



**City of American Canyon  
ORDINANCE 2009-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON APPROVING A MITIGATED NEGATIVE DECLARATION AND ADOPTING AMENDMENTS TO MUNICIPAL CODE REVISING REGULATIONS FOR THE ESTABLISHMENT AND OPERATION OF ADULT BUSINESSES IN THE CITY**

**WHEREAS**, on June 7, 2007, the City Council for the City of American Canyon enacted A 45-day urgency interim ordinance establishing a moratorium on the establishment of Adult Businesses within the City; and

**WHEREAS**, on July 5, 2007, the City Council for the City of American Canyon enacted A 10 month and 15-day urgency interim ordinance establishing a moratorium on the establishment of Adult Businesses within the City; and

**WHEREAS**, on April 20, 2008, the City Council for the City of American Canyon enacted a 12 month urgency interim ordinance establishing a moratorium on the establishment of Adult Businesses within the City; and

**WHEREAS**, reports were presented to the City Council describing the measures taken to alleviate the conditions which led to the adoption of the moratorium on the establishment and operation of adult businesses in the City pursuant to Government Code section 65858; and

**WHEREAS**, pursuant to the California Environmental Quality Act, an Initial Study was prepared for the project which concluded that no significant adverse environmental impacts would occur as a result of the project because revisions to the project have been made, and a draft Mitigated Negative Declaration was prepared; and

**WHEREAS**, a draft Mitigated Negative Declaration was circulated for public review from February 3, 2009 to February 23, 2009, and no public comments on the draft MND were received; and

**WHEREAS**, a duly-noticed public hearing was held by the City of American Canyon Planning Commission on February 11, 2009 and March 19, 2009, at which time all those in attendance were given the opportunity to speak on the proposal; and

**WHEREAS**, on March 19, 2009, the City of American Canyon Planning Commission unanimously recommended City Council approval of the proposed ordinance; and

**WHEREAS**, a duly-noticed public hearing was held by the City of American Canyon City Council on April 21, 2009 at which time all those in attendance were given the opportunity to speak on the proposal; and

WHEREAS, the City Council considered all of the written and oral testimony presented at the public hearing in making its decision.

NOW THEREFORE, the City Council of the City of American Canyon, California, does hereby resolve as follows:

**SECTION 1:** The Recitals set forth above are true and accurate and incorporated herein by this reference.

**SECTION 2: Environmental Determination.** That the American Canyon City Council hereby adopts the Mitigated Negative Declaration (MND) for the Adult Business Ordinance based on the following findings.

**SECTION 3: Findings.** Find, based on the following evidence and as required by Zoning Ordinance Section 19.48.040 C, that:

- a. The amendment is consistent with the goals and policies of the General Plan.

*The proposed amendment complies with the goals and policies of the General Plan, including Policy 1.1.3, to "control the location and number of adult-oriented businesses, game arcades, alcohols sales, entertainment establishments, gun sales, and similar uses that are characterized by intensities of use or activities that may conflict with the residential and semi-rural character of American Canyon as permitted by legislative and legal requirements."*

- b. The amendment is consistent with the purposes of the Zoning Ordinance, as set forth in Chapter 19.01, *Authority, Purposes, and Effects of the Zoning Ordinance.*

The amendments are consistent with the purpose of the Zoning Ordinance to protect and promote the public health, safety, peace, comfort, convenience, aesthetics, prosperity, and general welfare. More specifically, the amendments serve to establish clear, understandable and applicable land use regulations for adult oriented businesses.

**SECTION 4: Municipal Code Amendments.** The City Council amends Title 5 and Title 19 of the American Canyon Municipal Code ("Municipal Code") to add specific language to Chapter 5.06 entitled "Adult-Entertainment Businesses, Adult Performers" and Chapter 19.05.010 entitled "Purpose" to read as follows:

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**"Chapter 5.06 ADULT-ENTERTAINMENT BUSINESSES, ADULT PERFORMERS AND FIGURE MODELS**

**5.06.010 Legislative purpose.**

It is the purpose of this chapter to regulate adult-entertainment businesses in order to promote the health, safety, morals and general welfare of the citizens of the city. The provisions of this chapter have neither the purpose nor effect of imposing a

limitation or restriction on the content of any communicative materials or communicative conduct, including adult-entertainment business products and adult entertainment communicative conduct. Similarly, it is not the intent or effect of this chapter to restrict or deny access by adults to adult entertainment business products or adult entertainment communicative conduct protected by the First Amendment, or to deny access by the distributors and exhibitors of adult entertainment business products or adult entertainment communicative conduct to their intended market or audience. It is neither the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

#### **5.06.020 Definitions.**

For the purpose of this chapter, the following words and phrases are defined as follows:

"Adult-entertainment business" means any of the following:

1. "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture machines, projectors or other image producing devices are maintained to show images to five or fewer persons per machine at any time, and where a substantial portion of the images so displayed are distinguished or characterized by an emphasis on matters depicting or describing specified sexual activities.

2. "Adult bookstore, adult novelty store or adult video store" means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, compact discs (CDS), slides or other visual representations that are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas; or

b. Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

The items described in subsections (a) and (b) shall be referred to collectively as "adult products."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of products depicting, describing or relating to specified sexual activities or specified anatomical areas and still be categorized as adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration of the specified products that are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

3. "Adult cabaret" means a nightclub, restaurant, or similar business establishment that: a. regularly features live performances that are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or b. regularly features persons who appear in a state of nudity.

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

5. "Adult motion picture theater" means a building or portion thereof or area, open or enclosed, used for the presentation of motion pictures or other images in which a substantial portion of the total presentation time is devoted to the presentation of motion pictures distinguished or characterized by their emphasis on matters depicting, describing or relating to specified sexual activities, for observation by patrons or customers.

6. "Adult theater" means a theater, concert hall, auditorium or similar establishment that, for any form of consideration, regularly features live performances that are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.

7. "Modeling studio" means a business that provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who display specified anatomical areas to be observed, drawn, 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. Modelling studio further does not include a studio or similar facility owned, operated or maintained by an individual artist or group of artists, that does not provide, permit or make available specified sexual activities.

"Adult-entertainment business operator" (hereinafter "operator") means a person who supervises, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the activities at an adult-entertainment business.

"Adult performer" means a person who engages in or participates in any live performance displaying specified anatomical areas or depicting or involving specified sexual activities in an adult-entertainment business.

"Bar" means any commercial establishment licensed by the State Department of Alcoholic Beverage Control to serve any alcoholic beverages for consumption on the premises.

"Chief of police" means the chief of police of the city of American Canyon or authorized representative.

"City Manager" means the city manager of the city of American Canyon or authorized representative.

"Couch dancing or Straddle dancing" means an employee or independent contractor of the adult-oriented business intentionally touching any patron or coming within six (6) feet of any patron while engaged in the display or exposure of any specified anatomical area, or while simulating any specified sexual activity.

"Distinguished or characterized by an emphasis upon" means and refers to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films "that 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.3. 151 (1981).

"Figure model" means any person who, for pecuniary compensation, consideration, hire or reward, displays specified anatomical areas in a modeling studio to be observed, sketched, painted, drawn, sculptured, photographed or otherwise depicted.

"Nudity" or "in a state of nudity" means the showing of the human male or female genitals, pubic area, anus or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering below a horizontal line across the top of the areola at the areola's highest point, or the showing of the covered male genitals in a discernible turgid state.

