



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
July 18, 2007**

TO: Mayor and City Council
FROM: Albert Lopez, Deputy Community Development Director
SUBJECT: Ordinance Regulating Adult Entertainment Businesses
DATE: July 9, 2007

RECOMMENDATION:

Conduct public hearing to introduce ordinance repealing and reenacting Chapter 9.34 of the Martinez Municipal Code, Adult Entertainment Businesses, pertaining to Zoning Regulations applicable to Adult-Oriented Businesses.

BACKGROUND:

This item is a municipal code amendment (Chapter 9.34) that will repeal and reenact the regulations pertaining to Adult Oriented Businesses. The existing code was amended last in 1980 and lacks specificity as to where Adult Oriented Businesses can be located, development and operational standards, and approval criteria (similar to findings). The Planning Commission heard this item on July 10th, and recommended approval to the City Council.

In brief, the proposed Ordinance regulates the possible locations of Adult Oriented Businesses in that it stipulates distance requirements from schools, churches, parks, residential areas and other Adult Oriented Businesses. Contained in the findings of the ordinance are references to various studies that have documented the adverse secondary effects of Adult Oriented Businesses on local businesses and residences, and those studies are available for public review in the Community and Economic Development Department.

Adult-Oriented Business Permit

The new Ordinance introduces the concept of an Adult-Oriented Business Permit ("Permit") requiring a prospective business operator to ask for a special permit in order to open an Adult Oriented Business. As determined in the attached Ordinance, the locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City of Martinez, and thus certain requirements with respect to the ownership and operation of Adult-Oriented Businesses are in the public interest. The permit application will ensure that the operation, its owners, and the physical location, when taken as a whole, are adequately reviewed prior to permit approval.

Suitable Locations

The products and services of Adult Oriented Businesses are protected by the First Amendment and its Freedom of Speech language. As such, in regulating Adult Oriented Businesses, the City would not be able to impose restrictive zoning regulations that would interfere with a constitutional right. However, the City can impose reasonable restrictions on Adult Oriented Businesses to locate in specific locations, away from sensitive land uses such as residential areas and schools.

One of the challenges for staff was to locate desirable Zoning Districts for Adult Oriented Businesses, yet ensure that adequate, available and suitable locations do exist. Staff has recently completed the field work necessary for this exercise and located several locations that meet the distance requirements. As proposed, the Ordinance allows an Adult Oriented Business to be located in the SC- Service Commercial and LI – Light Industrial Zoning Districts. These are the Districts where available space has been identified that also maintains a 300 foot separation between Adult Oriented Businesses and residential areas, schools, churches, and parks.

In doing this field work, staff queried landowners, specifically asking if the available space was encumbered by long-term leases. Questionnaires were sent to the owners of 15 parcels, and the response rate was over 50%. The responses received identified several locations in the SC - Service Commercial and LI - Light Industrial zoning districts that both met the distance criteria and were not subject to long term leases. Maps showing the areas Adult Oriented Businesses could potentially locate are included as attachments. This field work was necessary to only identify potential locations, and did not ascertain the receptiveness of a property owner to renting or leasing their available space to Adult Oriented Businesses.

Existing Businesses

Upon adoption of the new Ordinance, all existing Adult Oriented Businesses are considered legal non-conforming businesses. The draft Ordinance contains an amortization period expiring one-year after adoption of the new Ordinance, with the possibility of getting extensions on the amortization period approved by the Planning Commission in a public hearing. Reasons for the Planning Commission to consider an extension of the amortization period include items such as the amount of investment into a business, the remaining life of a lease term, the cost of moving the business, and the secondary effects of the Adult-Oriented Business on the health, safety and welfare. The full text of the ordinance contains all the factors the Planning Commission can consider in making an extension decision.

If after the one year period a business has not received an extension, has not made an application for an Adult-Oriented Business Permit, and has not tried to remove the nonconformity, they will be considered a public nuisance. This would effectively allow the City to move forward with a code enforcement action.

FISCAL IMPACT:

None.

ACTION:

Conduct public hearing and introduce ordinance regulating adult entertainment businesses.

ATTACHMENTS

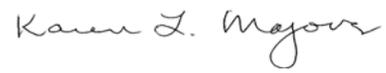
1. Draft Ordinance
2. Draft Planning Commission Resolution
3. Maps showing SC-Service Commercial and LI-Light Industrial areas

APPROVED BY:



City Manager

APPROVED BY:



Department Head

ORDINANCE NO. C.S.

**AN ORDINANCE REPEALING AND REENACTING CHAPTER 9.34 OF THE
MARTINEZ MUNICIPAL CODE, ADULT ENTERTAINMENT BUSINESSES,
PERTAINING TO ZONING REGULATIONS APPLICABLE TO ADULT-ORIENTED
BUSINESSES AND THE REGULATION OF ADULT-ORIENTED BUSINESSES**

The City Council of the City of Martinez does hereby ordain as follows:

SECTION 1. FINDINGS. The City Council of the City of Martinez hereby finds that:

- A. The City Council, in adopting this ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary effects of Adult-Oriented Businesses in other cities: Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1983); Beaumont, Texas (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Cleveland, Ohio (1977); Los Angeles, California (1977). The City Council finds that these studies are relevant to the problems addressed by the City in enacting this ordinance to regulate the adverse secondary side effects of Adult-Oriented Businesses, and more specifically finds that these studies provide convincing evidence that:
1. Adult-Oriented 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-Oriented Businesses to sensitive landuses and the concentration of Adult-Oriented Business tend to result in the blighting and deterioration of the areas in which they are located.
 3. The proximity and concentration of Adult-Oriented Businesses adjacent to residential, recreational, religious and educational uses as well as proximity to other Adult-Oriented 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-Oriented 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-Oriented Businesses which 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.

- B. Based on the foregoing, the City Council of the City of Martinez finds and determines that special regulation of Adult-Oriented Businesses is necessary to ensure that their adverse secondary side effects will not contribute to an increase in crime rates or to the blighting or deterioration of the areas in which they are located or surrounding areas. The need for such special regulations is based upon the recognition that Adult-Oriented Businesses have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or located in direct proximity to sensitive uses such as parks, playgrounds, schools, or churches, thereby having a deleterious effect upon the adjacent areas. It is the purpose and intent of these special regulations to prevent the concentration of Adult-Oriented Businesses and thereby prevent such secondary side effects.
- C. The locational requirements established by this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected Adult Oriented Businesses in the City of Martinez, and a sufficient reasonable number of appropriate locations for Adult-Oriented Businesses are provided by this ordinance.
- D. 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 (1997) 521 U.S. 844 (the principal channel through which many Americans now transmit and receive sexually explicit communication is the Internet); see also: Anheuser-Busch v Schmoke, 101 F 3d 325, 329 (4th Cir 1996) (rejecting First Amendment challenge to Baltimore ordinance restricting alcohol advertisements on billboards and acknowledging that the Internet is and available channel of communications); U.S. v Hockings, 129 F.3d 1069 (9th Cir. 1997); and U.S. v Thomas, 74 F. 3d 701 (6th Cir. 1996) (cert denied 519 U.S. 820). The emergence of the Internet provides a virtually unlimited additional source of adult oriented sexual material available to persons without regard to geographic boundaries. An adult-oriented business no longer needs to be actually physically located within a city to be available to the community.

