

ORDINANCE NO. _____

1 AN ORDINANCE repealing Lincoln Municipal Code Chapter 8.40 relating to Spa
 2 Facilities as spa facilities will now be regulated under revised Lincoln Municipal Code Chapter 8.38,
 3 Public Swimming Pools.

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

5 Section 1. That Chapter 8.40 of the Lincoln Municipal Code be and the same is
 6 hereby repealed.

7 ~~8.40.010~~ ~~Scope.~~

8 ~~———— This ordinance shall apply to any spa facility, together with buildings and appurtenances in~~
 9 ~~connection therewith, which is available to the general public with or without payment of an~~
 10 ~~admission charge or membership fee for use of same. This shall include, but is not limited to,~~
 11 ~~swimming facilities, apartment houses, housing developments having three or more living units,~~
 12 ~~clubs, camps, motels, hotels, schools, tubberies, fitness centers, recreational facilities spas, sales~~
 13 ~~demonstration facilities available for customer use, and other commercial establishments. This~~
 14 ~~ordinance shall not apply to spa facilities in hospitals, nursing homes, medical facilities and to private~~
 15 ~~family spa pools, the use of which is confined to members of such family and invited guests.~~

16 ~~8.40.020~~ ~~Definitions.~~

17 ~~———— Health Director shall mean the Health Director of the Lincoln-Lancaster County Health~~
 18 ~~Department or the director's authorized representative.~~

19 ~~———— Health Department shall mean the Lincoln/Lancaster County Health Department.~~

20 ~~———— Spa facility shall mean a facility which houses a spa pool as herein defined, together with all~~
 21 ~~bather preparation areas including shower rooms, dressing rooms, toilets, equipment rooms, and any~~
 22 ~~other appurtenances thereto.~~

23 ~~———— Spa pool shall mean any artificial basin of water designed for recreational and therapeutic use~~
 24 ~~which is not drained, cleaned, and refilled for each single individual using the pool. Spa pool shall~~
 25 ~~include hydroject circulation pools, hot water or cold water baths, mineral baths, air induction~~
 26 ~~bubbles water baths, "therapeutic pool", "hydrotherapy pool", "whirlpool", "hot spa", "hot tub",~~
 27 ~~"sensory deprivation tank", etc., or any combination thereof. Spa pools shall not include any~~
 28 ~~swimming pool that has been issued a permit under Section 8.38.050.~~

29 ~~———— Spa facility operator shall mean the person charged with the immediate supervision of a spa~~
 30 ~~facility~~

1 ~~8.40.030 — Rules and Regulations.~~

2 ~~Any person who owns, constructs, operates, or maintains a spa facility within the corporate~~
3 ~~limits of the city or within three miles thereof which falls within the scope of this ordinance, shall do~~
4 ~~so in accordance with this ordinance and the rules and regulations adopted under this ordinance by~~
5 ~~the City Council. A copy of said rules and regulations will be kept on file in the office of the City~~
6 ~~Clerk upon adoption by the council~~

7 ~~8.40.040 — Plans, Specifications for Construction, Alteration, or Renovation.~~

8 ~~No person shall construct, reconstruct, remodel, enlarge, improve, convert, alter, or renovate~~
9 ~~any spa facility in the city or within three miles of its boundaries, without first having obtained the~~
10 ~~approval of plans and specifications for any such construction, alteration, or renovation from the~~
11 ~~Health Director. Such plans and specifications shall be submitted to the Health Director as specified~~
12 ~~in the rules and regulations adopted under this ordinance. Plans and specifications for new spa~~
13 ~~facilities must be prepared by an architect or professional engineer qualified in the proposed work~~
14 ~~and licensed to practice such profession under the laws of the State of Nebraska.~~

15 ~~If upon examination and review the Health Director finds that the proposed construction,~~
16 ~~alteration, or renovation will comply with the provisions of the rules and regulations adopted under~~
17 ~~this ordinance, the Health Director shall approve the same; provided that such approval may be~~
18 ~~conditioned upon the making of such modifications in such plans and specifications to conform to~~
19 ~~the rules and regulations.~~

20 ~~The Health Director's approval does not relate to or relieve the applicant from the~~
21 ~~requirements of the plumbing, building, electrical, and zoning codes and all other relevant ordinances~~
22 ~~and regulations.~~

