

# Ordinance Prohibiting Obscenity for Commercial Gain



Town of York, Maine

**Most Recently Amended: May 16, 2015**

Prior Dates of Amendment:

Date of Original Enactment: June 12, 1980

## ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to amend this Ordinance: May 16, 2015.

Certified by the Town Clerk:

*Mary Anne Agnew*  
(signature)

on

*June 19, 2015*  
(date)

## **ORDINANCE PROHIBITING OBSCENITY FOR COMMERCIAL GAIN**

### **Section 1: Purpose**

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 of York has enacted this Ordinance for the purpose of promoting and protecting the general welfare, public safety, public order and morals.

### **Section 2: Definitions**

Commercial Enterprise Any business, corporation, association or natural person established for pecuniary gain other than a theater.

Theater

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

Present To show, reveal, display or expose to any person.

Engage In To solicit, produce, direct, finance, physically participate in, compensate others for, further the interest of, or be otherwise involved with the prescribed conduct.

Obscene 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 ultimate sexual acts, sodomy, bestiality, excretory functions, masturbation, direct physical stimulation of the 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; and

- c. Considered as a whole, lacks serious literary, artistic, political or scientific value.

Exhibition 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.

### **Section 3: Prohibition**

- a. It shall be unlawful for any commercial enterprise to present for profit any obscene exhibition within the Town of York.
- b. It shall be unlawful for any commercial enterprise to engage in any obscene exhibition for profit within the Town of York.
- c. 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 York.

### **Section 4: Exceptions**

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

### **Section 5: Penalty**

- a. Any person who violates this ordinance shall be subject to a civil penalty of \$500.00 for each offense. Each day the violation continues shall be considered a separate offense.
- b. 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.

### **Section 6: Waiver / Payment of Fines**

- a. Any person charged with a violation of this section, shall be allowed to waive such violation and tender to the Town of York the fine amount if paid within 20 days of issuance of the summons. If the waiver fine is paid, no appearance before a District Court Judge or other judicial officer shall be required. If the offender pays the waiver fine, the matter will be closed in the York Police Records system and listed as a subsequent offense for future violations
- b. If the offender chooses not to pay the waiver fine, he/she shall appear in court on the specified date to answer for the ordinance violation. If the offender is found to have committed the offense in court, fines, applicable court fees, attorney's fees, and prosecution costs may apply.

### **Section 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.

Adopted June 12, 1980