

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 8.24 of the Lincoln Municipal Code, Lincoln's
2 Noise Control Ordinance, by amending Section 8.24.080 to change requirements for reports;
3 amending Section 8.24.140 to clarify exemption provisions related to government activities;
4 amending Section 8.24.150 to update provisions for appeal procedures; and repealing Sections
5 8.24.080, 8.24.140, and 8.24.150 of the Lincoln Municipal Code as hitherto existing.

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

7 Section 1. That Section 8.24.080 of the Lincoln Municipal Code be amended to read
8 as follows:

9 **8.24.080 Periodic Reports.**

10 The health officer shall evaluate and report, every fiscal year following the effective date of
11 this ordinance, on the effectiveness of the city noise control program and make recommendations
12 for any legislative or budgetary changes necessary to improve the program. ~~This report shall be
13 made to the air pollution control advisory board, which may amend the report after consultation with
14 the health officer.~~ Such report shall then be submitted to the Lincoln-Lancaster County Board of
15 Health for approval.

16 Section 2. That Section 8.24.140 of the Lincoln Municipal Code be amended to read
17 as follows:

18 **8.24.140 Emergency Exception.**

19 The provisions of this ordinance shall not apply to (a) the emission of sound for the purpose
20 of alerting persons to the existence of an emergency, or (b) the emission of sound in the performance
21 of emergency work, or (c) the emission of sound in the performance of governmental services
22 including, but not limited to, training activities. Nothing in this section, however, shall be construed

1 to permit law enforcement, ambulance, fire, or other emergency personnel, or persons performing
2 governmental services to make excessive noise in the performance of their duties when such noise
3 is clearly unnecessary.

4 Section 3. That Section 8.24.150 of the Lincoln Municipal Code be amended to read
5 as follows:

6 **8.24.150 Variances.**

7 (a) The health officer shall have the authority to grant an initial variance to the strict
8 application of Section 8.24.090 for a period of not to exceed fifteen calendar days. Any person
9 seeking such a variance shall file an application with the health officer and shall submit a permit fee
10 of \$110.00. The application shall contain the information which demonstrates that bringing the
11 source of sound or activity for which the variance is sought into compliance with this ordinance
12 would constitute an unreasonable hardship on the applicant, on the community, or on other persons.

13 (b) The health officer shall have the authority to grant an extension to any variance. Any
14 person seeking such an extension shall file an application with the health officer. Notice of an
15 application for an extension shall be posted by a sign placed in a conspicuous place on or near the
16 property upon which action is pending. No extension shall be granted for a period of two days from
17 and after posting of the property.

18 (c) Any individual who claims to be adversely affected by allowance of any requested
19 extension of a variance may, prior to the end of the two-day period after posting of the property, file
20 a statement with the health officer containing any information to support the claim. If the health
21 officer finds that a sufficient controversy exists regarding an application, a public hearing shall be
22 held. All such hearings shall be held within five days after the period for filing claims under this
23 subsection has ended.

24 In determining whether to grant or deny any application, the health officer shall balance the
25 hardship to the applicant, the community, and other persons of not granting the variance or extension

1 against the adverse impact to the health, safety, and welfare of persons affected, the adverse impact
2 on property affected, and any other adverse impacts of granting the variance or extension.
3 Applicants for variances or extensions and persons contesting extensions may be required to submit
4 any information the health officer may reasonably require. In granting or denying an application,
5 the health officer shall place on public file a copy of the decision and the reasons for denying or
6 granting the variance or extension and the criteria to be considered in deciding whether to grant
7 variances and extensions.

8 Variances or extensions shall be granted by notice to the applicant containing all necessary
9 conditions, including a time limit on the permitted activity. The variance or extension shall not
10 become effective until all conditions are agreed to by the applicant. Noncompliance with any
11 condition of the variance or extension shall terminate such variance or extension and subject the
12 applicant to those provisions of this ordinance regulating the source of sound or activity for which
13 the variance or extension was granted.

14 The health officer may issue guidelines defining the procedures to be followed in applying
15 for a variance or extension and the criteria to be considered in deciding whether to grant variances
16 and extensions.

17 (d) Any person who is aggrieved by a decision or order of the health officer under this
18 ordinance may appeal such decision or order to the district court as provided by law. ~~Air Pollution~~
19 ~~Control Advisory Board by filing a notice of appeal with the board secretary within fifteen days~~
20 ~~from the date of the issuance of such decision or order by the health officer.~~

21 ~~—The secretary of the Air Pollution Control Advisory Board, having received a properly~~
22 ~~submitted notice of appeal, shall notify the chairman of the Air Pollution Control Advisory Board~~
23 ~~and establish a date for the appeals hearing. The secretary shall then notify the person making the~~
24 ~~appeal, and any person who appeared before or filed a statement with the health officer, in writing~~
25 ~~of the time and place of the hearing, which shall, in no event, be more than fifteen days from the date~~
26 ~~of the filing of the notice of appeal with the board secretary. The Air Pollution Control Advisory~~

1 ~~Board shall, within seven days of the concluding date of the appeals hearing, file with the health~~
2 ~~officer a written final decision, either affirming the decision of the health officer, or modifying or~~
3 ~~reversing same. A copy of said decision shall be forwarded to the appellant.~~

4 Section 4. That Sections 8.24.080, 8.24.140 and 8.24.150 of the Lincoln Municipal
5 as hitherto existing be and the same are hereby repealed.

6 Section 5. That this ordinance shall take effect and be in force from and after passage
7 and publication in one issue of a daily or weekly newspaper of general circulation in the City,
8 according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2013: _____ Mayor
