

**THE RILEY COUNTY  
SEXUALLY ORIENTED  
BUSINESS CODE**

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**TABLE OF CONTENTS**

Section 1.	Definitions.....	2
Section 2.	License Required .....	6
Section 3.	Issuance of License .....	8
Section 4.	Transfer of License .....	10
Section 5.	License Renewal .....	10
Section 6.	Fees .....	10
Section 7.	Inspections .....	10
Section 8.	Operational Regulations and Prohibitions .....	11
Section 9.	Suspension .....	13
Section 10.	Revocation .....	13
Section 11.	Hearing; License Denial, Suspension, and Revocation; Appeal.....	14
Section 12.	Loitering, Exterior Lighting, Visibility, and Monitoring Requirements .....	15
Section 13.	Penalties and Enforcement.....	15
Section 14.	Scienter Required to Prove Violation or Business Licensee Liability.....	16
Section 15.	Failure of County to Meet Deadline Not to Risk Applicant/Licensee Rights .....	16
Section 16.	Location of Sexually Oriented Businesses .....	16
Section 17.	Severability .....	17

# THE RILEY COUNTY SEXUALLY ORIENTED BUSINESS CODE

## Section 1. Definitions.

As used in this Code, unless the context otherwise requires, the following words for phrases shall have the meaning and be defined as provided in this Section.

“*Sexually Oriented Business*” means an adult bookstore / adult novelty store, an adult cabaret, an adult motel, an adult motion picture theatre, a semi-nude model studio, and a sexual encounter center, which are defined as follows:

“*Adult Bookstore / 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 to 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 description of “specified sexual activities” or “specified anatomical areas.”

The term “Adult Bookstore / Adult Video Store” shall also include a commercial establishment which regularly maintains one or more “Adult Arcades.” “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 distinguished or characterized by their emphasis upon matter exhibiting or describing “specified sexual activities” or “specified anatomical areas.”

“*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 who appear semi-nude.

“*Adult Motel*” means a motel, hotel, or similar commercial establishment which:

(a) 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 depiction or description 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

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

(c) 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 a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition of “specified sexual activities” or “specified anatomical areas” are regularly featured and shown for any form of consideration. “Adult Motion Picture Theater” shall also include an “Adult Movie House.” “Adult Movie House” means any movie theater which on a regular, continuing basis shows films rated “X” by any national or international motion picture rating association, or any movie theater which on a regular, continuing basis shows films characterized by an emphasis upon the exhibition of “specified sexual activities” or “specified anatomical areas.”

*“Semi-Nude Model Studio”* means any place where a person, who regularly appears in a state of semi-nudity, is provided, for money or any form of consideration, to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition of Semi-Nude Model Studio does not apply to any place where a person appearing semi-nude did so in a modeling class operated:

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

(b) 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

(c) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

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

*“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:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) physical contact between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.

Other definitions are as follows:

*“Board”* means the Board of Commissioners of Riley County, Kansas.

*“County”* means Riley County, Kansas.

*“Distinguished or Characterized by an Emphasis Upon”* means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description 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 description “specified anatomical areas” or “specified sexual activities.”

*“Employ, Employee, 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, whether or not the person is denominated an employee, independent contractor, agent, operator, 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:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

*“Hearing Body”* shall mean the Board of Commissioners of Riley County, Kansas.

*“Influential Interest”* means any of the following: (1) the actual power, directly or indirectly, to control the operation, management or policies of a business or entity, (2) ownership of a financial interest of twenty percent (20%) 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.) in a legal entity which operates the sexually oriented business.

*“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.

*“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.

*“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 persons on the premises of a sexually oriented business who is authorized to exercise overall 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 whether or not that person is an owner, part owner, or licensee of the business.

