

ORDINANCE NO. _____

1 AN ORDINANCE amending Section 2.35.035 of the Lincoln Municipal Code to
2 authorize emergency water restrictions enacted by Executive Order and allow the Director of Public
3 Works and Utilities to appoint Water Conservation Officers; amending Section 8.44.030 of the
4 Lincoln Municipal Code (Use of Water Well; When Permitted) to require private water well owners
5 to comply with certain provisions of emergency water restrictions; amending Section 17.26.010 of
6 the Lincoln Municipal Code (Emergency Restrictions) to make any persons who fail to follow duly
7 enacted emergency water restrictions subject to the administrative penalties identified herein;
8 amending Chapter 17.26 of the Lincoln Municipal Code relating to Emergency Restrictions by
9 adding a new section numbered 17.26.015 (Responsibility of Property Owner) to make unlawful any
10 violation of an emergency water restriction and to establish a rebuttable presumption that property
11 owners are responsible for violations that occur on property owned by them; adding a new section
12 numbered 17.26.040 (Water Conservation Officer) to authorize the Director of Public Works and
13 Utilities to appoint, employ, determine qualifications and authorize citation authority for Water
14 Conservation Officers; adding a new section numbered 17.26.045 (Payment of Fines and Costs;
15 Administrative Hearing Process; Appeal) to establish fines and administrative costs for the violation
16 of emergency water restrictions; to establish an administrative process for the handling, processing
17 and conduct of hearings and for appeals of violation of emergency water restrictions; adding a new
18 section numbered 17.26.047 (Emergency Water Restriction Fines and Costs; Rules; Collect and
19 Account for Money) to address the collection and accounting of monies collected for violations of
20 emergency water restrictions; and repealing Sections 2.35.035, 8.44.030, and 17.26.010 of the
21 Lincoln Municipal Code as hitherto existing.

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

1 Section 1. That Section 2.35.035 of the Lincoln Municipal Code be amended to read
2 as follows:

3 **2.35.035 Utility Operations.**

4 The Director of Public Works and Utilities shall have general control and supervision over
5 the construction, operation, maintenance, repair, extension, and replacement of all public utilities
6 owned or operated by the City of Lincoln, including the Lincoln Water System, the Lincoln
7 Wastewater System, sanitary landfill operations, and storm sewer systems, but excluding the Lincoln
8 Electric System. The Director of Public Works and Utilities shall be responsible for all future
9 planning and development (in conformance with the Comprehensive Plan), fiscal planning, project
10 development, and design and construction engineering relating to such utilities. The Director of
11 Public Works and Utilities shall have responsibility for the enforcement of any emergency water
12 restrictions enacted by Executive Order pursuant to Lincoln Municipal Code Section 17.26.010 and
13 shall have the authority to appoint or contract for Water Conservation Officers.

14 Section 2. That Section 8.44.030 of the Lincoln Municipal Code be amended to read
15 as follows:

16 **8.44.030 Use of Water Well; When Permitted.**

17 It shall be unlawful to construct, maintain, or use within the limits of the city a water well
18 without obtaining a water well permit; provided, that a water well existing immediately prior to the
19 effective date of this chapter may be continued although such use does not conform to Section
20 8.44.110. It shall be unlawful to construct a water well for potable use within the limits of the city
21 if a public water supply is available. Such water well shall comply with the other provisions of this
22 chapter, any emergency water restrictions enacted by Executive Order pursuant to Lincoln
23 Municipal Code Section 17.26.010, and with Title 178 NAC 12.

1 Whenever the use of a water well becomes a nonconforming use through a change in the
2 corporate limits of the city, such use may be continued if such water well is in substantial
3 conformance with Title 178 NAC 12 and poses a minimal likelihood of degradation of ground water
4 or risk to public health, and a permit is obtained from the Health Director.

5 Discharge, recharge, or reinjection wells are prohibited except for the disposal of water
6 where only the temperature of the water has been altered; provided, that the maximum water
7 temperature shall not exceed ninety degrees Fahrenheit. It shall be deemed a violation of this
8 ordinance for any person to reinject or inject any chemically altered water or hazardous substance
9 of any kind into a water well or into or above the ground water aquifer, except for purposes of
10 disinfection by a licensed water well contractor or pump installation contractor as defined in Title
11 178 NAC 10.

12 Section 3. That Section 17.26.010 of the Lincoln Municipal Code be amended to
13 read as follows:

14 **17.26.010 Emergency Restrictions.**

15 The Mayor of the city is authorized and empowered to declare the existence of any
16 emergency relating to the available water supply of the Lincoln Water System and to impose
17 restrictions on the use of water during such emergency. Whenever the Mayor shall determine that
18 the remaining available water supply is critically low, from whatever cause, the Mayor may declare
19 the existence of an emergency and impose reasonable restrictions, by Executive Order, on the use
20 of such water. It shall be unlawful for any person to fail to observe any such restriction so imposed
21 by the Mayor, provided ~~public announcement of such restriction has been made~~ such Executive
22 Order has been filed with the City Clerk. Failure to observe any such restriction imposed by the
23 Mayor shall subject a person to the penalties provided in this chapter.

1 Section 4. That Chapter 17.26 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 17.26.015 to read as follows:

3 **17.26.015 Responsibility of Property Owner.**

4 (a) It shall be unlawful for any person, as defined in Lincoln Municipal Code Section
5 1.04.010, to cause, allow, permit, or suffer the violation of an emergency water restriction on any
6 property owned by such person.

7 (b) If the identity of the person who commits a violation of this chapter cannot be readily
8 determined, there shall be a rebuttable presumption that the owner or person in whose name the
9 property is owned shall be responsible for such violation and shall be subject to the penalties and
10 procedures provided in this chapter.

11 Section 5. That Chapter 17.26 of the Lincoln Municipal Code be amended by adding
12 a new section numbered 17.26.040 to read as follows:

13 **17.26.040 Water Conservation Officer**

14 (a) Water Conservation Officer shall mean any individual designated by the Director of
15 Public Works and Utilities, whether appointed, employed or under contract, working under the
16 supervision of the Public Works and Utilities Department and enforcing the City's Emergency Water
17 Restrictions enacted pursuant to Section 17.26.010.

18 (1) The Director of Public Works and Utilities shall determine the qualifications,
19 both physical and educational, required for the performance of Water Conservation Officers.

20 (b) Any Water Conservation Officer or any police officer shall have the power to issue
21 citations for specific water restriction violations which shall be processed originally through the
22 Lincoln Water System Division upon finding that any person has violated an emergency water
23 restriction imposed pursuant to Section 17.26.010.

1 (c) This section shall not be construed as granting Water Conservation Officers the
2 power or authority of a peace officer or police officer.

3 Section 6. That Chapter 17.26 of the Lincoln Municipal Code be amended by adding
4 a new section numbered 17.26.045 to read as follows:

5 **17.26.045 Payment of Fines and Costs; Administrative Hearing Process; Appeal.**

6 (a) (1) Any person accused of a first offense violation of an emergency water
7 restriction imposed pursuant to Section 17.26.010 may waive the right to a hearing and pay the
8 administrative costs identified in subsection (4) below.

9 (2) Any person accused of a second offense violation of an emergency water
10 restriction imposed pursuant to Section 17.26.010, during the same declared emergency, may waive
11 the right to a hearing and pay the sum of \$100.00 plus the administrative costs identified in
12 subsection (4) below.

13 (3) Any person accused of a third or all subsequent offense violations of an
14 emergency water restriction imposed pursuant to Section 17.26.010, during the same declared
15 emergency, may waive the right to a hearing and pay the sum of \$200.00 plus the administrative
16 costs identified in subsection (4) below.

17 (4) In the event the payment for violation, as specified above, and waiver of the
18 right to a hearing occurs within seven (7) days of issuing the citation, the person charged in the
19 complaint shall pay, in addition to the amount specified above, the administrative costs of \$150.00;
20 in the event such payment for violation and waiver occurs after such seven-day period the person
21 charged in the complaint shall pay, in addition to the amount for the violation specified above,
22 administrative costs of \$175.00.

1 **(b) (1)** For a period of 14 calendar days from the issuance of an emergency water
2 restriction citation, a person may request an initial review of the notice by the Lincoln Water System
3 Division. The request may be made in writing or in person. The review shall occur within seven days
4 of such request and there shall be no charge for this review. If, following the initial review, the
5 Lincoln Water System Division is satisfied that the violation did not occur, that the accused was not
6 responsible for the violation, or that extenuating circumstances make dismissal of the citation
7 appropriate in the interest of justice, the Lincoln Water System Division shall dismiss the emergency
8 water restriction violation. The Lincoln Water System Division shall mail the results of the initial
9 review to the person contesting the notice.

10 **(2)** If the person is dissatisfied with the results of the initial review, the person
11 may, no later than 14 calendar days following the initial review decision, request an administrative
12 hearing of the violation. The request may be made in writing or in person. The person requesting
13 an administrative hearing shall, at the time of making the appeal request, deposit the amount of the
14 emergency water restriction penalty with the Lincoln Water System Division. Notice of this
15 procedure shall be provided to all persons requesting an administrative hearing. An administrative
16 hearing shall be held within 30 calendar days following the receipt of a request for an administrative
17 hearing.

18 **(3)** If a person has requested either the review in subsection (b)(1) or the appeal
19 in subsection (b)(2), the billing of the penalty shall be automatically deferred until the completion
20 of the review and/or appeal process.

21 **(4)** The administrative hearing process shall include the following:

1 (i) The person requesting a hearing may present any written statements
2 or documentary evidence relevant to the determination. All hearings shall be conducted within the
3 jurisdictional limits of the City of Lincoln.

4 (ii) If the person requesting a hearing is a minor under the age of 19, that
5 person shall be permitted to appear at a hearing or admit responsibility for the violation without the
6 necessity of the appointment of a guardian. The Lincoln Water System Division may proceed against
7 the minor in the same manner as against an adult.

8 (iii) The administrative hearing shall be conducted in accordance with
9 written procedures established by the Lincoln Water System Division and approved by the Director
10 of Public Works and Utilities.

11 (iv) The Director of Public Works and Utilities may delegate conducting
12 the administrative hearings to another city employee or to a company contracting with the City to
13 provide enforcement services. If the hearing is delegated to someone other than the Director of
14 Public Works and Utilities, such delegatee shall make written findings and conclusions and a
15 recommendation to the Director of Public Works and Utilities for the final determination of the
16 matter.

17 (v) The officer or person who issues a citation of emergency water
18 restriction violation shall not be required to participate in the administrative hearing. The Lincoln
19 Water System Division shall not be required to produce any evidence other than the citation of
20 emergency water restriction violation or copy thereof. The documentation in proper form shall be
21 prima facie evidence of the violation.

1 (vi) The Director of Public Works and Utilities shall make a final and
2 binding determination, within 15 days following the administrative hearing. Such determination
3 shall then be sent by first-class mail to the person requesting the appeal.

4 (c) Any person aggrieved by the decision of the Director of Public Works and Utilities
5 in subsection (b) may appeal such decision to district court through the provisions established in
6 Nebraska Revised Statutes § 15-1201 et seq.

7 (d) In the event:

8 (1) a person fails to pay any fines and costs imposed hereunder within 14 days
9 of the issuance of a citation; or

10 (2) of an initial review, fails to pay any fines and costs imposed hereunder within
11 14 days from the initial review decision; or

12 (3) of an appeal, fails to pay any fines and costs imposed hereunder within 30
13 days of any final determination made by the Director of Public Works,

14 such fines and costs shall be added to the water bill of such person.

15 Section 7. That Chapter 17.26 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 17.26.047 to read as follows:

17 **17.26.047 Emergency Water Restriction Fines and Costs; Rules; Collect and Account for**
18 **Money.**

19 The Lincoln Water System Division shall collect and account for all monies paid in
20 accordance with the provisions of this title and shall issue receipts therefor; shall remit all monies
21 collected under the provisions of this title to the Public Works Business Office; and shall keep
22 records of all violators, showing the name, time, and date of violation and disposition. It shall be the
23 duty of the Public Works Business Manager to credit to the City such amounts as shall be collected

1 for the payment of administrative costs. The balance of the monies collected shall be disbursed by
2 the Public Works Business Manager as provided by law. The Lincoln Water System Division may
3 accept credit card payments of any fines and costs payable to the Division, on terms to be
4 determined by the Director.

5 Section 8. That Sections 2.35.035, 8.44.030, and 17.26.010 of the Lincoln Municipal
6 Code as hitherto existing be and the same are hereby repealed.

7 Section 9. That this ordinance shall take effect and be in force from and after passage
8 and publication in one issue of a daily or weekly newspaper of general circulation in the City,
9 according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2013:

Mayor