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ORDINANCE NO. O-02-16

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF COLTON AMENDING AND RESTATING CHAPTER
18.49 OF THE COLTON MUNICIPAL CODE RELATING
TO ADULT BUSINESS REGULATIONS (FILE INDEX NO.
DAP-001-248)**

WHEREAS, the purpose of these amended and restated adult business regulations are to promote the health, safety and general welfare of the citizens of the City of Colton. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is recognized that adult-oriented businesses have a serious deleterious effect upon adjacent areas, as well as the areas in which they are located. It is therefore the purpose of this chapter to establish standards for the conduct of adult-oriented businesses which will protect the public health, safety and welfare, preserve locally recognized values of community appearance, minimize the potential for nuisances related to the operation of adult-oriented businesses, and maintain local property values.

WHEREAS, in approving the regulations contained in this chapter, the city council has reviewed detailed studies, reports and letters prepared by other jurisdictions and its own staff with respect to the detrimental social, health and economic effects on persons and properties surrounding adult businesses. These studies included Upland, 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); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); Los Angeles, California (1977); State of Minnesota, Attorney General Report (1989); Newport news, Virginia (1996); St. Paul, Minnesota (1987); Corpus Christi, Texas (1995); National Law Center (1995); and Azusa (2003) (collectively "Studies"). The Studies, a summary of which is attached hereto as Exhibit "A," substantiate the adverse, secondary effects of adult-oriented businesses.

WHEREAS, Based on the foregoing Studies and the other evidence presented, the city council finds that:

1. Adult-oriented businesses are linked to increases in the crime rates of those areas in which they are located and that surround them; and

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

3. Unregulated adult-oriented businesses create serious public health concerns and hazards since the Studies and cases demonstrate that such businesses have been linked to the spread of communicable and sexually-transmitted diseases.

1
2 4. Special regulation of adult-oriented businesses is necessary to ensure that their
3 adverse secondary effects will not contribute to an increase in the crime rates or the blighting or
4 downgrading of the areas in which they are located or surrounding areas. The need for special
5 regulation is based on the recognition that adult-oriented businesses have serious objectionable
6 operational characteristics, particularly when several of them are concentrated under certain
7 circumstances or located in direct proximity to sensitive uses such as residential zones and uses,
8 parks, schools, churches or day care centers.

9
10 5. It is the purpose and intent of these special regulations to prevent the establishment
11 and operation of adult-oriented businesses in a manner that would create such adverse secondary
12 effects. Thus, in order to protect and preserve the public health, safety, and welfare of the
13 citizenry, especially minors, special regulations are necessary.

14
15 6. The protection and preservation of the public health, safety and welfare require
16 that certain operational, zoning and distance requirements for adult-oriented businesses also be
17 imposed.

18
19 **WHEREAS**, in adopting these regulations, the city council is mindful of legal principles
20 relating to regulation of adult businesses and does not intend to suppress or infringe upon any
21 expressive activities protected by the First Amendments of the United States and California
22 Constitutions, but instead desires to enact reasonable time, place, and manner regulations that
23 address the adverse secondary effects of adult businesses. The city council has considered
24 decisions of the United States Supreme Court regarding adverse secondary effects and the local
25 regulation of adult businesses, including but not limited to: *Young v. American Mini Theaters*.
26 *Inc.*, 427 U.S. 50 (1976) (Reh. denied 429 U.S. 873); *Renton v. Playtime Theaters*, 475 U.S. 41
27 (1986) (Reh. denied 475 U.S. 1132); *FW/PBS. Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v.*
28 *Glenn Theater*, 501 U.S. 560 (1991), and *City of Erie v. Paps A.M.* (2000) 529 U.S. (2000
Daily Journal DAR 3255), 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); *Kev. Inc. v.*
Kitsap County, 793 F.2d 1053 (9th Cir. 1986); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir.
1998), pet. For cert. Filed (1999); several California cases including but not limited to: *Tily B. v.*
City of Newport Beach, 69 Cal.App.4th 1 (1998); *City of National City v. Wiener*, 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.