- E. In developing this ordinance, the City Council has been mindful of legal principles relating to regulation of Adult-Oriented Businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendments of the United States and California Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of Adult-Oriented Businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of Adult-Oriented Businesses, including but not limited to: Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976) (Reh. denied 429 U.S. 873); Renton v. Playtime Theaters, 475 U.S. 41 (1986) (Reh. denied 475 U.S. 1132); FW/PBS, Inc. v. Dallas, 493 U.S. 215 (1990); Barnes v. Glenn Theater, 501 U.S. 560 (1991) and City of Erie v. Paps A.M., 529 U.S. (2000); United States Court of Appeals 9th Circuit decisions, including but not limited to: Topanga Press, et al. v. City of Los Angeles, 989 F.2d 1524 (1993); Kev, Inc. v. Kitsap County, 793 F.2d 1053 (1986); several California cases including but not limited to: Tily B. V. City of Newport Beach, 69 Cal. App. 4th 1 (1998); City of National City v. Wiener, 3 Cal.4th 832 (1993); People v. Superior Court (Lucero) 49 Cal.3d 14 (1989); and City of Vallejo v. Adult Books, et al., 167 Cal.App.3d 1169 (1985) and other federal cases including Lakeland Lounge v. City of Jacksonville (5th Cir. 1992) 973 F.2d 1255, Hang On, Inc. v. Arlington (5th Cir. 1995) 65 F.3d 1248, Mitchell v. Commission on Adult Entertainment (3rd Cir. 1993) 10 F.3d 123, International Eateries v. Broward County (11th Cir. 1991) 941 F.2d 1157, and Star Satellite v. City of Biloxi (5th Cir. 1986) 779 F.2d 1074.
- F. The City Council of the City of Martinez also finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City of Martinez, and thus certain requirements with respect to the ownership and operation of Adult-Oriented Businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such businesses are located, the City Council also takes legislative notice of the facts recited in the case of Kev, Inc. v. Kitsap County, 793 F.2d 1053 (1986), regarding how live adult entertainment results in secondary effects such as prostitution, drug dealing, and other law enforcement problems.
- G. The City Council finds the following, in part based upon its understanding of the documents and judicial decisions in the public record:
1. Evidence indicates that some dancers, models and entertainers, and other persons who publicly perform

Specified Sexual Activities or publicly display Specified Anatomical Parts in Adult-Oriented Businesses (as those terms are defined herein) (collectively referred to as "Performers") have been found to engage in sexual activities with patrons of Adult-Oriented Businesses on the site of the Adult-Oriented Business; and

2. Evidence has demonstrated that Performers employed by Adult-Oriented Businesses have been found to offer and provide private shows to patrons who, for a price, are permitted to observe and participate with the performers in live sex shows; and

3. Evidence indicates that Performers at Adult-Oriented Businesses have been found to engage in acts of prostitution with patrons of the establishment; and
4. Evidence demonstrates that performers employed by Adult-Oriented Businesses frequently use stage names and other aliases, making it difficult for law enforcement personnel to properly identify them or ascertain their true identities; and
5. Evidence indicates that fully enclosed booths, individual viewing areas, and other small rooms whose interiors cannot be seen from public areas of the establishment regularly have been found to be used as a location for engaging in unlawful sexual activity; and
6. Individual Viewing Areas have been found to contain holes in the walls joining abutting Individual Viewing Areas which are used by customers to facilitate sexual activity between the occupants of the abutting Individual Viewing Areas; and
7. Individual Viewing Areas have been found to be unsanitary due to the existence of semen, saliva and blood on the walls and floors of the Individual Viewing Areas; and
8. Medical science has found that the Human Immunodeficiency Virus ("HIV virus") and hepatitis-B viruses are carried in the semen of infected males as well as saliva and blood of both males and females; and
9. The occurrence of sexual activity between patrons and entertainers as noted below can facilitate the direct transmission of the HIV virus and hepatitis-B viruses; and
10. The practice of individuals having anonymous and/or unprotected sexual relations in Individual Viewing Areas can facilitate the transmission of the HIV virus and hepatitis-B viruses as well as other sexually transmitted diseases; and
11. Poorly lit or unlit areas of Adult-Oriented Businesses provide a location for people to engage in illegal sexual activities; and
12. Police agencies have determined that some Adult-Oriented Businesses and the operators thereof have been found to be directly engaged in (as well as aid and abet) criminal and illegal sexual activity. Such individuals also have been known to use aliases; and
13. Many jurisdictions have found that Adult-Oriented

Businesses generate excessive noise and disorderly conduct, particularly at the closing time of the Adult-Oriented Businesses, which creates an adverse noise, and public safety impact on surrounding businesses and communities; and

14. As a result of the above, and the increase in incidents of Acquired Immune Deficiency Syndrome and Hepatitis B, which are both sexually transmitted diseases, the City has a substantial interest in adopting regulations which will reduce, to the greatest extent possible, the possibility for the occurrence of prostitution and casual sex acts at Adult-Oriented Businesses; and
- H. Zoning, licensing and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in the community of Martinez and to help assure that all operators of Adult-Oriented Businesses comply with reasonable regulations and are located in places that minimize the adverse secondary effects which accompany the operation of such businesses.
- I. The City Council has also determined that a closing hours requirement promotes the reduction of deleterious secondary effects from Adult-Oriented Businesses and reasonably relies on prior court decisions on the need for closing hours including, Mitchell v. Comm, on Adult Entertainment, 10 F. 3d 123 (3rd Cir 1993); Lady J. Lingerie, Inc. v. City of Jacksonville, 973 F. Supp. 1428 (M.D. Fla. 1997) and City of Colorado Springs v. 2354 Inc. 896 p.2d (1995).

- J. The City Council of the City of Martinez recognizes the possible harmful effects on children and minors exposed to the effects of such Adult-Oriented Businesses and the deterioration of respect for family values, and the need and desire of children and minors to stay away from and avoid such businesses, which causes children to be fearful and cautious when walking through or visiting the immediate neighborhood of such businesses; and the City Council desires to minimize and control the adverse secondary effects associated with the operation of Adult-Oriented Businesses and thereby protect the health, safety, and welfare of the citizens of the City of Martinez; 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 threat to health from the spread of communicable and sexually transmitted diseases.
- K. It is not the intent of the City Council of the City of Martinez in enacting this ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City of Martinez recognizes that state law prohibits the distribution of obscene materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities in the City of Martinez.
- L. Nothing in this ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any businesses, 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.
- M. In prohibiting public nudity in Adult-Oriented Businesses, the City Council does not intend to proscribe the communication of erotic messages or any other communicative element or activity, but rather only to prohibit public nudity due to the secondary impacts associated with such public nudity.

- N. The City Council also finds, as a wholly independent basis, that it has a substantial public interest in preserving societal order and morality, and that such interest is furthered by a prohibition on public nudity.
- O. While the City Council desires to protect the rights conferred by the United States Constitution to Adult-Oriented Businesses, it does so in a manner that ensures the continued and orderly development of property within the City and diminishes, to the greatest extent feasible, those undesirable secondary effects which the aforementioned studies have shown to be associated with the development and operation of Adult-Oriented Businesses.
- P. In enacting a nudity limitation, the City declares that the limitation is a regulatory licensing provision and not a criminal offense. The City has not provided a criminal penalty for a violation of the nudity limitation. The City adopts such a limitation only as a condition of issuance and maintenance of an Adult-Oriented Business permit issued pursuant to the City Municipal Code.
- Q. The City Council finds that preventing the exchange of money between entertainers and patrons also reduces the likelihood of drug and sex transactions occurring in Adult-Oriented Businesses.
- R. Requiring separations between entertainers and patrons reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the Adult-Oriented Business.
- S. Enclosed or concealed booths and dimly-lit areas within Adult-Oriented Businesses greatly increases the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. Requirements that all indoor areas be open to view by management at all times, and that adequate lighting be provided are necessary in order to reduce the opportunity for, and therefore the incidence of illegal conduct within Adult-Oriented Businesses, and to facilitate the inspection of the interior of the premises thereof by law enforcement personnel.

