

# ADULT ENTERTAINMENT

## APPLICANT CHECKLIST

- **Completed Application**
- **PERMIT FEE**  
**\$325.00 Business/Establishment**  
**\$220.00 Exotic Dancer/Escort**
- **FINGERPRINTING REQUIRED**
- **All applicants must be fingerprinted (Live scanned at the Sheriffs's Office). (\$56.00 Cash, Check, or Money Order payable to the City of Modesto for each applicant; There is an additional \$10.00 fee payable to Sheriff's Office at time of fingerprinting)**
- **COPY OF DRIVERS LICENSE (MPD WILL MAKE COPY)**
- **COPY OF SOCIAL SECURITY CARD (MPD WILL MAKE COPY)**
- **COPY OF CITY OF MODESTO BUSINESS LICENSE**
- **PHOTO OF APPLICANT (MPD WILL PHOTO APPLICANT)**
- **RELEASE AND WAIVER SIGNED BY EACH PRINCIPAL AND WITNESSED BY MODESTO POLICE PERSONNEL.**
- **MUNICIPAL CODE ACKNOWLEDGED LETTER SIGNED BY EACH PRINCIPAL AND WITNESSED BY MODESTO POLICE PERSONNEL.**



# Adult Related Business Permit Application

City of Modesto Police Department 601 11th St. Modesto, CA 95351 (209) 572-9500

Type of Permit:  Establishment  Renewal  Employee  Model  Escort

Name of Company: \_\_\_\_\_

Street Address: \_\_\_\_\_ Mailing Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Exact Nature of Services to be Provided at Establishment: \_\_\_\_\_

\_\_\_\_\_  
(Attach additional paper if needed).

Name of Corporation: \_\_\_\_\_

California Secretary of State Corporation #: \_\_\_\_\_ (Applicant must provide a Certified Copy of Incorporation and Statement of Officers.)

**Names of Each of the Officers, Directors, and each Stockholders and/or Partners in the case of a Partnership:**

(Designated Responsible Managing Officer/Partner)

1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_

2. Title:  Partner  Corporate Officer  Other \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_

3. Title:  Partner  Corporate Officer  Other \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_

4. Title:  Partner  Corporate Officer  Other \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_

**Note:** In a case of Partnership, the designated Managing Partner shall complete the Application form as an Individual Applicant.

**Lessor of Real Property upon which the business is to be conducted:**

Name (Full): \_\_\_\_\_

Street Address: \_\_\_\_\_ City/State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Model, Escort, Employee Applicant:**

**Name (Full):** \_\_\_\_\_  
**Aliases by which the applicant has been known:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City/Street:** \_\_\_\_\_ **Zip:** \_\_\_\_\_  
**Telephone:** \_\_\_\_\_

**Previous Residence Addresses (3 years immediately preceding the date of this application)**

- 1. **Address:** \_\_\_\_\_ **City/Street:** \_\_\_\_\_ **Zip:** \_\_\_\_\_
- 2. **Address:** \_\_\_\_\_ **City/Street:** \_\_\_\_\_ **Zip:** \_\_\_\_\_
- 3. **Address:** \_\_\_\_\_ **City/Street:** \_\_\_\_\_ **Zip:** \_\_\_\_\_
- 4. **Address:** \_\_\_\_\_ **City/Street:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Physical Description:** **Height:** \_\_\_\_\_ **Weight:** \_\_\_\_\_ **Hair:** \_\_\_\_\_ **Eyes:** \_\_\_\_\_  
**Date of Birth:** \_\_\_\_\_ **CDL#** \_\_\_\_\_  
**SS#:** \_\_\_\_\_

**Applicants business, occupation, or employment for the (3) years immediately preceding the date of this application:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Attach additional paper if needed).

**Applicants adult related establishment or similar business license or permit history:**

**-Have you operated in this or another city or state under a license or permit:**  Yes  No  
**-If yes, list the business name, street address, city, state and permit or license number, as well as total years operated:** \_\_\_\_\_

\_\_\_\_\_ (Attach additional paper if needed).

**-Have you ever had such a license or permit revoked or suspended:**  Yes  No  
**-If yes, Explain:** \_\_\_\_\_

\_\_\_\_\_ (Attach additional paper if needed).

**What business activity or occupation did you have subsequent to such action of suspension or revocation:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Have you ever been convicted of theft, fraud, or crimes involving moral turpitude or any felony involving such offenses:**  Yes  No

**-If yes, list convictions, with the most recent first:**

**Date:** \_\_\_\_\_ **Offence:** \_\_\_\_\_ **Court:** \_\_\_\_\_  
**Date:** \_\_\_\_\_ **Offence:** \_\_\_\_\_ **Court:** \_\_\_\_\_  
**Date:** \_\_\_\_\_ **Offence:** \_\_\_\_\_ **Court:** \_\_\_\_\_

I declare, under penalty of perjury, that all statements in this application are true and correct. And further, that any false statements or omissions may be cause for rejection of this application, or revocation of any license or permit issued.

