

RESOLUTION 2001-02

ENACTING REGULATIONS FOR BUSINESS ESTABLISHMENTS WHICH SERVE ALCOHOLIC OR CEREAL MALT BEVERAGES FOR CONSUMPTION ON THE PREMISES, PROHIBITING NUDDITY AND SEXUAL PERFORMANCES AND REGULATING CERTAIN TYPES OF CONDUCT

WHEREAS, the Board of County Commissioners of Barton County, Kansas, has the authority and responsibility to legislate on areas of local concern for the protection of the public health, safety and welfare; and

WHERE, the County Commissioners have the power and authority pursuant to K.S.A. 19-101a and 19-101b, pursuant to other applicable laws of the State of Kansas, and pursuant to the general police powers of a municipality to enact regulations for and upon business establishments which serve alcoholic or cereal malt beverages for consumption on the premises located within the unincorporated area of Barton County, Kansas; and

WHEREAS, the County Commissioners have found and determined that business establishments which have or provide adult, sexually oriented entertainment may foster or promote incidents of criminal activity, may contribute to decay and blight, and may create direct exposures to health risks and potential health hazards; and

WHEREAS, the County Commissioners have determined that the regulation of adult, sexually oriented entertainment businesses in the unincorporated areas of Barton County, Kansas, will best serve the public interest and is necessary and advisable for the protection of the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Barton County, Kansas, that the "Regulation of Business Establishments Providing Adult Entertainment" shall be and hereby is adopted and, from and after the effective date of this Resolution, the Regulations shall apply and be applicable to all business establishments which serve alcoholic beverages or cereal malt beverages for consumption on the premises located within the unincorporated area of Barton County, Kansas. The Regulations are available for review in the County Administrator's Office, 1400 Main, Room 107, Great Bend, Kansas.

Adopted this 8<sup>TH</sup> day of January, 2001.

BOARD OF COUNTY COMMISSIONERS

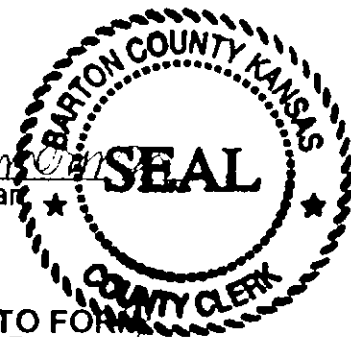
*Patty Linsner-Hansen*  
Patty Linsner-Hansen, Chair

*Pat Keenan*  
Pat Keenan, Commissioner

*Kirby Krier*  
Kirby Krier, Commissioner

ATTEST:

*Donna Zimmerman*  
Donna Zimmerman  
County Clerk



APPROVED AS TO FORM

*Richard A. Boeck*  
Richard A. Boeckman,  
County Counselor

# **REGULATION OF BUSINESS ESTABLISHMENTS PROVIDING ADULT ENTERTAINMENT**

## **ARTICLE I – PREAMBLE**

The Board of County Commissioners of Barton County, Kansas, has the authority and responsibility to legislate on matter of local concern for the protection of the public health, safety and welfare. Business establishments which serve alcoholic or cereal malt beverages for consumption on the premises are themselves subject to separate and particular regulation due to the effects of consumption of intoxicating beverages. Conduct at and within those establishments merits appropriate regulation to prevent health risks, to preserve safety and to minimize criminal activities.

Nudity and sexual performances may be acceptable conduct and entertainment in certain situations and non-public venues. It is not the intent of these Regulations to inhibit the free expression of any art or speech nor to suppress any speech activities protected by the First Amendment of the Constitution.

On the other hand, it is not the intent of the County to condone or legitimize any obscene acts or materials or any illicit or illegal conduct or activity. The intent of these Regulations is to adopt a content neutral regulation addressing the secondary effects of sexually oriented businesses.

These Regulations are intended to prevent the spread of disease, to promote sanitary health conditions, to prevent opportunities for criminal activity, to preserve property values and to promote the public morals and welfare.

