

**ORDINANCE NO. 1675**

**AN ORDINANCE TO AMEND THE CODE OF THE CITY OF COLBY KANSAS – ARTICLE 2. ADMINISTRATION AND ENFORCEMENT SECTION 21-202 – SPECIAL PERMITS OF THE CITY OF COLBY KANSAS ZONING REGULATIONS OF 2013:**

**WHEREAS**, the Code of the City of Colby, Kansas, includes the City of Colby, Kansas Zoning Regulations of 2013 which were incorporated by reference into the Code of the City of Colby, Kansas pursuant to Ordinance No. 1527, passed October 1, 2013; and

**WHEREAS**, the Governing Body, at the recommendation of the Colby-Thomas County Metropolitan Area Planning Commission, has determined it to be in the best interest of the City of Colby to eliminate paragraph 7 from Article 2 – Administration and Enforcement - Special Permits Section 21-202.

**WHEREAS**, said Zoning Regulations of 2013 were codified as part of the Code of the City of Colby, Kansas Chapter XVI: Zoning and Planning, Article 3: Zoning Regulations, and

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

**Section 1:** That Article 2 - Administration and Enforcement - Section 21-202 – Special Permits, of the Code of the City of Colby, Kansas is hereby amended as follows:

**21-202. Special Permits:**

Any of the following uses may be located in any district by special permission of the Governing Body under such conditions as the Governing Body may impose after the public hearing; provided, that in their judgment such use will not seriously injure the appropriate use of neighboring property and will conform to the general intent and purpose of this Ordinance, and shall comply with the height and area regulations of the district in which they may be located:

1. Any public building erected and used by any department of the City, County, State, or Federal Government.
2. Hospitals, clinics and institutions, except institutions for criminals and for persons who are insane or have contagious diseases; provided, however, that such buildings may occupy not over twenty-five (25) percent of the total area of the lot and will not have any serious and depreciating effect upon the value of the surrounding property, and, provided further, that the buildings shall be set back from all yard lines a distance of not less than two (2) feet for each foot of building height.
3. Cemetery.
4. Community building or recreation field.
5. Airport or landing field.
6. Greenhouses.

7. Day Care Facilities, provided that:
  - a. The owners, operators, and the facility have obtained and maintained in good standing all State of Kansas required licenses and certification and have complied with any and all similar State requirements.
  - b. The facility, at the time of application for the special use permit and at all times said operation is permitted under these provisions, shall be in compliance with all of the State of Kansas laws and regulations governing said facilities.
  - c. The facility care for no more than twelve (12) children.
  - d. The facility provides not less than two (2) off-street parking spaces for loading and unloading children.
  - e. The facility not erect or display any commercial signs identifying itself.
8. Bed and Breakfast Facilities provided that:
  - a. The owners and operators live in the facility.
  - b. The owners, operators, and the facility have obtained and maintained in good standing all State of Kansas required licenses and certification and have complied with any and all similar State requirements.
  - c. The facility, at the time of application for the special use permit and at all times said operation is permitted under these provisions, shall be in compliance with all of the State of Kansas laws and regulations governing said facilities.
  - d. The facility provides not less than one (1) off-street parking space for each room provided for transient temporary guests.
  - e. The facility has no more than one sign not exceeding six (6) square feet in area.
9. Communication Towers located in Residential Zoning Districts, provided that the following procedures are complied with: (Communication Towers are permitted uses in Commercial and Industrial Zoning Districts).

Amateur radio towers and towers less than 60 feet in height from the ground, or less than 30 feet in height as measured to the highest point of the tower/antenna if mounted on a structure or building, shall be considered permitted uses in the district in which they are located, and shall not be subject to the provisions of this Section.

- a. All communication towers should be located in areas zoned commercial, or industrial, except that communication towers may be permitted in areas zoned residential if it can be demonstrated that all reasonable efforts were made to locate the proposed tower in non-residentially zoned areas.
- b. Communication towers not meeting the criteria set out in 10. a. shall be subject to the provisions of this Section and shall be considered special uses in residential zoning districts.
- c. At the time of application, the applicant shall submit a development plan in sufficient detail, as determined by staff, to evaluate its conformance with applicable standards and guidelines.

