

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

**RESOLUTION NO. 07-050**

A RESOLUTION OF THE FRANKLIN COUNTY PLANNING COMMISSION APPROVING AN AMENDMENT TO ARTICLE 2 (DEFINITIONS), SECTION 2-1.01 DEFINING ADULT BUSINESSES AND RELATED TERMS AND AMENDING ARTICLE 11 (HIGHWAY COMMERCIAL DISTRICT) SECTION 11-3 (SPECIAL USES PERMITTED) TO ADD ADULT 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 Planning Commission published a notice on June 20th, 2007, 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 July 12th, 2007, 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 the Planning Commissions recommendation and evidence of the adverse secondary effects of adult businesses on findings, as follows:

A. that Adult 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 Adult 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 Adult 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 Adult 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 Adult Businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of Adult 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 Adult businesses extends to preventing future secondary effects of either current or future Adult 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 Board of County Commissioners desire 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 Adult businesses

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

## Article 2, Definitions

Section 2-1.01 – Adult Business means any business:

(a) that has a substantial or significant purpose the sale or rental of merchandise that is intended for use in connection with “Specified Sexual Activities” or that emphasizes matters depicting, describing or relating to “Specified Sexual Activities” or “Specified Anatomical Areas”; or

(b) that has one of its regular and substantial business purposes:

(1) the providing of entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display “Specified Anatomical Areas” or “Specified Sexual Activities”; or

(2) the providing of services that are intended to provide sexual arousal or excitement or that allow observation of “Specified Sexual Activities” or “Specified Anatomical Areas” ancillary to other pursuits, or allow participation in “Specified Sexual Activities” ancillary to other pursuits.

The definition of “Adult Business” also includes, but is not limited to, any and all of the following specific Adult Businesses: adult bookstore, adult video store or adult retail establishment; adult

motion picture theater; adult live entertainment business; adult modeling studio; adult motel; bathhouse; or body painting studio. The definition of "Adult Business" does not include, and this Resolution shall not apply to, a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances covered by the definition of "Adult Business" were permitted or allowed as part of such art exhibits or performances.

*"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".

*"Adult Bookstore, adult video store or adult news rack"* any establishment that devotes a substantial portion of its business to the display, barter, rental or sale of the following:

(1) books, magazines, periodicals, pictures, photographs, motion pictures, films, records, audiotapes, videotapes, slides or other forms of visual or audio representations or other printed matter, if such establishment is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

(2) Sexually-oriented toys or novelties

For purposes of this definition, it shall be presumed that a "substantial or significant portion" of a business is devoted to the display, barter, rental or sale of such items if:

(a) 25 percent or more of the exchanges, rentals or sales, measured in dollars over any consecutive 90 day period, is derived from such items; or

(b) 25 percent or more of the number of transactions, measured over any consecutive 90 day period, relate to such items; or

(c) 25 percent or more of the dollar value of all merchandise displayed at any time is attributable to such items; or

(d) 25 percent or more of all inventory consists of such items at any time; or

(e) 25 percent or more of the merchandise displayed for sale consists of such items at any time; or

(f) 25 percent or more of the floor area of the business (not including storerooms, stock areas, restrooms, basements or any portion of the business not open to the public) is devoted to such items at any time.

This presumption shall be rebuttable.

*"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.

*“Adult live entertainment business”* means (1) an establishment where a regular and substantial portion of its business is providing live “Adult Entertainment” that (i) is intended to provide sexual stimulation or sexual gratification to the “Entertainer”, an “Employee” or any patrons of the business, or (ii) is distinguished by or characterized by an emphasis on matter simulating, describing or relating to “Specified Anatomical Areas” or the simulation of “Specified Sexual Activities”; or (2) an establishment which regularly features entertainment of an erotic nature including exotic dancers, strippers or similar “Entertainers” appearing “Semi-Nude”.

