

Seward County Board of Commissioners

September 29, 2015

State of Nebraska)
County of Seward) ss.

A regular meeting of the Seward County Board of Commissioners was convened in open and public session at 9:00 a.m. on September 29, 2015 in the Commissioner's room at the Seward County Courthouse. Notice of the meeting was posted on the Courthouse bulletin board and on the Commissioner's room door. The agenda for all meetings is kept continually current and is available for public inspection at the County Clerk's Office during normal business hours. The agenda is held open until one business day prior to the meeting for appearance before the Board. The Board of Commissioners has the right to modify the agenda to include items of an emergency nature only at such public meeting.

The Seward County Board of Commissioners convened on September 29, 2015 at 9:00 a.m.

Present:	Chairman:	Roger E. Glawatz
	Members:	Mike Luebbe, Diana Garske, Gene Gausman, Whitney Fleischman
	County Clerk:	Sherry Schweitzer

The Chairman noted that the public meeting information is posted as required by law and available for public distribution if requested.

The Pledge of Allegiance was recited.

Moved by Luebbe and seconded by Fleischman to approve the minutes of September 22, 2015.

Affirmative Vote: Luebbe, Fleischman, Gausman, Garske, Glawatz Motion Carried

Jeff Baker, Veteran's Service Officer/Public Transit and Becky Paulsen, Weed/ Zoning Administrator updated the Commissioners on activities of their offices.

Commissioner Luebbe reported he attended the extra Commissioner's meeting for claims and met with the Road Dept. on several issues.

Commissioner Garske reported she attended the Economic Development meeting, a Firespring meeting, a JCOC meeting with the Architect and Construction Manager, and attended the extra Commissioner's meeting for claims.

Commissioner Gausman reported he received calls from several constituents, attended the weekly Firespring meeting, and attended the extra Commissioner's meeting for claims

Commissioner Fleischman had no report.

Commissioner Glawatz reported he attended a SENDD meeting, attended the extra Commissioner's meeting for claims, met with the County Clerk in regard to agenda items, and worked on correspondence with constituents.

On the Justice Center Update item, Commissioner Fleischman reported that things are progressing and actual days of work have been delayed because of rain.

Chairman Glawatz stated the agenda item regarding Zoning Public Hearing as: Amendments to the Zoning Regulations of Seward County, Nebraska, pursuant to

Article 11, Section 11.01 of the Seward County Nebraska Zoning Resolution No. 2567 (2007). The Proposed amendments relate to regulations for adult establishments. The proposed amendments would affect Sections 2.03.12 to 2.03.21, 2.03.413, 2.03.414, 4.09.01, 4.09.02, 4.10.01, 4.10.02, 4.10.03(Paragraph 6), 4.13.05, 4.14.10, 6.02, 8.08.04, 8.08.07,9.04, 11.02, 11.03 and 12.01, of the existing regulations, and would add a new Section 3.40 Adult Establishment Regulations, and a new Section 9.06 Remedies for Violation, Penalties, and Enforcement Generally

Moved by Garske and seconded by Fleischman to open the Public Hearing for the proposed Zoning Regulations Amendments at 9:17 a.m.

Affirmative Vote: Garske, Fleischman, Gausman, Luebbe, Glawatz Motion Carried

Becky Paulsen, Weed/Zoning Administrator gave copies of the transcripts of the August 31, 2015 Hearing of the Planning and Zoning Commission and gave the recommendation of the proposed amendments which was 7 FOR the amendments; 0 AGAINST the amendments and 0 ABSENT AND NOT VOTING.

Brandy Johnson, Attorney representing the Board in the litigation matter of Harrington vs Seward County and others, spoke. She stated: "that at the meeting on August 11, 2015 you heard a presentation from legal counsel about the secondary effects of adult establishments, and that's really the rationale behind the zoning amendment proposal that we put together for you folks. You received voluminous materials about all the case law that is out there, the studies that's out there, the research that's been done, I think you also heard about the fact that there may be researchers out there who tried to espouse the idea that these secondary effects don't exist and there is good reason to criticize that research that is out there. We believe the research on secondary effects of adult establishments are strong and it justifies that the regulations that are in the proposal before you. You had all these written materials before you and I've actually brought an extra copy of those today because I'd like Sherry to make them a part of record of today's proceeding as well. (Written materials noted as Exhibit 1). If you look at the proposal for zoning amendments, you'll see that the cases and studies you've already reviewed are actually directly referenced and incorporated in section 3.40.01 of the proposed amendments and other than that, these amendments also reflect some general updates to your penalty provision to harmonize that throughout the code and to refer to the statutes that actually provide the penalties and enforcement for the Zoning Regulations, also the legal provisions have been updated as well. You've had public hearings that Becky noted before the Planning Commission and having your public hearing here today, we've prepared a template resolution for you all to consider today to adopt these proposed amendments when that agenda item comes up and so I'm here to speak to you all in support of those amendments I want to make sure these comments are reflected in the minutes".