Applicants Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Witness: \_\_\_\_\_ Employee Number: \_\_\_\_\_ Date: \_\_\_\_\_

The officers of this partnership/corporation have reviewed and understand the City of Modesto Ordinance pertaining to Adult Related Business.

I am the Authorized Partner and/or Corporate Officer to act as the Responsible Managing Officer of the Adult Related establishment.

Applicants Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Witness: \_\_\_\_\_ Employee Number: \_\_\_\_\_ Date: \_\_\_\_\_

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**OFFICE USE ONLY**

Finance: Filing Fees: \_\_\_\_\_ Date: \_\_\_\_\_

City Clerk: Security Bond Posted: \_\_\_\_\_ Date: \_\_\_\_\_

Police Dept. Fingerprint Appointment: \_\_\_\_\_  
Date Fingerprinted: \_\_\_\_\_



**Police Department:**  
(209) 572-9500 FAX (209) 572-9656

601 11th Street, P.O. Box 3313, Modesto, CA 95353  
[TDD (209) 526-9211 Hearing and Speech Impaired only]

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## RELEASE AND WAIVER

To Whom It May Concern:

I hereby authorize any Police Officer or other authorized representative of the Modesto Police Department bearing this release (or a copy of it) to obtain any information in your files pertaining to my arrest or criminal records.

Consent is granted for the Modesto Police Department to furnish the information described above to its parties in the course of fulfilling its official responsibilities. I further understand that I waive any right or opportunity to read or review any background investigation report prepared by the Modesto Police Department, and I further understand that these reports are confidential.

I hereby release you, as the custodian of such records, from any and all liability for damages of whatever kind, which may at any time result to me, my heirs, family, associates or assigns because of compliance with this authorization and request to release information, or any attempt to comply with it. Should there be any question as to the validity of this release, you may contact me.

A photocopy of this release is to be considered as valid as an original.

NAME: \_\_\_\_\_ SOCIAL SECURITY NO: \_\_\_\_\_

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

WITNESS: \_\_\_\_\_  
(Modesto Police Department)

## Chapter 9 ADULT ENTERTAINMENT BUSINESSES

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(Former Ch. 9, §§ 5-9.101--5-9.406 added by Ord. 2899-C.S., § 1, as amended by Ord. 2953-C.S., § 3, effective 11-2-95)

#### Article 1 General Provisions

5-9.101 Legislative Purpose.

It is the purpose of this chapter to regulate adult oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor the effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

5-9.102 Definitions.

For the purpose of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) Adult Entertainment Businesses: “Adult entertainment businesses” means any one of the following:

(1) Adult arcade: The term “adult arcade” as used in this chapter, is an establishment where, for any form of consideration, one or more still or motion picture projectors, or similar machines, for viewing by five (5) or fewer persons each, are used to show films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

(2) Adult bookstore: The term “adult bookstore” as used in this chapter, is an establishment that has thirty (30) percent or more of its stock in books, magazines, periodicals or other printed matter, or of photographs, films, motion pictures, video cassettes, slides, tapes, records or other form of visual or audio representations which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities and/or specified anatomical areas.

(3) Adult cabaret: The term “adult cabaret” as used in this chapter, means a nightclub, restaurant, or similar business establishment which: (1) regularly features live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities; and/or (2) shows films, computer generated images, motion pictures, video cassettes, slides, or other photographic reproductions thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

(4) Adult hotel/motel: The term “adult hotel/motel” as used in this chapter, means 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 thirty (30) percent or more of the number of 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.

(5) Adult motion picture theater: The term “adult motion picture theater” as used in this chapter, is a business establishment where, for any form of consideration, films, computer generated images, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and thirty (30) percent or more of the number of which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.



(6) Adult theater: The term “adult theater” as used in this chapter, means a theater, concert hall, auditorium, or similar establishment which, for any form of consideration regularly features live performances which are distinguished or characterized by an emphasis on the display of specified anatomical areas or specified sexual activities.

(7) Escort bureau: The term “escort bureau” as used in this chapter, means a business which, for pecuniary compensation, consideration, hire or reward furnishes or offers to furnish escorts.

(8) Modeling studio: The term “modeling studio” as used in this chapter, means a business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure 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 or artists, and which does not provide, permit, or make available “specified sexual activities.”

(b) Adult entertainment business operator: “Adult entertainment business operator” (hereinafter “operator”) means a person who supervises, manages, inspects, directs, organizes, controls or in any other way is responsible for or in charge of the premises of an adult entertainment business or the conduct or activities occurring on the premises thereof.

(c) Applicant: A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of an “adult entertainment business.”

(d) Bar: For the purposes of this ordinance [chapter], a bar is defined as any commercial establishment licensed by the State Department of Alcoholic Beverage Control to serve any alcoholic beverages on the premises.

(e) Distinguished or characterized by an emphasis upon: As used in this ordinance, the term “distinguished or characterized by an emphasis upon” shall mean and refer to the dominant or essential theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon” the depiction or description of specified sexual activities or specified anatomical areas, the films so described are those whose dominant or predominant character 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).