29
30 **WHEREAS**, the Planning Commission considered DAP-001-248 on December 8, 2015.
31 The Planning Commission, by vote of 6 to 0 voted to recommend approval of DAP-001-248 to
32 the Colton City Council.

1 **18.49.020 - Definitions.**

2 In addition to the definitions contained in the Municipal Code, the following words and phrases
3 shall, for the purposes of this chapter, be defined as follows, unless it is clearly apparent from the
4 context that another meaning is intended. Should any of the definitions be in conflict with the
5 current provisions of the Municipal Code, these definitions shall prevail:

6 "Adult Arcade" means any business establishment or concern to which the public is permitted or
7 invited and where coin or slug operated or electronically, electrically or mechanically controlled
8 amusement devices, still or motion picture machines, projectors, videos or other image-producing
9 devices are maintained to show images on a regular or substantial basis, where the images so
10 displayed are distinguished or characterized by an emphasis on matter depicting or describing
11 "Specified Sexual Activities" or "Specified Anatomical Areas."

12 "Adult Bookstore" means any business establishment or concern having as a regular and
13 substantial portion of its stock in trade, "Material" (as defined below) which is distinguished or
14 characterized by its emphasis on matter depicting, describing or relating to "Specified Sexual
15 Activities" or "Specified Anatomical Areas."

16 "Adult Business" or "Adult Use" means:

17 1. Any business establishment or concern which as a regular and substantial course of
18 conduct operates as an Adult Bookstore, Adult Theater, Adult Arcade, Adult Cabaret, Adult
19 Figure Modeling Studio, Adult Motel or Hotel; or

20 2. Any business establishment or concern which as a regular and substantial course of
21 conduct offers, sells or distributes Adult Oriented Merchandise or sexually oriented merchandise,
22 or which offers to its patrons materials, products, merchandise, services or entertainment
23 characterized by an emphasis on matters depicting, describing or relating to "Specified Sexual
24 Activities" or "Specified Anatomical Parts," but not including those uses or activities which are
25 preempted by state law.

26 "Adult Cabaret" or "Adult Nightclub" means a business establishment or concern (whether or not
27 serving Alcoholic Beverages) which features live performances by topless and/or bottomless
28 dancers, go-go dancers, exotic dancers, strippers or similar entertainers, and where such
performances are distinguished or characterized by their emphasis on matter depicting, describing
or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."

"Adult Dance Studio" means any business establishment or concern which provides for members
of the public a partner for dance where the partner, or the dance, is distinguished or characterized
by the emphasis on matter depicting, or describing or relating to "Specified Sexual Activities" or
"Specified Anatomical Areas."

"Adult Oriented Merchandise" (or sexually oriented merchandise) means sexually oriented
implements, paraphernalia or novelty items, such as, but not limited to: dildos, auto sucks,
sexually oriented vibrators, benwa balls, inflatable orifices, anatomical balloons with orifices,

1 simulated and battery operated vaginas, and similar sexually oriented devices which are designed
2 or marketed primarily for the stimulation of human genital organs or sado-masochistic activity or
3 distinguished or characterized by their emphasis on matter depicting, describing or relating to
"Specified Sexual Activities" or "Specified Anatomical Areas."

4 "Adult Theater" means a theater or other commercial establishment with or without a stage or
5 proscenium which is used for presenting, on a regular and substantial basis, "Material" which is
6 distinguished or characterized by an emphasis on matter depicting, or describing, or relating to
"Specified Sexual Activities" or "Specified Anatomical Areas."

7 "Arcade Booth" means any enclosed or partially enclosed portion of an establishment in which an
8 Adult Arcade is located, or where a live performance is presented, on a regular or substantial
9 basis, where the material presented is distinguished or characterized by an emphasis on matter
10 depicting, or describing, or relating to "Specified Sexual Activities" or "Specified Anatomical
11 Areas."

12 "M-1 Light Industrial Zone" means any property within the City which is zoned M-1 Light
13 Industrial Zone on the City's Official Zoning Map adopted by Ordinance No. 0-14-92, effective
14 August 21, 1992, as may be amended from time to time.