T. The regulatory license fees imposed pursuant to this ordinance are reasonably necessary for the City of Martinez to recover the costs of regulating Adult-Oriented Businesses and Performers, including but not limited to those costs incident to the issuance of Business Permits and Performer Permits, investigations and inspections required under this ordinance, administration of this ordinance, maintenance of a system of supervision over Adult-Oriented Businesses and Performers and enforcement of the requirements set forth in this ordinance.

SECTION 2. REPEAL OF CODE. Chapter 9.34 of the Martinez Municipal Code, Adult Entertainment Businesses, is hereby repealed.

SECTION 3. REENACTMENT OF CODE. Chapter 9.34 of the Martinez Municipal Code, Adult Entertainment Businesses, is hereby reenacted to read as follows:

CHAPTER 9.34

ADULT ENTERTAINMENT ESTABLISHMENTS

Article 1. General Provisions

9.34.010 Intent and Purpose.

It is the intent of this chapter to provide special design guidelines, standards and development regulations to regulate the time, place and manner of the operation of Adult-Oriented Businesses in order to minimize the negative secondary effects associated with such uses including, but not limited to, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by the concentration of Adult-Oriented Businesses in close proximity to each other or proximity to other incompatible uses such as schools, parks, playgrounds, churches, and residentially zoned districts or uses. The City Council finds that it has been demonstrated in various communities that the concentration of Adult-Oriented Businesses causes an increase in the number of transients in the area, and an increase in crime, and in addition to the effects described above can cause other businesses and residents to move elsewhere. It is, therefore, the purpose of this chapter to establish reasonable and uniform regulations to prevent the concentration of Adult-Oriented Businesses or their close proximity to incompatible uses, while permitting the location of Adult-Oriented Businesses in certain areas. Additionally, it is the purpose of this chapter to regulate Adult-Oriented Businesses in order to promote the health, safety, morals and general welfare of the citizens of the City. The provisions of this chapter 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 chapter 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. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

9.34.020 Definitions.

- A. **Adult Arcade.** The term "adult arcade" as used in this chapter, means any business establishment or concern containing one or more coin or slug operated or manually or electronically controlled still or motion picture projectors, video machines, projector or similar image-producing devices, that are maintained to display images to an individual or group of individuals when those images are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- B. **Adult Bookstore.** The term "adult bookstore" as used in this chapter, means any establishment which as a regular and substantial course of conduct, displays and/or distributes sexually oriented merchandise, sexually oriented material, books, periodicals, magazines, or other printed materials, or photographs, drawings, sculptures, films, motion pictures, videos, discs, cassettes, slides, tapes, records or other form of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities and/or specified anatomical areas (See "adult-oriented business" for definition of regular and substantial course of conduct.)
- C. **Adult Cabaret.** The term "adult cabaret" as used in this chapter, means a nightclub, bar, lounge, restaurant, or similar business establishment or concern which features as a regular and substantial course of conduct, any type of live entertainment, films, motion pictures, computer generated images, videos, discs, slides, or other photographic reproductions, or other oral, written or visual representations which are distinguished or characterized by an emphasis upon matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- D. **Adult Dance Studio.** The term "adult dance studio" as used in this chapter, means any business establishment or concern which provides for members of the public a partner for dance where the partner, or the dance is distinguished or characterized by an emphasis upon matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

- E. **Adult Hotel/Motel.** The term "adult hotel/motel" as used in this chapter, means a hotel, motel or other similar business establishment or concern offering public accommodations for any form of consideration which as a regular and substantial course of conduct provides to its patrons, through the provision of rooms equipped with closed-circuit television, films, computer generated images, motion pictures, videos, discs, slides, other photographic reproductions, or other medium, material which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and which rents, leases, or lets any room for less than a twelve (12) hour period, or rents, leases, or lets any single room more than once in a twenty-four (24) hour period.
- F. **Adult Modeling Studio.** The term "adult modeling studio" as used in this chapter, means any business or premises where there is furnished, provided or procured, a figure model or models who pose in any manner which is characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas where such model(s) is being observed or viewed by any person for the purpose of being sketched, photographed, painted, drawn, sculpted, filmed or videotaped or otherwise depicted for a fee, compensation, gratuity or other thing of value as consideration for the right or opportunity to so observe the model or to remain on the premises. "Adult Modeling Studio" does not include any live art class or any studio or classroom which is operated by any public agency, or any private educational institution authorized to issue and confer a diploma or degree pursuant to standards set by the State Board of Education.
- G. **Adult-Oriented Business.** The term "adult-oriented business" means any business establishment or concern which as a regular and substantial course of conduct operates as an adult arcade, adult bookstore, adult cabaret, adult dance studio, adult hotel/motel, adult modeling studio, adult theater; any business establishment or concern which as a regular and substantial course of conduct sells or distributes or offers for sale or distribution sexually oriented merchandise or sexually oriented material; or any other business establishment or concern which as a regular and substantial course of conduct offers to its patrons products, merchandise, services or entertainment characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas. "Adult-oriented business" does not include those uses or activities, the regulation of which is preempted by State law. For the purposes of this section, a business establishment or concern has established the provision of products, merchandise, services or

entertainment characterized by an emphasis on matters depicting describing or relating to specified sexual activities or specified anatomical areas as a regular and substantial course of conduct when one or more of the following conditions exist:

1. The area devoted to adult merchandise and/or sexually oriented material exceeds more than twenty (20) percent of the total display or floor space area open to the public; and
2. The business establishment or concern presents any type of live entertainment which is characterized by an emphasis on specified sexual activity or specified anatomical areas at least four (4) times in any month; and
3. The regular and substantial course of conduct of the business consists of or involves the sale, trade, display or presentation of services, products, or entertainment which are characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

- H. **Adult Theater.** The term "adult theater" as used in this chapter, means a business establishment or concern which, as a regular and substantial course of conduct, presents live entertainment performances, motion pictures, videos, computer images, slide photographs, or other pictures or visual representations or reproductions which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.
- I. **Adult-Oriented Business Operator.** The term "Adult-Oriented Business Operator" (hereinafter "operator") means a person who supervises, manages, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the premises of an Adult-Oriented Business or the conduct or activities occurring on the premises thereof.
- J. **Applicant.** A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of an Adult-Oriented Business.
- K. **Bar.** For the purposes of this chapter, a bar is defined as any commercial establishment licensed by the State Department of Alcoholic Beverage Control to serve any alcoholic beverages on the premises.
- L. **Church.** The term "church" as used in this chapter, is a structure which is used primarily for religious worship and

related religious activities.

