

ORDINANCE NO. 531

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LINDSAY AMENDING TITLE 9, TITLE 18, SECTION 18.11.020, CHAPTER 18.15 AND CHAPTER 18.20 OF THE LINDSAY MUNICIPAL CODE; REPEALING CHAPTER 9.12 AND SECTION 18.15.120 OF THE LINDSAY MUNICIPAL CODE; AND ADDING CHAPTER 9.40 AND SECTIONS, 18.20.010, 18.20.020, 18.20.030 AND 18.20.040 TO THE LINDSAY MUNICIPAL CODE REGARDING STANDARDS FOR SPECIFIC USES, SEXUALLY ORIENTED BUSINESSES, BODY ART FACILITIES, AND FORTUNETELLING ESTABLISHMENTS.

THE CITY COUNCIL OF THE CITY OF LINDSAY DOES ORDAIN AS FOLLOWS:

SECTION 1:

Findings.

A. The City Council finds that it is necessary and appropriate to amend title 9, title 18, section 18.11.020, chapter 18.15 and chapter 18.20, to repeal chapter 9.12 and section 18.15.120, and to add sections 9.40.010, 18.20.010, and 18.20.020 of the Lindsay Municipal Code in order to update the standards for sexually oriented businesses operating within the City of Lindsay. The purpose of the City's ordinances adopted to regulate sexually oriented businesses ("regulatory ordinances") is to promote health, safety and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of the City's regulatory ordinances have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is neither the intent nor effect of the City's regulatory ordinances 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. It is not the intent or effect of the City's regulatory ordinances to condone or legitimize the distribution of obscene material.

B. The City Council, in adopting this ordinance, takes legislative notice of the existence and content of the following studies concerning the adverse secondary effects of sexually oriented businesses in other communities, including but not limited to: San Diego, California (1992); Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984); Houston, Texas (1983); Beaumont, Texas (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Amarillo, Texas (1977); Los Angeles, California (1977); and Cleveland, Ohio (1977).

C. The City Council, in adopting this ordinance, takes legislative notice of the existence and content of the materials prepared by the League of California Cities City Attorneys Department Spring Meeting (May 1-3, 1996) titled "Regulation of Adult Oriented Business".

D. The City Council finds the following in part based upon its understanding of the documents and judicial decisions in the public record:

a. Evidence indicates that some dancers, models and entertainers, and other persons who publicly perform specified sexual activities or publicly display specified anatomical areas in sexually oriented businesses (collectively referred to herein as "performers") have been found to engage in sexual activities with patrons of sexually oriented businesses on the site of those businesses.

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

c. Evidence indicates that performers at sexually oriented businesses have been found to engage in acts of prostitution with patrons of such businesses.

d. Evidence indicates that sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

e. Evidence indicates that persons often frequent adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

f. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

g. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

E. Based on the foregoing, reports made available to the Council, testimony presented in hearings, and findings incorporated in the cases of City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986), Young v. American Mini Theaters, 426 U.S. 50 (1976), and Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991), the City Council of the City of Lindsay finds and determines that special regulation of sexually oriented businesses is necessary to ensure the following:

a. That the adverse secondary side effects of sexually oriented businesses will not contribute to an increase in crime rates or to the blighting or deterioration of the areas in which they are located or surrounding areas.

b. That regulations are placed upon sexually oriented businesses that will reduce to the greatest extent possible, the possibility for the occurrence of illegal activities or conduct such as: (1) receiving money for the placement of persons for purposes of cohabitation; (2) purchasing persons for purposes of prostitution; (3) engaging in pimping or pandering, or lewd or obscene conduct; (4) maintaining a house of ill-fame, a disorderly house which disturbs the immediate neighborhood, or a place of prostitution or lewdness; or (5) maintaining a place used as bathhouse which permits conduct capable of transmitting AIDS.

F. The City Council finds that these studies cited herein are relevant to the problems addressed by the City in regulating the adverse secondary effects of sexually oriented businesses, and more specifically finds that these studies provide convincing evidence that:

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

b. The proximity and concentration of sexually oriented businesses adjacent to residential, recreational, religious, education and other sexually oriented business uses can cause other businesses and residences to move elsewhere.

c. There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by sexually oriented businesses, including but not limited to an increase in the crimes of narcotics distribution and uses, prostitution, pandering and violence against persons and property.

d. The studies from other cities establish convincing evidence that sexually oriented businesses that are not regulated as to permissible locations often have a deleterious effect on nearby businesses in residential areas, causing, among other adverse secondary effects, an increase in crime and a decrease in property values.

G. The City Council takes legislative notice of judicial decisions pertaining to locational criteria for sexually oriented businesses, including Tollis Inc. v. County of San Diego, 505 F.3d 935 (9th Cir. 2007); Isbell v. City of San Diego, 258 F.3d 1108 (9th Cir. 2001); Diamond v. City of Taft, 215 F.3d 1052 (9th Cir. 2000); Lim v. City of Long Beach, 217 F.3d 1050 (9th Cir. 2000); Topanga Press, Inc. v City of Los Angeles, 989 F.2d 1524 (9th Cir. 1993); and finds that the locational requirements contained in this ordinance do not unreasonably restrict the establishment and operation of constitutionally protected sexually oriented businesses and there are sufficient sites available for adult businesses within the City.

H. The City Council finds that the location criteria alone do not adequately protect the health, safety, and general welfare of the citizens of the City, and thus certain requirements with respect to the ownership and operation of sexually oriented businesses are in the public interest.

I. In addition to the findings and studies conducted in other cities regarding increases in crime rates, decreases in property values and the blighting of areas in which such

businesses are located, the City Council also takes notice of the facts recited in the case of Kev, Inc. v. Kitsap County, 793 F.2d 1053 (1986), regarding how live adult entertainment results in secondary effects, such as prostitution, drug dealing and other law enforcement problems.

J. Zoning, licensing and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in the City and help assure that all operators of sexually oriented businesses comply with reasonable regulations and are located in places that minimize the adverse secondary effects which naturally accompany the operation of such businesses.

K. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of such sexually oriented businesses and the need of children and minors to stay away from and avoid such businesses, which causes children to be fearful and cautious when walking through or visiting the immediate neighborhood of such businesses; and the City Council desires to minimize and control the adverse secondary side effects associated with the operation of sexually oriented businesses and thereby protect the health, safety and welfare of the citizens of the City; protect the citizens from increased crime; preserve the quality of life; preserve property values and the character of surrounding neighborhoods and businesses; deter the spread of urban blight and protect against the threat to health from the spread of communicable and sexually transmitted diseases. The City Council takes legislative notice of the cases which deem protecting minors from sexually explicit materials to be a compelling government interest, including Crawford v. Lungren, 96 F.3d 380 (9th Cir. 1996), *cert. denied* 520 U.S. 1117 (1997) and Berry v. City of Santa Barbara, 40 Cal.App.4th 1075 (1995).

L. In developing the City's regulatory ordinances, the City Council has been mindful of legal principles relating to regulation of sexually oriented businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendments of the United States and California Constitutions, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of sexually oriented businesses.

M. The City Council has considered decisions of the United States Supreme Court regarding local regulations of sexually oriented businesses, including but not limited to: Young v. American Mini Theaters, Inc., 427 U.S. 50 (1976) (Reh. Denied 429 U.S. 873); Renton v. Playtime Theaters, 493 U.S. 41 (1986) (Reh. Denied 475 U.S. 1132); FW/PBS, Inc. v. Dallas, 493 U.S. 215 (1990); Barnes v. Glenn Theater, 501 U.S. 560 (1991); Erie v. Pap's A.M. (2000) 529 U.S. 277; United States Court of Appeals 9th Circuit decisions, including but not limited to: Topanga Press, et al. v. City of Los Angeles, 989 F.2d 1524 (1993); Alameda Books v. City of Los Angeles, (9th Cir. 2000) 222 F.3d 719; several California cases including, but not limited to: Tily B., Inc. v. City of Newport Beach (1998) 69 Cal.App.4th 1; City of National City v. Weiner, 3 Cal.4th 832 (1993); People v. Superior Court (Lucero) 49 Cal.3d 14 (1989); and City of Vallejo v. Adult Books, et al., 167 Cal.App.3d 1169 (1985); and other federal cases including Lakeland Lounge v. City of Jacksonville (5th Cir. 1992) 973 F.2d 1255, Hang On, Inc. v. Arlington (5th Cir. 1995) 65 F.3d 1248, Mitchell v. Commission on Adult Entertainment (3rd Cir. 1993) 10 F.3d 123, International Eateries v. Broward County (11th Cir. 1991), 941 F.2d 1157, and Star Satellite v. City of Biloxi (5th Cir. 1986) 779 F.2d 1074.

N. The City Council of the City of Lindsay finds and determines that sexually oriented businesses have serious objectionable operational characteristics, particularly when several of them are located in direct proximity to sensitive uses such as parks, schools, churches, or residentially zoned districts thereby having a deleterious effect upon the adjacent areas.

