ITEM 11.C.

ORDINANCE NO. 361

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA 1) REPEALING ORDINANCE NO. 166; 2) APPROVING ZONING ORDINANCE AMENDMENT NO. 2007-03 TO AMEND TITLE 17, ZONING, BY AMENDING CHAPTER 17.20 USES BY ZONE TABLE 17.20.060A1 AND ADULT BUSINESSES, SECTION 17.24.040 BY ADDING 17.24.040N ADULT BUSINESS MINIMUM LOCATION REQUIREMENTS, AND CHAPTER 17.28 STANDARDS FOR SPECIFIC USES BY ADDING SECTION 17.28.050 ADULT BUSINESS PERMIT; AND 3) AMENDING TITLE 5, BUSINESS TAXES, LICENSES AND REGULATIONS BY ADDING CHAPTER 5.18 ADULT BUSINESS PERFORMER PERMIT

WHEREAS, Ordinance No. 166, adopted by the City Council on June 2, 1993 to establish regulations for adult entertainment facilities/business regulations, does not conform to the current law as it relates to the regulation of adult businesses; and

WHEREAS, at its meeting of September 25, 2007, the Planning Commission conducted a duly-noticed public hearing on the repeal of Ordinance No. 166 and the approval of Zoning Ordinance Amendment No. 2007-03, to amend Chapter 17.20 Table 17.20.060A1; amend Section 17.24.040 by adding Section 17.24.040N Adult Business Minimum Location Requirements; and amend Chapter 17.28 by adding Section 17.28.050 Adult Business Permit, received public testimony on the proposed amendments, and after receiving oral and written public testimony, closed the public hearing and recommended the repeal of Ordinance No. 166 and the approval of Zoning Ordinance Amendment No. 2007-03 to the City Council; and

WHEREAS, at its meeting of October 17, 2007, the City Council conducted a duly-noticed public hearing on the repeal of Ordinance 166 and the approval of Zoning Ordinance Amendment No. 2007-03, to amend Chapter 17.20 Table 17.20.060A1; amend Section 17.24.040 by adding Section 17.24.040N Adult Business Minimum Location Requirements; and amend Chapter 17.28 by adding Section 17.28.050 Adult Business Permit, as well as a public hearing on an amendment to Title 5 Business Taxes, Licenses and Regulations by adding Chapter 5.18 Adult Business Performer Permit, received public testimony on the proposed amendments, and after receiving oral and written public testimony, closed the public hearing and reached a decision; and

WHEREAS, the public health, safety and welfare of the City and its residents require the enactment of this ordinance and such operating standards for adult businesses in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City's retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of adult businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize adult businesses; and

WHEREAS, there is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish by convincing evidence that adult businesses that are not regulated as to operating standards often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values; and

WHEREAS, based on the foregoing, the City Council finds and determines that special regulation of adult businesses is necessary to ensure that their adverse secondary effects will not contribute to an increase in crime rates or to the deterioration of the areas in which they are located or surrounding areas. While the City Council acknowledges that as of the date of this ordinance no adult businesses have been established in the City, the need for such special regulations is nevertheless based upon the recognition that adult 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 residences, parks, schools and churches, thereby having a deleterious effect upon the adjacent areas. One of the purposes and intents of these special regulations is to prevent the concentration of adult businesses and thereby prevent such adverse secondary effects; and

WHEREAS, the City Council concurs with the Planning Director's determination that the proposed ordinance amending Title 5 Business Taxes, Licenses and Regulations by adding Chapter 5.18, Adult Business Performer Permit; amending Chapter 17.20 Table 17.20.060A1 and amending Section 17.24.040 to add Section 17.24.040N Adult Business Minimum Location Requirements; and amending Chapter 17.28 by adding Section 17.28.050 Adult Business Permit and the repeal of Ordinance 166, is needed to protect the public health, safety, and welfare of the citizens of Moorpark, and that the proposed ordinance is exempt from the provisions of the California Environmental Quality Act by the general rule that CEQA only applies to projects that may have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK, DOES ORDAIN AS FOLLOWS:

SECTION 1. GENERAL PLAN AND SPECIFIC PLAN CONSISTENCY: The City Council finds the proposed amendments under Zoning Ordinance Amendment No. 2007-03 to amend Chapter 17.20 Table 17.20.060A1, to amend Section 17.24.040 by adding Section 17.24.040N Adult Business Minimum Location Requirements and to amend Chapter 17.28 by adding Section 17.28.050 Adult Business Permit are consistent with the City of Moorpark General Plan and all adopted Specific Plans.

SECTION 2. FINDINGS. The City Council of the City of Moorpark hereby finds and declares that:

(a) It is necessary and appropriate to amend Title 5 Business Taxes, Licenses and Regulations, adding Chapter 5.18, Adult Business Performer Permit; and to amend

Chapter 17.20 Table 17.20.060A1 and to amend Section 17.24.040 to add Section 17.24.040N Adult Business Minimum Location Requirements and amend Chapter 17.28 by adding Section 17.28.050 Adult Business Permit in order to refine and update the appropriate zoning districts and locations for potential adult businesses and enhance the permitting and operational standards for adult businesses, and establish a permitting process for adult business performers. The public health, safety and welfare of the City and its residents require the enactment of this ordinance and such operating standards for adult businesses in order to: (1) mitigate and reduce the judicially recognized potential adverse secondary effects of adult businesses, including but not limited to crime, the prevention of blight in neighborhoods and the increased threat of the spread of sexually transmitted diseases; (2) protect the quality of life and neighborhoods in the City, the City's retail and commercial trade, and local property values, and minimize the potential for nuisances related to the operation of adult businesses; and (3) protect the peace, welfare and privacy of persons who own, operate and/or patronize adult businesses.

(b) The City Council, in adopting this ordinance, takes legislative notice pursuant to California Government Code Section 65850.4 of the existence and content of the following studies concerning the adverse secondary side effects of adult businesses in other cities: Alhambra, California (2007); Industry, California (2004); Dallas, Texas (1997); Houston, Texas, (1997); Newport News, Virginia (1996); New York City, New York (1994); Times Square, New York (1994); Oklahoma City, Oklahoma (1992); Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); St. Paul, Minnesota (1988); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1983); Beaumont, Texas (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); and 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 businesses, and more specifically finds that these studies provide convincing evidence that:

1. There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by adult businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, and violence against persons and property. The studies from other cities establish by convincing evidence that adult businesses that are not regulated as to operating standards often have a deleterious effect on nearby businesses and residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values.

2. Regulations for adult businesses should be developed to prevent deterioration or degradation of the vitality of the community before the problem exists, rather than waiting for problems to be created.

(c) Based on the foregoing, the City Council finds and determines that special regulation of adult businesses is necessary to ensure that their adverse secondary effects will not contribute to an increase in crime rates or to the deterioration of the areas in which they are located or surrounding areas. While the City Council acknowledges that

as of the date of this ordinance no adult businesses have been established in the City, the need for such special regulations is nevertheless based upon the recognition that adult 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 residences, parks, schools and churches, thereby having a deleterious effect upon the adjacent areas. One of the purposes and intents of these special regulations is to prevent the concentration of adult businesses and thereby prevent such adverse secondary effects.

