

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 9.16 of the Lincoln Municipal Code relating to
2 Offenses Against Public Decency by adding a new section numbered 9.16.025 to define marijuana;
3 adding a new section numbered 9.16.035 to define paraphernalia; adding a new section numbered
4 9.16.105 to make it an infraction to possess paraphernalia for the purpose of manufacturing,
5 inhaling, or ingesting marijuana or toxic compounds; and adding a new section numbered 9.16.145
6 to make it unlawful to possess one ounce or less of marijuana and to prescribe penalties for
7 violations.

8 WHEREAS, the City of Lincoln is empowered to make ordinances for maintaining
9 good government and welfare of the City, and for promoting the public health, safety, convenience,
10 comfort, and general interests and welfare of the inhabitants of the City; and

11 WHEREAS, the Lincoln Police Department issues a significant number of citations for
12 possession of one ounce or less of marijuana during investigations that also result in citations or
13 arrests for violations of the Lincoln Municipal Code; and

14 WHEREAS, the possession of marijuana and paraphernalia citations are currently
15 prosecuted by the Lancaster County Attorney’s Office, while a vast majority of citations issued for
16 violations of the Lincoln Municipal Code are prosecuted by the City Attorney’s Office; and

17 WHEREAS, the current process requires multiple citations, court dates, and filing of
18 more than one complaint in Lancaster County Court; and

1 WHEREAS, the City Council finds that the prosecution of possession of marijuana and
2 paraphernalia by the City Attorney’s Office, in the same complaint with other violations of the
3 Lincoln Municipal Code, will promote both governmental and judicial efficiency.

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

6 Section 1. That Chapter 9.16 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 9.16.025 to read as follows:

8 **9.16.025 Marijuana Defined.**

9 For purposes of this chapter, marijuana shall mean all parts of the plant of the genus
10 cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt,
11 derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks
12 of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced
13 from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture,
14 salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant
15 which is incapable of germination. When the weight of marijuana is referred to in this chapter, it
16 shall mean its weight at or about the time it is seized or otherwise comes into the possession of law
17 enforcement authorities, whether cured or uncured at that time.

18 Section 2. that Chapter 9.16 of the Lincoln Municipal Code be amended by adding a
19 new section numbered 9.16.035 to read as follows:

20 **9.16.035 Paraphernalia Defined.**

21 (a) As used in Section 9.16.105, unless the context otherwise requires, paraphernalia shall
22 mean all equipment, products, and materials of any kind which are used, intended for use, or
23 designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the

1 human body marijuana as defined in Section 9.16.025 or any toxic compound as defined in Section
2 9.16.030, in violation of any section of this code or of the Nebraska Revised Statutes. Paraphernalia
3 shall include, but not be limited to, the following:

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

6 (2) Balloons, bags, canisters, aerosol cans, and other objects used, intended for use,
7 designed for use, or modified for use in inhaling or absorbing toxic compounds into the human body;
8 and

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

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

14 (ii) Water pipes;

15 (iii) Carburetion tubes and devices;

16 (iv) Smoking and carburetion masks;

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

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

21 (vii) Chamber pipes;

22 (viii) Carburetor pipes;

23 (ix) Electric pipes;

- 1 (x) Air-driven pipes;
- 2 (xi) Chillums;
- 3 (xii) Bongs; and
- 4 (xiii) Ice pipes or chillers.

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

- 7 (1) Statements by an owner or by anyone in control of the object concerning its use;
- 8 (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under
9 any law relating to any controlled substance or toxic compound;
- 10 (3) The proximity of the object, in time and space, to marijuana and/or toxic
11 compound;
- 12 (4) The proximity of the object to any controlled substance;
- 13 (5) The existence of any residue of marijuana or any toxic compound;
- 14 (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in
15 control of the object, to deliver it to any person whom he or she knows, or should reasonably know,
16 intends to use the object to facilitate a violation of Sections 9.16.105, 9.16.110, 9.16.120, 9.16.130,
17 9.16.145 or any similar state statute. The innocence of an owner, or of anyone in control of the
18 object, as to a direct violation of those sections shall not prevent a finding that the object is intended
19 for use, or designed for use as paraphernalia;
- 20 (7) Instructions, oral or written, provided with the object concerning its use;
- 21 (8) Descriptive materials accompanying the object which explain or depict its use;
- 22 (9) National and local advertising concerning its use;
- 23 (10) The manner in which the object is displayed for sale;

1 (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of
2 like or related items to the community, such as a licensed distributor or dealer of tobacco products;

3 (12) Direct or circumstantial evidence of the ratio of sales of the object or objects to
4 the total sales of the business enterprise;

5 (13) The existence and scope of any legitimate use for the object in the community;
6 and

7 (14) Expert testimony concerning its use.

8 Section 3. That Chapter 9.16 of the Lincoln Municipal Code be amended by adding
9 a new section numbered 9.16.105 to read as follows:

10 **9.16.105 Paraphernalia; Use or Possession; Unlawful; Penalty.**

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

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

15 Section 4. That Chapter 9.16 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 9.16.145 to read as follows:

17 **9.16.145 Possession of Marijuana; One Ounce or Less; Unlawful; Penalty.**

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

20 (b) Penalty.

21 (1) For the first offense, be guilty of an infraction, receive a citation, be fined
22 \$100.00, and be assigned to attend a course as prescribed in *Neb. Rev. Stat. § 29-433* if the judge
23 determines that attending such course is in the best interest of the individual defendant;

1 (2) For the second offense, be guilty of a misdemeanor, receive a citation, and be
2 fined \$200.00 and may be imprisoned not to exceed five days; and

3 (3) For the third and all subsequent offenses, be guilty of a misdemeanor, receive a
4 citation, be fined \$300.00, and be imprisoned not to exceed seven days.

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

9 Section 5. That this ordinance shall take effect and be in force from and after its
10 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2006: _____ Mayor
