

ORDINANCE NO. _____

1 AN ORDINANCE amending Section 10.16.030 of the Lincoln Municipal Code,
2 relating to penalties for driving under the influence of alcoholic liquor, to conform with recent
3 changes in the state law by increasing the period of an operator's license revocation from one year
4 to 18 months for a second offense DUI and requiring an ignition interlock device to be installed on
5 any motor vehicle owned or operated by a person convicted of a second offense DUI for at least one
6 year; and repealing Section 10.16.030 of the Lincoln Municipal Code as hitherto existing.

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 person has
10 a concentration of eight hundredths (.08) of one gram or more by weight of alcohol per 100 mil-
11 liliters of his or her blood, or when that person has a concentration of eight hundredths (.08) of one
12 gram or more by weight of alcohol per 210 liters of his or her breath. Every person who violates this
13 section shall be guilty of a misdemeanor and, upon conviction, shall be punished as follows:

14 (a) (1) If such person has not had a prior conviction in the fifteen-year period prior to the
15 date of the current offense, such person shall be imprisoned in the county jail not less than seven
16 days nor more than sixty days, and shall be fined not less than \$500.00, recoverable with costs, and
17 the court shall, as part of the judgment of conviction, order that the operator's license of such person
18 be revoked for a period of six months from the date ordered by the court. The revocation order shall
19 require that the person apply for an ignition interlock permit pursuant to subsection (1)(b) of Neb.
20 Rev. Stat. § 60-6,197.01 for the revocation period and have an ignition interlock device installed on
21 any motor vehicle he or she operates during the revocation period. Such revocation shall be
22 administered upon sentencing, upon final judgment of any appeal or review, or upon the date that
23 any probation is revoked.

24 If the court places such person on probation or suspends the sentence for any
25 reason, the court shall, as one of the conditions of probation or sentence suspension, order such
26 person not to drive any motor vehicle for any purpose for a period of sixty days from the date
27 ordered by the court. Such order of probation shall also include, as one of its conditions, the
28 payment of a \$500.00 fine.

1 (2) If such person has not had a prior conviction in the fifteen-year period prior to the
2 date of the current offense and, as part of the current violation, had a concentration of fifteen-
3 hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood
4 or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or
5 her breath, such person shall be imprisoned in the county jail not less than seven days nor more than
6 sixty days, and shall be fined not less than \$500.00, recoverable with costs, and the court shall, as
7 part of the judgment of conviction, revoke the operator's license of such person for a period of one
8 year from the date ordered by the court. The revocation order shall require that the person apply for
9 an ignition interlock permit pursuant to Neb. Rev. Stat. §60-6,197.01 for the revocation period and
10 have an ignition interlock device installed on any motor vehicle he or she operates during the
11 revocation period. Such revocation shall be administered upon sentencing, upon final judgment of
12 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. The revocation order shall require that the person apply for an ignition
17 interlock permit pursuant to Neb. Rev. Stat. §60-6,197.01 for the revocation period and have an
18 ignition interlock device installed on any motor vehicle he or she operates during the revocation
19 period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal
20 or review, or upon the date that any probation is revoked. Such order of probation or sentence
21 suspension shall also include, as conditions, the payment of a \$500.00 fine and either confinement
22 in the county jail for two days or the imposition of not less than 120 hours of community service;

23 (b) If such person has had one prior conviction in the fifteen-year period prior to the date
24 of the current offense, and as part of the current violation had a concentration of less than fifteen-
25 hundredths of one gram by weight of alcohol per one hundred milliliters of his or her blood or less
26 than fifteen-hundredths of one gram by weight of alcohol per two hundred ten liters of his or her
27 breath, such person shall be imprisoned in the county jail not less than thirty days nor more than six
28 months, and shall be fined \$500.00, recoverable with costs, and the court shall, as part of the
29 judgment of conviction, order that the operator's license of such person be revoked for a period of
30 ~~one year~~ eighteen months from the date ordered by the court. The revocation order shall require that
31 the person not drive for a period of ~~45~~ forty-five days, ~~after which the court shall order~~ and that the

1 person apply for an ignition interlock permit ~~for the remainder of the revocation period~~ and have
2 an ignition interlock device installed on any motor vehicle he or she owns or operates ~~during the~~
3 ~~remainder of the revocation period and~~ for at least one year. The court shall also issue an order
4 pursuant to Lincoln Municipal Code Section 10.16.045(b). ~~Such~~ If the person has an ignition
5 interlock device installed as required under this subsection, the person shall not be eligible for
6 reinstatement of his or her operator's license until he or she has had the ignition interlock device
7 installed for the period ordered by the court. The revocation shall be administered upon sentencing,
8 upon final judgment of any appeal or review, or upon the date that any probation is revoked.

9 If the court places such person on probation or suspends the sentence for any reason,
10 the court shall, as one of the conditions of probation or sentence suspension, order that the operator's
11 license of such person be revoked for a period of ~~one year~~ eighteen months from the date ordered
12 by the court. The revocation order shall require that the person not drive for a period of forty-five
13 days, ~~after which the court shall order that during the period of revocation and that~~ the person apply
14 for an ignition interlock permit and installation of an ignition interlock device for not less than a
15 one-year period pursuant to Neb. Rev. Stat. §60-6,211.05, ~~and~~ The court shall also issue an order
16 pursuant to Lincoln Municipal Code Section 10.16.045(b). ~~Such~~ If the person has an ignition
17 interlock device installed as required under this subsection, the person shall not be eligible for
18 reinstatement of his or her operator's license until he or she has had the ignition interlock device
19 installed for the period ordered by the court. The order of probation shall also include, as conditions,
20 the payment of a \$500.00 fine and either confinement in the county jail for ten days or the
21 imposition of not less than 240 hours of community service.

22 (c) For each conviction under this section, the court shall, as part of the judgment of
23 conviction, make a finding on the record as to the number of the defendant's prior convictions in the
24 fifteen-year period prior to the date of the current conviction. The defendant shall be given the

1 opportunity to review the record of his or her prior convictions, bring mitigating facts to the
2 attention of the court prior to sentencing, and make objections on the record regarding the validity
3 of such prior convictions.

4 (d) For purposes of this section, the fifteen-year period shall be computed from the date
5 of the prior offense to the date of the offense which resulted in the current conviction and the term
6 "prior conviction" shall mean convictions defined by Neb. Rev. Stat. § 60-6,197.02, as the same
7 existed at the time of such conviction, regardless of subsequent amendments thereto.

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

10 (f) Any period of revocation imposed by the court for a violation of Section 10.16.030 or
11 10.16.040 shall be reduced by any period of revocation imposed under Neb. Rev. Stat. §§ 60-498.01
12 to 60-498.04, including any period during which a person has a valid ignition interlock permit,
13 arising from the same incident.

14 (g) A person who commits a violation punishable under Lincoln Municipal Code Section
15 10.16.030 or 10.16.040 while participating in criminal proceedings for a violation of Section
16 10.16.030, 10.16.040, or any of the violations referenced in Neb. Rev. Stat § 60-6,197.09 shall not
17 be eligible to receive a sentence of probation or a suspended sentence for either violation committed
18 in this state.

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

21 Section 3. That this ordinance shall take effect and be in force from and after passage
22 and publication in one issue of a daily or weekly newspaper of general circulation in the City,
23 according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2013:

Mayor