*“Adult model studio or modeling studio”*: any establishment open to the public which for any form of consideration or gratuity paid to or received by either the proprietor or model features, provides, or permits models who appear nude or partially nude or who display specified anatomical areas to be observed, sketched, drawn, painted, sculptured or photographed. This definition shall not apply to any school of arts which is operated by an individual, firm, association, partnership, corporation or institution and which is licensed by the State of Kansas and complies with all regulations and laws of the State of Kansas for such schools and is authorized thereunder to issue and confer a diploma.

*“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 tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

*“Adult motion picture theater”* means an enclosed building with a screen or projection area, where a regular and substantial portion of its business is the exhibition of “Patrons” of motion picture films, video cassettes, DVDs, cable television or any other such visual media, which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to “Specified Sexual Activities” or “Specified Anatomical Areas”.

*“Bathhouse”*: a facility which maintains and operates for compensation any services of baths of all kinds, including all forms and methods of hydrotherapy, except such establishments which operate by or under the supervision of a medical practitioner licensed by the State of Kansas, a hospital, clinic, nursing home or in connection with a physical therapist licensed by the State of Kansas.

*“Body painting studio”*: a facility maintaining, operating and offering any services for compensation of applying paint or other substances, whether transparent or non-transparent, to or on the human body by any means of application, technique or process when such body is wholly or partially nude or displays specified anatomical areas.

*“Characterized by”* means the essential character or quality of an item. As applied in these regulations, no business shall be classified as an Adult Business by virtue of showing, selling or

renting materials rated NC-17 or R by the Motion Picture Association of America.

*“Contagious and communicable diseases”*: any disease which is set out in Kansas Department of Health and Environment regulations, K.A.R. 28-1-6 and amendments thereto, and acquired immune deficiency syndrome.

*“Crime against public morals or offense of moral turpitude”*: any charges involving prostitution, pimping, lewd and lascivious behavior, gambling, possession or sale of narcotics, marijuana or any “controlled substances” as that term is defined in Chapter 65, Article 41, of the Kansas Statutes Annotated (K.S.A. 65-4101 et seq.), indecent exposure, incest and sex or moral crime involving, against or with minors.

*“Distances”*: specified herein shall be measured in a straight line from the nearest point on the building or structure housing the adult business to the nearest point on any property of any business, activity or zoning district identified herein.

*“Entertainer”*: any person who provides entertainment within an adult entertainment business as defined in this Resolution whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

*“Entertainment”*: any exhibition, performance, display or dance of any type, removal of articles of clothing, pantomime, modeling or any other personal service offered for amusement.

*“Establishing an adult business”*: includes any of the following:

- (1) the opening or commencement of any such business as a new business;
- (2) the conversion of an existing business, whether or not an adult business, to any of the adult businesses as defined in this Resolution;
- (3) the addition of any of the adult businesses defined herein to any other existing adult business; or
- (4) the relocation of any such business.

*“Employ, Employee and Employment”*: describes and pertains to any person who performs any service on the premises of an “Adult 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.

*“Establish or Establishment”*: shall mean and include any of the following:

- (1) the opening or commencement of any “Adult Business” as a new business;
- (2) the conversion of an existing business, whether or not an “Adult Business”, to any “Adult Business”;
- (3) the addition of any “Adult Business” to any other existing “Adult Business”

*“Governing Body”*: The Franklin County Board of County Commissioners.

*"Offense of moral turpitude"*: See crime against public morals.

*"Operator"*: any person, partnership or corporation operating, conducting, maintaining or in charge of operating an "Adult Business".

*"Patron"*: any person who utilizes or receives the services of any adult business subject to the provisions of this Resolution and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefore.

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

*"Premises"*: means the real property upon which the Adult Business is located and all appurtenances thereto and buildings thereon, including, but not limited to, the "Adult 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.

*"Public morals"*: see crime against public morals.

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

*"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 to 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.

*"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;

(4) in order to participate in a class, a student must enroll at least three days in advance of the class.

*"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.

*“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.

*“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.

*“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.

