

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 5.04 of the Lincoln Municipal Code, Alcoholic
2 Liquor, by repealing Sections 5.04.080 (Furnishing False Identification), 5.04.090 (Minors,
3 Misrepresenting Age), 5.04.100 (Minors, Possession of Alcohol), 5.04.160 (Places Where Drinking
4 Prohibited), and 5.04.165 (Open Containers in Vehicles), and amending Chapter 9.16 of the Lincoln
5 Municipal Code, Offenses Against Public Decency, by repealing Sections 9.16.025 (Marijuana
6 Defined), 9.16.030 (Toxic Compounds Defined), 9.16.035 (Paraphernalia Defined), 9.16.105
7 (Paraphernalia, Use or Possession, Unlawful, Penalty), 9.16.110 (Toxic Compounds, Unlawful Use),
8 9.16.120 (Toxic Compounds, Unlawful Possession), 9.16.130 (Toxic Compounds, Unlawful Sale),
9 9.16.140 (Toxic Compounds, Penalty for Violations), 9.16.145 (Possession of Marijuana, One Ounce
10 or Less, Unlawful, Penalty) and incorporating said offenses and penalties into one chapter by adding
11 new Chapter 9.48 entitled “Alcohol and Drug Offenses” consisting of Section 9.48.010, Definitions;
12 Section 9.48.020, Furnishing False Identification; Section 9.48.030, Minors, Misrepresenting Age;
13 Section 9.48.040, Minors, Possession or Consumption of Alcoholic Liquor Prohibited; Section
14 9.48.050, Consuming Alcoholic Liquor in Public Prohibited; Section 9.48.060, Consumption in
15 Unlicensed Premises Prohibited; 9.48.070, Consumption Inside Vehicles Prohibited; Section
16 9.48.080, Open Alcoholic Beverage Container in Motor Vehicle Prohibited; Section 9.48.090,
17 Possession of Marijuana, One Ounce or Less, Unlawful, Penalty; Section 9.48.100, Toxic
18 Compounds, Unlawful Use; Section 9.48.110, Toxic Compounds, Unlawful Possession; Section
19 9.48.120 Toxic Compounds, Unlawful Sale; Section 9.48.130, Paraphernalia, Use or Possession,
20 Unlawful, Penalty; Section 9.48.140, Violations, Penalty; and Section 9.48.150, Severability and
21 Savings Clause; amending Section 9.20.100 of the Lincoln Municipal Code to delete the minimum
22 fines for furnishing false identification, misrepresenting age, minor in possession of alcohol, and

1 consuming alcohol in prohibited places to maintain conformity with state statute; and repealing
2 Section 9.20.100 of the Lincoln Municipal Code as hitherto existing.

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

4 Section 1. That Section 5.04.080 of the Lincoln Municipal Code be and the same is
5 hereby repealed.

6 ~~**5.04.080 — Furnishing False Identification.**~~

7 ~~It shall be unlawful for any person to lend a motor vehicle operator's license, birth certificate,~~
8 ~~selective service registration card, or other identification document, to any minor for the use of such~~
9 ~~minor in obtaining or attempting to obtain alcoholic liquor.~~

10 Section 2. That Section 5.04.090 of the Lincoln Municipal Code be and the same is
11 hereby repealed.

12 ~~**5.04.090 — Minors; Misrepresenting Age.**~~

13 ~~(a) No minor shall, within the city, obtain or attempt to obtain any alcoholic liquor by~~
14 ~~misrepresentation of age, or by any other method, in any premises where alcoholic liquor is sold.~~

15 ~~(b) No minor shall, within the city, by misrepresentation of age, enter or attempt to enter~~
16 ~~any premises where alcoholic liquor is sold.~~

17 Section 3 That Section 5.04.100 of the Lincoln Municipal Code be and the same is
18 hereby repealed.

19 ~~**5.04.100 — Minors; Possession of Alcoholic Liquor Prohibited.**~~

20 ~~No minor, within this city, or upon property owned by the City of Lincoln, whether within~~
21 ~~or without the corporate limits, may consume or have in his or her possession or physical control, any~~
22 ~~alcoholic liquor, except that a minor may consume, possess or have physical control of alcoholic~~
23 ~~liquor in his or her permanent place of residence; provided, nothing herein contained shall prevent~~
24 ~~persons who are nineteen years of age or older from serving or selling alcoholic liquor in the course~~
25 ~~of their employment.~~

26 Section 4. That Section 5.04.160 of the Lincoln Municipal Code be and the same is
27 hereby repealed.

28 ~~**5.04.160 — Places Where Drinking Prohibited.**~~

29 ~~(a) It shall be unlawful for any person to consume alcoholic liquor in or on the public~~
30 ~~streets, alleys, parking areas, roads or highways within the city, or upon property within the city~~
31 ~~owned by the state or any political subdivision thereof, unless authorized by the governing body~~
32 ~~having jurisdiction over such property and by the provisions of a license issued by the Nebraska~~
33 ~~Liquor Control Commission.~~