(d) In developing this ordinance, the City Council is mindful of legal principles relating to regulation of adult businesses, and the City Council does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitutions but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of adult businesses, including but not limited to: *City of Los Angeles v. Alameda Books,* 535 U.S. 425, 122 S. Ct. 1728 (2002); *City of Erie v. Pap's A.M. ("Kandyland")*, 529 U.S. 277, 120 S.Ct. 1382 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S.Ct. 596 (1990); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925 (1986); and *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S.Ct. 2440 (1976); decisions of the United Stated Court of Appeals for the Ninth Circuit, including but not limited to: *Gammoh v. City of La Habra,* 395 F.3d 1114 (9th Cir. 2005); *Dream Palace v. County of Maricopa*, 384 F.3d 990 (9th Cir. 2004); *Diamond v. City of Taft,* 215 F.3d 1052 (9th Cir. 2000), *cert. denied* 531 U.S. 1072 (2001); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Young v. City of Simi Valley*, 216 F.3d 807 (9th Cir. 2000), *cert. denied* 531 U.S. 1104 (2001); *Lim v. City of Long Beach*, 217 F.3d 1050 (9th Cir. 2000), *cert. denied* 121 S.Ct. 1189 (2001); *Alameda Books v. City of Los Angeles*, 222 F.3d 719 (9th Cir. 2000), *cert. granted* 121 S.Ct. 1223 (2001); *Baby Tam & Co., Inc. v. City of Las Vegas ("Baby Tam I")*, 154 F.3d 1097 (9th Cir. 1998); *Baby Tam & Co., Inc. v. City of Las Vegas ("Baby Tam II")*, 199 F.3d 1111 (9th Cir. 2000); *Baby Tam & Co., Inc. v. City of Las Vegas ("Baby Tam III")*, 247 F.3d 1003 (9th Cir. 2001); *4805 Convoy, Inc. v. City of San Diego*, 183 F.3d 1108 (9th Cir. 1999); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), *cert. denied* 529 U.S. 1053 (2000); *Topanga Press, Inc. v. City of Los Angeles,* 989 F.2d 1524 (9th Cir. 1993), *cert. denied* 511 U.S. 1030 (1994); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); and *BSA, Inc. v. King County*, 804 F.2d 1104 (9th Cir. 1986); several California cases, including but not limited to: *Krontz v. City of San Diego,* 136 Cal.App.4th 1126 (2006); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board of California ("Vicary")*, 99 Cal.App.4th 880 (2002); *Tily B., Inc. v. City of Newport Beach*, 69 Cal.App.4th 1 (1998); *City of National City v. Wiener*, 3 Cal.4th 832 (1993), *cert. denied* 510 U.S. 824; *People v. Superior Court (Lucero)* 49 Cal.3d 14 (1989); and *City of Vallejo v. Adult Books*, 167 Cal.App.3d 1169 (1985), *cert. denied* 475 U.S. 1064 (1986); and other federal cases, including but not limited to: *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Mitchell v. Commission on Adult Entertainment,* 10 F.3d 123 (3rd Cir. 1993); *Lakeland Lounge v. City of Jackson,* 973 F.2d 1255 (5th Cir. 1992), *cert. denied* 507 U.S. 1030 (1993); *International Eateries v. Broward*

County, 941 F.2d 1157 (11th Cir. 1991), *cert. denied* 503 U.S. 920 (1992); and *Star Satellite, Inc. v. City of Biloxi,* 779 F.2d 1074 (5th Cir. 1986).

(e) The location requirements established by this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in the City, and a sufficient reasonable number of appropriate locations for adult businesses are provided by this ordinance.

(f) The City Council also finds that location criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City, and thus certain requirements with respect to the ownership, operation and licensing of adult 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 (9th Cir. 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, performers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in adult businesses (collectively referred to as "performers") have been found to engage in sexual activities with patrons of adult businesses on the site of the adult business.

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

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

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

5. As a result of the above, and the increase in incidents of HIV, AIDS, and hepatitis B, which are sexually transmitted or blood borne diseases, the City has a substantial interest in adopting regulations that will reduce the possibility for the occurrence of prostitution and unlawful sex acts at adult businesses in order to protect the health, safety, and well-being of its citizens. The City finds this is relevant to the experience of Moorpark and the need to regulate the secondary effects of adult businesses within the community.

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

(h) The City Council is cognizant of the specific danger from the sexually transmitted disease AIDS, which is currently irreversible and fatal. The City Council takes legislative notice of the Ventura County Public Health Department's "HIV/AIDS Surveillance Final Report January 2006 - December 2006." The report indicates that as of 2006 there were at least 1,024 people living with AIDS in Ventura County and that there have been at least 575 AIDS-related deaths reported in Ventura County since 1987. In the neighboring County of Los Angeles, the "HIV Prevention Plan 2004 - 2008," prepared by the Department of Health Services found that as of July 2004 there were 48,510 persons living with AIDS and that the total number of such persons had increased since 1995. Moreover, there have been at least 28,810 AIDS-related deaths reported in Los Angeles County since the mid-1980s.

(i) The City is also concerned with preventing the spread of other sexually transmitted diseases such as Syphilis, Gonorrhea and Chlamydia. The City Council takes legislative notice of the County of Ventura, Health Care Agency, Public Health Department's "Monthly Morbidity Report (12/1/2006 through 12/31/2006) listing a five-year total (2002-2006) of 7,765 cases of Chlamydia; 872 cases of Gonorrhea; and 165 cases of Syphilis. In the neighboring County of Los Angeles the Department of Health Services "Sexually Transmitted Disease Morbidity Report (1998-2002) indicates that the between 1998 and 2002 the number of reported cases in Los Angeles County of: (1) Syphilis increased from 1312 to 1644; (2) Gonorrhea increased from 5986 to 7,800; and (3) Chlamydia increased from 24,166 to 35,688. It should also be noted that numerous studies have shown that sexually transmitted diseases such as Syphilis, Gonorrhea and Chlamydia facilitate the transmission of HIV.

(j) In recognition of these negative secondary effects generated by live adult entertainment, a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and precluded direct exchange of monies between performers and patrons at adult businesses that provide live entertainment, including, but not limited to: *Gammoh v. City of La Habra,* 395 F.3d 1114 (9th Cir. 2005); *Tily B. v. City of Newport Beach* (1999) 69 Cal.App.4th 1; *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *BSA, Inc. v. King County*, 804 F.2d 1104, 1110-11 (9th Cir. 1986); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *DLS, Inc. v. City of Chattanooga*, 894 F. Supp. 1140 (E.D. Tenn. 1995); *Parker v. Whitfield County*, 463 S.E.2d 116 (Ga. 1995); and *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995).

(k) The City Council believes that prohibiting physical contact between performers and patrons at adult businesses prohibiting booths and concealed viewing areas, requiring separate entrances for performers from those used for patrons, requiring separate restrooms for opposite sexes, prohibiting performers from soliciting payment from patrons, and prohibiting the direct payment to performers by patrons are a reasonable and effective means of addressing the legitimate governmental interests

of preventing prostitution, the spread of sexually transmitted diseases, and drug transactions. The case law and studies establish this link.

(l) In considering appropriate operational regulations for adult businesses, the City Council finds that:

1. Preventing the exchange of money between performers and patrons also reduces the likelihood of drug and sex transactions occurring in adult businesses.

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

3. Enclosed or concealed booths and dimly lit areas within adult businesses greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease. Prohibiting such enclosed or concealed spaces and requiring adequate lighting to be provided reduces the opportunity for, and therefore the incidence of illegal conduct within adult businesses, and further facilitates the inspection of the interior of the premises thereof by law enforcement personnel.

i. The City Council recognizes and relies on the findings set forth in the 1986 Attorney General's Report on Pornography in support of this ordinance including, but not limited to, its recommendations that local governments ban certain features of video booths that facilitate carnal sexual encounters.

