



Village of Breedsville

82 E Main St. PO Box 152
Breedsville, MI 49027
(269) 427-9029

ORDINANCE 2023-11

AMENDED ORDINANCE NO. 8 ADULT ENTERTAINMENT

The Village of Breedsville amends Ordinance No. 8 as follows:

SECTION 1 - OBSCENITY PROHIBITIONS • OBSCENE MATERIAL - ADULT ENTERTAINMENT

SECTION 2 • DISTRIBUTING OBSCENE MATERIAL

It shall be unlawful for any person to knowingly either sell, lend, give away, distribute, show or transmit or offer either to sell, lend, give away, distribute, show or transmit, or have in his possession with intent either to sell, lend, give away, distribute, show or transmit or advertise or pander in any manner or who otherwise knowingly offers for sale, loan, gift or otherwise, any written, photographed, drawn or film obscenity.

SECTION 3 - OBSCENITY DEFINED

For the purpose of this ordinance, obscenity shall mean the same as defined by the U.S. Supreme Court (*Roth v. United States* 354 U.S. 476), to-wit: Whether to the average person; applying contemporary community standards, the dominant theme of the matter taken as a whole appeal to the prurient interest; and, under this definition, three elements must be established; first, the dominant theme of the material taken as a whole appeal to;3prurient interest in sex; second, the material is patently offensive because it affronts contemporary community standards relating to the description of the representation of sexual matters; and third, the material is utterly without redeeming social value, said three. elements to be applied as decided by the United States Supreme Court (*Redrup v. New York*, 386 U.S.767) and by the Michigan Supreme Court (*People v. Bloss*, 388 MI 792).

SECTION 4 – DEFINITIONS

The following definitions apply to words as used in this ordinance.

- A. Obscene Material - The material described in subparagraphs i. and 2 below shall be deemed to be obscene material if the average person applying contemporary community standards in the Village of Breedsville would find the material, taken as a whole, lacks serious literary, artistic, political, or scientific value.
1. Any picture, photograph, drawing, sculpture, motion picture, film, video, or other visual representation of the human body or any portion thereof that depicts nudity, sadomasochistic abuse, sexual conduct, or sexual excitement.
 2. Any book, magazine, paperback, pamphlet, or other written or printed material, however, reproduced, or any sound recordings which contain matter of the nature described in paragraph 1. above, or obscenities or explicit verbal description or narrative accounts of sexual conduct, sexual excitement, or sadomasochistic abuse depicted or described.

B. Obscene Performance

An obscene performance means a play, motion picture, dance, show, act, rendition, lecture, reading, or other presentation, whether pictured, animated, or live, performed before an audience or group and which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sadomasochistic abuse or which includes obscenities or explicit verbal descriptions of narrative accounts of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, depicted or described, provided that the average person, applying contemporary community standards in the Village of Breedsville would find that the performance is taken as a whole appeal to the prurient interest in a patently offensive way and lacks serious literary, artistic, political or scientific value.

This means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic area, the post-pubertal human female breast below a point immediately above the top of the areola, the human male or female buttocks, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, the female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

D. Obscenity

Those slang words currently generally rejected for regular use in mixed society, that are used to re/er to genitals; female breasts, sexual conduct, or excretory functions or products either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

E. Sadomasochistic Abuse.

This means flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume, or in the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

F. Sexual Conduct

This shall mean human masturbation, sexual intercourse, or any touching of the genitals, pubic areas, or buttocks of the human male or female or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

G. Sexual Excitement

This shall mean the conditions of human male or female genitals or the female breasts when in a state of sexual stimulation of the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

SECTION 5 - DISPLAY OF OBSCENE MATERIALS

It shall be unlawful for any person knowingly to show, expose, place, post, exhibit or otherwise display obscene materials to any person or in any place whether public or private where such materials may be readily seen and their conduct or character distinguished by any person in the Village of Breedsville.

SECTION 6 - POSSESSION OF OBSCENE MATERIALS

It shall be unlawful for any person knowingly to possess any obscene materials for the purpose of furnishing, transmitting or displaying such materials in the Village of Breedsville.

SECTION 7 - PRESENTATION OF OBSCENE PERFORMANCES

It shall be unlawful for any person to present, sponsor, procure, direct, act, or otherwise participate in, or to assist in the presentation of an obscene performance in the Village of Breedsville.

SECTION 8- LOCATION

In order to prevent undesirable concentration of the foregoing, same shall not be located within four hundred (400) feet of any other commercial and service establishment of an "adult" nature or within four hundred (400) feet of any residential dwelling unit Said distances shall be measured along a line forming the shortest distance between any portion of the respective properties.

SECTION 9 • PENALTIES

Violation of these sections shall be punishable by a fine of not more than five hundred (\$500.00) dollars and costs of prosecution or by imprisonment in the county jail for a period not to exceed ninety (90) days, or by both such fine, costs and imprisonment as may be determined by a court of competent jurisdiction.

In addition to the remedy described above, the Village of Breedsville may, in its discretion, seek injunctive relief prohibiting the violation hereof.

CERTIFICATION

I further certify that Trustee: L. Weniger moved for the adoption of said Ordinance No. 2023-07 and that Trustee: T. Weniger seconded said motion.

I further certify that the following Trustees: L. Weniger, T. Weniger, P. Cooley, and President S. Rogusta Voted for the adoption of said Ordinance No. 2023-07 and that the following Trustees: No Trustee voted against such Ordinance. Absent: W. Yeager.

I further certify that said Ordinance No 2023-07 has been recorded in the Ordinance Book of the Village of Breedsville and that such recording has been authenticated by the signatures of the Village President and Village Clerk

I do hereby certify that a synopsis of this Ordinance No. 2023-07, in accordance with statutory requirements, was published on the 27th day of January 2023 in the Van Buren Reminder, a copy of which is attached hereto.

Steven Rogusta
President

Linda Norton
Village of Breedsville, Clerk

ATTEST:

Linda Norton
Village of Breedsville, Clerk