- M. **Distinguished or characterized by an emphasis upon.** As used in this chapter, the term "distinguished or characterized by an emphasis upon" shall mean and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase 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 whose dominant or predominant character or theme are the depiction of the enumerated sexual activities or anatomical areas. See Pringle v. City of Covina (1981) 115 Cal.App.3d 151.
- N. **Entertainer.** As used herein, "entertainer" means any person who dances, models, entertains, and/or performs specified sexual activities or displays specified anatomical areas in an Adult-Oriented Business.
- O. **Establishment of an Adult-Oriented Business.** As used herein, to "establish" an Adult-Oriented Business shall mean and include any of the following:
1. The opening or commencement of any Adult-Oriented Business as a new business; and
 2. The conversion of an existing business, whether or not an Adult-Oriented Business, to any Adult-Oriented Business defined herein; and
 3. The addition of any of the Adult-Oriented Businesses defined herein to any other existing Adult-Oriented Business; or
 4. The relocation of any such Adult-Oriented Business.
- P. **Figure Model.** The term "figure model" as used in this chapter, means any person who, for pecuniary compensation, consideration, hire or reward, poses in a modeling studio to be observed, sketched, painted, drawn, sculptured, photographed or otherwise depicted.
- Q. **Live Art Class.** The term "live art class" as used in this chapter, means any premises on which all of the following occur: there is conducted a program of instruction involving the drawing, photographing, or sculpting of live models exposing specified anatomical areas; instruction is offered in a series of at least two classes; the instruction is offered indoors; an instructor is present in the classroom while any participants are present; and preregistration is required at least twenty four (24) hours in advance of participation in the class.

- R. **Nudity or a state of nudity.** "Nudity or a state of nudity" as used in this chapter, means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola.
- S. **Operate an Adult-Oriented Business.** As used in this chapter, "operate an Adult-Oriented Business" means the supervising, managing, inspecting, directing, organizing, controlling or in any way being responsible for or in charge of the conduct of activities of an Adult-Oriented Business or activities within an Adult-Oriented Business.
- T. **Permittee.** The term "permittee", as used in this chapter, means the person to whom an Adult-Oriented Business Permit is issued.
- U. **Person.** The term "person", as used in this chapter, means any individual, partnership, copartnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.
- V. **School.** The term "school" as used in this chapter, means any child or day care facility, or an institution of learning for minors, whether public or private, offering instruction in those courses of study required by the California Education Code and maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education or an institution of higher education, including a community or junior college, college, or university, but it does not include a vocational institution.
- W. **Semi-nude.** The term "semi-nude" as used in this chapter, means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- X. **Sexual Encounter Center.** "Sexual encounter center" as used in this chapter is any business, agency or person who, for any form of consideration or gratuity, provides a place where three or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in specified sexual activities or exposing specified anatomical areas.
- Y. **Sexually Oriented Material.** The term "sexually oriented material" as used in this chapter, means any element of sexually oriented merchandise, or any book, periodical, magazine, photograph, drawing, sculpture, motion picture

film, video, disc, computer generated image, or other written, oral or visual representation which, for purposes of sexual arousal, provides depictions which are characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

Z. **Sexually Oriented Merchandise.** The term "sexually oriented merchandise" as used in this chapter, means sexually oriented implements and paraphernalia, including, but not limited to, dildos, auto sucks, sexually oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery or electrically operated vaginas or penises, and similar sexually oriented devices which are designed or marketed primarily for the stimulation of human genital organs or sado-masochistic activity or which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

AA. **Specified Anatomical Areas.** As used in this chapter, "specified anatomical areas" shall mean and include any of the following:

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

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
3. Any device, costume or covering that simulates any of the body parts included in subdivisions 1. or 2. above.

BB. **Specified Sexual Activities.** As used herein, "specified sexual activities" shall mean and include any of the following, whether performed directly or indirectly through clothing or other covering.

4. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory function in the context of a sexual relationship, any of the following depicted sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerastia; or
5. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
6. Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; or
7. Fondling, or touching of nude human genitals, pubic region, buttocks, or female breast; or
8. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or
9. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or human excretion, urination, menstruation, vaginal or anal irrigation; or
10. The presence of any person who performs, or appears in a state of nudity or semi nude.

Article 2. Limitations on Location

9.34.040 Prohibited Areas and Minimum Proximity Requirements.

- A. Subject to the limitations set forth in this Chapter, Adult-Oriented Businesses may be established in the Service Commercial (SC) or Light Industrial (LI) zoning districts of the City.
- B. Notwithstanding the above, no Adult-Oriented Business shall

be established or located within certain distances of certain specified land uses or zones as set forth below:

1. No such business shall be established or located within a three hundred foot radius from any existing residential zone or use. The distance between a proposed Adult-Oriented Business use and a residential zone or use shall be measured from the nearest exterior wall of the facility housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line included within a residential zoning district or property in current residential use, along a straight line extended between the two points.
 2. No such business shall be established or located within one thousand feet of any other Adult-Oriented Business as defined in this chapter which is located either inside or outside the jurisdiction of the City of Martinez. The distance between the two Adult-Oriented Business uses shall be measured between the nearest exterior wall of the facility housing the Adult-Oriented Business use and proposed Adult-Oriented Business use along a straight line extended between the two uses.
 3. No such businesses shall be established or located within one thousand feet from any existing park, playground, church or school uses or property zoned Recreational Facilities (RF). The distance between a proposed Adult-Oriented Business use and park, playground, church or school uses or property zoned Recreational Facilities (RF), shall be measured from the nearest exterior wall of the facility housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line where the park, playground, church or school use is located, or property zoned Recreational Facilities (RF) is located, along a straight line extended between the two points.
- C. The above distance limitations shall also apply to residential districts or uses and parks, playgrounds, schools, and church uses or property designated as such in the General Plan Land Use Element of an adjacent jurisdiction.

Article 3. Application and Permits

9.34.060 Adult-Oriented Business Permit Required.

It shall be unlawful for any person to engage in, conduct, establish, carry on, or to permit to be engaged in, conducted, established or carried on, in or upon any premises in the City of Martinez, the operation of an Adult-Oriented Business unless the

person first obtains and continues to maintain in full force and effect both an Adult-Oriented Business Permit and a business license from the City of Martinez.

No Adult-Oriented Business may be established within the City of Martinez by right. All persons wishing to establish an Adult-Oriented Business within the City must first apply for and receive an Adult-Oriented Business Permit pursuant to this chapter.

It is the burden of the applicant for an Adult-Oriented Business Permit to supply sufficient evidence to justify the grant of an Adult-Oriented Business Permit.

9.34.080 Application Requirements.

- A. Application Submittal. Any person desiring to operate or establish an Adult-Oriented Business within the City of Martinez shall file with the Community Development Department an Adult-Oriented Business Permit application on a standard application form supplied by the Community Development Department.

- B. All applications shall include the following information:
 - 1. If the applicant is an individual, the individual shall state his or her legal name, including any aliases, address, and submit satisfactory written proof that he or she is at least eighteen (18) years of age.
 - 2. If the applicant is a partnership, the partners shall state the partnership's complete name, address, the names and current addresses of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.
 - 3. If the applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of California, the names, addresses and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process.
 - 4. The notarized signature of the property owner and proof of ownership.
 - 5. A non-refundable deposit or fee as set forth by ordinance or resolution of the City Council.
 - 6. Signed statement by the applicant verifying that applicant intends to and will comply with all adult-

oriented business development standards of this chapter.

7. A description of the Adult-Oriented Business for which the permit is requested and the proposed address where the Adult-Oriented Business will operate, plus the names and addresses of all the owners and lessors of the Adult-Oriented Business site.
8. The address to which notice of action on the application is to be mailed.