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

iii. Likewise, the City Council recognizes and relies on the findings set forth in the May 1990 study conducted by the City of Tucson in support of this ordinance including, but not limited to, the findings that holes were present in the walls of adjoining booths within adult entertainment establishments, and that these holes were used by male patrons to facilitate sex acts with the occupant of the neighboring booth. The City Council reasonably believes that the Tucson experience, along with the Attorney General's Report, is relevant to the problems potentially associated with adult businesses in Moorpark.

iv. The City Council finds that prohibiting adult booths and individual viewing areas is necessary to eliminate the masturbation and sexual activity that are known to occur in such closed booths and areas and which present significant health and safety concerns with respect to communicable diseases, including AIDS. The City Council takes further note of the Ninth Circuit's decision in *Ellwest Stereo Theatres, Inc. v. Weiner*, 681 F.2d 1243 (9th Cir. 1982) and its finding that there is no constitutional right to unobserved masturbation in a public place.

(m) The City Council also finds the establishment of an adult business regulatory licensing process, operational standards for adult businesses and performer licensing provisions are legitimate and reasonable means of ensuring that:

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

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

3. Adult business operators have specific guidelines with respect to the manner in which they can operate an adult business;

4. The applications for adult business regulatory permits and performer permits are handled fairly and expeditiously; and

5. The correct identification of performers working in adult businesses occurs so that the City is able to effectively deploy resources and detect and discourage prostitution and criminal activity from occurring in and around adult businesses.

(n) The City Council finds that law enforcement agencies maintain separate databases for drug-related convictions, prostitution convictions and sex crime offender registration, and that knowledge of an applicant's true identity is necessary to conduct background checks in such databases. Moorpark's Police Department has determined, based upon the experience of its police officers and its past experiences, along with other law enforcement agencies, that fingerprinting is the only reliable method for determining a person's true identity for the purposes of background checks.

(o) The City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult businesses and recognizes the need to enact regulations which will minimize and/or eliminate such exposure. The City Council takes

legislative notice of the Penal Code provisions authorizing local governments to regulate matter that is harmful to minors (*i.e.,* Penal Code § 313 *et seq.*). The City Council further takes legislative notice of the cases that recognize that protection of minors from sexually explicit materials is a compelling government interest, including *Crawford v. Lungren*, 96 F.3d 380 (9th Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and *Berry v. City of Santa Barbara*, 40 Cal.App.4th 1075 (1995).

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

(q) Operating standards are a legitimate and reasonable means of ensuring that adult businesses are conducted in a manner so as to minimize their adverse secondary effects and to help assure that such operators and businesses comply with reasonable regulations related to such requirements to minimize and control problems associated with such businesses and thereby protect the health, safety, and welfare of City residents, protect citizens from increased crime, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and businesses, and deter the spread of urban blight. The operational requirements contained in this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected adult businesses in the City.

(r) The City Council, in adopting operational standards, recognizes that these standards do not preclude reasonable alternative avenues of communication. For example, the closing hours requirement means that adult businesses are free to operate 7 days a week for 17 hours per day. The City Council takes note of the proliferation of adult material on the Internet, satellite television, direct television, CDs, DVDs, and that these various media provide alternative avenues of communication. The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. (*Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) [the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet]; *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), *cert. denied* 520 U.S. 1204 (1997) [the Fourth Circuit rejected a First Amendment challenge to a Baltimore ordinance restricting alcohol advertisements on billboards acknowledging that the Internet is one available channel of communication]; *U.S. v. Hockings*, 129 F.3d 1069 (9th Cir. 1997); *see also U.S. v. Thomas*, 74 F.3d 701 (6th Cir. 1996), *cert. denied* 519 U.S. 820 [recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions] *DiMa Corporation v. Town of Hallie*, 60 F.Supp.2d 918 (W.D. Wisconsin 1998) [adult bookstore able to operate after regulated hours using the Internet].)) The emergence of the Internet brings with it a virtually unlimited additional source of adult oriented sexual materials available to interested persons in every community with a mere keystroke. An adult business no longer has to be "actually" physically located in a city to be available in the community.

(s) The City Council has also determined that a closing hours requirement promotes the reduction of deleterious secondary effects from adult facilities and reasonably relies on prior court decisions on the need for closing hours including *Dream Palace v. County of Maricopa, 384 F.3d 990 (9th Cir. 2004); 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); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); and *City of Colorado Springs v. 2354 Inc.*, 896 P.2d 272 (1995).

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

(u) The City Council finds that the occurrence of nudity in alcoholic beverage establishments located in close proximity to residential areas, religious institutions, schools, and parks has a detrimental effect on such uses, and that the location of such establishments in close proximity to each other has a detrimental effect on the entire neighborhood. Therefore, the City Council finds that in order to preserve public peace and good order, the integrity of residential neighborhoods, and other sensitive land uses, it is necessary and advisable to regulate alcoholic beverage facilities permitting nudity.

(v) It is not the intent of the City Council in enacting this ordinance, or any provision thereof, to condone or legitimize the distribution of obscene material, and the City recognizes that state law prohibits the distribution of the obscene materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities in the City.

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

SECTION 3. Ordinance No. 166 is hereby repealed in its entirety.

SECTION 4. Chapter 17.20 Table 17.20.060A1, Section 17.24.040N Adult Business Minimum Location Requirements, Section 17.28.050 Adult Business Permit, and Chapter 5.18 Adult Business Performer Permit, are hereby amended and established as shown in Exhibits A, B, C, and D, attached.

SECTION 5. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this 17th day of October, 2007.

_____
Patrick Hunter, Mayor

ATTEST:

_____
Deborah S. Traffenstedt, City Clerk

Attachments:

Exhibit A, Table 17.20.060A1
Exhibit B, Section 17.24.040N
Exhibit C, Section 17.28.050
Exhibit D, Chapter 5.18

EXHIBIT A

AMENDMENT OF THE MUNICIPAL CODE TITLE 17 ZONING.

Title 17, Chapter 17.20 Uses by Zone, Section 17.20.060, Table 17.20.060 Permitted Uses in the Commercial and Industrial Zone, Section A.1. of the Moorpark Municipal Code is amended as shown below:

Table 17.20.060

PERMITTED USES IN COMMERCIAL AND INDUSTRIAL ZONES

[Blank] = Not permitted
AP = Administrative Permit
CUP = Conditional Use Permit
NZC = No Zoning Clearance required
TUP = Temporary Use Permit
ZC = Permitted by Zoning Clearance

Zones	C-O	C-1	CPD C-2	C-OT	M-1	M-2	I
A. Retail and Service Uses							
1. Adult businesses when in compliance with sections 17.24.040N, section 17.28.050 and Chapter 5.18					ZC	ZC	

The remainder of Table 17.20.060 remains unchanged.

EXHIBIT B

SECTION 17.24.040N

N. Adult business minimum location requirements. In addition to meeting all requirements of section 17.28.050 and all requirements of chapter 5.18 of the Moorpark Municipal Code, an adult business may not be located:

1. Within 500 feet of any property zoned R-1, R-2, RPD, or any lot where there is an actual residential use, whether inside or outside the city limits; and
2. Within 500 feet of any church, synagogue, mosque or other publicly recognized place of worship, whether inside or outside of the city limits; and
3. Within 500 feet of any public or private school or child care establishment, whether inside or outside the city limits; and
4. Within 500 feet of any public park or playground, or any city facility including but not limited to city hall, the city library, and any police or fire station; and
5. Within 500 feet of any property operating a business with a Type 40, 42, 48 or 61 on-site alcoholic beverage license; and
6. Within 1000 feet of any other adult business whether inside or outside the city limits.