"Operate an adult-entertainment business" means the supervising, inspecting, directing, organizing, controlling or in any other way being responsible for or in charge of activities at an adult-entertainment business.

"Permittee" means the person to whom an adult-entertainment business permit is issued.

"Person" means any individual, partnership, firm, association, joint stock company, corporation, limited liability company or combination of individuals of whatever form or character.

"Regularly features" with respect to an adult theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances that are

distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occur on two or more occasions within a thirty (30) day period; three or more occasions within a sixty (60) day period; or four or more occasions within one hundred and eighty (180) day period, shall to the extent permitted by law be deemed to be a regular and substantial course of conduct.

"Specified anatomical areas" shall include:

1. Less than completely and opaquely covered a. human genitals or pubic region, including anus; b. buttocks and c. female breast below a point immediately above the top of the areola; and
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities" shall include the following:

1. Actual or simulated intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following depicted sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or
2. Clearly depicted human genitals in a state of sexual stimulation, arousal or tumescence; or
3. Use of human or animal masturbation, sodomy, oral copulation, coitus, ejaculation; or
4. Fondling or touching of nude human genitals, pubic region, buttocks, anus or female breasts; or,
5. Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or,
6. Erotic or lewd touching, fondling or other contact with an animal by a human being; or,
7. Human excretion, urination, menstruation, vaginal or anal irrigation.

**5.06.021 Couch dancing/straddle dancing and other sexual and related activities prohibited.**

For purposes of this section, couch dancing or straddle dancing shall be defined as an employee or independent contractor of the adult-oriented business intentionally touching any patron or coming within six (6) feet of any patron while engaged in the

display or exposure of any specified anatomical area, or while simulating any specified sexual activity.

A. No person shall operate or cause to be operated an adult-oriented business, regardless of whether or not a permit has been issued under this Code, knowingly, or with reason to know, permitting, suffering or allowing any employee or independent contractor:

1. To engage in a couch dance or straddle dance with a patron at the business;
2. To contract or otherwise agree with a patron to engage in a couch dance or straddle dance with a person at the business;
3. To intentionally touch any patron at an adult-oriented business while engaged in the display or exposure of any specified anatomical area or engaged in or simulating a specified sexual activity;
4. To voluntarily be within six (6) feet of any patron while engaged in the display or exposure of any specified anatomical area or engaged in or simulating a specified sexual activity;
5. To violate any provision of Section 5.10.034 of this Code.

B. No employee or independent contractor of an adult-oriented business, regardless of whether or not a permit has been issued for said business under this chapter, shall:

1. Engage in a couch dance or straddle dance with a patron at the business;
2. Contract or otherwise agree to engage in a couch dance or straddle dance with a patron at the business;
3. Engage in the display or exposure of any specified anatomical area or engage in or simulate a specified sexual activity while intentionally touching a patron at the adult-oriented business;
4. Engage in the display or exposure of any specified anatomical area or engage in or simulate a specified sexual activity closer than six (6) feet from any patron;
5. Engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of eleven p.m. and ten a.m.;

6. Violate any provision of Section 5.10.034 of this Code.

C. No person at any adult-oriented business, regardless of whether or not said business is permitted under this Code, shall intentionally touch an employee or independent contractor who is displaying or exposing any specified anatomical area or engaging in or simulating a specified sexual activity at the adult-oriented business.

D. No person at any adult-oriented business, regardless of whether or not said business is permitted under this Code, shall engage in a couch dance or straddle dance with an employee or independent contractor at the business who is displaying or exposing any specified anatomical area or engaging in or simulating a specified sexual activity.

E. No person at any adult-oriented business, regardless of whether or not a permit has been issued for said business under this chapter, shall violate any provision of Section 5.10.034 of this Code.

F. No waiter(s) or waitress(es) at an adult-oriented business, regardless of whether or not a permit has been issued for said business under this chapter, shall appear on the premises in the nude, seminude, or display or expose specified anatomical areas.

**5.06.022 Establishment of an adult-oriented business.**

The establishment of an adult-oriented business shall include any of the following:

A. The opening or commencement of operation of any such business as a new business;

B. The conversion of any existing business, (whether or not an adult-oriented business), to any adult-oriented business;

C. The addition of any adult-oriented business to any existing adult-oriented businesses if the addition results in enlargement of the place of business. For the purposes of this paragraph, enlargement shall mean an increase in the size of the building within which the business is conducted by either construction or use of an adjacent building or any portion thereof, whether located on the same or an adjacent lot or parcel of land.



**5.06.030 Permit required for operation of an adult-entertainment business providing live performances displaying specified anatomical areas or depicting or involving specified sexual activities.**

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 the operation of an adult-entertainment business that provides live performances displaying specified anatomical areas or depicting or involving specified sexual activities unless the person first obtains and continues to maintain in full force and effect a permit (hereinafter "adult-entertainment business permit") from the city of American Canyon as required herein.

**5.06.040 Application for permit for an adult-entertainment business involving live performances.**

A. Any person desiring to obtain an adult-entertainment business permit to operate an adult-entertainment business for which a permit is required pursuant to Section 5.06.030 shall apply to the chief of police on a form provided by the police department. Before submitting the application a non-refundable fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of the investigation and report required by this chapter. The department of finance shall issue a receipt to the applicant showing that such permit application fee has been paid. The applicant shall provide the receipt or a copy thereof to the chief of police at the time of applying for a permit under this section.

B. The application to the chief of police shall set forth the following information:

1. The full and true name and any other names of each person with an ownership interest in the adult-entertainment business and of each person who will operate the adult-entertainment business;

2. The present address and telephone number and driver's license number, if any, of the applicant and any operator;

3. The two previous addresses immediately prior to the present address of the applicant and any operator;

4. Written proof that the applicant and any operator is at least eighteen (18) years of age;

5. The height, weight, color of eyes and hair of the applicant and any operator;

6. Five color portrait photographs at least 2" x 2" of the applicant and any operator;

7. The business license or tax certificate history of the applicant and any operator, including whether the person while previously operating in this or another city, county or state under license, has had a license revoked or suspended, the reason(s) therefor, and the person's business activity or occupation subsequent to the suspension or revocation;

8. All criminal convictions of any person with an ownership interest and any operator of offenses specified in Section 5.06.100 within five years of the date of application;

9. The name and address of the lessor of the real property on which the business is to be conducted, and a copy of the lease agreement or other documentation to establish that the owner and/or landlord of the premises consents to the establishment of an adult-entertainment business on the premises;

10. Detailed plans of the site and building as they will be operated; and

11. Such other identification and information necessary to discover the truth of the matters specified in this section as required to be set forth in the application.

C. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown on its articles of incorporation, together with the names and residence addresses of each of the officers, directors and each stockholder holding more than ten percent (10%) of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and the residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply.

D. The chief of police shall take fingerprints and additional photographs of the applicant and any operator, and shall confirm the height and weight of the applicant and any operator.

E. The application for a permit does not authorize conducting an adult-entertainment business until a permit has been granted. The issuance of a business operations tax certificate pursuant to Chapter 3.08 of this code shall not authorize conducting an adult-entertainment business until the necessary adult-entertainment business permit required by Section 5.06.030 has been lawfully granted.

#### **5.06.050 Corporate applicants—Exemption.**

The provisions of Section 5.06.040B(4), (5) and (7) and D. shall not apply to require any corporate applicant to provide such information as to the corporation; provided, however, that such information shall be provided for any operator.

