

Relevant provisions of the Rapid City Municipal Code relating to adult oriented businesses.

## **Chapter 9.20 OBSCENE MATERIAL**

### 9.20.010 Definitions.

The terms used in this chapter, unless the context otherwise requires, mean:

"Contemporary community standard" means the contemporary standard of Rapid City, South Dakota, tested by the average person of Rapid City, South Dakota.

"Disseminate" means to transfer possession of, whether with or without consideration.

"Exhibit" means to show or display.

"In the public view" means that conduct which would be viewed by the causal public observer.

"Knowingly" means having actual or constructive knowledge of the character of the subject matter or live conduct. A person shall be deemed to have constructive knowledge of the character of the subject matter or live conduct if he has knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the matter.

"Material" means anything tangible whether derived through the medium of reading, observation or sound.

"Matter or material" means any book, magazine, newspaper or other printed or written material; or any picture, drawing, photograph, motion picture, or other pictorial representation; or any statute or other figure; or recording, transcription or mechanical, chemical or electrical reproduction; or any other articles, equipment, machines or other materials.

"Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.

"Obscene material" means any matter or material or any performance or any description, or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when:

1. Applying contemporary community standards the work taken as a whole appeals to the prurient interest;

2. The work taken as a whole lacks serious literary, artistic, political or scientific value.

"Open display" means material, excluding motion pictures, which is available for viewing by nonemployees of the establishment prior to dissemination.

"Prurient interest" means a shameful or morbid interest in nudity, sex or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group.

"Public" includes those persons that have reached the age of majority.

"Public place" means any place at which people assemble or at which people commonly resort for the purposes of business, amusement, recreation or other lawful purpose, including publicly-owned lands or rights-of-way.

"In the public view" means that conduct which would be viewed by the casual public observer.

"Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

"Sexual conduct" means any act of masturbation, homosexuality, sexual intercourse, or physical conduct with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a female, the breast.

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal. (Prior code § 17-90)

#### 9.20.020 Disseminating--Prohibited--Violation--Penalty.

Disseminating obscene material is a misdemeanor punishable by confinement in jail not to exceed thirty days, or by fine not to exceed one hundred dollars, or by both such fine and imprisonment. (Prior code § 17-91)

#### 9.20.030 Disseminating--Acts constituting--Possession, sale or loan.

A person is guilty of disseminating obscene material when he knowingly, in a public place within the public view, gives or makes available to the public, or promotes or possesses with intent to promote to the public, or he knowingly sells or loans to the public any material described in Section 9.20.010. (Prior code § 17-92)

9.20.040 Disseminating--Acts constituting--Exhibiting to show or other presentation in public place.

A person is guilty of disseminating obscene material when, with reference to a show or other presentation which depicts obscene material, he knowingly exhibits such show or other presentation in a public place within the public view. (Prior code § 17-93)

9.20.050 Disseminating--Defense.

In any prosecution for disseminating obscene material it is an affirmative defense that:

A. The obscene material was not on open display; or

B. The obscene material was displayed only in an enclosure or behind a partition with all entrances clearly and distinctly marked with a sign in bold, capital letters at least three-fourths inch high stating: "ADULT MATERIAL ONLY";

C. Such possession, dissemination or display occurred in the course of bona fide school, college, university, public museum or public library activities or in the course of employment of such an organization. (Prior code § 17-94)

Relevant Zoning Provisions

**17.50.185 On-sale liquor establishment.**

An on-sale liquor establishment must be issued if:

A. The requested use will not adversely affect the use of any place used for religious worship, school, park, playground or similar use within a five hundred-foot radius.

B. The requested use is sufficiently buffered with respect to residential areas so as not to adversely affect such areas.

C. The proposed use will not create an undue concentration of similar uses, so as to cause blight, deterioration or substantially diminish or impair property values.

D. The proposed use complies with the standards of Sections 5.12.140 and 17.54.030 of this code. (Ord. 3270, 1996; Ord. 2391 (part), 1992)

On-sale liquor establishments are allowed in the following zoning districts:

Central Business District  
General Commercial  
Civic Center  
Shopping Center 1

Shopping Center 2  
General Ag (in conjunction with a country club)  
Hotel Motel