The distances specified in this subsection will be measured in a straight line, without regard to intervening structures, from the nearest point of the premises in which the proposed adult business is to be established to the nearest property line of a use or zoning classification listed above.

EXHIBIT C

SECTION 17.28.050

ADULT BUSINESS PERMIT

A. Intent. The intent of this chapter is to regulate adult businesses which, unless closely regulated, may have serious secondary effects on the community. These secondary effects include, but are not limited to: depreciation of property values, increases in vacancy rates in residential and commercial areas, increases in incidences of criminal activity and police service calls, increases in noise, litter and vandalism and the interference with property owners' enjoyment of their property in the vicinity of such businesses.

It is neither the intent nor effect of this section to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials, or to deny access by the distributors or exhibitors of sexually oriented entertainment to their intended market.

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

B. Definitions. As used in this section:

"Adult arcade" means any business establishment or concern containing coin or slug operated or manually or electronically controlled still, motion picture or video machines, projectors, or other image producing devices that are maintained to display images to an individual when those images are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. Such devices are referred to as "adult arcade devices."

"Adult bookstore" means any establishment, which as a regular and substantial course of conduct, displays or distributes sexually oriented merchandise, books, periodicals, magazines, photographs, drawings, sculptures, motion pictures, videos, slides, films, or other written, oral or visual representations which are distinguished or characterized by an emphasis on a matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

"Adult booth/individual viewing area" means a partitioned or partially enclosed portion of an adult business used for any of the following purposes:

1. Where a live or taped performance is presented or viewed, where the performances or images displayed or presented are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas;

2. Where adult arcade devices are located.

"Adult business" means any business establishment or concern which as a regular and substantial course of conduct performs or operates as an adult arcade, adult bookstore, adult cabaret, adult model studio, or adult theater. It also means any business establishment or concern which as a regular and substantial course of conduct sells or distributes 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 business" does not include those uses or activities, the regulation of which is preempted by state law.

"Adult cabaret" means a business establishment (whether or not serving alcoholic beverages) that features adult live entertainment.

"Adult live entertainment" means any physical human body activity, whether performed or engaged in, alone or with other persons, including but not limited to singing, walking, speaking, dancing, acting, posing, simulating, wrestling or pantomiming; in which:

1. The performer (including but not limited to topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar performers) exposes to public view, without opaque covering, specified anatomical areas; or

2. The performance or physical human body activity depicts, describes, or relates to specified sexual activities whether or not the specified anatomical areas are covered.

"Adult model studio" means a business establishment which provides for any form of consideration, the services of a live human model, who, for the purposes of sexual stimulation of patrons, displays specified anatomical areas to be observed, sketched, photographed, filmed, painted, sculpted, or otherwise depicted by persons paying for such services. Adult model 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 that is maintained pursuant to standards set by the Board of Education of the State of California.

"Adult store" means any establishment, which as a regular and substantial course of conduct, displays or distributes sexually oriented merchandise or sexually oriented material.

"Adult theater" means a business establishment or concern which, as a regular and substantial course of conduct, presents live entertainment, motion pictures, videos, digital video disks, slide photographs, or other pictures or electronically generated visual reproductions which is distinguished or characterized by the emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

"Code compliance officer" means an officer or employee authorized by the governing body to enforce certain provisions of this section.

"Director" means the community development director or the manager of the community development department of the city of Moorpark or the director's designee.

"Establishment of an adult business" means any of the following:

1. The opening or commencement of any adult business as a new business;

2. The conversion of an existing business, whether or not an adult business, to any adult business;

3. The addition of any of the adult businesses defined herein to any other existing adult business; or

4. The relocation of any such adult business.

"Lap dance" includes chair dancing, couch dancing, straddle dancing, table dancing, and means an employee or independent contractor of an adult business intentionally touching any patron while engaged in adult live entertainment.

"On-site manager" means any person designated by the owner as responsible for the day-to-day on-site operation of the adult business.

"Operate an adult business" means the supervising, managing, inspecting, directing, organizing, controlling or in any way being responsible for or in charge of the premises of an adult business or the conduct or activities occurring on such premises.

"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 business or the conduct or activities occurring on such premises.

"Owner" means all persons having a direct or indirect investment in an adult business; provided, however, where such investment is held by a corporation, for the purposes of this section, each officer and director of a corporation and each stockholder holding more than five percent (5%) of the stock of such corporation is deemed to be an owner.

"Performer" means a person who is an employee or independent contractor of an adult business or any other person who, with or without any compensation or other form of consideration, provides adult live entertainment for patrons of an adult business.

"Person" means any individual, firm, association, partnership, limited liability company, corporation or other form of legal entity.

"Permittee" means any of the following:

1. The sole proprietor of an adult business;

2. Any general partner of a partnership that owns and operates an adult business;

3. The owner of a controlling interest in a corporation or limited liability company that owns and operates an adult business; or

4. The person designated by the officers of a corporation or the members of an limited liability company to be the permit holder for an adult business owned and operated by the entity.

"Police chief" means the chief of the city of Moorpark police department or the police chief's designee.

"Sexually oriented material" means any element of sexually oriented merchandise, or any book, periodical, magazine, photograph, drawing, sculpture, motion picture film, video, 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 specific sexual activities or specified anatomical areas.

"Sexually oriented merchandise" 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 operated vaginas, 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 characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas.

"Specified anatomical areas" means:

1. Less than completely and opaquely covered human genitals; pubic region; buttocks, or 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.

"Specified sexual activities" means:

1. Fondling or touching of nude human genitals, pubic region, buttocks or female breast;

2. Human sex acts, actual or simulated, including intercourse, oral copulation or sodomy;

3. Acts of human masturbation, sexual stimulation or arousal, actual or simulated;

4. Human genitals in a state of sexual stimulation or arousal;

5. Use of human or animal ejaculation;

6. Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage, or restraints; or

7. Excretory functions as part of, or in connection with, any of the activities listed in (1) to (7) of this definition.

C. Permit required. It is unlawful for any person to establish or operate any adult business within the city without first obtaining, and continuing to maintain in full force and effect, an adult business permit and a business registration from the city. The adult business permit will be subject to the development and operational standards of this section, section 17.24.040N and the regulations of the zoning district in which the business is located.

D. Application submittals.

1. Application. Any person desiring to obtain an adult business permit must submit an application to the community development department on form(s) provided by the city. The application must contain, at a minimum, the following information regarding the owners and the following items:

a. Name and address of all owners of the proposed adult business, collectively referred to hereafter as the "applicant."

b. The previous residential addresses of all individual owners, if any, for a period of 5 years immediately prior to the date of filing the application and the dates of residence at each address.

c. Written proof that all individual owners are at least 18 years of age.

d. A five (5) year history of the applicant from the date of the application, as to the operation of any adult business or similar business or occupation. A statement as to whether or not such applicant, in operating an adult business under a permit or license, has had such permit or license revoked or suspended and the reasons therefore.

e. All criminal convictions or offenses described in Section 17.28.050F2j of the applicant; and whether the applicant is required to register under the provisions of Section 290 of California Penal Code or Section 11590 of the California Health and Safety Code.

f. Written authorization giving the city, its agents and employees authorization to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

g. The height, weight, and color of eyes and hair of all applicants.

h. Fingerprints and two (2) prints of a recent passport-size photograph of all applicants.

i. Business, occupation or employment history of the applicants for the five (5) years immediately preceding the date of the application.

j. A nonrefundable deposit or fee as set forth by city council resolution.

k. A narrative description of the proposed business explaining how such business complies or will comply with the applicable development and operational standards specified in this section and section 17.24.040N.

l. A site plan showing the building or unit proposed for the adult business, the distance required by section 17.24.040N of the surrounding area and a fully dimensioned interior floor plan showing how the business complies or will comply with the applicable development and operational standards specified in this section. The site plan and interior floor plan need not be professionally prepared, but must be drawn to a designated engineering or architectural scale to an accuracy of plus or minus 6 inches.

m. A photometric plan, in accordance with chapter 17.30, Lighting Regulations of the City of Moorpark Municipal Code for all outdoor areas including parking areas.

n. If the applicant is a partnership, limited liability company or corporation, documentary proof that such entity was duly formed, and is authorized to do business and is in good standing in the state of California.

o. The fictitious name, if any, of the adult business, together with documentary proof of registration of the fictitious name.

p. If the applicant does not own the lot or parcel on which the adult business will operate, the property owner or lessor of the premises, as applicable, must consent to the filing of the application by signing and dating the application. If the property owner or lessor is more than one natural person, one such person must sign the application. If the property owner or lessor is a legal entity, a general partner, officer, director, member or other authorized person thereof must sign the application.

q. A statement in writing and dated by the applicant certifying under penalty of perjury that the information contained in the application is true and correct. If the applicant is one or more natural persons, one such person must sign the application under penalty of perjury. If the applicant is a partnership, limited liability company or corporation, a general partner, officer, director or member of the entity must sign the application under penalty of perjury.

r. Such other information as the director may reasonably deem necessary.

2. Determination of completeness. The director will determine whether the application contains all the information and items required by the provisions of this section. If it is determined that the application is not complete, the applicant will be notified in writing within five (5) business days of the date of receipt of the application that the application is not complete and the reasons therefor, including any additional information necessary to render the application complete. The applicant will have thirty (30) business days to submit additional information to render the application complete. If within the thirty (30) business day period the applicant has not submitted the requested information the application will be void. Within five (5) business days following the receipt of an amended application or supplemental information, the director will again determine whether the application is complete in accordance with the procedures set forth in this subsection. Evaluation and notification will occur as provided above until such time as the application is found to be complete or the application is withdrawn. The applicant will be notified within five (5) business days of the date of the application is found to be complete (hereafter "application date"). All notices required by this section will be deemed given upon the date any such notice is either deposited in the United States mail or the date upon which personal service of such notice is provided.

E. Review of application.
1. The director will promptly cause the investigation of the complete application and within thirty (30) business days of the date of a complete application, either issue the permit or send by certified mail a written statement to the applicant setting forth the reasons for denial of the permit. If the director has not issued a decision on the application within thirty (30) business days of the date of a complete application, the application will be deemed approved, subject to an appeal under section 17.28.050M.
2. The director may deny the permit for any of the following reasons:

a. An applicant has made one or more material misstatements in the application;

b. The adult business, if permitted, will not comply with all applicable laws, including, but not limited to, the zoning, building, health, housing and fire codes of the city;

c. An applicant has pled guilty, nolo contendere or been convicted within five (5) years of the application date of an offense specified in section 17.28.050F2j;

d. An applicant or any operator has had a permit or license for an adult business denied, revoked or suspended for cause by any city, county or state within three (3) years of the application date;

e. An applicant is under 18 years of age;

f. The applicant failed to pay the filing fee required by this section.

If the permit is denied, the director must state in writing the reasons for the denial and in the notice to the applicant must reference the applicant's right to an appeal under Section 17.28.050M.
3. The decision of the director to issue or deny a permit will be final unless an appeal is timely filed under Section 17.28.050M.
F. Development and operational standards.
1. Development standards.

a. Zoning compliance. The building in which an adult business is located must comply with all applicable setbacks and parking requirements of the applicable zoning district.

b. Exterior lighting. All exterior areas, including parking lots regardless of the number of required parking spaces, of the adult business must be in compliance with chapter 17.30, Lighting Regulations of the Moorpark Municipal Code. Inoperable or broken lights must be replaced within 24-hours.

c. Sound. The premises within which the adult business is located must provide sufficient sound-absorbing insulation so that noise generated inside such premises will not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building and shall be in compliance with chapter 17.53. Noise of the Moorpark Municipal Code.

d. No minors. The building entrance to an adult business must be clearly and legibly posted with a notice indicating that persons under 18 years of age are precluded from entering the premises. Such notice must be constructed and posted to the satisfaction of the director and in compliance with chapter 17.40 Sign Regulations of the Moorpark Municipal Code. Persons under the age of 18 years may not be permitted within the premises at any time.

e. Open indoor areas. All indoor areas within which patrons are permitted, except restrooms, must be open to view at all times. Adult booths and individual viewing areas are prohibited.

f. Restrooms. Separate restroom facilities must be provided for male patrons and employees, and female patrons and employees. Male patrons and employees are prohibited from using any restroom for females, and female patrons and employees are prohibited from using any restroom for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities. The restrooms must be free from any sexually oriented material. Restrooms may not contain television monitors or other motion picture or video projection, recording or reproduction equipment. This subsection does not apply to an adult business which deals exclusively with the sale or rental of sexually oriented material which is not used or viewed on the premises, such as an adult bookstore or adult video store, and which does not provide restroom facilities to its patrons or the general public.

g. Residential conversions prohibited. Residential structures may not be converted for use as an adult business.

h. Portable structures prohibited. Adult business may not be located in any temporary or portable structure.

2. Operational standards.

a. Hours. Adult business may not operate or be open for business between the hours of 2:00 a.m. and 9:00 a.m.

b. Employment of minors prohibited. An owner or operator of any adult business may not employ or permit to be employed any person who is not at least 18 years of age.

c. Presence of minors on premises prohibited. An owner or operator of an adult business may not allow or permit any person under the age of 18 years to enter, be in or remain in any such business. Operators must determine the age of persons who enter the premises by checking the driver's license or other authorized identification of such person.

d. Screening of interior of premises and display of sexually oriented materials. No adult business may 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 applies to any display, decoration, sign, show window or other opening. No exterior door or window on the premises may be propped or kept open at any time while the business is open, and any exterior windows must be covered with opaque covering at all times or otherwise screened to prevent a view of the interior in a manner approved by the director.

e. Alcoholic beverages prohibited. Alcoholic beverages may not be served, consumed or sold on the premises of an adult business.

f. Interior lighting. All areas of the adult business must be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

Area	Foot-Candles
Stores and other retail establishments	20
Theaters and cabarets	5 (except during performances, at which times lighting must be at least 1.25 foot candles.)
Arcades	10
Modeling studios	20

g. On-site manager--security measures.

1. On-site manager. All adult businesses must have a responsible person who is over the age of 18 and is on the premises to act as manager at all times during which the business is open. Performers may not serve as a manager. The name of any individual designated as the on-site manager must be provided to the director in order to receive all complaints and be given the responsibility and duty by the owner or operator to address and immediately resolve all violations of law taking place on the premises.

2. Adult businesses must employ state licensed uniformed security guards in order to maintain the public peace and safety, based upon the following standards:

i. Adult businesses featuring adult live entertainment and performers must provide at least 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 must be on duty.

ii. Security guards for other adult businesses may be required if it is determined by the police chief that their presence is necessary in order to prevent any of the conduct listed in this section from occurring on the premises.

3. Security guards will have a duty to prevent violations of law and enforce compliance by patrons of the requirements of these regulations. Security guards must be uniformed in such a manner so as to be readily identifiable as a security guard by the public and must be duly licensed as a security guard as required by applicable provisions of state law. No security guard required under this subsection may act as a door person, ticket seller, ticket taker, admittance person, performer or sole occupant of the manager's station while acting as a security guard.

h. Adult live entertainment--additional operating regulations. The following additional requirements apply to adult businesses providing adult live entertainment:

1. A person may not perform adult live entertainment for patrons of an adult business except upon a permanently fixed stage at least eighteen inches (18") above the level of the floor, and surrounded by a three foot (3') high barrier or by a fixed rail at least thirty inches (30") in height. A distance of at least six feet (6'), measured horizontally, must be maintained between patrons and performers at all times during which a performer is revealing specified anatomical areas or depicting or engaging in specified sexual activities. Patrons may not be permitted on the stage while the stage is occupied by a performer. This provision does not apply to an individual viewing area where the performer is completely separated from the area in which the performer is viewed by an individual by a permanent floor to ceiling, solid barrier.

2. A performer may not have physical contact with any patron, and patrons may not have physical contact with any performer, while the performer is performing on the premises. In particular, a performer may not have physical contact with a patron and a patron may not have physical contact with a performer, which physical contact involves the touching of the clothed or unclothed genitals, pubic area, buttocks, cleft of the buttocks, perineum, anal region, or female breast with any part or area of any other person's body either before or after any adult live entertainment by such performer. This prohibition does not extend to incidental touching. Patrons must be advised of the no touching requirements by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size. If necessary, patrons must also be advised of the no touching requirements by employees or independent contractors of the establishment.

3. All employees and independent contractors of the adult business, except performers while performing on the fixed stage as provided in subparagraph 1 above, while on or about the premises, must wear at a minimum an opaque covering which covers their specified anatomical areas.

4. If patrons wish to pay or tip performers, payment or tips may be placed in containers placed at least six feet (6') from the stage used by the performers. Patrons may not throw money to performers, place monies in the performers' costumes or otherwise place or throw monies on the stage. Patrons must be advised of this requirement by signs conspicuously displayed and placed on the barrier between patrons and performers and utilizing red or black printing of letters not less than one inch (1") in size.

5. The adult business must provide dressing rooms for performers, that are separated by gender and exclusively dedicated to the performers' use and which the performers must use. Same gender performers may share a dressing room. Patrons are not permitted in dressing rooms.

6. The adult business must provide an entrance/exit to the establishment for performers that are separate from the entrance/exit used by patrons, and the performers must use this entrance/exit at all times.

7. The adult business must provide access for performers between the stage and the dressing rooms that is completely separated from the patrons. If such separate access is not physically feasible, the adult business must provide a minimum three foot (3') wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers. The patrons must remain at least three feet (3') away from the walk aisle. Nothing in this section is intended to exempt the adult business from compliance with the provisions of Title 24 of the California Code of Regulations pertaining to handicapped accessibility.

i. Adult theater--Additional operating requirements. The following additional requirements apply to adult theaters:

1. If the theater contains a hall or auditorium area, the area must comply with each of the following provisions:

i. Have individual, separate seats, not couches, benches, or the like, to accommodate the maximum number of persons who may occupy the hall or auditorium area;

ii. Have a continuous main aisle alongside the seating areas in order that each person seated in the hall or auditorium area is visible from the aisle at all times;

iii. Have a sign posted in a conspicuous place at or near each entrance to the hall or auditorium area which lists the maximum number of persons who may occupy the hall or auditorium area, which number may not exceed the number of seats within the hall or auditorium area; and

iv. If an adult theater is designed to permit outdoor viewing by patrons seated in automobiles, it must have the motion picture screen so situated, or the perimeter of the establishment so fenced, that the material to be seen by those patrons may not be seen from any public right-of-way, child day care facility, public park, school, or religious institution or any residentially zoned property occupied with a residence.

j. No owner or operator of any adult business may have pled guilty, nolo contendere or been convicted within the past three (3) years of any of the following

offenses or convicted of an offense outside the state of California that would have constituted any of the following offenses if committed within the state of California: Sections 243.4, 261, 266a through 266j, inclusive, 267, 314, 315, 316, 318, or subdivisions (a), (b) and (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, as those sections may hereafter be amended.

k. An owner, operator, employee or performer of an adult business may not personally solicit, or permit the personal solicitation of, motorists or pedestrians in the vicinity of the adult business.

l. Every adult business must display at all times during business hours the permit issued pursuant to the provisions of this section for such adult business in a conspicuous place so that the permit may be readily seen by all persons entering the adult business.

G. Prohibited conduct at adult businesses.

1. A person may not operate or cause to be operated an adult business knowingly, or with reason to know, permitting, suffering, or allowing any employee or independent contractor:

i. To engage in a lap dance with a patron at the business.

ii. To contract or otherwise agree with a patron to engage in a couch dance, lap dance, or straddle dance with a person at the business.

iii. To intentionally touch any patron at an adult business while engaged in the display or exposure of a specified anatomical area or engaged in or simulating a specified sexual activity.

iv. To voluntarily be within six feet (6') of any patron while engaged in the display or exposure of any specified anatomical area or engaged in or simulating a specified sexual activity.

v. To solicit or request any gratuity, pay, or any other form of consideration from a patron on the premises of the adult-oriented business while engaged in the display or exposure of any specified anatomical area or engaged in or simulating a specified sexual activity.

2. Persons at any adult business may not intentionally touch an employee or independent contractor who is displaying or exposing any specified anatomical area or engaging or simulating a specified sexual activity at the adult business.

3. Persons at any adult business may not engage in a couch dance, lap dance or straddle dance with an employee or independent contractor at the business who is displaying or exposing any specified anatomical area or engaging in or simulating a specified sexual activity.

4. Person may not directly pay, offer to pay, or otherwise seek to provide a gratuity, pay, or any other form of consideration to a performer at an adult-oriented business. Person may not use an intermediary, such as an employee or independent contractor to offer, provide, or otherwise pay a gratuity or other form of consideration to a performer at an adult-oriented business.

5. Employees or independent contractors of an adult business may not engage in a performance, solicit a performance, make a sale, provide a service, or solicit a service between the hours of 2 a.m. and 9 a.m.

6. Waiters or waitresses employed at an adult business may not appear on the premises thereof in the nude, seminude, or display or expose specified anatomical areas.

H. Permit requirements -- effect of noncompliance. The requirements described in chapter 5.18.Adult Business Performer Permit are conditions of an adult business permit, and the failure to comply with any applicable requirement is grounds for revocation of the permit issued pursuant to this section.

I. Permit duration. An adult business permit will be valid for a period of one (1) year from the date of issuance.

J. Permit renewal. An adult business permit must be renewed on an annual basis, provided that the permittee and the adult business continues to meet all applicable requirements set forth in this section. A request for permit renewal must be accompanied by an adult business permit application, completed in full detail with current information. The application and appropriate fee must be received by the city at least forty (45) calendar days prior to the expiration of the existing permit. The city will process a request for a permit renewal in the same manner as the original application.

K. Permit transferability. Adult business permits may not be sold, transferred, or assigned by any permittee, or by operation of law, to any other person unless and until the transferee obtains an amendment to the permit from the director stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the director in accordance with section 17.28.050D (including payment of the applicable application fee), and the director determines in accordance with section 17.28.050E that the transferee would be entitled to the issuance of the original permit. Without such amendment to the permit, any other purported sale, transfer, or assignment or attempted sale, transfer, or assignment will be deemed to constitute a voluntary surrender of the permit and thereafter the permit will be null and void. An adult business permit held by a corporation, partnership or limited liability company is subject to the same rules of transferability. An adult business permit will be valid only for the exact location specified in the permit.

