

CHAPTER 6.10

ADULT BUSINESSES

(Ordinance 2001-14)

6.10.010. Purpose. It is the purpose and intent of this Article to regulate the operations of adult businesses, which tend to have judicially recognized adverse secondary effects on the community, including, but not limited to, increases in crime in the vicinity of adult businesses; decreases in property values in the vicinity of adult businesses; increases in vacancies in residential and commercial areas in the vicinity of adult businesses; interference with residential property owners' enjoyment of their properties when such properties are located in the vicinity of adult businesses as a result of increases in crime, litter, noise, and vandalism; and deterioration of neighborhoods. Special regulation of these businesses is necessary to prevent these adverse secondary effects and the blighting or degradation of the neighborhoods in the vicinity of adult businesses while at the same time protecting the First Amendment rights of those individuals who desire to own, operate or patronize adult businesses.

It is, therefore, the purpose of this Article to establish reasonable and uniform operational standards for adult businesses.

6.10.020. Definitions. In addition to any other definitions contained in the Municipal Code, the following words and phrases shall, be defined as follows, unless it is clearly apparent from the context that another meaning is intended. Should any of the definitions be in conflict with any current provisions of the Municipal Code, these definitions shall prevail.

(a) Adult Arcade shall mean a business establishment to which the public is permitted or invited and where coin, card or slug operated or electronically, electrically or mechanically controlled devices, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices are maintained to show images on a regular or substantial basis, where the images so displayed are distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas. Such devices shall be referred to as adult arcade devices.

(b) Adult Retail Store shall mean a business establishment having as a regular and substantial portion of its stock in trade, adult oriented material.

(c) Adult Booth/Individual Viewing Area shall mean 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 and/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;

11-01

6.10.020 (c) (2)

(2) Where adult arcade devices are located.

(d) Adult Business shall mean:

(1) A business establishment or concern that as a regular and substantial course of conduct operates as an adult retail store, adult motion picture theater, adult arcade, adult cabaret, adult motel or hotel, adult modeling studio; or

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

(e) Adult Cabaret shall mean a business establishment (whether or not serving alcoholic beverages) that features adult live entertainment.

(f) Adult Hotel/Motel shall mean a hotel or motel (as defined in the Municipal Code) that is used for presenting on a regular and substantial basis images through closed circuit television, cable television, still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image-producing devices that are distinguished or characterized by the emphasis on matter depicting or describing or relating to specified sexual activities or specified anatomical areas.

(g) Adult Live Entertainment shall mean 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 a topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar performers) exposes to public view, without opaque covering, specified anatomical areas; and/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.

(h) Adult Modeling Studio shall mean 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 consideration. Adult modeling studio does not include schools maintained pursuant to standards set by the Board of Education of the State of California.

(i) Adult Motion Picture Theater shall mean a business establishment, with or without a stage or proscenium, where, on a regular and substantial basis and for any form of consideration, material is presented through films, motion pictures, video cassettes, slides, laser disks, digital video

disks, holograms, virtual reality devices, or similar electronically-generated reproductions that is characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(j) Adult Oriented Material shall mean accessories, paraphernalia, books, magazines, laser disks, compact discs, digital video disks, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos, slides, tapes, holograms or electronically generated images or devices including computer software, or any combination thereof that is distinguished or characterized by its emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. Adult oriented material shall include Asexually oriented merchandise.

(k) Child Day Care Facility. Any child day care facility as defined in Section 1596.750 of the California Health and Safety Code other than family day care homes.

(l) Establishment of An Adult Business shall mean any of the following:

- (1) The opening or commencement of any adult business (as defined above) 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 adult business to any other existing adult business;
- (4) The relocation of any adult business; or
- (5) Physical changes that expand the square footage of an existing adult business by more than ten percent (10%).

(m) Owner/Permit Holder. 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 that owns and operates an adult business; or (4) the person designated by the officers of a corporation to be the permit holder for an adult business owned and operated by the corporation.

(n) Performer shall mean 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.