15 "M-2 Heavy Industrial Zone" means any Property within the City which is zoned M-2 Heavy
16 Industrial Zone on the City's Official Zoning Map adopted by Ordinance No. 0-14-92, effective
17 August 21, 1992, as may be amended from time to time.

18 "Material" relative to Adult Businesses, means and includes, but is not limited to, accessories,
19 books, magazines, photographs, prints, drawings, paintings, motion pictures, pamphlets, videos,
20 slides, tapes or electronically generated images or devices including computer software, or any
21 combination thereof.

22 "Park" means any property within the City which is zoned "Public Park" on the City's Official
23 Zoning Map adopted by Ordinance No. 0-14-92, effective August 21, 1992, as may be amended
24 from time to time.

25 "Performer" means any person who is an employee or independent contractor of the Adult
26 Business, or any person who, with or without any compensation or other form of consideration,
27 performs live entertainment for patrons of an Adult Business.

28 "Religious Institution" means a facility used primarily for religious assembly or worship and
related religious activities.

"Residential Zone" means any property within the City which is zoned "Residential," including
R-E (Residential Estate Zone), R-1 (Low Density Residential Zone), R-2 (Medium Density
Residential Zone) and R-3 (High Density Residential Zone) as set forth on the City Zoning Map,
adopted by Ordinance No. 0-14-92 on August 21, 1992 and fully incorporated by this reference,
and as may be amended from time to time. "Residential Zone" also includes residential zones

1 contained within Specific Plan areas and the Planned Community Development Overlay Zone as
2 set forth on the City Zoning Map.

3 "School" means any institution of learning for minors whether public or private, which offers
4 instruction in those courses of study required by the California Education Code or which is
5 maintained pursuant to standards set by the State Board of Education and has an approved use
6 permit, if required, under the applicable jurisdiction. This definition includes a nursery school,
kindergarten, elementary school, junior high school, senior high school. The definition of School
does not include a community or junior college, college or university, or a vocational institution.

7 "Specified Anatomical Areas" means:

- 8 1. Less than completely and opaquely covered:
- 9 a. Human genitals, pubic region,
 - 10 b. Buttock, or
 - 11 c. Female breast below a point immediately above the top of the areola; or
- 12 2. Any device or covering, when exposed to view, which simulates the female breast below a
point immediately above the top of the areola, human genitals, pubic region or buttock; or
- 13 3. Human or simulated male genitals in a discernible turgid state, even if completely and
opaquely covered.

14 "Specified Sexual Activities" means:

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

21 **18.49.030 - Locational Limitations.**

22 A. Subject to the limitations of this chapter, Adult Businesses or Adult Use may be located in
23 the M-2 (Heavy Industrial Zone) or M-1 (Light Industrial Zone) of the City, subject to the
24 following:.

- 25 1. Within a one thousand foot radius of a Residential Zone. The distance between a proposed
26 use and a Residential Zone shall be measured from the nearest exterior wall of the facility
27 housing the Adult Business or proposed Adult Use to the nearest property line included within the
28 Residential Zone, measured along a straight line extended between the two points.

1 2. Within a one thousand-foot radius of a school or park. The distance between the proposed
2 Adult Business or Adult Use and a school or park shall be measured from the nearest exterior
3 wall of the facility housing the Adult Business or Adult Use to the nearest property line of the
school or park site, along a straight line extended between the two points.

4 3. Within a one thousand foot radius of a religious institution. The distance between the
5 Adult Business or proposed Adult Use and a religious institution shall be measured from the
6 nearest exterior wall housing the Adult Business or proposed Adult Use along a straight line
extended to the nearest exterior wall of the facility housing the religious institution.

7 4. For properties located in the M-1 (Light Industrial Zone), it is unlawful to establish any
8 adult business, except as specified in the following locations:

9 Location 1: Properties south of 1-10 Freeway and west of intersection of Hunts Lane and Steel
10 Road, eastern boundary is to include 2200 East Steel Road (APN: 0164-27-106) to
11 western boundary to include 2131 East Steel Road (APN: 0164-311-29), southern
12 boundary is north of 2150 Oliver Holmes Road (APN: 0164-311-02) and
13 southeastern boundary is west of 551 South Hunts Lane (APN: 0164-27-103).