*“Patron”* means any person who enters a sexually oriented business without regard to whether a purchase is made from the sexually oriented business or compensation is paid to the sexually oriented business or any employee of the sexually oriented business for merchandise, entertainment or service; Provided that the term patron shall not include persons who enter a sexually oriented business for the sole purpose of providing service or merchandise to the sexually oriented business and who do not remain in the sexually oriented business after the purpose has been accomplished.

*“Person”* shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

*“Regularly Features, Regularly Maintains, 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 or held out to the public as a part of the ongoing business carried on within the premises.

*“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 entire 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.

*“Specified Anatomical Areas”* means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*“Specified Criminal Activity”* means:

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

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

(ii) any crime set forth in the Kansas Uniform Controlled Substances Act, Chapter 65, Article 41, of the Kansas Statutes Annotated, or amendments thereto;

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

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

(v) furnishing alcoholic liquor or cereal malt beverage to a minor (K.S.A. 21-3610, or amendments thereto);

(vi) furnishing alcoholic beverages to a minor for illicit purposes (K.S.A. 21-3610b, or amendments thereto);

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

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

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

(b) any Kansas municipal code violation based upon any of the crimes set forth above in subparagraphs (i) through (ix), inclusive; and

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

“*Specified Sexual Activity*” means any of the following:

(a) sex acts, normal or perverted, including 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.

“*Transfer of Ownership or Control*” of a sexually oriented business shall mean any of the following:

(a) The sale, lease, or sublease of the business;

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

(c) 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.

## **Section 2. License Required.**

(a) It shall be unlawful for any person to operate a sexually oriented business in Riley County without a valid sexually oriented business license.

(b) It shall be unlawful for any person to be an “employee,” as defined in this Code, of a sexually oriented business in Riley County without a valid sexually oriented business employee license.

(c) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of Riley County Planning and Development Department (“Planning Department”) a completed application made on a

form provided by the Planning Department. The application shall be signed as required by subsection (e) herein and shall be notarized. An application shall be considered complete when the appropriate fee has been paid and when the application contains, for each person required to sign the application, the information and/or items required in Paragraphs 1 through 8 as follows:

(1) The applicant's full true name and any other names used by the applicant in the preceding five (5) years.

(2) Current business or other phone number, current business address or another mailing address of the applicant.

(3) Written proof of age, in the form of a copy of a birth certificate and a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the proposed sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) Proof that the applicant has been a resident of the state of Kansas for at least one year and a resident of Riley County for at least six months.

(7) A statement of whether an applicant has been convicted or has pled guilty or nolo contendere to a specified criminal activity as defined in this Code, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(8) A statement of whether an applicant, or any business in which an applicant has had an influential interest, has, in the previous five (5) years:

(i) had a license or permit revoked under this Code or under a similar sexually oriented business / adult entertainment Code in another jurisdiction; or

(ii) been declared by a court of law to be a nuisance; or

(iii) been subject to an order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 8 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Planning Department within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the proposed configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

Applicants are required to submit a diagram showing the interior configurations that meet the requirements of this Code.

(e) If a person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 3 and each applicant shall be considered a licensee if a license is granted.

(f) The information provided by an applicant in connection with an application for a license under this Code shall be maintained by the Planning Department on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order.

### **Section 3. Issuance of License.**

(a) Upon receipt of a completed sexually oriented business license application, the Director of the Planning Department ("Director") shall immediately transmit one copy of the application to the Director of the Riley County Police Department ("RCPD"). It shall be the duty of the RCPD to perform a criminal history records check of the proposed licensee. The Director of the RCPD shall report the results of the criminal history records check to the Planning Department no later than fifteen (15) working days from the date the application is received by the Planning Department. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Director shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Director shall issue a license unless one or more of the following is found to be true:

(1) An applicant is less than eighteen (18) years of age.

(2) An applicant has failed to provide information as required by Section 2 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Code has not been paid.

(4) The applicant has not been a resident of the state of Kansas for at least one year prior to filing the application and a resident of Riley County for at least six months prior to filing the application.