- d. The development plan shall include:
  - 1) Written authorization from the property owner of the proposed tower site.
  - 2) A site plan drawn to scale showing the property boundaries, tower, guy wire anchors and other apparatus, existing and proposed structures, proposed transmission buildings and/or other accessory uses, access road location, access road surface material, parking area, fences, location and content of warning signs, exterior lighting specifications, a landscaping plan, land elevation contours, and existing land uses surrounding the site. If any accessory building is proposed, details of the building, including elevations and proposed use of the building, shall be submitted with the application.
- e. A proposal for a new communication tower shall not be approved unless the applicant can provide documentation showing that the telecommunication equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or other structure due to one or more of the following reasons:
  - 1) The planned equipment would exceed the structural capacity of existing and approved towers, considering existing and planned use of those towers, and existing and approved towers cannot be reinforced to accommodate the planned or equivalent equipment at a reasonable cost.
  - 2) The planned equipment would cause frequency interference with other existing or planned equipment for these towers, and the interference cannot be prevented at a reasonable cost.
  - 3) Existing or approved towers do not have space on which planned equipment can be placed so it can function effectively and reasonably in parity with other similar equipment in place or approved.
  - 4) Other reasons that make it impracticable to place the equipment planned by the applicant on existing and approved towers.
- f. All communication towers shall be designed to accommodate at least two antennas for every 100 feet of tower height. The above requirements may be modified to provide the maximum number of compatible users within the radio frequency emission levels.
- g. Any communication tower that has not been properly maintained shall be removed by the owner at the owners' expense. Failure to remove the tower pursuant to maintenance issues may result in removal and assessment of cost to the property pursuant to K.S.A. 12-6a17.
- h. The communication tower owner/operator shall submit a letter to the Building Inspector by July 1 of each year listing the current users and types of antenna located on the approved tower. A sign shall be posted on the tower or the exterior fence around the base of the tower noting the name and telephone number of the tower owner and operator.

- i. An application for communication tower approval shall include a report or written information which describes the tower height and design, including a cross-section of the structure, if applicable; engineering specifications detailing construction of tower, base and guy wire anchorage; the proposed painting and lighting schemes; and describes the towers capacity, including the number and type of antennas that the tower can accommodate.
  - j. The location of a ground-mounted communication tower must be such that it is set back at least equal to the height of the tower to the nearest property line measured from the center of the tower. A ground-mounted tower may be set back less than the tower height to the nearest property line if documentation from a registered engineer is submitted certifying that in the event of a tower failure or collapse, the fall zone of the tower will be contained within the proposed setback area. All guy wires, similar support devices and other apparatus shall be no closer than twenty (20) feet from any lot line.
  - k. Communication towers may be placed on the roof of a building or on top of other structures using either of the following to determine tower height and setback:
    - 1) Tower height above the roof/structure may be as high as the setback distance to the nearest roof/structure edge.
    - 2) A roof-mounted tower may be set back less than the tower height to the nearest roof/structure edge if documentation from a registered engineer is submitted certifying that in the event of a tower failure or collapse, the fall zone of the tower will be contained within the proposed setback area.
  - l. All communication towers and accessory facilities shall be sited to have the least practical adverse visual effect on the environment. Towers shall not be lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be galvanized finish or painted gray or light blue unless other standards are required by the FAA. In all cases, monopole towers shall be preferable to guyed towers or other free-standing structures. Towers shall be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
  - m. All communication towers shall conform to the height limitations of an airport approach zone as established by the Federal Aviation Administration (FAA).
10. Sexually Oriented Businesses may be located in I-1, Light Industrial District, provided the following procedures are complied with:
- a. No sexually oriented business may operate within three hundred feet (300') of any existing residential zone as measured from property line to property line.
  - b. No sexually oriented business may operate within three hundred feet (300') of any existing public, private, or parochial school; library; park; playground; church; or other place where minors tend to congregate; measured from property line to property line.
  - c. No sexually oriented business may operate within three hundred feet (300') of any other sexually oriented business as measured from property line to property line.