(o) Sexually Oriented Merchandise shall mean sexually oriented implements, paraphernalia, or novelty items, such as, but not limited to: dildos, auto sucks, sexually oriented vibrators, 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 distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(p) Specified Anatomical Areas shall mean and include any of the following:

(1) Less than completely and opaquely covered, and/or simulated to be reasonably anatomically correct, even if completely and opaquely covered:

- (i) human genitals, pubic region;
- (ii) buttocks, anus; or
- (iii) female breasts below a point immediately above the top of the areola;

or

(2) Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

(q) Specified Sexual Activities shall mean and include any of the following, irrespective of whether performed directly or indirectly through clothing or other covering:

- (1) Human genitals in a state of sexual stimulation or arousal; and/or
- (2) Acts of human masturbation, sexual stimulation or arousal; and/or
- (3) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation; and/or
- (4) Masochism, erotic or sexually oriented torture, beating, or the infliction of pain, or bondage and/or restraints; and/or
- (5) Human excretion, urination, menstruation, vaginal or anal irrigation; and/or
- (6) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

6.10.030. Adult Business Regulatory Permit Required. All adult businesses are subject to the adult business regulatory permit requirements of this Chapter as well as all other applicable ordinances of the City and laws of the State of California.

(a) It shall be unlawful for any person to establish, operate, engage in, conduct, or carry on any adult business within the City of Encinitas unless the person first obtains, and continues to maintain in full force and effect, an adult business regulatory permit as herein required. Any occurrence of the establishment of an adult business as defined in Section 6.10.020(1) shall require a new application for an adult business regulatory permit. The adult business regulatory permit shall be subject to the development and operational standards of this Chapter and the underlying zone where the facility is located.

(b) The City Planning Official or his designee shall grant or deny adult business regulatory permits in accordance with these regulations.

(c) The City Planning Commission shall suspend or revoke adult business regulatory permits in accordance with these regulations.

(d) Permit applicants shall file a written, signed, and verified application on a form provided by the Planning Department. Such application shall contain the following information and be accompanied by the following documents:

(1) If the permit applicant is an individual, the individual shall state his or her legal name, including any aliases, and address, and shall submit satisfactory written proof that he or she is at least eighteen (18) years of age.

(2) If the permit applicant is a partnership, the partners shall state the partnership's complete name, address, the names of all partners, and whether the partnership is general or limited; and shall attach a copy of the partnership agreement, if any.

(3) If the permit applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the State of California, the names and capacities of all officers and directors, the name of the registered corporate agent, and the address of the registered office for service of process.

(4) A signed and verified statement that the permit applicant, if an individual, or partners, officers, directors, if a partnership or corporation, has not pled guilty or nolo contendere or been convicted of an offense classified by this or any other state as a sex or sex-related offense and (a) more than two 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) more than five 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 felony; or (c) more than five 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.

(5) The permit applicant shall sign the application. All persons who sign the application must also provide names, aliases, addresses, and date of birth.

(6) If the permit applicant intends to operate the adult business under a name other than that of the permit applicant, the permit applicant shall file the fictitious name of the adult business and show proof of registration of the fictitious name.

(7) A description of the type of adult business for which the permit is requested and the proposed address where the adult business will operate, plus the names and addresses of the owners and lessors of the adult business site.

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

(9) A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the adult business. The sketch or diagram need not be professionally prepared but must be oriented to the north or some other designated street or object and drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(10) A diagram of the off-street parking areas and entries to the premises of the adult business, also showing the location of the lighting system required by this Chapter.

(e) The completed application shall be accompanied by a non-refundable application fee. The amount of such fees shall be set by the City Council.

(f) The completeness of an application for an adult business regulatory permit shall be determined by the Planning Official within five (5) working days of its submittal. If the Planning Official determines that the permit application is incomplete, the Planning Official shall immediately notify in writing the permit applicant of such fact and the reasons therefor, including any additional information necessary to render the application complete. Such writing shall be deposited in the U.S. mail, postage prepaid, immediately upon determination that the application is incomplete. Within five (5) working days following the receipt of an amended application or supplemental information, the Planning Official shall again determine whether the application is complete in accordance with the provisions set forth above. Evaluation and notification shall occur as provided herein until such time as the application is found to be complete.

(g) The fact that a permit applicant possesses other types of state or City permits or licenses does not exempt the permit applicant from the requirement of obtaining an adult business regulatory permit.

6.10.040. Investigation and Action on Application for Adult Business Regulatory Permit.

(a) Upon receipt of a completed application and payment of the application and permit fees, the Planning Official shall immediately write or stamp the application Received and, in conjunction with City staff, shall promptly investigate the information contained in the application to determine whether an adult business regulatory permit shall be granted. Investigation shall not be grounds for the City to unilaterally delay in reviewing a completed application, nor is it grounds to extend the time period to conduct a hearing pursuant to this Section.

(b) Within twenty-one (21) days of receipt of the completed application, the investigation shall be completed and the Planning Official shall notice and conduct a public hearing with notice of such hearing to be made pursuant to California Government Code " 65091 and 65905.

(c) In reaching a decision, the Planning Official shall not be bound by the formal rules of evidence in the California Evidence Code.

(d) The Planning Official shall render a written decision on the application for an adult business regulatory permit within two (2) working days of the public hearing required by this Section. The failure of the Planning Official to render any decision within the time frames established in any part of this Section shall be deemed to constitute an approval, subject to appeal to the City Council, pursuant to Section 6.10.080. The Planning Official's decision shall be hand delivered or mailed to the applicant at the address provided in the application, and shall be provided in accordance with the requirements of this Code.

(e) Notwithstanding any provisions in this Section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this Section or may request a continuance regarding any decision or consideration by the City of the pending application. Extensions of time sought by applicants shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on applications.

(f) The Planning Official shall grant or deny the application in accordance with the provisions of this Section, and so notify the applicant as follows:

(1) The Planning Official shall write or stamp Granted or Denied on the application and date and sign such notation.

(2) If the application is denied, the Planning Official shall attach to the application a statement of the reasons for the denial.

(3) If the application is granted, the Planning Official shall attach to the application an adult business regulatory permit.

(g) The Planning Official shall grant the application and issue the adult business regulatory permit upon findings that the proposed business meets, or will meet, all of the development and operational standards and requirements of this Chapter, unless the application is denied based upon one or more of the criteria set forth in subsection (i) of this Section.

(h) If the Planning Official grants the application, the applicant may begin operating the adult business for which the permit was sought, subject to strict compliance with the development and operational standards and requirements of this Chapter. The permit holder shall post the permit conspicuously in the premises of the adult business.

(i) The Planning Official shall deny the application if the applicant fails to establish any of the following:

(1) The adult business complies with the City's zoning requirements as to its underlying zoning designation.

(2) The adult business complies with the development, operational or performance standards found in this Chapter.

(3) The permit applicant is at least eighteen (18) years of age.

(4) The required application fees have been paid.

(5) The application complies with Section 6.10.030.4(c).

(j) A person cannot re-apply for an adult business regulatory permit for a particular location within one (1) year from the date of prior denial.

(k) Any affected person may appeal the decision of the Planning Official in writing within five (5) days in accordance with the provisions of Section 6.10.080.

6.10.050. Operating Standards.

(a) Hours of Operation.

It shall be unlawful for any owner, operator, manager or employee of an adult business to allow such adult business to remain open for business, or to permit any employee or performer to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 12:00 a.m. and 10:00 a.m. of any day excepting here from an adult hotel/motel.

(b) Exterior Lighting Requirements.

All exterior areas, including parking lots, of the adult business shall be illuminated at a minimum of 1.50 foot-candle, maintained and evenly distributed at ground level with appropriate devices to screen, deflect or diffuse the lighting in such manner as to prevent glare or reflected light from creating adverse impacts on adjoining and nearby public and private properties. Inoperable and/or broken lights shall be replaced within 24 hours.

(c) Interior Lighting Requirements.

All interior areas of the adult business excepting therefrom adult hotels/motels shall be illuminated at a minimum of 1.00 foot-candle, maintained and evenly distributed at floor level. Inoperable and/or broken lights shall be replaced within 24 hours, excepting herefrom an adult hotel/motel.