No one else spoke at the hearing in favor or in opposition of said proposed Zoning Regulations Amendments.

Moved by Fleischman and seconded by Gausman to close the Public Hearing at 9:22 a.m.

Affirmative Vote: Fleischman, Gausman, Garske, Luebbe, Glawatz Motion Carried

Moved by Garske and seconded by Fleischman to adopt Resolution # 3205 regarding the adopting of Zoning Regulation Amendments to Zoning Resolution No. 2567 and authorize the Chairperson and members of the Seward County Board of Commissioners to place their signatures on said Resolution No. 3205.

**RESOLUTION NO. 3205
OF THE SEWARD COUNTY BOARD OF COMMISSIONERS**

A RESOLUTION AMENDING PROVISIONS OF THE ZONING RESOLUTION OF SEWARD COUNTY, NEBRASKA REGULATING ADULT ESTABLISHMENTS.

WHEREAS, adult establishments 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 adult establishments, 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 adult establishments, 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 areas and deter the spread of blight; and

WHEREAS, the County recognizes its constitutional duty to interpret and construe 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 Nebraska Constitutions, Nebraska Code, and the Nebraska 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 Nebraska Constitution, but to enact legislation to further the content-neutral governmental interests of the County, to wit, the controlling of secondary effects of adult establishments, and

WHEREAS, the proposed amendments are consistent with the Seward County Comprehensive Development Plan, and

WHEREAS, the Public Notice setting forth the Notice of Public Hearing by the Seward County Planning Commission on the amendments incorporated herein, was published in the Seward County Independent, and the Milford Times on August 19, 2015, and

WHEREAS, the Planning Commission held a public hearing on the amendments incorporated herein on August 31, 2015, opening at 8:31 p.m. and closing at 8:38 p.m., and upon motion at such meeting after the public hearing, voted 7 in favor, 0 against, and 0 absent to recommend that the County Board adopt the proposed amendments, and

WHEREAS, the Public Notice of the September 8, 2015 public meeting of the Seward County Board of Commissioners was published in the Seward County Independent and the Milford Times on September 2, 2015, and the agenda for such meeting included an item to accept the Planning Commission's Recommendations and to discuss the amendments incorporated herein with public comment invited, and,

WHEREAS, at the Seward County Board meeting on September 8, 2015, the Planning Commission submitted a written Report and Recommendation that the County Board adopt the amendments incorporated herein, and the County Board agrees with the findings outlined in such Report, and

WHEREAS, the Public Notice setting forth a Notice of Public Hearing to be held before the Seward County Board of Commissioners on September 29, 2015, regarding the amendments incorporated herein, was published in the Seward County Independent, and the Milford Times on September 16, 2015, and

WHEREAS, the County Board of Commissioners held a public hearing on the amendments incorporated herein on September 29, 2015, opening at 9:17 a.m. and closing at 9:22 a.m., and

WHEREAS, the amendments are as set forth specifically below and incorporated herewith by reference, which affect provisions relating to adult establishments, and remedies, in particular, Sections 2.03.12 to 2.03.21, 2.03.413, 2.03.414, 4.09.01, 4.09.02, 4.10.01, 4.10.02, 4.10.03 (paragraph 6), 4.13.05, 4.14.10, 6.02, 8.08.04, 8.08.07, 9.04, 11.02, 11.03, and 12.01, of the zoning regulations under Resolution No. 2567, and add a new Section 3.40 Adult Establishment Regulations, and a new Section 9.06 Remedies for Violation, Penalties, and Enforcement Generally, and

WHEREAS, at the public hearing held before the County Board on September 29, 2015:

