ORDINANCE NO. 2283

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST COVINA, CALIFORNIA, AMENDING CHAPTER 26 (ZONING) OF THE WEST COVINA MUNICIPAL CODE RELATED TO ADULT ORIENTED BUSINESSES

WHEREAS, on the 4th day of February, 2014, the City Council adopted Ordinance No. 2256 establishing a moratorium prohibiting the issuance of approvals for the operation of Adult Oriented Businesses and initiating a code amendment to consider revisions to the Adult Oriented Businesses section of the Municipal Code; and

WHEREAS, the Planning Commission held a study session on the 10th day of February, 2015 and on the 28th day of April, 2015 regarding Adult Oriented Businesses and zoning; and

WHEREAS, the Planning Commission, upon giving required notice, did on the 23rd day of June, 2015, conduct a duly advertised public hearing as prescribed by law, at which time the Planning Commission adopted Resolution No. 15-5772 recommending to the City Council approval of Code Amendment No. 14-01; and

WHEREAS, the City Council considered evidence presented by the Planning Commission, Planning Department, and other interested parties at a duly advertised public hearings on the 1st day of September and on the 6th day of October, 2015; and

WHEREAS, studies and investigations made by this Council and in its behalf reveal the following facts:

1. The existing Municipal Code standards for Adult Oriented Business have not been revised for eighteen years. Therefore it is appropriate to evaluate current development standards and to work with the City Attorney's Office to determine if the current ordinance is legally adequate in protecting First Amendment rights and in establishing standards that are appropriate for the City.

2. The standards in the Adult Oriented Business section of the Municipal Code may include regulations that are not in compliance with current legal requirements. The consideration of a code amendment allows City staff, in conjunction with the City Attorney's Office, to study the standards to ensure that they are legally adequate in protecting First Amendment rights, in establishing standards that are appropriate for the City, and that secondary effects of Adult Oriented Businesses are fully addressed.

3. The proposed action is considered to be exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that the proposed action consists of a code amendment, which does not have the potential for causing a significant effect on the environment.

WHEREAS, the City of West Covina has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the city. Cal. Const. art. XI, § 7.

WHEREAS, the City has the authority to impose time, place and manner restrictions on adult oriented businesses. City of Erie v. Pap's A.M., 529 U.S. 277 (2000).

WHEREAS, the City Council of the City of West Covina, in adopting this ordinance, takes legislative notice of the existence and content of the detailed studies prepared by other jurisdictions regarding the social and economic secondary effects on persons and properties surrounding established adult oriented businesses.

WHEREAS, the City Council finds that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City of West Covina, and thus certain requirements with respect to the ownership and operation of adult oriented businesses are in the public interest. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blight 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, the sale and use of drugs, and other law enforcement problems.

WHEREAS, it is not the intent of the City Council in adopting this ordinance to suppress any activities protected by the First Amendment, but rather to enact a content-neutral ordinance that addresses the secondary effects that adult businesses may have on the city. In developing this ordinance, the City Council has been mindful of legal principles relating to regulation of adult businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendments of the United States and California Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of adult businesses. The City Council has considered decisions of the United States Supreme Court regarding local regulation of adult businesses, including but not limited to the following: Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976); City of Renton v. Playtime Theaters, 475 U.S. 41 (1986); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); Barnes v. Glen Theatre, 501 U.S. 560 (1991). The City Council has also considered United States Ninth Circuit Court of Appeals decisions and decisions in other jurisdictions, including but not limited to the following: City of National City v. Wiener, 3 Cal. 4th 832 (1992), *cert. denied*, 510 U.S. 824 (1993); People v. Superior Court (Lucero), 49 Cal. 3d 14 (1989); City of Vallejo v. Adult Books,167 Cal. App. 3d 1169 (1985), cert. denied, 475 U.S. 1064 (1986); Lakeland Lounge v. City of Jacksonville, 973 F.2d 1255 (5th Cir. 1992), *cert. denied*, 507 U.S. 1030 (1993); Hang On, Inc. v. Arlington, 65 F.3d 1248 (5th Cir. 1995); Mitchell v. Commission on Adult Entertainment, 10 F.3d 123 (3rd Cir. 1993); International Eateries v. Broward County, 941 F.2d 1157 (11th Cir. 1991), cert. denied, 503 U.S. 920 (1992); Star Satellite v. City of Biloxi, 779 F.2d 1074 (5th Cir. 1986); Lady J. Lingerie v. City of Jacksonville, 973 F. Supp. 1428 (M.D. Fla. 1997); Movie & Video World, Inc. v. Palm Beach County, 723 F. Supp. 695 (S.D. Fla. 1989).

WHEREAS, the City Council finds that the locational requirements established by this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected

adult oriented businesses in the City of West Covina, and a sufficient reasonable number of appropriate locations for adult oriented businesses are provided by this ordinance.

WHEREAS, the City Council takes legislative notice of the existence and content of the following studies concerning the adverse secondary effects of adult oriented businesses in other cities: Newport News, Virginia (1996); Corpus Christi, Texas (1995); National Law Center (1995); Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); Minnesota Attorney General Report (1989); St. Paul, Minnesota (1987); 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); Los Angeles, California (1977). The City Council finds that these studies are relevant to the problems addressed by the City of West Covina in enacting this ordinance to regulate the adverse secondary effects of adult oriented businesses, and more specifically finds that these studies provide convincing evidence that:

1. Adult oriented businesses are linked to increases in the crime rates in those areas in which they are located and in surrounding areas.

2. Both the proximity of adult oriented businesses to sensitive land uses and the concentration of adult-oriented businesses tend to result in blight and deterioration of the areas in which they are located.

3. The proximity and concentration of adult oriented businesses adjacent to residential, recreational, religious, educational uses, as well as proximity to other adult oriented businesses can have adverse secondary impacts on local businesses and residences.