14 Location 2: Properties west of 215 Freeway, from 2185 (APN: 1167-131-14) to 2283 La Crosse
15 Avenue (APN: 1167-131-09) east of the Southern Pacific Railroad property (APN:
16 1167-131-11).

17 B. The Establishment of any Adult Business or Adult Use shall include the opening of such a
18 business as a new business, the relocation of the business, or the conversion of an existing
19 business, or an increase of more than fifty percent of the square footage of an existing business,
20 or of an existing Adult Business or Adult Use to a different type of Adult Business or Adult Use.

21 **18.49.040 - Development and Operating Standards.**

22 A. Hours of Operation. It is unlawful for any operator or employee of an Adult Business to
23 allow such Adult Business to remain open for business, or to permit any employee to engage in a
24 performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a
25 service, between the hours of 12:00 a.m. and 8:00 a.m. of any day.

26 B. Lighting Requirements. All exterior areas of the Adult Business shall be illuminated at a
27 minimum of one footcandle throughout the premises, minimally maintained and evenly
28 distributed at ground level.

C. Access Provision. The operator shall not permit any doors on the premises to be locked
during business hours and, in addition, the operator shall be responsible to see that any room or
area on the premises shall be readily accessible at all times and shall be open to view in its
entirety for inspection by any Law Enforcement Officer.

D. Minors' Access.

1 1. X-Rated Movies. X-rated movies or video tapes shall be restricted to persons over
2 eighteen years of age. If an establishment that is not otherwise prohibited from providing access
3 to persons under eighteen years of age sells, rents or displays videos that have been rated "X" or
4 rated "NC-17" by the Motion Picture Rating Industry (MPAA), or which have not been submitted
5 to the MPAA for a rating, and which consist of images which are distinguished or characterized
6 by an emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical
7 Areas," such videos shall be located in a specific section of the establishment where persons
8 under the age of eighteen shall be prohibited and shall not be visible from outside the premises.

9 2. Other Adult Materials. Access to adult materials shall be restricted to persons over
10 eighteen years of age.

11 E. Regulation of Closed Booths. No one shall maintain any Arcade Booth or individual
12 viewing area unless the entire interior of such premises wherein the picture or entertainment that
13 is viewed is visible upon entering into such premises; and further, that the entire body of any
14 viewing person is also visible immediately upon entrance to the premises without the assistance
15 of mirrors or other viewing aids. No partially or fully enclosed booths/individual viewing area or
16 partially or fully concealed booths/individual viewing area shall be maintained. No Arcade Booth
17 shall be occupied by more than one patron at a time. No holes shall be permitted between Arcade
18 Booths or individual viewing area.

19 F. Regulation of Viewing Areas. All viewing areas within the Adult Business shall be visible
20 from a continuous and accessible main aisle in a public portion of the establishment, and not
21 obscured in any manner by any door, curtain, wall, two-way mirror or other device which would
22 prohibit a person from seeing into the viewing area from the main aisle. A manager shall be
23 stationed in the main aisle or video monitoring shall be established at a location from which the
24 inside of all of the viewing areas are visible at all times in order to enforce all rules and
25 regulations. All viewing areas shall be designed or operated to permit occupancy of either one
26 person only, or more than ten persons. "Viewing area" means any area in which a person views
27 performances, pictures, movies, videos or other presentations.

28 G. Business License. A person shall not own, operate, manage, conduct or maintain an Adult
Business without first having obtained a Business License from the Development Services
Director pursuant to Chapter 5.02 of the Colton Municipal Code. The issuance or denial of the
Business License shall be made within fifteen days of the applicant's submitted application.