34 ~~(b) It shall be unlawful for any person to consume alcoholic liquors inside vehicles while~~
35 ~~upon the public streets, alleys, parking areas, roads, or highways.~~

1 ~~_____ (c) _____ It shall be unlawful for any person to consume alcoholic liquors within the city in any~~
2 ~~restaurant, café, club, or in any other place open to the public except as specifically permitted by a~~
3 ~~license issued by the Nebraska Liquor Control Commission.~~

4 Section 5. That Section 5.04.165 of the Lincoln Municipal Code be and the same is
5 hereby repealed.

6 **5.04.165 — Open Alcoholic Beverage Container in Motor Vehicle Prohibited.**

7 ~~_____ (a) _____ It shall be unlawful for any person in the passenger area of a motor vehicle to possess~~
8 ~~an open alcoholic beverage container while the motor vehicle is located in or on the public streets,~~
9 ~~alleys, parking areas, roads, or highways within the City, or upon property within the City owned by~~
10 ~~the state or any political subdivision thereof.~~

11 ~~_____ (b) _____ For purposes of this section —~~

12 ~~_____ (1) _____ Alcoholic beverage shall mean:~~

13 ~~_____ (i) Beer, ale, porter, stout, and other similar fermented beverages, including~~
14 ~~sake or similar products, of any name or description containing one-half of one percent or more of~~
15 ~~alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;~~

16 ~~_____ (ii) Wine of not less than one-half of one percent of alcohol by volume, or —~~

17 ~~_____ (iii) Distilled spirits which is that substance known as ethyl alcohol, ethanol,~~
18 ~~or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or~~
19 ~~by whatever process produced. Alcoholic beverage does not include trace amounts not readily~~
20 ~~consumable as a beverage; —~~

21 ~~_____ (2) _____ Open alcoholic beverage container shall mean any bottle, can, or other~~
22 ~~receptacle that contains any amount of alcoholic beverage and (i) is open or has a broken seal or (ii)~~
23 ~~the contents of which are partially removed.~~

24 ~~_____ (3) _____ Passenger area shall mean the area designed to seat the driver and passengers~~
25 ~~while the motor vehicle is in operation and any area that is readily accessible to the driver or a~~
26 ~~passenger while in their seating positions, including any compartments in such area. Passenger area~~
27 ~~does not include the area behind the last upright seat of such motor vehicle if the area is not normally~~
28 ~~occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.~~

29 ~~_____ (c) _____ Notwithstanding any other provision of this chapter, violation of this section shall be~~
30 ~~an infraction, punishable as prescribed in Lincoln Municipal Code Section 1.24.010(b). —~~

31 Section 6. That Section 9.16.025 of the Lincoln Municipal Code be and the same is
32 hereby repealed.

33 **9.16.025 — Marijuana Defined.**

34 ~~_____ For purposes of this chapter, marijuana shall mean all parts of the plant of the genus cannabis,~~
35 ~~whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative,~~
36 ~~mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant,~~
37 ~~hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks,~~
38 ~~oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative,~~
39 ~~mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable~~
40 ~~of germination. When the weight of marijuana is referred to in this chapter, it shall mean its weight~~

1 at or about the time it is seized or otherwise comes into the possession of law enforcement authorities,
2 whether cured or uncured at that time.

3 Section 7. That Section 9.16.030 of the Lincoln Municipal Code be and the same is
4 hereby repealed.

5 **9.16.030 — Toxic Compounds Defined.**

6 — For purposes of this chapter, the phrase toxic compounds shall mean and include any
7 compound, liquid, or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone,
8 ethylacetate, ethyl alcohol, ethylene dichloride, ethylene trichloride, hexane, isopropanol, isopropyl
9 alcohol, methyl cellosolve acetate, methyl alcohol, methyl ethyl ketone, methyl isobutyl ketone,
10 pentachlorophenol, petroleum ether, toluene, toluol, trichloroethane, trichloroethylene, or any other
11 substance which may be breathed, inhaled, ingested, or otherwise introduced into the human system
12 for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis,
13 irrational behavior, inebriation, excitement, or in any manner changing, distorting, or disturbing the
14 auditory, visual, mental or nervous processes.

15 Section 8. That Section 9.16.035 of the Lincoln Municipal Code be and the same is
16 hereby repealed.

17 **9.16.035 — Paraphernalia Defined.**

18 — (a) — As used in Section 9.16.105, unless the context otherwise requires, paraphernalia shall
19 mean all equipment, products, and materials of any kind which are used, intended for use, or designed
20 for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human
21 body marijuana as defined in Section 9.16.025 or any toxic compound as defined in Section 9.16.030,
22 in violation of any section of this code or of the Nebraska Revised Statutes. Paraphernalia shall
23 include, but not be limited to, the following:

24 — (1) — Separation gins and sifters used, intended for use, or designed for use in
25 removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

26 — (2) — Balloons, bags, canisters, aerosol cans, and other objects used, intended for
27 use, designed for use, or modified for use in inhaling, absorbing, or otherwise introducing toxic
28 compounds into the human body; and