O. The City Council of the City of Lindsay finds and determines that special regulations concerning the location, permitting, operating and advertising of sexually oriented businesses is necessary and is substantially related to the advancement of governmental concerns and thus, makes the following specific findings and determinations in support of its duly adopted regulations:

a. The locational requirements established in the City's Zoning Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected sexually oriented businesses in the City of Lindsay and a sufficient reasonable number of appropriate locations for sexually oriented businesses are provided by the City's Zoning Ordinance.

b. Within sexually oriented businesses, enclosed or concealed booths, dimly-lit areas and unsupervised patrons greatly increase the potential for misuse of the premises, including unlawful conduct of a type which facilitates transmission of disease.

c. Requirements that all indoor areas be open to view by management at all times, that adequate lighting be provided and that managers be situated at locations with an unobstructed view of areas accessible to patrons are necessary in order to reduce the opportunity for, and therefore, the incidence of illegal conduct within sexually oriented businesses, and to facilitate the inspection of the interior of the premises by law enforcement personnel.

d. Requiring a permit to operate a sexually oriented business is important to keep track of the various regulated adult uses and to aid in documenting the negative secondary effects of those uses.

e. The permit process is an important tool in providing for accountability and provides reasonable assurances that the licensee is the actual operator of the sexually oriented business, and is the person who is fully in possession and control of the premises and activities occurring therein.

f. Making a reasonable inquiry into a sexually oriented business applicant's sexually oriented business history and requiring the disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business is substantially related to the significant governmental interest in the operation of a business that has identifiable adverse secondary effects upon the community.

g. The City's duly adopted licensing procedures are an appropriate mechanism to place the burden of reasonable regulation on the owners and the operators of sexually oriented businesses.

h. Licensing procedures place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City.

i. Requiring operators of sexually oriented businesses to permit representatives of the City to inspect the premises is substantially related to the significant governmental interest in the operation of a business that has identifiable health concerns and adverse secondary effects upon the community.

j. The City's procedures for the administrative and judicial review of a denial, suspension or revocation of a sexually oriented business permit provide for the expedited processing of an appeal and protects the applicant's due process rights.

k. The City's regulations of advertising of sexually oriented businesses are substantially related to the significant governmental interest in the operation of businesses engaged in the sale of sexually oriented products and/or services.

P. The City Council of the City of Lindsay finds and determines that, the regulation of sexually oriented businesses originates from its involvement with organized crime along with the potential for corruption of politicians and police officers and that enclosed booths are used for anonymous sexual activity, prostitution and other criminal acts.

Q. The City Council has also determined that a closing hours requirement promotes the reduction of deleterious secondary effects from sexually oriented businesses and reasonably relies on prior court decisions on the need for closing hours including Center for Fair Public Policy v. Maricopa County, Arizona, 336 F.3d 1153 (9th Cir. 2003); Mitchell v. Comm. On Adult Entertainment, 10 F.3d 123, 131-139 (3rd Cir. 1993); Lady J. Lingerie, Inc. v. City of Jacksonville, 973 F. Supp. 1428 (M.D. Fla. 1997) and Lady J. Lingerie, Inv. v. City of Jacksonville, 176F.3d 1358 (11th Cir. 1999); and City of Colorado Springs v. 2354 Inc., 896 P.2d 272 (1995).

R. The City Council finds that preventing the direct exchange of money between entertainers and patrons also reduces the likelihood of drug and sex transactions occurring in Sexually Oriented Businesses; and

S. Requiring separations between entertainers and patrons reduces the likelihood that such persons will negotiate narcotics sales and/or transact sexual favors within the Sexually Oriented Business. The City Council takes notice of the cases upholding separation requirements as acceptable methods of reducing negative secondary effects, including Gammoh v. City of La Habra, 395

F.3d 1114 (9th Cir. 2005), cert. denied, 546 U.S. 871 (2005); Colacurcio v. City of Kent, 163 F.3d 545 (9th Cir. 1998); BSA, Inc. v. King County, 804 F.2d 1104 (9th Cir. 1986); Kev, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir. 1986); and Tily B. v. City of Newport Beach, (1999).

T. In prohibiting public nudity in Sexually Oriented Businesses, the City Council does not intend to proscribe the communication of erotic messages or any other communicative element or activity, but rather only to prevent or reduce the secondary impacts associated with such public nudity.

U. The City Council also finds, as a wholly independent basis, that it has a substantial public interest in preserving societal order and morality, and that such interest is furthered by a prohibition on public nudity.

SECTION 2: Title 9 of the Lindsay Municipal Code shall be amended to read as follows:

Title 9

PUBLIC PEACE, MORALS AND WELFARE

Chapters:

OFFENSES BY OR AGAINST PUBLIC OFFICERS OR GOVERNMENT

II. OFFENSES AGAINST THE PERSON

9.16 Disturbing the Peace

III. OFFENSES AGAINST PUBLIC DECENCY

9.28 Intoxicating Liquor

9.32 Gambling

9.36 Spitting or Throwing Fruit Peels on Sidewalks

9.40 Public Nudity

IV. OFFENSES AGAINST PUBLIC PEACE

9.48 Obstructing Passage and Throwing Objects

9.50 Nuisances

V. OFFENSES AGAINST PROPERTY

9.60 Pollution

VI. CONSUMER PROTECTION

9.72 Solicitation Without Invitation

VII. MINORS

9.84 Curfew

VIII. WEAPONS

9.96 Discharging

**VIII. OFFENSES BY OR AGAINST PUBLIC OFFICERS OR GOVERNMENT
(RESERVED)**

II. OFFENSES AGAINST THE PERSON

SECTION 3: Chapter 9.40 of the Lindsay Municipal Code shall be added and read as follows:

Chapter 9.40

PUBLIC NUILITY

Sections:

9.40.010 Prohibited

9.40.010 Prohibited

It shall be unlawful for any person to knowingly or intentionally appear in a public place in a state of nudity. "Nudity or state of nudity" means: a) the appearance or display of the human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or b) a state of dress which fails to opaquely and fully cover a human buttock, anus, male or female genitals, pubic region or areola or nipple of the female breast. "Public place" means any location frequented by the public, or where the public is likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, business and commercial establishments (whether for profit or not for profit, whether open to the public at large, or whether entrance is limited by a cover charge or membership requirement), hotels, motels, restaurants, nightclubs, country clubs, cabarets, and/or meeting facilities. Premises, or portions thereof, such as hotel rooms, used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place. This section shall not apply to children under ten (10) years of age. Furthermore, this section shall not apply to a person appearing in a state of nudity in a modeling class operated pursuant to section 18.20.020 of this code.

SECTION 4: Title 18 of the Lindsay Municipal Code shall be amended to read as follows:

Title 18

ZONING

Chapters:

- 18.01 General Provisions
- 18.02 Establishment and Designation of Zoning Districts
- 18.03 Zone Plan
- 18.04 Resource Conservation and Open Space District
- 18.05 UR Urban Reserve District
- 18.06 RA Residential Acreage District
- 18.07 R One-Family Residential Districts
- 18.08 RM Multi-Family Residential Districts
- 18.09 PO Professional Office District
- 18.10 Commercial Districts
- 18.11 I Industrial Districts
- 18.12 Combining Districts
- 18.13 Off-Street Parking and Off-Street Loading Facilities
- 18.14 Home Occupations – Temporary Subdivision Signs and Sales Offices – Mobile Home Parks – Signs and Outdoor Advertising Structures – Manufactured and Second Housing Units
- 18.15 General Provisions and Exceptions
- 18.16 Uses Permitted by Administrative Approval
- 18.17 Permits for Conditional Uses
- 18.18 Site Plan Review
- 18.19 Planned Unit Developments

- 18.20 Standards for Specific Uses
- 18.21 Variances
- 18.22 Amendments
- 18.23 Enforcement
- 18.24 Construction and Definitions

SECTION 5: Section 18.11.020 of the Lindsay Municipal Code shall be amended to include "Sexually oriented businesses, body art facilities, and fortune telling establishments" as permitted uses in subsection B.

SECTION 6: Chapter 18.15 of the Lindsay Municipal Code shall be amended to read as follows:

Chapter 18.15

GENERAL PROVISIONS AND EXCEPTIONS

Sections:

- 18.15.010 Addition of permitted uses.
- 18.15.020 Addition of permitted uses.
- 18.15.030 Yard spaces.
- 18.15.040 Yard requirements - Measurement.
- 18.15.050 Yard requirements - Exceptions.
- 18.15.060 Through lots.
- 18.15.070 Maintenance of landscaped areas
- 18.15.080 Maintenance and elimination of nonconforming sites, uses and structures.
- 18.15.090 Clarification of ambiguity Interpretation.
- 18.15.100 Height limitations-Measurement and exceptions.
- 18.15.110 Garage sales within residential areas.