23 ~~The construction, reconstruction, remodeling, enlarging, improving, converting, alteration,~~
24 ~~or renovation of any spa facility shall be made in accordance with the approved plans and~~
25 ~~specifications thereof; provided, that changes or modifications in such plans and specifications may~~
26 ~~be made with the written approval of the Health Director.~~

27 ~~Upon completion of any such construction, reconstruction, remodeling, enlarging, improving,~~
28 ~~converting, alteration, or renovation, the owner or spa facility operator, or agent of either, shall notify~~
29 ~~the Health Director of its readiness for inspection and no such facility shall be opened for use or~~
30 ~~allowed or caused to be used until inspected by the Health Director and found to be in compliance~~
31 ~~with the provisions of the rules and regulations adopted under this ordinance.~~

32 ~~8.40.050 — Conformity of Existing Spa Facilities.~~

33 ~~Spa facilities which were in lawful existence on or before August 6, 1989 and which do not~~
34 ~~comply with the specifications for construction as required in Section 8.40.040 may be permitted to~~
35 ~~operate as a nonconforming use; provided that any permit issued for a nonconforming use shall so~~
36 ~~state and shall be issued only on the condition that the spa facility may not be reconstructed,~~
37 ~~remodeled, enlarged, improved, converted, altered, or renovated without first complying with Section~~
38 ~~8.40.040. Permitted nonconforming uses shall in all other respects be subject to the rules and~~
39 ~~regulations for spa pools and facilities as provided herein.~~

40 ~~8.40.060 — Permit to Operate.~~

41 ~~No person shall operate or maintain a spa facility in the city or within three miles of its~~
42 ~~boundaries unless a permit to operate said spa facility has been issued by the Health Director. Each~~

1 permit to operate said spa facility shall be issued by the Health Director. Each permit shall be valid
2 for a period of one year from the date of issuance. A new permit shall be secured on or before April
3 first of each year, which will expire the following March thirty-first.

4 ~~———— All permits shall be in writing and shall state the conditions and terms thereof. The permit
5 shall be posted in a conspicuous location on the spa facility premises. It shall be unlawful for any
6 person to operate or maintain a spa facility without complying with the requirements of this ordi-
7 nance, and the Health Director is charged with the enforcement of the provisions hereof. A permit
8 to operate a spa facility is nontransferable.~~

9 **8.40.070 — Permit and Inspection Fees.**

10 ~~———— (a) The fee for a permit to conduct, operate, or maintain a spa facility shall be as follows:~~

11 ~~———— (1) Individual Spa Facility~~

12 ~~———— One Spa Pool \$365.00;~~

13 ~~———— Additional Spa Pool \$115.00 per spa pool;~~

14 ~~———— (2) Spa Facility Co-Located~~

15 ~~———— With A Permitted Swimming Pool. \$115.00 per spa pool.~~

16 ~~———— (b) Any initial spa permit issued after the 30th of September of each calendar year shall pay
17 67% of the annual fee.~~

18 ~~———— (c) The fees shall be payable annually to the City of Lincoln and shall be credited to the
19 Health Fund.~~

20 **8.40.075 — Permit; Renewal Late Fees.**

21 ~~———— (a) A permit holder who fails to renew the permit before it expires, but within 30 days of the
22 date of expiration shall pay a late fee of 33% of the annual fee in addition to the annual fee.~~

23 ~~———— (b) A permit holder who fails to renew the permit before it expires and fails to renew the
24 permit within 30 days from the date of expiration shall pay a late fee of 67% of the annual fee in
25 addition to the annual fee.~~

26 ~~———— (c) A permit holder who fails to renew the permit before it expires is operating without a
27 valid permit and shall be subject to closure or other appropriate enforcement action by the Health
28 Director.~~

29 **8.40.080 — Inspections and Enforcement.**

30 ~~———— The Health Director is hereby authorized and directed to make such inspections as are necessary
31 to determine satisfactory compliance with this ordinance. Upon presentation of proper credentials,
32 the Health Director may enter at reasonable times any building, structure, or premises having a spa
33 facility located in the city or within three miles thereof to determine compliance with the
34 requirements of this ordinance and rules and regulations adopted hereunder.~~

35 ~~———— If the conditions in existence at the spa facility constitute an immediate health hazard, the
36 Health Director may order that the facility be immediately closed until such time as the conditions
37 are corrected. The Health Director shall give written notice to the owner, spa facility operator, or the
38 agent of either, identifying those provisions of the ordinance or rules and regulations alleged to be
39 violated and the facts alleged to constitute such violation.~~

1 **8.40.090—Revocation of Permit.—**

2 — Any permit granted hereunder may be revoked by the Health Director for failure to comply with
3 the rules and regulations promulgated hereunder or with this chapter; or, whenever, in the determi-
4 nation of the Health Director, further operation under such permit creates a menace to the health and
5 safety of the users of the spa facility; provided, that the holder of any permit which has been revoked
6 may appeal to the Board of Health the Health Director's revocation of the permit.

