

ORDINANCE NO. _____

1 AN ORDINANCE amending Section 10.16.030 of the Lincoln Municipal Code
2 to bring the level of alcohol in blood or breath into compliance with state statute; and
3 repealing Section 10.16.130 of the Lincoln Municipal Code as hitherto existing.

4 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

5 Section 1. That Section 10.16.030 of the Lincoln Municipal Code be amended
6 to read as follows:

7 **10.16.030 Under Influence of Alcoholic Liquor; Alcohol in Body Fluid; Penalty.**

8 It shall be unlawful for any person to operate or be in the actual physical control of any
9 motor vehicle while under the influence of alcoholic liquor, or of any drug, or when that
10 person has a concentration of ~~ten eight~~ hundredths (~~.10~~ .08) of one gram or more by weight
11 of alcohol per 100 milliliters of his or her blood, or when that person has a concentration of
12 ~~ten eight~~ hundredths (.08) of one gram or more by weight of alcohol per 210 liters of his or
13 her breath. Every person who violates this section shall be guilty of a misdemeanor and, upon
14 conviction, shall be punished as follows:

15 (a) If such person has not had a previous conviction for this offense in Nebraska in
16 the twelve years prior to the date of the current conviction, under state law or under a city or
17 village ordinance enacted pursuant thereto, such person shall be imprisoned in the county jail
18 not less than seven days nor more than sixty days, and shall be fined not less than \$400.00 nor
19 more than \$500.00, recoverable with costs, and the court shall, as part of the judgment of
20 conviction, order such person not to drive any motor vehicle for any purpose for a period of

1 six months from the date ordered by the court and shall order that the operator's license of
2 such person be revoked for a like period. Such revocation shall be administered upon
3 sentencing, upon final judgment of any appeal or review, or upon the date that any probation
4 is revoked. Such revocation shall not run concurrently with any jail term imposed. If the
5 court places such person on probation or suspends the sentence for any reason, the court shall,
6 as one of the conditions of probation or sentence suspension, order such person not to drive
7 any motor vehicle for any purpose for a period of sixty days from the date of the order, unless
8 otherwise authorized by an order issued pursuant to Neb. Rev. Stat. § 60-6,211.05, and such
9 order of probation shall also include, as one of its conditions, the payment of a \$400.00 fine..

10 (b) If such person has had one conviction for this offense in Nebraska in the twelve
11 years prior to the date of the current conviction, under state law or under a city or village
12 ordinance enacted pursuant thereto, such person shall be imprisoned in the county jail not less
13 than thirty days nor more than ninety days, and shall be fined \$500.00, recoverable with costs,
14 and the court shall, as part of the judgment of conviction, order such person not to drive any
15 motor vehicle for any purpose for a period of one year from the date ordered by the court, and
16 shall order that the operator's license of such person be revoked for a like period. Such
17 revocation shall be administered upon sentencing, upon final judgment of any appeal or re-
18 view, or upon the date that any probation is revoked. Such revocation shall not run
19 concurrently with any jail term imposed. If the court places such person on probation or
20 suspends the sentence for any reason, the court shall, as one of the conditions of probation
21 or sentence suspension, order such person not to drive any motor vehicle in the State of
22 Nebraska for any purpose for a period of six months from the date of the order and such order

1 of probation shall include as one of its conditions confinement in the county jail for forty-eight
2 hours and the payment of a \$500.00 fine.

3 (c) For each conviction under this section, the court shall, as part of the judgment
4 of conviction, make a finding on the record as to the number of the defendant's prior
5 convictions for this offense in Nebraska in the twelve years prior to the date of the current
6 conviction, under state law or under a city or village ordinance enacted pursuant thereto. The
7 defendant shall be given the opportunity to review the record of his or her prior convictions,
8 bring mitigating facts to the attention of the court prior to sentencing, and make objections on
9 the record regarding the validity of such prior convictions. For purposes of this section, the
10 twelve-year period shall be computed from the date of the prior offense to the date of the
11 offense which resulted in the current conviction and the terms "conviction for this offense" and
12 "prior conviction" shall include any conviction under this section, under the state law pursuant
13 to which this section was enacted, or under any city or village ordinance enacted pursuant to
14 said state law, as the same existed at the time of such conviction, regardless of subsequent
15 amendments thereto.

16 (d) The provisions of this section shall apply anywhere throughout the city except
17 private property which is not open to public access.

18 (e) Any period of revocation imposed under this section shall be reduced by any
19 period imposed under Neb. Rev. Stat. § 60-6,206. Any period of revocation imposed under
20 this section shall not prohibit the operation of a motor vehicle under the terms and conditions
21 of an employment driving permit issued pursuant to subsection (2) of Neb. Rev. Stat. § 60-
22 6,206.

1 Section 2. That Section 10.16.030 of the Lincoln Municipal Code as hitherto
2 existing be and the same is hereby repealed.

3 Section 3. That this ordinance shall take effect and be in force from and after
4 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Staff Review Completed:

Administrative Assistant

Approved this ___ day of _____, 2001:

Mayor