9. The names of all employees, independent contractors, and other persons who will perform at the Adult-Oriented Business.
 10. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the Adult-Oriented Business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
 11. A straight-line drawing prepared within thirty (30) calendar days prior to application depicting the building and the portion thereof to be occupied by the Adult-Oriented Business, and: (1) the property line of any residential zone or use within three hundred feet of the primary entrance of the Adult-Oriented Business; (2) the property line of any other Adult-Oriented Business within one thousand feet of the primary entrance of the Adult-Oriented Business for which a Business Permit is requested; and (3) the property lines of any church, school, park or playground within one thousand feet of the primary entrance of the Adult-Oriented Business.
 12. A diagram of the off-street parking areas and premises entries of the Adult-Oriented Business showing the location of the lighting system required by this Chapter.
- C. If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with a ten percent (10%) or greater interest in the business entity shall sign the application.
- D. If the applicant intends to operate the Adult-Oriented Business under a name other than that of the applicant, the applicant shall file the fictitious name of the Adult-Oriented Business and show proof of registration of the fictitious name.

- E. All applicants for an Adult-Oriented Business Permit must also fill out the City's environmental information form for purposes of complying with the California Environmental Quality Act ("CEQA").
- F. The Community Development Director or his/her designee shall determine whether the application contains all the information required by the provisions of this Chapter. If it is determined that the application is not complete, the applicant shall be notified, in writing, within thirty (30) days of the date of receipt of the application that the application is not complete and the reasons therefor, including any additional information necessary to render the application complete. The applicant shall have thirty (30) calendar days to submit additional information to render the application complete. Failure to do so within the thirty (30) day period shall render the application automatically void. Within thirty (30) days following the receipt of an amended application or supplemental information, the Community Development Director or his/her designee shall again determine whether the application is complete in accordance with the procedures set forth in this subsection. Evaluation and notification shall occur as provided above until such time as the application is found to be complete. The applicant shall be notified within ten (10) days of the date the application is found to be complete. All notices required by this chapter shall be deemed given upon the date that they are either deposited in the United States mail or the date upon which personal service of such notice is provided.
- G. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining an Adult-Oriented Business Permit.

9.34.100 Investigation and Action on Application.

- A. The Planning Commission ("the Commission") shall grant, conditionally grant or deny an application for an Adult-Oriented Business Permit ("Permit"). Any conditions imposed upon the Permit shall be in keeping with the objective Development Standards of this chapter and the underlying zoning district in which the property is located.
- B. Upon the filing of a completed application, the Commission shall cause to be made by its own members, or members of its staff, an appropriate investigation, including consultation with the building, police, fire and health departments and inspection of the premises as needed. Consultation is not grounds for the City to unilaterally delay in reviewing a completed application.
- C. Within forty-five (45) days of receipt of the completed

application, the Commission shall hold a public hearing on the application for an Adult-Oriented Business Permit. Notice of the public hearing shall be given in accordance with California Government Code Section 65091, as the same may be amended from time to time.

- D. In reaching a decision on an application for an Adult-Oriented Business Permit, the Commission shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
- E. The Planning Commission shall render a written decision on the application for an Adult-Oriented Business Permit within sixty (60) days of receiving a completed application. The failure of the Commission to render such a decision within this time frame shall be deemed to constitute a denial of the application.
- F. The Commission's decision shall be hand delivered or mailed to the applicant.

9.34.110 Permit - Appeal

- A. Any interested person may appeal the decision of the Commission to the City Council in writing within ten (10) days after the Commission's written decision. In addition, within ten (10) days after the Commission's written decision, any member of the City Council shall have the authority to direct that the City Council review the decision of the Commission on the grounds that the individual council member believes that the matter should be decided by the City Council.

- B. Consideration of an appeal of the Commission's decision shall be at a de novo public hearing which shall be noticed in the same manner as the public hearing of the Commission and shall occur within thirty (30) days of the filing of the appeal or initiation of review by the City Council.
- C. The City Council action on the appeal of the Commission's decision shall be by a majority vote of the quorum, and upon the conclusion of the public hearing, the City Council shall grant, conditionally grant or deny the application. The City Council's decision shall be final and conclusive.
- D. In reaching its decision, the City Council shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

9.34.120 Permit - Judicial Review of Decision to Grant, Deny or Revoke

- A. The time for court challenge to a decision by the City Council to grant, deny or revoke, an Adult-Oriented Business Permit is governed by California Code of Civil Procedure section 1094.6.
- B. Notice of the City Council's decision and its findings shall be mailed to the applicant and shall include citation to California Code of Civil Procedure section 1094.6.
- C. The Petitioner may seek prompt judicial review of the City Council's action pursuant to California Code of Civil Procedure section 1094.8.

9.34.140 Permit - Expiration

Any Adult-Oriented Business Permit approved pursuant to this chapter shall become null and void unless the proposed use is established within six (6) months from the date of approval. As to facilities that are a reuse of existing facilities, the Adult-Oriented Business Permit shall become null and void unless the proposed use is established within six (6) months from the date of approval, unless prior to said expiration date the permittee demonstrates to the satisfaction of the Planning Commission that the applicant has a good faith intent to presently commence the proposed use. Such extensions shall not exceed a total of two (2) six (6) month extensions.

9.34.160 Permit - Approval Criteria

- A. The Commission or City Council shall approve or conditionally approve an application for an Adult-Oriented Business Permit where the information submitted by the applicant substantiates all of the following findings:

1. That the applicant is over the age of eighteen (18) years; and
2. That the required application fee has been paid; and
3. That the proposed use complies with the development and design requirements of the underlying zoning district in which it is located and with the applicable development standards of this chapter; and
4. That the proposed site is not located within a three hundred foot radius from any existing residential zone or use. The distance between a proposed Adult-Oriented Business use and a residential zone or use shall be measured from the nearest exterior wall of the facility housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line included within a residential zoning district or property in current residential use, along a straight line extended between the two points; and
5. That the proposed site is not located within one thousand feet of any other Adult-Oriented Business as defined in this chapter which is located either inside or outside the jurisdiction of the City of Martinez. The distance between the two Adult-Oriented Business uses shall be measured between the nearest exterior wall of the facility housing the Adult-Oriented Business use and proposed Adult-Oriented Business use along a straight line extended between the two uses; and
6. That the proposed site is not located within one thousand feet from any existing park, playground, church or school uses or property zoned Recreational Facilities (RF). The distance between a proposed Adult-Oriented Business use and park, playground, church or school uses or property zoned Recreational Facilities (RF), shall be measured from the nearest exterior wall of the facility housing the Adult-Oriented Business use or proposed Adult-Oriented Business use to the nearest property line where the park, playground, church or school use or property zoned Recreational Facilities (RF) is located, along a straight line extended between the two points; and
7. That the proposed site is not located within three hundred feet of a residential zoning district or use or within one thousand feet of a park, playground, church or school use located in or property designated for such use in the General Plan Land Use Element of an adjacent jurisdiction; and

8. That neither the applicant, if an individual, or any of the officers or general partners, if a corporation or partnership, have been found guilty or pleaded *nolo contendere* within the past four (4) years of a misdemeanor or a felony classified by the state as a sex or sex-related offense.
- B. Any conditions imposed upon the permit shall be in keeping with the objective development standards of this chapter and the underlying zoning district in which the property is located.

9.34.180 Registration of New Employees

- A. As a further condition of approval of every Adult-Oriented Business Permit issued pursuant to this chapter, every owner or operator of an Adult-Oriented Business shall register every employee with the Police Department within five (5) business days of the commencement of the employee's period of employment at the Adult-Oriented Business.
- B. Each Employee shall be required to provide two (2) recent color passport-quality photographs and, at the discretion of the Police Chief, shall allow himself or herself to be fingerprinted by the Police Department for purposes of identification. In addition, each new employee shall provide the following information in a form provided by the Police Department:
 1. Name, current resident address, telephone number; and
 2. Date of birth; and
 3. Social Security number; and
 4. Height, weight, color of eyes and hair; and
 5. Stage name, if applicable, and other aliases used within the previous two (2) years.
- C. Each owner or operator of an Adult-Oriented Business shall maintain a current register of the names of all employees currently employed by the Adult-Oriented Business, and shall disclose such registration for inspection by any Police Officer for the purposes of determining compliance with the requirements of this section.
- D. Failure to register each new employee within five (5) days of the commencement of employment, or to maintain a current register of the names of all employees shall be deemed a violation of the conditions of the Adult-Oriented Business Permit and may be considered grounds for suspension or revocation of the Permit.