7 **8.40.100 Board of Health; Variances; Appeals; Procedure.—**

8 — (a) — Board of Health. The Lincoln-Lancaster County Board of Health shall hear and
9 determine appeals regarding the reasonable interpretation and application of the provisions of this
10 chapter and the rules and regulations adopted under this chapter, and the suitability of alternate
11 materials and methods of construction and repair of spa facilities. The Board of Health shall hear and
12 determine variances from the strict application of this chapter and the rules and regulations adopted
13 hereunder. The Board of Health shall also hear and determine appeals concerning revocation of any
14 permits issued under the provisions of this chapter.

15 — (b) — Appeals to Board. Any person whose application for a permit under this chapter has been
16 denied or whose permit has been revoked or who is aggrieved by any decision or order of the Health
17 Director may, within ten days after official notification of such action, file with the Board of Health
18 a written appeal or written request for variance of the strict application of any of the rules, regu-
19 lations, standards or ordinances adopted by the City Council as described in Section 8.40.030. Within
20 ten days following the receipt of such request, the Board of Health shall set a hearing on the matter
21 and notify the appellant by mail of the time and place of the hearing. Said public hearing may be held
22 at the regular Board of Health meeting and shall be held within thirty days following the receipt of
23 the request. Notice of said public hearing shall be published at least three days prior to the hearing
24 in a newspaper of general circulation in the county. The Board of Health, in its discretion, may grant
25 the requested variance if the evidence presented at the public hearing establishes that:

26 — (1) — Strict applications of the provisions of the rules, regulations, standards, or
27 ordinances would result in undue hardship; and

28 — (2) — Granting the variance or rescinding the revocation would not create an
29 unreasonable hazard to the public health or increase the potential for disease transmission.

30 — (c) — Hearing Procedure. Hearings on appeal need not be conducted according to technical
31 rules relating to evidence and witnesses. Oral evidence shall be taken only on oath or affirmation.
32 The appellant, the Health Director, and any other party to the appeal hereunder shall have these
33 rights, among others:

34 — (1) — To call and examine witnesses on any matter relevant to the issues of the hearing;

35 — (2) — To introduce documentary and physical evidence;

36 — (3) — To cross-examine opposing witnesses on any matter relevant to the issues of the
37 hearing; and

38 — (4) — To rebut evidence.

39 — (d) — Decisions of the Board. In exercising the above mentioned jurisdiction, the Board of
40 Health may in conformity with the provisions of this section reverse or affirm, wholly or partially,
41 or may modify the order, requirement, decision, or determination appealed from and may make such
42 decision as ought to be made. In granting any variance from the strict applications of this chapter,
43 the Board of Health may impose any and all terms and conditions it deems necessary for the
44 protection of public health and safety. Every decision by the board shall be accompanied by a written

1 ~~finding of fact based upon testimony and other evidence, specifying the reason for granting or~~
2 ~~denying the variance.~~

3 ~~**8.40.110 — Penalty.**~~

4 ~~Any person upon whom a duty is placed by the provisions of this ordinance who shall fail,~~
5 ~~neglect, or refuse to perform such duty or who shall violate any of the provisions of this ordinance~~
6 ~~or the rules and regulations promulgated hereunder shall be guilty of a misdemeanor and upon~~
7 ~~conviction thereof shall be punished by imprisonment in the county jail for a period of not to exceed~~
8 ~~six months or by a fine of not to exceed \$500.00 recoverable with costs, or both. Each day that a~~
9 ~~violation of this ordinance continues shall constitute a separate and distinct offense and shall be~~
10 ~~punishable as such.~~

11 Section 2. Pursuant to Article VII, Section 7 of the City Charter, this ordinance shall be
12 posted on the official bulletin board of the City, located on the wall across from the City Clerk’s
13 office at 555 S. 10th Street, in lieu of and in place of newspaper publication with notice of passage
14 and such posting to be given by publication one time in the official newspaper by the City Clerk.
15 This ordinance shall take effect and be in force from and after its passage and publication as herein
16 and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2014: _____ Mayor