(f) Escort: “Escort” means a person who, for pecuniary compensation, monetary or other consideration, hire or reward, (i) escorts or accompanies others to or about social affairs, entertainment or places of amusement, or (ii) keeps company with others about any place

or public resort or within any private quarters, or (iii) who agrees or offers to privately model lingerie or to privately perform a striptease for another person, or (iv) who agrees to provide any service which is distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities.

(g) Figure model: "Figure model" means any person who, for pecuniary compensation, consideration, hire or reward, poses in a modeling studio to be observed, sketched, painted, drawn, sculptured, photographed or otherwise depicted.

(h) Health Officer: The Health Officer of the City of Modesto or his or her duly authorized representative.

(i) Nudity or a state of nudity: "Nudity or a state of nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

(j) Operate an adult entertainment business: As used in this article "operate an adult entertainment business" means the supervising, managing, inspecting, directing, organizing, controlling or in any way being responsible for or in charge of the conduct of activities of an adult entertainment business or activities within an adult entertainment business.

(k) Permittee: "Permittee" means the person to whom an adult entertainment business permit is issued.

(l) Person: Any individual, partnership, copartnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.

(m) Police Chief: The Police Chief of the City of Modesto or the authorized representatives thereof.

(n) Regularly Features: The term "regularly features" with respect to an adult theater or adult cabaret means a regular and substantial course of conduct. The fact that live performances which are distinguished or characterized by an emphasis upon the display of specified anatomical areas or specified sexual activities occurs on two (2) or more occasions within a thirty (30) day period; three (3) or more occasions within a sixty (60) day period; or four (4) or more occasions within a 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.

(o) Semi-nude: means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.

(p) Specified Anatomical Areas: As used herein, “specified anatomical areas” shall mean and include any of the following:

(1) Less than completely and opaquely covered human (i) genitals or pubic region; (ii) buttocks; and (iii) 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.

(3) Any device, costume or covering that simulates any of the body parts included in subdivisions (1) or (2) above.

(q) Specified Sexual Activities: As used herein, “specified sexual activities” shall mean and include any of the following, whether performed directly or indirectly through clothing or other covering:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;

(2) Sex acts, actual or simulated, including intercourse, oral and copulation, or sodomy;

(3) Masturbation, actual or simulated;

(4) Excretory functions as part of or in connection with any of the other activities described in subdivisions (1) through (3) of this subsection. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, 10-3-96)

#### 5-9.103 Permits Required.

(a) 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 Modesto, the operation of an adult entertainment business unless the person first obtains and continues to maintain in full force and effect a permit from the City of Modesto as herein required. (Adult Entertainment Business Regulatory Permit)

(b) It shall be unlawful for any persons to engage in or participate in any live performance depicting 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 a permit from the City of Modesto as herein required. (Adult Entertainment Business Performer Permit)

(c) It shall be unlawful for any person to act as an escort, figure model, or to take any other position of employment with an escort bureau or modeling studio in the City of

Modesto unless the person first obtains and continues to maintain in full force and effect a permit from the City of Modesto as herein required. (Escort Permit, Figure Model Permit)

## Article 2 Application and Permits

### 5-9.201 Adult Entertainment Business Regulatory Permit Required.

(a) Every person who proposes to maintain, operate or conduct an adult entertainment business in the City of Modesto shall file an application with the Police Chief upon a form provided by the City of Modesto and shall pay a filing fee, as established by resolution adopted by the City Council from time to time, which shall not be refundable. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

### 5-9.202 Applications.

(a) Adult entertainment business regulatory permits are nontransferable, except in accordance with Section 5-9.205. Therefore, all applications shall include the following information:

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

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

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

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

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

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

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

(f) The names of all employees, independent contractors, and other persons who will perform required by Section 5-9.206 to obtain an Adult Entertainment Business Performer License (for ongoing reporting requirements see Section 5-9.206).

(g) A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the adult entertainment 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.

(h) 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 entertainment business, and: (1) the property line of any other adult entertainment business within five hundred (500) feet of the primary entrance of the adult entertainment business for which a permit is requested; and (2) the property lines of any church, school, park, residential zone or use within three hundred (300) feet of the primary entrance of the adult entertainment business.

(i) A diagram of the off-street parking areas and premises entries of the adult entertainment business showing the location of the lighting system required by Section 5-9.301(c).

(j) If the Police Chief determines that the applicant has completed the application improperly, the Police Chief shall promptly notify the applicant of such 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. In addition, the applicant may request an extension, not to exceed ten (10) days, of the time for the Police Chief to act on the application. 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.

(k) The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining an adult entertainment business regulatory permit. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, effective 10-3-96)

#### 5-9.203 Investigation and Action on Application.

(a) Upon receipt of a completed application and payment of the application and permit fees, the Police Chief shall immediately stamp the application as received and promptly investigate the information contained in the application to determine whether the applicant shall be issued an adult entertainment business regulatory permit.