H. On-Site Manager—Security Measures. All Adult Businesses shall have a person who shall
be at least eighteen years of age and shall be on the premises to act as manager at all times during
which the business is open. Any and all individual(s) designated as the on-site manager shall be
registered with the City's Development Services Director by the owner to receive all complaints
and be responsible for all violations taking place on the premises.

The Adult Business shall provide a security system that visually records and monitors all parking
lot areas, or in the alternative, uniformed security guards to patrol and monitor the parking lot
areas during all business hours. A sign indicating compliance with this provision shall be posted

1 on the premises. The sign shall not exceed two by three feet and shall at a minimum be one foot
2 by one and a half feet.

3 I. Adult Business—Operating Requirements. No person, association, partnership or
4 corporation shall engage in, conduct or carry on, or permit to be engaged in, conducted or carried
5 on the operation of an Adult Business unless each and all of the following requirements are met:

6 1. No Employee, Owner, Operator, responsible managing employee, manager or permittee
7 of an Adult Business shall allow any person below the age of eighteen years upon the premises or
8 within the confines of any Adult Business if no liquor is served, or under the age of twenty-one if
9 liquor is served.

10 2. All Employees of Adult Businesses, other than performers while performing, shall, at a
11 minimum while on or about the licensed premises, wear an opaque covering which covers their
12 Specified Anatomical Areas.

13 3. No person shall perform live entertainment for patrons of an Adult Business except upon a
14 permanently fixed stage which is at least eighteen inches above the level of the floor, separated by
15 a distance of at least six feet from the nearest area occupied by patrons and surrounded with a
16 three-foot-high permanent barrier.. No patron shall be permitted within six feet of the stage while
17 the stage is occupied by a performer.

18 When patrons are present at the establishment, they shall not be allowed to directly touch, fondle
19 or caress, as those terms are defined in *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986),
20 the performers while they are performing. This prohibition does not extend to incidental touching.
21 Patrons shall be advised of the separation and no touching requirements by signs placed on the
22 barrier and if necessary by employees of the establishment.

23 4. If patrons wish to tip performers, receptacles shall be at least six feet from the
24 permanently fixed stage. Patrons shall not throw tips to performers, hand tips directly to
25 performers or place tips in the performers' costumes.

26 **18.49.050 - Adult Use Development Permit— Requirements.**

27 A. No Adult Business may be established or operate within the City by right—all persons
28 wishing to establish an Adult Business or Adult Use within the City must apply for and receive an
Adult Use Development Permit under this chapter.

B. It is the burden of the applicant to supply evidence to justify the grant of an Adult Use
Development Permit. Such evidence shall include information, maps and/or exhibits that shows
compliance with the provision of section 18.49.030 of this chapter.

C. Any Person desiring to establish or operate an Adult Business or Adult Use within the
City shall file with the Development Services Director an Adult Use Development Permit
application on a standard application form supplied by the Development Services Department.

18.49.060 - Permit—Contents of Application.

1
2 A. The application must be signed by the owner or lessee of the property where the Adult
3 Business or Adult Use will take place. If the application is signed by a lessee, a notarized
statement signed by the owner shall accompany the application. Proof of status is required.

4 B. The Development Services Department shall set forth the contents required for such
5 applications for an Adult Use Development Permit.

6 C. All applicants for an Adult Use Development Permit must also fill out the City's
7 environmental package for purposes of complying with the California Environmental Quality Act
(CEQA).

8 **18.49.070 - Permit—Application Fee.**

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10 The City Council, by resolution, shall set a reasonable nonrefundable application fee for persons
11 applying for an Adult Use Development Permit. The fee shall not exceed the reasonable
estimated costs of the City expended in processing the application.

12 **18.49.080 - Permit—Decision to Grant or Deny.**

13 A. The Planning Commission (the Commission) shall grant, conditionally grant or deny an
14 application for an Adult Use Development Permit in accordance with the approval criteria
15 contained in section 18.49.120 of this chapter. Any conditions imposed upon the permit shall be
16 in keeping with the objective development standards of this chapter and the underlying zoning
district in which the property is located.

17 B. The completeness of the application shall be determined by the Development Services
18 Director within fifteen (15) calendar days of its submittal to the Development Services Director.

