

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for April 13, 2005 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone #04062 for Title 27
Miscellaneous #05008 for Title 1

Note: This is a combined staff report for related items; there is single background and analysis section for all items.

PROPOSAL: Revise LMC Title 27, to amend Title 27 of the Lincoln Municipal Code relating to Zoning by adding a new section numbered 27.03.053 to provide a definition for "alternative to imprisonment facility"; by adding a new section numbered 27.03.153 to provide a definition for "children's home"; by adding a new section numbered 27.03.165 to provide a definition for disability or handicap; amending Section 27.03.300 to revise the definition of "group home"; by amending Section 27.03.310 to revise the definition of "health care facility"; by amending Sections 27.09.040, 27.11.040, 27.13.040, 27.15.040, 27.17.040, 27.19.040, 27.21.040, 27.23.040, and 27.24.040 to allow alternative to imprisonment facilities and children's homes as permitted special uses in the AGR and R-1 through R-8 residential districts; by adding a new section numbered 27.63.750 to add alternative to imprisonment facility as a permitted special use; by adding a new section numbered 27.63.760 to add children's homes as a permitted special use; and repealing Sections 27.03.300, 27.03.310, 27.09.040, 27.11.040, 27.13.040, 27.15.040, 27.17.040, 27.19.040, 27.21.040, 27.23.040, and 27.24.040 of the Lincoln Municipal Code as hitherto existing, and revise LMC Title 1 to create a new Chapter 1.28, Reasonable Accommodation.

CONCLUSION: These changes conform to the Comprehensive Plan and recommendations made by the Mayor's Group Homes Task Force.

RECOMMENDATION:

Approval

GENERAL INFORMATION:

HISTORY:

Mayor Coleen Seng formed the Mayor's Group Home Task Force in May, 2004, to examine the City's laws and regulations governing group homes and congregate housing. The report was accepted and endorsed by the Mayor in February, 2005.

The current definition for the term group home and the regulatory structure for residential facilities serving disabled persons was adopted in May, 1979.

COMPREHENSIVE PLAN SPECIFICATIONS:

Revise the congregate living facility codes and regulations in order to continue to provide housing opportunities for residents with special needs throughout the city that are compatible with residential

neighborhoods. Congregate facilities should be designed and located to enhance the surrounding neighborhood. Reasonable spacing, design, and operational requirements should be created for all congregate facilities to preserve the neighborhood character while providing for those with special needs. (F 72)

ANALYSIS:

1. This is a request to make several changes to LMC Title 27 Zoning and Title 1 General Provisions related to the regulation of group homes. These changes are based upon recommendations made by the Mayor's Group Homes Task Force and endorsed by Mayor Seng. The proposed legislation is attached.
2. The definition of group home will be changed to apply only to homes for more than 3 but less than 16 residents: either disabled persons or children residing outside their parent's home.
3. The terms disability or handicap will be defined consistent with the federal and state Fair Housing Acts. Therefore, the portions of the group home definition that identify approved purposes for therapy and counseling in a group home will be deleted. A group home for disabled persons will no longer need to identify the purpose for the therapy or counseling. Similarly, the definition for health care facility will be revised to delete specified purposes for therapy, counseling, or rehabilitation and refer to disabled persons.
4. Two new use types will be created for facilities engaged in the service of exercising 24-hour daily care, supervision, custody, or control over children, for compensation or hire in lieu of the care or supervision normally exercised by parents in their own home. Facilities with more than 3 but less than 16 children will be regulated by conditional use permit as a group home; facilities with 16 or more children will be regulated by special permit as a Children's Home. These type of facilities have not been defined in the past.
5. Facilities providing supervision to persons under a program of alternatives to imprisonment will be deleted from the definition of group home. This use will be defined as Alternative to Imprisonment Facility, and regulated by special permit.
6. New special permits will be added for alternative to imprisonment facility and children's home in the AGR and R-1 through R-8 residential districts. These permits will be granted by the Planning Commission, and do not include any specific conditions. Therefore, the Planning Commission will act pursuant to their authority to "impose such conditions as are appropriate and necessary to ensure compliance with the comprehensive plan and protect the health, safety, and general welfare..."

