;
 2. The name and proposed business address of the applicant. If the applicant is a corporation, the applicant's name shall be exactly as set forth in its articles of incorporation; and the applicant shall show the name and residence address of each of the officers and directors of the corporation. If the applicant is a general partnership or a limited partnership, the application shall show the name and residence address of each of the general partners of the partnership. If the applicant is a limited liability company, the application shall show the name and residence address of each of the managing members of the limited liability company;
 3. A detailed description of the proposed entertainment, including type of entertainment and number of persons engaged in the entertainment;
 4. Hours of operation and a floor plan showing where the specific entertainment uses are proposed to be conducted within the building and the admission fee, if any, to be charged.
 5. The name or names of the person or persons who have the management or supervision responsibilities of the applicant's business and of any entertainment;
 6. A statement of the nature and character of the applicant's business, if any, to be carried on in conjunction with such entertainment;
 7. A site area map showing the proposed business location and plotting of all uses listed in Section 21.31.060.
- B. Prior to the time limit set forth in Section 21.31.030 within which the Planning Commission must grant or deny an adult business license application, the Police Department shall complete a background investigation of all parties specified above in the application.

21.31.050 Development and Performance Standards and Regulations

- A. Any adult business otherwise authorized and/or operating within the City shall be established, located and operated consistent with each and every of the following:
1. Prohibition against minors in an adult business. It shall be unlawful for any licensee, operator, or other person in charge of any adult business to permit to enter, or remain within the adult business, any person who is not at least eighteen (18) years of age or to provide any service for which this Chapter requires a license, to any person who is not at least eighteen (18) years of age.

2. Concealing specified sexual activities and specified anatomical areas from public view. No adult business shall be operated in any manner that permits the 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 or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.
3. Posting notices relating to minors. No person under the age of eighteen (18) years shall be permitted within an adult business at any time. The building entrance to an adult business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are prohibited from entering the premises. Said notice shall be constructed and posted to the satisfaction of the Community Development Director or his or her designee.
4. Indoor areas open to view by management. All indoor areas of the adult business where patrons or members of the public are permitted, excluding restrooms, shall be open to view by management at all times.
5. Security guards. Any adult business shall employ security guards in order to maintain the public peace and safety, based upon the following standards:
 - a. Adult businesses featuring live entertainment shall provide at least one (1) security guard at all times while the business is open. If the occupancy limit of the adult business is greater than thirty-five (35) persons, an additional security guard shall be on duty.
 - b. Security guards shall be charged with preventing violations of law and enforcing compliance by patrons with the requirements of these regulations. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of 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.
6. Register and license number of employees.
 - a. Each person who will perform in live entertainment depicting specified anatomical areas or involving specified sexual activities shall submit a registration form to the chief of police that contains the person's name, residence address, telephone number, driver's license number and written evidence that the person is at least eighteen (18) years of age.
 - b. Unless the person cannot provide written evidence of his or her age, upon the submission of such registration form, the person shall be issued a temporary license to perform in live entertainment as described in paragraph (a) of this section.
 - c. The chief of police or his or her designee shall issue a permanent license to the person within ten (10) days of receipt pending verification of the person's age.
 - d. Every licensee of an adult 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 business and their license numbers. Such register shall be available for inspection during regular business hours by any police officer of the City.

7. Inspection.
 - a. An applicant or licensee shall permit representatives of the Police Department, Emergency Services Department, Community Development Department or other City departments or agencies to inspect the premises of an adult business for the purpose of ensuring compliance with the law, at any time the adult business is occupied or open for business.
 - b. It is a violation of this Chapter for a person who operates an adult business or that person's agent or employee to refuse to permit such lawful inspection of the adult business at any time it is open for business.
8. Restroom facilities. The adult 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. Restrooms 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 business that deals exclusively with the sale or rental of adult material that 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.
9. Additional regulations for adult motion picture arcade. Any adult business that is also an adult motion picture arcade shall comply with the following provisions:
 - a. The interior of the adult business shall be configured in such a manner that there is an unobstructed view from a manager station of every area of the adult business to which any patron is permitted access for any purpose, excluding restrooms. If the adult business has two (2) or more manager stations designated, then the interior of the adult motion picture arcade 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 business to which any patron is permitted access.
 - b. It shall be the duty of the licensee to ensure that the view area required by paragraph a. of this Section is at all times unobstructed by any doors, walls, merchandise, display racks, or other materials while the adult business is open to patrons.
 - c. No viewing room or booth may be occupied by more than one (1) person at any time.
 - d. 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.
 - e. Customers, patrons or visitors shall not be allowed to stand idly by in the vicinity of any such video booths, or remain in the common area of such adult business, 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.
 - f. The floors, seats, walls, and other interior portions of all video booths shall be maintained clean and free from waste and bodily secretions. The presence of human excrement, urine, semen or saliva in any such booth shall be evidence of improper maintenance and inadequate sanitary controls.