#### **5.06.060 Adult performer permits and figure model permits.**

A. No person shall engage in or participate in any live performance depicting or displaying specified anatomical areas or involving specified sexual activities in an adult-entertainment business unless the person first obtains and continues in full force and effect an adult-entertainment business performer permit (hereinafter "adult performer permit") and complies with all requirements of this chapter and other applicable laws.

B. No person shall act as a figure model in a modeling studio unless the person first obtains and continues in full force and effect a figure model permit (hereinafter "figure model permit") and complies with all requirements of this chapter and other applicable laws.

C. The issuance of a business operations tax certificate pursuant to Chapter 3.08 of this code shall not authorize any person to perform any act for which an adult performer permit or figure model permit is required until the necessary permit has been lawfully approved.

**5.06.070 Application for adult performer permit or figure model permit.**

A. An application for an adult performer permit or figure model permit shall be made to the chief of police on a form provided by the city clerk. Prior to submitting an application a non-refundable fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of investigation and report required by this chapter. The department of finance shall issue a receipt to the applicant showing that a permit application fee has been paid. The applicant shall provide the receipt or a copy thereof to the chief of police at the time of applying for a permit under this section.

B. The application to the chief of police shall set forth the following information:

1. Name, residence address and telephone number of the applicant, and two previous addresses immediately prior to the present address;

2. Driver's license number, if any, of the applicant;

3. Applicant's height, weight, color of eyes and hair;

4. Five color portrait photographs of the applicant at least 2" x 2";

5. Written evidence that the applicant is at least eighteen (18) years of age;

6. The name and address of the adult-entertainment business(es) where the applicant is to be employed or is to perform, if known, and the name of the owner(s) of the business(es);

7. The names and address of any adult-entertainment businesses where the applicant previously engaged in or participated in live performances displaying specified anatomical areas or depicting or involving specified sexual activities or acted as a figure model;

8. Whether the applicant has been convicted of any offense specified in Section 5.06.100 within five years of the date of application; and

9. The adult performer or figure model permit or license history of the applicant; whether applicant has had a license revoked or suspended, the reason therefor and the applicant's business activity or occupation subsequent to the suspension or revocation.

C. The chief of police shall take fingerprints and a photograph of the applicant and shall confirm the information submitted

**5.06.080 Verification of application.**

Every application for a permit under this chapter shall be verified as provided in Section 128.7 of the California Code of Civil Procedure for the verification of pleadings.

**5.06.090 Investigation and recommendations—Temporary permit.**

A. Upon receiving an application for an adult-entertainment business permit, the chief of police shall:

1. Stamp the application as received on the date of receipt, and determine whether the application is complete. If the chief of police determines that the application is incomplete or has been completed improperly, the chief of police shall promptly notify the applicant of that fact and, on request of the applicant, grant the applicant an extension of time of ten (10) days or less to complete the application properly. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time;

2. Within ten (10) days of the date of filing of a complete application, refer the application to the building inspections division, the planning division and the fire department; and

3. Within a reasonable period, not exceeding forty-five (45) days after the filing of a complete application, investigate the application and recommend approval or denial to the city manager. A failure to make a recommendation within the specified time period shall not be considered a recommendation for approval or denial.

B. Within ten (10) days of the date of filing of a complete application, and if the chief of police determines that (1) on the face of the application, there is no basis for denial of the permit under Section 5.06.100 due to prior criminal convictions, based solely upon the information provided by the applicant in the application; and (2) the

location of the proposed adult-entertainment business conforms with all requirements of the Title 17, the city manager shall issue a temporary permit authorizing operation of the adult-entertainment business while the chief of police investigates the application and the city manager determines whether to issue or deny a regular permit.

C. The building inspections division, the planning division and the fire department shall inspect the premises and make separate recommendations to the city manager, within thirty (30) days after the filing of the completed application.

#### **5.06.100 Issuance of permit for an adult-entertainment business.**

A. The city manager shall act on the application for an adult-entertainment business permit within sixty days (60) days after the date of filing of a completed application, and shall issue a regular permit if all requirements for an adult-entertainment business described in this chapter are met, unless the city manager finds:

1. That the operation as proposed by the applicant, if permitted, will not comply with all applicable laws, including, but not limited to, the Title 17 of this code and the locational requirements set forth therein, and the building, health, housing and fire codes of the city of American Canyon.

2. That the applicant or any operator has been convicted of any of the following offenses or convicted of an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) and (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may thereafter be amended or renumbered; provided, however, that the city manager shall issue a permit to any person convicted of any of the crimes described above if (a) the person is otherwise qualified for a permit; and (b) the longer of the following time periods has passed:

- i. Five years from date of the conviction; or
- ii. Five years from release from confinement; or
- iii. Five years from formal release from probation period; or
- iv. Five years from formal release from parole.

3. That the applicant has knowingly made a material misrepresentation in the application;

4. That the applicant or any operator has had a permit for an adult-entertainment business or adult-related establishment denied or revoked for cause by this city or any other city or county within the last five years;

5. That the applicant or operator is not at least eighteen (18) years of age;

6. That the applicant has not paid the required fee to the department of finance.

B. Notice of Decision. Not later than five days after the date of the decision of the city manager, notice of the decision shall be sent to the applicant postage prepaid at the address shown in the application and shall state whether the decision of the city manager was to grant or deny the permit.

C. Upon issuance of a temporary permit or a regular permit, or if the city manager neither grants nor denies the regular permit within sixty (60) days after the date a complete application is filed, the applicant may begin operating the adult-entertainment business for which the permit was sought, subject to strict compliance with the locational requirements of Chapter 5.06.255 of this code and the development and operational standards and requirements set forth in this chapter. Notwithstanding that applicant begins operating the adult-entertainment business under this section prior to the city manager's decision, the city manager may subsequently deny the application for a permit. In the event of a denial, the applicant shall cease operating the adult-entertainment business within ten (10) days unless the applicant timely appeals the decision denying the permit pursuant to Section 5.06.120. If a timely notice of appeal is filed, the applicant may continue operating the adult-entertainment business while the appeal is pending.

#### **5.06.110 Issuance of adult performer permit or figure model permit.**

A. The chief of police shall act on the adult performer permit or figure model application within sixty (60) days after the filing of a complete application. Pending the decision on the application, the applicant who has filed a complete application shall be entitled to perform as an adult performer or figure model, and the chief of police shall issue a temporary permit for this purpose; provided that no temporary permit shall be issued to a person who has applied for, and had denied within the past one year, an adult performer permit or figure model permit.

B. The chief of police shall issue the permit if all requirements for the permit are met, unless the chief of police finds:

1. That the applicant has been convicted of any of the following offenses or convicted of an offense without the State of California that would have constituted any of the following offenses if committed within the State of California: Sections 243.4, 261, 266a, 266b, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 288, 314.1, 314.2, 315, 316, 318, 653.22 or subdivisions (a), (b) or (d) of Section 647 of the California Penal Code; any offense requiring registration under provisions of either Section 290 of the California

Penal Code or Section 11590 of the California Health and Safety Code; or any felony offense involving the possession, possession for sale, sale, transportation, furnishing, giving away, of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the California Health and Safety Code, or as those sections may hereafter be amended or renumbered; provided, however, that the chief of police shall issue a permit to any person convicted of any of the crimes described above if (a) the person is otherwise qualified for a permit; and (b) the longer of the following time periods has passed:

- i. Five years from date of the conviction; or
  - ii. Five years from release from confinement; or
  - iii. Five years from formal release from probation period; or
  - iv. Five years from formal release from parole.
2. That the applicant has knowingly made a material misrepresentation in the application.
  3. That the applicant has had an adult performer permit or figure model permit denied or revoked for cause by this city or any other city or county within the last five years.
  4. That the applicant is not at least eighteen (18) years of age.
  5. That the applicant has not paid the required fee to the department of finance.

