

## RESOLUTION NUMBER 2011-012

**A RESOLUTION CONCERNING THE AMENDMENT OF CERTAIN SECTIONS OF THE ZONING REGULATIONS OF JEFFERSON COUNTY, KANSAS CONCERNING ARTICLE 1, TITLE; PURPOSE; DEFINITIONS; DISTRICT AND GENERAL REGULATIONS; ARTICLE 2, AGRICULTURAL DISTRICT; ARTICLE 8, PLANNED LIGHT COMMERCIAL DISTRICT; ARTICLE 9, PLANNED GENERAL COMMERCIAL DISTRICT; ARTICLE 10, PLANNED HIGHWAY SERVICE COMMERCIAL DISTRICT; ARTICLE 11, PLANNED LIGHT INDUSTRIAL DISTRICT; ARTICLE 12, PLANNED MEDIUM INDUSTRIAL DISTRICT; ARTICLE 18, PARKING REGULATIONS; ARTICLE 19, OFF-STREET LOADING REGULATIONS; ARTICLE 23, SUPPLEMENTARY USE REGULATIONS; CONDITIONAL USES; ACCESSORY USES; PROHIBITED USES; ARTICLE 27, BOARD OF ZONING APPEALS; AND ADDING TO ARTICLE 23 A NEW SECTION 23-112 CONCERNING SEXUALLY ORIENTED BUSINESSES, FOR ALL OF JEFFERSON COUNTY, KANSAS, EXCEPT THOSE LANDS WITHIN THE INCORPORATED CITIES.**

**WHEREAS**, sexually oriented 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 Commissioners finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

**WHEREAS**, the Board of Commissioners 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; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007) (upholding ban on sexual novelty devices); and

**WHEREAS**, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially “adult” nature, *see, e.g., City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that “the nonadult video selections appeared old and several of its display cases were covered with cobwebs”); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D.

Colo. March 31, 2001) (finding “plaintiff’s argument that it is not an adult entertainment establishment frivolous at best”); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in a Lion’s Den was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); and

**WHEREAS**, the County intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of sexually oriented businesses; and

**WHEREAS**, the County’s regulations shall be narrowly construed to accomplish this end; and

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

**WHEREAS**, with the passage of any resolution, the County and the Board of 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 Code, and the Kansas Rules of Civil and Criminal Procedure; and

**WHEREAS**, 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 enact legislation to further the content-neutral governmental interests of the County, to wit, the controlling of secondary effects of sexually oriented businesses; and

**WHEREAS**, the Jefferson County Planning Commission has conducted a public hearing in conformance with K.S.A. 12-741, *et seq.*, as amended, following published notification; and

**WHEREAS**, the Jefferson County Planning Commission has recommended that the Governing Body of Jefferson County, Kansas, adopt said amendments to the Jefferson County Zoning Regulations for all of Jefferson County, Kansas, except those lands within the incorporated cities;

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

SECTION 1. Article 1, Section 1-104(184) of the Zoning Regulations of Jefferson County, Kansas is amended to read as follows:

**184. SEXUALLY ORIENTED BUSINESS:** See Article 23, Section 23-112(3).

SECTION 2. Article 2, Section 2-102 of the Zoning Regulations of Jefferson County, Kansas is amended by adding a new subsection 8, to read as follows:

8. Sexually oriented businesses, but only within the Commercial/Industrial Area indicated on the Commercial/Industrial Area Map of Appendix D to the Jefferson County Comprehensive Plan, and subject to the provisions set forth in Article 23, Section 23-112 hereof.

