

Chapter 9.16

OFFENSES AGAINST PUBLIC DECENCY

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9.16.010 Gambling Related Definitions.

For the purposes of this chapter, the following words and phrases shall have the following meanings:

A person engages in gambling if he or she bets something of value upon the outcome of a future event, which outcome is determined by an element of chance, or upon the outcome of a game, contest, or election, or conducts or participates in any bingo, lottery by sale of pickle cards, lottery, raffle, gift enterprise, or other scheme not authorized or conducted in accordance with the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the Nebraska County and City Lottery Act, or *Neb. Rev. Stat.* §9-701 (Reissue 1987), but a person does not engage in gambling by:

- (a) Entering into a lawful business transaction;
- (b) Playing an amusement device or a coin-operated mechanical game which confers as a prize an immediate, unrecorded right of replay not exchangeable for something of value;
- (c) Conducting or participating in a prize contest; or
- (d) Conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska Pickle

Card Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the Nebraska County and City Lottery Act, or *Neb. Rev. Stat. §9-701* (Reissue 1987).

Gambling device shall mean any device, machine, paraphernalia, writing, paper, instrument, article, or equipment that is used or usable for engaging in gambling, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Gambling device shall also include any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, instant win tickets which also provide the possibility of participating in a subsequent drawing or event, or tickets or stubs redeemable for something of value, except as authorized in the furtherance of parimutuel wagering. Supplies, equipment, cards, tickets, stubs, and other items used in any bingo, lottery by the sale of pickle cards, other lottery, raffle, or gift enterprise conducted in accordance with the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the Nebraska County and City Lottery Act, or *Neb. Rev. Stat. §9-701* (Reissue 1987) are not gambling devices within this definition.

Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment.

Prize contest shall mean any competition in which one or more competitors are awarded something of value as a consequence of winning or achieving a certain result in the competition and (a) the value of such awards made to competitors participating in the contest does not depend upon the number of participants in the contest or upon the amount of consideration, if any, paid for the opportunity to participate in the contest or upon chance and (b) the value or identity of such awards to be made to competitors is published before the competition begins.

Communication device shall include any and all devices, equipment, instruments, and related devices, including related personnel and messenger services, used or useful in the transmission of text, data, facsimiles, voice, video, writing, signs, signals, pictures, sounds, digital information, or any other information or signal by transmission or other connection between a point of origin and a point of reception. (Ord. 15620 §1; July 9, 1990).

9.16.020 Sexual Penetration Defined.

For purposes of this chapter, sexual penetration shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen. (Ord. 15620 §2; July 9, 1990).

9.16.025 Marijuana Defined.

(Repealed by Ord. 19927 §6; October 7, 2013; prior Ord. 18855 §1; December 4, 2006).

9.16.030 Toxic Compounds Defined.

(Repealed by Ord. 19927 §7; October 7, 2013; Ord. 19750 §1; August 6, 2012; Ord. 15620 §3; July 9, 1990).

9.16.035 Paraphernalia Defined.

(Repealed by Ord. 19927 §8; October 7, 2013; Ord. 19750 §2; August 6, 2012; Ord. 18855 §2; December 4, 2006).

9.16.040 Gambling Prohibited; Exceptions.

It shall be unlawful for any person to knowingly or intentionally engage in gambling; provided, however, nothing in this section shall be construed to:

(a) Apply to or prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings; or

(b) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the Nebraska County and City Lottery Act, or *Neb. Rev. Stat.* § 9-701 (Reissue 1987). (Ord. 15620 §4; July 9, 1990).

9.16.050 Delivery of Gambling Information Prohibited.

It shall be unlawful for any person, either personally or on behalf of another, to furnish or deliver any information to another person having knowledge or notice that the recipient of such information uses such information to engage in gambling in violation of Section 9.16.040. The term notice shall include receipt, acquisition, or possession of written information furnished by the City Attorney, which information discloses the commission of acts which are alleged violations of Section 9.16.040. (Ord. 15620 §5; July 9, 1990; P.C. §9.16.010; Ord. 8846 §3; October 18, 1965; prior Ord. 3782 §1; December 9, 1940).