(d) Regulation of Adult Booth/Individual Viewing Area.

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

(2) Each adult booth/individual viewing area within the adult business shall be visible from a continuous and accessible main aisle in a public portion of the establishment, and shall not be obscured by any door, curtain, wall, two-way mirror or other device which would prohibit a person from seeing the entire interior of the adult booth/individual viewing area from the main aisle. A manager shall be stationed in the main aisle at all times. Further, no one shall maintain any adult booth/individual viewing area in any configuration unless the entire interior wherein the picture or entertainment that is viewed is visible from one main aisle. The entire body of any patron in any adult booth/individual viewing area must be visible from the main aisle without the assistance of mirrors or any other device.

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

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

(5) No beds shall be permitted in an adult booth/individual viewing area.

(e) On-Site Manager; Security Measures.

All adult businesses shall have a responsible person who shall be at least 18 years of age and shall be on the premises to act as manager at all times during which the business is open. No performer may serve as the manager. The individual(s) designated as the on-site manager shall provide his/her name to the Planning Official to receive all complaints and be given by the owner and/or operator the responsibility and duty to address and immediately resolve all violations taking place on the premises.

All adult businesses shall provide a security system that visually records and monitors all parking lot areas, or in the alternative, state-licensed, uniformed security guards to patrol and monitor the parking lot areas during all times during which the business is open. If the business employs security guards, they shall provide written confirmation to the Police Chief prior to their employment that the guards are duly registered. No performer may serve as a security guard.

A sign indicating compliance with this provision shall be posted on the exterior of the premises between four to six feet from the ground. The sign shall not exceed two feet by three feet and shall at a minimum be one foot by one and a half feet and shall utilize red or black printing of letters not less than 1-inch in size.

(f) Interior of Premises.

No exterior door or window on the premises of an adult business shall be propped or kept open at anytime while the business is open and any exterior windows shall be covered with opaque coverings at all times.

(g) Signs.

All adult businesses shall comply with the following sign requirements, in addition to those of the Encinitas Municipal Code. Should a conflict exist between the requirements of the Encinitas Municipal Code and this subsection, the more restrictive shall prevail.

(1) If an adult business does not serve alcohol, it shall post a notice inside the establishment, within ten (10) feet of every entrance used by customers for access to the establishment, stating that persons below the age of eighteen (18) years of age are prohibited from entering onto the premises or within the confines of the adult business. This notice shall be posted on a wall in a place of prominence. The dimensions of the notice shall be no less than six (6) inches by six (6) inches, with a minimum typeface of 25 points. If the adult business serves alcohol, it shall comply with all notice and posting requirements of the Alcoholic Beverage Control Department.

(2) No adult-oriented material shall be displayed in window areas or any area where it would be visible from any location other than within the confines of the adult business.

(h) Regulation of Public Restroom Facilities.

If the adult business provides restrooms for patron use, it shall provide separate restroom facilities for male and female patrons. The restrooms shall be free from adult oriented material. Only one (1) person shall be allowed in each restroom at any time, unless otherwise required by law, in which case the adult business shall employ a restroom attendant of the same sex as the restroom users who shall be present in the public portion of the restroom during operating hours. The attendant shall insure that no person of the opposite sex is permitted into the restroom, and that not more than one (1) person is permitted to enter a restroom stall, unless otherwise required by law, and that the restroom facilities are used only for their intended sanitary purposes. Access to restrooms for patron use shall not require passage through an area used as a dressing area by performers.

(i) Trash.

All interior trash cans shall be emptied into a single locked trash bin lined with a plastic bag at least once a day. At least four (4) times a day, the front and rear exteriors of any adult business shall be inspected for trash and debris and any trash and debris found shall be immediately removed and placed into a single locked trash bin lined with a plastic bag.

(j) Adult Live Entertainment - Additional Operating Requirements.

The following additional requirements shall apply to adult businesses providing adult live entertainment:

(1) No person shall perform adult live entertainment for patrons of an adult business except upon a permanently fixed stage at least 18 inches above the level of the floor.