- d. No sexually oriented business may operate on any premises licensed pursuant to the alcoholic beverage control regulations of the State of Kansas.
- e. Hours of Operation. No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.
- f. No sexually oriented business shall allow entrance to any person under the age of eighteen (18); noncompliance with this provision may result in revocation of the sexually oriented business license.
- g. License Requirements. It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City of Colby pursuant to this Ordinance. It is also unlawful for any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City of Colby pursuant to this Ordinance.
- h. Any application for a sexually oriented business license or a sexually oriented business employee license must be made on a form provided by the City of Colby, which shall be notarized, and shall include the information called for in Subsections (1) through (6) as follows:
  - 1) The full true name and any other names used in the preceding five (5) years. If the applicant is an individual, he or she shall sign the application for license as applicant. If the person that wishes to operate a sexually oriented business is other than an individual (such as a corporation), each officer, director, general partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant.
  - 2) The name, business location, legal description, business mailing address and phone number of the sexually oriented business.
  - 3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this Ordinance, or the applicants Social Security Number, to be used for the same purpose.
  - 4) Written proof of age, in the form of either a copy of a birth certificate and current photo, a current driver's license with picture, or other picture identification document issued by a governmental agency.
  - 5) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked or suspended, and if so, the reason or reasons therefore.
  - 6) The name and address of the statutory agent or other agent authorized to receive service of process for the sexually oriented business.
- i. For the purpose of insuring compliance with this Ordinance, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this Ordinance, normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, the premises of the business.

- j. Each license for a sexually oriented business or a sexually oriented business employee shall expire one (1) year from the date of issuance and may be renewed only by making application for renewal at least thirty (30) days before the expiration date. If the City denies an application or a renewal of a license, the applicant shall not be issued a license for one (1) year from the date of the denial.
- k. The City may refuse to issue, suspend, or revoke a license after providing due notice, for valid reasons including, but not limited to:
  - 1) Violation or noncompliance with any section of this Ordinance
  - 2) Refusal to allow an inspection of the sexually oriented business premises as authorized by this Ordinance
  - 3) Giving false or misleading information in the material submitted during the application process
  - 4) Knowingly allowing possession, use, or sale of controlled substances on the premises
  - 5) Knowingly allowing prostitution on the premises
  - 6) Knowingly operating the sexually oriented business during a period of time when the licensee's license was suspended
  - 7) Is delinquent in the payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business
  - 8) Has been convicted or entered a guilty plea to a criminal activity involving a sexual act or been placed on diversion for such acts under the laws of the State of Kansas, or a law of another state, or an ordinance of any city or resolution of any county which prohibits the acts this section prohibits.
- l. Fees shall be \$250.00 for an initial sexually oriented business license and \$125.00 for the renewal license; fees shall be \$100.00 for an initial sexually oriented business employee and \$50.00 for the renewal license.
- m. Advertisements, displays, or other promotional materials shall not be shown or exhibited so as to be visible or audible to the public from public rights-of-way other than permitted signs. Permitted signs shall be limited to those whose copy includes only the name of the business, place, organization, or building identified; sign, location and other requirements of such signs contained in Zoning Code **21-110. C-2 Neighborhood Commercial District.**
- n. Failure to Comply; Penalty. Should any person, corporation, partnership or association fail to comply with any provision of this Ordinance pertaining to sexually oriented businesses, the public officer may file a complaint in the municipal court of the City against such person, corporation, partnership or association and upon conviction of any violation of the same, be fined a minimum on the first conviction of \$200.00, upon a second conviction of \$400.00 and a maximum amount not to exceed \$1,000.00 on said first, second or any subsequent conviction or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

11. A temporary use permit may be issued for the temporary placement of semi-trailers and shipping (cargo) containers outside of a retail store subject to the following provisions:
  - a. Only one permit for a maximum of 90 days will be allowed per year; fee for said permit shall be \$100.00.
  - b. Semi-trailers and shipping (cargo) containers must be placed in the rear yard, must meet required setbacks for accessory buildings, cannot be adjacent to customer entrances or residential areas, cannot displace any required parking spaces, and cannot be placed in fire or circulation drives.
  - c. The number of containers to be allowed shall not exceed 5% of indoor square footage (floor area) of the business.
  - d. Semi-trailers and shipping (cargo) containers must be removed within five days of the expiration of the 90-day limit.
  - e. Any violation of the conditions of these provisions for a Temporary Use Permit will impact any future requests for a permit.
12. Small wind energy systems of not more than 100 kW shall be permitted in all zoning classifications where structures of any sort are allowed, provided that:
  - a. Definition: A small wind energy system shall be defined as a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce on-site consumption of utility power.
  - b. Set Backs: The wind system structure shall be set back a minimum of 110% of the maximum height of the structure (including turbine blades) from any property boundary of the installation site; in addition, no guy wire anchor may extend closer than ten (10) feet to the property boundaries of the installation site.
  - c. Tower Height: For property sizes less than 2 acre, maximum tower height shall be subject to set-backs as provided in Article 2 and restrictions imposed by FAA regulations. For property sizes between 2 acre and one acre, the tower height shall be limited to 150 feet, subject to set-backs provided in Article 2 and FAA regulations. For property sizes of one acre or more, there is no limitation on tower height other than set-backs provided in Article 2 and restrictions imposed by FAA regulations.
  - d. Noise: Small wind energy systems shall not exceed 60 decibels of sound measured at the property boundary of the installation site.