## **ARTICLE II – TITLE AND APPLICATION**

**SECTION 1 – CITATION.** These Regulations, entitled "Barton County, Kansas, Regulation of Business Establishments Providing Adult Entertainment", may be cited as "Adult Entertainment Regulations".

**SECTION 2 – APPLICABILITY.** These Regulations shall apply from and after the effective date to all persons and all property located within the unincorporated area of Barton County, Kansas, and shall be applicable to any business establishment, whether licensed or not, now located or hereafter locating within or upon any property located in the unincorporated area of Barton County, Kansas, which serves alcoholic beverages or cereal malt beverages for consumption on the premises, and to any operator of or entertainer for any such establishment.

**SECTION 3 – EFFECTIVE DATE.** These Regulations shall be and become effective upon adoption by the Board of County Commissioners and publication in the official newspaper of the County.

## **ARTICLE III – DEFINITIONS**

As used in these Regulations, unless the context otherwise requires, the following words or phrases shall have the meaning and be defined as provided herein.

- A. Alcoholic beverage shall mean and include all alcoholic, distilled spirits, wine or fortified wine, or beer, as well as cereal malt beverage.
- B. Entertainer shall mean any person who performs or presents entertainment at or upon any licensed premises for a fee, tip, compensation or other remuneration, whether as an employee or contractor of the business establishment.

- C. Licensed premises shall mean any premises on which alcoholic or cereal malt beverages are sold or served for consumption on the premises pursuant to a license or permit issued by the State of Kansas, the County of Barton or any other political subdivision or agency of the State of Kansas.
- D. Operator shall mean and include the owner, license holder, manager, person in charge or any person operating any licensed premises.
- E. Patron shall mean any person who is a guest, member or customer on or in a licensed premises.
- F. Person shall mean and include any natural person, corporation, partnership, association or any other legally recognized entity.

## **ARTICLE IV – PROHIBITED CONDUCT**

### **SECTION 1 – NUDITY AND SEXUAL CONDUCT PROHIBITED.**

- A. No manager, employee, server, entertainer or patron in an adult business other than a licensed bath house shall be nude, or clothed in less than opaque attire.
- B. Certain Acts Prohibited:
  - 1. No manager, employee, server, entertainer or patron shall perform any specified sexual activities as defined herein, wear or use any device or covering exposed to view which simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities or participate in any act of prostitution as prohibited by State law or municipal resolution while on the premises of an adult business. The display of post-pubertal human genitals, buttocks, or pubic area, or the female breast below the top of the nipple, is prohibited.
  - 2. All dancing or other live entertainment on the licensed premises that is intended to provide sexual stimulation or to appeal to, arouse, or excite the sexual desire or interests of the patrons, whether such dancing or other live entertainment is performed by a patron, entertainer, or operator, shall occur and be performed solely on a platform or stage which is raised at least two feet above the primary level of the customer floor area. In order to insure the performance area of the stage or performance platform is not within the reach of patrons and to further insure patrons are unable to touch the performers during their performances, the licensee, owner, operator or manager shall either erect a physical barrier between the performers and the patrons that effectively eliminates the touching of the performers by the patrons or they shall paint a clearly discernible boundary line on the stage surface beyond which the performers shall not perform and which is sufficiently distant from the forward edge of the stage to insure that patrons cannot touch the performers. Further, it shall be unlawful for any patron to be upon any portion of the stage during a performance or for an owner, operator or manager to permit a patron to be upon any portion of the stage during the performance.
  - 3. No employee, server, entertainer or patron of an adult business while on the premises of an adult business shall knowingly touch, fondle or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle or caress any specified anatomical area of such employee, server, entertainer or patron, whether such specified anatomical areas are clothed, unclothed, covered or exposed. For the purpose of this section, specified anatomical areas shall be the breasts, pubic region, buttocks or genitals.

