

(ORDINANCE AS AMENDED NO. 2)
ORDINANCE NO. _____

1 AN ORDINANCE amending Title 8 of the Lincoln Municipal Code relating to
2 Health and Sanitation by creating a new Chapter 8.48 entitled the Lincoln Smokefree Air Act
3 by adding a new section numbered 8.48.010 to set forth the title of the Chapter; adding a new
4 section numbered 8.48.020 to set forth the purpose of the Chapter; adding a new section
5 numbered 8.48.030 to set forth general provisions regarding definitions used in the Chapter;
6 adding new sections numbered 8.48.040 through 8.48.150 to provide definitions for
7 employed, employee, employer, guestroom or suite, health director, indoor area, international
8 no-smoking symbol, place of employment, proprietor, public place, smoking room, smoke or
9 smoking, respectively; adding a new section numbered 8.48.160 to make it unlawful for any
10 person to smoke in a place of employment or a public place and to provide exceptions
11 therefor; adding a new section numbered 8.48.170 to make it unlawful for a proprietor of any
12 place regulated by this chapter to allow smoking in any place of employment or public place
13 and providing exceptions therefor; adding a new section numbered 8.48.180 to require the
14 posting of signs; adding a new section numbered 8.48.190 to provide for the enforcement of
15 the provisions of the chapter; adding a new section 8.48.200 to provide penalties for
16 violations of the chapter; adding a new section numbered 8.48.210 to provide for severability
17 of the chapter; and providing that this ordinance shall become effective eighteen (18) months
18 after City Council approval.

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

1 Section 1. That Title 8 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 8.48.010 to read as follows:

3 **8.48.010** **Title.**

4 This Chapter shall be known as the Lincoln Smokefree Air Act.

5 Section 2. That Title 8 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 8.48.020 to read as follows:

7 **8.48.020** **Purpose.**

8 The City Council does hereby find and declare that the purpose of this Chapter is to
9 protect the health and welfare of employees and the public by requiring nonsmoking and
10 smoking areas to be separated in all places of employment and public places.

11 It is therefore declared to be the public policy of this City to eliminate and prevent
12 health and safety risks posed by smoking at places of employment and public places. The City
13 Council authorizes the Health Director of the Lincoln-Lancaster County Health Department
14 and law enforcement to administer and enforce this Chapter within the City of Lincoln.

15 Section 3. That Title 8 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 8.48.030 to read as follows:

17 **8.48.030** **Definitions; General Provisions.**

18 For the purposes of this Chapter, the following words and phrases shall have the
19 meaning ascribed to them by this Chapter.

20 Section 4. That Title 8 of the Lincoln Municipal Code be amended by adding
21 a new section numbered 8.48.040 to read as follows:

1 **8.48.040** **Definition; Employed.**

2 Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish
3 goods or services.

4 Section 5. That Title 8 of the Lincoln Municipal Code be amended by adding
5 a new section numbered 8.48.050 to read as follows:

6 **8.48.050** **Definition; Employee.**

7 Employee shall mean a person who is employed by an employer in consideration for
8 direct or indirect monetary wage(s), profit, or other remuneration.

9 Section 6. That Title 8 of the Lincoln Municipal Code be amended by adding
10 a new section numbered 8.48.060 to read as follows:

11 **8.48.060** **Definition; Employer.**

12 Employer shall mean any of the following with one or more employees: a person, non-
13 profit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership,
14 limited liability company, co-op, firm, trust, association, organization, or other business entity
15 formed for profit-making purposes, including retail establishments where goods or services are
16 sold.

17 Section 7. That Title 8 of the Lincoln Municipal Code be amended by adding
18 a new section numbered 8.48.070 to read as follows:

19 **8.48.070** **Definition; Guestroom or Suite.**

20 Guestroom or suite shall mean sleeping rooms and directly associated private areas,
21 such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their

1 exclusive transient occupancy including, but not limited to, hotels, motels, inns, lodges, or
2 other such establishments.

3 Section 8. That Title 8 of the Lincoln Municipal Code be amended by adding
4 a new section numbered 8.48.080 to read as follows:

5 **8.48.080** **Definition; Health Director.**

6 Health Director shall mean the Director of the Lincoln-Lancaster County Health
7 Department or authorized representative(s).

8 Section 9. That Title 8 of the Lincoln Municipal Code be amended by adding
9 a new section numbered 8.48.090 to read as follows:

10 **8.48.090** **Definition; Indoor Area.**

11 Indoor area shall mean the area bordered on all sides by a floor to ceiling wall in which
12 the sides must be continuous and solid except for closeable entry/exit doors and windows.

13 Section 10. That Title 8 of the Lincoln Municipal Code be amended by adding
14 a new section numbered 8.48.100 to read as follows:

15 **8.48.100** **Definition; International No-Smoking Symbol.**

16 International no-smoking symbol shall mean a pictorial representation of a burning
17 cigarette enclosed in a red circle with a red bar across it.

18 Section 11. That Title 8 of the Lincoln Municipal Code be amended by adding
19 a new section numbered 8.48.110 to read as follows:

20 **8.48.110** **Definition; Place of Employment.**

21 Place of employment shall mean an indoor area under the control of a proprietor that

1 an employee accesses as part of the course of employment without regard to whether work
2 is occurring at any given time. The indoor area shall include, but is not limited to, work areas,
3 employee breakrooms, restrooms, conference rooms, meeting rooms, classrooms, employee
4 cafeterias, and hallways. A private residence shall not be considered a “place of employ-
5 ment”.

6 Section 12. That Title 8 of the Lincoln Municipal Code be amended by adding
7 a new section numbered 8.48.120 to read as follows:

8 **8.48.120** **Definition; Proprietor.**

9 Proprietor shall mean the person who controls, governs, or directs the activities in a
10 place of employment or public place. A proprietor may be, but is not limited to the following:
11 employer, owner, operator, supervisor, or manager.

12 Section 13. That Title 8 of the Lincoln Municipal Code be amended by adding
13 a new section numbered 8.48.130 to read as follows:

14 **8.48.130** **Definition; Public Place.**

15 Public Place shall mean an indoor area to which the public is invited or in which the
16 public is permitted, whether or not the public is invited or permitted at that time. A private
17 residence shall not be considered a “public place”.

18 Section 14. That Title 8 of the Lincoln Municipal Code be amended by adding
19 a new section numbered 8.48.140 to read as follows:

1 **8.48.140** **Definition; Smoking Room.**

2 Smoking room shall mean a designated room within a place of employment or public
3 place where smoking may be allowed. This definition shall not include a guestroom or suite
4 as defined in Section 8.48.070.

5 Section 15. That Title 8 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 8.48.150 to read as follows:

7 **8.48.150** **Definition; Smoke or Smoking.**

8 Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the
9 possession of any lighted cigarette, cigar, or pipe, regardless of its composition.

10 Section 16. That Title 8 of the Lincoln Municipal Code be amended by adding
11 a new section numbered 8.48.160 to read as follows:

12 **8.48.160** **Smoking Prohibited; Exceptions.**

13 It shall be unlawful for any person to smoke in a place of employment or a public
14 place, except as designated by a proprietor pursuant to Section 8.48.170.

15 Section 17. That Title 8 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 8.48.170 to read as follows:

17 **8.48.170** **Proprietor to Prohibit Smoking; Exceptions.**

18 (a) It shall be unlawful for a proprietor of any place regulated by this Chapter to
19 allow smoking in any place of employment or public place, except as follows:

20 (1) Guestrooms or suites may be designated as an indoor area where
21 smoking is allowed, however, not more than twenty percent (20%) of the total number of
22 guestrooms or suites may be so designated.

1 (2) At times when a scientific or analytical laboratory, governed by state or
2 federal law, or a laboratory at a college or university approved by the Nebraska Coordinating
3 Commission for Post Secondary Education, is conducting research into the health effects of
4 smoking, smoking may be allowed as part of the study.

5 (3) In an employee breakroom that has been designated by the proprietor
6 to allow smoking by employees, provided that the following requirements are met:

7 (i) Only employees of the proprietor shall be allowed to smoke
8 within the designated smoking breakroom; and

9 (ii) An employee nonsmoking breakroom shall be provided. It shall
10 have at least the same size and amenities as the smoking breakroom; and

11 (iii) The smoking breakroom shall not serve as a work area for any
12 employee nor should any employee be required to enter the smoking breakroom in order to
13 reach the employee's work area. This provision shall not apply to employees providing
14 janitorial services within the smoking breakroom; and

15 (iv) The smoking breakroom shall be separated from the rest of the
16 place of employment or public place, and from any other adjacent or connected place of
17 employment or public place, by solid walls, floors, ceiling, and doors equipped with
18 automatic closing mechanisms; and

19 (v) The smoking breakroom shall be at negative air pressure with
20 respect to the rest of the place of employment or public place, and from any other adjacent
21 or connected place of employment or public place, so as to prohibit the flow of air from the
22 smoking breakroom into the place of employment or public place; and

1 (vi) The smoking breakroom's air shall be immediately exhausted to
2 the outside of the building by an exhaust fan rather than being recirculated within the smoking
3 breakroom or any place of employment or public place; and

4 (vii) No person under the age of eighteen shall be allowed to enter the
5 smoking breakroom.

6 (4) One smoking room may be provided within any place of employment
7 or public place, provided that it meets the following requirements:

8 (i) The smoking room shall be separated from the rest of the place
9 of employment or public place, from any other adjacent or connected place of employment
10 or public place, by solid walls, floors, ceiling, and doors equipped with automatic closing
11 mechanisms; and

12 (ii) The smoking room shall be at negative pressure with respect to
13 any adjacent or connected place of employment or public place to prohibit the flow of air
14 from the smoking room into the nonsmoking portion of the place of employment or public
15 place; and

16 (iii) The smoking room's air shall be immediately exhausted to the
17 outside of the building by an exhaust fan rather than being recirculated within the smoking
18 room or any place of employment or public place; and

19 (iv) The maximum size of the smoking room shall be no greater than
20 thirty-five percent of the gross square footage of the place of employment or public place; and

21 (v) Any service or amenity which the place of employment or public
22 place chooses to provide to the public or employees within the smoking room shall be at least

1 as available in the rest of the place of employment or public place. This is to include, but not
2 be limited to, the services of the place of employment or public place, entertainment, and
3 seating; and

4 (vi) The public or employees shall not be required to enter the
5 smoking room in order to access common areas of the place of employment or public place.

6 This is to include, but not be limited to, hallways, restrooms, lobbies, and waiting rooms; and

7 (vii) No person under the age of eighteen shall be allowed to enter the
8 smoking room.

9 (5) A proprietor of a theatrical production site may allow smoking by an
10 actor or actress as part of the character role, if smoking is an integral part of the story in the
11 theatrical production.

12 (b) The proprietor shall have an affirmative defense to this section when the
13 proprietor (1) verbally requested a person to refrain from smoking within a public place or
14 place of employment; and (2) took every reasonable step to prohibit the person from smoking.
15 “Reasonable step” shall not require the physical ejection of a person by the proprietor from
16 the place of employment or public place.

17 (c) This Chapter shall not be interpreted or construed to permit smoking where
18 smoking is otherwise restricted by other applicable laws.

19 Section 18. That Title 8 of the Lincoln Municipal Code be amended by adding
20 a new section numbered 8.48.180 to read as follows:

1 **8.48.180 Signs Required; Requirements.**

2 (a) If smoking is not allowed by this Chapter and/or by the proprietor, the proprietor
3 shall post at least one sign at all entrances of the place of employment or public place used
4 by employee(s) or the public containing only the international no smoking symbol or only the
5 words "no smoking," or only the words "no smoking under penalty of law."

6 (b) If smoking is allowed in conformance with this Chapter and by the proprietor,
7 the proprietor shall post at least one sign at all entrances of the place of employment or public
8 place used by employee(s) or the public containing only the words "no smoking except in
9 designated area under penalty of law," and:

10 (1) If a guestroom or suite is to be designated as a smoking room, the
11 proprietor shall post signs which indicate smoking is allowed within the guestroom or suite.
12 The sign shall include the words "smoking allowed." Each letter shall be one inch or larger
13 in size. There shall be a separately posted sign on each entrance of the guestroom or suite.

14 (2) If research is being conducted, pursuant to Section 8.48.170(2), that
15 requires a person to smoke, the proprietor shall post a temporary sign on all entrances used
16 by employee(s) or the public indicating that smoking is being allowed for the purposes of the
17 research.

18 (3) If a smoking breakroom, designated pursuant to Section 8.48.170(3), or
19 smoking room has been designated, the proprietor shall post signs indicating that smoking is
20 allowed within the smoking breakroom or smoking room. The signs shall include the words
21 "smoking allowed." Each letter shall be one inch or larger in size. There shall be a separately
22 posted sign on each entrance to the smoking breakroom or smoking room.

1 (c) Proprietors shall conspicuously post or display required signs so that the signs
2 are readily viewable by employee(s) and the public.

3 Section 19. That Title 8 of the Lincoln Municipal Code be amended by adding
4 a new section numbered 8.48.190 to read as follows:

5 **8.48.190 Enforcement.**

6 The Health Director and law enforcement agencies are hereby authorized to inspect
7 a place of employment or public place at any reasonable time to determine compliance with
8 this Chapter.

9 Section 20. That Title 8 of the Lincoln Municipal Code be amended by adding
10 a new section numbered 8.48.200 to read as follows:

11 **8.48.200 Violations and Penalties.**

12 (a) A person who smokes in a place of employment or a public place in violation
13 of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be
14 punished by a fine of up to five hundred dollars (\$500) together with costs and/or up to six (6)
15 months in jail with:

16 (1) A minimum fine of one hundred dollars (\$100) and costs for the first
17 offense.

18 (2) A minimum fine of two hundred dollars (\$200) and costs for the second
19 offense.

20 (3) A minimum fine of five hundred dollars (\$500) and costs for the third and
21 subsequent offenses.

1 **(b) A proprietor of a place of employment or public place upon whom a duty is**
2 **placed by the provisions of this Chapter, who shall fail, neglect, or refuse to perform such**
3 **duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of**
4 **a misdemeanor, and upon conviction thereof, shall be punished by a fine of up to five**
5 **hundred dollars (\$500) together with costs and/or up to six (6) months in jail with:**

6 **(1) A minimum fine of one hundred dollars (\$100) and costs for the first**
7 **offense.**

8 **(2) A minimum fine of two hundred dollars (\$200) and costs for the second**
9 **offense.**

10 **(3) A minimum fine of five hundred dollars (\$500) and costs for the third and**
11 **subsequent offenses.**

12 **(c) Each individual violation and each day that the violation continues to exist shall**
13 **constitute a separate and distinct offense and shall be punishable as such.**

14 **(d) Every act or omission of whatsoever nature constituting a violation of any of the**
15 **provisions of this Chapter by an officer, manager, supervisor, agent, or employee of any**
16 **proprietor, if said act or omission is made with the authorization, knowledge, or approval of**
17 **the proprietor, shall be deemed and held to be the act or omission of such proprietor, and said**
18 **proprietor shall be punishable in the same manner as if said act or omission had been**
19 **committed by such proprietor personally.**

20 **(e) The violations of any of the provisions of this Chapter by a proprietor shall be**
21 **cause sufficient to justify the revocation or suspension of any permit or license that the**
22 **proprietor has received from the City of Lincoln for the place of employment or public place.**

1 Such revocation or suspension shall be cumulative with the penalty imposed by this Chapter,
2 any other ordinance of the City of Lincoln, and any other penalty or remedial consequence
3 imposed by law.

4 Section 21. That Title 8 of the Lincoln Municipal Code be amended by adding
5 a new section numbered 8.48.210 to read as follows:

6 **8.48.210 Severability.**

7 Each section and subsection of this Chapter is hereby declared to be independent of
8 every other section or subsection of this Chapter and invalidity of any section or subsection
9 of this Chapter shall not invalidate any other section or subsection thereof.

10 Section 22. That Sections 1 through 21 hereof be codified in the Lincoln
11 Municipal Code as Chapter 8.48, the Lincoln Smokefree Air Act.

12 Section 23. That the operative date of this ordinance shall be eighteen (18)
13 months after City Council approval.

14 Section 24. That this ordinance shall take effect and be in force from and after
15 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

<p>Approved this ___ day of _____, 2003:</p> <p>_____</p> <p>Mayor</p>
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