

## Chapter 9.48

### ALCOHOL AND DRUG OFFENSES

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#### 9.48.010 Definitions.

Unless the context otherwise requires, the words and phrases as herein defined are used in this chapter in the sense given them in the following definitions.

**Alcoholic liquor** shall include alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and capable of being consumed as a beverage by a human being. The provisions of this chapter shall not apply to:

(1) alcohol used in the manufacture of denatured alcohol produced in accordance with acts of Congress and regulations promulgated thereunder;

(2) flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, or toilet preparations, or food products unfit for beverage purposes, but this chapter shall not be construed to exclude or not apply to alcoholic liquor used in the manufacture, preparation, or compounding of such products, or confections or candy that contains more than one-half of one percent alcohol; or

(3) wine intended for use and used by any church or religious organization for sacramental purposes.

**Marijuana** shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of

germination. When the weight of marijuana is referred to in this chapter, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time.

**Minor** shall mean any person, male or female, under twenty-one years of age, regardless of marital status.

**Paraphernalia.**

(a) As used in Section 9.48.130, unless the context otherwise requires, paraphernalia shall mean all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body marijuana as defined in Section this section or any toxic compound as defined in this section, in violation of any section of this code or of the Nebraska Revised Statutes. Paraphernalia shall include, but not be limited to, the following:

(1) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(2) Balloons, bags, canisters, aerosol cans, and other objects used, intended for use, designed for use, or modified for use in inhaling, absorbing, or otherwise introducing toxic compounds into the human body; and

(3) Objects used, intended for use, designed for use, or modified for use in ingesting, inhaling, or otherwise introducing marijuana into the human body, which shall include but not be limited to the following:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, which has become too small or too short to be held in the hand;

(vi) Blunts, meaning cigarettes or cigar wrappers with some or all of the tobacco removed.

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs; and

(xiii) Ice pipes or chillers.

(b) In determining whether an object is paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any law relating to any controlled substance or toxic compound;

(3) The proximity of the object, in time and space, to marijuana and/or toxic compound;

(4) The proximity of the object to any controlled substance;

(5) The existence of any residue of marijuana or any toxic compound;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of Sections 9.48.090, 9.48.100, 9.48.110, and 9.48.120 or any similar state statute. The innocence of an owner, or of anyone in control of the object, as to a direct violation of those sections shall not prevent a finding that the object is intended for use, or designed for use as paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(13) The existence and scope of any legitimate use for the object in the community; and

(14) Expert testimony concerning its use.

**Person** shall mean any natural person, corporation, partnership, or association.

**Premises** shall mean the designated area specified in a license issued under the Nebraska Liquor Control Act.

**Toxic Compounds.** Toxic compounds shall mean and include any compound, liquid, or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethylacetate, ethyl alcohol, ethylene dichloride, ethylene trichloride, hexane, isopropanol, isopropyl alcohol, methyl cellosolve acetate, methyl alcohol, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol, petroleum ether, toluene, toluol, trichloroethane, trichloroethylene, or any other substance which may be breathed, inhaled, ingested, or otherwise introduced into the human system for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, irrational behavior, inebriation, excitement, or in any manner changing, distorting, or disturbing the auditory, visual, mental or nervous processes. (Ord. 19927 §15; October 7, 2013).

#### **9.48.020 Furnishing False Identification.**

It shall be unlawful for any person to lend a motor vehicle operator's license, birth certificate, selective service registration card, or other identification document, to any minor for the use of such minor in obtaining or attempting to obtain alcoholic liquor. (Ord. 19927 §16; October 7, 2013).

#### **9.48.030 Minors; Misrepresenting Age.**

(a) No minor shall, within the city, obtain or attempt to obtain any alcoholic liquor by misrepresentation of age, or by any other method, in any premises where alcoholic liquor is sold.

(b) No minor shall, within the city, by misrepresentation of age, enter or attempt to enter any premises where alcoholic liquor is sold. (Ord. 19927 §17; October 7, 2013).

**9.48.040 Minors; Possession or Consumption of Alcoholic Liquor Prohibited.**

(a) No minor, within this city, or upon property owned by the City of Lincoln, whether within or without the corporate limits, may consume or have in his or her possession or physical control, any alcoholic liquor.

(b) It is an affirmative defense to prosecution under this section if:

(1) the minor consumed, possessed, or had physical control of alcoholic liquor as part of a bonafide religious rite, ritual, or ceremony; or

(2) the minor consumed, possessed, or had physical control of alcoholic liquor in his or her permanent place of residence.

(c) Any person older than eighteen years of age and under twenty-one years of age who violates this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$500.00, up to three months in jail, or both.

(d) Any person eighteen years of age or younger who violates this section who has one or more licenses or permits issued under the State Motor Vehicle Operator's License Act, shall be guilty of a misdemeanor and upon conviction or adjudication thereof be punished by a fine not to exceed \$500.00, three months in jail, or both, and:

(1) For the first offense, the court may, as part of the judgment of conviction or adjudication, impound any such licenses or permits for thirty days and require such person to attend an alcohol education class; and

(2) For a second offense, the court may, as part of the judgment of conviction or adjudication, impound any such licenses or permits for ninety days and require such person to complete no fewer than twenty and no more than forty hours of community service and to attend an alcohol education class;

(3) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, impound any such licenses or permits for twelve months and require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

(e) Any person eighteen years of age and younger who violates this section who does not have a permit or license issued under the State Motor Vehicle Operator's License Act, shall be guilty of a misdemeanor and upon conviction or adjudication thereof be punished by a fine not to exceed \$500.00, three months in jail, or both, and:

(1) For the first offense, the court may, as part of the judgment of conviction or adjudication, prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and require such person to attend an alcohol education class; and

(2) For a second offense, the court may, as part of the judgment of conviction or adjudication, prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and require such person to complete no fewer than twenty hours and not more than forty hours of community service and to attend an alcohol education class;

(3) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and require such person to complete no fewer than sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

(f) A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to Neb. Rev. Stat. §§ 60-497.01 to 60-497.04. (Ord. 19927 §18; October 7, 2013).

**9.48.050 Consuming Alcoholic Liquor on Public Property; Prohibited.**

(a) It shall be unlawful for any person to consume alcoholic liquor in or on the public streets, alleys, parking areas, roads or highways within the city, or upon property within the city owned by the state or any political subdivision thereof, unless authorized by the governing body having jurisdiction over such property and by the provisions of a license issued by the Nebraska Liquor Control Commission.

(b) Any person violating this section shall be guilty of a misdemeanor and upon conviction thereof:

(1) For a first offense, shall be fined no more than \$500.00; and

(2) For a second or subsequent conviction, shall be fined no more than \$500.00, sentenced to jail for not more than six months, or both. (Ord. 19927 §19; October 7, 2013).

**9.48.060 Consumption in Unlicensed Premises; Prohibited.**

(a) It shall be unlawful for any person to consume or allow consumption of alcoholic liquors within the city in any restaurant, café, club, or in any other place open to the public except as specifically permitted by a license issued by the Nebraska Liquor Control Commission.

(b) Any person violating this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$500.00, three months in jail, or both. (Ord. 19927 §20; October 7, 2013).

**9.48.070 Consumption Inside Vehicles; Prohibited.**

(a) It shall be unlawful for any person to consume alcoholic liquors inside vehicles while upon the public streets, alleys, parking areas, roads, or highways.

(b) Any person violating this section shall be guilty of an infraction and upon conviction thereof shall be punished by a fine not to exceed \$100.00. (Ord. 19927 §21; October 7, 2013).

**9.48.080 Open Alcoholic Beverage Container in Motor Vehicle; Prohibited.**

(a) It shall be unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in or on the public streets, alleys, parking areas, roads, or highways within the City, or upon property within the City owned by the state or any political subdivision thereof.

(b) For purposes of this section

(1) Alcoholic beverage shall mean:

(i) Beer, ale, porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor,

(ii) Wine of not less than one-half of one percent of alcohol by volume, or

(iii) Distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(2) Limousine shall mean a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and no more than fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses.

(3) Except as provided by Neb. Rev. Stat. Chapter 53, open alcoholic beverage container shall mean any bottle, can, or other receptacle that contains any amount of alcoholic beverage and (i) is open or has a broken seal or (ii) the contents of which are partially removed.

(4) Passenger area shall mean the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(c) Any person violating this section shall be guilty of an infraction and upon conviction thereof shall be punished by a fine not to exceed \$100.00.

(d) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the Public Service Commission and subject to Neb. Rev. Stat. Chapter 75, Article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this state if (1) the driver of the limousine or bus is prohibited from consuming alcoholic liquor, and (2) alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area. (Ord. 19927 §22; October 7, 2013).

**9.48.090 Possession of Marijuana; One Ounce or Less; Unlawful; Penalty.**

(a) It shall be unlawful for any person to knowingly or intentionally possess marijuana weighing one ounce or less.

(b) Penalty.

(1) For the first offense, be guilty of an infraction, receive a citation, and upon conviction thereof, shall be punished by a \$300.00 fine, and be assigned to attend a course as prescribed in *Neb. Rev. Stat. § 29-433* if the judge determines that attending such course is in the best interest of the individual defendant;

(2) For the second offense, be guilty of a misdemeanor, receive a citation, and upon conviction thereof, shall be punished by a \$400.00 fine and may be imprisoned not to exceed five days; and

(3) For the third and all subsequent offenses, be guilty of a misdemeanor, receive a citation, and upon conviction thereof, shall be punished by a \$500.00 fine, and be imprisoned not to exceed seven days.

(4) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(5) In addition to the penalties provided in this section, if the person convicted or adjudicated of violating this section is eighteen years of age or younger:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any licenses or permits issued under the State Motor Vehicle Operator's License Act for thirty days, and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days, and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months, and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(6) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order, and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order, and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order, and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection. (Ord. 19927 §23; October 7, 2013).

#### **9.48.100 Toxic Compounds; Unlawful Use.**

It shall be unlawful for any person for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, irrational behavior, inebriation, excitement, or in any manner changing, distorting, or disturbing the auditory, visual, mental or nervous processes to intentionally breathe, inhale, drink, ingest, or otherwise introduce into the human system any toxic compound as defined herein or intentionally induce or entice any person to breathe, inhale, drink, ingest, or otherwise introduce into the human system any such substance for such purpose; provided, however, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia or medication prescribed by a licensed practitioner of medicine and surgery for medical or dental purposes. (Ord. 19927 §24; October 7, 2013).

**9.48.110 Toxic Compounds; Unlawful Possession.**

It shall be unlawful for any person, for the purpose of violating Section 9.48.100, to possess any toxic compound as defined herein. (Ord. 19927 §25; October 7, 2013).

**9.48.120 Toxic Compounds; Unlawful Sale.**

It shall be unlawful for any person to sell or offer for sale, deliver, give, or offer to give, any toxic compound as herein defined to any person if the seller, offerer, or deliverer knows or has reason to know that the compound sold, offered for sale, delivered, given, or offered to be given, will be used for the purpose of violating Section 9.48.100. (Ord. 19927 §26; October 7, 2013).

**9.48.130 Paraphernalia; Use or Possession; Unlawful; Penalty.**

(a) It shall be unlawful for any person to use, or to possess with intent to use, paraphernalia to manufacture, ingest, inhale, or otherwise introduce into the human body marijuana or any toxic compounds in violation of any section of this code or of the Nebraska Revised Statutes.

(b) Any person who violates this section shall be guilty of an infraction. (Ord. 19927 §27; October 7, 2013).

**9.48.140 Violations; Penalty.**

Any person who violates any provision of this chapter, for which a penalty is not otherwise provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of no more than \$500.00, sentenced to jail not more than three months, or both.

This penalty shall be cumulative in addition to any revocation or suspension of any license or any other penalty prescribed by law. (Ord. 19927 §28; October 7, 2013).

**9.48.150 Severability and Savings Clause.**

(a) Each section and each subdivision of a section of this chapter is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the passage of this ordinance is concerned and invalidity of any section or subdivision of a section of this chapter shall not invalidate any other section or subdivision of a section thereof.

(b) This chapter shall in no manner affect pending actions, either civil or criminal, founded on or growing out of any ordinance or part of any ordinance hereby repealed; and this chapter shall in no manner affect rights or causes of action, either civil or criminal, not in suit that may have already accrued or grown out of any ordinance or part of any ordinance hereby repealed. (Ord. 19927 §29; October 7, 2013).