(5) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Code or is not in compliance with locational requirements of this Code, or is not in compliance with the County sanitary code, the County zoning regulations or any other applicable County regulation.

(6) An applicant, or any business in which the applicant has had an influential interest, has, in the previous five (5) years:

(i) had a license or permit suspended or revoked under this Code or under a similar sexually oriented business/adult entertainment Code in another jurisdiction; or

(ii) been declared by a court of law to be a nuisance; or

(iii) been subject to an order of closure or padlocking.

(7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Code.

(b) Upon receipt of a completed sexually oriented business employee license application, the Director shall immediately transmit one copy of the application to the Director of the RCPD. It shall be the duty of the RCPD to perform a criminal history records check of the proposed licensee. The Director of the RCPD shall report the results of the criminal history records check to the Planning Department no later than fifteen (15) working days from the date the application is received by the Planning Department. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Director shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Director shall approve the issuance of a license unless one or more of the following is found to be true.

(1) The applicant is less than eighteen (18) years of age.

(2) The applicant has failed to provide information as required by Section 2 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Code has not been paid.

(4) The applicant has not been a resident of the state of Kansas for at least one year prior to filing the application and a resident of Riley County for at least six months prior to filing the application.

(5) The applicant, or any business in which the applicant has had an influential interest, has, in the previous five (5) years:

(i) had a license or permit suspended or revoked under this Code or under a similar sexually oriented business/adult entertainment Code in another jurisdiction; or

(ii) been declared by a court of law to be a nuisance; or

(iii) been subject to an order of closure or padlocking.

(6) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Code.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually

oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon reasonable request by a law enforcement officer or other County official performing functions connected with the enforcement of this Code. The failure to post a sexually oriented business license in the manner required herein shall be prima facie evidence that a sexually oriented business has not obtained such a license.

(d) Any change in the type of sexually oriented business shall invalidate the sexually oriented business license and require the licensee to obtain a new license for the change or use. A separate license is required for each sexually oriented business.

#### **Section 4. Transfer of License.**

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

#### **Section 5. License Renewal.**

(a) Any license issued under this Code shall expire at the end of the calendar year of its issuance. A license may be renewed by making application to the Planning Department on application forms provided for that purpose. Renewal applications for such licenses shall be submitted between November 1st and November 15th of each year.

(b) Upon timely application and review as provided for a new license, a license issued under the provisions of this Code shall be renewed by issuance of a new license in the manner provided herein for the initial issuance of the license.

#### **Section 6. Fees.**

(a) The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: one hundred dollars (\$100) for the initial fee for a sexually oriented business license and fifty dollars (\$50) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five dollars (\$25) for annual renewal.

(b) In addition to the specified license fee, each individual applicant shall be responsible to pay in full, by certified or cashier's check, the fee chargeable by appropriate law enforcement agencies to process the criminal history records check. The RCPD shall prepare and make available a schedule of such charges and shall be responsible for ensuring that the applicant pays for such charges.

#### **Section 7. Inspections.**

(a) Sexually oriented businesses and sexually oriented business employees shall permit officers or agents of the County, RCPD or other law enforcement officers to inspect, on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific

regulations of this Code, during those times when the sexually oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall not constitute a misdemeanor, but shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this Code, but not to authorize a harassing or excessive pattern of inspections.

(b) The provisions of this Code do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

### **Section 8. Operational Regulations and Prohibitions.**

(a) It shall be a violation of this Code for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this Code for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron and on a stage at least two (2) feet above the immediate floor level in a room of at least one thousand (1,000) square feet.

(c) The six-foot boundary from the outer edge of the stage shall be painted or otherwise clearly indicated on the floor so that patrons will not cross the six-foot boundary. The absence of this demarcation will create a presumption that there have been violations of these standards of conduct during performances in unmarked areas.