- No one appeared to oppose said amendments
- Individuals appeared to oppose said amendments
- No one appeared to support said amendments
- Individuals appears to support said amendments
- Individuals appeared without commitment of said amendments,

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED by the Seward County Board of Commissioners that the Seward County Nebraska Zoning Resolution No. 2567 (2007), be amended as follows:

Item 1:

That Section 2.03 Definitions of Terms be amended by repealing the definitions in subsections 2.03.12 through 2.03.21, 2.03.413, and 2.03.414; that the following new definitions be adopted; and that the subsections of Section 2.03 be renumbered accordingly:

ADULT BOOKSTORE OR ADULT VIDEO STORE shall mean a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

1. At least 35% of the establishment's displayed merchandise consists of said items, or
2. At least 35% of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items, or
3. At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
4. The establishment maintains at least 35% of its floor area for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well

as cashier stations where said items are rented or sold, shall be included in "floor area" maintained for the display, sale, or rental of said items); or

5. The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor area for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in "floor area" maintained for the display, sale, or rental of said items); or
6. The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or
7. The establishment maintains an "adult arcade," which 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 characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

ADULT LOUNGE shall mean a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live, semi-nude conduct. No establishment shall avoid classification as an adult lounge by offering nudity.

ADULT ESTABLISHMENT shall mean an "adult bookstore or adult video store," an "adult lounge," an "adult motion picture theater," or an "adult paraphernalia store."

ADULT MOTION PICTURE THEATER shall mean a commercial establishment to which the public is permitted or invited wherein an image-producing device is regularly maintained to show images to more than five persons at any one time, and where the images so displayed are characterized by their emphasis upon "specified sexual activities" or "specified anatomical areas."

ADULT PARAPHERNALIA STORE shall mean a commercial establishment that regularly offers 100 or more sexual devices for sale. For purposes of this definition, "sexual device" means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. "Sexual device" shall not be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

EMPLOYEE OF AN ADULT ESTABLISHMENT shall mean any person who performs any service on the premises of an adult establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

NUDITY means the showing of the human male or female genitals, pubic area, vulva, or anus 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.

OPERATOR OF ADULT ESTABLISHMENT means any person on the premises of an adult establishment who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

SEMI-NUDE OR 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 lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

SPECIFIED ANATOMICAL AREAS shall mean less than completely and opaquely covered human genitals, pubic region, buttock, and/or female breast below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITIES shall mean intercourse, oral copulation, masturbation or sodomy.

Item 2:

That Article 3: General Regulations, be amended to add a new subsection 3.40 as follows:

Section 3.40 Adult Establishment Regulations

Section 3.40.01 Purpose; Findings and Rationale

1. *Purpose.* It is the purpose of this resolution to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the County. The provisions of this resolution have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this resolution to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this resolution 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); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *City of Lincoln v. ABC Books, Inc.*, 470 N.W.2d 760 (Neb. 1991); *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *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); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *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); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *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); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *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); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *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); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); *DLH Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361(2003); *Village of Winslow v Sheets*, 261 Neb.203 (2001); and

based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime? An Examination Using Spatial Analysis," *Crime & Delinquency* (2012) (Louisville, KY); *Metropolis, Illinois – 2011-12*; *Manatee County, Florida – 2007*; *Hillsborough County, Florida – 2006*; *Clarksville, Indiana – 2009*; *El Paso, Texas – 2008*; *Memphis, Tennessee – 2006*; *New Albany, Indiana – 2009*; *Louisville, Kentucky – 2004*; *Fulton County, GA – 2001*; *Chattanooga, Tennessee – 1999-2003*; *Jackson County, Missouri – 2008*; *Ft. Worth, Texas – 2004*; *Kennedale, Texas – 2005*; *Greensboro, North Carolina – 2003*; *Dallas, Texas – 1997*; *Houston, Texas – 1997, 1983*; *Phoenix, Arizona – 1995-98, 1979*; *Tucson, Arizona – 1990*; *Spokane, Washington – 2001*; *St. Cloud, Minnesota – 1994*; *Austin, Texas – 1986*; *Indianapolis, Indiana – 1984*; *Garden Grove, California – 1991*; *Los Angeles, California – 1977*; *Whittier, California – 1978*; *Oklahoma City, Oklahoma – 1986*; *New York, New York Times Square – 1994*; the Report of the Attorney General's Working Group On The Regulation Of Adult establishments, (June 6, 1989, State of Minnesota); *Dallas, Texas – 2007*; "Rural Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Adult establishments: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; *Sex Store Statistics and Articles*; and *Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA)*, McLeary and Weinstein; *Do "Off-Site Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory and Empirical Evidence, Law and Policy, Vol. 31, No. 2 (April 2009)*, *Adult Business Study: Town and Village of Ellicottville, Cattaraugus County, New York (January 1998)*,