SECTION 7: Chapter 18.20 of the Lindsay Municipal Code shall be amended to read as follows:

CHAPTER 18.20

STANDARDS FOR SPECIFIC USES

Sections:

- 18.20.010 Purpose and Intent
- 18.20.020 Sexually Oriented Businesses
- 18.20.030 Body Art Facilities
- 18.20.040 Fortune Telling Establishments

SECTION 8: Chapter 9.12 shall be repealed from Title 9 of the Lindsay Municipal Code.

SECTION 9: Section 18.15.120 shall be repealed from Chapter 18.15 of the Lindsay Municipal Code.

SECTION 10: Section 18.20.010 shall be added to Chapter 18.20 of the Lindsay Municipal Code and read as follows:

18.20.010 Purpose and Intent

Certain activities and uses, due to their nature, create more significant impacts upon the community than others. As a result, specific regulation of these activities and uses is warranted. The purpose of this chapter is to identify and regulate such uses in districts permitting those uses, in order to ensure

the maintenance of the public health, safety and welfare in accordance with the goals, objectives, policies and implementation programs of the general plan.

SECTION 11: Section 18.20.020 shall be added to Chapter 18.20 of the Lindsay Municipal Code and read as follows:

18.20.020 Sexually Oriented Businesses

A. Purpose and Intent. It is the purpose and intent of this section to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the City, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this section 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 neither the intent nor effect of this section 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 the section to condone or legitimize the distribution of obscene material.

B. Prohibited Uses, Conduct and Activities.

1. One of the important purposes of the regulations set forth in this section is to discourage and to minimize the opportunity for criminal conduct. As such, nothing in this section shall permit or be interpreted to permit any use, conduct, and/or activity which is specifically prohibited under the following California Penal Code sections:

- a. Receipt of money for placement of person for purposes of cohabitation. (Penal Code §266d);
- b. Purchase of person for purposes of prostitution or placement of person for immoral purposes. (Penal Code §266f);
- c. Sale of person for immoral purposes (Penal Code §266f);
- d. Pimping (Penal Code §266h);
- e. Pandering (Penal Code §266i);
- f. Lewd or obscene conduct (Penal Code §314);
- g. Houses of ill-fame (Penal Code §315);
- h. Disorderly houses which disturb the immediate neighborhood (Penal Code § 316);
- i. Places of prostitution (Penal Code §317);
- j. Place of prostitution; place of lewdness; place used as bathhouse permitting conduct capable of transmitting AIDS (Penal Code §11225).

2. Nothing in this section shall be interpreted to issue a permit for or permit any use, conduct, and/or activity which violates any federal, state or local law or regulation.

3. A "sexual encounter establishment" is not a permitted use. For purposes of these regulations, a "sexual encounter establishment" means any business or commercial establishment that as one of its important business purposes offers for any form of consideration a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" when one or more of the persons of the establishment is in a "state of nudity" or where two or more persons may congregate, associate, or consort for the purpose of the exposure of "specified anatomical areas" where one of the patrons of the establishment is in a "state of nudity" or "state of semi-nudity". The definition of sexual encounter establishment shall not include an establishment where a medical practitioner, physiologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

C. Establishment of Classification of Sexually Oriented Businesses. The establishment of any sexually oriented business shall be permitted or conditionally permitted only in industrial zones and shall be subject to the following restrictions: No person shall cause or permit the establishment of any sexually oriented businesses, as defined above, within 1,000 feet of another such business or within 1,000 feet of any religious institution, school, boys' club, girls' club or similar existing youth organization, or public park, or any public building regularly frequented by children including but not limited to the McDermont Field House and Community Aquatics and Wellness Center, or within 500

feet of any property in the City of Lindsay zoned for residential use. These limitations apply to sexually oriented businesses classified as follows:

1. Adult arcades;
2. Adult bookstores;
3. Adult cabarets;
4. Adult motels;
5. Adult motion picture theaters;
6. Adult novelty stores;
7. Adult theaters;
8. Adult video stores; and
9. Nude model studios.

D. Definitions. For purposes of this section, certain words and phrases are defined as follows:

1. "Sexually oriented businesses" are those businesses defined as follows:

a. "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are regularly available or used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

b. "Adult Bookstore", "Adult Novelty Store" or "Adult Video Store" means a commercial establishment which (1) has a significant or substantial portion of its stock-in-trade or (2) derives a significant or substantial portion of its revenues or (3) devotes a significant or substantial portion of its interior floor or display space or (4) devotes a significant or substantial part of its business activities or employees' time, or advertising, to the sale, rental or viewing for any form of consideration, of any one or more of the following:

i. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representatives which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";

ii. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

iii. An establishment may have other significant or substantial business purposes that do not involve the offering for sale, rental or viewing of materials, depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its significant or substantial business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

c. "Adult cabaret" means a nightclub, bar, restaurant, "bottle club" or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear or perform semi-nude, including go-go dancers, exotic dancers, strippers, or similar entertainers; (b) live performances which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" or (c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

d. "Adult motel" means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, and which regularly provides or makes available to patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way or by means of any off premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period

of time less than ten (10) hours; or (c) allows a tenant or occupant to rent or sub-rent the sleeping room for a time period of less than ten (10) hours.

e. "Adult motion picture theater" means commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing "specified sexual activities" or "specified anatomical areas" are regularly shown for an any form of consideration.

f. "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which, for any form or consideration, regularly features person who appear semi-nude or live performances which are characterized by their emphasis on matter depicting, describing, or relating to "specified anatomical areas" or "specified sexual activities."

g. "Nude Model Studio" means any place where a person, who appears in a state of nudity or semi-nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This term does not include a modeling class operated by a proprietary school, licensed by the State of California; a college, junior college, or university supported entirely or partly by taxation; by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing, where in order to participate in a class a student must enroll at least three (3) days in advance of the class, and where no more than one nude model is on the premises at any one time.

h. "Regularly Features or Regularly Shown" with respect to an adult cabaret, adult theater, or adult motion picture theater means at least three (3) times within any thirty (30) day period; or carried on as part of the business' routine scheduling of events or activities and not so infrequently as to constitute a single, rare or unusual event or occurrence.

i. "Significant or Substantial Portion" means such a percentage of its activities, space allocation, revenues, advertising targeting, stock in trade, floor or display space, business receipts, revenues, or other business undertakings as to indicate to a reasonable person that the sexually oriented portion of the business is one of its important activities, though not necessarily its only or even primary activity; for this purpose, evidence that 25% or more of its revenue is derived from such sexually oriented activities or materials, or that 25% or more of its interior floor space or display space is devoted to such sexually oriented activities or materials, or that 25% or more of its actual stock in trade regularly displayed and immediately available for use, rental, purchase, viewing or perusal is comprised of such sexually oriented materials, shall be evidence that a "significant or substantial portion" of the business is devoted to such uses.

2. "Adult cabaret dancer" shall mean any person who is an employee or independent contractor of an "adult cabaret" or other "sexually oriented business" and who, with or without any compensation or other form of consideration, performs as a sexually oriented dancer, exotic dancer, stripper, go-go dancer or similar dancer whose performance on a regular and substantial basis focuses on or emphasizes the adult cabaret dancer's breasts, genitals, and/or buttocks, or where the performance involves semi-nudity.

3. "Adult live entertainment" means any physical human body activity, whether performed or engaged in, alone or with other persons, including but not limited to singing, walking, speaking, dancing, acting, posing, simulating, wrestling or pantomiming, in which the performance is distinguished or characterized by its emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas." Adult live entertainment includes any type of performance where the entertainer is an adult cabaret dancer, as defined herein.

4. "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

5. "Entertainer" shall mean any person who is an employee or independent contractor of the sexually oriented business, or any person who with or without any compensation or other form of consideration performs adult live entertainment for patrons of a sexually oriented business. "Entertainer" includes adult cabaret dancers.

6. "Establishment" means and includes any of the following:

- a. The opening or commencement of any such business as a new business;
 - b. The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
 - c. The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
 - d. The relocation of any such sexually oriented business; or
 - e. The substantial enlargement of any such sexually oriented business.
7. "G-string" shall mean a narrow strip of fabric that covers the pubic area, passes between the thighs, and is supported by a waistband.
 8. "Nudity or State of Nudity" means: (a) the appearance or display of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (b) a state of dress which fails to opaquely and fully cover a human buttock, anus, male or female genitals, pubic region or areola or nipple of the female breast.
 9. "Operator" means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.
 10. "Pasties" are coverings that only conceal the nipples and areola.
 11. "Permitted or "Unlicensed Premises" means any premises that requires a license and/or permit and that is classified as a sexually oriented business.
 12. "Permittee and/or Licensee" means a person in whose name a permit and/or license to operate a sexually oriented business has been issued as well as the individual listed as an applicant on the application for a permit and/or license.
 13. "Person" means an individual, proprietorship, partnership, corporation, association or other legal entity.
 14. "Public Building Regularly Frequented By Children" means any building owned, leased or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used as a library, community center, children's center, or any other use having special attraction to children, or which building is often visited by children for social activities unaccompanied by their parents or other adult custodians. This includes the McDermont Field House and the Community Aquatics and Wellness Center.
 15. "Public Park" or "Recreation Areas" means public land which has been designated for park or recreational activities including, but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, open space wilderness areas, or similar public land within the city which is under the control, operation, or management of the city park and recreation authorities. This includes the McDermont Field House, Sweet Briar Plaza and the Community Aquatics Center.
 16. "Religious Institution" means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities, as identified on the latest equalized tax assessment roll.
 17. "School" means any public or private educational facility including, but not limited to nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.
 18. "Semi-Nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps and devices. This definition includes female persons wearing only "pasties" and a "G-string".
 19. "Sensitive land uses" means residences and residential neighborhoods, child day care facilities, cemeteries, religious institutions, schools, boys' clubs, girls' clubs, or similar existing youth organizations, or public parks, or any public building regularly frequented by children.
 20. "Sexually Oriented Business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment, escort agency or nude model studio.