*“Specified criminal act”*: entrance into a diversion program or a conviction, plea of *nolo contendere* or no contest to:

(1)a criminal violation of this Resolution;

(2) any of the offenses defined in Chapter 21, Article 35, of the Kansas Statutes Annotated;

(3) incest as defined in Chapter 21, Article 36 of the Kansas Statutes Annotated;

(4) aggravated incest as defined in Chapter 21, Article 36, of the Kansas Statutes Annotated;

(5) bribery as defined in Chapter 21, Article 39, of the Kansas Statutes Annotated;

(6) promoting obscenity as defined in Chapter 21, Article 43, of the Kansas Statutes Annotated;

(7) promoting obscenity to minors as defined in Chapter 21, Article 43, of the Kansas Statutes Annotated;

(8) promotion to minors of obscenity harmful to minors as defined in Chapter 21, Article 43, of the Kansas Statutes Annotated;

(9) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses; or

(10) any of the foregoing offenses under an analogous regulation or statute of the United States Code of Annotated or of a state other than Kansas or under an analogous resolution or ordinance of another County, City or similar jurisdiction other than resolutions of Franklin County.

If necessary, the County Counsel shall issue an interpretive ruling determining whether a crime from another State or jurisdiction is analogous to a crime under Kansas law or resolutions of Franklin County. An application for an interpretive ruling shall be made in writing on a form provided by the Clerk and shall be accompanied by such other information as may be reasonably requested under the circumstances pertaining to the specified item about which a ruling is requested.

*"Specified sexual activities":* any one of the following:

- (1) human genitals in a state of sexual stimulation or arousal;
- (2) acts or representations of acts of human masturbation, sexual intercourse, sodomy, bestiality, oral copulation or flagellation;
- (3) fondling or other erotic touching of human genitals, public region, buttocks or female breast; or
- (4) excretory functions as a part of or in connection with any activities set forth in (1) through (3) above.

*"Sexually-Oriented Toys or Novelties":* means instruments, devices or paraphernalia which either depict representations of "Specified Anatomical Areas" or are designed or marketed for use in connection with "Specified Sexual Activities". In determining whether an item is "designed or marketed for use" in connection with "Specified Sexual Activities", the following guidelines may be considered:

- (1) expert testimony as to the principle use of the item;
- (2) evidence concerning the total business of a person or business establishment and the type of merchandise involved in the business;
- (3) national and local advertising concerning the use of the item;
- (4) evidence of advertising concerning the nature of the business establishment;
- (5) instructions, graphics or other material contained on the item itself or on the packaging materials for the item;
- (6) the physical or structural characteristics of the item; and
- (7) the manner in which the item is displayed, including its proximity to other regulated merchandise or signage relating to items in a display area.

Any person may request an interpretive ruling from the County Counselor as to whether a particular item is considered by the County to be "designed or marketed for use" in connection with "Specified Sexual Activities". An application for an interpretive ruling shall be made in writing on a form provided by the Clerk and shall be accompanied by such other information as may reasonably be requested under the circumstances pertaining to the specific item about which a ruling is requested.

*"Transfer of ownership or control":* any of the following:

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

(2) the transfer of securities which constitute a controlling interest in such 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 such business, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

*“Viewing Room”* shall mean the room, booth or area where a patron of Adult 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. Adult Business as defined in Article 2, Section 2-1-01 as follows:

- (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

Such Adult Businesses allowed to operate in the unincorporated areas of Franklin County shall meet the following criteria:

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

(b) that the structure occupied by the Adult 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 Adult 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 Adult 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 1st day of August 2007. This action shall become effective upon publication in the official county newspaper.

/s/ Karen S Farrell  
Karen S. Farrell  
Commissioner District 1

/s/ John E Taylor  
John E. Taylor  
Commissioner District 2

/s/ Roy C Dunn  
Roy C. Dunn

/s/ Donald C Hay  
Donald C. Hay

Commissioner District 3

Commissioner District 4

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

Received and recorded this the 1st day of August 2007.

Shari Perry

/s/ Shari Perry

County Clerk