

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Chapter 10.16 of the Lincoln Municipal Code (Driving  
 2 While Intoxicated, Unlicensed or Uninsured) by amending Section 10.16.030 relating to the penalty  
 3 for driving under the influence of alcoholic liquor to comply with state statute; by amending Section  
 4 10.16.040 relating to the penalty for refusing to submit to a chemical test of blood, breath or urine  
 5 test to determine the concentration of alcohol or the presence of drugs in such blood, breath or urine  
 6 to comply with state statute; amending Section 10.16.045 relating to restrictions imposed for a  
 7 second violation of Section 10.16.030 or 10.16.040 to comply with state statute; repealing Sections  
 8 10.16.030, 10.16.040, and 10.16.045 of the Lincoln Municipal Code as hitherto existing; and  
 9 declaring an emergency.

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

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

13 **10.16.030 Under Influence of Alcoholic Liquor; Alcohol in Body Fluid; Penalty.**

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

20 (a) (1) If such person has not had a ~~previous~~ prior conviction ~~for this offense~~ in the  
 21 ~~twelve years~~ fifteen-year period prior to the date of the current ~~conviction~~ offense, such person shall  
 22 be imprisoned in the county jail not less than seven days nor more than sixty days, and shall be fined  
 23 not less than ~~\$400.00~~ nor more than \$500.00, recoverable with costs, and the court shall, as part of

1 the judgment of conviction, order ~~such person not to drive any motor vehicle for any purpose for a~~  
2 ~~period of six months from the date ordered by the court and shall order that the operator's license~~  
3 ~~of such person be revoked for a like period~~ that the operator's license of such person be revoked for  
4 a period of six months from the date ordered by the court. The revocation order shall require that  
5 the person apply for an ignition interlock permit pursuant to subsection (1)(b) of Neb. Rev. Stat. §  
6 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor  
7 vehicle he or she operates during the revocation period. Such revocation shall be administered upon  
8 sentencing, upon final judgment of any appeal or review, or upon the date that any probation is  
9 revoked. ~~Such revocation shall not run concurrently with any jail term imposed.~~

10           If the court places such person on probation or suspends the sentence for any  
11 reason, the court shall, as one of the conditions of probation or sentence suspension, order such  
12 person not to drive any motor vehicle for any purpose for a period of sixty days from the date ~~of the~~  
13 ~~order, unless otherwise authorized by an order issued pursuant to Neb. Rev. Stat. § 60-6,211.05, and~~  
14 ~~such~~ ordered by the court. Such order of probation shall also include, as one of its conditions, the  
15 payment of a ~~\$400.00~~ \$500.00 fine.

16           (2) If such person has not had a prior conviction ~~for this offense~~ in the fifteen-  
17 year period prior to the date of the current offense and, as part of the current violation, had a  
18 concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred  
19 milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per  
20 two hundred ten liters of his or her breath, such person shall be imprisoned in the county jail not less  
21 than seven days nor more than sixty days, and shall be fined not less than \$500.00, recoverable with  
22 costs, and the court shall, as part of the judgment of conviction, revoke the operator's license of such  
23 person for a period of one year from the date ordered by the court. The revocation order shall

1 require that the person apply for an ignition interlock permit pursuant to Neb. Rev. Stat. §60-  
2 6,197.01 for the revocation period and have an ignition interlock device installed on any motor  
3 vehicle he or she operates during the revocation period. Such revocation shall be administered upon  
4 sentencing, upon final judgment of any appeal or review, or upon the date that any probation is  
5 revoked.

6           If the court places such person on probation or suspends the sentence for any  
7 reason, the court shall, as one of the conditions of probation or sentence suspension, order that the  
8 operator's license of such person be revoked or impounded for a period of one year from the date  
9 ordered by the court, ~~unless otherwise authorized by an order issued pursuant to Neb. Rev. Stat. §~~  
10 ~~60-6,211.05, and such~~ The revocation order shall require that the person apply for an ignition  
11 interlock permit pursuant to Neb. Rev. Stat. §60-6,197.01 for the revocation period and have an  
12 ignition interlock device installed on any motor vehicle he or she operates during the revocation  
13 period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal  
14 or review, or upon the date that any probation is revoked. Such order of probation or sentence

15 suspension shall also include, as conditions, the payment of a \$500.00 fine and either confinement  
16 in the county jail for two days or the imposition of not less than 120 hours of community service;