21. "Specified Anatomical Areas" as used in this chapter means and includes any of the following:

a. Less than completely and opaquely covered human genitals, public region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or

b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

22. "Specified Sexual Activities" as used in this chapter means includes any of the following:

a. The fondling or other intentional touching of buttocks for purpose of sexual arousal, or fondling or other intentional touching of human genitals, pubic region, anus, or female breasts;

b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

c. Masturbation, actual or simulated;

d. Human genitals in a state of sexual stimulation, arousal or tumescence;

e. Excretory functions as part of or in connection with any of the activities set forth in sub-section a through d of this sub-section;

f. Masochism, erotic or sexually oriented torture, beating or the infliction of pain.

23. "Substantial Enlargement of a Sexually Oriented Business" means an increase in the floor areas occupied by the business as the floor areas existed on the affected date of this ordinance.

24. "Transfer of Ownership or Control of a Sexually Oriented Business" means and includes any of the following:

a. The sale, lease or sublease of the business

b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means.

E. Measurement of Distance. Distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any religious institution, school, boys club, girls club or similar existing youth organization, or public park or public building regularly frequented by children or any properties zoned for residential use shall also be measured in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where sexually oriented business is conducted, to the nearest property line of the premises of a religious institution, public or private elementary or secondary school, or the nearest boundary of an affected public park, public building regularly frequented by children, residential district or residentially zoned lot.

F. Permit Required. No person shall operate, maintain, manage or conduct a sexually oriented business without a valid sexually oriented business permit issued by the City for the particular type of sexually oriented business.

G. Application for Permit.

1. The City's designee is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits for proposed or existing sexually oriented businesses.

2. The City's designee shall be the City Manager, or any other officer or employee designated in writing by the City Manager to deal with the provisions of this section.

3. A completed application shall contain the following information and shall be accompanied by the following documents:

a. If the applicant is:

i. An individual, the individual shall state his/her legal name, any aliases, and date of birth;

ii. A partnership, the partnership shall state its complete name and the names of all general partners;

iii. A corporation, the corporation shall state its complete name, the names and capacity of all officers, directors and the name and address of the registered corporate agent for service of process.

iv. A limited liability company (LLC), the LLC shall state its complete name, the names and capacity of all members and managers and the name and address of the agent for service of process.

b. If the applicant intends to operate the sexually oriented business under a name other than that on the application, he/she must state the sexually oriented business's fictitious name.

c. A statement as to whether the applicant or any other individuals identified in the application, excluding any agent for service of process who is not also listed as a director or officer, has

had a previous permit under this section, or any other similar sexually oriented business ordinance of the City, denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

d. A statement as to whether the applicant or any other individuals identified in the application, excluding any agent for service of process who is not also listed as a director or officer, has been a sole proprietor, general partner, officer, a director of a sexually oriented business that has had a previous permit under this section, or any other similar sexually oriented business ordinance of the City denied, suspended or revoked by the City, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

e. The name(s) of the responsible person(s) who will be on the premises to act as manager during the times that the business is open, or a statement that the applicant has not yet selected the manager(s).

f. The classification, as defined in this section, of sexually oriented business for which the applicant is seeking a permit.

g. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s) currently in service.

h. The applicant's address.

i. A recent photograph of the applicant.

j. The applicant's driver's license number or permit number or identification number and social security number and/or the applicant's state or federally issued tax identification number.

k. A clearly legible sketch or diagram showing the configuration of the premises, all improvements to the site including, parking, landscaping, sign configuration and location and outdoor lighting, including a statement of total floor space and its purpose, occupied by the business. The sketch or diagram need not be professionally prepared, but it 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 inches.

l. A radius map prepared within thirty (30) days prior to application depicting the building and the portion thereof to be occupied by the sexually oriented business, and (1) the property line of any other sexually oriented business within 1500 feet of the property line of the sexually oriented businesses for which a permit is requested; and (2) the property lines of any cemetery, church, school, park, or other sensitive use within 1500 feet of the property line of the sexually oriented business.

m. A diagram of the off-street parking areas and premises entries of the sexually oriented business showing the location of the lighting system required pursuant to this section.

n. The applicant's fingerprint on a form approved by the Public Safety Department

4. The applicant shall be required to pay a non-refundable application fee at the time of filing an application pursuant to this section.

H. Continuing permit obligations.

1. The fact that a person possesses other types of state or City permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit.

2. By applying for a permit under this section, the applicant shall be deemed to have consented to the provisions of this section and to the exercise by the City or its designee, the Police Chief's office, and all other City departments charged with enforcing the laws, ordinances and codes applicable in the City, of their respective responsibilities under this section.

3. An operator shall promptly update, correct or supplement the information contained in the application for a sexually oriented business permit on file with the City as necessary to keep the information contained therein accurate.

I. Filing of the completed application.

1. Upon receipt of an application properly filed with the City and upon payment of the non-refundable application fee, the City or its designee shall immediately stamp the application as received on that date.

2. If the City Designee determines that the applicant has completed the application improperly, or otherwise deems the application to be incomplete, the City Designee shall, within

fifteen (15) days of receipt of the original application, notify the applicant of such fact and, on request of the applicant, grant the applicant an extension of time twenty (20) days or less to submit a complete application. In addition, the applicant may request an extension, not to exceed fifteen (15) days, of the time for the City Designee 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.

J. Issuance of Permit. Within thirty (30) business days of receipt of a completed application, the City shall issue a sexually oriented business permit upon verification of the following facts:

1. The location of the business complies with all applicable zoning laws.
2. The configuration of the premises, as set out in the sketch or plan submitted with the application, does not reveal any violation of applicable health, zoning, fire and safety laws of the State of California and ordinances of the City of Lindsay applicable thereto, including those set out in this section.

3. The applicants or individuals identified therein, excluding any agent for service of process who is not also listed as a director or officer, are not otherwise disqualified from lawful operation of a sexually oriented business pursuant to any state, county, federal or local law, including those set out in this section.

4. The applicant is eighteen (18) years of age or older.

5. The applicant has provided all information required by this section, none of which is known to the City to be incorrect.

6. The application or permit fees required by this section have been paid.

7. Applicant has no prior conviction of sexually related convictions listed in Section 18.20.020(B).

K. Processing the Completed Application. The City, or its designee, shall grant or deny a completed application for a permit within thirty (30) business days from the date receipt by the City of a complete application. Upon the expiration of the thirtieth day, unless the City or its designee has given written notice to the applicant, the application shall be deemed granted and the operator shall be excused from the requirement that a duly issued permit be posted at the premises until such time as said permit is issued pursuant to this section.

L. Notification of Permit Denial; Subsequent Application. If the City or its designee denies the application, he/she shall notify the applicant of the denial and state the reason(s) for the denial. Any subsequent application which has been supplemented to cure the grounds for prior denial shall be treated as a new application.

M. Annual Permit Fee.

1. The annual fee for a sexually oriented business permit is set forth in Resolution, to partially offset the costs of monitoring and policing the operation of the business entities involved.

2. Said fee shall be due yearly on the anniversary of the issuance of the permit and shall be deemed delinquent thirty (30) days thereafter.

N. Inspection. Every operator shall permit representatives of the City to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time it is occupied or open for business.

O. Administrative and Judicial Review of Permit Denial, Suspension or Revocation.

1. Administrative Appeal to the City Council. After denial of an application or suspension or revocation of a permit, the applicant or permittee may seek prompt review of such administrative action through the City Council, by filing a written appeal within ten (10) calendar days of the action. The Council shall promptly set an administrative hearing in accordance with the provision of Lindsay Municipal Code Section 5.04.310.

2. Expedited Review of Free Speech Claims. An administrative appeal shall be heard and decided at the next regularly scheduled City Council meeting when the written request for an administrative appeal alleges that the administrative action constitutes a violation of the applicant or permittee's state or federal constitutional rights to free speech, press or expression. If affirmed by the City Council, the administrative action is subject to prompt review by the Superior Court for the State of California, in and for the County of Tulare, pursuant to California Code of Civil Procedure section 1094.8. Additionally, the applicant or permittee may seek a temporary or preliminary injunction, stay of the administrative action pending judicial review and/or a permanent injunction or declaratory relief.

