

**ARTICLE 546a  
Obscene Material**

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**546a.01 FINDINGS AND PURPOSE.**

- (a) The governing body of the Town of Nutter Fort, West Virginia (the "Council"), has, since on or before June 24, 1997, prohibited the existence of adult book stores with pornographic materials within the corporate limits of the Town of Nutter Fort; and
- (b) Said prohibition was formerly codified at Section 546.01 of the Codified Ordinances of the Town of Nutter Fort; and
- (c) Article 546 of the Codified Ordinances of the Town of Nutter Fort was formerly known as the Nude or Topless Establishments Ordinance; and
- (d) The aforementioned ordinance also prohibited the existence of adult book stores with pornographic materials within the corporate limits of the Town of Nutter Fort; and
- (e) Article 546 of the Codified Ordinances of the Town of Nutter Fort was recently repealed and re-enacted in a different form, one reason of which was to separate the prohibition of adult book stores with pornographic materials within the corporate limits of the Town of Nutter Fort from the other content of said ordinance; and

(f) Article 517.09 of the Codified Ordinances of the Town of Nutter Fort has long prohibited the preparation, distribution or exhibition of obscene matter to minors within the corporate limits of the Town of Nutter Fort; and

(g) The Council reaffirms its findings that the crass commercial exploitation of explicit sexual conduct through the public exhibition of obscene films and the sale of obscene publications and devices constitutes a debasement and distortion of a sensitive key relationship of human existence central to family life, community welfare and the development of human personality, is indecent and offensive to the senses and to public morals and interferes with the comfortable enjoyment of life and property, in that such actions interfere with the interest of the public in the quality of life and total community environment, the tone of commerce in the Town, property values and the public safety; and that continued operation of such activities is detrimental to the health, safety, convenience, good morals and general welfare of the Town and of the residents, citizens, inhabitants and businesses thereof.

#### **546a.02 DEFINITIONS.**

For purposes of this article:

(a) "Knowingly" means to have knowledge of or to be aware of the content or character of obscene matter.

(b) "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing or photograph, motion picture, or other visual representation, or live conduct, or any recording, transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or material.

(c) "Individual" means any human being regardless of age.

(d) "Obscene" means matter which the average individual applying contemporary community standards would find, taken as a whole, appeals to the prurient interest; depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated; and the matter, taken as a whole, lacks serious literary, artistic, political or scientific value, and which either:

- (1) Depicts or describes patently offensive representation of masturbation, excretory functions, lewd exhibition of genitals, sodomy, fellatio, cunnilingus, bestiality, sadism, masochism; or
- (2) Depicts or describes nudity or sexual acts of persons, male or female, below the age of eighteen years.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Prepare" means to produce, publish or print.

(g) "Public display" means the placing of material on or in a billboard, viewing screen, theater, marquee, newsstand, display rack, window, showcase, display case or similar public place so that material can be purchased or viewed by individuals.

**546a.03 INJUNCTIVE RELIEF.**

The Circuit Court of Harrison County shall have jurisdiction to issue an injunction to enforce the purposes of this article upon petition by the attorney for the Municipality or a representative thereof or any resident of the Municipality who can show a good faith and valid reason for making such application. No bond shall be required unless for good cause shown.

**546a.04 ACTIVITIES PROHIBITED.**

No person shall knowingly send or cause to be sent or cause to be brought into the Municipality for sale or public display, or prepare, sell or make a public display, or in the Municipality, offer to prepare, sell or make a public display, or have in his possession with the intent to sell or make a public display of, any obscene matter to any individual.

**546a.05 EMPLOYEES ACTING WITHIN SCOPE OF EMPLOYMENT.**

No employee shall be guilty of a violation of this article when such employee is a projectionist, ticket taker, usher, or when such employee prepares, sells or makes a public display of obscene matter while acting within the scope of his regular employment, unless such employee has a proprietary interest in such obscene matter or is a shareholder or officer of a corporation which has a proprietary interest in such obscene matter.

**546a.06 EXEMPTIONS.**

Nothing in this article shall be construed so as to apply to any person exercising a right secured by the Constitution or laws of this State or of these United States.

**546a.07 PENALTY.**

Whoever violates any provision of this article shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty (30) days, or both. A person convicted of a second or subsequent offense under this article, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than thirty (30) days, or both. Whoever violates any provision of this article shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than thirty (30) days, or both. A person convicted of a second or subsequent offense under this article, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned not more than thirty (30) days, or both.

(Passed 3-9-04)