19 C. Upon the filing of a completed application, the Commission shall cause to be made by its
20 own members, or members of its staff, an appropriate investigation, including consultation with
21 the Building, Police, Fire and Health Departments and inspection of the premises as needed.
Consultation is not grounds for the City to unilaterally delay in reviewing a completed
application.

22 D. In reaching a decision, the Commission shall not be bound by the formal rules of
23 evidence.

24 E. After the investigation has been completed within ten days or a specified time period that
25 falls within subsection (G) of this section, the Commission shall conduct a noticed public hearing
on the application for an Adult Use Development Permit.

26 F. Notice of the time and place of the hearing shall be given by notice through the U.S. Mail,
27 with postage prepaid, to all persons shown on the last equalized assessment roll of the County, as
28 owning property within a distance of three hundred feet from the external boundaries of the

1 property described in the application. Further notice shall be given by publication in a newspaper
2 of general circulation within the City at least ten days before the scheduled hearing.

3 G. The Planning Commission shall render a written decision on the application for an Adult
4 Use Development Permit within thirty days of receiving a completed application. The
5 Commission is authorized to impose conditions reasonably related to the impacts generated by
6 the proposed Adult Business or Adult Use. However, in the event a negative declaration,
7 mitigated negative declaration or any type of Environmental Impact Report needs to be prepared
8 for the Project pursuant to the California Environmental Quality Act (CEQA, Public Resources
Code Section 21000, et seq.) and the companion guidelines (CEQA guidelines, Title 14
California Code of Regulation Section 15000, et seq.), then those timeframes set forth in CEQA
and the CEQA guidelines shall apply.

9 H. The failure of the Commission to render such a decision within the time frames set forth
10 above shall be deemed to constitute an approval.

11 I. Written Notice of the Commission's decision shall be hand delivered or mailed to the
12 applicant within forty-eight hours.

13 **18.49.090 - Permit—Appeal.**

14 A. Any interested person may appeal the decision of the Commission to the City Council in
15 writing within ten days after the Commission's written decision. The City Council within the
same ten days may also initiate such an appeal.

16 B. Consideration of an appeal of the Commission's decision shall be at a public hearing
17 which shall be noticed as provided in Section 18.49.080(F) above and shall occur within thirty
days of the filing or initiation of the appeal.

18 C. The City Council action on the appeal of the Commission's decision shall be by a majority
19 vote of the quorum and upon the conclusion of the de novo public hearing. The City Council shall
20 grant, conditionally grant or deny the application in accordance with the approval criteria
21 contained in section 18.49.120 of this chapter. The City Council's decision shall be final and
conclusive.

22 D. In reaching its decision, the City Council shall not be bound by the formal rules of
23 evidence.

24 **18.49.100 - Permit—Judicial Review of Decision to Grant or Deny.**

25 A. The time for court challenge to a final decision by the Commission or City Council is
26 governed by California Code of Civil Procedure Section 1094.6.

1 B. Notice of the Commission's or City Council's decision and its findings shall be mailed to
2 the applicant within forty-eight hours and shall include citation to California Code of Civil
3 Procedure Section 1094.6.

4 **18.49.110 - Permit—Expiration.**

5 Any Adult Use Development Permit approved pursuant to this chapter shall become null and void
6 if not exercised within one year from the date of the approval. If an Adult Business ceases to
7 operate for a period of six months, the Adult Use Development Permit shall become null and
8 void. A permit extension shall be granted if prior to the expiration date the permittee
9 demonstrates to the satisfaction of the City's Planning Commission that it has a good faith intent
10 to presently commence the proposed use. Such extensions shall not exceed a total of two six-
11 month extensions.