B. Notice of Decision. The decision shall be in writing and mailed to the applicant postage prepaid, within five days after the chief of police's decision. If the permit is denied, the applicant shall cease activities as an adult performer or figure model within ten (10) days unless the applicant timely appeals the decision denying the permit pursuant to Section 5.06.120. If a timely notice of appeal is filed, the applicant may continue acting as an adult performer or figure model while the appeal is pending.

#### **5.06.120 Administrative appeals: issuance or denial of permit**

A. Adult-entertainment Business Permits. Any applicant aggrieved by the decision of the city manager relating to the issuance or denial of a permit for an adult-entertainment business may, within ten (10) days after the date of mailing of the decision to the applicant, appeal the decision to the city council by filing a written notice of appeal with the city clerk. Pending a decision on the appeal, and if a temporary permit has been issued, the appellant may continue to operate the adult-entertainment business. If an appeal is not filed within ten (10) days, the decision of the city manager shall be final.

B. Adult Performer Permits or Figure Model Permits. Any applicant aggrieved by the decision of the chief of police relating to the issuance or denial of any adult performer permit or figure model permit may, within ten (10) days after the date of mailing of the decision to the applicant, appeal the decision to the city council by filing a written notice of appeal with the city clerk. Pending a decision on the appeal, the appellant may continue to perform as an adult performer or figure model pursuant to the temporary permit. If an appeal is not filed within ten (10) days, the decision of the chief of police shall be final.

C. Hearing on Appeal. An appeal pursuant to subsection (A) or (B) shall be set for hearing by the council at a date not later than thirty (30) days after the filing of the notice of appeal. The notice of hearing shall be mailed to the applicant at least ten (10) days prior to the date set for the hearing. The council may continue its hearing on the appeal from time to time; provided, however, that the decision on the appeal shall issue no later than thirty (30) days after the original date set for hearing. The council shall hear all relevant evidence from competent persons relating to the granting or denial of the permit. It may return the matter to the city manager or chief of police for further information or further investigation. The council may affirm, reject or modify the decision of the city manager or chief of police.

D. Appointment of Hearing Examiner. The city council may employ the procedure specified in this code for the appointment of a hearing officer to hear and decide the appeal.

**5.06.130 Term and renewal of adult-entertainment business permits.**

A. An adult-entertainment business permit shall expire one year from the date of issuance of the permit, unless sooner suspended or revoked.

B. A permit that has not been suspended or revoked may be renewed for the period specified in Subsection (A) above on written application to the chief of police. Applications for renewal shall be acted on as provided in this chapter for permit applications. Before submitting the renewal application a non-refundable renewal fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of reviewing the renewal application. The application shall be filed at least thirty (30) days but not more than sixty (60) days prior to the expiration date of the current valid permit. When a timely and complete application for renewal is filed, the expiration of the permit shall be stayed until a decision on the renewal application is issued. When the application for renewal is filed less than thirty (30) days before the expiration date, the expiration of the permit shall not be stayed.

C. An adult-entertainment business lawfully operating as a conforming use pursuant to an adult-entertainment business permit is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the adult-entertainment business permit, of a use or a zone not consistent with the locational requirements set forth in Chapter 5.06.255 of this code, and a renewal application shall not be denied on that ground.



**5.06.140 Term and renewal of adult performer permits and figure model permits.**

A. An adult performer permit or figure model permit shall expire one year from the date of issuance of the permit, unless sooner suspended or revoked.

B. A permit that has not been suspended or revoked may be renewed for the period specified in Subsection (A) above on written application to the chief of police. Applications for renewal shall be acted on as provided in this chapter for permit applications. Before submitting the renewal application a non-refundable renewal fee as established by resolution of the city council shall be paid to the department of finance to defray, in part, the cost of reviewing the renewal application. The application shall be filed at least ten (10) days but not more than sixty (60) days prior to the expiration date of the current valid permit. When a timely and complete application for renewal is filed, the expiration of the permit shall be stayed until a decision on the renewal application is issued. When the application for renewal is filed less than ten (10) days before the expiration date, the expiration of the permit shall not be stayed.

**5.06.150 Name and place of business—Change of location.**

No person granted a permit for an adult-entertainment business shall operate the adult-entertainment business under any name or at any location not specified in the permit.

**5.06.160 Suspension or revocation of adult-entertainment business permits, adult performer permits, and figure model permits.**

A. An adult-entertainment business permit may be suspended or revoked by the city manager in accordance with the procedures and standards of this section. An adult performer permit or figure model permit may be suspended or revoked by the chief of police in accordance with the procedures and standards of this section.

B. The city manager or chief of police shall hold a hearing prior to the suspension or revocation of a permit. On determining that grounds for permit suspension or revocation exist, the city manager or chief of police shall furnish written notice of the proposed suspension or revocation to the permittee. The notice shall set forth the time and place of a public hearing to be held prior to the suspension or revocation, the ground or grounds upon which the proposed suspension or revocation is based, the pertinent code sections, and a brief statement of the factual matters in support thereof. The notice shall be mailed, postage prepaid, addressed to the last known address of the permittee, or shall be delivered to the permittee personally, at least ten (10) days prior to the hearing.

C. Adult-Entertainment Business Permit. An adult-entertainment business permit required pursuant to Section 5.06.030 may be suspended or revoked or be subjected to other appropriate disciplinary action, if any of the following causes arises from the acts or omissions of the permittee, or an operator of the adult-entertainment business:

1. The building, structure, equipment or location used by the adult-entertainment business fails to comply with all applicable building, fire, electrical, plumbing, health and zoning requirements of the city of American Canyon all applicable State and federal requirements of a similar nature that are customarily enforced by the city, and all provisions of these regulations and this code relating to adult-entertainment businesses, including the adult-entertainment business development and operational standards;

2. The permittee has knowingly made any false, misleading or fraudulent statement of material facts in the application for a permit, or in any report or record required to be filed with the city;

3. The permittee or operator of an adult-entertainment business has knowingly allowed or permitted, or has failed to make a reasonable effort to prevent the occurrence of any of the following on the premises of the adult-entertainment 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 occur;

c. Any conduct constituting a criminal offense that requires registration under Section 290 of the California Penal Code;

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

e. Any act constituting a violation of provisions in the California Penal Code relating to obscene matter or distribution of harmful matter to minors, including but not limited to Sections 311 through 313.4.

4. Failure to abide by any disciplinary action previously imposed;

5. Failure to comply with any of the requirements for operation of adult-entertainment businesses set forth in this chapter.

D. Adult Performer and Figure Model Permits. The chief of police may suspend or revoke an adult performer permit or figure model permit for conviction of any of the crimes specified in Section 5.06.110 or for engaging in one of the activities described in Section 5.06.160(C)(3) while on the premises of an adult-entertainment business.

E. After holding the hearing in accordance with the provisions of this section, if the city manager or chief of police finds and determines that there are grounds for

disciplinary action, based upon the severity of the violation, the city manager or chief of police shall impose one of the following:

1. A warning;
2. Conditions upon the permit;
3. Suspension of the permit for a specified period not to exceed six months;
4. Revocation of the permit.

