

Ordinance Prohibiting Obscenity

SECTION 1. FINDINGS

Unlimited commercial exploitation of nudity can induce individuals to engage in prostitution, sexual assaults, breaches of the peace and other criminal activity.

Displays of nudity in commercial establishments tend to create, and have created in other towns and cities, a tawdry atmosphere which adversely affects the quality of the lives of the residents of said towns and cities. Such displays are highly detrimental to the public health, safety and welfare, lead to the debasement of both women and men and tend to promote violence, sexual harassment, public intoxication, the spread of sexually transmitted diseases, and other serious criminal activity and deleterious effects.

The above is especially so in establishments that have a license to sell liquor and other alcoholic beverages.

The promotion and/or wholesale promotion of obscene material and/or obscene devices can also be a blighting influence on the surrounding neighborhood, tending to create a tawdry atmosphere which adversely affects the quality of the lives of the residents of said towns and cities. Such promotion is highly detrimental to the public health, safety and welfare, leads to the debasement of both women and men and tends to promote violence, sexual harassment, the spread of sexually transmitted diseases, and other serious criminal activity and deleterious effects.

SECTION 2. PURPOSE

The provisions of this ordinance are directed at the negative secondary effects of nudity and obscenity as set forth above.

SECTION 3. DEFINITIONS

- A. *Expose*: cause to be unclothed, uncostumed or not covered by a fully opaque material.
- B. *Opaque*: completely concealed by a covering made of cloth or textile material, not including, latex body paint or similar materials applied as a liquid.
- C. *Prurient interest in sex*: a shameful or morbid interest in sex.
- D. *Commercial Enterprise*: any natural person, business, corporation, association or other entity engaged in an activity for pecuniary gain.

- E. *Material*: anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.
- F. *Obscene*: material or a performance that:
 - (1) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
 - (2) Depicts or describes:
 - a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - b. Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
 - (3) Taken as a whole, lacks serious literary, artistic, political or scientific value.
- G. *Obscene device*: a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.
- H. *Patently offensive*: so offensive on its face as to be intolerable to the average person, applying contemporary community standards.
- I. *Performance*: a play, motion picture, dance, or other exhibition performed before an audience.
- J. *Promote*: to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.
- K. *Wholesale promote*: to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

SECTION 4. PROHIBITIONS

- A. It shall be unlawful for any person in a commercial enterprise to engage in, and for any commercial enterprise to promote, encourage, allow or hire any person to engage in, the following activities:

1. expose his or her genitals, pubic hair, buttocks, perineum or anus, or to expose the areola of the female breast;
 2. engage in sexual intercourse;
 3. fondle the genitals of himself, herself or the genitals of another person; or
 4. engage in any act of public indecency, as defined in 17-A M.R.S.A. §854 as amended from time to time.
- B. The prohibitions contained in Section IV(A) above do not apply to theatrical, movie or similar establishments which are primarily devoted to theatrical performances or the presentation of movies, except as set forth in Section IV(C) and (D) below.
- C. It shall be unlawful for any person, knowing its content and character, to wholesale promote or to possess with intent to wholesale promote any obscene material or obscene device.
- D. It shall be unlawful for any person, knowing its content and character:
1. to promote or to possess with intent to promote any obscene material or obscene device; or
 2. to produce, present or direct an obscene performance or to participate in a portion thereof that is obscene.
- E. A person who promotes or wholesale promotes obscene material or an obscene device, or possesses the same with intent to promote or wholesale promote said obscene material or obscene device in the course of his business is presumed to do so with knowledge of its content and character.
- F. The prohibitions contained in Section IV (C) and (D) do not apply to a person who participates in conduct otherwise prohibited in the course of law enforcement activities.

SECTION 5. PENALTIES

- A. Any person who engages in conduct violating Section IV(A) shall be subject to a minimum civil penalty in the amount of \$100.00 and a maximum civil penalty in the amount of \$250.00.
- B. Any commercial enterprise which engages in conduct violating Section IV(A) shall be subject to a minimum civil penalty in the amount of \$750.00 and a maximum civil penalty in the amount of \$1,500.00, except that

1. If the violation takes place within 1,000 feet of the lot lines of (a) a public or private elementary or secondary school, (b) a day care facility, (c) a public park or public recreational facility, and/or (d) a church, synagogue or other house of religious worship, the minimum civil penalty shall be \$1,500.00 and the maximum civil penalty shall be \$3,000.00.
 2. If the violation occurs in a commercial enterprise that serves liquors and/or other alcoholic beverages, the minimum civil penalty shall be \$1,500.00 and the maximum civil penalty shall be \$3,000.00.
- C. Any commercial enterprise which has a license to serve liquors and/or other alcoholic beverages, and which engages in conduct violating Section IV(A), shall have his/her/its license to serve such liquors and/or other alcoholic beverages suspended and may not apply for another license to serve such beverages until at least six months from the date of said suspension.
- D. Any person who engages in conduct prohibited by Section IV(C) and (D) shall be subject to a minimum civil penalty in the amount of \$1,000.00 and a maximum civil penalty in the amount of \$2,000.00, except that if the violation takes place within 1,000 feet of the lot lines of (a) a public or private elementary or secondary school, (b) a day care facility, (c) a public park or public recreational facility, and/or (d) a church, synagogue or other house of religious worship, the minimum civil penalty shall be \$1,500.00 and the maximum civil penalty shall be \$3,000.00.
- E. Any business, corporation, partnership, association, commercial enterprise or other entity which engages in conduct prohibited by Section IV(C) and (D) shall be subject to a minimum civil penalty in the amount of \$1,500.00 and a maximum civil penalty in the amount of \$3,000.00, except that if the violation takes place within 1,000 feet of the lot lines of (a) a public or private elementary or secondary school, (b) a day care facility, (c) a public park or public recreational facility, and/or (d) a church, synagogue or other house of religious worship, the minimum civil penalty shall be \$2,000.00 and the maximum civil penalty shall be \$5,000.00.
- F. Each day that a person, business, corporation, partnership, association, commercial enterprise or other entity engages in conduct prohibited by Section IV(C) and (D), after being notified of the violation by the Code Enforcement Officer, or other municipal official specifically designated by ordinance or other law or by the municipal officers with enforcement authority, may be considered a separate violation.
- G. Violations of Section IV(A), (C) and (D) shall be deemed nuisances and may be abated by the Town.
- H. If the economic benefit resulting from the violation exceeds the applicable penalties under this section (Section V), the maximum civil penalties may be increased. Any increased civil penalty imposed under this subsection may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes,

but is not limited to, the costs avoided or the enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.

SECTION 6. ENFORCEMENT

This ordinance may be enforced (1) by the Code Enforcement Officer or (2) by any other municipal official specifically designated by ordinance or other law or by the municipal officers, with such authority.

Upon determining that a violation has occurred, the enforcing officer shall notify the violator of the violation, order an immediate cessation of the prohibited activity, if appropriate, and impose an appropriate civil penalty under Section IV(A), (C) and (D).

If court action is necessary in order to enforce this ordinance, procedures similar to those set forth in 30-A M.R.S.A. § 4452 may be employed. Any such action shall be brought in the name of the Town and any civil penalties resulting from said proceedings shall inure to the benefit of, and be paid to, the Town.

If the Town is the prevailing party in any court action it shall be awarded its reasonable attorney fees and other enforcement costs.

SECTION 7. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining provisions of this ordinance.