P. Transfer of a Permit.

1. A permittee shall not operate sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.
2. A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:
 - a. Obtains an amendment to the permit from the City or its designee, which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the City or its designee, setting forth the information called for under Section 18.20.020(I) in the application; and
 - b. Pays a transfer of fifty percent (50%) of the annual permit set by Resolution.
3. No permit may be transferred during the pendency of administrative procedures following notice by the City or its designee to the permittee that suspension or revocation proceedings have been or will be brought against the permittee, until such proceedings have been completed, withdrawn or otherwise canceled.
4. Permittee shall not transfer a permit whether directly or indirectly in violation of this subsection, and such transfer is hereby declared void, and the permit shall be considered abandoned and shall automatically revert to the City.

Q. Registration of New Employees/Independent Contractors.

1. As a further condition of approval of every sexually oriented business permit issued pursuant to this chapter, every owner or operator shall register every employee or independent contractor working on its premises with the Police Department within five (5) business days of the commencement of the employee's period of employment at the sexually oriented business.
2. Each employee/independent contractor shall be required to provide two (2) recent color passport quality photographs and shall allow himself or herself to be fingerprinted by the Police Department for purposes of identification. In addition, each employee/independent contractor shall provide the following information on a form provided by the Police Department.
 - a. Name, current resident address, telephone number
 - b. Date of birth
 - c. Social security number
 - d. Height, weight, color of eyes and hair
 - e. Stage name (if applicable) and other aliases used within the previous two (2) years
3. The information provided for purposes of this subsection shall be maintained by the Police Department as confidential information and shall not be disclosed as public records unless pursuant to an order issued by a court of competent jurisdiction.
4. Each owner or operator of a sexually oriented business shall maintain a current register of names of all employees and independent contractors currently employed by or working at the sexually oriented business, and shall disclose such registration for inspection by any designated City representative for purposes of determining compliance with this subsection.
5. Failure to register each new employee/independent contractor with the Police Department within five (5) days of commencement of employment and to maintain a current register of the names of all employees shall be deemed a violation of the conditions of the permit and may be considered grounds for suspension or revocation of the permit.

R. Business Operations.

1. Visibility.
 - a. The entire interior of an adult arcade, adult bookstore, adult novelty store, adult cabaret, adult video arcade, nude model studio, and any non-conforming sexual encounter establishment and the entire concession area of an adult motion picture theater or adult theater, the entire common areas of an adult motel, and the entire exhibition area of an adult motion picture theater or adult theater, shall be visible upon entrance to such areas.
 - b. Visibility from the entrance shall not be obstructed by any curtain, door, wall, merchandise rack, or any other thing.
 - c. No partially or fully enclosed booths or partially or fully concealed booths shall be maintained within the sexually oriented business.

d. Each private viewing booth or room shall be visible from a continuous and accessible main aisle in a public portion of the establishment, and shall not be obscured by any door, curtain, wall, two-way mirror or other device which would prohibit a person from seeing the entire interior of the private viewing room or booth from the main aisle. At all times, at least one manager station shall be maintained to ensure a clear line of sight into the interior of the private viewing booth or room. The entire body of any patron in any private viewing booth or room shall be visible from the main aisle and the manager station without the assistance of mirrors, cameras, or any other device.

e. No sexually oriented business shall maintain any private booth or room unless the entire interior wherein the picture or entertainment that is viewed is visible from at least one (1) manager station.

f. In order to comply with this part, a sexually oriented business may have multiple manager stations. If multiple manager stations are necessary for compliance with this part, then at all times during business hours there must be a manager at each station. If one manager station is maintained only for the purpose of monitoring a video or live entertainment, then a manager need only occupy said station while a video or live entertainment is in progress, provided that the area where the video or entertainment is shown is not accessible to patrons and no entertainers are in said area.

g. No doors are permitted on any private viewing booths or rooms. No partially or fully enclosed private viewing booth or room or partially or fully concealed private viewing booth or room shall be maintained.

h. No patrons shall be permitted access to any area of the premises not visible from at least one (1) manager station and at least one (1) main aisle in a public portion of the establishment.

i. Customers, patrons or visitors of adult arcades shall be prohibited from standing idly by in the vicinity of any such video booths, or from remaining in the common area of such business, other than the restrooms, who are not actively engaged in shopping for or reviewing the products available on display for purchaser viewing. Signs prohibiting loitering shall be posted in prominent places in and near the video booths.

j. All areas of the sexually oriented business shall be illuminated at a minimum of the following foot-candles, minimally maintained and evenly distributed at ground level:

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

k. All off-street parking area and premise entries of the sexually oriented business shall be illuminated from dusk to a half hour after 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 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.

1. Sexually oriented businesses shall maintain a security system that visually monitors and records all parking lot areas.

2. Exceptions to Visibility Requirements.

a. Section 18.20.020(R)(1) shall not apply to those areas of a sexually oriented business to which only employees are permitted access and patrons are excluded and which cannot be viewed from any area accessible to patrons.

b. Section 18.20.020(R)(1) shall not apply to a restroom; however, no restroom shall contain any merchandise, materials, product, or service referenced in Section 18.20.020(D).

3. Regulation of Public Restroom Facilities.

a. If the sexually oriented business provides restrooms for patron use, it shall provide separate restroom facilities for male and female patrons. Male patrons and employees shall be prohibited from using the restroom(s) for females, and female patrons and employees shall be prohibited from using the restroom(s) for males, except to carry out duties of repair, maintenance and cleaning of the restroom facilities.

b. The restrooms shall be free from sexually oriented material, including any motion picture or video projection, recording or reproduction equipment.

c. Only one (1) person shall be allowed in each restroom at any time unless otherwise required by law, in which case the sexually oriented business shall employ a restroom attendant of the same sex as the restroom users who shall be present in the public portion of the restroom during operating hours. The attendant shall ensure that no person of the opposite sex is permitted into the restroom, and that not more than one (1) person is permitted to enter a restroom stall, unless otherwise required by law and that the restroom facilities are used only for their intended sanitary purposes.

d. Access to restrooms for patron use shall not require passage through an area used as a dressing area by performers.

e. The foregoing provisions of this paragraph shall not apply to a sexually oriented 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 restroom facilities to its patrons or the general public.

4. Private Viewing Booths or Rooms.

a. No viewing room or booth of an adult arcade or adult video arcade may be occupied by more than one person at any time.

b. No beds, couches, or chairs with a sitting area greater than twenty-four (24) inches wide shall be permitted in a private viewing booth or room.

c. The walls or partitions between viewing rooms or booths shall be maintained in good repair at all times, with no holes between any two such rooms such as would allow viewing from one booth into another or such as to allow physical contact of any kind between the occupants of any two such booths or rooms. Any such hole or opening shall be repaired within twenty-four (24) hours using "pop" rivets to secure metal plates over the hole or opening to prevent patrons from removing the metal plates.

d. The floors, seats, walls and other interior portions of all viewing rooms or booths shall be maintained clean and free from waste and bodily secretions.

5. Business Hours. A sexually oriented business shall be open for business only between the hours of 7 a.m. and midnight on any particular day. This restriction shall not apply to adult motels.

6. Posting Permit. A valid sexually oriented business permit duly issued pursuant to this Section shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at all times.

7. Sexually Oriented Business Facility. A sexually oriented business shall only be located in a structure with a permanent foundation and fixed walls, and shall not be located, wholly or partially, within any mobile structure, pushcart, trailer, bungalow, recreational vehicle, or any other non-permanent type of facility.

8. Manager on Duty.

a. There shall be a responsible person at least eighteen (18) years of age on the premises to act as manager at all times during which the business is open.

b. At all times that any patron is present inside the premises, at least one manager shall be situated at a location within the premises so as to allow her/him an unobstructed view of the entire area accessible to patrons. Within those sexually oriented businesses lawfully configured to include more than one open room accessible to patrons, such as an adult theater with both a concession area and an exhibition area, or various common areas of an adult motel, sufficient additional managers shall be present as necessary to allow management personnel to maintain an unobstructed view of the entirety of all areas accessible to patrons, at all times.

c. Every permittee shall ensure that all employees are familiar with the provisions of this section as amended from time to time and with all other regulations adopted by the City related to sexually oriented businesses.

9. Required Physical Modification to Premises.

a. An operator of a sexually oriented business shall be permitted a reasonable period of time to make modifications to the business premises if such modifications are made necessary by the implementation of the provisions of this ordinance.

b. The reasonable period of time shall normally be thirty days from the effective date of said ordinance to file the appropriate plans and designs with the City, and up to sixty days thereafter for completion of the modifications.

c. Should modifications be so extensive as to reasonably require a longer period of time, the City or its designee may grant a longer period of time for completion of such modifications, in consultation with the City's building officials.

