

**BOARD OF COUNTY COMMISSIONERS
OF
FRANKLIN COUNTY, KANSAS**

RESOLUTION NO. 06-012

A RESOLUTION AMENDING ARTICLE 2 (DEFINITIONS), SECTION 2-1.01 DEFINING SEXUALLY ORIENTED BUSINESSES AND RELATED TERMS AND AMENDING ARTICLE 11 (HIGHWAY COMMERCIAL DISTRICT) SECTION 11-3 (SPECIAL USES PERMITTED) TO ADD SEXUALLY ORIENTED BUSINESSES, INCLUDING LOCATIONAL CRITERIA OF THE FRANKLIN COUNTY ZONING REGULATIONS FOR THE UNINCORPORATED AREAS OF THE COUNTY AS PROVIDED IN K.S.A. 12-757.

WHEREAS, Franklin County, Kansas is a county municipal government, organized pursuant to Kansas Statutes K.S.A. 19-101; and

WHEREAS, the Franklin County Board of County Commissioners did by Resolution #23-91 create the Franklin County Planning Commission as provided in K.S.A. 12-744; and

WHEREAS, the Franklin County Board of County Commissioners did adopt an update of the Zoning Regulations of Franklin County, Kansas on August 4, 2002 as provided in K.S.A. 12-757; and

WHEREAS, the Franklin County Planning Commission published a notice on December 28th, 2005, that a public hearing would be held to consider said revision of the Franklin County, Kansas Zoning Regulations, as required by K.S.A. 12-757; and

WHEREAS, the Franklin County Planning Commission did, on January 19th, 2006, hold a Public Hearing for the consideration of adopting an amendment to the County Zoning Regulations as prescribed by K.S.A. 12-757; and

WHEREAS, the Franklin County Planning Commission has reviewed in detail the Amendment to Article 2 (Definitions), Section 2-1.01 and Article 11 (Highway Commercial District) Section 11-3.01; and

WHEREAS, after due consideration of all written reports and testimony, the Planning Commission, by unanimous vote of those members present, finds such Amendment to the County Zoning Regulations to be in the public interest and necessary to promote the health, safety, convenience, prosperity and general welfare of the citizens of Franklin County, Kansas; and

WHEREAS, after due consideration of all written reports, public testimony and evidence of the adverse secondary effects of adult uses presented in hearing and in reports made available to the Planning Commission, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4 L.L.C.*, 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10th Cir. 2003); *Z.J. Gifts D-4 L.L.C. v. City of Littleton*, 311 F.3d 1220 (10th Cir. 2002); *Essence, Inc. v. City of Federal Heights*, 285 F.3d 1272 (10th Cir. 2002); *O'Connor v. City and County of*

Denver, 894 F.2d 1210 (10th Cir. 1990); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998) (including exhibits cited therein); *Dodger's Bar & Grill, Inc. v. Johnson County*, 98 F.3d 1262 (10th Cir. 1996); *Connection Distrib. Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998); *Sundance Assocs. v. Reno*, 139 F.3d 804 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004) (including exhibits cited therein); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978); *Williams v. A.G. of Alabama*, 378 F.3d 1232 (11th Cir. 2004); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Dodger's Bar & Grill v. Johnson County*, 32 F.3d 1436 (10th Cir. 1994); *American Target Advertising, Inc. v. Giani*, 199 F.3d 1241; *MS News Co. v. Casado*, 721 F.2d 1281 (10th Cir. 1983); *Cortese v. Black*, No. 95-1429, 1996 U.S. App. LEXIS 15311 (10th Cir., June 25, 1996); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *CTR for Fair Public Policy*, 336 F.3d 1153 (9th Cir. 2003) (and cases cited therein); *BGHA, LLC v. City of Universal City*, 210 F.Supp. 2d 821 (W.D. Tex. 2002), *aff'd* 340 F.3d 295 (5th Cir. 2003); *Function Junction, Inc. v. Daytona Beach*, 705 F.Supp 544 (M.D. Fla. 1987); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Passions Video, Inc. v. Nixon*, 2005 U.S. Dist. LEXIS 2830 (W.D. Mo. 2005); *N.W. Enters., Inc. v. Houston*, 352 F.3d 162 (5th Cir. 2003); and reports concerning secondary effects occurring in and around sexually oriented business, including but not limited to, Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Houston, Texas – 1983, 1997; Phoenix, Arizona – 1979, 1995-98; Chattanooga, Tennessee – 1999-2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1977; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado – 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997; Greensboro, North Carolina – 2003; Amarillo, Texas – 1977; Roncek, McCleary Expert Reports – 2004; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota) and Dickinson County, Kansas -- 2005, the Planning Commission, by unanimous vote of its membership, finds:

A.that sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, litter, and sexual assault and exploitation; and

B.that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons such as masturbation, oral and anal sex, sometimes occur inside the premises of or in the parking lot of unregulated sexually oriented businesses, including but not limited to those which provide private or semi-private booths, rooms, or cubicles for viewing films, videos, or live sexually explicit shows, which acts pose a risk to public health through the spread of transmitted diseases; and

C.that sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area; and

D.that the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating, and said substantial interest exists independent of any comparative analysis between sexually oriented and non-sexually oriented

businesses. Additionally, the County's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the County. The County finds that the cases and documentation relied on in this section are reasonably believed to be relevant to said secondary effects.

E.that the Planning Commission desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; prevent adverse impacts on nearby properties; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

F.that the County must recognize its constitutional duty to interpret, construe and amend its laws and ordinances to comply with constitutional requirements as they are established; and

G.that it is not the intent of this Resolution to suppress any speech activities protected by the U.S. Constitution or the Kansas Constitution, but to address the secondary effects of sexually oriented businesses

NOW, THEREFORE, BE IT RESOLVED, that the Franklin County Planning Commission does hereby approve the adoption of an Amendment to the County Zoning Regulations as follows:

Article 2, Definitions

Section 2-1.01 – Sexually Oriented Business means an “adult arcade”, an “adult bookstore” or “adult video store”, an “adult cabaret”, and “adult motel”, an “adult motion picture theater”, a “semi-nude model studio”, a “sexual device shop”, or a “sexual encounter center”; and shall include the following terms when associated with sexually oriented businesses:

a)“*Adult Arcade*” means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or specified “anatomical areas”.

b)“*Adult Bookstore or Adult Video Store*” means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” or “sexual devices”.

A “principal purpose” means that the commercial establishment:

(1) has a substantial portion of its displayed merchandise which consists of said items, or

(2) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or

(3) has a substantial portion of the retail value of its displayed merchandise which consists of said

items, or

(4) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items, or

(5) maintains a substantial section of its interior business space for the sale or rental of said items.

c) "*Adult Cabaret*" means a nightclub, bar, juice bar, restaurant, bottle club or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons nude or semi-nude

d) "*Adult Motel*" means a motel, hotel or similar commercial establishment which:

(1) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(2) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(3) allows a tenants or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

e) "*Adult Motion Picture Theater*" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

f) "*Characterized by*" means the essential character or quality of an item. As applied in these regulations, no business shall be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.

g) "*Employ, Employee and Employment*" describes and pertains to any person who performs any service on the premises of a sexually oriented business, on a full time, part time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

h) "*Establish or Establishment*" shall mean and include any of the following:

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

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The addition of any sexually oriented business to any other existing sexually oriented business

i) *"Influential Interest"* means any of the following: (1) the authority to act as "operator" of the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, etc.) or directorship in a legal entity which operates the sexually oriented business.

j) *"Licensee"* shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee", it shall mean the person in whose name the sexually oriented business employee license has been issued.

k) *"Nudity or a State of Nudity"* means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

l) *"Operate or Cause to Operate"* shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner or licensee of the business.

m) *"Person"* shall mean individual, proprietorship, partnership, corporation, association or other legal entity.

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

o) *"Regularly"* means and refers to the consistent and repeated doing of the act so described.

p) *"Semi-Nude or State of Semi-Nudity"* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, shirt, leotard or similar wearing apparel provided the areola is not exposed in whole or in part.

q) *"Semi-Nude Model Studio"* means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

(1) by a college, junior college or university supported entirely or partly by taxation;

(2) by a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college or university supported entirely or partly by taxation; or

(3) in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewings and; where, in order to participate in a class, a student must enroll at least three days in advance of the class.

r) "*Sexual Device*" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, butt plugs and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted disease or for preventing pregnancy.

s) "*Sexual Device Shop*" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

t) "*Sexual Encounter Center*" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact between persons of the opposite sex when one or more of the persons is semi-nude.

u) "*Specified Anatomical Areas*" means and includes:

- (1) less than completely and opaquely covered: human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola; and
- (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

v) "*Specified Criminal Activity*" means:

(1) any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

(a) any sex offense set forth in Chapter 21, Article 35, of the Kansas Statutes Annotated, or amendments thereto:

(b) incest (K.S.A. 21-3602 , or amendments thereto);

(c) aggravated incest (K.S.A. 21-3603 or amendments thereto);

(d) promoting obscenity (K.S.A. 21-4301);

(e) promoting obscenity to minors (K.S.A. 21-4301a);

(f) promotion to minors of obscenity harmful to minors (K.S.A. 21-4301c); and

(2) any offenses in other jurisdictions that had the predicate act(s) been committed in Kansas, would constitute any of the foregoing offenses.

w) "Specified Sexual Activity" means any of the following:

(1) intercourse, oral copulation, masturbation or sodomy; or

(2) excretory functions as a part of, or in connection with, any of the activities described in (a) above.

x) "Substantial" means at least thirty-five percent (35%) of the item(s) so modified.

y) "Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

(1) the sale, lease or sublease of the business;

(2) the transfer of securities which constitute an influential interest in the business, whether by sale, exchange or similar means; or

(3) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

z) "Viewing Room" shall mean the room, booth or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette or other video reproduction.

Article 11 – Highway Commercial (C-2)

Section 11-3. Special Uses

11-3.01 The following uses may be permitted by approval of a Special Use Permit as provided in Article 17 of these Zoning Regulations and subject to such conditions as recommended by the Planning Commission and adopted by the Board of County Commissioners to ensure the utility and value of adjacent property and the protection of the public health, safety and general welfare.

1. any use permitted by Special Use Permit in the C-1 Zoning District

2. anhydrous ammonia, propane and butane bulk storage and distribution.

3. communication structures, antennas and towers.

4. crematories, funeral homes and mortuaries.

5. public utility and service facilities as follows:

a. substations

b.outdoor storage yards

6.truck and freight terminals

7.used auto and truck repair shops and garages

8.used auto, truck/trailer, manufactured home, mobile home and recreational vehicle sales.

9.utility substations, pumping stations and water towers.

10.Oil and gas well supply sales, service and office facilities, including storage and repair of exploration equipment and the outside storage of pipe and related materials, providing storage of outside materials is completely enclosed with a six foot high enclosure or is screened from view of adjoining properties.

11.Sexually Oriented Business as defined in Article 2, Section 2-1-01 as follows:

1. (a) adult arcade
- (b)adult bookstore or adult video store
- (c)adult cabaret
- (d)adult motel
- (e)adult motion picture theater
- (f)semi-nude model studio
- (g)sexual device shop
- (h)sexual encounter center

2.Such sexually oriented businesses allowed to operate in the unincorporated areas of Franklin County shall meet the following criteria:

(a)that the structure occupied by the sexually oriented business is at least 1000 feet from any structures occupied by another sexually oriented business or by a business licensed by the State of Kansas to sell alcohol on the premises.

(b)that the structure occupied by the sexually oriented business is at least 1000 feet from any structure occupied by a house of worship, licensed day-care homes or center, public or private secondary schools or public park.

(c)that the structure occupied by the sexually oriented business is at least 1000 feet from any structure used as a residence.

For purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest portion of the structure occupied by the sexually oriented business to the nearest portion of the structure occupied or used for any of the land use/s identified in subsection 11-2.1, 2 or 3 above.

PASSED AND ADOPTED by the Franklin County Board of County Commissioners this 6th day of February 2006. This action shall become effective upon publication in the official county newspaper.

/s/ Donald E. Waymire
Donald E. Waymire
Commissioner District 1

absent
John E. Taylor
Commissioner District 2

/s/ Roy C. Dunn
Roy C. Dunn
Commissioner District 3

/s/ Donald C. Hay
Donald C. Hay
Commissioner District 4

/s/ Donald R. Stottlemire
Donald R. Stottlemire
Commissioner District 5

Received and recorded this the 6th day of February 2006.

/s/ Shari Perry
Shari Perry
County Clerk