**5.06.170 Administrative appeals: suspension or revocation of permit.**

A. Adult-Entertainment Business Permits. Any permittee aggrieved by the decision of the city manager relating to the suspension or revocation of an adult-entertainment business permit, or other discipline imposed, may within ten (10) days after the date of mailing of the decision to the permittee, appeal to the city council by filing a written notice of appeal with the city clerk. If an appeal is not filed within ten (10) days, the decision of the city manager shall be final. If a timely notice of appeal is filed, the decision of the city manager shall be stayed until the decision on appeal is issued. No fee shall be charged for an appeal.

B. Adult Performer or Figure Model Permits. Any permittee aggrieved by the decision of the chief of police relating to the suspension or revocation of, or the imposition of a condition or restriction upon, any adult performer or figure model permit may, within ten (10) days after the date of mailing of the decision to the permittee, appeal the decision to the city council by filing a written notice of appeal with the city clerk. If an appeal is not filed within ten (10) days, the decision of the chief of police shall be final. If a timely notice of appeal is filed, the decision of the chief of police shall be stayed until the decision on appeal is issued. No fee shall be charged for an appeal.

C. Hearing on Appeal. An appeal pursuant to subsection (A) or (B) shall be set for hearing by the council at a date not later than thirty (30) days after the filing of the notice of appeal. The notice of hearing shall be mailed to the applicant at least ten (10) days prior to the date set for the hearing: The council may continue its hearing on such appeal from time to time provided, however, that the decision on the appeal shall issue no later than thirty (30) days after the original date set for hearing. The council shall hear all relevant evidence from competent persons relating to suspension or revocation of, or other discipline imposed upon, the permit. It may return the matter to the city manager or chief of police for further information or further investigation. The council may affirm, reject or modify the decision of the city manager or chief of police.

D. Appointment of Hearing Examiner. The city council may employ the procedure specified in this code for the appointment of a hearing officer to hear and decide the appeal.

**5.06.180 Judicial review—Stay pending trial court decision.**

A. General. Judicial review of any final administrative decision after appeal under this chapter issuing, denying, suspending or revoking, or imposing other discipline upon, an adult-entertainment business permit, adult performer permit or figure model permit may be had pursuant to Code of Civil Procedure Section 1094.8. The city clerk shall provide written notice of the time limits referenced in Code of Civil Procedure Section 1094.8 to the appellant when transmitting the decision.

B. Stay Pending Expiration of Period for Filing a Judicial Challenge. A final administrative decision issuing, denying, suspending or revoking, or imposing other discipline upon, an adult-entertainment business permit, adult performer permit or figure model permit, whether temporary or regular, shall be stayed for a period of twenty-one (21) days after the decision becomes final, and the adult-entertainment business, adult performer or figure model shall be entitled to operate pursuant to the permit during the twenty-one (21) day time period.

C. Stay Pending Court Decision on Judicial Challenge. Upon the timely filing of a request for judicial review pursuant to Code of Civil Procedure Sec. 1094.6 or 1094.8, the administrative decision issuing, denying, suspending or revoking, or imposing other discipline upon an adult-entertainment business permit, adult performer permit or figure model permit, whether temporary or regular, shall be stayed until the request for judicial review is dismissed or until a decision on the merits is issued by the trial court. The adult-entertainment business, adult performer or figure model shall be entitled to operate during the stay.

**5.06.190 Register of adult performers and figure models.**

A. The operator of a modeling studio shall maintain on the premises a register of all persons employed as or acting as figure models and their permit numbers.

B. The operator of an adult-entertainment business that provides live entertainment depicting or displaying specified anatomical areas or involving specified sexual activities shall maintain a register on the premises of all persons performing on the premises and their permit numbers.

C. The register required by subsections (A) and (B) shall include models and performers then modeling or performing on the premises as well as all models and performers who have modeled or performed on the premises during the previous six months. The register shall remain confidential, except that it shall be available for inspection by law enforcement personnel or the county health officer immediately upon demand at all times during regular business hours.

**5.06.200 Adult performer and figure model identification card.**

The chief of police shall provide to each adult performer and figure model granted a temporary or regular permit an identification card containing the name, photograph and permit number of the adult performer or figure model. The identification card shall remain confidential, except that an adult performer or figure model shall

deposit his or her identification card with the on-site manager of an adult-entertainment business while the adult performer or figure model is working on the premises. The on-site manager shall make the identification cards available for inspection by law enforcement personnel or the county health officer at all times while the adult-entertainment business is open for business.

**5.06.210 Employment of persons under the age of eighteen (18) years prohibited.**

It shall be unlawful for the permittee or operator of an adult-entertainment business to employ, or permit to perform services or entertainment on the premises, any person who is under the age of eighteen (18) years.

**5.06.220 Display of permit.**

Every adult-entertainment business granted a permit shall display the permit in a conspicuous place within the adult-entertainment business at all times during business hours.

**5.06.230 Business operations tax.**

Nothing in this title shall relieve the owner of any adult-entertainment business, or any adult performer or any figure model, from paying the applicable business operations tax pursuant to Chapter 5.04 of this code. The issuance of a business operations tax certificate shall not authorize conducting an adult-entertainment business, or performing as an adult performer in an adult-entertainment business, or acting as a figure model in a modeling studio, until the necessary temporary or regular permit required by Sections 5.06.030 or 5.06.060 has been lawfully granted

**5.06.240 Transfer of adult-entertainment business permit.**

A. Upon sale, transfer or relocation of an adult-entertainment business, the permit therefor shall be void unless permission to transfer is first obtained pursuant to this section; provided, however, that upon the death or incapacity of the permittee, the establishment may continue in business for a reasonable period of time to allow for an orderly transfer of the permit pursuant to this section. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and upon such attempt the permit shall be deemed revoked.

B. No adult-entertainment business permit shall be transferable as to location or person, except with the written consent of the city manager. An application for transfer shall be in writing and contain the same information required for an initial permit application. Prior to submitting the application to the chief of police, the applicant shall pay a non-refundable fee, established by resolution of the city council, to the department of finance. The department of finance shall issue a receipt to the applicant showing that the permit transfer application fee has been paid. The applicant shall provide the receipt or a copy thereof to the chief of police with the permit transfer application.

C. No adult-entertainment business permit may be transferred after the city manager has notified the permittee that the permit has been or may be suspended or revoked.

D. An application to transfer shall be approved if the city manager determines that the transferee would be entitled to the issuance of an adult-entertainment business permit under this chapter; provided, however, that an application for transfer at the same location shall not be denied if the only ground for denial is that the location of the business no longer meets the locational criteria set forth in the Chapter 5.06.255.

**5.06.250 Employment of adult performer and figure models.**

A. No permittee or operator of a modeling studio shall allow or permit a person to act as a figure model for the studio unless the person possesses a valid figure model permit under the provisions of this chapter. It shall be the responsibility of the permittee and the operator to ensure that each person employed or acting as a figure model shall have first obtained a valid permit pursuant to this chapter.

B. No permittee or operator of an adult-entertainment business shall employ and/or allow any person to engage in or participate in any live performance displaying or depicting specified anatomical areas or involving specified sexual activities unless that person possesses a valid adult performer permit under the provisions of this chapter. It shall be the responsibility of the permittee and the operator to ensure that each person acting as an adult performer shall have first obtained a valid permit pursuant to this chapter and shall comply with all other requirements of this chapter.