(b) Within thirty (30) days of receipt of the completed application, the Police Chief shall complete the investigation, grant or deny the application in accordance with the provisions of this section, and so notify the applicant as follows:

(1) The Police Chief shall write or stamp “Granted” or “Denied” on the application and date and sign such notation.

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

(3) If the application is granted, the Police Chief shall attach to the application an adult entertainment business regulatory permit.

(4) The application as granted or denied and the permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the address stated in the application.

(c) The Police Chief shall grant the application and issue the adult entertainment business regulatory permit upon findings that the proposed business meets the locational criteria of Section 10-2.2403; and that the applicant has met all of the development and performance standards and requirements of Section 5-9.301, unless the application is denied for one or more of the reasons set forth in Section 5-9.204. The permittee shall post the permit conspicuously in the adult entertainment business premises.

(d) If the Police Chief grants the application or if the Police Chief neither grants nor denies the application within thirty (30) days after it is stamped as received (except as provided in Section 5-9.202(j)), the applicant may begin operating the adult entertainment business for which the permit was sought, subject to strict compliance with the development and performance standards and requirements of Sections 5-9.301.

(Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.204 Permit Denial.

The Police Chief shall deny the application for any of the following reasons:

(a) The building, structure, equipment, or location used by the business for which an adult entertainment business regulatory permit is required do not comply with the requirements and standards of the health, zoning, fire and safety laws of the City and

State of California, or with the locational or development and performance standards and requirements of these regulations.

(b) The applicant, his or her employee, agent, partner, director, officer, shareholder or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for an adult entertainment business regulatory permit.

(c) An applicant is under eighteen (18) years of age. (d) The required application fee has not been paid.

Each adult entertainment business regulatory permit shall expire one (1) year from the date of issuance, and may be renewed only by filing with the Police Chief a written request for renewal, accompanied by the annual permit fee and a copy of the permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. When made less than thirty (30) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. (Amended during 11-98 supplement)

#### 5-9.205 Transfer of Adult Entertainment Regulatory Permits.

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

(b) A permittee shall not transfer ownership or control of an Adult Entertainment Business or transfer an adult entertainment business regulatory permit to another person unless and until the transferee obtains an amendment to the permit from the Police Chief stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Police Chief in accordance with Sections 5-9.201 and 5-9.202, accompanies the application with a transfer fee in an amount set by resolution of the City Council, and the Police Chief determines in accordance with Section 5-9.203 that the transferee would be entitled to the issuance of an original permit.

(c) No permit may be transferred when the Police Chief has notified the permittee that the permit has been or may be suspended or revoked.

(d) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, effective 10-3-96)

#### 5-9.206 Adult Entertainment Business Performer Permit.

(a) No person shall engage in or participate in any live performance depicting specified anatomical areas or involving specified sexual activities in an adult entertainment business, without a valid adult entertainment business performer permit issued by the City. All persons who have been issued an adult entertainment business regulatory permit shall promptly supplement the information provided as part of the application for the permit required by Section 5-9.201, with the names of all performers required to obtain an adult entertainment business performer permit, within thirty (30) days of any change in the information originally submitted. Failure to submit such changes shall be grounds for suspension of the adult entertainment business regulatory permit.

(b) The Police Chief shall grant, deny and renew adult entertainment business employee permits.

(c) The application for a permit shall be made on a form provided by the Police Chief. An original and two copies of the completed and sworn permit application shall be filed with the Police Chief.

(d) The completed application shall contain the following information and be accompanied by the following documents:

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

(2) Age, date and place of birth;

(3) Height, weight, hair and eye color;

(4) Present residence address and telephone number;

(5) Whether the applicant has ever been convicted of:

(i) Any of the offenses set forth in Sections 315, 316, 266a, 266b, 266c, 266e, 266g, 266h, 266i, 647(a), 647(b) and 647(D) of the California Penal Code as those sections now exist or may hereafter be amended or renumbered.

(ii) The equivalent of the aforesaid offenses outside the State of California.

(6) Whether such person is or 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 any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.



(7) State driver's license or identification number;

(8) Satisfactory written proof that the applicant is at least eighteen (18) years of age;

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

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

(e) The completed application shall be accompanied by a nonrefundable application fee. The amount of the fee shall be set by resolution of the City Council.

(f) Upon receipt of an application and payment of the application fees, the Police Chief shall immediately stamp the application as received and promptly investigate the application.

(g) If the Police Chief determines that the applicant has completed the application improperly, the Police Chief shall promptly notify the applicant of such fact and grant the applicant an extension of time of not more than ten (10) days to complete the application properly. In addition, the applicant may request an extension, not to exceed ten (10) days, of the time for City Manager to act on the application. 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. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.207 Investigation and Action on Application.

(a) Within five (5) days after receipt of the properly completed application, the Police Chief shall grant or deny the application and so notify the applicant as follows:

(1) The Police Chief shall write or stamp "Granted" or "Denied" on the application and date and sign such notation.

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

(3) If the application is granted, the Police Chief shall attach to the application an adult entertainment business employee permit.

