

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

1 AN ORDINANCE amending Chapter 9.16 of the Lincoln Municipal Code relating  
2 to Offenses Against Public Decency by amending Section 9.16.030 defining toxic compounds;  
3 amending Section 9.16.035 defining paraphernalia; amending Section 9.16.110 relating to the  
4 unlawful use of toxic compounds to clarify that a toxic compound could be introduced into the  
5 human system by other means than currently set forth in the sections; amending Section 9.16.140  
6 to make the penalty comparable with state statute; and repealing Sections 9.16.030, 9.16.035,  
7 9.16.100, and 9.16.140 of the Lincoln Municipal Code as hitherto existing.

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

9 Section 1. That Section 9.16.030 of the Lincoln Municipal Code be amended to read  
10 as follows:

11 **9.16.030 Toxic Compounds Defined.**

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

1                   Section 2. That Section 9.16.035 of the Lincoln Municipal Code be amended to read  
2 as follows:

3 **9.16.035       Paraphernalia Defined.**

4                   (a)     As used in Section 9.16.105, unless the context otherwise requires, paraphernalia  
5 shall mean all equipment, products, and materials of any kind which are used, intended for use, or  
6 designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the  
7 human body marijuana as defined in Section 9.16.025 or any toxic compound as defined in Section  
8 9.16.030, in violation of any section of this code or of the Nebraska Revised Statutes. Paraphernalia  
9 shall include, but not be limited to, the following:

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

12                   (2)     Balloons, bags, canisters, aerosol cans, and other objects used, intended for  
13 use, designed for use, or modified for use in inhaling, ~~or~~ absorbing, or otherwise introducing toxic  
14 compounds into the human system; and

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

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

20                   (ii)    Water pipes;

21                   (iii)  Carburetion tubes and devices;

22                   (iv)   Smoking and carburetion masks;

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

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

5 (vii) Chamber pipes;

6 (viii) Carburetor pipes;

7 (ix) Electric pipes;

8 (x) Air-driven pipes;

9 (xi) Chillums;

10 (xii) Bongs; and

11 (xiii) Ice pipes or chillers.

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

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

16 (2) Prior convictions, if any, of an owner, or of anyone in control of the object,  
17 under any law relating to any controlled substance or toxic compound;

18 (3) The proximity of the object, in time and space, to marijuana and/or toxic  
19 compound;

20 (4) The proximity of the object to any controlled substance;

21 (5) The existence of any residue of marijuana or any toxic compound;

22 (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in  
23 control of the object, to deliver it to any person whom he or she knows, or should reasonably know,

1 intends to use the object to facilitate a violation of Sections 9.16.105, 9.16.110, 9.16.120, 9.16.130,  
2 9.16.145 or any similar state statute. The innocence of an owner, or of anyone in control of the  
3 object, as to a direct violation of those sections shall not prevent a finding that the object is intended  
4 for use, or designed for use as paraphernalia;

- 5 (7) Instructions, oral or written, provided with the object concerning its use;
- 6 (8) Descriptive materials accompanying the object which explain or depict its  
7 use;
- 8 (9) National and local advertising concerning its use;
- 9 (10) The manner in which the object is displayed for sale;
- 10 (11) Whether the owner, or anyone in control of the object, is a legitimate supplier  
11 of like or related items to the community, such as a licensed distributor or dealer of tobacco  
12 products;
- 13 (12) Direct or circumstantial evidence of the ratio of sales of the object or objects  
14 to the total sales of the business enterprise;
- 15 (13) The existence and scope of any legitimate use for the object in the  
16 community; and
- 17 (14) Expert testimony concerning its use.

18 Section 3. That Section 9.16.110 of the Lincoln Municipal Code be amended to read  
19 as follows:

20 **9.16.110 Toxic Compounds; Unlawful Use.**

21 It shall be unlawful for any person for the purpose of inducing a condition of intoxication,  
22 stupefaction, depression, giddiness, paralysis, irrational behavior, inebriation, excitement, or in any  
23 manner changing, distorting, or disturbing the auditory, visual, mental or nervous processes to

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

7 Section 4. That Section 9.16.140 of the Lincoln Municipal Code be amended to read  
8 as follows:

9 **9.16.140 Toxic Compounds; Penalty for Violations.**

10 Any person who shall violate any of the provisions of Sections 9.16.110, 9.16.120, or  
11 9.16.130 shall be deemed guilty of a misdemeanor and upon conviction thereof ~~of a first offense~~  
12 shall be punished by imprisonment in the county jail for a period of not to exceed ~~six~~ three months,  
13 or by a fine not to exceed \$500.00, recoverable with costs, or both.

14 ~~Any person who shall stand convicted of a second offense of violation of any provision of~~  
15 ~~Sections 9.16.110, 9.16.120, or 9.16.130 shall be punished by imprisonment in the county jail for~~  
16 ~~a period of not less than five days nor more than six months and by a fine of not less than \$100.00~~  
17 ~~nor more than \$500.00, recoverable with costs.~~

18 ~~Any person who shall stand convicted of a third or subsequent offense for violation of any~~  
19 ~~provision of Sections 9.16.110, 9.16.120, or 9.16.130 shall be punished by imprisonment in the~~  
20 ~~county jail for a period of not less than thirty days nor more than six months and a fine of not less~~  
21 ~~than \$250.00 nor more than \$500.00, recoverable with costs.~~

22 Section 5. That Sections 9.16.030, 9.16.035, 9.16.100, and 9.16.140 of the Lincoln  
23 Municipal Code as hitherto existing be and the same are hereby repealed.

1                   Section 6. That this ordinance shall take effect and be in force from and after passage  
2 and publication in one issue of a daily or weekly newspaper of general circulation in the City,  
3 according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

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

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

\_\_\_\_\_

Mayor