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

WHEREAS, the City Council finds the following, in part based upon its understanding of the documents, testimony and judicial decisions in the public record:

1. Evidence indicates that some dancers, models and other persons who publicly perform specified sexual activities or publicly display specified anatomical parts in adult businesses (hereinafter collectively referred to as "performers") have been found to engage in sexual activities with patrons of adult businesses on the premises of an adult oriented business.

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

3. Evidence indicates that performers at adult oriented 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 a location for engaging in unlawful sexual activity.

5. As a result of the above, and the increase in incidents of AIDS and Hepatitis B, both of which are sexually transmitted diseases, the city has a substantial interest in adopting regulations which will reduce, to the greatest extent possible, the occurrence of prostitution and casual sex acts at adult oriented businesses.

6. Evidence indicates that adult oriented businesses are frequently used for unlawful sexual activities, including prostitution, and sexual liaisons of a casual nature.

WHEREAS, the City Council may rely on studies and reports from other jurisdictions, relevant judicial decisions and public testimony that the City reasonably believes to be relevant to assert a connection between adult oriented business and the enumerated secondary effects. City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 438 (2002); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 52 (1986); Ctr. For Fair Pub. Policy v. Maricopa County, 336 F.3d 1153, 1168 (9th Cir. 2003).

WHEREAS, the City Council finds that preventing the direct exchange of money between performers and patrons will serve to reduce the likelihood of drug and sex transactions occurring in adult oriented businesses. Requiring separation between entertainers and patrons also reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the adult business.

WHEREAS, the City Council finds that enclosed or concealed booths and dimly-lit areas within adult oriented businesses greatly increase the potential for misuse of the premises, including potential harm to patrons and performers and unlawful conduct of a type which facilitates transmission of disease. Requirements that all indoor areas be open to view by management at all times, and that adequate lighting be provided are necessary in order to reduce the opportunity for, and therefore, the incidence of, illegal conduct and harm to patrons and performers within adult oriented businesses, and to facilitate the inspection of the interior of the premises by law enforcement personnel.

WHEREAS, the City Council finds that licensing is a legitimate and reasonable means of accountability to ensure that operators of adult oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

WHEREAS, the City Council recognizes that this ordinance is necessary to clarify the permit application process and to specify operational limitations for adult oriented businesses to further reduce and control the negative secondary effects of adult oriented businesses. This is in keeping with evolving case law and is part of the city's continuing efforts to balance the First

Amendment rights of adult oriented business operators and patrons with the city's substantial governmental interest in reducing such adverse secondary effects. Because the city's dispersal requirements must necessarily be limited to no more than 500 feet due to the primarily residential character of the city, and so as to provide for constitutionally sufficient alternative avenues of communication for adult uses to lawfully locate, the use of a permit process is essential to eliminate the adverse secondary effects of such uses and, in fact, in West Covina is the least restrictive means to do so.

WHEREAS, the City Council recognizes that a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, prohibition of complete nudity, and direct payment and receipt of gratuities between performers and patrons at adult use business establishments that provide live entertainment, including the following: Gammoh v. City of La Habra, 395 F.3d 1114, Amended by, Rehearing, en banc, denied by Gammoh v. City of La Habra, 402 F.3d 875 (9th Cir. 2005), BSA, Inc. v. King County, 804 F.2d 1104, 1110-11 (9th Cir. 1986); Kev, Inc. v. Kitsap County, 793 F.2d 1091 (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 (1995); and Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1996); Tily B. v. City of Newport Beach, 69 Cal. App. 4th 1, 81 Cal. Rptr. 2d 6 (1998) *as modified on reh'g* December 30, 1998, *review denied* March 17, 1999.

WHEREAS, the City Council finds that prohibiting physical contact between performers and patrons at an adult oriented business, requiring separate entrances for performers from those used for patrons, requiring separate restrooms for opposite sexes, prohibiting performers from soliciting payment of gratuities from patrons, and prohibiting the direct payment of gratuities 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.

WHEREAS, adult oriented business licensing ordinances are required to provide for prompt hearing and prompt judicial review for persons whose license or permit applications had been denied or revoked. Baby Tam & Co., Inc. v. City of Las Vegas, 154 F.3d 1097 (1998).

WHEREAS, adult oriented business may be regulated by cities pursuant to state law. Gov't Code § 65850.4; Penal Code §§ 318.5, 318.6.

WHEREAS, the City Council finds that a sufficient number of appropriate locations exist for the establishment of adult oriented businesses in the City considering the City's predominantly residential character (85% percent of the City is zoned for residential land uses).

WHEREAS, the City Council recognizes and relies on information regarding eight adult uses located within a 10 minute drive in the City of Industry, including Paradise Gentleman's Club (14310 Valley Blvd, City of Industry, CA 91746), Spearmint Rhino (15411 Valley Blvd, City of Industry, CA 91746), Bliss Showgirls (13217 Valley Blvd, La Puente, CA 91746), Déjà vu Showgirls (13217 Valley Blvd, La Puente, CA 91746), Monarch's Gentlemen's Club (15333 E Gale Ave, City of Industry, CA 91745), Satin Topless Gentlemen's Club (13079 Valley Blvd, City of Industry, CA 91746), Pinks Gentlemen's Club (15333 E Gale Ave, City of Industry, CA 91745),

