

BOARD OF COUNTY COMISSIONERS OF
JEFFERSON COUNTY, KANSAS

RESOLUTION NO. 2011-029

A RESOLUTION ADOPTING CONDUCT REGULATIONS PROHIBITING NUDITY AND
PHYSICAL CONTACT BETWEEN PATRONS AND BIKINI – CLAD EMPLOYEES OF
ALCHOHOLIC BEVERAGE ESTABLISHMENTS WITHIN JEFFERSON COUNTY.

WHEREAS, certain businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the County; and

WHEREAS, the Board of County Commissioners finds that such establishments include alcoholic beverage establishments that feature bikini – clad employees; and

WHEREAS, the Board of County Commissioners finds that nudity, partial nudity, conduct by bikini – clad persons, and/or sexual conduct coupled with alcohol in public places begets undesirable behavior, and that sexual, lewd, lascivious, and salacious conduct among patrons and employees within alcoholic beverage establishments results in violation of law and dangers to the health, safety and welfare of the public; it is the intent of this resolution to prohibit such conduct in said establishments;

WHEREAS, there is a convincing documented evidence that physical contact between bikini – clad performers and patrons of alcoholic beverage establishments leads to unlawful sexual activities, including masturbation, lewdness, illicit sexual activity, and other behaviors which the County seeks to prevent; and

WHEREAS, K.S.A. 19-101a authorizes counties to adopt resolutions pertaining to alcoholic beverages which are not in conflict with the Kansas liquor control act and the cereal malt beverage act;

WHEREAS, the County recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the County and the Board of County Commissioners accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Kansas Constitutions, Kansas Law, and the Kansas Rules of Civil and Criminal Procedure ; and

WHEREAS, it is not the intent nor the effect of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Kansas Constitution, but to enact an ordinance to further the substantial governmental interests of the County, to wit, the controlling of secondary effects associated with physical contact in alcoholic beverage establishments.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, KANSAS, that:

Section 1. Purpose; findings and rationale.

- (a) Purpose. It is the purpose of this Resolution to regulate alcoholic beverage establishments in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of physical contact in alcoholic beverage establishments between patrons and certain employees of the establishment. The provisions of this Resolution have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials or performances, including sexually oriented materials or performances. Similarly, it is neither the purpose nor effect of this Resolution 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 the purpose nor effect of this Resolution to condone or legitimize the distribution or presentation of obscene material or performances.
- (b) Findings and Rationale. Based on evidence of adverse secondary effects associated with certain conduct in alcoholic beverage establishments, which effects have been presented in hearings and in reports made available to the Board of County Commissioners, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to *California v. LaRue*, 409 U.S. 109 (1972); *New York State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *City of Dallas v. Stanlin*, 490 U.S. 19 (1989); *Entertainment Productions, Inc. v. Shelby County, Tennessee*, 2011 WL 3903002, No. 2;08-cv-02047 (W.D. Tenn. Sept 6, 2011); *5634 East Hillsborough Ave., Inc. v Hillsborough County*, 2008 WL 4276370 (11th Cir. Sept 8, 2008) (affirming 2007 WL 2936211 (M.D. Fla. Oct 4, 2007)); *wacko's Too, Inc. v City of Jacksonville*, No. 3:04-cv-1307, R22 (M.C. Fla. Mar 16, 2005); *Baby Dolls Toppless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *Hang-On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *City of Chicago v. Pooh Bah Enterprises, Inc.* 865 N.E. 2d 133 (Ill. 2006); *Doctor John's, Inc. v. Wahlen*, 542 F.3d 787 (10th Cir. 2008); *Moody v Bd. Of Comm'rs of County of Shawnee*, 237 Kan. 67 (1985); *DPR, Inc. v. City of Pittsburg*, 24 Kan. App. 2d 703 (1998); *Heideman b. South Salt Lake City*, 348 F.3d 1185 (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); *Cortese v. Black*, No. 95-1429, 87 F.3d 1327 (10th Cir. June 25, 1996) (table); *Imaginary Images, Inc., v. Evans*, 612 F.3d 736 (4th Cir. 2010); *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Gary v. City of Warner Robins*, 311 F.3d 1334 (11th Cir. 2002); *Ben's Bar Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *BZAP's Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *Sammy's of Mobile, Ltd. v. City of Mobile*, 140 F.3d 993 (11th Cir. 1998); *Grand Faloon Tavern, Inc. v. Wicker*, 670 F.2d 943 (11th Cir. 1982); *Board of County Commissioners v. Dexterhouse*, 348 So.2d 916 (Ct. App. Fla. 1977); *International Flood & Beverage Systems v. Ft. Lauderdale*, 794 F.2d 1520 (11th Cir. 1986); *Willis v. Town of Marshall*, 426 F.3d 251 (4th Cir. 2005); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Gammoh v. city of La Habra*, 395 F.3d 1114 (9th Cir. 2005); and other cases; and on

reports of secondary effects occurring in and around sexually oriented businesses, including, but not to, Jacksonville, Florida; Dallas, Texas – 1997, 2004; Phoenix, Arizona – 12995-98; and “Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD,” Journal of Urban Health (2011), and also on finding of physical abuse from the papers entitled “Stripclubs According to Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; Jackson County, Missouri – 2008; Affidavit of J.R. Long; and “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and Various Media Articles; the Board of Commissioners finds:

1. Nudity, partial nudity, conduct by bikini-clad persons, and /or sexual conduct coupled with alcohol in public places begets negative secondary effects, including sexual, lewd, lascivious, and salacious conduct among patrons and employees resulting in violation of laws and dangers to the health, safety and welfare of the public;
2. Physical contact between bikini-clad employees of alcoholic beverage establishments, including “bed” danced, “couch” danced, and “lap” dances as they are commonly called, are associated with and can lead to illicit sexual activities, including masturbation, lewdness, and prostitution, as well as other negative effects, including sexual assault.
3. The County finds that the foregoing conduct, even when said employees are technically not nude or semi-nude as defined in other portions of Jefferson County regulations, is substantially similar to and presents similar concerns as conduct by nude and semi-nude performers in sexually oriented businesses.
4. Each of the negative effects targeted by this Resolution constitutes a harm which the County has a substantial government interest in preventing and/or abating. This substantial government interest in preventing such negative effects, which is the County’s rationale for this Resolution, exists independent of any comparative analysis between and regulated establishments and other, non-regulated establishments. The County finds that the cases and secondary effects documentation relied on in this ordinance are reasonably believed to be relevant to the County’s interest in preventing illicit sexual behavior.

The County hereby adopts and incorporates herein its stated findings and legislative record related to adverse secondary effects, including the judicial opinions and reports related to such secondary effects.

Section 2. Definitions.

For purposes of this Resolution, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

“Alcoholic Beverages” means beverage that are suitable for human consumption and contain .05% or more of alcohol by volume.

“Alcoholic Beverage Establishment, “ for purposes of this resolution, means any commercial establishment where alcoholic beverages, as defined herein, are sold, consumed, or possessed on the premises, or any commercial establishment within fifty (50) feet of such an establishment . This definition shall include a “tavern” or “drinking establishment” as defined in the Jefferson County Code, as well as any commercial establishment that is within fifty (50) feet of a tavern or drinking establishment.

“Bikini-Clad” means a state of dress in which opaque clothing covers (i) the human male or female genitals, pubic area, and buttocks, and (ii) the female breasts below the top of the areola, but no additional area contiguous to those portions of the body described in (i) and (ii) other than area covered by supporting straps or devices.

“Employee” means any person who performs a service on the premises of an alcoholic beverage establishment on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises to repair or maintenance of the premises or for the delivery of goods to the premises.

“Nudity” or a “State of Nude Condition” has the same meaning as in K.S.A. 12-770.

“Specified Sexual Activity” means the following:

- (a) Intercourse, oral copulation, masturbation or sodomy; or
- (b) Excretory functions as a part of or in connection with any of the activities described in (a) above.

Section 3. Regulations.

- (a) No employee of an alcoholic beverage establishment shall knowingly or intentionally, in the alcoholic beverage establishment, appear in a state of nudity, appear in a semi-nude condition, or engage in specified sexual activity. This subsection (a) shall not apply to persons operating or performing in theaters, concerts halls, art centers, museums, or similar establishments that are primarily devoted to the arts or theatrical performances, when the performances that are presented are expressing matters of serious literary, artistic, scientific, or political value.
- (b) No bikini-clad employee of an alcoholic beverage establishment shall knowingly or intentionally touch or make physical contact with a patron or the clothing of a patron on the premises of the establishment. This subsection (b) shall not apply to physical contact between the hand of a bikini-clad employee and the hand of a patron.
- (c) No person maintaining, owning, managing, or operating an alcoholic beverage establishment shall knowingly or recklessly allow conduct prohibited by subsections 9a) through (b) of this Section 3 of this Resolution.

Section 4. Penalties and enforcement.

- (a) A person who violates any of the provisions of this Resolution shall be guilty of a Class B misdemeanor, and, upon conviction, shall be punishable by a fine not to exceed \$1000.00, by confinement in the county jail for a period not to exceed six (6) months, or by both fine and

confinement. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such. Criminal prosecution pursuant to this section shall be brought by the County Attorney in the name of the County.

- (b) The County Counselor is hereby authorized to institute civil proceedings necessary for the enforcement of this Resolution to enjoin, restrain, or correct violation hereof. Such proceedings shall be brought in the name of the County, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceeding as may be authorized by other provisions of this Resolution, or any of the laws in force in the County or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Section 5. Severability.

This Resolution and each section and provision of said Resolution hereunder, are hereby declared to be independent divisions and subdivisions and , notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Resolution, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section provision so know to be invalid. Should any procedural aspect of this Resolution be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Resolution.

Section 6. Effective date.

This Resolution shall be effective upon publication in the official county newspaper.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS of Jefferson County, Kansas, this 19th day of December, 2011.

/S/ Richard Malm, Chairman
/S/ Lynn Luck, Vice Chairman
/S/ Roy Dunnaway, Member

Attest: /S/ Linda M. Buttron, County Clerk

(seal)