(2) No performer shall be within ten (10) feet of a patron while the performer is performing. This ten-foot separation shall be marked by a continuous railing or other physical barrier designed to obstruct any contact between the performer and the patron(s).

(3) No performer shall have physical contact with any patron, and no patron shall have physical contact with any performer, while the performer is performing on the premises. In addition, while on the premises, no performer shall have physical contact with a patron and no patron shall 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 shall be advised of the separation and 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 (1) inch in size. And, if necessary, patrons shall also be advised of the separation and no touching requirements by employees or independent contractors of the establishment.

(4) All employees, except therefrom performers while performing on the fixed stage, while on or about the premises or tenant space, shall wear at a minimum an opaque covering which covers their specified anatomical areas.

(5) If patrons wish to pay or tip performers, payment or tips shall be placed in containers placed at least ten (10) feet from the stage or other area used by the performers. Patrons shall not throw money to performers, hand money directly to performers, place monies in the performers' costumes or otherwise place or throw monies on the stage. Patrons shall 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 (1) inch in size.

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

(7) The adult business shall provide an entrance/exit to the establishment for performers that is separate from the entrance/exit used by patrons, which the performers shall use at all times.

(8) The adult business shall 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 shall provide a minimum three (3) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers capable of (and which actually results in) preventing any physical contact between patrons and performers and the patrons must also be seven (7) feet 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.

(9) Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this subsection.

(k) Adult Motion Picture Theater - Additional Operating Requirements.

The following additional requirements shall apply to adult motion picture theaters:

(1) If the theater contains a hall or auditorium area, the area shall 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 shall be 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 shall not exceed the number of seats within the hall or auditorium area; and

(2) If an adult motion picture theater is designed to permit outdoor viewing by patrons seated in automobiles, it shall 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.

6.10.060. Transfer of Adult Businesses or Adult Business Regulatory Permits.

(a) A permit holder shall not operate an adult business under the authority of an adult business regulatory permit at any place other than the address of the adult business stated in the application for the permit.

(b) In the event of a transfer of ownership of the adult business or the adult business regulatory permit, the new owner shall be fully informed of the requirements of this Division, including the operational and development standards of this Chapter.

(c) In the event of a transfer of the adult business or the adult business regulatory permit, the transferee must provide the Planning Official with the following information within seven (7) days of the transfer:

(1) If the transferee is an individual, the individual shall state his or her legal name, including any aliases, and address, and shall submit satisfactory written proof that he or she is at least eighteen (18) years of age.

(2) If the transferee is a partnership, the partners shall state the partnership's complete name, address, the names of all partners, and whether the partnership is general or limited; and shall attach a copy of the partnership agreement, if any.

(3) If the transferee is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the State of California, the names and capacities of all officers and directors, the name of the registered corporate agent, and the address of the registered office for service of process.

6.10.070. Suspension or Revocation of Adult Business Regulatory Permits.

(a) On determining that grounds for permit suspension or revocation exist, the Planning Official or his designee shall furnish written notice of the proposed suspension or revocation to the permit holder. Such notice shall set forth the time and place of a public hearing and the ground or grounds upon which the hearing is based, the pertinent Encinitas Municipal Code Sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the permit holder, or shall be delivered to the permit holder personally, at least ten (10) days prior to the hearing date. Public hearings pursuant to this section shall be noticed in accordance with Government Code " 65091 and 65905 and conducted by the Planning Commission. Public hearings pursuant to this Section shall be conducted in accordance with procedures established by the Planning Commission but, at a minimum shall include the following:

(1) All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel.

(2) The Planning Commission shall not be bound by the formal rules of evidence.

(3) 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 permit holder. Extensions of time or continuances sought by a permit holder shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on permit suspensions or revocations.

(4) The Planning Commission's decision may be appealed in accordance with Section 6.10.080.

(b) A permit may be suspended or revoked based on the following causes arising from the acts or omissions of the permit holder, or an employee, independent contractor, partner, director, or manager of the permit holder:

(1) The building, structure, equipment, or location used by the adult business fails to comply with all provisions of these regulations and this Section relating to adult businesses, including the adult business development and operational standards contained in Section 6.10.050, and all other applicable building, fire, electrical, plumbing, health, and zoning requirements of the Encinitas Municipal Code.

