

## TITLE 7 INDECENT EXPOSURE

### Chapter 7.01 FAILURE TO CONCEAL SEXUAL OR GENITAL PART OF THE BODY

1. It shall be unlawful for any person owning, renting, leasing, operating or managing any establishment that sells, by the drink or for consumption on the premises, intoxicating liquor, alcoholic beverages, or low point beer, which establishment has had a license application approved or recommended to be approved by the governing body of the County of Brown, to cause, allow or permit any person in or about such establishment, while in the presence of any other person in such establishment:

- A. To fail to conceal with fully opaque covering, the sexual or genital parts of his or her body. For the purposes of this section, "sexual" or "genital parts" shall include the genitals, pubic area, anus, cleavage of the buttocks or perineum of any person or the vulva or nipple and areola (the more darkly pigmented portion of the breast encircling the nipple) of a female. For the purposes of this section, a fully opaque covering, shall mean or include the wearing of pasties that cover the nipple and areola of a female breast.
- B. To expose any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anal region or public hair region of nipple and/or the areola of a female.
- C. For the purposes of this ordinance, "person" shall mean a natural person, association, corporation, firm, organization, partnership or society.

2. None of the following uses may be established, operated, or maintained within one-fourth mile of a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship.

- a. Adult bookstore
- b. Adult theater
- c. Adult photo studio
- d. Adult cabaret
- e. Adult motel
- f. Nude Model studio
- g. Adult video store
- h. Adult novelty store

For the purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structure or objects, from the nearest point on the property line of a parcel containing an adult oriented business to the nearest point on the property line of a parcel containing a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence or a place of worship. An adult oriented business lawfully operating in conformity with this section does not violate this section if a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence or a place of worship subsequently locates within one-fourth mile of an adult oriented business.

It is recognized that there are some uses, which because of their very nature, are recognized as having serious questionable operational characteristics, and are not compatible with certain uses. Special

regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding area.

No more than one adult use may be established, operated, or maintained within 2,500 feet of another adult use as measured from the closest point of the outside wall of the building or tenant space.

3. An person who shall violate any of the provisions of this ordinance or shall fail to comply therewith shall be guilty of a Class 2 Misdemeanor punishable by thirty days imprisonment in the county jail or one hundred dollars fine, or both.

4. In addition, upon proof of violation of this ordinance, any license approved or recommended to be approved by the governing body of Brown County may be revoked or suspended pursuant to SDCL 35-2-10.

5. State law further provides that no adult oriented business established after June 30, 2008, may be located within one-fourth mile of a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship. A violation of this State law is a Class 1 Misdemeanor. Each day of violation constitutes a separate offense.

#### DEFINITIONS:

Adult Bookstore, Adult Novelty Store, or Adult Video Store. A Commercial establishment which, as one of its principle purposes offers for sale or rental for any form of consideration any one or more of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or
- B. Instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.” A principal business purpose is defined as a business that maintains at least 40% of its inventory items for sale or rent that are characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas.” The definition under this subsection shall not include a store that, as its principal business purpose, sells or rents films, motion pictures, video cassettes, video reproductions or other visual representations that contain an official industry rating of G, PG, PG-13, R or NC 17.

Adult Cabaret. A nightclub, bar, juice bar, restaurant, bottle club or similar commercial establishment whether or not alcoholic beverages are served which regularly features persons who appear nude or semi-nude.

Adult Motel. A hotel, motel, or similar commercial establishment which offers accommodations to the public in any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, DVD's or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions. A hotel, motel or similar commercial establishment, which offers a sleeping room for rent for a period of time that is less than ten (10) hours. A hotel, motel or similar commercial establishment which allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult Motion Picture Theater or Drive In Theater. An enclosed building or outdoor drive in theater used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as herein defined, for observation by patrons therein. The definition under this subsection shall not include a store that, as its principal business purpose, sells or rents or show films, motion pictures, video cassettes, video reproductions, DVD's or other visual representations that contain an official industry rating of G, PG, PG-13, R or NC-17.

Adult Oriented Businesses. An adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult photo studio or nude model studio.

Adult Photo Studio. An establishment, which, on payment of a fee, provides models for the purpose of photographing "specified anatomical areas."

Nude Model Studio. Any place where a person who appears nude, or who displays "specified anatomical areas" and is provided to be sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of South Dakota, or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- B. Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
- C. Where no more than one nude or semi-nude model is on the premises at any one time.

Specified Anatomical Areas. (1) Less than completely and opaquely covered (a) human genitals, pubic region; and (b) female breast below a point immediately above the top of the areola. (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities. (1) Human genitals in a state of sexual stimulation or arousal; (2) acts of human masturbation, oral copulation, sexual intercourse, or sodomy; (3) fondling or other erotic touching or another's human genitals, pubic region, buttock, anus or female breast.