7. The general regulatory strategy for group homes will remain largely unchanged. Homes for 3 or fewer residents will continue to meet the definition of family, and be allowed in any zoning district allowing residences. Homes for 4 to 15 residents will continue to be regulated through the conditional use permit process, which will still require separation from existing group homes. Homes for 16 or more residents will be regulated through the special permit process as health care facilities.
8. Also, if a group home, children's home, or alternative to imprisonment facility can qualify as a "non-profit religious, educational, and philanthropic institution," it could be allowed in any district that allows this use, including O1-O3, RT, B1-B4, H-3, and I-3 districts.
9. The proposed change to Title 1 will add a process for reasonable accommodations. This process will provide group home providers and residents an opportunity to request a modification from any of the City's regulations. The request will be heard by the city department with authority over the particular regulation. This reviewing authority will make a recommendation directly to the City Council. City Council review will be on a case-by-case basis. In the case of a zoning issue, the Planning Commission will act as the reviewing authority. Requests for accommodations from other regulations, such as the building code or fire code, will not be presented to the Planning Commission. A copy of this ordinance is also attached.

Prepared by:

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Date: March 29, 2005

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ORDINANCE NO. _____

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code relating to
2 Zoning by adding a new section numbered 27.03.053 to provide a definition for “alternative to
3 imprisonment facility”; by adding a new section numbered 27.03.153 to provide a definition for
4 “children’s home”; by adding a new section numbered 27.03.165 to provide a definition for
5 disability or handicap; amending Section 27.03.300 to revise the definition of “group home”; by
6 amending Section 27.03.310 to revise the definition of “health care facility”; by amending Sections
7 27.09.040, 27.11.040, 27.13.040, 27.15.040, 27.17.040, 27.19.040, 27.21.040, 27.23.040, and
8 27.24.040 to allow alternative to imprisonment facilities and children’s homes as permitted special
9 uses in the AGR and R-1 through R-8 residential districts; by adding a new section numbered
10 27.63.750 to add alternative to imprisonment facility as a permitted special use; by adding a new
11 section numbered 27.63.760 to add children’s homes as a permitted special use; and repealing
12 Sections 27.03.300, 27.03.310, 27.09.040, 27.11.040, 27.13.040, 27.15.040, 27.17.040, 27.19.040,
13 27.21.040, 27.23.040, and 27.24.040 of the Lincoln Municipal Code as hitherto existing.

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

15 Section 1. That Chapter 27.03 of the Lincoln Municipal Code be amended by adding
16 a new section numbered 27.03.053 to read as follows:

17 **27.03.043 Alternative to Imprisonment Facility.**

18 Alternative to imprisonment facility shall mean a facility in which more than three but less
19 than sixteen persons who are unrelated by blood, marriage, or adoption reside under a supervised
20 program of alternatives to imprisonment including, but not limited to, pre-release, work-release, and
21 probationary programs. Such facilities shall be licensed or approved by the State of Nebraska or
22 other appropriate agency if so required.

23 Section 2. That Chapter 27.03 of the Lincoln Municipal Code be amended by adding
24 a new section numbered 27.03.153 to read as follows:

1 **27.03.153 Children's Home.**

2 Children's home shall mean a facility engaged in the service of exercising 24-hour daily care,
3 supervision, custody, or control over sixteen or more children for compensation or hire in lieu of the
4 care or supervision normally exercised by parents in their own home.

5 Section 3. That Chapter 27.03 of the Lincoln Municipal Code be amended by adding
6 a new section numbered 27.03.165 to read as follows:

7 **27.03.165 Disability or Handicap.**

8 Disability or handicap shall mean, with respect to a person:

9 (1) A physical or mental impairment which substantially limits one or more of such
10 person's major life activities;

11 (2) A record of having such an impairment; or

12 (3) Being regarded as having such an impairment.

13 Disability shall not include current, illegal use of or addiction to a controlled substance as
14 defined by state law.

15 Section 4. That Section 27.03.300 of the Lincoln Municipal Code be amended to
16 read as follows:

17 **27.03.300 Group Home.**

18 Group home shall mean a building or structure licensed or approved by the State or an
19 appropriate agency, if required, used as any one of the following: ~~facility in which more than two~~
20 ~~but less than sixteen persons who are unrelated by blood, marriage, or adoption reside while~~
21 ~~receiving therapy or counseling, but not nursing care, for any of the purposes listed below. Such~~
22 ~~facility shall be licensed or approved by the State of Nebraska or other appropriate agency.~~

23 ~~(a) Adaptation to living with, or rehabilitation from, the handicaps of physical disability;~~

