

ORDINANCE NO. 48-198

AN ORDINANCE CREATING NEW CHAPTER 5.36 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE CRIME OF GAMBLING AND OTHER GAMBLING-RELATED CRIMES AND THE PENALTIES THEREFOR, AND REPEALING THE ORIGINAL OF SAID CHAPTER 5.36.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.36.010 of the Code of the City of Wichita, Kansas, shall read as follows: **“Definitions.** For the purpose of this chapter, the words and phrases used herein shall have the following meanings unless otherwise clearly indicated by the context:

- (a) “Bet means a bargain in which the parties agree that, dependent upon chance, one stands the chance to win or lose something of value specified in the agreement. A bet does not include:
 - (1) Bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
 - (2) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;
 - (3) a lottery as defined in this section;

(4) any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;

(5) a lottery operated by the state pursuant to the Kansas lottery act;

(6) any system of parimutuel wagering managed, operated or conducted in accordance with the Kansas parimutuel racing act; or

(7) tribal gaming.

(b) “Lottery” means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include;

(1) A lottery operated by the state pursuant to the Kansas lottery act; or

(2) tribal gaming.

(c) “Consideration” means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

As used in this subsection, consideration does not include:

(1) Sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious charitable, fraternal, educational or veteran organization licenses to manage, operate or conduct bingo games under the laws of the state of Kansas and

- it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701 and amendments thereto;
- (2) sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas lottery act;
 - (3) sums of money paid by or for participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
 - (4) Sums of money paid by or for a person to participate in tribal gaming.
- (d) (1) “Gambling device” means:
- (A) Any so-called “slot machine” or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and (i) which when operated may deliver, as the result of chance, any money or property; or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
 - (B) any other machine, mechanical device, electronic device or other contrivance (including, but not limited to, roulette wheels and similar devices) which is equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits to be removed, or is otherwise designed, manufactured or

altered primarily for the use in connection with gambling, and (i) which when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

(C) any subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or

(D) any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet.

The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(2) Gambling device does not include:

(A) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(B) any machine, mechanical device, electronic device or other contrivance, such as a coin operated blowing alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (i) which when operated does not deliver, as a result of chance, any money or (ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;

(C) any so-called claw, crane, or digger machine and similar devices which are designed and manufactured primarily for use at carnivals or country or state fairs; or

(D) any machine, mechanical device, electronic device or other contrivance used in tribal gaming;

(E) A “gambling place” is any place, room, building, vehicle, tent or location which is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(F) “Tribal gaming” has the meaning provided by K.S.A. 74-9802 and amendments thereto.

(G) “Tribal gaming commission” has the meaning provided by K.S.A. 74-9802 and amendments thereto.

SECTION 2. Section 5.36.020 of the Code of the City of Wichita, Kansas, shall read as follows: “**Gambling.** Gambling is:

- (a) Making a bet; or
- (b) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

Anyone gambling within the corporate limits of the city is guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 3. Section 5.36.030 Code of the City of Wichita, Kansas, shall

read as follows: “**Permitting premises to be used for gambling.** Permitting premises to be used for gambling is intentionally:

- (a) Granting the use or allowing the continued use of a place as a gambling place; or
- (b) Permitting another to set up a gambling device for use in a place under the offender’s control.
- (c) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 4. Section 5.36.040 of the Code of the City of Wichita, Kansas, shall read as follows: **Possession of a gambling device.**

- (a) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee, or otherwise, of any gambling device.
- (b) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.
- (c) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner’s or the defendant’s possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.
- (d) It shall be a defense to a prosecution under this section that the gambling device is possessed or under custody or control of a manufacturer registered under the federal

gambling devices act of 1962 (15 U.S.C. 1171 *et seq.*) or a transporter under contract with such manufacturer with the intent to transfer for use:

- (1) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;
- (2) by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;
- (3) in a state other than the state of Kansas; or
- (4) in tribal gaming.

SECTION 5. Section 5.36.050 of the Code of the City of Wichita, Kansas, shall read as follows: “**Penalty.** Any person, who, within the corporate limits of the City of Wichita, violates any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by six (6) month’s imprisonment, or by both such fine and imprisonment.”

SECTION 6. The original of Chapter 5.36 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 7. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of March,
2009.

Carl Brewer, Mayor

Attest:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law