29 — (3) — Objects used, intended for use, designed for use, or modified for use in
30 ingesting, inhaling, or otherwise introducing marijuana into the human body, which shall include but
31 not be limited to the following:

32 — (i) — Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or
33 without screens, permanent screens, hashish heads, or punctured metal bowls;

34 — (ii) — Water pipes;

35 — (iii) — Carburetion tubes and devices;

36 — (iv) — Smoking and carburetion masks;

37 — (v) — Roach clips, meaning objects used to hold burning material, such as
38 a marijuana cigarette, which has become too small or too short to be held in the hand;

39 — (vi) — Blunts, meaning cigarettes or cigar wrappers with some or all of the
40 tobacco removed;

41 — (vii) — Chamber pipes;

- ~~(viii) Carburetor pipes;~~
- ~~(ix) Electric pipes;~~
- ~~(x) Air-driven pipes;~~
- ~~(xi) Chillums;~~
- ~~(xii) Bongs; and~~
- ~~(xiii) Ice pipes or chillers.~~

~~(b) In determining whether an object is paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:~~

- ~~(1) Statements by an owner or by anyone in control of the object concerning its use;~~
 - ~~(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any law relating to any controlled substance or toxic compound;~~
 - ~~(3) The proximity of the object, in time and space, to marijuana and/or toxic compound;~~
 - ~~(4) The proximity of the object to any controlled substance;~~
 - ~~(5) The existence of any residue of marijuana or any toxic compound;~~
 - ~~(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of Sections 9.16.105, 9.16.110, 9.16.120, 9.16.130, 9.16.145 or any similar state statute. The innocence of an owner, or of anyone in control of the object, as to a direct violation of those sections shall not prevent a finding that the object is intended for use, or designed for use as paraphernalia;~~
 - ~~(7) Instructions, oral or written, provided with the object concerning its use;~~
 - ~~(8) Descriptive materials accompanying the object which explain or depict its use;~~
 - ~~(9) National and local advertising concerning its use;~~
 - ~~(10) The manner in which the object is displayed for sale;~~
 - ~~(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;~~
 - ~~(12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;~~
 - ~~(13) The existence and scope of any legitimate use for the object in the community;~~
- ~~and~~
- ~~(14) Expert testimony concerning its use.~~

Section 9. That Section 9.16.105 of the Lincoln Municipal Code be and the same is hereby repealed.

~~9.16.105 Paraphernalia; Use or Possession; Unlawful; Penalty.~~

- ~~(a) It shall be unlawful for any person to use, or to possess with intent to use, paraphernalia to manufacture, ingest, inhale, or otherwise introduce into the human body marijuana or any toxic compounds in violation of any section of this code or of the Nebraska Revised Statutes.~~
- ~~(b) Any person who violates this section shall be guilty of an infraction.~~

Section 10. That Section 9.16.110 of the Lincoln Municipal Code be and the same is hereby repealed.

1 ~~**9.16.110 — Toxic Compounds; Unlawful Use.**~~

2 ~~It shall be unlawful for any person for the purpose of inducing a condition of intoxication,~~
3 ~~stupefaction, depression, giddiness, paralysis, irrational behavior, inebriation, excitement, or in any~~
4 ~~manner changing, distorting, or disturbing the auditory, visual, mental or nervous processes to~~
5 ~~intentionally breathe, inhale, drink, ingest, or otherwise introduce into the human system any toxic~~
6 ~~compound as defined herein or intentionally induce or entice any person to breathe, inhale, drink,~~
7 ~~ingest, or otherwise introduce into the human system any such substance for such purpose; provided,~~
8 ~~however, that nothing in this section shall be interpreted as applying to the inhalation of any~~
9 ~~anesthesia or medication prescribed by a licensed practitioner of medicine and surgery for medical~~
10 ~~or dental purposes.~~

11 Section 11. That Section 9.16.120 of the Lincoln Municipal Code be and the same
12 is hereby repealed.

13 ~~**9.16.120 — Toxic Compounds; Unlawful Possession.**~~

14 ~~It shall be unlawful for any person, for the purpose of violating Section 9.16.110, to possess~~
15 ~~any toxic compound as defined herein.~~

16 Section 12. That Section 9.16.130 of the Lincoln Municipal Code be and the same
17 is hereby repealed.

18 ~~**9.16.130 — Toxic Compounds; Unlawful Sale.**~~

19 ~~It shall be unlawful for any person to sell or offer for sale, deliver, give, or offer to give, any~~
20 ~~toxic compound as herein defined to any person if the seller, offerer, or deliverer knows or has reason~~
21 ~~to know that the compound sold, offered for sale, delivered, given, or offered to be given, will be~~
22 ~~used for the purpose of violating Section 9.16.110.~~