24 ~~(b) Adaptation to living with, or rehabilitation from, the handicaps of emotional or~~
25 ~~mental disorder, or mental retardation;~~

26 ~~(c) Rehabilitation from the effects of drug or alcohol abuse;~~

1 ~~—— (d) Supervision while under a program of alternatives to imprisonment, including but not~~
2 ~~limited to pre-release, work-release, and probationary programs.~~

3 (a) A facility in which more than three but less than sixteen disabled persons who are
4 unrelated by blood, marriage, or adoption reside while receiving therapy or counseling, but not
5 nursing care;

6 (b) A facility engaged in the service of exercising 24-hour daily care, supervision,
7 custody, or control over more than three but less than sixteen children, for compensation or hire in
8 lieu of the care or supervision normally exercised by parents in their own home.

9 Section 5. That Section 27.03.310 of the Lincoln Municipal Code be amended to
10 read as follows:

11 **27.03.310 Health Care Facilities.**

12 Health care facilities shall mean a building or structure, licensed or approved by the state or
13 an appropriate agency, if required, used as any of the following:

14 (a) Hospitals: A hospital may include offices of medical societies, offices of charitable
15 public health associations and private office space for the practice of medicine and dentistry under
16 a license from the Department of Health of the State of Nebraska; provided, that any such private
17 offices for the practice of medicine and dentistry shall be located on the hospital lot and the doctors
18 and dentists involved therein must be on the staff of the hospital;

19 (b) Convalescent or nursing home;

20 (c) A facility in which sixteen or more disabled people reside while receiving therapy,
21 counseling, or rehabilitation ~~for physical, emotional, or mental disease or disability;~~

22 (d) A facility for out-patient physical, occupational, or vocational therapy or reha-
23 bilitation;

24 (e) Public health clinics and facilities;

25 (f) Ambulatory surgical care center which does not allow for overnight stay by patients.
26 Ambulatory surgical center does not include an office or clinic used solely by a practitioner or group
27 of practitioners in the practice of medicine, dentistry, or podiatry.

1 Except as provided in (a) above, health care facilities does not include doctors' or dentists'
2 professional offices and private clinics.

3 Section 6. That Section 27.09.040 of the Lincoln Municipal Code be amended to
4 read as follows:

5 **27.09.040 Permitted Special Uses.**

6 A building or premises may be used for the following purposes in the AGR Agricultural
7 Residential District if a special permit for such use has been obtained in conformance with the re-
8 quirements of Chapter 27.63:

9 (a) Private schools;

10 (b) Recreational facilities;

11 (c) Dwellings for members of religious orders;

12 (d) Broadcast towers;

13 (e) Campgrounds;

14 (f) Veterinary facilities;

15 (g) Mining or extraction of minerals from any portion of the district, and the storage and
16 processing thereof;

17 (h) Garden centers;

18 (i) Facilities for the commercial storage or sale of fertilizer or toxic or flammable
19 agricultural chemicals;

20 (j) Church steeples, amateur radio antenna installations, towers, and ornamental spires
21 which exceed the maximum district height;

22 (k) Community unit plans shall be permitted in conformance with the provisions of
23 Chapter 27.65;

24 (l) Expansion of nonconforming uses;

25 (m) Historic preservation;

26 (n) Public utility purposes;

27 (o) Private landing strips and appurtenances;

1 (p) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
2 children not meeting the specified conditions for a permitted conditional use under Section
3 27.09.030;

4 (q) Clubs;

5 (r) Dwelling units for domestic employees in accessory buildings;

6 (s) Alternative to imprisonment facilities;

7 (t) Children's homes.

8 Section 7. That Section 27.11.040 of the Lincoln Municipal Code be amended to
9 read as follows:

10 **27.11.040 Permitted Special Uses.**

11 A building or premises may be used for the following purposes in the R-1 Residential
12 District if a special permit for such use has been obtained in conformance with the requirements of
13 Chapter 27.63:

14 (a) Community unit plans in conformance with Chapter 27.65;

15 (b) Private schools, other than those permitted under Section 27.11.020(e) above;

16 (c) Health care facilities;

17 (d) Dwellings for members of religious orders;

18 (e) Mobile home courts;

19 (f) Recreational facilities;

20 (g) Church steeples, amateur radio antenna installations, towers, and ornamental spires
21 which exceed the maximum district height;

22 (h) Broadcast towers;

23 (i) Certain parking lots as defined in Chapter 27.63;

24 (j) Elderly or retirement housing;

25 (k) Expansion of nonconforming uses;

26 (l) Historic preservation;

27 (m) Public utility purposes;

- 1 (n) Wind energy conversion systems;
- 2 (o) Mobile home subdivisions;
- 3 (p) Housing and related facilities for the physically handicapped;
- 4 (q) Outdoor seasonal sales;
- 5 (r) Cemeteries;
- 6 (s) Domiciliary care facility;
- 7 (t) Expansion of nonstandard single and two-family dwellings into required yards;
- 8 (u) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
- 9 children not meeting the specified conditions for a permitted conditional use under Section
- 10 27.11.030;
- 11 (v) Neighborhood support services;
- 12 (w) Clubs;
- 13 (x) Dwelling units for domestic employees in accessory buildings;
- 14 (y) Connection of single-family dwelling to accessory building for the physically
- 15 handicapped;
- 16 (z) Alternative to imprisonment facilities;
- 17 (aa) Children's homes.

18 Section 8. That Section 27.13.040 of the Lincoln Municipal Code be amended to

19 read as follows:

20 **27.13.040 Permitted Special Uses.**

21 A building or premises may be used for the following purposes in the R-2 Residential

22 District if a special permit for such use has been obtained in conformance with the requirements of

23 Chapter 27.63:

- 24 (a) Community unit plans in conformance with Chapter 27.65;
- 25 (b) Private schools, other than those permitted under Section 27.13.020(e) above;
- 26 (c) Health care facilities;
- 27 (d) Dwellings for members of religious orders;

- 1 (e) Mobile home courts;
- 2 (f) Recreational facilities;
- 3 (g) Church steeples, amateur radio antenna installations, towers, and ornamental spires
- 4 which exceed the maximum district height;
- 5 (h) Broadcast towers;
- 6 (i) Certain parking lots as defined in Chapter 27.63;
- 7 (j) Elderly or retirement housing;
- 8 (k) Expansion of nonconforming uses;
- 9 (l) Historic preservation;
- 10 (m) Public utility purposes;
- 11 (n) Wind energy conversion systems;
- 12 (o) Mobile home subdivisions;
- 13 (p) Housing and related facilities for the physically handicapped;
- 14 (q) Outdoor seasonal sales;
- 15 (r) Cemeteries;
- 16 (s) Domiciliary care facility;
- 17 (t) Expansion of nonstandard single and two-family dwellings into required yards;
- 18 (u) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
- 19 children not meeting the specified conditions for a permitted conditional use under Section
- 20 27.13.030.;
- 21 (v) Neighborhood support services;
- 22 (w) Clubs;
- 23 (x) Connection of single-family dwelling to accessory building for the physically
- 24 handicapped;
- 25 (y) Garden centers;
- 26 (z) Adult care centers;
- 27 (aa) Alternative to imprisonment facilities;

1 **(bb) Children’s homes.**

2 Section 9. Section 27.15.040 of the Lincoln Municipal Code be amended to read as
3 follows:

4 **27.15.040 Permitted Special Uses.**

5 A building or premises may be used for the following purposes in the R-3 Residential
6 District if a special permit for such use has been obtained in conformance with the requirements of
7 Chapter 27.63:

8 (a) Community unit plans in conformance with the following requirements:

- 9 (1) The average lot area shall be at least 5,000 square feet;
10 (2) All the requirements of Chapter 27.65.

11 (b) Private schools, other than those permitted under Section 27.15.020(e) above;

12 (c) Health care facilities;

13 (d) Dwellings for members of religious orders;

14 (e) Mobile home courts;

15 (f) Recreational facilities;

16 (g) Church steeples, amateur radio antenna installations, towers, and ornamental spires

17 which exceed the maximum district height;

18 (h) Broadcast towers;

19 (i) Extracting sand, gravel, and soil;

20 (j) Certain parking lots as defined in Chapter 27.63;

21 (k) Elderly or retirement housing;

22 (l) Expansion of nonconforming uses;

23 (m) Historic preservation;

24 (n) Garden centers;

25 (o) Public utility purposes;

26 (p) Wind energy conversion systems;

27 (q) Mobile home subdivisions;

- 1 (r) Housing and related facilities for the physically handicapped;
2 (s) Greenhouses;
3 (t) Outdoor seasonal sales;
4 (u) Cemeteries;
5 (v) Domiciliary care facility;
6 (w) Expansion of nonstandard single and two-family dwellings into required yards;
7 (x) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
8 children not meeting the specified conditions for a permitted conditional use under Section
9 27.15.030;
10 (y) Neighborhood support services;
11 (z) Clubs;
12 (aa) Connection of single-family dwelling to accessory building for the physically
13 handicapped;
14 (bb) Adult care centers;
15 (cc) Alternative to imprisonment facilities;
16 (dd) Children's homes.