9.16.060 Communication Devices; Uses Prohibited.

It shall be unlawful for any person to use a communication device for the transmission of bets, or wagers, or any information to another person having knowledge or notice that the recipient of such information uses such information to engage in gambling either personally or on behalf of another in violation of Section 9.16.040. (Ord. 15620 §6; July 9, 1990; P.C. §9.16.030; Ord. 8846 §2; October 18, 1965).

9.16.070 Exceptions.

Nothing in Sections 9.16.050 and 9.16.060 shall be construed to prevent the transmission of information for use in news reporting, including sporting events, point spreads, betting odds, or statistics. (Ord. 15620 §7; July 9, 1990; P.C. §9.16.040; Ord. 8846 §4; October 18, 1965).

9.16.080 Gambling House Prohibited.

It shall be unlawful for any person to set up or keep any gambling house, table, or room or place whatever, or any gambling device of any kind, form, or character, at which any person engages in gambling and it shall be unlawful for any person to suffer or permit any such gambling device to be set up, or used in or upon any premises or tenements belonging to or under the control of such person, for the purpose of engaging in gambling. (Ord. 15620 §8; July 9, 1990; P.C. §9.36.010; Ord. 3489 §21-401; July 6, 1936).

9.16.090 Permitting Gambling Unlawful.

It shall be unlawful for the owner or operator of any place offered for or held open to the use of the public within the city to engage in or permit in, at, or about said place, any gambling. (Ord. 15620 §9; July 9, 1990: P.C. §9.36.040: Ord. 3489 §21-404; July 6, 1936).

9.16.100 Loitering Within Gambling Place Prohibited.

It shall be unlawful for any person within the city to visit, or frequent, or loiter within, any room or place wherein gambling as defined in this chapter is conducted or permitted, knowing the same to be such gambling place, or to induce any other person to visit or frequent any such gambling place. (Ord. 15620 §10; July 9, 1990: P.C. §9.36.070: Ord. 3489 §21-407; July 6, 1936).

9.16.105 Paraphernalia; Use or Possession; Unlawful; Penalty.

(Repealed by Ord. 19927 §9; October 7, 2013: Ord. 18855 §3; December 4, 2006).

9.16.110 Toxic Compounds; Unlawful Use.

(Repealed by Ord. 19927 §10; October 7, 2013: Ord. 19750 §3; August 6, 2012: Ord. 15620 §11; July 9, 1990: P.C. §9.45.020: Ord. 9668 §2; December 30, 1968).

9.16.120 Toxic Compounds; Unlawful Possession.

(Repealed by Ord. 19927 §11; October 7, 2013: Ord. 15620 §12; July 9, 1990: P.C. §9.45.030: Ord. 9668 §3; December 30, 1968).

9.16.130 Toxic Compounds; Unlawful Sale.

(Repealed by Ord. 19927 §12; October 7, 2013: Ord. 15620 §13; July 9, 1990: P.C. §9.45.040: Ord. 9668 §4; December 30, 1968).

9.16.140 Toxic Compounds; Penalty for Violations.

(Repealed by Ord. 19927 §13; October 7, 2013: Ord. 19750 §124; August 6, 2012: Ord. 15620 §14; July 9, 1990: P.C. §9.45.050: Ord. 9668 §5; December 30, 1968).

9.16.145 Possession of Marijuana; One Ounce or Less; Unlawful; Penalty.

(Repealed by Ord. 19927 §14; October 7, 2013: Ord. 19100 §1; July 7, 2008: Ord. 18855 §4; December 4, 2006).

9.16.150 Prostitution.

It shall be unlawful for any person to intentionally or knowingly perform, offer or agree to perform any act of sexual penetration with any person not his or her spouse in exchange for money or other thing of value.

It shall be unlawful for any person purposely or knowingly to solicit, induce, or attempt to induce another person to engage in an act or acts prohibited hereunder.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$100.00, recoverable with costs.

Any person violating this section shall be issued a citation in lieu of arrest pursuant to law. (Ord. 15620 §15; July 9, 1990: P.C. §9.52.065: Ord. 13762 §8; February 13, 1984).

9.16.160 Keeping a Place of Prostitution.

It shall be unlawful for any person who has or exercises control over the use of any place which offers seclusion or shelter to knowingly grant or permit the use of such place to engage in an act or acts as prohibited in Section 9.16.150. (Ord. 15620 §16; July 9, 1990: P.C. §9.52.066: Ord. 13762 §9; February 13, 1984).

9.16.170 Unlawful to Visit or Frequent House of Prostitution.

It shall be unlawful for any person to visit or frequent a house, building, or place of prostitution for the purpose of engaging in an act or acts as prohibited in Section 9.16.150. (Ord. 15620 §17; July 9, 1990: P.C. §9.52.080: Ord. 13762 §11; February 13, 1984: prior Ord. 3489 §21-208, as amended by Ord. 3726; March 11, 1940).

9.16.180 Public Indecency and Indecent Exposure Prohibited.

It shall be unlawful for any person, in a public place or on private premises, and under circumstances in which he or she knows or reasonably should know that his or her conduct may readily be observed from either a public place or other private premises, (a) to perform an act of sexual penetration; (b) to fondle or caress the genitals of another person of the same or opposite sex; or (c) to intentionally or recklessly expose his or her genitals in such a manner or under such circumstances as to affront or alarm another person. (Ord. 15620 §18; July 9, 1990: P.C. §9.52.100: Ord. 13762 §13; February 13, 1984: prior Ord. 3489 §21-210, as amended by Ord. 6764; June 2, 1958).

ANNOT.: Indecent exposure: The words "indecent," "immodest," and "filthy," as contained in former section, are not capable of sufficiently precise definitions to afford individuals with knowledge of what behavior is prohibited. *State v. Metzger*, 211 Neb. 593 (1982).

9.16.185 Spitting on Another Person; Prohibited.

It shall be unlawful for any person to intentionally, knowingly, or recklessly spit or expectorate upon any person within the City. (Ord. 17578 §1; November 15, 1999).

9.16.190 Spitting on Sidewalks and Other Places.

It shall be unlawful for any person to spit or expectorate on any sidewalk, crosswalk, or in any cellarway, window, door, grating, or entrance to any basement, excavation, area, in, under, or leading from public sidewalk space in the city; or to spit or expectorate on the floor, wall, stairway, in any hall or in the elevator of any public building in said city. (Ord. 15620 §19; July 9, 1990: P.C. §9.68.090: Ord. 3480 §21-609; July 6, 1936).

9.16.200 Smoking and Spitting in Buses; Prohibited.

It shall be unlawful for any person to smoke in or to spit, or expectorate, on the floor, grating, step, or platform of any bus used for the purpose of conveying passengers. (Ord. 15620 §20; July 9, 1990: P.C. §9.68.100: Ord. 3489, as amended by Ord. 4075; December 31, 1945).

9.16.210 Urinating or Defecating in Public; Prohibited.

It shall be unlawful for any person to urinate or defecate on a public street, alley, or any other property, public or private, open to or visible to the public.

This section shall not apply to urinating or defecating in any restroom facility in a manner for which that facility was designed. (Ord. 16119 §1; May 26, 1992).

9.16.220 Public Nudity; Statement of Intent.

It is the intent of the City to prohibit the exploitation of human nudity for the purpose of advertising, selling, or otherwise promoting the economic interests of any type of business enterprise. It is also the intent of the City to further the government's interest in avoiding the harmful secondary effects of this activity such as prostitution, sexual assaults, criminal activity, degradation of women, and other activities which break down family structure. This prohibition is not intended to extend to any expression of opinion or the performance of a bona fide play, ballet, or drama protected by the First Amendment to the Constitution of the United States or by Article I, §5 of the Constitution of the State of Nebraska. (Ord. 16935 §1; February 20, 1996).

9.16.230 Public Nudity; Unlawful.

(a) It shall be unlawful for a person to, knowingly or intentionally, in a public place or in any place open to the public, appear in a state of nudity.

(b) 'Nudity' means the showing of the human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering on any part of the areola and nipple, or the showing of covered male genitals in a discernibly turgid state.

(c) This section shall not apply to:

(1) Any theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibit or performance;

(2) Any dressing/changing room or restroom facility open to the public;

(3) Any person under twelve years of age; or

(4) Mothers who are breast feeding. (Ord. 17757 §1; November 6, 2000: prior Ord. 17730 §1; September 25, 2000: prior Ord. 16935 §2; February 20, 1996).

9.16.240 Sexual Contact; Prohibited.

(a) It shall be unlawful for any employee or performer (including amateur performers) in any business or commercial establishment to have any sexual contact with any other employee, performer or patron for gratuity, pay or other remuneration, direct or indirect, or in conjunction with or as part of any performance or entertainment in any business or commercial establishment.

(b) It shall be unlawful for any patron to have sexual contact with any employee or performer in any business or commercial establishment.

(c) For the purposes of this section, sexual contact shall mean the intentional touching between a patron, a performer, or employee involving contact by or with a patron's, performer's, or employee's sexual organ, buttock(s), or breast(s), whether covered or not, or kissing, when such contact can reasonably be construed as being for the purpose of sexual arousal or sexual gratification of either party or any observer.

(d) It shall be unlawful for any person purposely or knowingly to solicit, induce, or attempt to induce another person to engage in an act or acts prohibited hereunder.

(e) It shall be unlawful for the owner, lessee, proprietor, or manager of any business or commercial establishment to knowingly allow any person on the premises of such business or commercial establishment to engage in an act or acts prohibited hereunder.

(f) The provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances. (Ord. 17657 §1; April 24, 2000; prior Ord. 17613 §1; February 22, 2000).

9.16.250 Residency Restrictions for Sexual Predators.

(a) Purpose. The Nebraska Legislature finds that certain sex offenders present a high risk of recidivism and has enabled municipalities to restrict such person's place of residence as provided in the Sexual Predator Residency Restriction Act. It is the intent and purpose of this section to serve the City's compelling interest to protect the health, safety and welfare of the children of the City of Lincoln, Nebraska from the risk that sexual predators may reoffend where children congregate on a regular concentrated basis by prohibiting sexual predators from establishing a residence around schools.

(b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings prescribed to them, except where the context clearly indicates a different meaning:

Sex Offender shall mean an individual who has been convicted of a crime listed in *Neb. Rev. Stat.* §29-4003 and who is required to register as a sex offender pursuant to the State of Nebraska's Sex Offender Registration Act.

Sexual Predator shall mean an individual as defined by Nebraska state statute.

Reside or residence shall mean a place where the sexual predator abides, dwells, lives or sleeps, which may include more than one location and may be mobile or transitory.

School shall mean a public, private, denominational or parochial school which meets the requirements for accreditation or approval prescribed by the State of Nebraska, pursuant to Nebraska Revised Statute Chapter 79, and which has or includes any or all grades kindergarten through 12th grade.

(c) Residency Restrictions. It shall be unlawful for a sexual predator to reside within 500 feet of the real property comprising a school.

(d) Measurement of Distance. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the real property comprising a residence to the nearest outer property line of the real property comprising the school.

(e) Penalty for Violation. Any person who shall violate any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months or by a fine of not less than \$250.00 nor more than \$500.00 or both such fine and imprisonment.

(f) Exceptions. A sexual predator residing within 500 feet of the real property comprising a school does not commit a violation of this ordinance if any of the following apply:

(1) The sexual predator resides within a prison or a correctional or treatment facility operated by the state or a political subdivision.

(2) The sexual predator has established a residence before January 1, 2010, and has not moved from that residence.

(3) The sexual predator has established a residence after January 1, 2010, and the school triggering the restriction was established after the initial date of the sexual predator's residence at that location.

(g) This section does not preclude a sexual predator deemed to be handicapped or disabled under the Fair Housing Act, Rehabilitation Act, or Americans with Disabilities Act from pursuing requests for reasonable accommodations.

(h) If any provision of this section or its application to any person or circumstance shall be held invalid, the remainder of the section or the application of the provisions to other persons or circumstances shall not be affected. (Ord. 19347 §1; March 1, 2010; prior Ord. 19334 §1; December 7, 2009; Ord. 18731 §1; May 22, 2006).