L. Enforcement and revocation.

1. Inspections. All code compliance officers have the right to enter the premises of an adult business from time to time during regular business hours to make reasonable inspections, to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to ascertain whether there is compliance with the provisions of this section.

2. Revocation grounds. The director may revoke an adult business permit when:

i. Any of the applicable requirements of this section ceases to be satisfied; or

ii. The application is discovered to contain incorrect, false or misleading information; or

iii. An owner has pled guilty, nolo contendere or been convicted of a felony or misdemeanor occurring upon, or relating to the premises or lot upon which the adult business is located, which offense is one of those listed in section 17.28.050F2j; or

iv. Any operator, employee, agent or contractor of the permittee has pled guilty, nolo contendere or been convicted on two or more occasions within a 12-month period of a felony or misdemeanor occurring upon, or relating to the premises or lot upon which

the adult business is located, which offense is one of those listed in section 17.28.050F2j; or

v. The permittee, operator or any employee, agent or contractor of the owner has knowingly allowed prostitution, or solicitation for prostitution, on the premises; or

vi. The permittee, operator or any employee, agent or contractor of the owner has knowingly allowed the premises to be used as a place where a controlled substance has been illegally consumed, sold or exchanged; or

vii. The adult business has been operated in violation of any of the requirements of this section and;

(a) If the violation is of a continuous nature, the business continues to be operated in violation of such provision for more than ten (10) days following the date written notice of such violation is mailed or delivered to the permittee, or

(b) If the violation is of a noncontinuous nature, 1 or more additional violations of the same provision, or two (2) or more violations of any other of the provisions, of this section occur (regardless of whether notice of each individual violation is given to the permittee) within any 12-month period.

3. Revocation notice. Upon determining that grounds for permit revocation exist, the director will furnish written notice of the proposed revocation to the permittee. Such notice must summarize the principal reasons for the proposed revocation and state that the revocation will become effective on the 20th day after the notice was deposited in the U.S. mail, unless the permittee files an appeal under section 17.28.050M. The notice must be delivered both by posting the notice at the location of the adult business and by sending the same, certified mail to the permittee as that name and address appears on the permit.

M. Appeals.

1. Any interested person may appeal a decision of the director regarding an application or revocation of an adult business permit by filing with the city clerk a complete notice of appeal within fifteen (15) calendar days from the date notice of such decision is mailed. To be deemed complete, the appeal must be in writing, state the grounds for disagreement with the director's stated decision, include the address to which notice is to be mailed, be signed under penalty of perjury, and be accompanied by the filing fee established by city council resolution.

2. If an appeal is timely filed, the city council will at the next regularly scheduled city council meeting held more than five (5) calendar days after receipt of such notice of appeal, review the matter and determine whether the city council or a hearing officer will hear the appeal.

3. The city council or the hearing officer, as the case may be, must set a date, not less than five (5) calendar days, and not more than twenty-one (21) calendar days from the date such determination is made by the city council for the hearing of the appeal. The hearing may be continued for good cause. The hearing will be a de novo hearing on the action appealed from.

4. The hearing officer or city council will issue written findings and a decision within ten (10) calendar days of the conclusion of the hearing, and send notice of the decision by certified mail to the appellant. The notice of the decision must include reference to the appellant's right to prompt judicial review under California Code of Civil Procedure section 1094.8.

5. The action by the hearing officer or city council will be final unless timely judicial review is sought pursuant to California Code of Civil Procedure section 1094.8.

N. Reapplication after denial or revocation.

1. Reapplication after denial. An applicant for a permit under this section whose application for such permit has been denied may not reapply for a permit for a period of one (1) year from the date such notice of denial may be deposited in the mail or received by the permittee, whichever occurs first. However, a reapplication prior to the termination of one (1) year may be made if accompanied by evidence that the ground or grounds for denial of the application no longer exists.

2. Reapplication after revocation. No person may obtain an adult business permit for three (3) years from the date any order of permit revocation affecting such person has become final.

O. Violations.

1. Any owner, operator, permittee, employee or independent contractor of an adult business violating or permitting the violation of any of the provisions of this section regulating adult businesses will be subject to any and all civil remedies, including license or permit revocation. All remedies provided herein are cumulative and not exclusive.

2. In addition to the remedies set forth in subsection 1., any adult business that is operating in violation of these provisions regulating adult businesses is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation.

3. The regulations imposed under this section are part of a regulatory permitting process, and do not constitute a criminal offense. Notwithstanding any other provision of the Moorpark Municipal Code, the city does not impose a criminal penalty for violations of this section related to expressive activities.

P. Regulations nonexclusive. The provisions of this section regulating adult businesses are not intended to be exclusive and compliance therewith will not excuse noncompliance with any other applicable regulations pertaining to the operation of businesses adopted by the city.

EXHIBIT D

CHAPTER 5.18

ADULT BUSINESS PERFORMER PERMIT

5.18.010. Purpose.
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5.18.010. Purpose.
The purpose of this chapter is to require a permit for adult business performers to (1) protect minors by requiring that all performers be over the age of 18 years; (2) assure the correct identification of persons performing in adult businesses; (3) enable the city to deploy law enforcement resources effectively; and (4) detect and discourage the involvement of crime in adult businesses by precluding the licensing of performers with certain sex-related convictions within a prescribed time period.

It is neither the intent nor the effect of these regulations to invade the privacy of performers or to impose limitations or restrictions on the content of any communicative material. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adults to communicative materials or to deny access by the distributors or exhibitors of adult businesses to their intended lawful market.

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

5.18.020. Definitions.
The definitions contained in the section 17.28.050 of this code also apply to this chapter with the following additions:
"Director" means the community development director or the manager of the community development department of the city of Moorpark or the director's designee.
"Permittee" means a person who is issued an adult business performer permit under this chapter.

5.18.030 Adult business performer permit required.
Upon verification of compliance with section17.28.040N and section 17.28.050 that the place of business has a valid adult business permit authorized to provide adult live

entertainment, an adult business performer permit may be issued. The applicant must meet the requirements of this chapter in order to obtain a permit.

A. A performer may not be employed, hired, engaged, or otherwise retained in an adult business to participate in or give any live performance displaying specified anatomical areas or specified sexual activities without first having a valid adult business performer permit issued by the city.

B. The director is responsible for the processing, investigation and issuance of adult business performer permits in accordance with this chapter.

C. Permit applicants must file a permit application or renewal application on a form provided by the director. At minimum, this application form will contain the following information:

1. The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant.

2. Principal place of residence.

3. Age, date and place of birth.

4. Height, weight, hair and eye color and tattoo descriptions and locations.

5. Each present or proposed business address and telephone number of the establishments at which the applicant intends to work.

6. Driver's license or identification number and state of issuance.

7. Social security number.

8. Satisfactory written proof that the permit applicant is a least 18 years of age.

9. The permit applicant's fingerprints on a form provided by the city and two passport-size photographs clearly showing the applicant's face. Any fees for the photographs and fingerprints will be paid by the applicant. Fingerprints and photographs must be taken within 6 months of the date of application.