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

1 alcohol per two hundred ten liters of his or her breath, such person shall be imprisoned in the county  
2 jail not less than thirty days nor more than six months, and shall be fined \$500.00, recoverable with  
3 costs, and the court shall, as part of the judgment of conviction, order ~~such person not to drive any~~  
4 ~~motor vehicle for any purpose for a period of one year from the date ordered by the court, and shall~~  
5 ~~order~~ that the operator's license of such person be revoked for a ~~like~~ period of one year from the date  
6 ordered by the court. The revocation order shall require that the person not drive for a period of 45  
7 days, after which the court shall order that the person apply for an ignition interlock permit for the  
8 remainder of the revocation period and have an ignition interlock device installed on any motor  
9 vehicle he or she owns or operates during the remainder of the revocation period and shall issue an  
10 order pursuant to Lincoln Municipal Code Section 10.16.045(b). Such revocation shall be  
11 administered upon sentencing, upon final judgment of any appeal or review, or upon the date that  
12 any probation is revoked. ~~Such revocation shall not run concurrently with any jail term imposed.~~

13 If the court places such person on probation or suspends the sentence for any reason,  
14 the court shall, as one of the conditions of probation or sentence suspension, order that the operator's  
15 license of such person not to drive any motor vehicle in the State of Nebraska for any purpose be  
16 revoked for a period of one year from the date ordered by the court. of the order unless otherwise  
17 authorized by an order issued The revocation order shall require that the person not drive for a  
18 period of forth-five days, after which the court shall order that during the period of revocation the  
19 person apply for an ignition interlock permit and installation of an ignition interlock device pursuant  
20 to Neb. Rev. Stat. §60-6,211.05 and shall issue an order pursuant to Lincoln Municipal Code Section  
21 10.16.045(b), with respect to all motor vehicles owned by such person, and such Such order of  
22 probation shall also include, as conditions, the payment of a \$500.00 fine and either confinement  
23 in the county jail for ten days or the imposition of not less than 240 hours of community service.

1 (c) For each conviction under this section, the court shall, as part of the judgment of  
2 conviction, make a finding on the record as to the number of the defendant's prior convictions for  
3 ~~this offense in Nebraska in the twelve years~~ in the fifteen-year period prior to the date of the current  
4 conviction. The defendant shall be given the opportunity to review the record of his or her prior  
5 convictions, bring mitigating facts to the attention of the court prior to sentencing, and make  
6 objections on the record regarding the validity of such prior convictions.

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

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

13 (e)(f) Any period of revocation imposed ~~under this section~~ by the court for a violation of  
14 Section 10.16.030 or 10.16.040 shall be reduced by any period of revocation imposed under Neb.  
15 Rev. Stat. § ~~60-6,206~~. §§ 60-498.01 to 60-498.04, including any period during which a person has  
16 a valid ignition interlock permit, arising from the same incident. ~~Any period of revocation imposed~~  
17 ~~under this section shall not prohibit the operation of a motor vehicle under the terms and conditions~~  
18 ~~of an employment driving permit issued pursuant to subsection (2) of Neb. Rev. Stat. § 60-6,206.~~

19 (g) A person who commits a violation punishable under Lincoln Municipal Code Section  
20 10.16.030 or 10.16.040 while participating in criminal proceedings for a violation of Section  
21 10.16.030, 10.16.040, or any of the violations referenced in Neb. Rev. Stat § 60-6,197.09 shall not  
22 be eligible to receive a sentence of probation or a suspended sentence for either violation committed  
23 in this state.

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

3 **10.16.040     Chemical Tests; Refusal; Penalty.**

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

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

16           (c)     Any ~~law enforcement~~ peace officer who has been duly authorized to make arrests for  
17 violations of traffic laws of this state or of ordinances of any city or village may require any person  
18 who operates or has in his or her actual physical control a motor vehicle to submit to a preliminary  
19 test of his or her breath for alcohol concentration if the officer has reasonable grounds to believe that  
20 such person has alcohol in his or her body, has committed a moving traffic violation, or has been  
21 involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or  
22 whose preliminary breath test results indicate an alcohol concentration in violation of Section  
23 10.16.030 shall be placed under arrest. Any person who refuses to submit to such preliminary breath

1 test shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of  
2 not to exceed \$100.00, recoverable with costs.

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

9 (1) If such person has not had a prior conviction ~~for this offense in the twelve~~  
10 ~~years prior to the date of the current conviction,~~ such person shall be imprisoned in the county jail  
11 for not less than seven days nor more than sixty days, and shall be fined not less than ~~\$400.00 nor~~  
12 ~~more than~~ \$500.00, recoverable with costs, and the court shall, as part of the judgment of conviction,  
13 ~~order such person not to drive any motor vehicle for any purpose in the State of Nebraska for a~~  
14 ~~period of six months from the date ordered by the court and shall order that the operator's license~~  
15 ~~of such person be revoked for a like period~~ of six months from the date ordered by the court. The  
16 revocation order shall require that the person apply for an ignition interlock permit pursuant to  
17 subsection (1)(b) of Neb. Rev. Stat. § 60-6,197.01 for the revocation period and have an ignition  
18 interlock device installed on any motor vehicle he or she operates during the revocation period.  
19 Such revocation shall be administered upon sentencing, upon final judgment of any appeal or re-  
20 view, or upon the date that any probation is revoked. ~~Such revocation shall not run concurrently~~  
21 ~~with any jail term imposed.~~

22 If the court places such person on probation or suspends the sentence for any  
23 reason, the court shall, as one of the conditions of probation or sentence suspension, order such

1 person not to drive any motor vehicle for any purpose for a period of sixty days from the date of the  
2 order ordered by the court, unless otherwise authorized by an order issued pursuant to *Neb. Rev.*  
3 *Stat. § 60-6,211.05*, and such The court shall order that during the period of revocation the person  
4 apply for an ignition interlock permit pursuant to *Neb. Rev. Stat. § 60-6,211.05*. Such order of  
5 probation shall also include, as one of its conditions, the payment of a ~~\$400.00~~ 500.00 fine.

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

22 ~~—————(3) For each conviction under this subsection, the court shall, as part of the~~  
23 ~~judgment of conviction, make a finding on the record as to the number of the defendant's prior~~

1 ~~convictions for this offense in Nebraska in the twelve years prior to the date of the current con-~~  
2 ~~viction. The defendant shall be given the opportunity to review the record of his or her prior~~  
3 ~~convictions, bring mitigating facts to the attention of the court prior to sentencing, and make~~  
4 ~~objections on the record regarding the validity of such prior convictions. For purposes of this~~  
5 ~~subsection, the twelve-year period shall be computed from the date of the prior offense to the date~~  
6 ~~of the offense which resulted in the current conviction and the term "prior conviction" shall mean~~  
7 ~~convictions defined by *Neb. Rev. Stat.* § 60-6,197.02, as the same existed at the time of such~~  
8 ~~conviction, regardless of subsequent amendments thereto.~~

9 (e) Any person arrested for any offense involving the operation or actual physical control  
10 of a motor vehicle while under the influence of alcoholic liquor or drugs shall be required to submit  
11 to a chemical test or tests of his or her blood, breath, or urine, as provided in this section, without  
12 the preliminary breath test if the arresting officer does not have available the necessary equipment  
13 for administering a breath test, or if the person is unconscious or is otherwise in a condition  
14 rendering him or her incapable of testing by a preliminary breath test.

15 (f) Any person who is required to submit to a chemical blood, breath, or urine test or  
16 tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate  
17 crime for which the person may be charged. Failure to provide such advisement shall not affect the  
18 admissibility of the chemical test result in any legal proceedings. However, failure to provide such  
19 advisement shall negate the state's ability to bring any criminal charges against a refusing party  
20 pursuant to this section.

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

1           (h) Any person involved in a motor vehicle accident in this state may be required to  
2 submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the  
3 officer has reasonable grounds to believe that the person was driving or was in actual physical  
4 control of a motor vehicle on a public highway in this state while under the influence of alcoholic  
5 liquor or drugs at the time of the accident.

6           (i) Any period of revocation imposed by the court for a violation of Section 10.16.030  
7 or 10.16.040 shall be reduced by any period of revocation imposed under Neb. Rev. Stat. §§ 60-  
8 498.01 to 60-498.04, including any period during which a person has a valid ignition interlock  
9 permit, arising from the same incident.

10           (j) A person who commits a violation punishable under Section 10.16.030 or 10.16.040  
11 while participating in criminal proceedings for a violation of Section 10.16.030, 10.16.040, or any  
12 of the violations referenced in Neb. Rev. Stat. § 60-6,197.09 shall not be eligible to receive a  
13 sentence of probation or a suspended sentence for either violation committed in this state.

14           Section 3. That Section 10.16.045 of the Lincoln Municipal Code be amended to  
15 read as follows:

16       **10.16.045     Driving Under Influence of Alcoholic Liquor or Drug; Second Offense;**  
17       **Restrictions on Motor Vehicles.**

18           Upon conviction for a second violation of Lincoln Municipal Code Section 10.16.030 or  
19 10.16.040, the court shall impose either of the following restrictions ~~on all motor vehicles owned~~  
20 ~~by the person so convicted:~~

21           (a)     (1) The court shall order ~~the~~ all motor vehicles owned by the person so convicted  
22 or motor vehicles immobilized at the owner's expense for a period of time not less than five days  
23 and not more than eight months and shall notify the Department of Motor Vehicles of the period of  
24 immobilization. Any immobilized motor vehicle shall be released to the holder of a bona fide lien

1 on the motor vehicle executed prior to such immobilization when possession of the motor vehicle  
2 is requested as provided by law by such lienholder for purposes of foreclosing and satisfying such  
3 lien. If a person tows and stores a motor vehicle pursuant to this section at the direction of a peace  
4 officer or the court and has a lien upon such motor vehicle while it is in his or her possession for  
5 reasonable towing and storage charges, the person towing the vehicle has the right to retain such  
6 motor vehicle until such lien is paid. For purposes of this section, immobilized or immobilization  
7 means revocation or suspension, at the discretion of the court, of the registration of such motor  
8 vehicle or motor vehicles, including the license plates; and

9 ~~(b)(1)~~ (2) Any immobilized motor vehicle shall be released by the court without any  
10 legal or physical restraints to any registered owner who is not the registered owner convicted of a  
11 second violation of Section 10.16.030 or 10.16.040 if an affidavit is submitted to the court by such  
12 registered owner stating that the affiant is employed, that the motor vehicle subject to  
13 immobilization is necessary to continue that employment, that such employment is necessary for the  
14 well-being of the affiant's dependent children or parents, that the affiant will not authorize the use  
15 of the motor vehicle by any person known by the affiant to have been convicted of a second  
16 violation of Section 10.16.030 or 10.16.040, that affiant will immediately report to a local law  
17 enforcement agency any unauthorized use of the motor vehicle by any person known by the affiant  
18 to have been convicted of a second violation of Section 10.16.030 or 10.16.040, and that failure to  
19 release the motor vehicle would cause undue hardship to the affiant.

20 ~~(2)~~ — A registered owner who executes an affidavit pursuant to ~~subsection (b)(1)~~  
21 ~~of this section~~ which is acted upon by the court and who fails to immediately report an unauthorized  
22 use of the motor vehicle which is the subject of the affidavit is guilty of a misdemeanor, punishable

1 by fine of not less than \$100.00 nor more than \$500.00, and may not file any additional affidavits  
2 pursuant to subsection (b)(1) of this section.

3 (b) As an alternative to subsection (a) of this section, the court shall order the convicted  
4 person, in order to operate a motor vehicle, to obtain an ignition interlock permit and install an  
5 ignition interlock device on each motor vehicle owned or operated by the convicted person if he or  
6 she was sentenced to an operator's license revocation of at least one year. If the person's operator's  
7 license has been revoked for at least a one-year period, after a minimum of a forty-five-day no  
8 driving period, the person may operate a motor vehicle with an ignition interlock permit and an  
9 ignition interlock device pursuant to this subsection and shall retain the ignition interlock permit and  
10 ignition interlock device for not less than the remainder of a one-year period or period of revocation  
11 ordered by the court, whichever is longer.

12 (c) In addition to the restrictions required by subsection (b) of this section, the court may  
13 require a person convicted of a second violation of Section 10.16.030 to use a continuous alcohol  
14 monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term  
15 of license revocation ordered by the court. A continuous alcohol monitoring device shall not be  
16 ordered for a person convicted of a second violation unless the installation of an ignition interlock  
17 device is also required.

18 Section 4. That Sections 10.16.030, 10.16.040, and 10.16.045 of the Lincoln  
19 Municipal Code as hitherto existing be and the same is hereby repealed.

1                   Section 5. Whereas an emergency exists, this ordinance shall take effect and be in  
2 force from and after its passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2012:

\_\_\_\_\_  
Mayor