Synn's Gentlemen's Club (15619 Valley Blvd, City of Industry, CA 91744); and regarding twenty-two adult uses located within a 10-30 minute drive there are following additional adult facilities: Knockouts Gentlemen's Club (1580 Clark St, Arcadia, CA 91006), Taboo Gentlemen's Club (11606 Clark St, Arcadia, CA 91006), Fritz That's It (710 E Katella Ave, Anaheim, CA 92805), Sahara Theatre (1210 S State College Blvd, Anaheim, CA 92806), Flamingo Showgirls (618 E Ball Rd, Anaheim, CA 92805), House of Eden (1189 E Ash Ave, Fullerton, CA 92831), The Holiday Gentlemen's Club (10915 Norwalk Blvd, Santa Fe Springs, CA 90670), Tropical Lei (2121 W Foothill Blvd, Upland, CA 91786), Strip Joint Advanced Entertainment (1405 E Mission Blvd, Pomona, CA 91766), Bare N Legal Showgirls (2851 Pomona Blvd, Pomona, CA 91768), Imperial Showgirls (2640 W Woodland Dr, Anaheim, CA 92801), Nicola's (960 S Gerhart Ave, Commerce, CA 90022), Playpen (1109 S Santa Fe Ave, Los Angeles, CA 90021), Sam's Hofbrau (1751 E Olympic Blvd, Los Angeles, CA 90021), Alameda Strip (4209 Alameda St, Vernon, CA 90058), Dames N Games (2319 E Washington Blvd, Los Angeles, CA 90021), Sam's After Dark (1501 E Washington Blvd, Los Angeles, CA 90021), Spearmint Rhino Los Angeles (2020 E Olympic Blvd, Los Angeles, CA 90021), Déjà Vu Showgirls (1800 S Main St, Los Angeles, CA 90015), Déjà vu Showgirls Afterhours (710 E Commercial St, Los Angeles, CA 90012), Hunk O Mania (1050 S Hill St, Los Angeles, CA 90015), Slammer (3688 Beverly Blvd, Los Angeles, CA 90004).

WHEREAS, the City Council takes note of the proliferation of adult material on the Internet and its availability as an alternative avenue of communications. The City Council also considers and relies on published decisions examining the proliferation of communications on the Internet. Reno v. ACLU, 521 U.S. 844 (1997) (the principle channel through which many Americans now transmit and receive sexually explicit communication is the Internet); Anhauser-Busch v. Schmoke, 101 F.3d 325, 329 (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. 1996); 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 explicitly material in the context of obscenity prosecutions). The emergence of the Internet brings with it a virtually unlimited additional source of adult oriented materials available to interested person in every community with a mere keystroke. An adult business no longer has be actually physically located in a city to be available to the community.

WHEREAS, the City Council finds that zoning, licensing and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in the City of West Covina, and to help assure that all operators of adult oriented businesses comply with reasonable regulations and are located in places that minimize the adverse secondary effects that naturally accompany the operation of such businesses.

WHEREAS the City Council finds that a closing hour 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 Mitchell v. Comm. On Adult Entertainment, 10 F.3d 123, 131-39 (3d Cir. 1993); Lady J. Lingerie, Inc. v. City of Jacksonville, 973 F.Supp. 1428 (M.D. Fla. 1997) and Lady J. Lingerie v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999).

WHEREAS, the City Council recognizes the possible harmful effects on children and minors exposed to the impacts of adult oriented businesses, and by the enactment of this ordinance intends to minimize minors' exposure to adult oriented businesses.

WHEREAS, the City Council finds that this code amendment is consistent with the West Covina General Plan and the implementation thereof.

NOW THEREFORE, the City Council of the City of West Covina does ordain as follows:

SECTION NO. 1: The above recitals are true and correct and are incorporated herein as if set forth herein in full.

SECTION NO. 2: Based on the evidence presented and the findings set forth, Code Amendment No. 14-01 is hereby found to be consistent with the West Covina General Plan and the implementation thereof and that the public necessity, convenience, general welfare, and good zoning practices require Code Amendment No. 14-01.

SECTION NO. 3: Based on the evidence presented and the findings set forth, the City Council of the City of West Covina approves Code Amendment No. 14-01 to amend Chapter 26 (Zoning) of the West Covina Municipal Code to read as shown below:

Chapter 26 - ZONING

ARTICLE XII. – Special Regulations for Unique Uses

DIVISION 20

Sec. 26-685.4100. - Purpose.

The purpose of this Division 20 is to prevent community-wide adverse economic impacts, increased crime, decreased property values, and the deterioration of neighborhoods that can be brought about by the concentration of adult oriented businesses in close proximity to each other or proximity to other incompatible uses such as schools for minors, churches, and residentially zoned districts.

It has been demonstrated in various communities that the concentration of adult-oriented businesses causes an increase in the number of transients in the area, and an increase in crime, and in addition to the effects described herein can cause other businesses and residents to move elsewhere. It is, therefore, the purpose of this division to establish reasonable and uniform

regulations to prevent the concentration of adult oriented businesses or their close proximity to incompatible uses, while permitting the location of such businesses in appropriate areas.

By the adoption of this ordinance, the City Council does not intend to condone or legitimize the distribution of obscene material, and the City Council recognizes that state law prohibits the distribution of certain materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities within the City.

Sec. 26-685.4200. - Definitions.

The following definitions shall apply for purposes of this section:

Adult arcade: An establishment having as one of its principal business purposes, for any form of consideration, one (1) or more still or motion picture projectors, or similar machines show films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult bookstore: An establishment having as one of its principal business purposes the display and/or distribution of adult merchandise, books, periodicals, magazines, photographs, drawings, sculpture, motion pictures, films, or videos, or other visual representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activity or specified anatomical areas.

Adult cabaret: A nightclub, restaurant, or similar business establishment which: (1) regularly features live entertainment as defined herein; and/or (2) which regularly features persons who display specified anatomical areas; and/or (3) shows films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult hotel/motel: A hotel or motel or similar business establishment offering public accommodations for any form of consideration which (1) provides patrons with closed-circuit television transmissions, films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; and (2) rents, leases, or lets any room for less than a six (6) hour period, or rents, leases, or lets any single room more than twice in a twenty-four (24) hour period.