C. No permittee or operator of an adult-entertainment business shall employ at an adult-entertainment business, or permit to provide services or entertainment at an adult-entertainment business, any person who has been convicted of an offense specified in Section 5.06.110B, where the offense occurred at any adult-related establishment

**5.06.255 Locational standards.**

A. No adult business shall be established or located in any area in the City other than the following zoning districts:

CC--Community Commercial District;

GI -- General Industrial District;

B. An adult business shall not be established or located within:

1. Five Hundred (500) feet from any residence or residential zone, or religious institution (as defined in Section 9.08.010(E)).

2. One Thousand (1,000) feet of any school, nursery, day care center, or public or private park.

C. Distance Between Adult Businesses. An adult business shall not be established or located within one thousand (1,000) feet of an existing adult business. If two (2) or more existing adult businesses are located in closer proximity to each other than one thousand (1,000) feet, then in determining which of the businesses is or are nonconforming, preference shall be given in the order of the respective lengths of continuous lawful uninterrupted operation of the businesses.

D. Measurement of Distance. For the purpose of measuring the distance requirements set forth in subsections (B) and (D) of this section, all distances shall be measured, without regard to intervening structures, from the nearest property line of the property on which the adult business is or will be located to the nearest property line of any residentially zoned property, school, nursery, day care center, religious institution or public or private park as described in subsection (B) of this section, or between the nearest property lines of the properties occupied by or proposed to be occupied by adult businesses as described in subsection (D) of this section, along a straight line extended between the two (2) points.

E. All adult businesses are required to procure and maintain an adult business license as mandated by Chapter 5.10 et seq. of the City's Municipal Code.

F. No building permit or zoning clearance, business tax receipt, adult business license, or other permit or entitlement for use shall be legally valid if issued to any adult business proposed to operate or to be established in the City except if the zoning and locational requirements set forth in this section are satisfied.

G. An adult business or establishment operating as a legal conforming use with an approved adult business license from the City shall not be rendered a nonconforming use by the subsequent location of residential zones, schools, nurseries, day care centers, religious institutions or public or private parks within the locational limitations set forth in this section. For purposes of this section, a use shall be deemed to be subsequently located if it commences following the date an application for an adult business license is filed pursuant to Section 5.10.014 of the Municipal Code.

H. Zone D of the Napa County Airport Land Use Environs Plan (AELUP) limits occupancy to 100 persons per structure and 150 persons per net acre (both within a structure and outdoors on the site). All adult businesses within Zone D of the Napa County AELUP are required to comply with the applicable AELUP occupancy standards.

## 5.06.260 Development standards.

### D. Design Standards.

1. All building openings, entries and windows shall be located, covered or screened to prevent viewing the interior from any exterior area.

2. No partitions between subdivisions of a room, portion, or part of a building, structure or premises--including restrooms--may have an aperture, hole, slit, or other opening or gap which is designed or otherwise constructed to encourage, permit, or allow sexual activity between persons on either side of the partition.

3. Each adult-oriented business shall have a business entrance separate from any other nonadult business located in the same building.

4. The maximum occupancy load, fire exits, fire lanes, and fire suppression equipment shall be regulated, designed and provided in accordance with the regulations and standards of the American Canyon Fire Division and the City's Building Division.

5. Any adult-oriented business in which live entertainment is performed, whether or not such performers are appropriately licensed as required by this Code, shall have such performances only conducted on a stage or on a platform that is raised eighteen (18) inches and which has a rail which does not allow patrons to be any closer to the performers than six (6) feet. Said rail shall be at least forty-two (42) inches in height and shall be installed around the perimeter of the stage or platform.

6. Any adult-oriented business shall be designed such that a manager's station is provided for the purpose of supervising activities within the business and such that a manager in the manager's station can view the entire interior of the business to which the public is allowed access, excepting restrooms.

7. Any viewing room or area shall be visible from the manager's station and such view shall not be obscured or obstructed by any wall, curtain, door, any other structure, or by any display of merchandise.

8. No private viewing areas as defined herein shall be permitted or shown on any design for an adult-oriented business.

9. An adult business proposed in Zone D of the Napa County Airport Land Use Environs Plan (AELUP) shall demonstrate that the occupancy of the proposed business shall not exceed the AELUP occupancy standards of 100 persons per structure and 150 persons per net acre (both within a structure and outdoors on the site).

E. Performance Standards. The establishment of an adult-oriented business shall comply with the applicable site development standards--including parking--of the zone, district, or area in which the adult-oriented business is located, the Building Code, Fire Code, and the Health and Safety Code of the City. An adult-oriented business shall



comply with the applicable City permit and inspection procedures. In addition, adult-oriented businesses shall comply with the following performance standards:

1. At all times, the maintenance and operation of an adult-oriented business shall be in accordance with the design standards set forth in subsection D of this section.

2. The building entrance to the adult-oriented business shall be clearly and legibly posted with a notice indicating that minors are precluded from entering the premises.

3. A manager shall be on duty on the premises during all times that the adult-oriented business is open to the public.

4. Any viewing room shall be visible from the manager's station of the adult-oriented business, and visibility of the entire viewing room from the manager's station shall be neither obscured nor obstructed by any curtain, door, wall, or other structure.

5. All exterior areas of adult-oriented businesses, including buildings, landscaping, and parking areas, shall be maintained in a clean and orderly manner free of trash, weeds and debris.

6. No special events, promotions, concerts, or similar activities which are likely to increase the parking demand at the location of the adult-oriented business shall occur unless the permit-holder has obtained a special events permit from the City as would be required by all other types of businesses within the City.

7. No adult-oriented business, excepting an adult motel, shall operate between the hours of eleven p.m. and ten a.m. No owner, operator, manager, employee, or independent contractor of an adult-oriented business, except an adult motel, regardless of whether or not a permit has been issued for said business under the provisions of this Code, shall allow such business to remain open for business, or no owner, operator, manager or employee of an adult-oriented business shall permit any employee or independent contractor 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 eleven p.m. and ten a.m.

8. Off-street parking shall be provided for the adult-oriented business on-site and as specified for the zone, district or area in which the business is located in accordance with the parking provisions of this Code and as follows:

a. Adult Theater, Adult Cabaret, Adult Motion Theater, or Adult Arcade. One (1) parking space shall be provided for every two (2) seats in a viewing room, or one (1) parking space shall be provided for every two (2) occupants per the allowable occupant load as established by the chief building official and/or the fire marshal, whichever standard is greater. In addition, one (1) parking space shall be provided for each employee or independent contractor on the maximum shift.

9. Any person who operates or causes to be operated an adult-oriented business, other than an adult motel and regardless of whether or not an adult-oriented business license has been issued to said business under this Code, which exhibits on the premises in a viewing room or viewing area of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

a. Upon application for an adult-oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, the location of all overhead lighting fixtures, and designating any portion of the premises in which patrons shall not be permitted. A manager's station(s) shall not exceed thirty-two (32) square feet of floor area.

b. No alteration in the configuration or location of a manager's station shall be made without the prior written approval of the Director of Community Development.

c. It is the duty of the permit holder to ensure that at least one (1) employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.

d. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms shall not contain video reproduction equipment. If the premises has two (2) or more manager's stations designed, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection shall be by direct line of sight from the manager's station.

e. It shall be the duty of the permit holder and any employees or independent contractors present on the premises to insure that the view area specified in paragraph (d) of this subdivision remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to insure that no patron is permitted access to any area of the premises which has been designed as an area in which patrons shall not be permitted in the application filed pursuant to this chapter.