9.34.200 Adult-Oriented Business Development Standards.

- A. It shall be unlawful for any operator or employee of an Adult-Oriented Business to allow such adult business to

remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 10:00 p.m. and 10:00 a.m. of any day.

- B. Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the Fire Department and building regulations and standards adopted by the City of Martinez.
- C. No Adult-Oriented 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.
- D. All off-street parking areas and other exterior areas of the Adult-Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light evenly distributed at ground level. The required lighting level is established in order to provide sufficient illumination of the parking areas, walkways and outdoor areas serving the Adult-Oriented Business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.
- E. The operator of an Adult-Oriented Business shall not permit any doors on the premises to be locked during business hours and, in addition, the operator shall be responsible to see that any room or area on the premises shall be readily accessible at all times and shall be open to view in its entirety for inspection by any law enforcement official.
- F. The Adult Oriented Business shall post in plain view inside the front portion of the business, a sign, in two (2) inch print which shall reference California Penal Code Section 314 which shall read as follows:

“Every person who willfully and lewdly either: (1) exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or (2) Procures, counsels, or assists any person so as to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view or the view of any number of persons, such as is offensive to decency, or

is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subsection (1) above, or upon a first conviction under subsection (1) above after a previous conviction under [California Penal Code] Section 288, every person so convicted is guilty of a felony, and is punishable by imprisonment in state prison. California Penal Code Section 314."

- G. All indoor areas of the Adult-Oriented Business within which patrons are permitted, except rest rooms and customer changing rooms, if any, shall be open to view by the management at all times.
- H. Any adult-oriented business which is also an "Adult Arcade", shall comply with the following additional provisions:
 - 1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms and customer changing rooms. Restrooms and customer changing rooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station.
 - 2. The view area specified in subsection 1. shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times. No patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
 - 3. No viewing room or changing room may be occupied by more than one person at any one time.
 - 4. The walls or partitions between viewing rooms or booths, changing rooms, restrooms and stalls or spaces contained therein shall be maintained in good repair at all times, with no holes between any two such rooms such as would allow viewing from one booth or room into another or such as to allow physical contact of any kind between the occupants of any two such booths or rooms.
 - 5. Customers, patrons or visitors who are not actively

engaged in shopping for or reviewing the products available on display for purchaser viewing, 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 business, other than the restrooms. 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; instances of such conditions may justify suspension or revocation of the Adult-Oriented Business Permit.

I. All interior areas of the Adult-Oriented Business shall be illuminated at a minimum of the following foot-candles, adequately maintained and evenly distributed at ground level:

<u>Area</u>	<u>Foot-Candles</u>
Bookstores and other retail establishments	20
Theaters and cabarets	5 (except during performances, at which times lighting shall be at least 1.25 foot-candles)
Adult Arcades	10
Motels/Hotels	20 (in public areas)
Modeling studios	20

J. The Adult-Oriented Business shall provide and maintain separate rest room facilities for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using the rest room(s) for females, and female patrons and employees shall be prohibited from using the rest room(s) for males, except to carry out duties of repair, maintenance and cleaning of the rest room facilities. The rest rooms shall be free from any Adult-Oriented Material. Rest rooms 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 sale or rental of sexually oriented material or merchandise which is not used or consumed on the premises and which does not

provide rest room facilities to its patrons or the general public.

K. The following additional requirements shall pertain to Adult-Oriented Businesses providing live entertainment depicting specified anatomical areas or involving specified sexual activities, except for businesses regulated by the Alcoholic Beverage Control Commission:

1. No employee, owner, operator, responsible managing employee, manager or permittee of an Adult-Oriented Businesses providing live entertainment shall allow any person below the age of eighteen (18) years upon the premises or within the confines of the business if no alcoholic beverage is served, or under the age of twenty-one (21) if alcoholic beverages are served.
2. No entertainer shall dance with or otherwise be within four (4) feet of a patron while performing for compensation or while on the Adult-Oriented Businesses premises. This four (4) foot separation shall be marked by a railing or other physical barrier designed to obstruct any contact between the entertainer and the patron(s).
3. No owner, operator, responsible managing employee, manager or permittee shall permit or allow at licensed premises any patron to approach within four (4) feet of an entertainer, or permit or allow an entertainer to approach within four (4) feet of a patron.
4. All employees, other than entertainers while performing, shall, at a minimum while on or about the licensed premises, wear an opaque covering which covers their specified anatomical areas.
5. The Adult-Oriented Business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.
6. The Adult-Oriented Business shall provide an entrance/exit for entertainers which is separate from the entrance/exit used by patrons.
7. The Adult-Oriented Business shall provide access for entertainers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the Adult-Oriented Business shall provide a minimum three (3) foot wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.

8. No entertainer, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either or before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the Adult-Oriented Business.
 9. No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit any pay or gratuity from any patron.
- L. Adult-Oriented Businesses shall employ security guards in order to maintain the public peace and safety, consistent with the following standards:
1. Adult-Oriented 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 premises is greater than thirty-five (35) persons, an additional security guard shall be on duty.
 2. All Adult-Oriented Businesses shall have a responsible person who shall be at least 18 years of age and shall be on the premises to act as manager at all times during which the business is open. The individual designated as the on-site manager shall be registered with the City's Community Development Director by the owner to receive all complaints and be responsible for all violations taking place on the premises.
 3. All Adult-Oriented Businesses shall provide a security system that visually records and monitors the exterior premises of the property including all parking lot areas, or in the alternative, uniformed security guards to patrol and monitor the exterior premises of the property, including the parking lot areas during all business hours. A sign indicating compliance with this provision shall be posted on the premises. The sign shall not exceed two (2) by three (3) feet and shall at a minimum be one (1) foot by one and a half feet.
 4. 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 subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.
- M. X-rated movies or videos shall be restricted to persons over 18 years of age. If an establishment that is not otherwise prohibited from providing access to persons under 18 years of age sells, rents, or displays videos or other motion

picture media that have been rated "X" or rated "NC-17" by the motion picture rating industry ("MPAA"), or which have not been submitted to the MPAA for a rating, and which consist of images which are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, said videos shall be located in a specific section of the establishment where persons under the age of 18 shall be prohibited. All access to sexually oriented material or merchandise shall be restricted to persons over 18 years of age.

- N. Any and all sexually oriented materials or sexually oriented merchandise discarded by an Adult-Oriented Business shall be fully contained within a locked garbage receptacle at all times so that minors are not exposed to sexually oriented materials or sexually oriented merchandise.

The foregoing applicable requirements of this section shall be deemed conditions of Adult-Oriented Business Permit approvals, and failure to comply with every such requirement shall be grounds for revocation of the Business Permit issued pursuant to these regulations.

9.34.210 Display of Business Permit.

Every Adult-Oriented Business shall display at all times during business hours the Business Permit issued pursuant to the provisions of this chapter for such Adult-Oriented Business in a conspicuous place so that the same may be readily seen by all persons entering the Adult-Oriented Business.