23 Section 13. That Section 9.16.140 of the Lincoln Municipal Code be and the same
24 is hereby repealed.

25 ~~**9.16.140 — Toxic Compounds; Penalty for Violations.**~~

26 ~~Any person who shall violate any of the provisions of Sections 9.16.110, 9.16.120, or~~
27 ~~9.16.130 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by~~
28 ~~imprisonment in the county jail for a period of not to exceed three months, or by a fine not to exceed~~
29 ~~\$500.00, recoverable with costs, or both.~~

30 Section 14. That Section 9.16.145 of the Lincoln Municipal Code be and the same
31 is hereby repealed.

32 ~~**9.16.145 — Possession of Marijuana; One Ounce or Less; Unlawful; Penalty.**~~

33 ~~(a) It shall be unlawful for any person to knowingly or intentionally possess marijuana~~
34 ~~weighing one ounce or less.~~

35 ~~(b) Penalty.~~

1 ~~_____ (1) For the first offense, be guilty of an infraction, receive a citation, be fined~~
2 ~~\$300.00, and be assigned to attend a course as prescribed in *Neb. Rev. Stat. § 29-433* if the judge~~
3 ~~determines that attending such course is in the best interest of the individual defendant;~~

4 ~~_____ (2) For the second offense, be guilty of a misdemeanor, receive a citation, and be~~
5 ~~fined \$400.00 and may be imprisoned not to exceed five days; and~~

6 ~~_____ (3) For the third and all subsequent offenses, be guilty of a misdemeanor, receive~~
7 ~~a citation, be fined \$500.00, and be imprisoned not to exceed seven days.~~

8 ~~_____ (4) Any person convicted of violating this section, if placed on probation, shall,~~
9 ~~as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling~~
10 ~~on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act~~
11 ~~or other licensed drug treatment facility.~~

12 Section 15. That Title 9 of the Lincoln Municipal Code be amended by adding a new
13 section numbered 9.48.010 to read as follows:

14 **9.48.010** **Definitions.**

15 Unless the context otherwise requires, the words and phrases as herein defined are used in this
16 chapter in the sense given them in the following definitions.

17 **Alcoholic liquor** shall include alcohol, spirits, wine, beer, and every liquid or solid, patented
18 or not, containing alcohol, spirits, wine, or beer, and capable of being consumed as a beverage by a
19 human being. The provisions of this chapter shall not apply to:

20 (1) alcohol used in the manufacture of denatured alcohol produced in accordance
21 with acts of Congress and regulations promulgated thereunder;

22 (2) flavoring extracts, syrups, or medicinal, mechanical, scientific, culinary, or
23 toilet preparations, or food products unfit for beverage purposes, but this chapter shall not be
24 construed to exclude or not apply to alcoholic liquor used in the manufacture, preparation, or
25 compounding of such products, or confections or candy that contains more than one-half of one
26 percent alcohol; or

27 (3) wine intended for use and used by any church or religious organization for
28 sacramental purposes.

1 **Marijuana** shall mean all parts of the plant of the genus cannabis, whether growing or not,
2 the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such
3 plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols
4 extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds
5 of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such
6 mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight
7 of marijuana is referred to in this chapter, it shall mean its weight at or about the time it is seized or
8 otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that
9 time.

10 **Minor** shall mean any person, male or female, under twenty-one years of age, regardless of
11 marital status.

12 **Paraphernalia.**

13 (a) As used in Section 9.48.130, unless the context otherwise requires, paraphernalia shall
14 mean all equipment, products, and materials of any kind which are used, intended for use, or designed
15 for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human
16 body marijuana as defined in Section this section or any toxic compound as defined in this section,
17 in violation of any section of this code or of the Nebraska Revised Statutes. Paraphernalia shall
18 include, but not be limited to, the following:

19 (1) Separation gins and sifters used, intended for use, or designed for use in
20 removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

21 (2) Balloons, bags, canisters, aerosol cans, and other objects used, intended for
22 use, designed for use, or modified for use in inhaling, absorbing, or otherwise introducing toxic
23 compounds into the human body; and

1 (3) Objects used, intended for use, designed for use, or modified for use in
2 ingesting, inhaling, or otherwise introducing marijuana into the human body, which shall include but
3 not be limited to the following:

4 (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or
5 without screens, permanent screens, hashish heads, or punctured metal bowls;

6 (ii) Water pipes;

7 (iii) Carburetion tubes and devices;

8 (iv) Smoking and carburetion masks;

9 (v) Roach clips, meaning objects used to hold burning material, such as
10 a marijuana cigarette, which has become too small or too short to be held in the hand;

11 (vi) Blunts, meaning cigarettes or cigar wrappers with some or all of the
12 tobacco removed.

13 (vii) Chamber pipes;

14 (viii) Carburetor pipes;

15 (ix) Electric pipes;

16 (x) Air-driven pipes;

17 (xi) Chillums;

18 (xii) Bongs; and

19 (xiii) Ice pipes or chillers.