Adult merchandise: Sexually oriented implements and paraphernalia, such as, but not limited to: dildo, auto suck, sexually oriented vibrators, edible underwear, benwa balls, inflatable orifices, anatomical balloons with orifices, simulated and battery operated vaginas, and similar sexually oriented devices.

Adult motion picture theater: An establishment having as one of its principal business purposes, the showing of, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult oriented business: Adult arcades, adult bookstores, adult cabarets, adult hotels/motels, adult motion picture theaters, adult theaters, sexual encounter centers, modeling studios, and any other business or establishment which offers and/or provides to its patrons merchandise, services or entertainment distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, but not including those activities, the regulation of which are preempted or prohibited by state law. "Adult oriented business" shall also include any establishment which, on a regular basis, provides or allows performers, models, or employees to appear in any place in non-opaque clothing, covering, or lingerie or in any opaque covering which is at any time altered to become non-opaque such that specified anatomical areas become visible. For the purposes of this section, emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas is found to be in existence in situations which include, but are not limited to, one (1) or more of the following:

(1) One of the principal purposes of the business or establishment is to operate as an adult oriented business as evidenced by the name, signage, advertising or other public promotion utilized by said establishment.

(2) One of the principal purposes of the business or establishment is to operate as an adult oriented business as demonstrated by its services, materials, products or entertainment constituting a substantial or significant portion of total business operations where such services, products or entertainment are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. As used in this division, the term "distinguished or characterized by an emphasis upon" shall mean and refer to the dominant or essential theme of the object described by such phrases. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon" the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character and theme are the depiction of the enumerated sexual activities or anatomical areas. See Pringle v. City of Covina, 115 Cal. App. 3d 151 (1981).

(3) As applied in this division, no business shall be classified as an adult oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Adult oriented material: Any book, periodical, magazine, photograph, drawing, sculpture, motion picture film, video, CD-ROM, laser disk, DVD, or other visual representation distinguished or characterized by an emphasis upon the depiction or description of specified sexual activity or specified anatomical areas.

Adult theater: A theater, concert hall, auditorium, or similar establishment which, for any form of consideration regularly features, as one of its principal business purposes, live performances which are distinguished or characterized by an emphasis on the display of specified sexual activities or specified anatomical areas.

Applicant: A person who is required to file an application for a permit under this chapter, and shall include the applicant's employees, agents, partners, directors, officers, shareholders or managers.

Business permit: A permit validly issued by the City of West Covina to operate an adult oriented business.

Employee: Any person who performs any service on the premises of a sexually oriented business, on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. "Employee" does not include a person exclusively on the premises for repair or perform maintenance of the premises or for the delivery of goods to the premises.

Establishment of an adult oriented business.

(1) The opening or commencement of any adult oriented business as a new business;

(2) The conversion of an existing business, whether or not an adult oriented business, to any adult oriented business, as defined;

(3) The addition of any adult oriented business to any existing business or an existing adult oriented business;

(4) The relocation of any adult oriented business;

(5) A change in twenty-five percent (25%) or more of the ownership of an existing adult oriented business.

Existing business: A business that has been in operation within the past six months. An adult oriented business shall only be considered an existing business if it has been in operation as an adult oriented business within the past six months.

Individual viewing area: Any area designed for occupancy of only one person at any time for the purpose of viewing live performances, pictures, movies, videos, or other presentations.

Live entertainment: Any display or performance by a human being which is characterized by an emphasis on specified sexual activities or specified anatomical areas.

Modeling studio: An establishment having as one of its principal business purposes, provides, for any form of compensation, models who, for the purposes of sexual stimulation of patrons, display specified anatomical areas to be observed, sketched, photographed, painted, sculpted, or otherwise depicted by persons paying such consideration. "Modeling studio" does not include schools maintained pursuant to standards set by the State Board of Education. "Modeling studio" further does not include a studio or similar facility owned, operated, or maintained by an individual artist or group of artists, and which does not provide, permit, or make available specified sexual activities.

Nudity or nude: The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operate or cause to operate: To cause to function or to put or keep in a state of doing business.

Operator: Any person who causes an adult oriented business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated an adult oriented business whether or not that person is an owner, part owner, or permittee of the business.

Owner or manager: Any person who operates, owns, or otherwise has control over an adult oriented business.

Performer or adult oriented business performer: Any dancer, model, entertainer, or other person who publicly performs specified sexual activities or publicly displays specified anatomical areas, or otherwise engages in performances distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.

Performer permit: A permit validly issued by the City of West Covina for a person to work as an adult oriented business performer within the City of West Covina.

Permittee: A person in whose name a permit to operate an adult oriented business has been issued, including the individual or individuals listed as an applicant on the application for an adult oriented business permit. In the case of a performer, it means the person in whose name the adult oriented performer permit has been issued. "Permittee" shall include the permittee's employees, agents, partners, directors, officers, shareholders or managers.

Person: Individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises: The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the permittee, as described in the application for a sexually oriented business permit.

Principal business purpose shall mean that the establishment:

(1) Has a substantial portion of its displayed merchandise which consists of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas; or

(2) Has a substantial portion of the wholesale value of its displayed merchandise which consists of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas; or

(3) Has a substantial portion of the retail value of its displayed merchandise which consists of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas; or

(4) Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of live performances, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas; or

(5) Maintains a substantial section of its net floor area for the sale or rental of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas; or

(6) Regularly features live performances, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas; and prohibits access by

minors, by reason of age, to its premises, and regularly advertises, on signage visible from a public right-of-way, as providing items that the advertising describes using the term "adult," "xxx," "triple-x," "x-rated," "erotic," "sexual," or a term or terms with similar import; or

Sexual encounter center: Any business, agency or person who, for any form of consideration or gratuity, provides a place where three (3) or more persons, not all members of the same family, may congregate, assemble or associate for the purposes of engaging in specified sexual activities or exposing specified anatomical areas.

Specified anatomical areas:

(1) Less than completely and opaquely covered human genitals; pubic region; buttock; 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.

