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ORDINANCE NO. 1358

AN ORDINANCE AMENDING ORDINANCE NO. 1257 DATED APRIL 15, 1997, INCLUDING ALL SUBSEQUENT REVISIONS, (ZONING REGULATIONS FOR THE CITY OF COLBY, KANSAS), BY ADDING THE DEFINITION FOR SEXUALLY ORIENTED BUSINESSES, ADDING SEXUALLY ORIENTED BUSINESSES AS A PERMITTED USE IN I-1, LIGHT INDUSTRIAL DISTRICTS, AND PROVIDING SPECIAL PERMIT PROCEDURE PROCESS REGULATIONS FOR ALLOWING SEXUALLY ORIENTED BUSINESSES IN I-1, LIGHT INDUSTRIAL DISTRICTS WITHIN THE CITY OF COLBY, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS:

SECTION 1: Pursuant to Ordinance No. 1257, Section 21-205, a public hearing was held before the Colby/Thomas County Metropolitan Area Planning Commission on May 13, 2004, Adding the Definition for Sexually Oriented Businesses, Adding Sexually Oriented Businesses as a Permitted Use in I-1, Light Industrial Districts, and Providing Special Permit Procedure Process Regulations for Allowing Sexually Oriented Businesses in I-1, Light Industrial Districts Within the City of Colby, Kansas.

SECTION 2: That *Article 1, Section 21.102, Definitions* be revised as follows:

46. **Sexually Oriented Businesses:** Shall include adult arcades; adult bookstores, adult novelty stores or adult video stores; adult cabarets; adult motels; adult motion picture theaters; adult theaters, escort agencies; semi-nude model studios; and sexual encounter centers which offer their patrons services or entertainment wherein greater than ten percent (10%) of the receipts, signage, or floor area of the business is in printed or written materials, pictures, drawings, photographs, motion pictures, or other pictorial representation, or statues or other figures, or any recordings, transcriptions, or mechanical, chemical or electronic reproductions, or any other articles, equipment, machines, or materials depicting sexual activity and all other business of the same general character as described herein.

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 machine, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting "specified sexual activities" or "specified anatomical areas."

b. *Adult Bookstore, Adult Novelty Store or Adult Video Store* means a commercial establishment which has a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

- books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas";
- instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

c. *Adult Cabaret* means a nightclub, bar, restaurant, or similar commercial establishment which regularly feature:

- persons who appear semi-nude; or
- live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas".

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

- offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; and either
- offers a sleeping room for rent for a period of time that is less than ten (10) hours, or
- allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

e. *Adult Motion Picture Theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

f. *Adult Theater* means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

g. *Distinguished or Characterized by an Emphasis Upon* means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas", the films so described are those whose dominant or principal character and theme are the exhibition or display of "specified anatomical areas" or "specified sexual activities".

h. *Employee, Employ, and Employment* describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. *Employee* does not include a person exclusively on the premises, for the delivery of goods to the premises.

i. *Enforcement Officer* shall mean the City Building Official or such person as may be designated by the City Manager.

j. *Escort* means a person who, for consideration, and for another person, agrees or offers:

- to act as a companion, guide, or date, or
- to privately model lingerie, or
- to privately perform a striptease.

k. *Escort Agency* means a person or business association that for a fee, tip, or other consideration, furnishes, offers to furnish, or advertises to furnish, escorts as one of its primary business purposes.

l. *Establish or Establishment* means and includes any of the following:

- the opening or commencement of any sexually oriented business as a new business;
- the conversion of an existing business, whether or not a sexually oriented business;
- the addition of any sexually oriented business to any other existing sexually oriented business; or
- the relocation of any sexually oriented business.

m. *Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

n. *Nude, Nudity or a State of Nudity* means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

o. *Operate or Cause to be Operated* means 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 is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

p. *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

q. *Regularly Features or Regularly Shown* means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

r. *Semi-nude or in a Semi-nude Condition* means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathingsuit, or other wearing apparel, provided the areola is not exposed in whole or in part.

s. *Semi-nude Model Studio* means a commercial establishment which regularly features a person (or persons) who appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration, but shall not include a proprietary school licensed by the State of Kansas or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

t. *Sexual Encounter Center* means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities". The definition of sexual encounter center or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

u. *Sexually Oriented Business* means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio, or sexual encounter center.

v. *Specified Anatomical Areas* means:

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

w. *Specified Criminal Activity* means any of the following offenses:

- prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries.
- for which:
 - less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

x. *Specified Sexual Activities* means any of the following:

- the fondling of another person's genitals, pubic region, anus, or female breasts;
- sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- excretory functions as part of, or in connection with, any of the activities set forth in (1) through (2) above.

y. *Substantial Enlargement* of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on the date this Ordinance takes effect.

z. *Transfer of Ownership or Control* of a sexually oriented business means and includes any of the following:

- the sale, lease, or sublease of the business;
- the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- 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 processing the ownership or control.