20 (b) In determining whether an object is paraphernalia, a court or other authority shall
21 consider, in addition to all other logically relevant factors, the following:

22 (1) Statements by an owner or by anyone in control of the object concerning its
23 use;

- 1 (2) Prior convictions, if any, of an owner, or of anyone in control of the object,
2 under any law relating to any controlled substance or toxic compound;
- 3 (3) The proximity of the object, in time and space, to marijuana and/or toxic
4 compound;
- 5 (4) The proximity of the object to any controlled substance;
- 6 (5) The existence of any residue of marijuana or any toxic compound;
- 7 (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in
8 control of the object, to deliver it to any person whom he or she knows, or should reasonably know,
9 intends to use the object to facilitate a violation of Sections 9.48.090, 9.48.100, 9.48.110, and
10 9.48.120 or any similar state statute. The innocence of an owner, or of anyone in control of the object,
11 as to a direct violation of those sections shall not prevent a finding that the object is intended for use,
12 or designed for use as paraphernalia;
- 13 (7) Instructions, oral or written, provided with the object concerning its use;
- 14 (8) Descriptive materials accompanying the object which explain or depict its use;
- 15 (9) National and local advertising concerning its use;
- 16 (10) The manner in which the object is displayed for sale;
- 17 (11) Whether the owner, or anyone in control of the object, is a legitimate supplier
18 of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- 19 (12) Direct or circumstantial evidence of the ratio of sales of the object or objects
20 to the total sales of the business enterprise;
- 21 (13) The existence and scope of any legitimate use for the object in the community;
- 22 and
- 23 (14) Expert testimony concerning its use.

1 Person shall mean any natural person, corporation, partnership, or association.

2 Premises shall mean the designated area specified in a license issued under the Nebraska
3 Liquor Control Act.

4 Toxic Compounds. Toxic compounds shall mean and include any compound, liquid, or
5 chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethylacetate, ethyl
6 alcohol, ethylene dichloride, ethylene trichloride, hexane, isopropanol, isopropyl alcohol, methyl
7 cellosolve acetate, methyl alcohol, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol,
8 petroleum ether, toluene, toluol, trichloroethane, trichloroethylene, or any other substance which may
9 be breathed, inhaled, ingested, or otherwise introduced into the human system for the purpose of
10 inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, irrational
11 behavior, inebriation, excitement, or in any manner changing, distorting, or disturbing the auditory,
12 visual, mental or nervous processes.

13 Section 16. That Title 9 of the Lincoln Municipal Code be amended by adding a new
14 section numbered 9.48.020 to read as follows:

15 **9.48.020 Furnishing False Identification.**

16 It shall be unlawful for any person to lend a motor vehicle operator's license, birth certificate,
17 selective service registration card, or other identification document, to any minor for the use of such
18 minor in obtaining or attempting to obtain alcoholic liquor.

19 Section 17. That Title 9 of the Lincoln Municipal Code be amended by adding a new
20 section numbered 9.48.030 to read as follows:

21 **9.48.030 Minors; Misrepresenting Age.**

22 (a) No minor shall, within the city, obtain or attempt to obtain any alcoholic liquor by
23 misrepresentation of age, or by any other method, in any premises where alcoholic liquor is sold.

1 **(b) No minor shall, within the city, by misrepresentation of age, enter or attempt to enter**
2 **any premises where alcoholic liquor is sold.**

3 Section 18. That Title 9 of the Lincoln Municipal Code be amended by adding a new
4 section numbered 9.48.040 to read as follows:

5 **9.48.040 Minors; Possession or Consumption of Alcoholic Liquor Prohibited.**

6 **(a) No minor, within this city, or upon property owned by the City of Lincoln, whether**
7 **within or without the corporate limits, may consume or have in his or her possession or physical**
8 **control, any alcoholic liquor.**

9 **(b) It is an affirmative defense to prosecution under this section if:**

10 **(1) the minor consumed, possessed, or had physical control of alcoholic liquor as**
11 **part of a bonafide religious rite, ritual, or ceremony; or**

12 **(2) the minor consumed, possessed, or had physical control of alcoholic liquor in**
13 **his or her permanent place of residence.**

14 **(c) Any person older than eighteen years of age and under twenty-one years of age who**
15 **violates this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished**
16 **by a fine not to exceed \$500.00, up to three months in jail, or both.**

17 **(d) Any person eighteen years of age or younger who violates this section who has one**
18 **or more licenses or permits issued under the State Motor Vehicle Operator's License Act, shall be**
19 **guilty of a misdemeanor and upon conviction or adjudication thereof be punished by a fine not to**
20 **exceed \$500.00, three months in jail, or both, and:**

21 **(1) For the first offense, the court may, as part of the judgment of conviction or**
22 **adjudication, impound any such licenses or permits for thirty days and require such person to attend**
23 **an alcohol education class; and**

1 (2) For a second offense, the court may, as part of the judgment of conviction or
2 adjudication, impound any such licenses or permits for ninety days and require such person to
3 complete no fewer than twenty and no more than forty hours of community service and to attend an
4 alcohol education class;

5 (3) For a third or subsequent offense, the court may, as part of the judgment of
6 conviction or adjudication, impound any such licenses or permits for twelve months and require such
7 person to complete no fewer than sixty hours of community service, to attend an alcohol education
8 class, and to submit to an alcohol assessment by a licensed alcohol and drug counselor.