10. Additional regulations relating to live entertainment. The following additional requirements shall pertain to adult businesses providing live entertainment depicting specified anatomical areas or involving specified sexual activities, except for businesses regulated by the California Department of Alcoholic Beverage Control.
 - a. No person shall perform live entertainment for patrons of an adult business except upon a stage that is at least twenty-four (24) inches above the level of the floor and which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons. A fixed rail(s) at least thirty (30) inches in height shall be maintained by 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 business, or any person who, with or without compensation or other form of consideration, performs live entertainment for patrons of an adult business.
 - b. The adult business shall provide separate dressing room facilities for performers, which are exclusively dedicated to the performers' use.
 - c. The adult business shall provide an entrance/exit for performers that is separate from the entrance/exit used by patrons.
 - d. The adult business shall provide access for performers between the stage and the dressing rooms, which is completely separated from the patrons. If such separate access is not physically feasible, the adult 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 that is capable of preventing any physical contact between patrons and performers.
 - e. 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 business, including off-street parking areas.
 - f. No patron shall directly pay or give any gratuity to any performer, and no performer shall solicit any pay or accept any gratuity from any patron.
 - g. No owner or other person with managerial control over an adult business shall permit any person on the premises of the adult 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 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.
11. Additional regulations for adult motels.
 - a. Evidence that a sleeping room in a hotel, motel, or a 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 hotel or motel.
 - b. 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 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.

- c. For purposes of paragraphs a. and b. of this Section, the terms “rent” or “sub-rent” mean the act of permitting a room to be occupied for any form of consideration.
12. 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 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, CD, DVD, live entertainment or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
 - a. Upon application for an adult business license, the application shall be accompanied by a diagram of the premises showing a plan thereof 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 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.
 - b. 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.
 - c. It is the duty of the licensee of the adult 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 business.
 - d. The interior of the adult business shall be configured in such a manner that there is an unobstructed view from a manager’s station of every area of the adult business to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video viewing equipment. If the adult 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 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.
 - e. 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.
 - f. It shall be the duty of the licensee to ensure that no patron is permitted access to any area of the adult business, which has been designated, as an area in which patrons will not be permitted pursuant to paragraph a. of this Section.
 - g. No viewing room may be occupied by more than one (1) person at any time.
 - h. The adult 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 foot (5.0’) candles as measured at the floor level.

- i. 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.
 - j. No openings of any kind shall exist between viewing rooms or booths.
 - k. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
 - l. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist, and, if any do exist, promptly repair any such openings or holes prior to any use of such booths by patrons.
 - m. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
 - n. 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.
 - o. It is a violation of this Chapter for a person having a duty under this Section to knowingly fail to fulfill that duty.
13. Additional regulations for adult model studios.
- a. An adult model studio shall not employ any person under the age of eighteen (18) years.
 - b. 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 an adult 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.
 - c. 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 an adult model studio premises, which can be viewed from the public right of way.
 - d. An adult 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.

21.31.060 Location of adult businesses

- A. All adult businesses as defined in this chapter shall be located in the Airport (AP) zone only.
- B. Within the AP zone no adult businesses shall be established within five hundred (500) feet of the following uses within or outside the city limits:
 - 1. Residentially zoned properties;
 - 2. Public or private educational facilities;
 - 3. Religious institutions;
 - 4. Public parks and public facilities;
 - 5. Youth-oriented facilities;
 - 6. Bars or taverns.
- C. Within the AP zone, no adult business may be established within 1,000 feet of another adult business as defined by this chapter.

- D. The distance of five hundred or one thousand feet shall be measured in a straight line from the closest property line of the adult business to the closest property line of any of the preceding uses.