10. An on-site security program shall be prepared and implemented including the following items:

a. All off-street parking areas and building entries serving the adult-oriented business shall be illuminated during all hours of operation with a lighting system designed to provide an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walk way. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways

serving the adult-oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and theft. The lighting shall be shown on the required site or plot plan. The required lighting shall remain on for at least thirty (30) minutes after the closing time of the adult-oriented business to promote safety for employees thereof.

b. All off-street parking areas shall have a security system provided that visually records and retains activities in the parking lot for at least a forty-eight (48) hour period for the purposes of promoting safety and identifying violators.

c. All interior portions of the adult-oriented business, except those areas devoted to mini-motion or motion pictures, shall be illuminated during all hours of operation with a lighting system designed to provide a minimum maintained horizontal illumination of not less than two (2) foot candles of light.

d. For adult-oriented businesses which exceed an occupant load of one hundred twenty-five (125) persons, the provision of on-site security personnel shall be required during all business hours pursuant to a plan to be reviewed and approved for adequacy by the designated head of the law enforcement entity providing law enforcement services to the City. Security personnel shall be licensed in accordance with the California Business and Professions Code, to the satisfaction of the designated head of the entity providing law enforcement services to the City.

#### 11. Adult Motion Picture Theater/Adult Arcade.

a. A manager's station shall be located near the main entrance and the station shall be provided with an unobstructed view of all motion picture or arcade viewing areas.

b. No adult motion picture theater or adult arcade shall be maintained or operated unless the complete interior of the adult motion picture theater or adult arcade is visible upon entrance to such premises. No partially or fully enclosed booths or partially or fully concealed booths shall be maintained.

c. Maximum Number of Devices. No person shall operate an adult motion picture theater or adult arcade in which the number of image producing devices exceeds the maximum occupancy load permitted in any room or partitioned portion of a room in which an image producing device is located.

#### 12. Adult Hotel/Motel.

a. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented or subrented and vacated two (2) or more times in a period of time that is less than ten (10) hours within a twenty-four (24) hour period on a recurring basis creates a rebuttable presumption that the establishment is an adult hotel/motel as that term is defined in this title.

b. A person is in violation of the provisions of this title if such person rents or subrents a sleeping room at a location without an adult-oriented business license and an adult use planning permit to a person or persons and within ten (10) hours thereafter rents or subrents the same room to an other person(s), or subrents the same room to the prior renter.

13. No advertising sign or structure, advertisement, display, or other promotional material depicting specified anatomical areas or specified sexual activities or displaying instruments, devices or paraphernalia designed for use in connection with specific sexual activities, shall be shown or exhibited so as to be visible from any exterior area.

14. No loudspeaker or sound equipment audible to persons in any public exterior area shall be used in connection with an adult-oriented business, and the business shall be so conducted that sounds associated with the business are not emitted into any public exterior area.

#### **5.06.270 Adult-entertainment businesses providing live entertainment.**

The following additional requirements shall pertain to adult-entertainment businesses providing live entertainment depicting or displaying or involving specified anatomical areas or involving specified sexual activities:

A. The adult-entertainment business shall provide separate dressing room facilities for adult performers that are exclusively dedicated to the adult performers' use, and to which no patron shall be admitted.

B. The adult-entertainment business shall provide an entrance/exit for adult performers that are separate from the entrance/exit used by patrons.

C. No adult performer, either before, during or after performances, shall fondle or caress any patron and no patron shall fondle or caress any adult performer either before, during or after performances by the adult performer. This subsection shall only apply to physical contact on the premises of the adult-entertainment business.

#### **5.06.280 Management and security requirements.**

A. There shall be present on the premises of an adult-entertainment business at all times while the business is open a manager who shall be in charge of all of the activities on the premises and who shall be responsible to ensure compliance with all requirements set forth in this chapter.

B. An adult-entertainment business shall employ security guards in order to maintain the public peace and safety, based upon the following standards:

1. An adult-entertainment business featuring live entertainment shall provide at least one security guard at all times while the business is open. If the number of

persons on the premises exceeds fifty (50) persons, an additional security guard shall be on duty.

2. Security guard(s) shall be charged with preventing violations of law and enforcing patrons' compliance with the requirements of this chapter. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of state law. No security guard required pursuant to this subsection shall act as a manager, door person, ticket seller, ticket taker, admittance person or perform any duties other than surveillance of the premises, the adult performers, and the patrons to prevent violations of law and enforce compliance with the requirements of this chapter while acting as a security guard. Security guards shall report any violation of law immediately to the responsible manager on the premises at the time the violation or threatened violation occurs, and shall prepare a written report outlining the violation or threatened violation observed. Copies of all written reports required by this section shall be maintained on the premises along with the register of adult performers required by Section 5.06.190, and shall be available for inspection by law enforcement personnel at all times during regular business hours.

**5.06.290 Persons under the age of eighteen (18) years prohibited on premises of adult-entertainment business.**

It shall be unlawful for the permittee or operator of an adult-entertainment business to permit to enter, or remain within, the adult-entertainment business, any person who is under the age of eighteen (18) years.

**5.06.300 Violations.**

A. In order to operate an adult business in American Canyon, the business must obtain an adult business license as provided for in Chapter 5.22 et seq.

B. 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 any and all civil remedies, including license revocation. All remedies provided in this chapter shall be cumulative and not exclusive. Any violation of these provisions shall constitute a separate violation for each and every day during which such violation is committed or continued.

C. In addition to the remedies set forth in subsection (B) of this section, 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.

D. The restrictions imposed pursuant to this section do not constitute a criminal offense. Notwithstanding any other provision of the American Canyon Municipal Code, the City

does not impose a criminal penalty for violations of the provisions of the ordinance codified in this chapter related to sexual conduct or activities.

**5.06.310 Regulations non-exclusive.**

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

**5.06.320 Applicability to existing adult-entertainment businesses, adult performers and figure models.**

A. General. The provisions of this chapter shall apply to all adult-entertainment businesses, and all owners or operators thereof, and all adult performers and figure models, whether such business or activity was in operation before or after the effective date of this chapter; provided, however, that all such businesses, and all owners or operators thereof, and persons shall have one hundred eighty (180) days from the effective date of this chapter to comply with the provisions of this chapter and adult performers and figure models shall have sixty (60) days from the effective date of this chapter to comply with provisions of this chapter. Any person who has filed a timely application for a permit within said time limit shall not be subject to the provisions of this chapter relating to possession or display of a permit until a permit is issued or denied.

Exception. Temporary exemption from permit requirements for lawfully existing adult-entertainment businesses with adult-related establishment permit: The owner(s) and operator(s) of lawfully existing adult-entertainment businesses providing live entertainment depicting or displaying specified anatomical areas or involving specified sexual activities that were lawfully established on the effective date of this chapter shall not be required to obtain an adult-entertainment business permit pursuant to Section 5.06.030 of this chapter within one hundred eighty (180) days, if the owner(s) and operator(s) have an adult-related establishment permit for the facility pursuant to Chapter 5.04 as it existed prior to the effective date of this chapter; and provided further that the owner(s) and operator(s) shall obtain a permit pursuant to this chapter prior to the date on which the adult-related establishment permit expires or would have expired.

B. Variance from Separate Entrance/Exit Requirements. The chief of police may authorize a variance from the separate entrance/exit requirements of Section 5.06.270(B) for an adult-entertainment business lawfully existing on the effective date of this chapter if the chief finds that the alternative method of separation and/or entrance and exit provides adequate safety for adult performers entering or exiting the premises. The chief of police shall make a decision on the variance within thirty (30) days after the owner or operator of the business submits a written request for variance describing in detail the variance requested.

