

TOWN OF UNITY  
OBSCENITY ORDINANCE

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 Unity in order to reduce the likelihood of criminal activity, moral degradation, sexually transmitted diseases, 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 without infringing on protected First Amendment rights.

2. Offenses

A person commits an offense if, knowing its content and character, he/she wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device. (See definitions below.)

An offense is punishable by a penalty of not less than \$50.00 nor more than \$100.00. Each day an offense continues shall be a separate offense. Enforcement shall be the responsibility of the Board of Selectmen or their duly authorized agent.

3. Definitions

As used in this ordinance, the following words shall have the following meanings:  
Obscene means material or a performance that the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex; depicts or describes patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality, or 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 taken as a whole, lacks serious literary, artistic, political, or scientific value.



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.

Performance means a play, motion picture, dance, or other exhibition performed before an audience.

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

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

Promote 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.

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.

Obscene device means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs. If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

#### 4. Validity of Severability

If any provision of this article is held to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such holding shall not invalidate or otherwise affect the remaining provisions.



ADULT BUSINESS ORDINANCE

1997

*Adopted  
3/28/1997*

SECTION 1. PURPOSE AND AUTHORITY: To prevent the use of or intended use of commercial premises, commercial structures, or parts thereof, by reason of design, from being conducive to the spread of communicable disease found to be of danger to persons frequenting such premises, structures, or parts thereof, and to the public health, safety, and welfare. The health, safety, and welfare of all persons in Unity, Maine must be protected by the establishment of standards for such premises, structures, or parts thereof, to eliminate the possibility of infection of contagious disease. Of specific danger is the sexually transmissible disease of Acquired Immune Deficiency Syndrome, which is currently found to be irreversible and uniformly fatal. The incidence of this disease is found to occur in discernible population groups, and the risk factors for obtaining or spreading the disease are associated with high-risk sexual conduct with multiple partners.

The commercial premises, structures, or parts thereof, which place persons at risk of infection from this disease due to their design or intended use for high-risk sexual conduct, are necessarily subject to regulation and minimal standards for the prevention of the spread of this disease and for the protection of the public health, safety, and welfare.

This ordinance is enacted pursuant to municipal home rule authority, Title 30-AM.R.S.A. Section 3001.

SECTION 2. DESIGN OR USE OF COMMERCIAL PREMISES FOR HIGH-RISK SEXUAL CONDUCT PROHIBITED: No commercial building, structure, premises or subdivision, partition, portion or part thereof or facilities therein, shall be so constructed, used, or operated for the purpose of sexual activities, in which facilities high-risk sexual conduct takes place. No commercial building, structure, premises, or sub-division, partition, or portion shall be designed for or used to promote high-risk sexual conduct

SECTION 3. MINIMUM STANDARDS FOR PREVENTION OF CERTAIN COMMUNICABLE DISEASES IN COMMERCIAL PREMISES: No person shall occupy any commercial building, structure, premises, or portion or part thereof which does not comply with the following requirements:

a) For the prevention of the spread of sexually transmitted disease, no partitions between subdivisions of a room, portion or part of a building, structure or premises may have an aperture which is designed or otherwise constructed to encourage sexual activity between persons on either side of the partition.

b) No booths, stalls, or partitioned portions of a room, or individual rooms, used for the viewing of motion pictures or other forms of entertainment, shall have doors, curtains or portal partitions, but all such booths, stalls, partitioned portions of a room, or individual rooms so used shall have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. All such described areas shall be lighted in such a manner that the persons in the areas used for viewing motion pictures or other forms of enter-

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tainment are visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.

c) No physical, verbal, or visual contact or interaction between persons within or in adjacent booths shall be encouraged or permitted.

SECTION 4. DEFINITIONS: The words "booth, stall, partitioned portions of a room or individual rooms" mean such enclosures as are specifically offered to the public or members of that establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure.

The words "doors, curtains or portal partitions" mean full, complete, nontransparent closure devices through which one cannot see or view the activity taking place within the enclosure.

The words "open to an adjacent public room so that the area inside is visible to persons in the adjacent public room" shall mean either the absence of any "door, curtain or portal partition" or a door or other device which is made of clear, transparent material such as glass, plexiglass, or other such material meeting building code and safety standards, extending from the floor to the top of the door frame, exclusive of the door or device framing itself, so that the activity inside the enclosure may be viewed or seen by persons outside the enclosure.

SECTION 5. ENFORCEMENT AND PENALTIES: This ordinance shall be enforceable by the Code Enforcement Officer or such other official as the municipal officers may designate. Any violation of this ordinance shall be penalized in accordance with Title 30--AM.R.S.A. Section 4452. In the event that this statute is held by a court of competent jurisdiction not to apply to this ordinance, the following penalties shall apply:

The violation of any provision of this ordinance shall be punishable by a fine of one thousand dollars (\$1,000.00) for a first offense, one thousand five hundred dollars (\$1,500.00) for a second offense, and two thousand dollars (\$2,000.00) for a third or subsequent offense, regardless of the time between offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalties, the town may enjoin or abate any violation of this ordinance by appropriate action, and, if the court finds for the town, the town shall recover its costs of suit, including reasonable experts' fees, reasonable attorneys' fees, and reasonable investigative costs.

SECTION 6. SEVERABILITY: If any section, phrase, sentence, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of any other portion hereof.

PUBLIC INDECENCY ORDINANCE

1997

SECTION 1. PURPOSE AND AUTHORITY: To prohibit certain acts of commercial exploitation of human sexuality within the Town lines of Unity 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 to protect the health, safety, welfare, and morals of the community by using the government's recognized and traditional enforcement power to protect societal order, morality, and physical and emotional health in public places without infringing on protected First Amendment rights.

This ordinance is enacted pursuant to municipal home rule authority, Title 30-AM.R.S.A. Section 3001.

SECTION 2. DEFINITIONS: For the purposes of this ordinance, the following definitions apply:

SEXUAL INTERCOURSE means any penetration of the female sex organ by the male sex organ. Emission is not required.

SEXUAL ACT means any act of sexual gratification between two persons involving direct physical contact between the sex organs of one and the mouth or anus of the other or direct physical contact between the sex organs of one and the sex organs of the other, or direct physical contact between the sex organs of one and an instrument or device manipulated by the other. A sexual act may be proved without allegations or proof of penetration.

SEXUAL CONTACT means any touching of the genitals, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire.

NUDITY means the showing of the human male or female genitals, public area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

PUBLIC PLACE means a place to which the public at large or a substantial group has access, including but not limited to commercial or business establishments, public ways, schools, government-owned facilities, and the lobbies, hallways, and basement portions of apartment houses, hotels, motels, public buildings, and transportation terminals.

PUBLIC INDECENCY means the knowing or intentional commission of an act of sexual intercourse, a sexual act, sexual contact, or nudity in a public place.

SECTION 3. PUBLIC INDECENCY PROHIBITED: Engaging in public indecency in return for pecuniary benefit is prohibited.

Encouraging or permitting another person to engage in public indecency in return for pecuniary benefit, such as by the owner or operator of the es-

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tablissement wherein public indecency occurs, is also prohibited.

SECTION 3. PENALTIES: The violation of any provision of this ordinance shall be punishable by a fine of one thousand dollars (\$1,000.00) for a first offense, one thousand five hundred dollars (\$1,500.00) for a second offense, and two thousand dollars (\$2,000.00) for a third or subsequent offense, regardless of the time between offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalties, the town may enjoin or abate any violation of this ordinance by appropriate action, and, if the court finds for the town, the town shall recover its costs of suit, including reasonable experts' fees, reasonable attorneys' fees, and reasonable investigative costs.

SECTION 4. SEVERABILITY: If any section, phrase, sentence, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of any other section, phrase, sentence, or portion hereof.

THIS IS A PRESENT MAINE STATE LAW, AND DOES NOT REQUIRE OUR VOTE.

AL CODE Title 17-A

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17-A § 851

basis of insufficiency of trial counsel. State v. Dafeo (1983) Me., 463 A.2d 770.

9. Sufficiency of evidence

Defendant's conviction of burglary and criminal mischief was supported by evidence that telephone inside burglarized apartment had been damaged, police were able to follow unbroken tracks from apartment to point where defendant was apprehended, and three weeks prior to defendant's entry into apartment telephones at another apartment had been disconnected and cords removed after defendant was seen at that residence. State v. Jacques (1988) Me., 537 A.2d 587.

