

ORDINANCE NO. 3967

AN ORDINANCE TO INCREASE THE SPACING REQUIREMENTS FOR ADULT ORIENTED BUSINESSES FROM 400 FEET TO 1000 FEET AND TO CLARIFY THE PROHIBITION OF ADULT ORIENTED BUSINESSES IN THE CENTRAL BUSINESS DISTRICT BY AMENDING CHAPTER 17.50 OF THE RAPID CITY ZONING ORDINANCE.

BE IT ORDAINED by the City of Rapid City that Chapter 17.50 of the Rapid City Zoning Ordinance be amended to read as follows:

A. Purpose and Intent.

It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented entertainment to their intended market, unless otherwise restricted by law.

B. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section:

“Adult entertainment center.” An enclosed building or a part of an enclosed building, wherein an admission is charged for entrance into the facility, or for food, alcoholic beverages or other beverages intended for consumption within the facility, wherein may be observed or which contains one or more coin-operated mechanisms which when activated permit a customer to view one or more live persons unclothed or in such attire, costume or clothing as to expose to view any portion of the areola of the female breast, or any portion of the male or female pubic hair, anus, cleft of the buttocks, vulva or genitals.

“Adults-only bookstore.” An establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for sale or viewing on premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse, as defined below, or an establishment with a segment or section devoted to the sale or display of such material, for sale to patrons therein.

“Adults-only motion picture theater.” An enclosed building used regularly and routinely for presenting programs, material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochistic abuse, as defined below, for observation by patrons therein.

“Nudity.” The showing of the human male or female genitals, pubic area or buttocks, or areola of the female breast with less than a fully opaque covering or the depiction of covered male genitals in a discernibly turgid state.

“Sadomasochistic abuse.” Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

“Sexual conduct.” Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person’s unclothed genitals, pubic area, buttocks or, if such person be a female, her breast.

“Sexual excitement.” The condition of human male or female genitals when in a state of sexual stimulation or arousal.

“Sexually oriented business” An adult entertainment center, adults-only bookstore, adult novelty store, adult video store, or adults-only motion picture theater whose inventory, merchandise, or performances are characterized by a preponderance of nudity, sexual conduct, sadomasochistic abuse, and/or sexual excitement.

“Residential district” Any land within the city limits of Rapid City zoned as LDR-1, LDR-2, MDR, HDR, MHR, and PF.

C. Classification.

Sexually oriented businesses are classified as follows:

1. Adults-only bookstores, adult novelty stores, and adult video stores
2. Adults-only motion picture theaters;
3. Adult entertainment centers.

D. Location of sexually oriented businesses.

(1) A sexually oriented business shall not be permitted to operate within ~~four hundred (400)~~ one thousand (1,000) feet of:

- a. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- b. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- c. Any property zoned LDR-1, LDR-2, MDR, HDR, MHR, and PF;
- d. Any property zoned Central Business District (CBD);

- e. A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within Rapid City which is under the control, operation, or management of Rapid City park and recreation authorities;
- f. Auditoriums, convention centers, fairgrounds, museums, art or music centers, and theaters.

(2) A sexually oriented business shall not be permitted to operate within ~~four hundred (400)~~ one thousand (1,000) feet of another sexually oriented business.

(3) For the purposes of paragraph (1), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of those facilities or boundaries outlined in paragraph (1).

(4) For the purposes of paragraph (2) of this section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

E. Conditional Use.

Any sexually oriented business lawfully operating in a location permitted by this section shall be classified as a conditional use, and authorized by § 17.54.030

F. Nonconforming Sexually Oriented Businesses.

Any sexually oriented business lawfully operating on August 2, 2002, that is in violation of subsection D of this section shall be deemed a nonconforming use and shall not be expanded or enlarged except in conformance with chapter 17.52 of this title.

G. Sign Requirements.

All new sexually oriented businesses, and all existing sexually oriented business uses on August 2, 2002, shall, in addition to the requirements of chapter 15.28, comply with the following sign requirements.

- (1) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from persons walking or driving by the premises.
- (2) Window areas shall be covered and opaque.

H. Severability of Provisions and Applications.

If a part of this chapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this chapter is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: