

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA, TO AMEND THE LA VISTA MUNICIPAL CODE SECTION 71.016; TO REPEAL CONFLICTING ORDINANCES PREVIOUSLY ENACTED; TO PROVIDE FOR SEVERABILITY; AND TO PROVIDE FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, SARPY COUNTY, NEBRASKA:

SECTION 1. Section 71.016 of the La Vista Municipal Code is amended to read as follows:

§ 71.016 DRIVING UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS.

(A) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(1) While under the influence of alcoholic liquor or of any drug;

(2) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood; or

(3) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.

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

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

(D) Any peace officer who has been duly authorized to make arrests for violation of traffic laws of the state or of ordinances of the city may require any person who operates or has in his or her actual physical control a motor vehicle in the city to submit to a preliminary test of his or her breath for alcohol concentration if the officer has reasonable

grounds to believe that such person has alcohol in his or her body, has committed a moving traffic violation or has been involved in a traffic accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicated an alcohol concentration in violation of division (A) of this section shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of an offense.

(E) Any person arrested as provided in this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of division (A) of this section, the person shall be subject to the administrative revocation procedures provided in Neb. RS 60-498.01 to 60-498.04, and upon conviction shall be punished as provided in Neb. RS 60-6, 197.02 to 69-6, 197.08. Any person who or if any person refuses to submit to such test or tests required pursuant to this section, such person shall be subject to the administrative revocation procedures provided in Neb. RS 60-6, 205 to 60-6, 208 60-498.01 to 60-498.04, and shall be guilty of an offense—a crime upon conviction punished as provided in Neb. RS 60-6, 197.02 to 60-6, 197.08.

(F) Upon the conviction of any person for the violation of this section, there shall be assessed as part of the court costs the fee charged by any physician or any agency administering tests pursuant to a permit issued in accordance with Neb. RS 60-6, 201, for the test administered and the analysis thereof if such test was actually made. (Neb. RS 60-6, 196, 60-6, 197, 60-6, 203) ('79 Code, § 5-511)

Statutory reference:

Statutory penalties, see Neb. RS 60-6, 196 et seq.

SECTION 2. Repeal of Conflicting Ordinances. All ordinances and parts of ordinances as previously enacted that are in conflict with this Ordinance or any part hereof are hereby repealed.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall be in full force and effect from and after passage, approval and publication in pamphlet form as provided by law.

PASSED AND APPROVED THIS 1ST DAY OF MAY 2007.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

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