

TOWN OF SKOWHEGAN
Ordinance Entitled
Establishing Community Standards
and Regulating Commerce in Obscene Material,
Obscene Devices, Obscene Performances

Adopted Referendum
November 5, 1996

Title: This Ordinance shall be known and may be cited as the "Town of Skowhegan Obscenity Ordinance."

SECTION 1: Authority. This ordinance has been prepared in accordance with 30-A M.R.S.A., §3001 and the Constitution of the State of Maine.

SECTION 2: Findings and Purpose.

The Inhabitants of the Town of Skowhegan find as follows:

1. That commerce in obscene materials, obscene devices and obscene performances threatens the health, safety, welfare and morals of the community.
2. That commerce in obscene material, obscene devices and obscene performances in the community undermines societal order, morality, physical and emotional health, and degrades human dignity.
3. That commerce in obscene material, obscene devices and obscene performances in the community exploits human sexuality and increases the likelihood of criminal activity, moral degradation, sexually transmitted diseases and disturbances of the peace.

THEREFORE, The purpose of this ordinance is to protect the health, safety, welfare and morals of the community by using the recognized, traditional police power of government to protect societal order, morality, physical and emotional health, and human dignity, and to reduce the likelihood of criminal activity, moral degradation, sexually transmitted diseases and disturbances of the peace, without infringing on protected First Amendment rights; and to establish the community standard on obscene material and performances, pursuant to:

1. The right of the community to establish a moral climate in which its members choose to live and raise their children.
2. The right of the community to create a cultural, ethical and moral environment above that which exploits human

sexuality and panders to the basest sexual appetites of human beings.

SECTION 3: Definitions.

3.01 **Material:** means anything 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.

3.02 **Obscene:** means material or a performance that:

1. The average person, applying contemporary community standards, would find that taken as 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; or

c. Taken as a whole, lacks serious literary, artistic, or scientific value.

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

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

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

3.06 **Promote:** means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, advertise, or to offer or agree to do the same.

3.07 **Prurient interest in sex:** means a shameful or morbid interest in sex.

3.08 **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 the purpose of resale.

SECTION 4: Offenses:

4.01 A person commits an offense if, knowing its content and character, they wholesale promote or possess with the intent to wholesale promote any obscene material or obscene device:

4.02 A person commits an offense if, knowing its content and character, said person:

any 4.02.01 Promotes or possesses with intent to promote obscene material or obscene device; or

4.02.02 Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

4.03 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 their business is presumed to do so with the knowledge of its content and character.

4.04 A person who possesses six (6) or more obscene devices or six (6) or more articles of obscene material, whether such devices or material are similar or identical, is presumed to possess them with intent to promote the same.

4.05 This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

SECTION 5: Enforcement:

The Skowhegan Police Department shall be responsible for enforcing the provisions of this ordinance and shall have the following powers and duties:

1. To gather evidence prior to the issuance of a summons.
2. To issue a summons to any person who violates any provision of this ordinance.
3. To represent the municipality in the District Court in the prosecution of alleged violations of this ordinance.

SECTION 6: 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 7: 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.

SECTION 8: Conflict:

This ordinance shall not in any way impair, or remove, the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw or provision of law.

SECTION 9: Effective Date:

This ordinance shall become effective upon approval by the legislative body of the Town of Skowhegan.