- (2) The permit holder has failed to obtain or maintain all required City permits.
- (3) The permit holder has made any false, misleading, or fraudulent statement of material fact in the application for an adult business regulatory permit.
- (4) The permit is being used to conduct an activity different from that for which it was issued.
- (5) That an individual employed by the adult business (whether classified as an employee or independent contractor) has been convicted of two or more sex-related offenses that occurred in or on the licensed premises within a 12 month period and was an employee of the adult business at the time the offenses were committed.
- (6) That the use for which the approval was granted has ceased to exist or has been suspended for six (6) months or more.
- (7) That the transferee/new owner of an adult business or adult business regulatory permit failed to comply with the requirements of Section 6.10.060.
- (8) The permit holder, partner, director, or manager has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the adult business; or a permittee has been convicted of violating any of the following State laws on the premises of the adult business:
 - a. Any act of unlawful sexual intercourse, sodomy, oral copulation, or masturbation.
 - b. Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.
 - c. Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.
 - d. The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, 318 of the California Penal Code.
 - e. Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including, but not limited to, Sections 311 through 313.4.

f. Any act constituting a felony involving the sale, use, possession, or possession for sale of any controlled substance specified in Sections 11054, 11055, 11056, 11057, or 11058 of the California Health & Safety Code.

g. An act or omission in violation of any of the requirements of this Division if such act or omission is with the knowledge, authorization, or approval of the permit holder or is as a result of the permit holder's negligent supervision of the employees of the adult facility. This includes the allowance of activities that are or become a public nuisance which includes the disruptive conduct of business patrons whether on or immediately off the premises where such patrons disturb the peace, obstruct traffic, damage property, engage in criminal conduct, violate the law and otherwise impair the free enjoyment of life and property.

(c) After holding the hearing in accordance with the provisions of this Section, if the Planning Commission finds and determines that there are grounds for suspension or revocation, the Planning Commission shall impose one of the following:

(1) Suspension of the permit for a specified period not to exceed six (6) months;

or

(2) Revocation of the permit.

The Planning Commission shall render a written decision that shall be hand delivered or overnight mailed to the permit holder within five (5) days of the public hearing.

(d) Any affected person may appeal the decision of the Planning Commission in writing within five (5) days in accordance with the provisions of Section 6.10.090.

(e) In the event a permit is revoked pursuant to this Section, another adult business regulatory permit to operate an adult business shall not be granted to the permittee within twelve (12) months after the date of such revocation.

6.10.080. Appeal Procedures.

(a) After approval, denial, suspension or revocation of a permit, any affected person may appeal the decision to the City Council in writing within five (5) days after the written decision.

(b) Consideration of an appeal of the decision shall be at a public hearing, notice of which shall be given pursuant to California Government Code " 65091 and 65905 and which hearing shall occur within thirty (30) days of the filing or initiation of the appeal.

(c) The City Council action on the appeal of the decision shall be by a majority vote of the members present and upon the conclusion of the de novo public hearing, the City Council shall grant or deny the appeal. The City Council's decision shall be final and conclusive and shall be rendered in writing within four (4) working days of the hearing, such written decision to be immediately mailed to the party appealing the Planning Commission's decision.

(d) In reaching its decision, the City Council shall not be bound by the formal rules of evidence.

(e) Notwithstanding any provisions in this Section regarding the occurrence of any action within a specified period of time, the applicant may request additional time beyond that provided for in this division or may request a continuance regarding any decision or consideration by the City of the pending appeal. Extensions of time sought by applicants shall not be considered delay on the part of the City or constitute failure by the City to provide for prompt decisions on applications.

(f) Failure of the City Council to render a decision to grant or deny an appeal of a permit denial within the time frames established by this section shall be deemed to constitute an approval of the adult business regulatory permit.

(g) The time for a court challenge to a decision of the City Council is governed by California Code of Civil Procedure ' 1094.8.

(h) Notice of the City Council's decision and its findings shall include citation to California Code of Civil Procedure ' 1094.8.

