

ORDINANCE NO. _____

1 AN ORDINANCE amending Sections 10.16.030 and 10.16.040 of the Lincoln
 2 Municipal Code by amending penalty provisions for driving under the influence and refusal to
 3 submit to alcohol testing to conform with changes made in state statutes as required by law;
 4 repealing Sections 10.16.030 and 10.16.040 of the Lincoln Municipal Code as hitherto existing; and
 5 declaring an emergency

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

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

9 **10.16.030 Under Influence of Alcoholic Liquor; Alcohol in Body Fluid; Penalty.**

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

- 16 (a) (1) If such person has not had a previous conviction for this offense in the twelve
 17 years prior to the date of the current conviction, 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 more
 19 than \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, order
 20 such person not to drive any motor vehicle for any purpose for a period of six months from the date
 21 ordered by the court and shall order that the operator's license of such person be revoked for a like
 22 period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal
 23 or review, or upon the date that any probation is revoked. Such revocation shall not run
 24 concurrently with any jail term imposed. If the court places such person on probation or suspends

1 the sentence for any reason, the court shall, as one of the conditions of probation or sentence
2 suspension, order such person not to drive any motor vehicle for any purpose for a period of sixty
3 days from the date of the order, unless otherwise authorized by an order issued pursuant to *Neb. Rev.*
4 *Stat.* § 60-6,211.05, and such order of probation shall also include, as one of its conditions, the
5 payment of a \$400.00 fine.

6 (2) If such person has not had a prior conviction for this offense and, as part of
7 the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of
8 alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by
9 weight of alcohol per two hundred ten liters of his or her breath, the court shall, as part of the
10 judgment of conviction, revoke the operator's license of such person for a period of one year from
11 the date ordered by the court. Such revocation shall be administered upon sentencing, upon final
12 judgment of any appeal or review, or upon the date that any probation is revoked.

13 If the court places such person on probation or suspends the sentence for any
14 reason, the court shall, as one of the conditions of probation or sentence suspension, order that the
15 operator's license of such person be revoked or impounded for a period of one year from the date
16 ordered by the court unless otherwise authorized by an order issued pursuant to *Neb. Rev. Stat.* § 60-
17 6,211.05, and such order of probation or sentence suspension shall also include, as conditions, the
18 payment of a \$500.00 fine and either confinement in the county jail for two days or the imposition
19 of not less than 120 hours of community service;

20 (b) If such person has had one conviction for this offense in Nebraska in the twelve years
21 prior to the date of the current conviction, (i) under state law; (ii) under a city or village ordinance
22 enacted pursuant thereto; or (iii) under a law of another state, if at the time of the conviction under
23 the law of another state, the offense for which such person was convicted would have been a
24 violation under *Neb. Rev. Stat.* § 60-6,196, and as part of the current violation had a concentration
25 of less than fifteen-hundredths of one gram by weight of alcohol per one hundred milliliters of his
26 or her blood or less than fifteen-hundredths of one gram by weight of alcohol per two hundred ten

1 liters of his or her breath, such person shall be imprisoned in the county jail not less than thirty days
2 nor more than ~~ninety days~~ six months, and shall be fined \$500.00, recoverable with costs, and the
3 court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle
4 for any purpose for a period of one year from the date ordered by the court, and shall order that the
5 operator's license of such person be revoked for a like period. Such revocation shall be administered
6 upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation
7 is revoked. Such revocation shall not run concurrently with any jail term imposed. If the court
8 places such person on probation or suspends the sentence for any reason, the court shall, as one of
9 the conditions of probation or sentence suspension, order such person not to drive any motor vehicle
10 in the State of Nebraska for any purpose for a period of one year from the date of the order unless
11 otherwise authorized by an order issued pursuant to *Neb. Rev. Stat.* §60-6,211.05 and shall issue an
12 order pursuant to Lincoln Municipal Code Section 10.16.045 with respect to all motor vehicles
13 owned by such person, and such order of probation shall also include, as conditions, the payment
14 of a \$500.00 fine and either confinement in the county jail for ten days or the imposition of not less
15 than 240 hours of community service.

16 (c) For each conviction under this section, the court shall, as part of the judgment of
17 conviction, make a finding on the record as to the number of the defendant's prior convictions for
18 this offense in Nebraska in the twelve years prior to the date of the current conviction. The de-
19 fendant shall be given the opportunity to review the record of his or her prior convictions, bring
20 mitigating facts to the attention of the court prior to sentencing, and make objections on the record
21 regarding the validity of such prior convictions. For purposes of this section, the twelve-year period
22 shall be computed from the date of the prior offense to the date of the offense which resulted in the
23 current conviction and the term "prior conviction" shall mean convictions defined by *Neb. Rev. Stat.*
24 § 60-6,197.02 as the same existed at the time of such conviction, regardless of subsequent
25 amendments thereto.

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

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

7 Section 2. That Section 10.16.040 of the Lincoln Municipal Code be amended to
8 read as follows:

9 **10.16.040 Chemical Tests; Refusal; Penalty.**

10 (a) Any person who operates or has in his or her actual physical control a motor vehicle
11 shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her
12 blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence
13 of drugs in such blood, breath, or urine.