9 (e) Any person eighteen years of age and younger who violates this section who does not
10 have a permit or license issued under the State Motor Vehicle Operator’s License Act, shall be guilty
11 of a misdemeanor and upon conviction or adjudication thereof be punished by a fine not to exceed
12 \$500.00, three months in jail, or both, and:

13 (1) For the first offense, the court may, as part of the judgment of conviction or
14 adjudication, prohibit such person from obtaining any permit or any license pursuant to the act for
15 which such person would otherwise be eligible until thirty days after the date of such order and
16 require such person to attend an alcohol education class; and

17 (2) For a second offense, the court may, as part of the judgment of conviction or
18 adjudication, prohibit such person from obtaining any permit or any license pursuant to the act for
19 which such person would otherwise be eligible until ninety days after the date of such order and
20 require such person to complete no fewer than twenty hours and not more than forty hours of
21 community service and to attend an alcohol education class;

22 (3) For a third or subsequent offense, the court may, as part of the judgment of
23 conviction or adjudication, prohibit such person from obtaining any permit or any license pursuant

1 to the act for which such person would otherwise be eligible until twelve months after the date of
2 such order and require such person to complete no fewer than sixty hours of community service, to
3 attend an alcohol education class, and to submit to an alcohol assessment by a licensed alcohol and
4 drug counselor.

5 (f) A copy of an abstract of the court’s conviction or adjudication shall be transmitted to
6 the Director of Motor Vehicles pursuant to Neb. Rev. Stat. §§ 60-497.01 to 60-497.04.

7 Section 19. That Title 9 of the Lincoln Municipal Code be amended by adding a new
8 section numbered 9.48.050 to read as follows:

9 **9.48.050 Consuming Alcoholic Liquor on Public Property; Prohibited.**

10 (a) It shall be unlawful for any person to consume alcoholic liquor in or on the public
11 streets, alleys, parking areas, roads or highways within the city, or upon property within the city
12 owned by the state or any political subdivision thereof, unless authorized by the governing body
13 having jurisdiction over such property and by the provisions of a license issued by the Nebraska
14 Liquor Control Commission.

15 (b) Any person violating this section shall be guilty of a misdemeanor and upon
16 conviction thereof:

17 (1) For a first offense, shall be fined no more than \$500.00; and

18 (2) For a second or subsequent conviction, shall be fined no more than \$500.00,
19 sentenced to jail for not more than six months, or both.

20 Section 20. That Title 9 of the Lincoln Municipal Code be amended by adding a new
21 section numbered 9.48.060 to read as follows:

1 **9.48.060** **Consumption in Unlicensed Premises; Prohibited.**

2 (a) It shall be unlawful for any person to consume or allow consumption of alcoholic
3 liquors within the city in any restaurant, café, club, or in any other place open to the public except
4 as specifically permitted by a license issued by the Nebraska Liquor Control Commission.

5 (b) Any person violating this section shall be guilty of a misdemeanor and upon
6 conviction thereof shall be punished by a fine not to exceed \$500.00, three months in jail, or both.

7 Section 21. That Title 9 of the Lincoln Municipal Code be amended by adding a new
8 section numbered 9.48.070 to read as follows:

9 **9.48.070** **Consumption Inside Vehicles; Prohibited.**

10 (a) It shall be unlawful for any person to consume alcoholic liquors inside vehicles while
11 upon the public streets, alleys, parking areas, roads, or highways.

12 (b) Any person violating this section shall be guilty of an infraction and upon conviction
13 thereof shall be punished by a fine not to exceed \$100.00.

14 Section 22. That Title 9 of the Lincoln Municipal Code be amended by adding a new
15 section numbered 9.48.080 to read as follows:

16 **9.48.080** **Open Alcoholic Beverage Container in Motor Vehicle; Prohibited.**

17 (a) It shall be unlawful for any person in the passenger area of a motor vehicle to possess
18 an open alcoholic beverage container while the motor vehicle is located in or on the public streets,
19 alleys, parking areas, roads, or highways within the City, or upon property within the City owned by
20 the state or any political subdivision thereof.

21 (b) For purposes of this section

22 (1) Alcoholic beverage shall mean:

1 (i) Beer, ale, porter, stout, and other similar fermented beverages, including
2 sake or similar products, of any name or description containing one-half of one percent or more of
3 alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor,

4 (ii) Wine of not less than one-half of one percent of alcohol by volume, or

5 (iii) Distilled spirits which is that substance known as ethyl alcohol, ethanol,
6 or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or
7 by whatever process produced. Alcoholic beverage does not include trace amounts not readily
8 consumable as a beverage;

9 (2) Limousine shall mean a luxury vehicle used to provide prearranged passenger
10 transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and
11 no more than fourteen persons behind the driver with a physical partition separating the driver seat
12 from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or
13 shuttles, or buses.