(1) The exposure, display or depiction of human genitals in a state of sexual stimulation or arousal; or

(2) Acts of sexual intercourse, human masturbation, sexual stimulation or arousal; or

(3) Fondling or other erotic touching of one's own or another(s)' body/bodies, human genitals, pubic region, buttock, or female breast whether covered or not.

Specified criminal activity means any of the following specified crimes:

(1) Rape, child molestation, sexual assault, sexual battery, aggravated sexual assault, aggravated sexual battery, or public indecency;

(2) Prostitution, keeping a place of prostitution, pimping, or pandering;

(3) Obscenity, disseminating or displaying matter harmful to a minor, or use of child in sexual performance;

(4) Any offense related to any sexually-oriented business, including controlled substance offenses, tax violations, racketeering, crimes involving sex, crimes involving prostitution, or crimes involving obscenity;

(5) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

(6) Any offense in another jurisdiction that, had the predicate act(s) been committed in California, would have constituted any of the foregoing offenses.

Substantial: At least twenty-five percent (25%).

Temporary sign. Any sign subject to a time limitation or used for a limited time period or purpose. Temporary signs include promotional signs.

Sec. 26-685.4300. Permit required.

(1) It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of West Covina, the operation of an adult oriented business unless the person first obtains and continues to maintain in full force and effect a business permit from the City of West Covina pursuant to the provisions of this chapter.

(2) It shall be unlawful for any individual to engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an adult-oriented business unless the individual first obtains and continues in full force and effect a performer permit from the City of West Covina pursuant to the provisions of this chapter.

Sec. 26-685.4305 - Sexual encounter businesses prohibited.

No sexual encounter business is permitted to operate in any zone within the City of West Covina.

Sec. 26-685.4400. Adult oriented business permit application.

(1) Any person, association, partnership, group, or corporation wishing to operate, any adult oriented business shall submit an application, to the planning director. Possession of other state or city licenses does not exempt the applicant from this permit. The planning director shall grant or deny a permit application in accordance with the provisions of Section 26-685.4500 (Permit processing; grounds for denial).

(2) An application for an adult oriented business permit shall be signed by the applicant and shall contain or include the following information:

(a) A nonrefundable permit processing fee, as set by City Council resolution.

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

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

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

(e) If the applicant is an individual, he or she shall sign the application. If the applicant is other than an individual, an officer of the business entity or an individual with a 10 percent or greater interest in the business entity shall sign the application.

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

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

(h) The address to which notice of action on the application is to be mailed; the address shall not be a post office box.

(i) An applicant must state under penalty of perjury that he or she (as well as any of the officers, directors, or partners in the business) does not have a conviction for a specified criminal activity, or the equivalent in another state for which:

(i) If the conviction is a misdemeanor offense – Less than two (2) years have elapsed since the date of the conviction or the date of release from confinement imposed for the conviction, whichever is the later date.

(ii) If the conviction is a felony offense – Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date,

(iii) If the convictions are of two or more misdemeanor offenses or a combination of misdemeanor offenses occurring within a twenty-four (24) month period – Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date,

(j) The names of all employees, independent contractors, and other persons who will work at the adult oriented business, including performers.

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

(l) A certificate and straight-line drawing prepared within thirty (30) days prior to application depicting the building and the portion thereof to be occupied by the adult oriented business and (a) the property line of any other adult oriented business within seven hundred and fifty (750) feet of the primary entrance of the adult oriented business for which a permit is requested; and (b) the property lines of any church, school, park, residential zone or use within five hundred (500) feet of the primary entrance of the adult oriented business.

(m) A diagram of the off-street parking areas and premises entries of the proposed business showing the location of the lighting system required by Section 26-685.4600 (Development and Performance Standards).

(n) A security plan that satisfies the requirements of subsection (20) of Section 26-685.4600 (Development and Performance Standards).

(3) All persons who have been issued a business permit shall promptly supplement the information provided as part of the application for the permit required by this section, including, but not limited to, the names of all performers required to obtain a performer permit, within fifteen (15) calendar days of any change in the information originally submitted.

Sec. 26-685.4405. - Adult oriented business performer permit application.

(1) Any individual wishing to perform as an adult oriented business performer shall submit an application to the planning director. Possession of other state or city licenses does not exempt the applicant from this permit. The planning director shall grant, conditionally grant, or deny a permit application in accordance with the provisions of Section 26-685.4500 (Permit processing; grounds for denial).

(2) An application for a performer permit shall be signed by the applicant and shall contain or include the following information:

(a) A nonrefundable permit processing fee, as set by City Council resolution.

(b) The applicant's legal name and any other names (including "stage names" and aliases) used by the applicant; age, date, and place of birth; height, weight, and hair and eye color; and present residence address and telephone number.

(c) A copy of the applicant's driver's license, or other current government-issued identification.

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

(e) An applicant must state under penalty of perjury that he or she does not have a conviction for a specified criminal activity, or the equivalent in another state for which:

(i) If the conviction is a misdemeanor offense – Less than two years have elapsed since the date of the conviction or the date of release from confinement imposed for the conviction, whichever is the later date.

(ii) If the conviction is a felony offense – Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date,

(iii) If the convictions are of two or more misdemeanor offenses or a combination of misdemeanor offenses occurring within a twenty-four month period – Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date,

(f) The applicant must declare under penalty of perjury whether he or she has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other jurisdiction to engage in prostitution in such other jurisdiction. If the applicant has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, the applicant shall provide the place of such registration, licensing or legal authorization, and the inclusive dates during which he or she was so licensed, registered, or authorized to engage in prostitution.

(g) The applicant's fingerprints on a form provided by the Police Department, and a passport-size color photograph clearly showing the applicant's face. Any fees for the photographs and fingerprints shall be paid by the applicant.