(4) The application as granted or denied and the permit, if any, shall be placed in the United States mail, first class postage prepaid, addressed to the applicant at the residence address stated in the application.

(b) The Police Chief shall grant the application and issue the permit unless the application is denied for one or more of the reasons set forth in subsection (d) of this section.

(c) If the Police Chief grants the application or if the Police Chief neither grants nor denies the application within five (5) days after it is stamped as received (except as provided in Section 5-9.206(g)), the applicant may begin performing in the capacity for which the license was sought.

(d) The Police Chief shall deny the application for any of the following reasons:

(1) The applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a permit or in any report or document required to be filed with the application;

(2) The applicant is under eighteen (18) years of age;

(3) The adult entertainment business employee permit is to be used for performing in a business prohibited by State or City law.

(4) The applicant has been registered in any state as prostitute.

(5) The applicant has been convicted of any of the offenses enumerated in Section 5-9.206(d)(5) or convicted of an offense outside the State of California that would have constituted any of the described offenses if committed within the State of California. A permit may be issued to any person convicted of the described crimes if the conviction occurred more than five (5) years prior to the date of the application.

(e) Each adult entertainment business performer permit shall expire one (1) year from the date of issuance and may be renewed only by filing with the Police Chief a written request for renewal, accompanied by the application fee and a copy of the permit to be renewed. The request for renewal shall be made at least thirty (30) days before the expiration date of the permit. When made less than thirty (30) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for applications for permits. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.208 Suspension or Revocation of Adult Entertainment Business Regulatory Permits and Adult Entertainment Business Performer Permits.

An adult entertainment business regulatory permit or adult entertainment business performer permit may be suspended or revoked in accordance with the procedures and standards of this section.

(a) On determining that grounds for permit revocation exist, the Police Chief shall furnish written notice of the proposed suspension or revocation to the permittee. Such notice shall set forth the time and place of a hearing, and the ground or grounds upon which the hearing 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 date. Hearings shall be conducted in accordance with procedures established by the Police Chief, but at a minimum shall include the following:

(1) All parties involved shall have a right to offer testimonial, documentary, and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness. The Police Chief's decision may be appealed in accordance with Section 5-9.209.

(b) A permittee may be subject to suspension or revocation of his permit, or be subject to other appropriate disciplinary action, for any of the following causes arising from the acts or omissions of the permittee, or an employee, agent, partner, director, stockholder, or manager of an adult entertainment business:

(1) In the case of a permittee of an adult entertainment business regulatory permit only, 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 Modesto City Code, all applicable State and Federal requirements of a similar nature which 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 performance standards contained in Section 5-9.301.

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

(i) Any act of unlawful 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, assination, 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 conduct prohibited by this chapter.

(4) Failure to abide by a disciplinary action previously imposed by an appropriate City official.

(c) After holding the hearing in accordance with the provisions of this section, if the Police Chief finds and determines that there are grounds for disciplinary action, based upon the severity of the violation, the Police Chief shall impose one of the following:

(1) A warning;

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

(3) Revocation of the permit. (Amended by Ord. 3000-C.S., § 3, 10-3-96)

#### 5-9.209 Appeal of Denial, Suspension or Revocation.

After denial of an application for an adult entertainment business regulatory permit or an adult entertainment business performer permit, or after denial of renewal of a permit, or suspension or revocation of a permit, the applicant or person to whom the permit was granted may seek review of such administrative action by the City Council in accordance with the provisions of Chapter 4 Title 1 of the Modesto Municipal Code. If the denial, suspension or revocation is affirmed on review, the applicant, permittee may seek prompt judicial review of such administrative action pursuant to California Code of Civil Procedure Section 1094.5. The City shall make all reasonable efforts to expedite judicial review, if sought by the permittee. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, 10-3-96)

#### 5-9.210 Additional Permits Required.

(a) No person shall act as an “escort” unless an escort permit is first obtained.

(b) No person shall act as a “figure model” in a modeling studio unless a figure model permit is first obtained. The issuance of a business license pursuant to Section 6-1.103 of the Modesto Municipal Code shall not authorize acting as an “escort,” or as or as a “figure model” in a modeling studio until the necessary regulatory permit has been lawfully granted. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, 10-3-96)

#### 5-9.211 Application for Escort or Figure Model Permit.

(a) An applicant for an “escort” or “figure model” permit shall make an application under penalty of perjury to the Police Chief or his authorized representative upon a form provided by the City of Modesto. A nonrefundable fee, as established by resolution adopted by the City Council from time to time, shall be paid to the City of Modesto to reimburse the City for the cost of the investigation. A copy of the receipt issued by the City of Modesto Finance Department shall accompany the application. The permit fee required under this section is in addition to any other license or permit fee required by the Modesto Municipal Code.

(b) The application for permit does not authorize the applicant to act as an “escort” or as a “figure model” until such permit has been granted.

(c) Every application submitted to the Police Chief shall include the following information:

(1) The applicant’s full name, any other names used, date of birth, California driver’s license number or California identification number, social security number, present residence address, telephone number, sex, height, weight, color of hair, and color of eyes.