9.34.220 Employment of and Services Rendered to Persons Under the Age of Eighteen (18) Years Prohibited

It shall be unlawful for any Permittee, operator, or other person in charge of any Adult-Oriented Business to employ, or provide any service for which it requires a Business Permit, to any person who is not at least eighteen (18) years of age.

9.34.240 Transfer of Adult-Oriented Business Regulatory Permits.

- A. A Permittee shall not operate an Adult-Oriented Business under the authority of an Adult-Oriented Business Permit at any place other than the address of the Adult-Oriented Business stated in the application for the Adult-Oriented Permit.
- B. A Permittee shall not transfer ownership or control of an Adult-Oriented Business or transfer an Adult-Oriented Business Permit to another person unless and until the transferee obtains an amendment to the Permit from the Planning Commission stating that the transferee is now the Permittee. Such an amendment may be obtained only if the

transferee files an application with the Planning Commission in accordance with Sections 9.34.060 and 9.34.080, accompanies the application with a transfer fee as set forth in the schedule of fees established by resolution from time to time by the City Council, and the Planning Commission determines in accordance with Section 9.34.100-160 that the transferee would be entitled to the issuance of an original Adult-Oriented Business Permit. Said transfer fee shall be paid in lieu of the filing fee set forth in Section 9.34.080 B 5.

- C. No Adult-Oriented Business Permit may be transferred when the permittee has been notified that the Business Permit has been or may be suspended or revoked.
- D. Any attempt to transfer an Adult-Oriented Business Permit either directly or indirectly in violation of this Section is hereby declared void, and the Adult-Oriented Business Permit shall be deemed revoked.

9.34. 260 Permit - Revocation

- A. Any Adult-Oriented Business Permit issued pursuant to the provisions of this chapter may be revoked by the City on the basis of any of the following:
 - 1. That the business or activity has been conducted in a manner which violates one or more of the conditions imposed upon the issuance of the permit or which fails to conform to the plans and procedures described in the application, or which violates the occupant load limits for the building in which the use is located set by the Fire Marshall; and
 - 2. That the permittee has misrepresented a material fact in the application for permit or in any report required to be filed with the City or has not answered each question in the application truthfully; and
 - 3. That the permittee has failed to obtain or maintain all required City, County, and State licenses and permits; and
 - 4. That the permit is being used to conduct an activity different from that for which it was issued; and
 - 5. That the building or structure in which the Adult-Oriented Business is conducted is hazardous to the health or safety of the employees or patrons of the business or of the general public under the standards set forth in the Uniform Building, Uniform Plumbing or Uniform Fire Code; and
 - 6. That the permitted business creates sound levels which

violate the Noise Ordinance of the City; and

7. That the permittee, if an individual, or any of the officers or general partners, if a corporation or partnership is found guilty or pleaded *nolo contendere* to a misdemeanor or felony classified by the state as a sex or sex-related offense during the period of the Adult-Oriented Business's operation; and
8. That the permittee, employee, agent, partner, director, stockholder or manager of an Adult-Oriented 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-Oriented Business:
 - (i) Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation; and
 - (ii) Use of the Adult-Oriented Business site as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation or masturbation openly occur; and
 - (iii) Any conduct constituting a criminal offence which requires registration under Section 290 of the California Penal Code; and
 - (iv) The occurrence of acts of lewdness, assignation, or prostitution including any conduct constituting violations of Sections 315, 316, or 318 or subdivision b of section 647 of the California Penal Code; and

- (v) Any act constituting a violation of provisions of the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including, but not limited to, Sections 311 through 313.4; and
 - (vi) Any conduct prohibited by this chapter.
- 9. Failure to abide by any action previously imposed by an appropriate City official.
- 10. That the use for which the approval was granted has ceased to exist or has been suspended for six (6) months or more.
- B. Written notice of hearing on the proposed permit revocation, together with written notification of the specific grounds of complaint against the permittee shall be personally delivered or sent by certified mail to the permittee at least ten (10) days prior to the hearing.
- C. The Planning Commission shall hold a public hearing on the proposed revocation of the permit. Notice of the public hearing shall be given in accordance with California Government Code Section 65091, as the same may be amended from time to time. In reaching a decision on the proposed revocation, the Planning Commission shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
- D. The Commission shall revoke, not revoke, or not revoke but add additional conditions to, the permittee's Adult-Oriented Business Permit. Any additional conditions imposed upon the permit shall be in keeping with the objective development standards of this chapter and the underlying zoning district in which the property is located.
- E. The Commission's decision shall be in writing, and shall be hand delivered or mailed to the applicant and mailed to all property owners within three hundred (300) feet of the use.
- F. The Commission shall make its final decision within thirty (30) days of the public hearing.
- G. Any interested person may appeal the decision of the Commission to the City Council in writing within ten (10) days after the Commission's written decision. In addition, within ten (10) days after the Commission's written decision, any member of the City Council shall have the authority to direct that the City Council review the decision of the Commission on the grounds that the individual council member believes that the matter should be decided by the City Council.

- H. Consideration of an appeal of the Commission's decision shall be at a de novo public hearing which shall be noticed in the same manner as the public hearing of the Commission and shall occur within thirty (30) days of the filing of the appeal or initiation of review by the City Council. In reaching its decision, the City Council shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.
- I. The City Council action on the appeal of the Commission's decision shall be by a majority vote of the quorum, and upon the conclusion of the public hearing, the City Council shall revoke, not revoke, or not revoke but add additional conditions to, the permittee's Adult-Oriented Business Permit. Any additional conditions imposed upon the permit shall be in keeping with the objective development standards of this chapter and the underlying zoning district in which the property is located. The City Council's decision shall be final and conclusive.
- J. In the event a permit is revoked pursuant to this chapter, another adult use development permit to operate an adult business shall not be granted to the permittee within twelve (12) months after the date of such revocation.

9.34.300 Violations

Any person who violates any section of this chapter shall be guilty of a misdemeanor and is subject to a fine and/or imprisonment in accordance with the limits set forth in California Government Code section 36901, as it may be amended from time to time, or any other legal remedy available to the City.

9.34.320 Applicability to Other Regulations

The provisions of this chapter are not intended to provide exclusive regulation of the Adult-Oriented Business uses. Such uses must comply with any and all applicable regulations imposed in other articles of the zoning ordinance, other City ordinances and state and federal law.

9.34.340 Conduct Constituting a Public Nuisance

The conduct of any business within the City in violation of any of the terms of this chapter is hereby found and declared to be a public nuisance, and the City Attorney or the District Attorney may, in addition or in lieu of prosecuting a criminal action hereunder, commence an action or proceeding for the abatement, removal and enjoinder thereof, in the manner provided by law; and shall take other steps and shall apply to such courts as may

have jurisdiction to grant such relief as will abate or remove such Adult-Oriented Business and restrain and enjoin any person from conducting, operating or maintaining an Adult-Oriented business contrary to the provisions of this chapter.