The Board of Commissioners finds:

- a. Adult establishments, 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. Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments 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. Additionally, the County's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the County. The County finds that the cases and documentation relied on in this resolution are reasonably believed to be relevant to said secondary effects.

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

Section 3.40.02 *Regulations*

1. No person shall establish, operate, or cause to be operated an adult establishment in Seward County within:
 - a. 1,000 feet of another adult establishment;
 - b. 500 feet of a business licensed to sell alcohol at the premises; or
 - c. 1,000 feet of a residential district, residential use, residence, church, educational institution, park, or recreational facility.
 - d. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of the structure containing the adult establishment to the closest point on a property boundary of another adult establishment, a business licensed to sell alcohol at the premises, a residential district, a residential use, a residence, a church, an educational institution, park, or a recreational facility.
2. No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.
3. No patron, employee of an adult establishment, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.
4. No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee of an adult establishment who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
5. No employee of an adult establishment who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee of an adult establishment or

the clothing of such an employee of an adult establishment on the premises of an adult establishment.

6. No person shall possess alcoholic beverages on the premises of an adult establishment.
7. No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult establishment.
8. No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any employee of an adult establishment who is semi-nude or who appears semi-nude on the premises of the adult establishment, unless an operator of the adult establishment is present in the same room.
9. A person who operates or causes to be operated an adult establishment which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
 - a. The operator of the adult establishment shall, within one week of opening the adult establishment for business, submit to the County Zoning Administrator a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches.
 - b. It shall be the duty of the operator of the adult establishment, and of any employees of the adult establishment present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
 - c. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
 - d. It shall be the duty of the operator of an adult establishment, and of any employees of an adult establishment present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
 - e. It shall be the duty of the operator of an adult establishment to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - i. That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - ii. That specified sexual activity on the premises is prohibited.
 - iii. That the making of openings between viewing rooms is prohibited.
 - iv. That violators will be required to leave the premises.
 - v. That violations of these regulations are unlawful.
 - f. It shall be the duty of the operator of an adult establishment to enforce the regulations articulated in e.i. through e.v. above.
 - g. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator of the adult establishment's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for

any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator of an adult establishment to ensure that at least one employee of an adult establishment is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator of an adult establishment, and it shall also be the duty of any employees of an adult establishment present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

- h. It shall be the duty of the operator of an adult establishment to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
 - i. It shall be unlawful for a person having a duty under subsections 11.a. through 11.h above to knowingly or recklessly fail to fulfill that duty.
 - j. No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.
 - k. No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.
 - l. No person shall knowingly or recklessly make any hole or opening between viewing rooms.
10. It shall be the duty of the operator of an adult establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
11. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state shall be sufficient to establish a violation of a provision of this section 3.40.02.

Item 3:

That Section 4.09 C-2 Highway Commercial District be amended as follows:

4.09.01 Intent

The intent of this district is to provide for those trade services, cultural and recreational uses that are appropriate to be developed in conjunction with a highway or major street, thereby offering a desired convenience in location and accessibility to the motoring public. Adult Establishments are permitted uses in this Zoning District, but are regulated to control the negative secondary effects of these uses, as set forth in Article 3, Section 3.40.

4.09.02 Permitted Uses

- 1. Professional, medical and personal service uses ~~not including any use defined as an Adult Establishment.~~
- ...
- 3. Retail sales for use by or consumption by individuals, including but not limited to...etc. ~~not including any use defined as an Adult Establishment.~~
- 4. Hotels and motels ~~not including any use defined as an Adult Establishment.~~
- 5. Eating and drinking places ~~not including any use defined as an adult establishment.~~
- ...
- 9. ~~All other uses indicated as Permitted within the Zoning Matrix.~~ Adult Establishments.