- e. Notification of Adjoining Property Owners: Applicants for a wind energy system shall notify all adjoining property owners within two hundred feet of the installation site of their intention to erect a wind energy system and shall file an affidavit of mailing said notice with the office of the City Clerk. The notice shall contain the time and date of the public hearing to be held before the Colby/Thomas County Metropolitan Area Planning Commission and a detailed description of the wind energy system to be installed.
  - f. Approved Wind Turbines: Small wind turbines must have been approved by a small wind certification program recognized by the American Wind Energy Association. A copy of the certification must accompany the permit application.
  - g. The wind energy systems shall not cause interference to microwave communications or radio and television transmission or reception in the area. All blades shall be constructed of non-metallic substances.
  - h. Compliance with FAA Regulations: Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to an airport. A copy of the FAA Form 7460-1, Notice of Proposed Construction or Alteration, must accompany the permit application.
  - i. Liability Insurance: Owners of small wind energy systems must carry liability insurance with a combined single limit of no less than \$2,000,000 as evidenced by a Certificate of Insurance attached to the permit application. Each insurance policy shall contain a clause to the effect that the policy shall not be canceled, reduced, restricted or limited at any time unless the city clerk is given ten (10) days written notice. Failure to provide insurance may result in disconnection of the wind energy system from the utility company's distribution system.
  - j. Interconnection Agreement: No small wind energy system shall be installed until evidence has been given that the utility company has approved the customer's request to install an interconnected customer-owned generator.
  - k. Removal of Wind Energy System: Any wind energy system which is inoperable or unused for a period of one (1) year shall be removed at the owners' expense and shall be deemed a hazard and a dangerous and unfit structure within the meaning of the code of the City of Colby, Kansas, Chapter IV, Article 6, Dangerous and Unsafe Structures (K.S.A. 12-1751) (Code 2007). If the owner has not removed the structure as required herein, the City may exercise its remedies pursuant to those code sections and ordinances cited above, as amended from time to time.
13. Before issuance of any special permit for any of the above buildings or uses, the Governing Body shall refer the proposed application to the Planning Commission, which Commission shall be given thirty (30) days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood, traffic conditions, public utility facilities, and other matters pertaining to the public health, public safety, and general welfare. No action shall be taken upon any application for a proposed building or use referred to above, until and unless the report of the Planning Commission has been filed; provided, however, if no report is received from the Commission within thirty (30) days, it shall be assumed that

approval of the application has been given by said Commission.

***Communication Tower Definition:*** *A structure measuring 60 feet or more in height from the ground, or 30 feet in height as measured to the highest point of the tower/antenna if mounted on a structure or building, erected or maintained for the primary purpose of supporting antennae or apparatus for transmitting and/or receiving radio frequency waves. For the purposes of these regulations the term ACommunication Tower shall include, but not be limited to, commercial radio or television broadcasting towers; microwave transmitting and/or receiving towers; and wireless telephone towers, but shall not include amateur radio transmitting or receiving towers, satellite dish antennae or television antennae. Amateur Radio towers are specifically exempt from regulations applying to communication towers.*

**Section 2:** The following section of the Code of the City of Colby, Zoning Regulations, are repealed:

Article 2, Section 21-202

**Section 3:** This Ordinance shall be in full force and effect from and after its publication in the official newspaper of the City of Colby, Kansas, as provided by law.

PASSED BY THE GOVERNING BODY AND APPROVED BY THE MAYOR this 19<sup>th</sup> day of November, 2024.

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Lee Leiker, Mayor

ATTEST:

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Joni L. Ketchum, City Clerk

(SEAL)