10. No Alcohol. No alcoholic beverages shall be served or consumed on the premises of any sexually oriented business. No person shall bring any alcohol on to the premises of any sexually oriented business.

S. Prohibitions Regarding Minors and Sexually Oriented Businesses. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and knowingly, or with the reasonable cause to know, permits, suffers, or allows:

1. Admittance of a person under eighteen years of age to the business premises;
2. A person under eighteen years of age to remain at the business premises;
3. A person under eighteen years of age to purchase goods or services at the business premises; or
4. A person who is under eighteen years of age to work at the businesses premises as an employee;
5. The view of the entrance to any sexually oriented business from outside of the business shall be designed in a manner that obscures the view of the interior of the premises from minors outside the premises so as to prohibit minors from viewing or seeing any material, conduct or activities which depict, describe, display, or are characterized by their emphasis on "specified sexual activities" or "specified anatomical areas".

T. Display Regulations.

1. No display or exhibit depicting or describing "specified sexual activities" or "specified anatomical areas" shall be placed in, on or at the site of the subject premises in such a manner as to be visible from the exterior of the premises.

2. The building entrance to a sexually oriented 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 consist of letters no less than one inch in height.

3. The building entrance to a sexually oriented business shall be clearly and legibly posted with a notice indicating that no alcoholic beverages are to be served or consumed on the premises. Said notice shall consist of letters no less than one inch in height.

4. The building entrance to a sexually oriented business shall be clearly and legibly posted with a notice indicating the business's hours of operation.

U. Additional Requirements. The following additional requirements shall pertain to sexually oriented businesses providing adult live entertainment:

1. No person shall perform adult live entertainment for patrons of a sexually oriented 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.

2. As an exception to the requirement in Section 18.20.020(U)(1), entertainers may perform adult live entertainment off-stage in private viewing areas where the entertainer is separated from the customer by a permanent, floor to ceiling, solid barrier.

3. No person shall appear in a state of nudity at any time, including during on-stage or private viewing booth performances of adult live entertainment. Persons may appear semi-nude while performing adult live entertainment. Except during the course of performing adult live entertainment, no person may appear semi-nude or in a manner which displays or reveals specified anatomical areas. This only applies to portions of the facility where patrons are permitted.

4. No owner, operator, manager, or any other person with control over a sexually oriented business shall permit any entertainer, employee, independent contractor, or other person to appear in a state of dress that violates this section.

5. No patron shall be allowed on the stage during performances.
6. The sexually oriented business shall provide separate dressing room facilities for entertainers which are exclusively dedicated to the entertainers' use.
7. The sexually oriented business shall provide an entrance/exit for entertainers which is separate from the entrance/exit used by patrons.
8. The sexually oriented business shall provide access for entertainers between the stage and dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the sexually oriented 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.
9. No entertainer, either before, during or after performance, 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. No entertainer or employee or independent contractor of a sexually oriented business shall "fondle" or "caress" any patron, and no patron shall be permitted to "fondle" or "caress" any entertainer or other employee or independent contractor. "Fondle" and "caress" shall have commonly understood meanings. This Subsection shall only apply to physical contact on the premises of the sexually oriented business. This Subsection does not apply to incidental contact.
10. Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between entertainers and patrons required by this subsection.
11. No patron shall directly pay or give any gratuity to any entertainer and no entertainer shall solicit or accept any pay or gratuity from any patron. Patrons shall not throw money to entertainers, place monies in the entertainers' costumes or otherwise place or throw monies on the stage. Patrons shall be advised of this requirement by signs conspicuously displayed and placed on the barrier between patrons and entertainers and utilizing red or black printing of letters not less than one inch (1") in size.
12. If patrons desire to tip or pay performers, the tips must be placed in fixed receptacles, and not directly handed to any persons.
13. Sexually oriented 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 twenty-one (21) persons, an additional security guard shall be on duty. Additional security guards may be required if the occupancy limit of the premises is greater than seventy (70) persons. Security guard(s) shall be charged with preventing the 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 not 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. All security guards shall be duly licensed and bonded as a security guard as required by applicable provisions of state law.
14. The foregoing applicable requirements of this section shall be deemed conditions of sexually oriented 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.
15. Every permittee of a sexually oriented business which provides live entertainment pursuant to this Section must maintain a register of all persons so performing on the premises. Such register shall be available for inspection during the regular business hours by any designee of the City of Lindsay.

V. Exemptions.

1. It is a defense to prosecution for any violation of this section that a person appearing in a state of nudity did so in a modeling class operated:
 - a. By a college, junior college, or university supported entirely or partly by taxation;
 - b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
 - c. In a structure:

- i. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing, and
- ii. Where, in order to participate in a class, a student must enroll at least three days in advance of the class, and
- iii. Where no more than one nude model is on the premises at any one time.

2. It is a defense to prosecution of a violation of this section that an employee of a sexually oriented business, regardless of whether or not it is permitted under this section, exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

W. Criminal Penalties and Additional Legal, Equitable, and Injunctive Relief.

1. If any person fails or refuses to obey or comply with or violates any of the provisions of the Section, such person, upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars or by imprisonment not to exceed sixty days in the jail, or both, in the discretion of the court. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation or noncompliance shall be considered as a separate offense.

2. Nothing herein contained shall prevent or restrict the City from taking such other lawful action as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, a nuisance abatement proceeding, a civil nuisance abatement of equitable action for injunctive relief or an action at law for damages in any court of competent jurisdiction.

3. All remedies and penalties provided for in this section shall be cumulative and independently available to the City, and the City shall be authorized to pursue any and all remedies set forth in this subsection to the full extent allowed by law.

4. The City shall be entitled to recover all attorney's fees and costs incurred in the filing or prosecution of any action or administrative proceeding brought to enforce any provisions(s) of the Section.

X. Suspension or Revocation of Permit.

1. After an investigation, notice, and hearing, the City Manager or his designee shall suspend or revoke an existing permit, or impose such conditions upon the retention of the permit as shall be found to be necessary to assure the preservation of the public health and safety, if the evidence presented establishes that one of the following conditions exist:

a. The building, structure, equipment, location, or manner of operation of such business does not comply with the requirements of or fails to meet the standards of the health, zoning, fire, or safety laws of the State of California or of the City of Lindsay applicable to such business operations.

b. The permittee, his or her employee, agent, partner, director, officer, stockholder or manager has knowingly made any false, misleading or fraudulent statements of material fact in the application for sexually oriented business permit, or in any report or record to be filed with the City pertaining to the permit for the sexually oriented business, or has violated any rule or regulation duly adopted by the City relating to sexually oriented businesses, including those set out in this section.

c. A court of competent jurisdiction has found that the permittee, his or her employee, agent, partner, director, manager, or stockholder has knowingly engaged in or allowed or permitted to be committed any unlawful act of sexual intercourse, sodomy, oral copulation, masturbation, or distribution of obscenity, on or in the subject premises.

d. A court of competent jurisdiction has found that the permittee, his or her employee, agent, partner, director, manager, or stockholder has knowingly engaged in or permitted or allowed to occur unlawful solicitations for sexual intercourse, sodomy, oral copulation, masturbation or distribution of obscenity, on or in the subject premises.

e. A court of competent jurisdiction has found that the permittee, his or her employee, agent, partner, director, manager, or stockholder has knowingly engaged in or permitted or allowed, in or on the premises, the unlawful possession, use or sale of controlled substance, as defined by the California Uniform Controlled Substances Act, California Health & Safety Code §11000 et seq., as amended from time to time.

f. More than 30 days have elapsed since a tax, fee, fine, any form of regulatory assessment of judgment for monetary damages, irrespective of any other form of relief set out in the judgment, which is to be paid to the City has been imposed against a sexually oriented business, and said sum remains owing.

2. In the event that a permit for a sexually oriented business is revoked pursuant to any applicable law the premises shall be closed and shall not be used as a sexually oriented business of any classification for a period of one year commencing on the date of revocation. Further, the operators of the sexually oriented business closed due to suspension or revocation of a permit shall be disqualified from operating any other sexually oriented business established thereafter within the City during the entire period of any such suspension, or for one year if the license was revoked.

Y. Immunity from prosecution. The city and its designee, the chief of police's office and all other departments and agencies, the city attorney, and all other city officers, agents and employees, charged with enforcement of state and local laws and codes shall be immune from prosecution, civil or criminal for reasonable, good-faith trespass upon a sexually oriented business while acting within the scope of authority conferred by this Section.

Z. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Section 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 of effectiveness of the remaining portions of the chapter or any part thereof. The City Council hereby declares that it would have passed each section, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part 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.

SECTION 12: Section 18.20.030 shall be added to Chapter 18.20 of the Lindsay Municipal Code and read as follows:

18.20.030 Body Art Facilities.

A. Purpose and Intent. The purpose of this section is to establish location and operation criteria for body art facilities (tattooing, body piercing and permanent make-up) as the City of Lindsay has determined that the secure management and placement of facilities involving body art is necessary to protect the public health, safety, and welfare of the community.