12 **18.49.120 - Permit—Approval Criteria.**

13 A. The Commission or City Council shall approve or conditionally approve an application
14 for an Adult Use Development Permit where the information submitted by the applicant
15 substantiates the following findings:

16 1. That the proposed use complies with the objective development and design requirements
17 of zone in which it is located and with the applicable standards of this chapter;

18 2. That the proposed site is not located within a one thousand foot radius of a Residential
19 Zone. The distance between a proposed use and a Residential Zone Shall be measured from the
20 nearest exterior wall of the facility housing the Adult Business or proposed Adult Use, to the
21 nearest property line included within the Residential Zone, along a straight line extended between
22 the two points;

23 3. That the proposed site is not located within a one thousand-foot radius of a school or park.
24 The distance between the proposed use and a School or park shall be measured from the nearest
25 exterior wall of the facility housing the Adult Business or proposed Adult Use to the property line
26 of the nearest school or park site, along a straight line extended between the two points;

27 4. That the proposed site is not located within a one thousand foot radius of a religious
28 institution. The distance between the Adult Business or proposed Adult Use and a religious
institution shall be measured from the nearest exterior wall housing the Adult Business or
proposed Adult Use along a straight line extended to the nearest exterior wall of the facility
housing the religious institution;

5. That neither the applicant, if an individual, or any of the officers or general partners, if a
corporation or partnership, have been found guilty or pleaded nolo contendere within the past
four years of a misdemeanor or a felony classified by the state as a sex or sex-related offense.

18.49.130 - Permit—Revocation.

1 A. Any permit issued pursuant to the provisions of this chapter may be revoked by the City
2 on the basis of any of the following:

3 1. That the business or use has been conducted in a manner which violates one or more of
4 the conditions imposed upon the issuance of the permit or which fails to conform to the plans and
5 procedures described in the application, or which violates the occupant load limits set by the Fire
6 Marshal;

7 2. That the permittee has failed to obtain or maintain all required City, County and State
8 licenses and permits;

9 3. That the permit is being used to conduct a use different from that for which it was issued;

10 4. That the permittee has misrepresented a material fact in the application for Adult Use
11 Development Permit or has not answered each question therein truthfully;

12 5. That the building or structure in which the Adult Business is to be conducted is hazardous
13 to the health or safety of the employees or patrons of the business or of the general public under
14 the standards set forth in the City's Building, Electrical, Plumbing or Fire Code;

15 6. That the permittee, if an individual, or any of the officers or general partners, if a
16 corporation or partnership is found guilty or pleaded nolo contendere to a misdemeanor or felony
17 classified by the state as a sex or sex-related offense during the period of the Adult Business'
18 operation; or

19 7. That the use for which the approval was granted has ceased to exist or has been suspended
20 for six months or more.

21 B. Written notice of hearing on the proposed permit revocation, together with written
22 notification of the specific grounds of complaint against the permittee shall be personally
23 delivered or sent by certified mail to the permittee at least ten days prior to the hearing.

24 C. The Commission shall provide notice and conduct a public hearing on the proposed
25 permit revocation. Written notice shall be provided within at least ten days prior to the hearing to
26 all parties who have expressed their interest in writing. The notice shall inform the permittee of
27 the reasons for revocation.

28 D. The revocation hearing shall be heard by the Commission. The Commission shall not be
bound by the formal rules of evidence at the hearing.

E. The Commission shall revoke, not revoke, or not revoke but add additional conditions to,
the permittee's Adult Use Development Permit. Any additional conditions imposed upon the
permit shall be in keeping with the objective development standards of this chapter as set forth in
Sections 18.49.020 and 18.49.120 above, and the underlying zoning district in which the property
is located.

1
2 F. The Commission shall make its decision within thirty days of the conclusion of the public
hearing.

3
4 G. The Commission's decision shall be by resolution, and shall be hand delivered or mailed
5 to the applicant within forty-eight hours and mailed to all property owners within three hundred
feet of the use.

6 H. Any interested person may appeal the decision of the Commission to the City Council in
7 writing within ten days after the written decision of the Commission in accordance with the
provisions of Section 18.58.070 of this chapter.

8 I. In the event a permit is revoked pursuant to this chapter, another Adult Use Development
9 Permit to operate an Adult Business shall not be granted to the permittee within twelve months
after the date of such revocation.