SECTION 3: That "Use Regulations" in *Article 1, Section 21.112. I-1 – Light Industrial District*, be revised to include the following:

21-112. I-1– Light Industrial District:

Insert the following under Permitted Uses as item m.:

m. Sexually Oriented Businesses provided a license is obtained through Zoning Regulation **21-202. Special Permit Process**

SECTION 4: That "Use Regulations" in *Article 2, Section 21.202. Special Permits*, be revised to include the following:

21-202. Special Permits

Insert the following as Paragraph 11.:

11. Sexually Oriented Businesses may be located in I-1, Light Industrial District, provided the following procedures are complied with:

- No sexually oriented business may operate within three hundred feet (300') of any existing residential zone as measured from property line to property line.
- No sexually oriented business may operate within three hundred feet (300') of any existing public, private, or parochial school; library; park; playground; church; or other place where minors tend to congregate; measured from property line to property line.
- No sexually oriented business may operate within three hundred feet (300') of any other sexually oriented business as measured from property line to property line.
- No sexually oriented business may operate on any premises licensed pursuant to the alcoholic beverage control regulations of the State of Kansas.
- Hours of Operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.
- No sexually oriented business shall allow entrance to any person under the age of eighteen (18); noncompliance with this provision may result in revocation of the sexually oriented business license.

g. License Requirements. It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City of Colby pursuant to this Ordinance. It is also unlawful for any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City of Colby pursuant to this Ordinance.

h. Any application for a sexually oriented business license or a sexually oriented business employee license must be made on a form provided by the City of Colby, which shall be notarized, and shall include the information called for in Subsections (1) through (6) as follows:

- The full true name and any other names used in the preceding five (5) years. If the applicant is an individual, he or she shall sign the application for license as applicant. If the person that wishes to operate a sexually oriented business is other than an individual (such as a corporation), each officer, director, general partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant.
- The name, business location, legal description, business mailing address and phone number of the sexually oriented business.
- Either a set of fingerprints suitable for conducting necessary background checks pursuant to this Ordinance, or the applicant's Social Security Number, to be used for the same purpose.
- Written proof of age, in the form of either a copy of a birth certificate and current photo, a current driver's license with picture, or other picture identification document issued by a governmental agency.
- The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked or suspended, and if so, the reason or reasons therefore.
- The name and address of the statutory agent or other agent authorized to receive service of process for the sexually oriented business.

i. For the purpose of insuring compliance with this Ordinance, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this Ordinance, normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, the premises of the business.

j. Each license for a sexually oriented business or a sexually oriented business employee shall expire one (1) year from the date of issuance and may be renewed only by making application for

renewal at least thirty (30) days before the expiration date. If the City denies an application or a renewal of a license, the applicant shall not be issued a license for one (1) year from the date of the denial.

k. The City may refuse to issue, suspend, or revoke a license after providing due notice, for valid reasons including, but not limited to:

- Violation or noncompliance with any section of this Ordinance
- Refusal to allow an inspection of the sexually oriented business premises as authorized by this Ordinance
- Giving false or misleading information in the material submitted during the application process
- Knowingly allowing possession, use, or sale of controlled substances on the premises
- Knowingly allowing prostitution on the premises
- Knowingly operating the sexually oriented business during a period of time when the licensee's license was suspended
- Is delinquent in the payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business
- Has been convicted or entered a guilty plea to a criminal activity involving a sexual act or been placed on diversion for such acts under the laws of the State of Kansas, or a law of another state, or an ordinance of any city or resolution of any county which prohibits the acts this section prohibits.

l. Fees shall be \$250.00 for an initial sexually oriented business license and \$125.00 for the renewal license; fees shall be \$100.00 for an initial sexually oriented business employee and \$50.00 for the renewal license.

m. Advertisements, displays, or other promotional materials shall not be shown or exhibited so as to be visible or audible to the public from public rights-of-way other than permitted signs. Permitted signs shall be limited to those whose copy includes only the name of the business, place, organization, or building identified; sign, location and other requirements of such signs contained in Zoning Code **21-110. C-2 – Neighborhood Commercial District**.

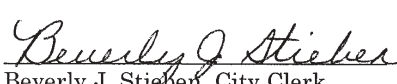
n. Failure to Comply; Penalty. Should any person, corporation, partnership or association fail to comply with any provision of this Ordinance pertaining to sexually oriented businesses, the public officer may file a complaint in the municipal court of the City against such person, corporation, partnership or association and upon conviction of any violation of the same, be fined a minimum on the first conviction of \$200.00, upon a second conviction of \$400.00 and a maximum amount not to exceed \$1,000.00 on said first, second or any subsequent conviction or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

SECTION 5: This Ordinance shall take effect and be in force from and after its passage and publication once in the official City newspaper.

PASSED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR this 18th day of May, 2004.



Warren C. Hixson, Mayor

ATTEST:


Beverly J. Stieber, City Clerk

SEAL

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and some like to shop the COOL
want ad way!!

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