(2) Previous two (2) residence addresses of the applicant and the inclusive dates at each address.

(3) The applicant’s business, occupation, and employment history for five (5) years preceding the date of application and inclusive dates of same.

(4) The permit history of the applicant; whether such person ever had any permit or license issued to him or her by any other public entity in this state; the date of issuance of any such permit or license, whether any such permit or license has ever been revoked or suspended; and if any such license or permit has been revoked or suspended, the reason therefor.

(5) All convictions for any crimes involving conduct which requires registration under any state law similar to and including California Penal Code Section 290, or of conduct

which is a violation of the provisions of any state laws similar to and including California Penal Code Sections 243.4, 261, 261.5, 262, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 267, 309, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 313.1, 314, 315, 316, 318, 647(a), 647(b), 647(d), 647.6.

(6) Any offense requiring registration under provisions of 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.

(7) Whether such person is or 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 any person mentioned in this subsection has ever been licensed or registered as a prostitute, or otherwise authorized by the laws of any other state to engage in prostitution, a statement shall be submitted giving the place of such registration, licensing or legal authorization, and the inclusive dates during which such person was so licensed, registered, or authorized to engage in prostitution.

(8) Acceptable written proof that the applicant is at least eighteen (18) years of age.

(9) A complete set of fingerprints acceptable to the Police Chief.

(10) The applicant shall make himself or herself available to the Modesto Police Department in order to be photographed.

(11) Authorization for the City of Modesto, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, 10-3-96)

#### 5-9.212 Issuance and Denial of Permits.

(a) The Police Chief or his authorized representative shall have thirty (30) days from the date the application is accepted as complete in which to investigate the application and background of the applicant. Upon completion of the investigation, the Police Chief or his designated representative shall approve or deny the permit. The Police Chief may refuse to issue permit for “escort” or “figure model” for any of the following reasons, which reasons will be set forth fully in writing and delivered to the applicant:

(1) The applicant has been convicted of any of the offenses enumerated in the paragraphs (c)(5) and (6) of Section 5-9.211, or convicted of an offense outside the State of California that would have constituted any of the described offenses if committed within the State of California. A permit may be issued to any person convicted of any of the

crimes described if such conviction occurred more than five (5) years prior to the date of the application.

(2) The applicant has been licensed or registered in any state as a prostitute.

(3) Any false statements made in the initial application for “escort” or “figure model” permit.

(4) That the applicant has had an “escort” or “figure model” permit denied or revoked for cause by this City within the last five (5) years.

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

(6) That the applicant has not paid the required fee to the City of Modesto Finance Department.

(b) Any refusal to issue a permit pursuant to this section or the suspension, or revocation of a permit under the provisions of Section 5-9.213 is appealable to the City Council in accordance with the provisions of Chapter 4 of Title 1 of Modesto Municipal Code. After the denial of any such appeal, the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction pursuant to California Code of Civil Procedure Section 1094.5. The court shall promptly review the action taken by the City Council. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.213 Revocation or Suspension of Permits.

After following the procedure in Section 5-9.205, the Police Chief may revoke or suspend an “escort” or “figure model” permit for conviction of any crimes specified in Section 5-9.211(c)(5) and (6). The decision of the Police Chief shall be in writing and shall be mailed postage prepaid to the escort or figure model. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.214 Term of Permit.

(a) Permits issued under the provisions of the section shall be valid for a period of one (1) year from the date of issuance and shall be renewable annually.

(b) An application for renewal for an “escort” or “figure model” permit shall be accompanied by a nonrefundable filing fee, as established by resolution adopted by the City Council from time to time. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

## Article 3 Facilities and Employees

### 5-9.301 Adult Entertainment Business Development and Performance Standards.

(a) Maximum occupancy load, fire exits, aisles and fire equipment shall be regulated, designed and provided in accordance with the Fire Department and building regulations and standards adopted by the City of Modesto.

(b) No adult entertainment business shall be operated in any manner that permits the observation of any material or activities depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” from any public way or from any location outside the building or area of such establishment. This provision shall apply to any display, decoration, sign, show window or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

(c) All off-street parking area and premises entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot-candle of light on the parking surface and/or walkways. The required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

(d) The premises within which the adult entertainment business is located shall provide sufficient sound-absorbing insulation so that noise generated inside said premises shall not be audible anywhere on any adjacent property or public right-of-way or within any other building or other separate unit within the same building.

(e) Except for those businesses also regulated by the California Department of Alcoholic Beverage Control, an adult entertainment business shall be open for business only between the hours of 8:00 a.m. and midnight on any particular day.

(f) Any adult entertainment business which is also a “picture arcade” pursuant to Section 4-1.1302 of this Code shall comply with Sections 4-1.1303 and 4-1.1304.

(g) The building entrance to an adult entertainment business shall be clearly and legibly posted with a notice indicating that persons under eighteen (18) years of age are precluded from entering the premises. Said notice shall be constructed and posted to the satisfaction of the Community Development Director or designee. No person under the age of eighteen (18) years shall be permitted within the premises at any time.