4. No entertainer shall solicit, demand or receive any payment or gratuity from any patron for any act prohibited herein and while on the premises of an adult business and no entertainer shall receive any payment or gratuity from any patron for any entertainment except as follows:
  - a. While such entertainer is on the stage a patron may place such payment or gratuity into a container affixed to the stage; or
  - b. While such entertainer is not on the stage but while on the premises of an adult business and is clothed so as to not expose to view any specified anatomical area, a patron may either place such payment or gratuity into the entertainer's hand, or under a leg garter worn by such entertainer at least four (4) inches below the bottom of the pubic region.
5. No owner, operator, manager or other person in charge of the premises of an adult business shall:
  - a. Knowingly permit alcoholic liquor or cereal malt beverages to be brought upon the premises unless authorized to do so by a properly issued and current drinking establishment or cereal malt beverage license;
  - b. Knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises;
  - c. Knowingly allow or permit any person under the age of eighteen (18) to be in or upon the premises of an adult entertainment business;
  - d. Knowingly allow or permit any act of prostitution or patronizing prostitution on the premises, as prohibited by State law or County resolution; or
  - e. Knowingly allow or permit a violation of this resolution or any other resolution, provision or State law.

C. Signs Required – All adult entertainment businesses that provide live entertainment shall conspicuously display in the common area at the principal entrance to the premises, a sign, on which uppercase letters shall be at least two (2) inches high, and lowercase letters at least one (1) inch high, which shall read as follows:

**THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED AND LICENSED BY BARTON COUNTY, KANSAS**

**ENTERTAINERS ARE:**

- Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle, caress or touch the breasts, pubic region, buttocks or genitals or any employee, patron or other entertainer or to permit any employee, patron or other entertainer to fondle, caress, to touch the breasts, pubic region, buttocks or genitals of said entertainer.
- Not permitted to be nude.
- Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:

While such entertainer is on the stage, by placing such payment or gratuity into a box affixed to the stage; or

While such entertainer is not on the stage, by either placing such payment or gratuity into the entertainer's hand or under the entertainer's leg garter.

#### **CUSTOMERS ARE:**

- Not permitted to be upon the stage at any time.
- Not permitted to touch, caress or fondle the breasts, pubic region, buttocks or genitals or any employee, server, entertainer or patron or engage in solicitation for prostitution.

#### **SECTION 2 – ALLOWING PERSONS TO ENGAGE IN PROBITED ACTS.**

- A. No operator shall allow or permit to remain in or about the licensed premises any person who performs acts of or acts which constitute or simulate:
1. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law; or
  2. The touching, caressing or fondling of the anus or genitals; or
  3. The displaying of post-pubertal genitals, buttocks, or pubic area, or the female breast below the top of the nipple.

### **ARTICLE V – VIOLATIONS AND PENALTIES**

**SECTION 1 – VIOLATION ESTABLISHED.** It shall be unlawful for any person to fail to comply with any provision of these Regulations or to perform or commit any act prohibited by these Regulations, and the commission of any prohibited act or refusal to comply with any requirement of these Regulations shall be hereby declared to be a violation, and each separate act or event shall be and constitute a separate violation.

**SECTION 2 – PENALTIES.** Any person or operator who violates any provision of these Regulations shall be guilty of a Class B misdemeanor, and, upon conviction, shall be punishable by a fine in an amount not less than Two Hundred Fifty Dollars (\$250.00) and not to exceed One Thousand Dollars (\$1,000.00), or imprisonment in the County jail for a period not to exceed six (6) months or both.

**SECTION 3 – DECLARATION OF NUISANCE.** The violation of any provision of these Regulations by the operator of any licensed premises shall be deemed a public nuisance and shall constitute grounds for the suspension and revocation of any and all alcoholic beverages licenses issued to said premises or to such operator.

### **ARTICLE VI – MISCELLANEOUS**

**SECTION 1 – SEVERABILITY.** Should any court declare any section, subsection, subparagraph, sentence, clause, or other subdivision of these Regulations to be unconstitutional or otherwise void, such decision shall affect only said section, subsection, subparagraph, sentence, clause, or subdivision and shall not affect any other section, subsection, subparagraph, sentence, clause or subdivision of these Regulations.