

TOWN OF BERWICK
OBSCENITY ORDINANCE

ARTICLE 1. Purpose.

The purpose of this ordinance is to prohibit any commercial enterprise from presenting or engaging in any obscene exhibitions for profit. It is not intended to suppress or inhibit the free exchange of ideas or artistic expression. The Town Selectmen have recommended this ordinance for the purpose of promoting and protecting the general welfare, public safety, public order, and morals.

ARTICLE 2. Definitions.

Section 1. "Commercial Enterprise" means any business, corporation, association, or natural person established for pecuniary gain other than a theater.

Section 2. "Theater" means:

- a. Any building or hall designed primarily for showing motion pictures, having a permanent movie screen and permanently fixed seats arranged in such fashion as to allow spectators an unobstructed view of this screen.
- b. An open-air theater designed primarily for showing motion pictures, having a permanent movie screen and permanent devices for broadcasting movie sound tracts in motor vehicles.
- c. Any playhouse, hall, or similar structure designed primarily for legitimate artistic expression.

Section 3. "Present" means to show, reveal, display or expose to any person.

Section 4. "Engage In" means to solicit, produce, direct, finance, physically participate in, compensate others for, further the interest of, or be otherwise involved with the proscribed conduct.

Section 5. "Obscene" means any conduct of a sexual nature which:

- a. To the average individual applying contemporary community standards, considered as a whole appeals to the prurient interest.
- b. Presents in a patently offensive manner actual or simulated sexual acts, sodomy, bestiality, excretory functions, masturbation, direct physical stimulation of unclothed genitals, flagellation or torture in context of ultimate sexual acts, lewd exhibition of the human male or female genitals, pubic area, buttocks or the female breast below the top of the nipple.
- c. Considered as a whole lacks serious literary, artistic, political or scientific value.

Section 6. "Exhibition" means any aural, visual, or tactile performance, dramatization, show or display which includes any amount of human, animal, or animated conduct, whether presented live or by way of mechanical reproduction, sound recording, audio-visual cassette or tape, silhouette depiction or by any other means.

ARTICLE 3. Prohibition

Section 1. It shall be unlawful for any commercial enterprise to present for profit any obscene exhibition within the Town of Berwick.

Section 2. It shall be unlawful for any commercial enterprise to engage in any obscene exhibition for profit within the Town of Berwick.

Section 3. It shall be unlawful for any commercial enterprise to solicit, permit, promote, or assist any commercial enterprise or person to present or engage in any obscene exhibition within the Town of Berwick.

ARTICLE 4. Exceptions

This ordinance is not intended to regulate any conduct expressly regulated by existing State Statute.

ARTICLE 5. Penalty

Section 1. Any conduct made unlawful by this ordinance and any violation of this ordinance shall be punishable by a fine of five hundred dollars (\$500.00) for each offense. Each day that such unlawful act or violation continues shall be considered a separate offense.

Section 2. In addition to any other penalty provided by law, the commission of acts prohibited by this ordinance shall constitute a nuisance and may be abated by the Town seeking an injunction to prohibit further and continued violations.

ARTICLE 6. Severability

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

EFFECTIVE DATE: This ordinance will take effect and replace the existing Obscenity Ordinance, upon passage, March 12, 1983.

CERTIFIED BY:

George C. Stone
Samuel S. Mathews
Richard W. Ferris
Daniel P. Jones

BOARD OF SELECTMEN/BERWICK ME.

ATTEST: A true copy of an ordinance entitled "Town of Berwick Obscenity Ordinance", as certified to me by the Municipal Officers of Berwick, Maine on Feb. 19, 1983.

Janet D. Saucier
Janet D. Saucier, Town Clerk

Adopted 3/83.