(h) All indoor areas of the adult entertainment business within which patrons are permitted; except rest rooms, shall be open to view by the management at all times.



(i) The adult entertainment business shall provide and maintain separate rest room facilities for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using the rest room(s) for females, and female patrons and employees shall be prohibited from using the rest room(s) for males, except to carry out duties of repair, maintenance and cleaning of the rest room facilities. The rest rooms shall be free from any adult material. Rest rooms shall not contain television monitors or other motion picture or video projection, recording or reproduction equipment. The foregoing provisions of this paragraph shall not apply to an adult entertainment business which deals exclusively with sale or rental of adult material which is not used or consumed on the premises, such as an adult bookstore or adult video store, and which does not provide rest room facilities to its patrons or the general public.

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

(1) No person shall perform live entertainment for patrons of an adult entertainment business except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patrons, and no patron shall be permitted within ten (10) feet of the stage while the stage is occupied by an entertainer. "Entertainer" shall mean any person who is an employee or independent contractor of the adult entertainment business, or any person who, with or without any compensation or other form of consideration, performs live entertainment for patrons of an adult entertainment business.

(2) The adult entertainment business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.

(3) The adult entertainment business shall provide an entrance/exit for entertainers which is separate from the entrance/exit used by patrons.

(4) The adult entertainment business shall provide access for entertainers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the adult business shall provide a minimum three (3) foot wide walk aisle for entertainers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the entertainers capable of (and which actually results in) preventing any physical contact between patrons and entertainers.

(5) No person who is required to obtain a permit pursuant to Section 5-9.206, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after performances by such entertainer. This subsection shall only apply to physical contact on the premises of the adult entertainment business.

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

(7) No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit any pay or gratuity from any patron.

(8) No owner or other person with managerial control over an adult entertainment business (as that term is defined herein) shall permit any person on the premises of the adult-oriented business to engage in a live showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque coverage, and/or the female breast with less than a fully opaque coverage over any part of the nipple or areola and/or covered male genitals in a discernibly turgid state. This provision may not be complied with by applying an opaque covering simulating the appearance of the specified anatomical part required to be covered.

(k) Adult entertainment businesses shall employ security guards in order to maintain the public peace and safety, based upon the following standards:

(1) Adult entertainment businesses featuring live entertainment shall provide at least one (1) security guard at all times while the business is open. If the occupancy limit of the premises is greater than thirty-five (35) persons, an additional security guard shall be on duty.

(2) Security guards for other adult entertainment businesses may be required if it is determined by the Police Chief that their presence is necessary in order to prevent any of the conduct listed in Section 5-9.208(b)(3) from occurring on the premises.

(3) Security guard(s) shall be charged with preventing violations of law and enforcing compliance by patrons of the requirements of these regulations. Security guards shall be uniformed in such a manner so as to be readily identifiable as a security guard by the public and shall be duly licensed as a security guard as required by applicable provisions of State law. No security guard required pursuant to this subsection shall act as a door person, ticket seller, ticket taker, admittance person, or sole occupant of the manager's station while acting as a security guard.

The foregoing applicable requirements of this section shall be deemed conditions of adult entertainment business regulatory permit approvals, and failure to comply with every such requirement shall be grounds for revocation of the permit issued pursuant to these regulations. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, and Ord. 3028-C.S., § 1, effective 2-27-97)

5-9.302 Register and Permit Number of Employees.

(a) Every permittee of an “adult entertainment business” which provides live entertainment depicting specified anatomical areas or involving specified sexual activities must maintain a register of all persons so performing on the premises and their permit numbers. Such register shall be available for inspection during regular business hours by any police officer or health officer of the City of Modesto. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.303 Display of Permit and Identification Cards.

(a) Every “adult entertainment business” shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for such “adult entertainment business” in a conspicuous place so that the same may be readily seen by all persons entering the “adult entertainment business.”

(b) The Police Chief shall provide each adult entertainment business performer required to have a permit pursuant to the chapter, with an identification card containing the name, address, photograph and permit number of such performer.

(c) The Police Chief shall provide each “escort” or “figure model” granted a permit with an identification card containing the name, address, photograph, and permit number of the “escort” or “figure model.”

(d) An “escort” shall carry such card at all times while providing escort services.

(e) A “figure model” shall have such card available for inspection at all times during the hours of operation of the model studio.

(f) An adult entertainment business performer shall have such card available for inspection at all times during which such person is on the premises of the adult entertainment business. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.304 Employment of and Services Rendered to Persons Under the Age of Eighteen Years Prohibited.

(a) It shall be unlawful for any permittee, operator, or other person in charge of any “adult entertainment business” to employ any person who is not at least eighteen (18) years of age.