14 (3) Except as provided by Neb. Rev. Stat. Chapter 53, open alcoholic beverage
15 container shall mean any bottle, can, or other receptacle that contains any amount of alcoholic
16 beverage and (i) is open or has a broken seal or (ii) the contents of which are partially removed.

17 (4) Passenger area shall mean the area designed to seat the driver and passengers
18 while the motor vehicle is in operation and any area that is readily accessible to the driver or a
19 passenger while in their seating positions, including any compartments in such area. Passenger area
20 does not include the area behind the last upright seat of such motor vehicle if the area is not normally
21 occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

22 (c) Any person violating this section shall be guilty of an infraction and upon conviction
23 thereof shall be punished by a fine not to exceed \$100.00.

1 (d) This section does not apply to persons who are passengers of, but not drivers of, a
2 limousine or bus being used in a charter or special party service as defined by rules and regulations
3 adopted and promulgated by the Public Service Commission and subject to Neb. Rev. Stat. Chapter
4 75, Article 3. Such passengers may possess open alcoholic beverage containers and may consume
5 alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this
6 state if (1) the driver of the limousine or bus is prohibited from consuming alcoholic liquor, and (2)
7 alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's
8 seat, including any compartments in such area.

9 Section 23. That Title 9 of the Lincoln Municipal Code be amended by adding a new
10 section numbered 9.48.090 to read as follows:

11 **9.48.090 Possession of Marijuana; One Ounce or Less; Unlawful; Penalty.**

12 (a) It shall be unlawful for any person to knowingly or intentionally possess marijuana
13 weighing one ounce or less.

14 (b) Penalty.

15 (1) For the first offense, be guilty of an infraction, receive a citation, and upon
16 conviction thereof, shall be punished by a \$300.00 fine, and be assigned to attend a course as
17 prescribed in *Neb. Rev. Stat.* § 29-433 if the judge determines that attending such course is in the best
18 interest of the individual defendant;

19 (2) For the second offense, be guilty of a misdemeanor, receive a citation, and
20 upon conviction thereof, shall be punished by a \$400.00 fine and may be imprisoned not to exceed
21 five days; and

1 (3) For the third and all subsequent offenses, be guilty of a misdemeanor, receive
2 a citation, and upon conviction thereof, shall be punished by a \$500.00 fine, and be imprisoned not
3 to exceed seven days.

4 (4) Any person convicted of violating this section, if placed on probation, shall,
5 as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling
6 on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act
7 or other licensed drug treatment facility.

8 (5) In addition to the penalties provided in this section, if the person convicted or
9 adjudicated of violating this section is eighteen years of age or younger:

10 (i) For the first offense, the court may, as a part of the judgment of conviction
11 or adjudication, (A) impound any licenses or permits issued under the State Motor Vehicle
12 Operator's License Act for thirty days, and (B) require such person to attend a drug education class;

13 (ii) For a second offense, the court may, as a part of the judgment of conviction
14 or adjudication, (A) impound any such licenses or permits for ninety days, and (B) require such
15 person to complete no fewer than twenty and no more than forty hours of community service and to
16 attend a drug education class; and

17 (iii) For a third or subsequent offense, the court may, as a part of the judgment
18 of conviction or adjudication, (A) impound any such licenses or permits for twelve months, and (B)
19 require such person to complete no fewer than sixty hours of community service, to attend a drug
20 education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

21 (6) If the person convicted or adjudicated of violating this section is eighteen years
22 of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's
23 License Act:

1 (i) For the first offense, the court may, as part of the judgment of conviction
2 or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the
3 act for which such person would otherwise be eligible until thirty days after the date of such order,
4 and (B) require such person to attend a drug education class;

5 (ii) For a second offense, the court may, as part of the judgment of conviction
6 or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the
7 act for which such person would otherwise be eligible until ninety days after the date of such order,
8 and (B) require such person to complete no fewer than twenty hours and no more than forty hours
9 of community service and to attend a drug education class; and

10 (iii) For a third or subsequent offense, the court may, as part of the judgment
11 of conviction or adjudication,(A) prohibit such person from obtaining any permit or any license
12 pursuant to the act for which such person would otherwise be eligible until twelve months after the
13 date of such order, and (B) require such person to complete no fewer than sixty hours of community
14 service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and
15 drug counselor.

16 A copy of an abstract of the court's conviction or adjudication shall be transmitted to
17 the Director of Motor Vehicles pursuant to sections 60-497. 01 to 60-497.04 if a license or permit is
18 impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

19 Section 24. That Title 9 of the Lincoln Municipal Code be amended by adding a new
20 section numbered 9.48.100 to read as follows:

21 **9.48.100 Toxic Compounds; Unlawful Use.**

22 It shall be unlawful for any person for the purpose of inducing a condition of intoxication,
23 stupefaction, depression, giddiness, paralysis, irrational behavior, inebriation, excitement, or in any

1 manner changing, distorting, or disturbing the auditory, visual, mental or nervous processes to
2 intentionally breathe, inhale, drink, ingest, or otherwise introduce into the human system any toxic
3 compound as defined herein or intentionally induce or entice any person to breathe, inhale, drink,
4 ingest, or otherwise introduce into the human system any such substance for such purpose; provided,
5 however, that nothing in this section shall be interpreted as applying to the inhalation of any
6 anesthesia or medication prescribed by a licensed practitioner of medicine and surgery for medical
7 or dental purposes.