10. All other uses indicated as Permitted within the Zoning Matrix.

Item 4:

That Section 4.10 I-1 Industrial District be amended as follows:

4.10.01 Intent

...

The intent of this district is to provide a wide range of industrial and commercial uses that shall be able to meet comparatively rigid specifications as to nuisance free performance. Certain uses that are incompatible or would interfere with industrial development are excluded.

~~Adult Entertainment Facilities Establishments are included in this Zoning District. The intent of the Seward County Zoning Resolution is not to prohibit these uses but to regulate the secondary effects of these uses within the community~~ are permitted uses in this Zoning District, but are regulated to control the negative secondary effects of these uses, as set forth in Article 3, Section 3.40.

4.10.02 Permitted Uses

...

~~14. All other uses indicated as Permitted within the Zoning Matrix.~~ Adult Establishments.

~~15. All other uses indicated as Permitted within the Zoning Matrix.~~

Item 5:

That Section 4.10.03 Conditional Uses, paragraph 6, including subsections (a) through (m) be repealed, and that the paragraphs under Section 4.10.03 be renumbered accordingly.

Item 6:

That Section 4.13.05 Fines and Penalties, Section 4.14.10 Penalties For Violation, Section 11.02 Remedies, and Section 11.03 Fines and Penalties, and the second paragraph only of Section 9.04 be repealed, and those Sections be renumbered accordingly, as necessary.

That a new Section 9.06 be enacted to replace the above repealed sections as follows:

Section 9.06 Remedies for Violation, Penalties, and Enforcement Generally

Remedies for violation and penalties concerning the Regulations and provisions in this Resolution, as may be amended, as read in its entirety, shall be those set forth in Neb. Rev. Stat. §23-114.05 and §23-174, or as otherwise amended by the State Legislature.

Item 7:

That Section 8.08.04 Prohibited home occupations, paragraph 6 be amended as follows:

6. Adult Entertainment-Uses Establishments

That Section 8.08.07 Prohibited home based businesses, paragraph 4, be amended as follows:

4. Adult Entertainment-Uses Establishments.

That Section 6.02 Schedule of Minimum Off-Street Parking and Loading Requirements, be amended as follows:

Adult Entertainment Establishments

Item 8:

That Section 12.01 Separability be repealed and replaced with the following new section:

Section 12.01 Severability

Each section and provision herein is hereby declared to be independent and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision herein, 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 or application so known to be invalid.

Item 9:

That the "Table of Contents" of the existing zoning regulations be renumbered and revised accordingly for consistency with all amendments contained herein.

MOTION TO ADOPT the above set forth amendments to the Zoning Resolution No. 2567, made this 29th day of September, 2015, by authorizing the Chairperson to place his signature on Resolution No. 3205.

Dated this 29th day of September, 2015.

Motion by: Garske

Seconded by: Fleischman

Aye: Diana Garske, Whitney Fleischman, Eugene Gausman, Michael Luebbe, & Roger Glawatz

Attest: Sherry Schweitzer, Seward County Clerk

Affirmative Vote: Garske, Fleischman, Luebbe, Gausman, Glawatz Motion Carried

Derek Ptomey and Rick Morton of Goldberg Group Architects and Dean Uhlenberg of Beckenhauer Construction were present and talked to the Board about the bricks for the new Justice Center. There was much discussion about smooth vs rough brick, red vs. tan.

Moved by Fleischman and seconded by Garske to use the recommended medium red smooth brick for the majority of the Justice Center exterior and the beige velour brick for the banding and Frosted Jade Tile for the entrance area.

Affirmative Vote: Fleischman, Garske, Luebbe, Gausman, Glawatz Motion Carried

Moved by Fleischman and seconded by Luebbe to authorize the Chairman to sign Change Request #3 for Justice Center – Modifications to elevator openings.

Affirmative Vote: Fleischman, Luebbe, Gausman, Garske, Glawatz Motion Carried

Ptomey also asked the Board about who will be making the recommendation about the colors for the interior part of the building. Fleischman suggested that gray tones with a maroon accent. Ptomey will come back with a new board of colors that can be presented to a JCOC meeting.

Ptomey also gave technology plans to Commissioner Garske to give to our IT Company.