(d) No employee shall receive directly any payment or gratuity from any patron for any act prohibited herein and while on the premises of a sexually oriented business and no employee shall receive any payment or gratuity from any patron for any entertainment except as follows:

(1) While such employee is not on the stage but while on the premises of a sexually oriented business, a patron may place such payment or gratuity into the employee's hand.

(e) It shall be a violation of this Code for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a patron or the clothing of a patron on the premises of a sexually oriented business. No patron shall intentionally have any physical contact with an employee who is semi-nude.

(f) No operator, employee or other person, shall perform any specified sexual activities as defined in this Code, wear or use any device or covering exposed to view which simulates any specified anatomical area, use artificial devices or simulate or depict any of the specified sexual activities as defined in this Code, or participate in any act of prostitution, or solicit prostitution, while on the premises of a sexually oriented business.

(g) A sign in a form to be prescribed by the Planning Department and summarizing the provisions of Paragraphs (a), (b), (c), (d), (e), and (f) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

(h) It shall be a violation of this Code for any person to sell, use or consume alcoholic beverages on the premises of a sexually oriented business.

(i) No operator of a sexually oriented business shall:

(1) knowingly permit alcoholic liquor or cereal malt beverages to be sold, used, or consumed upon the premises;

(2) knowingly permit any employee of the business or any patron to engage in any specified criminal act or specified sexual activity on the premises;

(3) knowingly permit any patron to have any physical contact with an employee at the time the employee is semi-nude.

(4) knowingly permit any minor to be in or upon the premises of a sexually oriented business;

(5) knowingly permit a violation of this Code.

(j) All sexually oriented businesses shall be equipped with overhead lighting, of every place to which patrons are permitted access, at an illumination of not less than five foot-candle as measured at floor level, and such illumination must be maintained at all times when any patron is present.

(k) The interior premises of all sexually oriented businesses shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises to which a patron is permitted access for any purpose excluding restrooms. The view required must be by direct line of sight from the operator's station.

(l) The premises of all sexually oriented businesses shall be kept in a sanitary condition. Separate dressing rooms and restrooms for men and women shall at all times be properly ventilated, regularly maintained and kept in a sanitary condition.

(m) No sexually oriented business may be open or in use between the hours of 2:00 a.m. and 9:00 a.m. on any day.

(n) All doors to the sexually oriented business shall remain unlocked during business hours.

(o) Every person, in whose name a license to operate a sexually oriented business has been issued, holding a license as a sexually oriented business operator, shall post such license in his or her work area within the sexually oriented business so it shall be readily available for inspection by County authorities responsible for enforcement of this Code and by RCPD.

- (p) Nothing contained herein shall be construed to eliminate other requirements of State law or County regulation concerning the maintenance of premises, nor to preclude authorized inspection thereof.
- (q) All sexually oriented businesses shall have a single permanently located operator's station and shall have an operator on duty at all times the establishment is open for business. The name of the operator on duty shall be posted within 10 feet of the front entrance during business hours of the sexually oriented business.
- (r) A sexually oriented business shall have no more than one internally lit exterior wall sign, not exceeding twenty square feet in area, which shall include only the name of the sexually oriented business.
- (s) A sexually oriented business shall have no more than one sign located on the building entrance, not exceeding two square feet in area, indicating only the name of the sexually oriented business and the hours of operation.
- (t) No sign or exterior surface of the sexually oriented business, including windows and doors, shall include: photographs, silhouettes, drawings, descriptive art, graphics, lighting or designs depicting or referring to a nude person or specified sexual activity or pictorial representations in any manner, and may contain only the name of the enterprise.
- (u) All signs shall be a flat plane, rectangular in shape. No sexually oriented business shall permit any building element to draw attention to the sexually oriented business, including but not limited to neon lighting outlining the building, spot lighting, strobe lighting, or garish paint.
- (v) A sexually oriented business shall have only the on-site signs as provided for herein, and additional signs are prohibited.
- (w) A sexually oriented business shall obtain a sign permit prior to installation or any modification of any exterior sign.