21.31.070 Additional public hearing notices.

The public notice required for a public hearing on an application for an adult business license shall include mailed notices to all property owners and residents or tenants located within one thousand feet of the exterior boundaries of the parcel on which the business is proposed to be located. This shall be in addition to the notice requirements in Section 21.23.040(A).

21.31.080 Limitations on display of harmful matter in newsracks.

The limitations on display of material, which is harmful to minors contained within Chapter 11.35, shall apply to private property as well as to the public right-of-way.

21.31.090 Transfer of License

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

21.31.100 Suspension or Revocation of License

An adult business license may be suspended or revoked in accordance with the procedures and standards of this Section.

- A. Based on a determination that grounds for permit revocation exist, the Planning Commission 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, and the ground(s) upon which the hearing is based, the pertinent 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 licensee, or shall be delivered to the licensee personally, at least ten (10) days prior to the hearing date. Hearings shall be conducted in accordance with the City's procedures.
- B. A licensee may be subject to suspension or revocation of his or his permit, or be subject to other appropriate remedial action, including the imposition of additional conditions, 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 business:
1. The licensee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the City.
 2. The licensee, employee, agent, partner, director, stockholder, or manager of an adult business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the adult business:
 - a. Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.
 - b. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.
 - c. Any conduct constituting a criminal offense that requires registration under Section 290 of the California Penal Code.
 - d. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318 of Subdivision (b) of Section 647 of the California Penal Code.
 - e. Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 to 313.4.
 - f. Any conduct prohibited by this chapter.

3. Failure to abide by any action previously imposed by an appropriate City official.
- C. After holding the hearing in accordance with the provisions of this Section, if the Planning Commission finds and determines that there are grounds for action, the Planning Commission shall do one of the following:
1. Issue a warning.
 2. Suspend the license for a specified period not to exceed six months.
 3. Revoke the permit.
- D. Any adult business that is operating in violation of the requirements of this code is declared to constitute a public nuisance and, in addition to actions authorized in this Section, may be subject to abatement or enjoined from further operation by the City.

21.31.110 Appeal of Denial, Suspension or Revocation

After denial of an application for an adult business license, or after denial of renewal of a license, or suspension or revocation of a license, the applicant or person to whom the license was granted may seek review of such administrative action by the City Council.

21.31.120 Judicial Review – Stay pending trial court decision.

- A. Judicial review of any final administrative decision after appeal under this chapter issuing, denying, suspending or revoking, or imposing other discipline upon, an adult business license may be had pursuant to Code of Civil Procedure section 1094.8. The applicant shall be provided written notice of the time limits references in Code of Civil Procedure section 1094.8 to the appellant when transmitting the decision.
- B. A final administrative decision issuing, denying, suspending or revoking, or imposing other discipline upon, an adult business license shall be stayed for a period of twenty-one (21) days after the decision becomes final, and the adult business shall be entitled to operate pursuant to the permit during the twenty-one day time period.
- C. Upon the timely filing of a request for judicial review pursuant to Code of Civil Procedure Section 1094.6 or section 1094.8, the administrative decision issuing, denying, suspending or revoking, or imposing other discipline upon an adult business license shall be stayed until the request for judicial review is dismissed or until a decision on the merits is issued by the trial court. The adult business shall be entitled to operate during the stay.

21.31.130 Enforcement

- A. Separate offense for each day. Any person who knowingly 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.
- B. 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 9.06 of the Municipal Code.
- C. Criminal penalties. Any person who knowingly 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 extent permitted by state law.
- D. 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.

- E. Administrative penalties. In addition to the civil remedies and criminal penalties set forth above, any person who violates the provisions of this Chapter may be subject to administrative penalties, as set forth by City ordinance.”

21.31.140 Severability

If any section, subsection, subdivision, sentence, clause or phrase in this Chapter or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter 21.31 or any part thereof. The City Council hereby declares that it would have passed each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.”

Section 2. Effective Date.

This Ordinance shall go into effect thirty (30) days after its passage. Within fifteen (15) days after its passage, it shall be published once in accordance with Section 36933 of the Government Code.

INTRODUCED at a regular meeting of the City Council held on July 16, 2002, and passed and adopted by the Council of the City of El Paso de Robles this 6th day of August 2002 by the following vote:

AYES: Finigan, Heggarty, Picanco and Mecham
NOES: None
ABSTAIN: None
ABSENT: Nemeth

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk