

OBSCENITY ORDINANCE OF THE TOWN OF NEWPORT, MAINE

Section 1. Purpose

The two purposes of this ordinance are (1) to prohibit certain acts of commercial exploitation of human sexuality in commercial or business establishments within the Town of Newport in order to reduce the likelihood of criminal activity, moral degradation, sexually transmitted diseases and disturbances of the peace and good order of the community which may occur when such commercial exploitation is permitted in such places, and (2) to protect the health, safety, welfare and morals of the community by using the government's recognized and traditional police power to protect societal order, morality and physical and emotional health without infringing on protected First Amendment rights.

Section 2. Definitions

As used in this Article, the following words shall have the following meanings:

Material means 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.

Obscene means material or a performance that:

- A. The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
- B. Depicts or describes:
 1. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 2. 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 designated and marketed as useful primarily for stimulation of the human genital organs; and
- C. Taken as a whole, lacks serious literary, artistic, political or scientific value.

Obscene device means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

Patently offensive means so offensive on its face as to be intolerable to the average person, applying contemporary community standards.

Performance means 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.

Prurient interest in sex means a shameful or morbid interest in sex.

Wholesale promote means 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 3. Promotion of obscene material or devices prohibited.

- A. A person commits an offense if, knowing its content and character, he wholesale promote or possesses with intent to wholesale promote any obscene material or obscene device.
- B. A person commits an offense if, knowing its content and character, he:
 - 1. Promotes or possesses with intent to promote any obscene material or obscene device; or
 - 2. Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.
- C. A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.
- D. A person who possesses six (6) or more obscene devices or six (6) or more obscene articles, whether such devices or articles are similar or identical, is presumed to possess them with intent to promote the same.
- E. This section not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct occurs in the course of law enforcement activities.

Section 4. Penalties

- A. The violation of any provision of this Article shall be punishable by a fine not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the Town may enjoin or abate any violation of

may enjoin or abate any violation of this Article by appropriate action, including but not limited to, revocation of any Town license for a premises or commercial or business establishment in which he violation occurs.

2. If the Town is the prevailing party in any action brought to enforce this ordinance, the Town must be awarded reasonable attorneys' fees, expert witness fees, and costs, unless the court finds that special circumstances make the award of these fees and costs unjust.

Section 5. Severability

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Signed
February 15, 1995

“Attest, a true copy of an ordinance entitled Obscenity Ordinance of the Town of Newport as certified by the municipal officers of the Town of Newport, Maine, and adopted by the Town meeting on the 3rd day of March 1995.”

Date: 08/31/2012

Signature: Paula A. Scott, CMC
Municipal Clerk