SECTION 3. Article 8, Section 8-102(4) of the Zoning Regulations of Jefferson County, Kansas is amended to read as follows:

4. Sexually oriented businesses, subject to the provisions set forth in Article 23, Section 23-112 hereof.

SECTION 4. Article 9, Section 9-102(6) of the Zoning Regulations of Jefferson County, Kansas is amended to read as follows:

6. Sexually oriented businesses, subject to the provisions set forth in Article 23, Section 23-112 hereof.

SECTION 5. Article 10, Section 10-102(7) of the Zoning Regulations of Jefferson County, Kansas is amended to read as follows:

7. Sexually oriented businesses, subject to the provisions set forth in Article 23, Section 23-112 hereof.

SECTION 6. Article 11, Section 11-102(8) of the Zoning Regulations of Jefferson County, Kansas is amended to read as follows:

8. Sexually oriented businesses, subject to the provisions set forth in Article 23, Section 23-112 hereof.

SECTION 7. Article 12, Section 12-102(9) of the Zoning Regulations of Jefferson County, Kansas is amended to read as follows:

8. Sexually oriented businesses, subject to the provisions set forth in Article 23, Section 23-112 hereof.

SECTION 8. Article 18, Section 18-101 of the Zoning Regulations of Jefferson County, Kansas is amended to add the following row to the Parking Requirements Chart:

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>USE OR USE CATEGORY</b>	<b>SPACES REQUIRED PER BASIC MEASURING UNIT</b>	<b>ADDITIONAL REQUIREMENTS</b>
...		
Sexually oriented business	1 per 3 seats or seating spaces or 1 per 200 square feet of floor area, whichever is greater	

SECTION 9. Article 19, Section 19-101 of the Zoning Regulations of Jefferson County, Kansas is amended to add “Sexually Oriented Business” to the first row of the off-street loading requirements chart as follows:

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Use or</b>	<b>Floor Area as</b>	<b>Loading Spaces</b>
<b>Use Category</b>	<b>Defined in Article 1</b>	<b>Required</b>
	<b>In Square Feet</b>	
Retail Store, Department Store, Restaurant, <u>Sexually Oriented Business,</u>	2,000 – 10,000	One
Wholesale House, Warehouse	10,000 – 20,000	Two
Repair, General Service	20,000 – 40,000	Three
Manufacturing or Industrial Establishment	40,000 – 60,000	Four
	Each 50,000 over 60,000	One Additional

...

SECTION 10. Article 23, Section 23-105(59) of the Zoning Regulations of Jefferson County, Kansas is deleted, as follows:

59. [Deleted.]

SECTION 11. Article 23 of the Zoning Regulations of Jefferson County, Kansas is amended to add a new Section 23-112 to read as follows:

**Sections:** . . .

**23-112 Sexually Oriented Businesses**

. . .

**23-112 Sexually Oriented Businesses:**

1. **Purpose:** It is a purpose of these Regulations to regulate sexually oriented businesses 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 sexually oriented businesses within the County. The provisions of these Regulations have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of these Regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these Regulations to condone or legitimize the distribution of obscene material.
  
2. **Findings and Rationale:** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

*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); *Abilene Retail #30, Inc. v. Bd. of Comm'rs of Dickinson County*, 492 F.3d 1164 (10th Cir. 2007); *Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150 (10th Cir. 2006); *Heideman v. South Salt Lake City*, 165 Fed. Appx. 627 (10th Cir. 2006); *Heideman v. South Salt Lake City*, 348 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); *Dodger's Bar & Grill, Inc. v. Johnson County*, 98 F.3d 1262 (10th Cir. 1996); *Dodger's Bar & Grill, Inc. v. Johnson County*, 32 F.3d 1436 (10th Cir. 1994); *American Target Advertising, Inc. v. Gianini*,

199 F.3d 1241 (10th Cir. 2000); *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); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 2011 WL 1085629 (11th Cir. Mar. 25, 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, 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; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; Jackson County, Missouri - 2008; Louisville, Kentucky - 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); Dallas, Texas - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); and "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011),

the Board of Commissioners finds:

- a. 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 surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- b. 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.
- c. Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is among the County's rationales for these Regulations, 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.