(i) Any applicant or permit holder whose permit has been denied, suspended, or revoked pursuant to this Section shall be afforded prompt judicial review of that decision as provided by California Code of Civil Procedure ' 1094.8.

6.10.090. Employment of and Services Rendered to Persons Under the Age of Eighteen (18) Years Prohibited; twenty-one (21) if Liquor is Served.

(a) Employees.

Employees of an adult business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten (10) percent or greater interest, employee, or other person in charge of any adult business to employ, contract with, or otherwise retain any services in connection with the adult business with or from any person who is not at least eighteen (18) years of age. If liquor is served at the adult business, employees of the adult business must be at least twenty-one (21) years of age. If liquor is served at the adult business, it shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten (10) percent or greater interest, employee, or other person in charge of any adult business to employ, contract with, or otherwise retain any services in connection with the adult

business with or from any person who is not twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons seeking to contract with, be employed by, or otherwise service the adult business.

(b) Patrons.

Patrons of an adult business must be at least eighteen (18) years of age. It shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten (10) percent or greater interest, employee, or other person in charge of any adult business to permit to enter or remain within the adult business any person who is not at least eighteen (18) years of age. If liquor is served at the adult business, patrons must be at least twenty-one (21) years of age. If liquor is served at the adult business, it shall be unlawful for any owner, operator, manager, partner, director, officer, shareholder with a ten (10) percent or greater interest, employee, or other person in charge of any adult business to permit to enter or remain within the adult business any person who is not at least twenty-one (21) years of age. And said persons shall exercise reasonable care in ascertaining the true age of persons entering the adult business.

(c) X-rated movies.

The selling, renting and/or displaying of x-rated movies, videotapes, digital video disks (DVDs), compact disks (CDs) and laser disks shall be restricted to persons over eighteen (18) years of age. If an establishment that is not otherwise prohibited from providing access to the establishment to persons under eighteen (18) years of age sells, rents, or displays movies, videos, DVDs, or laser disks that have been rated AX or rated ANC-17 by the motion picture rating industry (MPAA), or which have not been submitted to the MPAA for a rating, and which consist of images that are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, said movies, videos, DVDs, CDs, and laser disks shall be located in a specific section of the establishment from which persons under the age of eighteen (18) shall be prohibited.

6.10.100. Inspections.

Each owner, operator, manager, employee of an adult business or other person in charge of an adult business shall permit representatives of the Police Department, Health Department, Fire Department, Planning Department, License and Code Services Division and other City departments, to inspect the adult business for the purpose of insuring compliance with the laws and operating standards applicable to adult businesses at any time it is occupied or open for business. Such inspections shall be conducted in a reasonable manner.

6.10.110. Regulations Non-Exclusive.

The provisions of this Chapter regulating adult businesses are not intended to be exclusive, and compliance therewith shall not excuse non-compliance with any other regulations pertaining to the operation of businesses as adopted by the City Council of the City of Encinitas.

6.10.120. Violations.

(a) Any owner, operator, manager, employee or independent contractor of an adult business violating or permitting, counseling, or assisting the violation of any of these provisions regulating adult businesses shall be subject to a fine of not more than one thousand dollars (\$1,000.00) pursuant to Government Code " 36900 and 36901, and any and all other civil remedies including permit revocation. All remedies provided herein shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate offense for each and every day during which such violation is committed or continued.

(b) The restrictions imposed pursuant to this Section constitute a permitting process, and do not constitute a criminal offense. Notwithstanding any other provision of the Encinitas City Municipal Code, the City does not impose a criminal penalty for violations of the provisions of this ordinance related to sexual conduct or activities.

6.10.130. Public Nuisance.

In addition to the penalties set forth in this Chapter, 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.

6.10.140. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this Article and the Ordinance to which it is a part, or any part thereof is held for any reason to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, the remaining sections, subsections, paragraphs, sentences, clauses, and phrases shall not be affected thereby. The City Council hereby declares that it would have adopted this Chapter and the Ordinance to which it is a part regardless of the fact that one or more sections, subsections, paragraphs, sentences, clauses, or phrases may be determined to be unconstitutional, invalid, or ineffective.