B. Definitions.

1. "Body Art" shall mean body piercing, permanent cosmetics and/or tattooing.

2. "Body Artist" shall mean any individual who is a practitioner of body art (tattooing, permanent cosmetics and/or body piercing) to include conducting body art procedures on another individual or technically advising the body art procedures performed by another individual. For the purposes of this chapter, body artists do not include persons engaged in ear piercing.

3. "Body Art Facility" shall mean any establishment owned, controlled, leased, or operated to practice or engage in the practice of body art.

4. "Body Piercing" shall mean the creation of an opening in the human body for the purpose of inserting jewelry or other decoration, with the exclusion of ear piercing. This includes but is not limited to, piercing of a lip, tongue, nose, or eyebrow.

5. "Ear Piercing" shall mean the piercing of the leading edge or earlobe of the ear with a sterile, disposable, single-use stud, or solid needle that is applied using a mechanical device to force the needle or stud through the ear. Such practice is exempt from this Section.

6. "Permanent Cosmetics" shall mean the application of pigments to or under the skin of a human being for the purpose of permanently changing the color or appearance of the skin. This includes, but is not limited to, permanent eyeliner, eye shadow, or lip color.

7. "Substantial Change in Operation" shall mean any of the following:

a. The location, ownership, and type of business changes; or

b. The certificate of registration issued by the Tulare County Department of Environmental Health is revoked or suspended for a period of more than thirty (30) days; or

c. The premises are altered thereby increasing the gross floor area; or

d. The facility is closed, abandoned, discontinued, or suspended for a continuous period of more than ninety (90) days for reason other than a break in continuous business due to natural disaster or other similar circumstances beyond the control of the licensee, owner, or operator; or

e. Other circumstances deemed to be a substantial change by the Planning Commission.

8. "Tattooing" shall mean inserting pigment under the surface of the skin by pricking with a needle or otherwise, to permanently change the color or appearance of the skin or to produce an indelible mark or figure visible through the skin. This includes, but is not limited to, eyeliner, lip color, camouflage, stencil designs, and free-hand designs.

C. Permit Requirements.

1. It shall be unlawful for any person, firm or corporation, owning, controlling, leasing, acting as agent for, conducting, managing, or operating any body art facility to practice or engage in the practice of body art without first obtaining a body art facility permit and meeting all applicable zoning district and this chapter standards.

2. No body artist shall operate within a permitted body art facility without first obtaining a body artist practitioner permit.

D. Locational Requirements. No person shall cause or permit the establishment of any body art facility, as defined above, within 500 feet of another such business or within 500 feet of any religious institution, school, boys' club, girls' club or similar existing youth organization, or public park, or any public building regularly frequented by children, including but not limited to the McDermost Field House and Community Aquatics and Wellness Center or within 500 feet of any property in the City of Lindsay zoned for residential use.

E. Application Submittal Requirements.

1. Applications shall be filed on a form provided by the City.

2. The application shall include the following:

a. A Body Art Facility Permit.

b. A map demonstrating that the separation requirements pursuant to Section 18.20.030(D) are met.

c. The name of the contaminated waste transporter.

d. A Body Art Practitioner Permit, which application shall include the following:

i. A nonrefundable application or renewal fee to cover cost incurred by the city in staff time, and other expenses involved in investigation and processing of permit.

ii. Proof of completion of an exposure control training program.

iii. Proof of Hepatitis B vaccinations.

iv. The record of conviction for violations of the law, excluding minor traffic violations.

v. The applicant's height, weight, color of eyes and hair, and date and place of birth, California driver's license or identification number and social security number.

vi. The fingerprints of the applicant on a form provided by the police department.

vii. The address, city and state, and the approximate dates where and when the applicant practiced a similar business, either alone or in conjunction with others.

F. Grounds for Suspension, Denial, Revocation, or Refusal to Renew Permit

1. The City or its designee, may suspend a permit, deny a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for suspension, denial, revocation, or refusal to renew:

a. Fraud, deceit, or misrepresentation in obtaining a permit or its renewal;

b. Any present or past violations of State, County, or the City of Lindsay regulations governing the practice of body art;

c. Applying body art while impaired by drugs or alcohol;

d. Knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit;

e. Continuing to practice while his/her permit is lapsed, suspended, or revoked;

f. Having previously held a body art facility permit, body art practitioner permit, or similar license, permit, or privilege in another jurisdiction, which was revoked within the previous five years.

G. Standard Conditions for all body art facilities.

1. Possession of a lawfully issued body artist permit.
2. The body art facility shall comply at all times with State, County, and the City of Lindsay laws governing body art facilities and the application of body art..
3. Mobile body art shall not be allowed at any time within the City limits.
4. The permittee shall maintain a file on-site of all notarized minor consent forms, and submit to the City of Lindsay Community Development Department a copy of such form within ten (10) days of receipt.
5. Body art may not be performed on any person who is under the influence by illicit or illegal drugs or alcohol.
6. No alcoholic beverages shall be allowed within the body art facility at any time.
7. A Body Art Facility Permit shall be posted in a conspicuous location inside the business at all times.
8. Body Art Facilities may be open for operation only between the hours of seven a.m. and midnight.
9. The certificate of registration from the Tulare County Department of Environmental Health shall be posted in a conspicuous location inside the body art facility at all times.
10. All Body Artist employees shall have a Body Art Practitioner Permit.
11. Prior to approval of any City Business License or Permit, the body artist shall schedule a special inspection with the City of Lindsay, or its designee, to determine compliance with any body art operational guidelines of the State, County, or City.
 - H. Annual Inspection and Review.
 1. Each body art facility shall be subject to annual inspection by the City and/or its authorized agent.
 2. Fees for annual inspections and review, as set by resolution of the Council from time to time, shall be paid to the City of Lindsay on or before the anniversary of the effective date of the Body Art Facility Permit.
 - I. Denial of Permit.
 1. If one or more of the findings set forth in Section 18.20.030(G) cannot be made, the permit shall be denied. In the event of denial, notification and reasons for denial shall be communicated to the applicant. The denied applicant shall upon submission of his/her written request, have the right to receive a hearing before the city manager or his/her designee. If such a hearing is not requested within ten days of the date of notification of denial of permit, the denial shall be final.
 2. Any individual who operates a body art establishment or practices body art after denial of an application is guilty of a misdemeanor.
 - J. Term of Permit. The term of the permit and the term of the business license shall be for one year from the date of issuance. A renewal application shall be filed no later than thirty (30) days prior to the expiration of the permit and shall be processed in the same manner as a new application
 - K. Suspension or Revocation of Permit. Any permit issued under this section shall be subject to suspension or revocation by the director of finance for violation of any provision of this section or for grounds that would warrant denial of the issuance of such permit in the first instance.
 - L. Appeal from Suspension or Revocation.
 1. Within ten days after any denial, suspension, or revocation of a permit, the individual aggrieved may appeal such action to the city manager by filing a written request for a hearing with the city manager or his/her designee. Upon the filing of such a request, the city manager shall set a time and place for the hearing and shall notify the appellant thereof. The hearing shall be set within thirty (30) days after the request is filed. At the hearing, any individual may present evidence in opposition to or in support of the appellant's case. The suspension or revocation of the permit shall be stayed pending a decision of the city manager or designee, on the appeal.
 2. Any individual who operates a body art establishment or practices body art after suspension of a permit or after revocation of a permit is guilty of a misdemeanor.
 3. Reapplication of Denied or Revoked Permit. Any individual whose permit is denied or revoked may not apply for a permit to operate a body art establishment or practice body art in the city for a period of one year from the date of such revocation.

M. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Section 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 of effectiveness of the remaining portions of the chapter or any part thereof. The City Council hereby declares that it would have passed each section, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part 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.

SECTION 13: Section 18.20.040 shall be added to Chapter 18.20 of the Lindsay Municipal Code and read as follows:

18.20.040 FortUNETELLING Establishments.

A. Purpose. The purpose of this section is to protect the health, welfare and safety of the public at large and patrons of fortunetelling establishments by ensuring that the services provided by those establishments are, to the greatest extent possible, free from fraud, corruption, vice, trickery and other criminal influences. It is also the purpose of this chapter to minimize the impact upon local neighborhoods caused by concentrations of fortunetelling establishments in localized area and to provide that such establishments are located in areas designated to serve broader portions of the community.

B. Definitions. For the purpose of this chapter, certain terms are defined as follows:

1. "Applicant" means an individual who is required to file an application for a permit under this section including a fortuneteller, individual, owner, managing partner, managing officer of a corporation, or any other operator, manager, or employee of a fortunetelling establishment.

2. "For pay" means a fee, reward, donation, loan or receipt of anything of value.