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

**3. Definitions:**

- a. "*Sexually Oriented Business*" has the same meaning as in K.S.A. 12-770 except that the term "adult cabaret" has the meaning provided in this Section. To the extent that the definitions in K.S.A. 12-770, or the definition of "adult cabaret" in this Section, employ a term not defined in K.S.A. 12-770 but that is defined in this Section, the definition in this Section shall provide the meaning for that term.
- b. "*Adult Cabaret*" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features live semi-nude conduct. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

- c. “*Characterized by*” means describing the essential character or quality of an item. As applied in this Section, 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.
- d. “*Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities*” shall not be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.
- e. “*Regularly*” means the consistent and repeated doing of an act on an ongoing basis.
- f. “*Specified Sexual Activity*” means any of the following:
  - (i) intercourse, oral copulation, masturbation or sodomy; or
  - (ii) excretory functions as a part of or in connection with any of the activities described in (i) above.

**4. Location of Sexually Oriented Businesses:**

- a. Sexually oriented businesses shall not be required to obtain a conditional use permit under these Regulations.
- b. It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business unless said sexually oriented business is at least:
  - (1) 1,000 feet from any parcel occupied by another sexually oriented business or by a business licensed to sell alcohol at the premises;
  - (2) 1,000 feet from any parcel zoned RR, SR, R-1, LL, or V-1;
  - (3) 1,000 feet from any parcel occupied by a house of worship, public or private elementary or secondary school, public park or recreational area, or library; and
  - (4) 1,000 feet from any residential structure on a parcel that is not zoned RR, SR, R-1, LL, or V-1.
- c. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures, objects, or municipal boundaries within the County, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the following:

- (1) the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in subsection (b)(1)-(3) above; and
  - (2) the closest point of any residential structure on a parcel that is not zoned RR, SR, R-1, LL, or V-1.
- d. Notwithstanding anything to the contrary in these Regulations, a nonconforming sexually oriented business, lawfully existing in all respects under law prior to the effective date of this section, may continue to operate for one (1) year following that date in order to make a reasonable recoupment of its investment in its current location. At the conclusion of said one (1) year, the use will no longer be recognized as a lawful nonconforming use, provided that a nonconforming sexually oriented business may apply for one or more six-month extensions of the original one-year period upon a showing of financial hardship. An application for an initial extension based upon financial hardship (“hardship exception”) shall be made at least sixty (60) days before the conclusion of the aforementioned one-year (1-yr.) period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least sixty (60) days before the conclusion of the nonconforming sexually oriented business’s current extension period.
- e. *Procedure for seeking hardship extension.* An application for a hardship extension shall be filed in writing with the Zoning Administrator, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation. The Zoning Administrator shall schedule a public hearing on the application before the Board of Zoning Appeals to occur within forty (40) days after the Zoning Administrator’s receipt of the application. Within ten (10) days after receiving the application and not less than twenty (20) days prior to the date of such public hearing, the Zoning Administrator shall publish notice of the time and place of the public hearing in the official County paper. The Zoning Administrator shall also notify all property owners in the notification area (within 1,000 feet of the sexually oriented business, but extending only 200 feet into an incorporated city) by first class U.S. mail, postage prepaid, of the application for a hardship extension and of the time and place of the public hearing on the application.
- The Board of Zoning Appeals shall issue a written decision within ten (10) days after the public hearing on the application for a hardship extension. The hardship extension shall be granted upon a showing that the nonconforming sexually oriented business is unable to recoup its investments, made prior to the effective date of this section, in its current location unless the hardship extension is granted.

SECTION 12. Article 27, Section 27-102(1) of the Zoning Regulations of Jefferson County, Kansas is amended to add a new subsection (e) to read as follows:

- e. To hear and decide applications for a hardship extension of a nonconforming sexually oriented business pursuant to Section 23-112(4)(e) of these Regulations.

SECTION 13. 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 person or 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 or provision so known 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 14. EFFECTIVE DATE. This resolution shall be in full force and effect from and after its publication once in the official county newspaper.

**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS** of Jefferson County,  
Kansas, this 23rd day of May, 2011.

/s/ Richard Malm, Chairman

/s/ Lynn Luck, Vice-Chair

/s/ Roy Dunnaway, Member

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