10. Whether the applicant, has pled guilty, nolo contendere or been convicted of an offense classified by this or any other state as a sex-related offense and less than

a. Two (2) years have elapsed since the date of conviction or the date of release from confinement of conviction to the date of application, whichever is the later date, if the conviction is a misdemeanor; or

b. Five (5) years have elapsed since the date of conviction or the date of release from confinement of conviction to the date of conviction, whichever is the later date, if the conviction is a felony; or

c. Five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the conviction to the date of application, whichever is the later date, if the convictions are two or more misdemeanors or combination of misdemeanor offenses occurring within any 24-month period.

11. If the application is made for the purpose of renewing a permit, the applicant must attach a copy of the permit to be renewed.

D. The information provided above in subsection C which is personal, private, confidential or the disclosure of which could expose the applicant to the risk of harm will not be disclosed under the California Public Records Act. Such information includes, but is not limited to, the applicant's residence address, telephone number, date of birth and age, driver's license and social security number. The city council in adopting the permit system set forth in this chapter has determined in accordance with California Government Code section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this

chapter by ensuring that the applicant's privacy, confidentiality or security interest are protected. The city clerk will cause this information described above to be redacted from any copy of a completed application form made available to any member of the public.

E. The completed application must be accompanied by a non-refundable application fee and an annual permit fee. The amount of such fees will be as set forth in the schedule of fees established by resolution from time to time by the city council.

F. The director will determine whether the application is complete within two (2) business days. If the director determines that the application is incomplete, the director must immediately inform the applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Upon receipt of a completed adult business performer application, the director will immediately issue a temporary permit that will automatically expire ten (10) business days from the date of issuance unless extended by the director for an additional ten (10) business days. Only one extension may be granted. This temporary adult business performer permit authorizes a performer to commence performance at an adult business that possesses a valid adult business permit authorized to provide adult live entertainment.

G. Possession by the permit applicant of other types of state or city permits or licenses does not exempt the permit applicant from the requirement of obtaining an adult business performer permit.

5.18.040. Investigation and action on permit application.

A Upon submission of a completed application and issuance of a temporary adult business performer permit, the director will promptly cause the investigation of the information contained in the application to determine whether the applicant should be issued an adult business performer permit.

B. The director's decision to grant or deny the adult business performer permit must be made within ten (10) business days from the date the temporary license was issued or extended, whichever is later. If the application is denied, the director must include a written statement of the reasons for the denial. Such notice must also advise the applicant of the right to appeal the denial under Section 5.18.060. If the application is granted, the director will attach the adult business performer permit to the notice. The decision will be mailed or personally delivered to the applicant at the address provided in the application.

C. The director shall deny the application based on any of the following grounds:

1. The applicant has made false, misleading, or fraudulent statement of material fact in the application for an adult business performer permit.

2. The applicant is under 18 years of age.

3. The adult business performer permit is to be used for performing in a business prohibited by laws of the state or city or at a business that does not have a valid adult business permit.

4. The occurrence of any of the events set forth in Section 5.18.030C10.

D. If the director fails to render a decision on the permit within the time frame established by this section, the application will be deemed approved, subject to an appeal under Section 5.18.060.

E. Each adult business performer permit, other than the temporary permit described in Section 5.18.020F, will expire 1 year from the date of issuance and may be renewed only by filing with the director a written request for renewal at least thirty (30) calendar days prior to the expiration of the permit, accompanied by the annual permit fee and a copy of the permit to be renewed. If the application conforms to the previously approved application and there has been no change with respect to the permittee being convicted of any crime classified by this or any other state as a sex-related offense, the director will renew the permit for one (1) year. An application for renewal will be acted upon in the same manner as the application for the original permit. If the director denies renewal of the application, that decision is also appealable under Section 5.18.060.

5.18.050. Permit revocation.

A. A permit may be revoked, based on any of the following causes arising from the acts or omissions of the permittee:

1. The permittee has made any false, misleading, or fraudulent statement of material fact in the application for a performer permit.

2. The permittee has pled guilty, nolo contendere or been convicted of an offense as set forth in Section 5.18.030C10.

3. The permittee has failed to comply with any of the operating standards of Chapter 5.18 applicable to a performer or the requirements of this chapter.

B. On determining that grounds for license revocation or suspension exist, the director will furnish written notice of the proposed action to the permittee. Such notice will set forth the time and place of a hearing before the city manager, the city manager's designee or a city manager appointed hearing officer, the grounds, including the factual matters, in support of such proposed action, and the pertinent code sections. The notice will be mailed, postage prepaid, to the last known address of the permittee, or personally delivered to the permittee, at least ten (10) business days prior to the hearing date.

C. At the hearing, the permittee will have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. The city manager, the city manager's designee or a city manager appointed hearing officer will not be bound by the formal rules of evidence. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness at the request of the permittee.

D. After the hearing, the city manager, the city manager's designee or a city manager appointed hearing officer will either sustain or overrule the decision of the director and render a written decision within five (5) business days of the hearing. The decision will be sent by certified mail to the applicant or licensee. The decision of the city manager, the city manager's designee or a city manager appointed hearing officer must include reference to the right to prompt judicial review under California Code of Civil Procedure section 1094.8.

The action by the city manager, the city manager's designee or a city manager appointed hearing officer will be final unless timely judicial review is sought pursuant to California Code of Civil Procedure section 1094.8.

5.18.060 Appeals.

A. Any interested person may appeal a decision of the director regarding an application for an adult business performer permit by filing with the city clerk a complete notice of

appeal within fifteen (15) calendar days from the date notice of such decision is mailed. To be deemed complete, the appeal must be in writing, state the grounds for disagreement with the director's stated decision, include the address to which notice is to be mailed, be signed under penalty of perjury, and be accompanied by the filing fee established by city council resolution.

B. If an appeal is timely filed, the city manager, the city manager's designee or a city manager appointed hearing officer will hear the appeal.

C. The city manager, the city manager's designee or a city manager appointed hearing officer, as the case may be, must set a hearing date not more than twenty-on (21) calendar days from the date of the filing of the appeal. The hearing may be continued for good cause.

D. The city manager, the city manager's designee or a city manager appointed hearing officer will issue findings in writing within five (5) business days of the conclusion of the hearing. The written findings and decision will be sent by certified mail to the appellant. The notice of the decision must include reference to the appellant's right to prompt judicial review under California Code of Civil Procedure section 1094.8.

E. The action by the city manager, the city manager's designee or a city manager appointed hearing officer will be final unless timely judicial review is sought pursuant to California Code of Civil Procedure section 1094.8.

5.18.070. Permit identification cards.

The director will provide each adult business performer whose application is approved with an identification card containing the name, address, photograph, and license number of such performer. Every performer must have such card available for inspection at all times during which the performer is on the premises of the adult business at which he or she performs.

5.18.080. Adult business performer permit non-transferable.

No adult business performer permit may be sold, transferred, or assigned by any permittee or by operation of law, to any other person. Any such sale, transfer, or assignment, or attempted sale, transfer, or assignment will be deemed to constitute a voluntary surrender of the adult business performer permit, and the permit thereafter will be null and void.

5.18.090. Violations.

A. Any permittee violating any of the provisions of this chapter or the provisions of section 17.28.050 regulating adult business performers will be subject to permit revocation, and any and all other civil remedies. All remedies provided herein are cumulative and not exclusive. Any such violation will constitute a separate violation for each and every day during which such violation is committed or continued.

B. The restrictions imposed pursuant to this chapter are part of a regulatory licensing process, and do not constitute a criminal offense. Notwithstanding any other provision of the Moorpark Municipal Code, the city does not impose a criminal penalty for violations of the provisions of this chapter related to expressive conduct or activities.