

TOWN OF LOMIRA
DODGE COUNTY

Chapter 12

Ordinance Prohibiting Obscene Conduct, Distributing Obscene Material and Promoting the Same in the Town of Lomira

Section 1. Definitions

- A. **Obscene.** Obscene means that:
- (1) To the average person applying contemporary community standards, the predominant appeal of the matter, taken as a whole, is to prurient interest; i.e. a shameful or morbid interest in sexual conduct, nudity or excretion; and
 - (2) The matter depicts or describes in a patently offensive manner sexual conduct; and
 - (3) The work, taken as a whole, lacks serious literary, artistic, political or scientific value.
- B. **Material.** Material means any writing, picture, record, motion picture, printed material, or other representation or embodiment of the obscene.
- C. **Person.** Person means any individual, partnership, firm, association, corporation or other legal entity.
- D. **Disseminate.** Disseminate means to transfer possession of, with or without consideration.
- E. **Knowingly.** Knowingly means having general knowledge or reason to know or a belief or ground for believe which warrants further inspection or inquiry.
- F. **Performance.** Performance means any preview, play, show, skit, dance, film, or other exhibition performed before an audience.
- G. **Available to Public.** Available to public means that the matter or performance may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance.
- H. **Service to Patrons.** Service to patrons means the provision of services to paying guests in establishments providing food and beverages, including but not limited to hostessing, hat checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing, and entertaining.

- I. Promote. Promote means to cause, permit, procure, counsel, or assist.
- J. Sexual Conduct. Sexual conduct, as used in this section, shall include the following:
 - (1) Masturbation;
 - (2) Fellatio;
 - (3) Cunnilingus;
 - (4) Sexual Intercourse;
 - (5) Sadism;
 - (6) Masochism;
 - (7) Sado-masochistic Abuse;
 - (8) Bestiality;
 - (9) Sodomy;
 - (10) Group sexual activities in masturbation, fellatio, cunnilingus, sexual intercourse, sadism, masochism, sado-masochistic abuse, sodomy and bestiality.
 - (11) Simulated sexual intercourse, fellatio, cunnilingus, masturbation, sodomy and bestiality.

Section 2. Prohibited Conduct

- A. It shall be unlawful for any person to:
 - (1) Knowingly disseminate, distribute or make available to the public any obscene material; or
 - (2) Knowingly engage or participate in any obscene performance made available to the public; or
 - (3) Knowingly engage in commerce for commercial gain with obscene materials depicting and describing explicit sexual conduct, or excretion, utilizing displays, circulars, advertisements and other public sales efforts that promote such commerce primarily on the basis of their prurient appeal; or

- (4) Provide service to patrons in such a manner as to expose to public view:
 - (a) His or her genital, pubic hair, buttocks, anal region, or pubic hair region; or
 - (b) Any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, anal region, or pubic hair region; or
 - (c) Any portion of the female breast at or below the areola thereof; or
- (5) Knowingly promote the commission of any of the above-listed unlawful acts.

Section 3. Notice of Obscene Material or Action

- A. The Town attorney, on the basis of information lawfully gathered and supplied to him, may give actual notice of the obscene nature of any material, performance or activity to a person involved in or responsible for such.
- B. Such notice shall be in writing and delivered by mail or in person to the alleged offender.
- C. Such notice shall state that:
 - (1) In the opinion of the Town attorney or the Town Board the activity engaged in falls within the prohibition of this section;
 - (2) That if such activity is not ceased within seven days, the Town will take appropriate legal action; and
 - (3) That a declaratory judgment proceeding as described in this section is available if the person engaged in the challenged activity wishes to initiate the legal determination of whether the activity is, in fact, obscene.

Section 4. Types of Proceedings

- A. Declaratory judgment.
 - (1) Any person receiving notice in writing from the Town attorney that the specified activity is obscene may bring an action against the Town for declaratory judgment to determine whether such activity is obscene.
 - (2) If it is adjudged and declared by the Court that such activity is obscene, then the Town attorney may cause a publication of such judgment in a

newspaper of general circulation in this Town, and upon such publication all persons will be presumed to have actual notice of the obscene nature of the activity.

B. Prosecution.

- (1) The Town attorney may cause charges to be brought against any person presently engaging in or who has engaged in any prohibited activity in violation of this section.
- (2) If the Town attorney has given notice pursuant to this section, then such charges may be brought only after seven days after receipt of said notice.

C. Injunction.

- (1) The Town attorney may seek a temporary restraining order to enjoin any obscene performance or the service of patrons in violation of this section.
- (2) If the Town attorney has given written notice pursuant to this section, he may, after the passage of seven days, seek such a temporary restraining order.
- (3) Proceedings authorized by this section shall be in addition to any others provided by law.

Section 5. Penalties

- A. Every person convicted of a violation of this section shall be subject to a forfeiture of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense, and to a forfeiture of not less than five hundred dollars (\$500.00) for the second offense and subsequent offenses. Where no showing of indigency is made, the person violating this section shall be imprisoned in the County Jail until payment of the forfeiture, said imprisonment not to exceed thirty (30) days for each violation.
- B. Each act of violation, and every day upon which the violation occurs or continues, constitutes a separate offense.