

## Proposed Yellowstone County Obscenity Ordinance

**WHEREAS**, Sections 7-5-131 through 7-5-136, Montana Code Annotated, provide a method for proposing and adapting ordinances for Yellowstone County, Montana; and

**WHEREAS**, the dissemination of obscene materials constitutes a public nuisance and presents a danger to the health, safety and welfare of the citizens of Yellowstone County; and

**WHEREAS**, obscenity is not protected by the U.S. Constitution for any age group, pursuant to *Miller v. California*, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d. 419 (1973)

**WHEREAS**, Section 45-8-201(5) Montana Code Annotated authorizes the adoption by said county of an ordinance more restrictive as to obscenity than the existing provisions of section 45-8-201, Montana Code Annotated.

Now, **THEREFORE**, the following ordinance shall be in full force and effect in all of Yellowstone County, Montana.

- (1) A person as defined in (3)(c) commits the offense of obscenity when, with knowledge of the nature or character thereof, he purposely or knowingly:
  - (a) sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene to anyone;
  - (b) presents or directs an obscene performance as defined in (3)(b) or participates in that portion thereof which makes it obscene to anyone;
  - (c) publishes, exhibits or otherwise makes available anything obscene to anyone;
  - (d) performs an obscene act or otherwise presents an obscene exhibition of his/her body to anyone;
  - (e) creates, buys, procures or possesses obscene material as defined in (3)(a) with the purpose to disseminate it to anyone; or
  - (f) advertises or otherwise promotes the sale of obscene material as defined in (3)(a) represented or held out by him to be obscene.
- (2) A thing is obscene if:
  - (a) the average person, applying contemporary adult community standards, would find that the material, taken as a whole, appeals to a prurient interest in sex as defined in (3)(d); and
  - (b) the average person, applying contemporary adult community standards, would find that the work depicts or describes, in a patently offensive way, sexual conduct as defined in (3)(f); and
  - (c) a reasonable person would find that the work, taken as a whole, lacks serious literary, artistic, political or scientific value.
- (3) Definitions.
  - (a) "Material" is both singular and plural and means any item, article, exhibition or live performance, including any book, magazine, newspaper, film, video recording or other visual or written material; or any picture, drawing, photography, motion picture or other pictorial representation; or any statue or other figurine; or any recording, transcription or mechanical, chemical or electrical reproduction; or any other article, equipment, computer hardware and software, or computer generated images or messages; or any public or commercial live exhibition.

- (b) "Performance" means any motion picture, film, videotape, played record, phonograph or tape, broadcast, preview, trailer, play, show, skit, dance or any other exhibition performed or presented to or before an audience of one or more, transmitted by means of electrical, radio, television, telephonic or other communicative device or facility to a known closed or open circuit audience of one or more persons or to the general public.
  - (c) "Person" means any individual, corporation, company, partnership, firm, association, business, establishment, organization or other legal entity of any kind.
  - (d) "Prurient" means a lascivious, erotic, shameful, abnormal, unhealthy, degrading or morbid interest in sex, nudity, excretion, sadomasochistic sexual abuse, as defined in (3)(e), or lewd exhibition of the genitals. Where the material or performance is designed for or primarily disseminated or promoted to a clearly defined deviant sexual group, rather than the public at large, the prurient-appeal requirement is satisfied if the dominant theme of the material or performance, taken as a whole, appeals to the prurient interest in sex of the members of the intended and probable recipient group.
  - (e) "Sadomasochistic sexual abuse" means actual or simulated flagellation, rape, torture or other physical or sexual abuse, by or upon a person who is nude or partially denuded or in a condition of being fettered, bound or otherwise physically restrained for the actual or simulated purpose of sexual gratification of abuse or represented in the context of a sexual relationship.
  - (f) "Sexual Conduct" means ultimate sex acts, normal or perverted, actual or simulated; masturbation; excretory functions; lewd exhibition of the genitals; or sadomasochistic sexual abuse as defined in (3)(e).
- (4) A person as defined in (3)(c) convicted of obscenity shall be fined a maximum of \$500 or imprisoned in the County jail for a term not to exceed 6 months, or both.
- (5) Severability.

If any phrase, clause, sentence, section or provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other phrase, clause, sentence, section, provision or application of this ordinance, which can be given effect without the invalid phrase, clause, sentence, section, provision or application; and, to this end, the provisions of this ordinance are declared to be severable.