8 Section 25. That Title 9 of the Lincoln Municipal Code be amended by adding a new
9 section numbered 9.48.110 to read as follows:

10 **9.48.110 Toxic Compounds; Unlawful Possession.**

11 It shall be unlawful for any person, for the purpose of violating Section 9.48.100, to possess
12 any toxic compound as defined herein.

13 Section 26. That Title 9 of the Lincoln Municipal Code be amended by adding a new
14 section numbered 9.48.120 to read as follows:

15 **9.48.120 Toxic Compounds; Unlawful Sale.**

16 It shall be unlawful for any person to sell or offer for sale, deliver, give, or offer to give, any
17 toxic compound as herein defined to any person if the seller, offerer, or deliverer knows or has reason
18 to know that the compound sold, offered for sale, delivered, given, or offered to be given, will be
19 used for the purpose of violating Section 9.48.100.

20 Section 27. That Title 9 of the Lincoln Municipal Code be amended by adding a new
21 section numbered 9.48.130 to read as follows:

1 **9.48.130 Paraphernalia; Use or Possession; Unlawful; Penalty.**

2 (a) It shall be unlawful for any person to use, or to possess with intent to use,
3 paraphernalia to manufacture, ingest, inhale, or otherwise introduce into the human body marijuana
4 or any toxic compounds in violation of any section of this code or of the Nebraska Revised Statutes.

5 (b) Any person who violates this section shall be guilty of an infraction.

6 Section 28. That Title 9 of the Lincoln Municipal Code be amended by adding a new
7 section numbered 9.48.140 to read as follows:

8 **9.48.140 Violations; Penalty.**

9 Any person who violates any provision of this chapter, for which a penalty is not otherwise
10 provided, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine
11 of no more than \$500.00, sentenced to jail not more than three months, or both.

12 This penalty shall be cumulative in addition to any revocation or suspension of any license
13 or any other penalty prescribed by law.

14 Section 29. That Title 9 of the Lincoln Municipal Code be amended by adding a new
15 section numbered 9.48.150 to read as follows:

16 **9.48.150 Severability and Savings Clause.**

17 (a) Each section and each subdivision of a section of this chapter is hereby declared to
18 be independent of every other section or subdivision of a section so far as inducement for the passage
19 of this ordinance is concerned and invalidity of any section or subdivision of a section of this chapter
20 shall not invalidate any other section or subdivision of a section thereof.

21 (b) This chapter shall in no manner affect pending actions, either civil or criminal,
22 founded on or growing out of any ordinance or part of any ordinance hereby repealed; and this

1 chapter shall in no manner affect rights or causes of action, either civil or criminal, not in suit that
2 may have already accrued or grown out of any ordinance or part of any ordinance hereby repealed.

3 Section 30. That Section 9.20.100 of the Lincoln Municipal Code be amended to read
4 as follows:

5 **9.20.100 Minimum Penalties.**

6 Any person convicted of violating the following sections of the Lincoln Municipal Code shall
7 be fined no less than the following amounts:

8	Interfering with officer making an arrest (9.08.020)	\$250.00
9	Resisting an officer (9.08.030)	\$250.00
10	Making a false statement (9.08.040)	\$150.00
11	Assault and battery (9.12.010)	\$200.00
12	Public indecency and indecent exposure (9.16.180)	\$200.00
13	Urinating or defecating in public (9.16.200)	\$100.00
14	Failure to disperse (9.20.060)	\$200.00
15	Discharging weapons (9.36.050)	\$250.00
16	Furnishing false identification (5.04.080)	\$175.00
17	————— Misrepresenting age (5.04.090)	\$175.00
18	————— Minors in possession of alcohol (5.04.100)	\$175.00
19	————— Consuming alcohol in a prohibited place (5.04.160)	\$150.00

20 Section 31. That Section 9.20.100 of the Lincoln Municipal Code as hitherto existing
21 be and the same is hereby repealed.

22 Section 32. That Sections 15 through 29 of this ordinance shall be codified in the
23 Lincoln Municipal Code as Chapter 9.48 entitled “Alcohol and Drug Offenses.”

1 Section 33. Pursuant to Article VII, Section 7 of the City Charter, this ordinance shall
2 be posted on the official bulletin board of the City, located on the wall across from the City Clerk's
3 office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice of passage
4 and such posting to be given by publication one time in the official newspaper by the City Clerk.
5 This ordinance shall take effect and be in force from and after its passage and publication as herein
6 and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2013: _____ Mayor