(h) If the application is made for the purpose of renewing a performer permit, the applicant shall attach a copy of the permit to be renewed.

(3) Any individual who has been issued a performer permit shall promptly supplement the information provided as part of the application for the permit required by this section, including but not limited to each and every location within the City where the individual is performing, within fifteen (15) calendar days of any change in the information originally submitted.

Sec. 26-685.4500. Permit processing; grounds for denial.

(1) For both a business permit application and a performer permit application, the planning director shall determine whether the application is complete within thirty (30) days of receipt. The application shall be determined to be complete upon receipt of all required documentation and fees. The planning director shall thereafter approve or deny the permit within thirty (30) days of determining that the application is complete in accordance with the provisions of this section.

(2) The planning director shall deny a business permit application on the following grounds:

(a) The building, structure, equipment or location used by the business for which an adult oriented business permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of the city and the state, or with the locational or development and performance standards and requirements of this Ordinance.

(b) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for an adult oriented business permit, or within any subsequently updated information, renewal or report required by this division.

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

(d) The adult oriented business does not comply with the locational standards in Section 26-685.4000.

(e) The applicant has, within the previous twelve (12) months, had a permit for an adult oriented business denied or revoked or is applying for a new permit within the period in which the existing permit has been suspended.

(f) The applicant (or any officers, directors, or partners in the business) has been convicted of any specified criminal activity for which:

(i) If the conviction is a misdemeanor offense – Less than two (2) years have elapsed since the date of the conviction or the date of release from confinement imposed for the conviction, whichever is the later date.

(ii) If the conviction is a felony offense – Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date,

(iii) If the convictions are of two (2) or more misdemeanor offenses or a combination of misdemeanor offenses occurring within a twenty-four (24) month period – Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date,

(3) The planning director shall deny a performer permit application on the following grounds:

(a) The applicant has knowingly made any false, misleading or fraudulent statement of material fact in the application for an adult oriented performer permit, or within any subsequently updated information, renewal or report required by this division.

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

(c) The applicant has, within the previous twelve (12) months, had a performer permit denied or revoked or is applying for a new permit within the period in which the existing permit has been suspended.

(d) The applicant has, within the previous twelve (12) months, had a prostitution permit denied, suspended or revoked.

(e) The applicant has been convicted of any specified criminal activity for which:

(i) If the conviction is a misdemeanor offense – Less than two (2) years have elapsed since the date of the conviction or the date of release from confinement imposed for the conviction, whichever is the later date.

(ii) If the conviction is a felony offense – Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date,

(iii) If the convictions are of two or more misdemeanor offenses or a combination of misdemeanor offenses occurring within a twenty-four (24) month period – Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date,

(4) In the event a business or performer permit is denied, the applicant shall not reapply for a period of twelve (12) months from the date the denial becomes final.

Sec. 26-685.4600. Development and performance standards.

An adult oriented business permit shall comply with all of the following operational requirements, except as otherwise regulated by the State Department of Alcoholic Beverage Control:

(1) Zoning. The adult oriented business is to be located in the service-commercial (S-C) zone, medium-commercial (C-2) zone, heavy-commercial (C-3) zone, regional-commercial (R-C) zone, or manufacturing (M-1) zone.

(2) Proximity to other uses. The adult oriented business is not:

(a) Within five hundred (500) feet of any residential zone or any lot upon which a residential use is legally occurring at the time this ordinance is adopted and continues to occur at the time the application is reviewed; and

(b) Within five hundred (500) feet of any lot upon which there is located a church or other religious facility or institution, public park, or educational institution which is utilized by minors; and

(c) Within seven hundred and fifty (750) feet of another adult oriented business, provided that this separation requirement also applies from adult oriented businesses that are located in adjacent cities.

(d) Within one hundred (100) feet of the Civic Center.

(3) Measurement of distances. For the purpose of this subsection, measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line where the building or structure used as a part of the premises where the adult oriented business is conducted to the nearest property line of the premises of the religious institution, educational institution utilized by minors, or park, or to the nearest boundary of a residential district or use, or of the Civic Center.

(4) Traffic. The adult oriented business shall not be located in an area where the traffic from the adult oriented business shall increase the volume capacity ratio below level of service E; or, will worsen the existing condition at level of service F; or increase the volume capacity ratio by 0.02, all as determined by the city engineer.

(5) Signs and displays. Moving signs, as defined in Section 26-310.22, as well as signs with changeable copy and temporary signs are not permitted for adult businesses. Exterior signs shall not depict recognizable specified anatomical areas or adult entertainment activities. Advertisements, displays of merchandise, signs or any other exhibit depicting specified anatomical areas or adult entertainment activities placed within the interior of buildings or premises shall be arranged or screened to prevent public viewing from outside such building or premises.

(6) Exterior painting. Buildings and structures shall not be painted or surfaced with any design that would simulate a sign or advertising message and cannot be established or maintained such that the exterior appearance of the structure is substantially inconsistent with the external appearance of structures on abutting properties.

(7) Development standards. Except as set out herein or otherwise restricted by law, the adult oriented business shall comply with the development standards, including signage standards, for the zone in which the business is located.

(8) Display of adult oriented material or merchandise. The adult oriented business shall not display any adult oriented material or merchandise in such a manner so as to be visible from any location other than within the adult oriented business.

(9) Exclusion of minors. The adult oriented business shall not be accessible to any person under the age of eighteen (18), and such exclusion shall be clearly posted at all entrances.

(10) Areas open to public view. No area within the adult oriented business shall be visible from its exterior.

(11) Nude performance prohibited. Nude adult oriented performances are prohibited. Adult oriented performers shall wear no less than pasties to cover the nipple areas of female breasts, and a g-string that covers the genital area.

(12) Interior orientation. The interior of the adult oriented business shall be configured such that there is an unobstructed view, by use of the naked eye and unaided by video, closed circuit cameras or any other means, of every public area of the premises (excluding restrooms), including but not limited to the interior of all individual viewing areas, from a manager's station which is no larger than thirty-two (32) square feet of floor area with no single dimension being greater than eight (8) feet in a public portion of the establishment. No public area (excluding restrooms), including but not limited to the interior of any individual viewing area, shall be obscured by any door, curtain, wall, two way mirror or other device which would prohibit a person from seeing into the interior of the individual viewing area, solely with the use of the naked eye and unaided by video, closed circuit cameras or any other means, from the manager's station. A manager shall be stationed in the manager's station at all times the business is in operation or open to the public in order to enforce all rules and regulations. No individual viewing area shall be designed or operated to permit occupancy of more than one (1) person at a time.

(13) Business hours. No adult oriented business shall operate from the hours of 2:00 a.m. to 7:00 a.m.

(14) Parking lot lighting. The parking lot lighting system shall be so designed to produce a minimum light level of three foot candles on the entire parking facility's horizontal surface.

(15) Interior lighting. All areas of the adult oriented business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

a. Arcade: 10 foot-candle in public areas
b. Bookstores: 20 foot-candles
c. Cabaret: 5 foot-candles, except during performances, at which times the lighting shall be at least 1.25 foot candles
d. Hotels/Motels: 20 foot-candles in public areas
e. Individual viewing booths: 1.25 foot-candles
f. Motion picture theater: 10 foot-candles, except during performances, at which times the lighting shall be at least 1.25 foot-candles
g. Theater: 5 foot-candles, except during performances, at which times the lighting shall be at least 1.25 foot candles
h. Other establishments not listed above: 20 foot-candles

(16) Operation of individual viewing areas. Each machine used to show films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions, which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas, shall be located in an individual viewing area. Any individual viewing area of the adult oriented business shall be separated from patrons by a floor to ceiling plexiglass or other clear, permanent barrier and shall be operated and maintained with no holes, openings, or other means of direct visual or physical access between the interior space of two or more individual viewing areas. No individual viewing area may be occupied by more than one person at any one time.

(17) Separation zones. Whenever live entertainment is provided, patrons shall be physically separated from performers by a buffer zone of at least six (6) feet and no physical contact between performers and patrons shall be permitted. This provision shall not apply to an individual viewing area where the stage is completely separated from the individual viewing area by a floor to ceiling permanent, solid barrier.

(18) Use of single building for multiple uses. No building, premises, structure, or other facility shall be permitted to contain more than one type of adult oriented business as such types of adult

oriented business are defined in section 26-685.4200. For the purposes of this section, the phrase "adult oriented business" shall not be considered a single type of adult oriented business.

(19) Payment of gratuity. No patron shall directly or indirectly pay or give any gratuity to any performer and no performer shall solicit or accept any gratuity from any patron.

(20) Separate restrooms. The adult oriented business shall provide separate restroom facilities for male and female patrons and employees. The restrooms shall be free from adult oriented material. Only one (1) person shall be allowed in the restroom at any time, unless otherwise required by law, in which case the Adult oriented business shall employ a restroom attendant of the same sex as the restroom users who shall be present in the restroom during operating hours. The attendant shall prevent any person(s) from engaging in any specified sexual activities within the restroom and shall ensure that no person of the opposite sex is permitted in the restroom.

(21) Parking. The adult oriented business complies with the city's parking standards for the underlying use. Where no city parking standards exist for a particular underlying use, the applicant shall provide one (1) space per occupant as based upon the maximum occupancy as determined by the building official.

(22) Security plan. A detailed security plan is submitted to the planning director that describes measures that will be implemented to provide adequate security both within the interior and exterior of the premises of the business, specifically including, but not limited to, measures to comply with the requirements of subparagraphs (10) and (21) of this section.

(23) Security guards. For an adult oriented business that provides live entertainment, at least one security guard shall be on duty outside the premises, patrolling the grounds and parking areas, at all times while the business is open and providing live entertainment. If the occupancy limit of the premises is greater than fifty (50) persons, an additional security guard shall be on duty inside the premises for each additional fifty (50) patrons permitted. The security guard(s) shall be charged with preventing violations of and enforcing compliance by patrons with the requirements of this division, and notifying the appropriate authorities of any violations of law observed. Any security guard required by this subparagraph shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of ~~the~~ state or local law. No security guard required pursuant to this subparagraph shall act as a door person, ticket seller, ticket taker or admittance person while on duty as a security guard.

(24) The business location, structure, and equipment complies with all applicable health, fire, building, or other state, federal, or local laws and regulations.

(25) The owner or manager of an adult oriented business will not permit any employee on the premises to engage in a live showing of specified anatomical areas. The owner or manager of an adult oriented business shall be responsible to ensure compliance with this Ordinance by employees, performers and patrons.

Sec. 26-685.4650. - Inspections.

Officers of the City of West Covina may inspect the premises of an adult oriented business for the purpose of ensuring compliance with the law at any time the adult oriented business is open for business or occupied.

Sec. 26-685.4700. - Permit renewal.

Adult oriented business permits and adult oriented business performer permits shall only be valid for a period of one year from the date of issuance. Business permits and performer permits shall be renewed on a year to year basis provided that the permittee continues to meet the requirements set forth in this chapter. The renewal fee for an adult oriented business permit shall be established by resolution of the city council. A renewal request must be submitted to the planning director on a form provided by the City no later than 30 days prior to the permit's expiration date.

Sec. 26-685.4800. - Permits non-transferable.

(1) No adult oriented business permit or adult oriented business performer permit may be sold, transferred, or assigned by any permittee or by operation of law, to any other person, or persons. Any such sale, transfer, assignment or attempted sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of the permit and the permit shall thereafter be null and void. A business permit held by an individual in a corporation, partnership, or limited partnership is subject to the same rules of transferability as contained above.

(2) Any transfer of twenty-five percent (25%) or more of the ownership of an adult oriented business shall be considered a new adult oriented business and shall require a new business permit application.

Sec. 26-685.4900. Business Permit issued for one location only; performer permit issued for one individual only.

(1) An adult oriented business permit shall only be valid for the location specified on the permit.

(2) An adult oriented business performer permit shall only be valid as to the individual permittee.

Sec. 26-685.5000. - Permit revocation.

(1) The planning director may revoke or suspend an adult oriented business permit or an adult oriented business performer permit on the following grounds:

(a) Any violation of the provisions of this division.

(2) A business permit or performer permit shall be revoked upon a showing, by a preponderance of the evidence, of the following:

(b) The permittee, employee, agent, partner, director, stockholder, or manager of an adult oriented business has knowingly allowed or permitted, and has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the business, or in the case of a performer, the permittee has engaged in one of the activities described below while on the premises of an adult oriented business:

(i) Any act of sexual intercourse, sodomy, oral copulation, or masturbation.

(ii) Use of the establishment as a place where unlawful solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

(iii) Any conduct constituting a criminal offense which requires registration under Section 290 of the California Penal Code.

(iv) The occurrence of acts of lewdness, assignation, or prostitution, including any conduct constituting violations of Sections 315, 316, or 318 or Subdivision (b) of Section 647 of the California Penal Code.

(v) 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.

(vi) Any violation of the provisions of this division, including, but not limited to, the sales or exchange of drugs, or allowing any person to engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an adult oriented business, without a valid performer permit.

(c) Failure to abide by any disciplinary action previously imposed by an appropriate City.

(3) Written notice of the proposed revocation shall be furnished to the permittee. Such notice shall summarize the principal reasons for the proposed revocation or suspension and shall be delivered as follows:

(a) Business permit: both by posting the notice at the location of the adult oriented business and by sending the same, certified mail, return receipt requested and postage pre-paid, addressed to the permittee as that name and address appears on the permit.

(b) Performer permit: sending the same, certified mail, return receipt requested and postage pre-paid, addressed to the permittee as that name and address appear on the permit.

(4) Within ten (10) days after the later of the mailing or posting of the notice, the permittee may file a request for hearing with the planning director. If the request for a hearing is timely received by the planning director, the hearing shall be provided ~~as contained in~~ pursuant to Section 26-685.5100 below. If a hearing is requested, no action shall be taken before the planning commission decision.

(5) If the permittee does not request a hearing, the suspension or revocation shall take effect ten (10) days after the later of the mailing or posting of the notice, and the decision of the planning director shall be final.

Sec. 26-685.5100. - Permit revocation hearing.

(1) Upon receipt of a written request for a hearing the planning director shall transmit the request to the planning commission who shall conduct a noticed public hearing within thirty (30) days of receipt of such request. The hearing shall be advertised in a local paper of general circulation ten (10) days prior to hearing. The permittee shall be notified by certified mail, return receipt requested and postage pre-paid, of the time and place of the hearing. Notice by U.S. mail shall also be provided to any interested party requesting such notice.

(2) At the time and place set for the hearing, the planning commission shall hold a *de novo* hearing and shall afford the permittee and other interested parties a reasonable opportunity to be heard in connection therewith.

(3) To allow the permittee the opportunity to fully present their arguments, the formal rules of evidence shall not apply and all relevant evidence may be considered. However, the planning commission has the discretion to exclude irrelevant evidence, i.e., evidence that does not pertain to the issue(s) on appeal. The planning commission also has the discretion to exclude evidence it deems needlessly repetitive.

(4) If, based on all the relevant evidence and testimony of witnesses at the hearing, the planning commission finds that the permittee has committed violations of this division, or has allowed the commission of such violations, then the planning commission shall issue an order to either revoke, suspend or modify the permit. If the planning commission finds no violations, it shall take no action on the permit.

(5) The director shall mail by certified or registered U.S. Mail a copy of the planning commission's decision to the permittee, and to any other person requesting the same, within five (5) business days after the adoption thereof. The planning commission's decision shall be final and effective immediately, and shall specify that any action to review its decision shall be commenced no later than the time period set forth in the California Code of Civil Procedure Section 1094.8.

Sec. 26-685.5200. - Violation and penalty.

(a) Every person, whether acting as an individual owner, employee of the owner, permittee, or operator or employee of the permittee, or whether acting as a mere helper for the owner, permittee employer, or operator, or whether acting as a participant or worker in any way, who operates or conducts an activity referred to in this section without first obtaining an adult oriented business permit from the city, or who shall violate any provisions of this division, shall be guilty of a misdemeanor. Any person violating any of the provisions of this section shall be fined not more than one thousand dollars ($1,000.00) for each offense nor imprisoned for more than six (6) months in the county jail or both for each offense. Each day such violation shall continue shall be regarded as a separate offense.

(b) Any establishment operated, conducted or maintained contrary to the provisions of this section is unlawful and a public nuisance, and the city attorney may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinment thereof in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such adult oriented business and restrain and enjoin any person from operating, conducting or maintaining such an establishment contrary to the provisions of this division.

Secs. 26-685.5300—26-685.5900. - Reserved.

PASSED, APPROVED AND ADOPTED on this 20th day of October, 2015.

Fredrick Sykes
Mayor

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

ATTEST:

Nickolas S. Lewis
City Clerk

I, NICKOLAS S. LEWIS, CITY CLERK of the City of West Covina, California, do hereby certify that the foregoing Ordinance was regularly introduced and placed upon its first reading at a regular meeting of the City Council on the 6th day of October, 2015. That thereafter said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 20th day of October, 2015, by the following vote:

AYES:	Spence, Toma, Warshaw, Wong, Sykes
NOES:	None
ABSENT:	None
ABSTAIN:	None

Nickolas S. Lewis
City Clerk