Testimony of arresting officer that police cruiser was assigned to him by the town police department was sufficient to allow the jury to conclude beyond a reasonable doubt that the police cruiser was the property of another as required to prove criminal mischief. State v. Perry (1985) Me., 486 A.2d 154.

10.5. Instructions

Although evidence properly warranted only instruction on criminal mischief as defined as damaging or destroying property of another and not

additional instruction containing alternative definition of destroying or damaging property of utility, inclusion of alternative definition in instruction did not rise to level of obvious error. State v. Jacques (1988) Me., 537 A.2d 587.

Since defenses of duress, competing harms and self-defense were not supported by the evidence in disorderly conduct, criminal mischief and escape prosecution, trial court properly instructed on the only defense generated by the evidence, that to the charge of escape. State v. Perry (1985) Me., 486 A.2d 154.

In prosecution for criminal mischief, there was no error in refusing to give requested instruction on "competing harms" defense absent sufficient evidence to generate such defense. State v. Brasslett (1982) Me., 452 A.2d 973.

12. Review

Sentences to six-month prison terms for criminal mischief were not facially invalid, and thus claimed sentencing infirmities were not cognizable on direct appeal. State v. Brasslett (1982) Me., 452 A.2d 973.

§ 807. Repealed. Laws 1995, c. 434, § 2

Historical and Statutory Notes

The repealed section, which made a person guilty of animal enterprise terrorism where such person intentionally causes physical disruption to

the functioning of an animal enterprise, was derived from: Laws 1993, c. 83, § 1.

CHAPTER 35

PROSTITUTION AND PUBLIC INDECENCY

Section

- 851. Definitions.
- 852. Aggravated promotion of prostitution.

Section

- 853-A. Engaging in prostitution.
- 853-B. Engaging a prostitute.
- 854. Indecent conduct.

Law Review and Journal Commentaries

Commentaries on Maine Criminal Code: Sex offenses. Judy R. Potter, 28 Me.L.Rev. 65 (1976).

§ 851. Definitions

As used in this chapter:

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

1-A. "Engages a prostitute" means providing or agreeing to provide; either to the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return for a sexual act or sexual contact as those terms are defined in section 251;

2. "Promotes prostitution" means:

A. Causing or aiding another to commit or engage in prostitution, other than as a patron;

Law Review and Journal Commentaries

Commentaries on Maine Criminal Code: Sex Prevention versus punishment: Toward a principled distinction in the restraint of released sex offenders. Judy R. Potter, 28 Me.L.Rev. 65 (1976).  
109 Harv.L.Rev. 1711 (1996).

§ 251. Definitions and general provisions

1. In this chapter the following definitions apply.

[See main volume for A]

B. Repealed. Laws 1989, c. 401, § A, 2.

C. "Sexual act" means:

- (1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;
- (2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or
- (3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration.

D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

E. "Compulsion" means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being.

"Compulsion" as defined in this paragraph places no duty upon the victim to resist the actor.

1985, c. 495, §§ 5, 6; 1989, c. 401, § A, 2; 1991, c. 457.

Historical and Statutory Notes

Amendments

1985 Amendment. Laws 1985, c. 495, repealed and replaced subsec. 1, C.

Laws 1985, c. 495, subsec. 1, D, inserted "or anus", and added "or for the purpose of causing bodily injury or offensive physical contact".

1989 Amendment. Laws 1989, c. 401, § A, 2, repealed subsec. 1, par. B, which defined "sexual intercourse".

1991 Amendment. Laws 1991, c. 457, in subsec.

1, par. E, first par., substituted references to the use of physical force and a threat to use physical force for references merely to physical force and a threat of physical force; and added subsec. 1, par. E, last par., stating that compulsion places no duty upon the victim to resist the actor.

Notes of Decisions

Indictment, information or complaint 6

1. In general

In view of availability of motion for bill of particulars, defendant charged with "sexual act" was not impermissibly impeded in proper preparation of defense. State v. Hebert (1982) Me., 448 A.2d 322.

2. Sexual act—In general

In prosecution for gross sexual misconduct, jury charge on definition of "sexual act" which included the words "of sexual gratification," even if erroneous, did not prejudice defendant; definition given by court placed greater burden on state than that imposed after change in statutory definition of sexual act during time period covered by indictment, and thus any error inured to defendant's benefit. State v. Parsons (1993) Me., 626 A.2d 348.

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Ch. 11

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