C. Failure to Obtain Permits—Violation of Chapter. Failure to apply for and obtain a permit within the time period specified in Subsection A and thereafter

continuing to operate an adult-entertainment business for which a permit is required pursuant to Section 5.06.030 without a permit shall constitute a violation of this chapter.

#### **5.06.330 Severability.**

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

In particular, the city council hereby declares that it would have adopted the development and operational provisions of this chapter, even in the absence of the permit issuance provisions of this chapter. Further, the city council hereby declares that it would have adopted the permit issuance provisions relating to adult performers even in the absence of the permit issuance provisions for adult-entertainment businesses. In the event a court of competent jurisdiction renders a decision invalidating any permit issuance provisions contained herein, any adult-entertainment business that operates in the city shall be deemed to be operating under a de facto permit subject to all requirements of this chapter that have not been invalidated.

### **Title 19 ZONING**

#### **Chapter 19.42 CONDITIONAL USE PERMITS**

##### **19.42.020 Review and approval procedures.**

###### **A. Application.**

1. Applications for conditional use permits shall be filed with the planning department. Submittals shall include a completed application form, along with related information and filing fees established by the city.

2. If other approvals are necessary, an application for a conditional use permit may be filed and processed concurrently with the related entitlement request(s), and shall be acted upon by the appropriate decision-making authority.

3. Following the denial or revocation of a conditional use permit application, no application for such permit for the same or substantially the same use and design, or use of the same or substantially the same site shall be filed within one year from the date of denial or revocation.

**B. Approval Authority.** The planning commission may approve conditional use permits for those uses designated "C" in this title. Applications for such permits shall be reviewed in accordance with Chapter 19.40, Review and Approval Procedures.

C. Terms and Conditions. Any conditional use permit may include such terms and conditions deemed appropriate or necessary by the decision-making authority to make the findings required by subsection (D) of this section. If no terms or conditions are specified, the use permit shall be considered unconditional and valid for an indefinite period, unless the use is abandoned.

D. Required Findings. The decision-making authority may approve or conditionally-approve an application for a conditional use permit if it makes all of the following findings:

1. The proposed use is consistent with the policies and programs of the general plan and any applicable master or specific plan.

2. The proposed use is consistent with the purpose(s) and standards of the applicable zoning district(s).

3. The project site is physically suitable for the type and intensity of land use being proposed.

4. The proposed use will not be a nuisance or materially detrimental to the general health, safety and welfare of the public or to property and residents in the vicinity.

5. The site for the proposed use has adequate access, and meets parking and circulation standards and criteria.

6. There are adequate provisions for water and sanitary services, and other public utilities to ensure that the proposed use would not be detrimental to public health and safety.

E. Required Findings — Homeless Shelters. In addition to the findings required by subsection (D) of this section, the planning commission shall make the following findings of fact in approving a conditional use permit for a homeless shelter:

1. The applicant has demonstrated that the type and size of homeless shelter proposed directly fulfills the needs of city residents.

2. Approval of the permit will not result in an over concentration of homeless shelters in the vicinity.

3. The land uses and development in the immediate vicinity of the project will not constitute an immediate or potential hazard to occupants of the shelter.

4. The shelter will have ready access to public transportation and planned or existing support services.



F. Required Findings — Accessory Dwelling Units. In addition to the findings required by subsection (D) of this section, the planning commission shall make the following findings in approving a conditional use permit for accessory dwelling units:

1. Access separate from the on-site commercial use(s) is provided for the accessory dwelling unit(s).

2. Noise levels within the accessory dwelling unit(s) will not exceed any adopted noise standards.

3. The accessory dwelling unit(s) will be protected from any obnoxious odors generated on-site or in the immediate vicinity. (Ord. 2001-02 § 1 (part), 2001)

**NOTE TO CODIFIER:** SECTION G WAS REMOVED FROM CHAPTER 19.42.020.

**19.05.050 Commercial classifications.**

Adult-entertainment business: means any of the following:

1. "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture machines, projectors or other image producing devices are maintained to show images to five or fewer persons per machine at any time, and where a substantial portion of the images so displayed are distinguished or characterized by an emphasis on matters depicting or describing specified sexual activities.

2. "Adult bookstore, adult novelty store or adult video store" means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, compact discs (CDS), slides or other visual representations that are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas; or

b. Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

The items described in subsections (a) and (b) shall be referred to collectively as "adult products."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of products depicting, describing or relating to specified sexual activities or specified anatomical areas and still be categorized as adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration of the specified

products that are distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

3. "Adult cabaret" means a nightclub, restaurant, or similar business establishment that: a. regularly features live performances that are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or b. regularly features persons who appear in a state of nudity.

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

5. "Adult motion picture theater" means a building or portion thereof or area, open or enclosed, used for the presentation of motion pictures or other images in which a substantial portion of the total presentation time is devoted to the presentation of motion pictures distinguished or characterized by their emphasis on matters depicting, describing or relating to specified sexual activities, for observation by patrons or customers.

6. "Adult theater" means a theater, concert hall, auditorium or similar establishment that, for any form of consideration, regularly features live performances that are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.

7. "Modeling studio" means a business that provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who display specified anatomical areas to be observed, drawn, 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, that does not provide, permit or make available specified sexual activities.

Entertainment, indoor: the provision of participant or spectator entertainment within an enclosed building, excluding uses classified under adult-entertainment business. Typical uses include live theater, motion picture theaters, and nightclubs.

**NOTE TO CODIFIER: NO FURTHER CHANGES TO DEFINITIONS.**

**Table 1  
Permitted and Conditionally-Permitted Uses**

Use Classification	Zoning District		Related Provision
	CN	CC	
<b>Residential</b>			
Congregate living facility	-	-	
Farm employees housing	-	C	
Garden apartments	-	-	
Mobilehome	-	-	
Mobilehome park	-	-	
Multifamily residential	P <sup>1</sup>	P <sup>2</sup>	<sup>1</sup> GP Policy 1.14.1 <sup>2</sup> GP Policy 1.15.1
Residential care home	-	-	
Second residential unit	-	-	
Single-family residential			
- Detached	-	-	
- Semidetached	-	-	
Townhouses	-	-	
<b>Commercial</b>			
Adult-entertainment business	-	P	

**NOTE TO CODIFIER: NO FURTHER CHANGES TO TABLE 1.**

Table 19.14.050			
PERMITTED AND CONDITIONALLY-PERMITTED USES INDUSTRIAL DISTRICTS			
Use Classifications	Zoning District		Related Provisions
	LI	GI	
<b>Residential</b>			
Congregate living facility	-	-	
Farm employees housing	-	-	
Garden apartments	-	-	
Mobilehome	-	-	
Mobilehome parks	-	-	
Multifamily residential	-	-	
Residential care home	-	-	
Second residential unit	-	-	
Single-family residential			
- Detached	-	-	
- Semidetached	-	-	

Townhouses	-	-	
<b>Commercial</b>			
Adult-entertainment business	-	P	

**NOTE TO CODIFIER: NO FURTHER CHANGES TO TABLE 19.14.050"**

**PASSED AND ADOPTED** by the City Council of the City of American Canyon at a regular meeting on April 21, 2009, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

\_\_\_\_\_  
**Leon Garcia, Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Dorothy Roadman**  
City Clerk

\_\_\_\_\_  
**William Ross**  
City Attorney