

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, REPEALING THE BRIGHTON MUNICIPAL CODE SECTION 9-12-20. VIOLATION AND PENALTY FOR TRESPASS AND ADOPTING A NEW SUBSECTION 9-12-10(c) SETTING PENALTIES FOR TRESPASS VIOLATIONS IN ACCORDANCE WITH ARTICLE 1-24 GENERAL PENALTY; ADOPTING SECTION 9-16-20 DISORDERLY CONDUCT SETTING FORTH WHAT CONSTITUTES DISORDERLY CONDUCT; AND ADOPTING SUBSECTIONS 9-16-90(a)(4) and (c) HARASSMENT TO INCLUDE ELECTRONIC FORMS OF HARASSMENT; REPEALING AND REENACTING OR AMENDING SECTIONS 9-16-51. PUBLIC INDECENCY, 9-16-52. INDECENT EXPOSURE, AND 9-16-53, PUBLIC URINATION AND DEFECTION; AND, SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

ORDINANCE NO. 2183

INTRODUCED BY: Kniss

WHEREAS, the current penalty provisions related to defendant convicted of or pleading guilty to trespass violations unduly limit the discretion of the Municipal Court to determine the appropriate penalties for such trespass violations ; and

WHEREAS, the penalty and other provisions of Article 1-24. General Penalty of the Brighton Municipal Code provide the appropriate penalties and discretion afforded the Municipal Court and should be made applicable to trespass violations; and

WHEREAS, the City has an overriding interest in prohibiting conduct or speech which incites others to unlawful conduct or provokes retaliatory action amounting to a breach of the peace and clear enough in its prohibitions that people of common intelligence need not guess at its meaning; and

WHEREAS, the provisions prohibiting harassment should include electronic means of communication over and beyond the telephone; and

WHEREAS, the commission of acts constituting indecency, indecent exposure, and public urination and defecation that occur in such a manner and place should be prohibited whether in a public place or where the conduct may reasonably be expected to be viewed by members of the public; and

WHEREAS, the City Council finds and determines that the additions and amendments to the Brighton Municipal Code set forth in this ordinance are necessary for the protection of the public health, safety and welfare and are within the constitutional protections of free speech.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Section 9-12-20. Violation and penalty for trespass of the Brighton Municipal Code is hereby repealed.

~~Sec. 9-12-20. Violation and penalty for trespass.~~

~~(a) A person who is found guilty or enters a plea of guilty or nolo contendere to violating Section 9-12-10 shall be punished as follows:~~

~~(1) For the first offense, a fine of not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00);~~

~~(2) For the second offense committed within five (5) years of a first offense, a fine of not less than fifty dollars (\$50.00) nor more than three hundred dollars (\$300.00);~~

~~(3) For the third and all subsequent offenses committed within five (5) years of the first offense, a minimum penalty of a three-hundred dollar fine.~~

~~(b) The minimum fines imposed by this Section shall be mandatory and the Court shall not suspend a fine, in whole or in part.~~

Section 9-12-10. Acts constituting trespass is amended by the addition of a new subsection (c) to read as follows:

(c) A person who is found guilty or enters a plea of guilty or nolo contendere to violating this Section 9-12-10, as the same may be amended, shall be punished as provided in Article 1-24. General penalty of this Code.

Section 2. Section 9-16-20 Disorderly conduct of the Brighton Municipal Code is hereby repealed and reenacted in its entirety to read as follows:

Sec. 9-16-20. Disorderly conduct.

~~It is unlawful for any person to disturb or to tend to disturb peace of others by violent, tumultuous, offensive or obstreperous conduct, by loud or unusual noises by unseemly, profane, obscene or offensive language calculated to provoke a breach of the peace; or by assaulting, striking or fighting another; or for any person to permit any such conduct in any house or upon any premises owned or possessed by him or her or under his or her management or control, when the prohibition of such acts is within his or her power to prevent, so that others in the vicinity are or may be disturbed thereby.~~

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

(b) Makes an unreasonable noise in a public place near a private residence that he or she has no right to occupy, which, under all of the circumstances presented, would cause a person of ordinary sensitivities significant annoyance and irritation; or

(c) *Fights with another in a public place except in an amateur or professional contest of athletic skill;*

(d) *Not being a peace officer, discharges a firearm in a public place except when engaged the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States;*

(e) *Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.*

Section 3. Subsections 9-16-90(a)(4) and (c) Harassment of the Brighton Municipal Code are hereby repealed and reenacted in their entirety to read as follows:

Sec. 9-16-90. Harassment

~~(a)(4) Initiate communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion or proposal by telephone which is obscene;~~

(a)(4) Initiate communication with a person, anonymously or otherwise by telephone, TELEPHONE NETWORK, TEXT MESSAGE, INSTANT MESSAGE, COMPUTER, COMPUTER NETWORK, OR COMPUTER SYSTEM in a manner intended to harass or threaten bodily injury or property damage, or make any comment, request, suggestion or proposal by telephone, TELEPHONE NETWORK, TEXT MESSAGE, INSTANT MESSAGE, COMPUTER, COMPUTER NETWORK OR COMPUTER SYSTEM that is obscene;

~~(c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received.~~

(c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call, TEXT MESSAGE, INSTANT MESSAGE, ELECTRONIC MAIL, OTHER ELECTRONIC COMMUNICATION OR OTHER COMPUTER-CREATED COMMUNICATION was either made or received.

Section 4. Sections 9-16-51. Public indecency, 9-16-52. Indecent exposure, and 9-16-52, Public urination and defecation are repealed and reenacted in their entirety or amended to read as follows:

Sec. 9-16-51. Public indecency.

~~It is unlawful for any person to commit the following acts in a public place, or where the conduct may reasonably be expected to be viewed by members of~~

the public:

- ~~(1) An act of sexual intercourse;~~
- ~~(2) A lewd exposure of the body done with the intent to arouse or to satisfy the sexual desire of any person; or~~
- ~~(3) A lewd fondling or caress of the body of another person.~~

(1) Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(a) An act of sexual intercourse; or

(b) A lewd exposure of an intimate part of the body as defined herein, not including the genitals, done with intent to arouse or to satisfy the sexual desire of any person; or

(c) A lewd fondling or caress of the body of another person; or

(d) A knowing exposure of the person's genitals to the view of a person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) "Intimate parts" means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person.

Sec. 19-16-52. Indecent exposure.

~~It is unlawful in a public place or where the conduct may reasonably be expected to be viewed by members of the public for any person to knowingly expose his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.~~

(1) A person commits indecent exposure:

(a) If he or she knowingly exposes his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person with the intent to arouse or to satisfy the sexual desire of any person; or

(b) If he or she knowingly performs an act of masturbation in a manner which exposes the act to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(2) For purposes of this section, "masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own genitals or pubic area for the purpose of sexual gratification or arousal of the person, regardless of whether the genitals or pubic area is exposed or covered.

Sec. 9-16-53. Public urination and defecation.

It is unlawful for any person to urinate or defecate in any public place where such conduct is likely to be viewed by any other person OR WHERE THE CONDUCT MAY REASONABLY BE EXPECTED TO BE VIEWED BY MEMBERS OF THE PUBLIC and causes affront or alarm to such other person. It shall not be an offense under this Section if such urination and defecation is done in a public place designated for such purposes.

Section 5. Purpose. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 6. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance

Section 7. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 8. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 18th DAY OF November, 2014.

CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

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CITY OF BRIGHTON, COLORADO

Richard N. McLean, Mayor

ATTEST:

Natalie Hoel, City Clerk

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