17 Section 10. That Section 27.17.040 of the Lincoln Municipal Code be amended to
18 read as follows:

19 **27.17.040 Permitted Special Uses.**

20 A building or premises may be used for the following purposes in the R-4 Residential
21 District if a special permit for such use has been obtained in conformance with the requirements of
22 Chapter 27.63:

- 23 (a) Community unit plans in conformance with Chapter 27.65;
24 (b) Private schools, other than those permitted under Section 27.17.020(e) above;
25 (c) Health care facilities;
26 (d) Dwellings for members of religious orders;
27 (e) Mobile home courts;

- 1 (f) Recreational facilities;
- 2 (g) Church steeples, amateur radio antenna installations, towers, and ornamental spires
- 3 which exceed the maximum district height;
- 4 (h) Broadcast towers;
- 5 (i) Certain parking lots as defined in Chapter 27.63;
- 6 (j) Clubs;
- 7 (k) Elderly or retirement housing;
- 8 (l) Expansion of nonconforming uses;
- 9 (m) Historic preservation;
- 10 (n) Public utility purposes;
- 11 (o) Wind energy conversion systems;
- 12 (p) Mobile home subdivisions;
- 13 (q) Housing and related facilities for the physically handicapped;
- 14 (r) Outdoor seasonal sales;
- 15 (s) Cemeteries;
- 16 (t) Domiciliary care facility;
- 17 (u) Expansion of nonstandard single and two-family dwellings into required yards;
- 18 (v) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
- 19 children not meeting the specified conditions for a permitted conditional use under Section
- 20 27.17.030;
- 21 (w) Neighborhood support services;
- 22 (x) Connection of single-family dwelling to accessory building for the physically
- 23 handicapped;
- 24 (y) Adult care centers;
- 25 (z) Alternative to imprisonment facilities;
- 26 (aa) Children's homes.

1 Section 11. That Section 27.19.040 of the Lincoln Municipal Code be amended to
2 read as follows:

3 **27.19.040 Permitted Special Uses.**

4 A building or premises may be used for the following purposes in the R-5 Residential
5 District if a special permit for such use has been obtained in conformance with the requirements of
6 Chapter 27.63:

- 7 (a) Private schools, other than those permitted under Section 27.19.020(g) above;
- 8 (b) Health care facilities;
- 9 (c) Dwellings for members of religious orders;
- 10 (d) Recreational facilities;
- 11 (e) Church steeples, amateur radio antenna installations, towers, and ornamental spires

12 which exceed the maximum district height;

- 13 (f) Broadcast towers;
- 14 (g) Certain parking lots as defined in Chapter 27.63;
- 15 (h) Clubs;
- 16 (i) Elderly or retirement housing;
- 17 (j) Community unit plans in conformance with Chapter 27.65;
- 18 (k) Expansion of nonconforming uses;
- 19 (l) Historic preservation;
- 20 (m) Public utility purposes;
- 21 (n) Wind energy conversion systems;
- 22 (o) Housing and related facilities for the physically handicapped;
- 23 (p) Outdoor seasonal sales;
- 24 (q) Cemeteries;
- 25 (r) Domiciliary care facility;
- 26 (s) Expansion of nonstandard single and two-family dwellings into required yards;

1 (t) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
2 children not meeting the specified conditions for a permitted conditional use under Section
3 27.19.030;

4 (u) Neighborhood support services;

5 (v) Connection of single-family dwelling to accessory building for the physically
6 handicapped;

7 (w) Alternative to imprisonment facilities;

8 (x) Children's homes.