14 (b) Any law enforcement officer who has been duly authorized to make arrests for
15 violations of traffic laws of this state or of ordinances of any city or village may require any person
16 arrested for any offense arising out of acts alleged to have been committed while the person was
17 driving or was in actual physical control of a motor vehicle while under the influence of alcoholic
18 liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the
19 purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath,
20 or urine, when the officer has reasonable grounds to believe that such person was driving or was in
21 the actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs.

22 (c) Any law enforcement officer who has been duly authorized to make arrests for
23 violations of traffic laws of this state or of ordinances of any city or village may require any person
24 who operates or has in his or her actual physical control a motor vehicle to submit to a preliminary
25 test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that
26 such person has alcohol in his or her body, has committed a moving traffic violation, or has been

1 involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or
2 whose preliminary breath test results indicate an alcohol concentration in violation of Section
3 10.16.030 shall be placed under arrest. Any person who refuses to submit to such preliminary breath
4 test shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of
5 not to exceed \$100.00, recoverable with costs.

6 (d) Any person arrested as provided in subsections (b) and (c) of this section may, upon
7 the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or
8 her blood, breath, or urine for a determination of the concentration of alcohol or the presence of
9 drugs. Any person who refuses to submit to such test or tests required pursuant to this section shall
10 be guilty of a misdemeanor and, upon conviction, shall be punished as follows:

11 (1) If such person has not had a conviction for this offense in the twelve years
12 prior to the date of the current conviction, such person shall be imprisoned in the county jail for not
13 less than seven days nor more than sixty days, and shall be fined not less than \$400.00 nor more than
14 \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction, order
15 such person not to drive any motor vehicle for any purpose in the State of Nebraska for a period of
16 six months from the date ordered by the court and shall order that the operator's license of such
17 person be revoked for a like period. Such revocation shall be administered upon sentencing, upon
18 final judgment of any appeal or review, or upon the date that any probation is revoked. Such
19 revocation shall not run concurrently with any jail term imposed. If the court places such person on
20 probation or suspends the sentence for any reason, the court shall, as one of the conditions of proba-
21 tion or sentence suspension, order such person not to drive any motor vehicle for any purpose for
22 a period of sixty days from the date of the order, unless otherwise authorized by an order issued
23 pursuant to *Neb. Rev. Stat.* § 60-6,211.05, and such order of probation shall also include, as one of
24 its conditions, the payment of a \$400.00 fine.

25 (2) If such person has had one conviction for this offense in the twelve years prior
26 to the date of the current conviction, such person shall be imprisoned in the county jail not less than

1 thirty days nor more than ~~ninety days~~ six months, and shall be fined \$500.00, recoverable with costs,
2 and the court shall, as part of the judgment of conviction, order such person not to drive any motor
3 vehicle in the State of Nebraska for any purpose for a period of one year from the date ordered by
4 the court, and shall order that the operator's license of such person be revoked for a like period.
5 Such revocation shall be administered upon sentencing, upon final judgment of any appeal or
6 review, or upon the date that any probation is revoked. Such revocation shall not run concurrently
7 with any jail term imposed. If the court places such person on probation or suspends the sentence
8 for any reason, the court shall, as one of the conditions of probation or sentence suspension, order
9 such person not to drive any motor vehicle in the State of Nebraska for any purpose for a period of
10 one year from the date of the order unless otherwise authorized by an order issued pursuant to *Neb.*
11 *Rev. Stat.* § 60-6,211.05 and shall issue an order pursuant to Lincoln Municipal Code §10.16.045
12 with respect to all motor vehicles owned by such person, and such order of probation shall also
13 include, as conditions, the payment of a \$500.00 fine and either confinement in the county jail for
14 ~~five~~ ten days or the imposition of not less than 240 hours of community service.

15 (3) For each conviction under this subsection, the court shall, as part of the
16 judgment of conviction, make a finding on the record as to the number of the defendant's prior
17 convictions for this offense in Nebraska in the twelve years prior to the date of the current con-
18 viction. The defendant shall be given the opportunity to review the record of his or her prior
19 convictions, bring mitigating facts to the attention of the court prior to sentencing, and make
20 objections on the record regarding the validity of such prior convictions. For purposes of this
21 subsection, the twelve-year period shall be computed from the date of the prior offense to the date
22 of the offense which resulted in the current conviction and the term "prior conviction" shall mean
23 convictions defined by *Neb. Rev. Stat.* § 60-6,197.02 as the same existed at the time of such convic-
24 tion, regardless of subsequent amendments thereto.

25 (e) Any person arrested for any offense involving the operation or actual physical control
26 of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit

1 to a chemical test or tests of his or her blood, breath, or urine, as provided in this section, without
2 the preliminary breath test if the arresting officer does not have available the necessary equipment
3 for administering a breath test, or if the person is unconscious or is otherwise in a condition
4 rendering him or her incapable of testing by a preliminary breath test.

5 (f) Any person who is required to submit to a chemical blood, breath, or urine test or
6 tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate
7 crime for which the person may be charged.

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

10 Section 3. That Sections 10.16.030 and 10.16.040 of the Lincoln Municipal Code
11 as hitherto existing be and the same are hereby repealed.

12 Section 4. Whereas an emergency exists, this ordinance shall take effect and be in
13 force from and after its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2006:

Mayor