(b) It shall be unlawful for any permittee, operator or other person in charge of any adult-oriented business to permit to enter, or remain within the adult-oriented business, any person who is not at least eighteen (18) years of age. (Added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, 10-3-96)

## Article 4 Miscellaneous Provisions

### 5-9.401 Inspection.

An applicant or permittee shall permit representatives of the Police Department, Health Department, Fire Department, Planning Division, or other City Departments or Agencies to inspect the premises of an adult entertainment business for the purpose of insuring compliance with the law and the development and performance standards applicable to adult entertainment businesses, at any time it is occupied or opened for business. A person who operates an adult entertainment business or his or her agent or employee is in violation of the provisions of this section if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

### 5-9.402 Regulations Nonexclusive.

The provisions of this article regulating adult entertainment 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 Modesto. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

### 5-9.403 Employment of Persons Without Permits Unlawful.

(a) It shall be unlawful for any owner, operator, manager, or permittee in charge of or in control of an “adult entertainment business” which provides live entertainment depicting specified anatomical areas or involving specified sexual activities to allow any person to perform such entertainment who is not in possession of a valid, unrevoked adult entertainment business performer permit.

(b) No permittee or operator of an escort service shall allow or permit a person to act as an “escort” for such service unless said person possesses a valid escort permit under the provisions of this article. It shall be the responsibility of the permittee and the operator to ensure that each such person employed as an “escort” shall first have obtained a valid permit pursuant to this article.

(c) No permittee or operator of a model studio shall allow or permit a person to act as a “figure model” for such studio unless the person possesses a valid figure model permit under the provisions of this article. It shall be the responsibility of the permittee and the operator to ensure that each such person employed as a “figure model” shall first have

obtained a valid permit pursuant to this article. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.404 Time Limit for Filing Application for Permit.

All persons who possess an outstanding business license heretofore issued for the operation of an “adult entertainment business” and all persons required by this chapter to obtain an adult entertainment business performer permit, or an escort permit, or a figure model permit must apply for and obtain such a permit within ninety (90) days of effective date of this chapter. Failure to do so continued operation of an “adult entertainment business,” or continued employment as an “escort” or “figure model,” or the continued performances depicting specified anatomical areas or specified sexual activities in an “adult entertainment business” after such time without a permit shall constitute a violation of this chapter. (Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.405 Certain Conduct in Bars Prohibited.

The City Council of the City of Modesto finds that barroom nudity is a direct cause of increased demand for police services in and about such establishments, and finds further that the activities commonly engaged in by both employees and patrons of such establishments are inimical to the public welfare in that nudity in such establishments has been demonstrated to increase the occurrence of illegal activity in and occurring around such establishments. Accordingly, the following acts or conduct on the premises of any bar are deemed contrary to the public interest and welfare and the best interests of the community and, therefore:

(a) No bar owner or operator or an employee thereof shall permit any person on the premises to display or expose his or her genitals, pubic hair, buttocks, anal region, or any portion of the female breast at or below the areola thereof.

(b) No bar owner or operator or employee thereof shall permit any person on the premises to perform “specified sexual activities” as defined in Section 5-9.102.

Any bar owner, operator or employee thereof who permits any of the above while alcoholic beverages are being sold or in the presence of anyone who has consumed any alcoholic beverages on the premises at any time during the four (4) hours immediately preceding the act or display referred to above shall be guilty of a misdemeanor.

Any person who exposes his or her genitals, pubic hair, buttocks, anal region, or any portion of the female breast at or below the areola thereof on the premises while alcoholic beverages are being sold, or on the premises and in the presence of anyone who has consumed any alcoholic beverages at such premises at any time during the four (4) hours

immediately preceding such display or exposure shall be guilty of a misdemeanor.  
(Added by Ord. 2953-C.S., § 3, effective 11-2-95)

#### 5-9.406 Nuisance Per Se.

Violations of Municipal Code Sections 10-2.2403, 10-2.2404, 5-9.103, 5-9.205, 5-9.206, 5-9.208, 5-9.213, 5-9.304, 5-9.403 or 5-9.405 shall constitute a nuisance per se, whether or not such violations are repeated or intentional, subject to abatement at the expense of the person or persons creating, causing, committing, or maintaining any of these violations. Where a violation of a valid ordinance is proven, the cost, including court costs and attorneys' fees relating to such proof, shall be recoverable in addition to any other abatement-related costs both as a personal obligation of the violator and of the property owner owning the property where the violation occurred, and as a lien against that property in accordance with the procedures set forth in California Government Code Sections 38773, 38773.1 or 38773.5 as they exist now or may be amended or recodified in the future. The City Attorney may, in addition to or in lieu of prosecuting a criminal action or revoking the appropriate permits, commence an action or actions, proceeding or proceedings for the abatement, removal and enjoinder thereof in the manner provided by law, and shall take such other steps and shall apply to such other court or courts as may have jurisdiction to grant such a relief as will abate or remove such adult entertainment business and restrain and enjoin any person from operating, conducting, or maintaining an adult entertainment business contrary to the provisions of this Code.  
(Added by Ord. 3028-C.S., § 1, effective 2-27-97)

#### 5-9.407 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective. (Formerly 5-9.406, added by Ord. 2953-C.S., § 3, amended by Ord. 3000-C.S., § 3, and Ord. 3028-C.S., § 1, effective 2-27-97)