9.34.360 Amortization of Legal Non-Conforming Uses

- A. Any Adult-Oriented Business or establishment regulated under the provisions of this chapter which is a non-conforming use on the effective date of this Ordinance shall be subject to an amortization period expiring one year from the effective date of this Ordinance.
- B. An Adult-Oriented Business or establishment operating as a conforming use with an approved Adult-Oriented Business Permit from the City shall not be rendered a non-conforming use by the location of a religious institution or school, within the locational limitations of this division.
- C. The Community Development Department shall provide written notice to the owner (and lessee/operator, if known by reference to City's business license records) at least one hundred twenty (120) days prior to the expiration of this amortization period. This notice is not mandatory and lack of notice shall not be deemed to prevent the City from initiating an action seeking declaratory or injunctive relief against the owner and/or operator of such business. However, if notice of expiration of amortization period is not given, any application by the owner or lessee/operator of the business for an extension of the amortization period shall not be denied on the grounds that it is untimely.
- D. Amortization - Application for Extension.
 - 1. The owner may file an application with the Community Development Department for an extension of the amortization period. The applicant must state:
 - (i) Whether a previous extension has been requested and granted, as well as the date of the previous request, and
 - (ii) The efforts that will be made to conform by the conclusion of the extended period.
 - 2. The owner's application shall be made in writing and shall be accompanied by the required fee as established by resolution of the City Council.
 - 3. Any application for an extension of the amortization period shall be made prior to the expiration of the amortization period unless the Commission determines that good cause exists for the late filing of the

application.

E. Amortization - Decision to Grant or Deny.

1. The Commission shall hold a public hearing at which time it shall consider the evidence and testimony regarding the request for an extension of the amortization period. Notice of the public hearing shall be given in accordance with California Government Code Section 65091 as the same may be amended from time to time. In reaching its decision, the Commission shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Commission shall grant or deny an application for extension of the amortization period. The Commission shall make its decision within thirty (30) days of the filing of the request.
2. In rendering its decision, the Commission shall determine whether the Adult-Oriented Business has been provided with a reasonable amortization period commensurate with the investment involved. If the Commission determines that the amortization period is not reasonable it shall prescribe an amortization period that is commensurate with the investment involved. The burden shall be on the applicant to establish that the extension should be granted.
3. The Commission shall consider the following factors in making its determination:
 - (i) The Adult-Oriented Business owner's financial investment in the business; and
 - (ii) The present actual and depreciated value of business improvements; and
 - (iii) The applicable Internal Revenue Service depreciation schedules; and
 - (iv) The remaining useful life of the business improvements; and
 - (iv) The remaining lease term; and
 - (vi) The cost of relocating the business to a site conforming with the provisions of this division; and
 - (vii) The ability of the business and/or land owner to change the use to a conforming use; and
 - (viii) The secondary effects of the Adult-Oriented

Business on the health, safety and welfare of surrounding businesses and uses if the Adult-Oriented Business is permitted to extend the amortization period.

4. The Commission's decision shall be in writing, and shall be hand delivered or sent by certified mail to the applicant.

F. Amortization - Appeal.

1. Any interested person may appeal the decision of the Commission to the City Council in writing within ten (10) days after the Commission's written decision. In addition, within ten (10) days after the Commission's written decision, any member of the City Council shall have the authority to direct that the City Council review the decision of the Commission on the grounds that the individual council member believes that the matter should be decided by the City Council.
2. Consideration of an appeal of the Commission's decision shall be at a de novo public hearing which shall be noticed in the same manner as the public hearing of the Commission and shall occur within thirty (30) days of the filing of the appeal or initiation of review by the City Council.
3. The City Council action on the appeal of the Commission's decision shall be by a majority vote of the quorum. The City Council's decision shall be final and conclusive.
4. In reaching its decision, the City Council shall not be bound by the formal rules of evidence. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

G. Amortization - Public Nuisance.

The City Council declares to be a public nuisance any parcel where an Adult-Oriented Business is operating and where the amortization period as a legal non-conforming use has expired and (a) no application for an extension is on file or has been granted, or (b) no application for an Adult-Oriented Business Permit is on file or has been granted.

9.34.380 Inspection.

An applicant or Permittee shall permit representatives of the Police Department, Health Department, Community Development Department, or other City Departments or Agencies to inspect the premises of an Adult-Oriented Business for the purpose of insuring compliance with the law and the development standards applicable to Adult-Oriented Businesses, at any time it is occupied or opened for business. A person who operates an Adult-Oriented Business or his or her agent or employee is in violation of the provisions of this section if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this

chapter or any part thereof is for any reason held to be unconstitutional or 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 or any part thereof.

The City Council hereby declares that it would have passed each section subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDING. The City Council finds that this ordinance is enacted in order to mitigate the threat posed to the public peace, health or safety by Adult Oriented Businesses. In this regard, the findings set forth in Section I of this ordinance are incorporated herein by reference. This ordinance either provides for the amendment of existing regulations applicable to Adult Oriented Businesses or, for the first time, provides for zoning regulations which are specifically applicable to Adult Oriented Business uses. Such uses are already allowed under the City's existing zoning regulations. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA guidelines.

SECTION 6. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 7. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in Martinez Gazette, the official newspaper of the City of Martinez, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Deputy City Clerk

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 18th day of July, 2007, and duly passed and adopted at a Regular Meeting of said City Council held on the day of , 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ
CITY CLERK, CITY OF MARTINEZ

Approved as to form:

City Attorney

RESOLUTION NO. PC #07-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MARTINEZ, RECOMMENDING THE CITY COUNCIL ADOPT AN ORDINANCE REPEALING AND REENACTING CHAPTER 9.34 OF THE MARTINEZ MUNICIPAL CODE, ADULT ENTERTAINMENT BUSINESSES, PERTAINING TO ZONING REGULATIONS IN THE SC- SERVICE COMMERCIAL AND LI – LIGHT INDUSTRIAL ZONING DISTRICTS, APPLICABLE TO ADULT-ORIENTED BUSINESSES AND THE REGULATION OF ADULT-ORIENTED BUSINESSES

WHEREAS, the City of Martinez seeks to repeal chapter 9.34 of the Martinez Municipal Code pertaining to Adult Oriented Businesses, and will replace it with a new chapter 9.34 that provides special design guidelines, standards and development regulations to regulate the time, place and manner of the operation of Adult-Oriented Businesses in order to minimize the negative secondary effects associated with such uses; and,

WHEREAS, the secondary effects of Adult Oriented Businesses is well documented and cited in the draft ordinance, and the Planning Commission acknowledges and accepts the findings thereof; and,

WHEREAS, the draft ordinance serves to protect free speech while shielding sensitive uses such as schools, churches and residences from Adult Oriented Businesses; and

WHEREAS, the necessary field work to ensure available locations was properly done by staff, and several potential locations were identified so as to not prohibit the establishment of Adult Oriented Businesses, the distribution of Adult-oriented content, or to deny access by adults to adult-oriented materials protected by the First Amendment; and,

WHEREAS, the SC- Service Commercial and LI- Light Industrial zoning districts are suitable districts with the potential to absorb additional Adult Oriented Businesses that can also meet the prescribed location requirements; and,

WHEREAS, the adoption of the proposed ordinance is exempt from the requirements of CEQA, pursuant to Section 15061(b)(3) of the CEQA guidelines; and

WHEREAS, the Planning Commission held a public hearing on July 10th, 2007, and listened to testimony from the public.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission with this action hereby incorporates into its findings the findings contained in the draft ordinance under Section I, as they pertain to the secondary effects of Adult Oriented Businesses and the need to create further regulation, recognizing that location restrictions, in and by themselves, are not adequate to reduce the negative secondary effects of such businesses.

BE IT FURTHER RESOLVED that the Planning Commission hereby recommends that the City Council repeal and reenact chapter 9.34 of the Martinez Municipal Code, Adult Entertainment Businesses, pertaining to zoning regulations in the SC- Service Commercial and LI – Light Industrial zoning districts, applicable to adult-oriented businesses and the regulation of adult-oriented businesses, and to incorporate said revisions as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 10th day of July 2007 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: _____
Robert Glover
Planning Commission Chair

Albert Lopez
Deputy Community Development Director

ATTACHMENT # 2