10
11 **18.49.140 - Violation—Penalty.**

12 Any person who violates any section of this chapter shall be guilty of a misdemeanor and subject
13 to a fine of one thousand dollars and/or imprisonment in the County jail for a period of up to six
months or any other legal remedy available pursuant to the Colton Municipal Code.

14
15 **18.49.150 - Applicability to other regulations.**

16 The provisions of this chapter are not intended to provide exclusive regulation of the regulated
17 adult uses. Such uses must comply with any and all applicable regulations imposed in other
chapters of the zoning code, other City ordinances and state and federal law.

18
19 **18.49.160 - Conduct constituting a Public Nuisance.**

20 The conduct of any business within the City in violation of any of the terms of this chapter is
21 found and declared to be a public nuisance, and the City Attorney or the District Attorney may, in
22 addition or in lieu of prosecuting a criminal action hereunder, commence an action or proceeding
23 for the abatement, removal and enjoinder thereof, in the manner provided by law; and shall take
other steps and shall apply to such courts as may have jurisdiction to grant such relief as will
24 abate or remove such Adult Business or Adult Use and restrain and enjoin any person from
conducting, operating or maintaining an Adult Business or Adult Use contrary to the provisions
of this chapter. “

25 **SECTION 5:** If any provision or clause of this ordinance or any application of it
26 to any person, firm, organization, partnership or corporation is held invalid, such invalidity shall
27 not affect other provisions of this ordinance which can be given effect without the invalid
provision or application. To this end, the provisions of this ordinance are declared to be
28 severable.

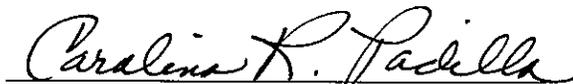
1 **SECTION 6.** Based on the entire record before it and all written and oral
2 evidence presented, the Planning Commission finds that pursuant to the California Environmental
3 Quality Act (CEQA), the attached Initial Study was prepared of the potential environmental
4 effects of the project. Based on the findings contained in that Initial Study, City staff determined
5 that, there would be no substantial evidence that the project would have a significant effect on the
6 environment. Based on that determination, proposed project could not have a significant effect
7 on the environment, and a Negative Declaration has been prepared. The Negative Declaration
8 was advertised and posted for public review and comment period starting on November 16, 2015.
9 The public review period for comments on the proposed adoption of the Negative Declaration
10 closed December 7, 2015. Staff is directed to file a Notice of Determination with the San
11 Bernardino County Clerk's Office within five (5) working days. The Secretary shall certify to the
12 adoption of this resolution.

13 **SECTION 7. Effective Date.** This ordinance shall become effective thirty (30)
14 days after its adoption.

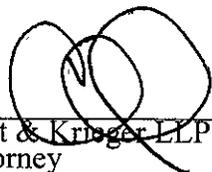
15 **PASSED, APPROVED AND ADOPTED** this 16th day of February, 2016.

16 
17 Richard A. DeLaRosa, Mayor

18 ATTEST:

19 
20 Carolina R. Padilla, City Clerk

21 APPROVED AS TO FORM:

22 
23 Best Best & Kringer LLP
24 City Attorney

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF COLTON)

4 CERTIFICATION

5 I, **CAROLINA R. PADILLA**, City Clerk of the City of Colton, California, do hereby
6 certify under penalty of perjury that the foregoing is a full, true and correct copy of
7 **ORDINANCE NO. O-02-16**, and was duly passed, approved, and adopted by the City
8 Council of the City of Colton at its Regular Meeting held on the **16th day of February,**
9 **2016**, by the following vote to wit:

10
11 AYES: COUNCILMEMBER Toro, Jorin, Navarro, González,
12 Bennett, Suchil and Mayor
DeLaRosa

13 NOES: COUNCILMEMBER None

14 ABSTAIN: COUNCILMEMBER None

15 ABSENT: COUNCILMEMBER None
16

17 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
18 seal of the City of Colton, California, this ____ day of _____, _____.
19
20
21

22 _____
CAROLINA R. PADILLA
23 City Clerk
City of Colton, California
24

25 (SEAL)
26
27
28