Georgia Stockley of the Road Dept. presented maps that need to be approved for Federal Aid.

Moved by Fleischman and seconded by Luebbe to approve Federal Aid Boundary Maps for Seward County and Seward Urban Area.

Affirmative Vote: Fleischman, Luebbe, Gausman, Garske, Glawatz Motion Carried

Moved by Fleischman and seconded by Gausman to approve the right of way request for Windstream between the SE ¼ of Section 31, and the SW ¼ of Section 32, Township 10 North, Range 4 East of the 6th p.m.

Affirmative Vote: Fleischman, Gausman, Luebbe, Garske, Glawatz Motion Carried

Moved by Fleischman and seconded by Luebbe to approve the right of way request from Unite Private Networks LLC in the East ½ of Section 22, Township 11 North, Range 2 East of the 6th p.m.

Affirmative Vote: Fleischman, Luebbe, Garske, Gausman, Glawatz Motion Carried

Moved by Fleischman and seconded by Luebbe to approve the right of way request from Unite Private Networks LLC between the NE ¼ of Section 30 and the NW ¼ of Section 29, all in Township 11 North, Range 3 East of the 6th p.m.

Affirmative Vote: Fleischman, Luebbe, Gausman, Garske, Glawatz Motion Carried

Curt Parrack, Seward County Highway Supt. and Jeremy Cruise of Nebraska Machinery were present to give information about leasing a skid loader.

Moved by Fleischman and seconded by Luebbe to authorize the Chairman to sign Skid Loader Lease Agreement documents with Nebraska Machinery Company.

Affirmative Vote: Fleischman, Luebbe, Garske, Gausman, Glawatz Motion Carried

Maria Hatfield, Jail Administrator gave information about a Butler County contract for housing females. Currently, females are being housed at Saline County and they have informed us that there is no longer room at their facility. Butler County has agreed to house any female inmates we may have, which is close for Seward County.

Moved by Fleischman and seconded by Gausman to authorize the Chairman to sign the Female Boarding Prisoner Contract with Butler County.

Affirmative Vote: Fleischman, Gausman, Garske, Luebbe, Glawatz Motion Carried

John Owens and Brian Coyman of Edward Jones were present to give information about the bond issue that was issued on behalf of Seward County in 2014. He gave information, generally, about the current bond market.

Joe Yocum, Sheriff, was present to ask what the intent of the Justice Center Organizational Committee (JCOC) and what authority and decision making does the committee have. He stated that at the last JCOC meeting, there was much discussion on the JCOC authority. Commissioner Garske stated that the last meeting was not just a JCOC meeting. It was a meeting where other stakeholders, etc. attended such as Judges and others who will have offices in the building. They were there to voice opinions about colors, etc. Commissioner Fleischman is the Chairman of the group stated there are 7 members to the JCOC. She stated that in the future, she wants to make things are more communicated so no questions arise.

Moved by Garske and seconded by Fleischman to authorize the Chairman to sign the Funding Disbursement Agreement for Seward County Economic Development.

Affirmative Vote: Garske, Fleischman, Luebbe, Gausman, Glawatz Motion Carried

Moved by Fleischman and seconded by Gausman to authorize the Chairman to sign the Public Membership Agreement for Seward County Economic Development.
Affirmative Vote: Fleischman, Gausman, Luebbe, Garske, Glawatz Motion Carried

Known items on the agenda for Board of Commissioners on October 6, 2015 are as follows:

8:30 a.m. Convene and announce Open Meetings Law
Pledge of Allegiance
Discuss/Action – Public/Officials/Boards
Discuss/Action - Approve minutes of September 29, 2015

Other Business Matters to Address When Time Allows

Commissioners Reports
Right of Way Request(s): None
Discuss/Action – Justice Center Update
Discuss/Action - Insurance Costs Replacement Coverage for Courthouse

Moved by Fleischman and seconded by Garske to adjourn at 11:03 a.m.
Affirmative Vote: Fleischman, Garske, Gausman, Luebbe, Glawatz Motion Carried

State of Nebraska)
County of Seward) ss.

I, Sherry Schweitzer, the undersigned County Clerk of Seward County, Nebraska do hereby certify the foregoing minutes are true and are part of the official records of this office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 6th day of September 2015.

County Clerk

Chairman