### **Section 9. Suspension.**

- (a) The Planning Department shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this Code or has knowingly allowed an employee to violate this Code.
- (b) The Planning Department shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this Code.

### **Section 10. Revocation.**

- (a) The Planning Department shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license if the licensee commits two or more causes of suspension in Section 9 within a twelve-month (12-mo.) period.

(b) The Planning Department shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license.

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;

(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

(4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was suspended;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises;

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) Nature of Revocation. When, after the notice and hearing procedure described in Section 11, the Board of Commissioners revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for two (2) years from the date revocation becomes effective.

### **Section 11. Hearing; License Denial, Suspension, and Revocation; Appeal.**

(a) If the Director of the Planning Department determines that facts exist for denial, suspension, or revocation of a license under this Code, the Director shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the Director for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the Director a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

Within five (5) days of the receipt of respondent's written response, the Director shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. Within ten (10) working days of the receipt of respondent's written response, the Board of Commissioners shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Director's witnesses. The Director shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended

to meet the requirements of due process and proper administration of justice. The Board of Commissioners shall issue a written opinion within five (5) days after the hearing.

If a court action challenging the Board's decision is initiated, the Board shall prepare and transmit to the court a transcript of the hearing within ten (10) days after the issuance of the Board's written opinion. If a response is not received by the Director in the time stated in the first paragraph of this section or, if after the hearing the Board finds that grounds as specified in this Code exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Board sends, by certified mail, written notice to the respondent that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Board finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Board shall order the Director to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing, by certified mail, of such action. The Director shall contemporaneously therewith issue the license to the applicant.

(b) When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal or challenge such action to any court of competent jurisdiction by filing an original action therein. The County will consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings.

## **Section 12. Loitering, Exterior Lighting, Visibility, and Monitoring Requirements.**

(a) It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

## **Section 13. Penalties and Enforcement.**

(a) In addition to the license denial, suspension, and revocation sanctions set forth above, any person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Code shall be guilty of a Class B misdemeanor, and, upon conviction, shall be punishable by a fine in an amount not exceeding \$1,000.00, or imprisonment in the County Jail for a period not

to exceed six (6) months. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) The County's Legal Counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this Code to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, 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 proceedings as may be authorized by other provisions of the County Code, or any of the laws or Codes 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 14. Scierer Required to Prove Violation or Business Licensee Liability.**

This Code does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless act is necessary to establish a violation of a provision of this Code. Notwithstanding anything to the contrary, for the purposes of this Code, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this Code, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

#### **Section 15. Failure of County to Meet Deadline Not to Risk Applicant/Licensee Rights.**

In the event that a County official is required to perform an act pursuant to this Code within a prescribed time, and fails to perform an act within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the County under this Code is not completed in the time prescribed, including approval of condition(s) necessary for approval by the County of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the applicant or licensee's application shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the County's action has passed.

#### **Section 16. Location of Sexually Oriented Businesses.**

(a) It shall be unlawful for any person to operate or cause to be operated any Sexually Oriented Business within one thousand (1000) feet of the following:

- (1) a church or place of worship;
- (2) a school;
- (3) a residential zoning district;
- (4) another Sexually Oriented Business;
- (5) a child care center;

- (6) a public park or public building;

Or within five hundred (500) feet of an interstate, freeway/expressway (non-interstate), principal arterial, minor arterial or major collector, as designated by the functional classification of roads approved by the Kansas Department of Transportation (KDOT).

(b) For the purpose of the above requirements, the separation distance is measured in a straight line, without regard to intervening objects or structures, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on property boundaries, or rights-of-way associated with those items listed above.

(c) It shall be unlawful for any person to operate or cause to be operated more than one (1) Sexually Oriented Business in any building, structure, or portion thereof.

**Section 17. Severability.**

This Code and each section and provision of said Code 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 Code, 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 Code be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Code.