3. "Fortune telling" means telling of fortunes, forecasting of futures, or furnishing of any information by means of any occult, psychic power, faculty, force, chiromancy, clairvoyance, clairaudience, cartomancy, psychology, psychometry, phrenology, spirits, tea leaves or other such reading, mediumship, telepathy, or other craft art, science, cards, talisman, charm, potion, magnetism, magnetized article or substance, gypsy cunning or foresight, crystal gazing, oriental mysteries, or magic, of any kind or nature, or other means beyond the ordinary process of knowledge.

4. "Fortunetelling establishments" means any establishment having a fixed place of business where any individual or entity engages in, or carries on, or permits to be engaged in or carried on any activities defined in this section.

5. "Fortuneteller" means any individual who, for any consideration whatsoever, engages in the practice of fortunetelling as herein defined unless otherwise excepted.

C. Permits Required. It is unlawful and a misdemeanor for any individual 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, the operation of a fortunetelling establishment without first having obtained a permit from the city as herein required. A fortunetelling establishment permit shall include the right of the individual permittee to practice fortunetelling at such an establishment.

D. Permit Application. Every person who, for pay, conducts, engages in, carries on, or practices fortune telling shall file a separate verified application or a permit with the director of finance. The application shall contain the following:

1. The name, home and business address, and home and business telephone number of the applicant.

2. The record of conviction for violations of the law, excluding minor traffic violations.

3. The applicant's height, weight, color of eyes and hair, and date and place of birth, California driver's license or identification number and social security number.

4. Two photographs of the applicant at least two inches by two inches, taken within the last six-month period immediately preceding the date of filing of the application.

5. The fingerprints of the applicant on a form provided by the police department.

6. The address, city and state, and the approximate dates where and when the applicant practiced a similar business, either alone or in conjunction with others.

7. A nonrefundable application or renewal fee to cover cost incurred by the city in staff time, and other expenses involved in investigation and processing of permit.

E. Filing and Fee Provisions.

1. Every individual or entity that proposes to maintain, operate or conduct a fortunetelling establishment in the city shall file an application with a nonrefundable filing fee. Said filing fee shall be established by the city manager, and may be revised from time to time. This fee shall not be deemed in lieu of a business tax.

2. A permit, when issued, shall state whether it is for a fortunetelling establishment or for a fortuneteller.

F. Issuance of Permit. The director of finance shall issue the permit if, based upon the investigation, it is found:

1. That the operation as proposed by the applicant would comply with all applicable laws.

2. That the applicant has not been convicted in a court of competent jurisdiction of any of the following offenses:

a. An offense involving the element of fraud or theft.

b. A crime requiring registration under Section 290 of the California Penal Code, or of any violation of Section 311 through 311.7, 314, 315, 316, 318, or 647 (a), (b), or (d) of the California Penal Code.

c. Any other crime involving moral turpitude.

d. Any of the above substantive offenses as defined in the laws of any jurisdiction other than the state of California or as defined by any law of the state of California in effect before the above sections were adopted.

~~3. That the applicant has not knowingly and with intent to deceive made any false, misleading, or fraudulent statements of fact in the license application or any other document required by the city in conjunction therewith.~~

G. Denial of Permit.

1. If one or more of the findings set forth in Section 18.20.040(F) cannot be made, the permit shall be denied. In the event of denial, notification and reasons for denial shall be communicated to the applicant. The denied applicant shall upon submission of his/her written request, have the right to receive a hearing before the city manager or his/her designee. If such a hearing is not requested within ten days of the date of notification of denial of permit, the denial shall be final.

2. Any individual who operates a fortunetelling establishment or practices fortunetelling after denial of an application is guilty of a misdemeanor.

H. Term of Permit. The term of the permit and the term of the business license shall be for one year from the date of issuance. A renewal application shall be filed no later than thirty (30) days prior to the expiration of the permit and shall be processed in the same manner as a new application.

I. Operating Requirements.

1. No fortunetelling establishment or any portion of a building in which the fortunetelling establishment is located shall be used for residential or sleeping purposes.

2. Fortunetelling establishments may be open for operation only between the hours of seven a.m. and midnight.

3. No fortunetelling establishment shall be located closer than 500 feet to any other licensed fortunetelling establishment or within 500 feet of any religious institution, school, boys' club, girls' club or similar existing youth organization, or public park, or any public building regularly frequented by children, including but not limited to the McDermont Field House and Community Aquatics and Wellness Center or within 500 feet of any property in the City of Lindsay zoned for residential use.

J. Display of Permit and Identification Cards. Every fortunetelling establishment shall display at all times during business hours the permit issued pursuant to the provisions of this section for such establishment in a conspicuous place so that the same may be readily seen by all individuals entering this establishment.

K. Employment of Individuals Under the Age of Eighteen is Prohibited. It is unlawful for any individual owner, managing partner, managing officer, or other individual in charge of any fortunetelling establishment to employ any individual who is not at least eighteen (18) years of age.

L. Services and Rate Sign. Every permittee of a fortunetelling establishment shall post a sign in a conspicuous place so that the same may be readily seen by all individuals entering the fortunetelling establishment, printed in bold letters not less than one inch in height, listing the services available and the rate to be charged therefore. No services shall be performed and no sums shall be charged for such services other than those shown on the sign posted.

M. Receipts. Prior to the acceptance of any money or item of value from a client, the fortune teller shall issue a written receipt to the client, clearly showing the following:

1. Date.
2. Name of client.
3. Amount of money received or specific description of item of value received.
4. Purpose for which the money or item of value was received.

N. Employment of Individuals without Permits Unlawful. It is unlawful for any owner, operator, manager, or permittee in charge of or in control of a fortunetelling establishment to employ any individual to practice fortunetelling who is not in possession of a valid permit to practice fortunetelling. Permits are not required for employees who do not practice fortunetelling.

O. Suspension or Revocation of Permit. Any permit issued under this section shall be subject to suspension or revocation by the director of finance for violation of any provision of this section or for grounds that would warrant denial of the issuance of such permit in the first instance.

P. Appeal from Suspension or Revocation.

1. Within ten days after any denial, suspension, or revocation of a permit, the individual aggrieved may appeal such action to the city manager by filing a written request for a hearing with the city manager or his/her designee. Upon the filing of such a request, the city manager shall set a time and place for the hearing and shall notify the appellant thereof. The hearing shall be set within thirty (30) days after the request is filed. At the hearing, any individual may present evidence in opposition to or in support of the appellant's case. The suspension or revocation of the permit shall be stayed pending a decision of the city manager or designee, on the appeal.

2. Any individual who operates a fortunetelling establishment or practices fortunetelling after suspension of a permit or after revocation of a permit is guilty of a misdemeanor.

Q. Reapplication of Denied or Revoked Permit. Any individual whose permit is denied or revoked may not apply for a permit to operate a fortunetelling establishment or practice fortunetelling in the city for a period of one year from the date of such revocation.

R. Exception Entertainment. The provisions of this section shall not apply to any person engaged solely in the business of entertaining the public by demonstrations of fortune telling at public places and in the presence of and within the hearing of all other persons in attendance, and at which no questions are answered as part of such entertainment except in a manner to permit all persons present at such public place to hear such answers.

S. Exception Religious Practice. The provisions of this subsection shall not be applicable to any person conducting or participating in any religious ceremony or service when such person holds a certificate of ordination as a minister, missionary, medium, healer, clairvoyant, or similar position (hereinafter collectively referred to as "minister") from any bona fide church or religious association having a creed or set of religious principles that is recognized by all churches of like faith which provides for fortune telling; provided, that:

1. Except as provided in Section 18.20.040(S)(3), the minister's fees, gratuities, emoluments, and profits shall be regularly accounted for and paid solely to or for the benefit of the bona fide church or religious association, as defined in this subsection.

2. The minister holding a certificate of ordination from such bona fide church or religious association, as defined in this subsection, shall file with the business license officer a certified copy of the minister's certificate of ordination and the minister's name, age, street address, and telephone number in this city where the activity set forth in this subsection is to be conducted.

3. Such bona fide church or religious association, as defined in this subsection, may pay to its ministers a salary or compensation based upon a percentage basis, pursuant to an agreement between the church or religious association and the minister which is embodied in a resolution and transcribed in the minutes of such church or religious association.

T. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Section 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 of effectiveness of the remaining portions of the chapter or any part thereof. The City Council hereby declares that it would have passed each section, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part 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.

SECTION 14:

The City Council declares that this ordinance would not have a significant impact on the environment based on the findings of the initial study.

SECTION 15:


This ordinance shall be in full force and effect on or after the 30th day after its adoption by the City Council. Within 15 days after its adoption by the City Council, this Ordinance shall be published in full text or in summary in a newspaper of general circulation in the City of Lindsay.

The foregoing ordinance, read by title only with waiving of the reading in full was introduced at a regularly scheduled meeting of the City Council on the 28th day of June, 2011.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 12th day of July, 2011.

ATTEST:

CITY COUNCIL OF THE CITY OF LINDSAY


Carmela Wilson, Deputy City Clerk


Ed Murray, Mayor