9 Section 12. That Section 27.21.040 of the Lincoln Municipal Code be amended to
10 read as follows:

11 **27.21.040 Permitted Special Uses.**

12 A building or premises may be used for the following purposes in the R-6 Residential
13 District if a special permit for such use has been obtained in conformance with the requirements of
14 Chapter 27.63:

15 (a) Private schools, other than those permitted under Section 27.21.020(g) above;

16 (b) Health care facilities;

17 (c) Dwellings for members of religious orders;

18 (d) Recreational facilities;

19 (e) Church steeples, amateur radio antenna installations, towers, and ornamental spires
20 which exceed the maximum district height;

21 (f) Broadcast towers;

22 (g) Certain parking lots as defined in Chapter 27.63;

23 (h) Elderly or retirement housing;

24 (i) Community unit plans in conformance with Chapter 27.65;

25 (j) Expansion of nonconforming uses;

26 (k) Historic preservation;

27 (l) Public utility purposes;

- 1 (m) Wind energy conversion systems;
- 2 (n) Housing and related facilities for the physically handicapped;
- 3 (o) Outdoor seasonal sales;
- 4 (p) Cemeteries;
- 5 (q) Domiciliary care facility;
- 6 (r) Expansion of nonstandard single and two-family dwellings into required yards;
- 7 (s) Nonprofit religious, educational or philanthropic institutions;
- 8 (t) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
9 children not meeting the specified conditions for a permitted conditional use under Section
10 27.21.030;
- 11 (u) Connection of single-family dwelling to accessory building for the physically
12 handicapped;
- 13 (v) Alternative to imprisonment facilities;
- 14 (w) Children's homes.
- 15 Section 13. That Section 27.23.040 of the Lincoln Municipal Code be amended to
16 read as follows:
- 17 **27.23.040 Permitted Special Uses.**
- 18 A building or premises may be used for the following purposes in the R-7 Residential
19 District if a special permit for such use has been obtained in conformance with the requirements of
20 Chapter 27.63:
- 21 (a) Private schools, other than those permitted under Section 27.23.020(h) above;
- 22 (b) Health care facilities;
- 23 (c) Dwellings for members of religious orders;
- 24 (d) Recreational facilities;
- 25 (e) Church steeples, amateur radio antenna installations, towers, and ornamental spires
26 which exceed the maximum district height;
- 27 (f) Broadcast towers;

- 1 (g) Certain parking lots as defined in Chapter 27.63;
- 2 (h) Elderly or retirement housing;
- 3 (i) Expansion of nonconforming uses;
- 4 (j) Historic preservation;
- 5 (k) Public utility purposes;
- 6 (l) Wind energy conversion systems;
- 7 (m) Housing and related facilities for the handicapped;
- 8 (n) Outdoor seasonal sales;
- 9 (o) Cemeteries;
- 10 (p) Domiciliary care facility;
- 11 (q) Expansion of nonstandard single and two-family dwellings into required yards;
- 12 (r) Nonprofit religious, educational or philanthropic institutions;
- 13 (s) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
- 14 children not meeting the specified conditions for a permitted conditional use under Section
- 15 27.23.030;
- 16 (t) Connection of single-family dwelling to accessory building for the physically
- 17 handicapped;
- 18 (u) Alternative to imprisonment facilities;
- 19 (v) Children's homes.

20 Section 14. That Section 27.24.040 of the Lincoln Municipal Code be amended to
 21 read as follows:

22 **27.24.040 Permitted Special Uses.**

23 A building or premises may be used for the following purposes in the R-8 Residential
 24 District if a special permit for such use has been obtained in conformance with the requirements of
 25 Chapter 27.63:

- 26 (a) Private schools, other than those permitted under Section 27.24.020(h) above;
- 27 (b) Health care facilities;

- 1 (c) Dwellings for members of religious orders;
2 (d) Recreational facilities;
3 (e) Broadcast towers;
4 (f) Certain parking lots as defined in Chapter 27.63;
5 (g) Elderly or retirement housing;
6 (h) Expansion of nonconforming uses;
7 (i) Historic preservation;
8 (j) Offices;
9 (k) Church steeples, amateur radio antenna installations, towers, and ornamental spires
10 which exceed the maximum height permitted in the district;
11 (l) Public utility purposes;
12 (m) Wind energy conversion systems;
13 (n) Housing and related facilities for the physically handicapped;
14 (o) Outdoor seasonal sales;
15 (p) Cemeteries;
16 (q) Domiciliary care facility;
17 (r) Expansion of nonstandard single and two-family dwellings into required yards;
18 (s) Nonprofit religious, educational or philanthropic institutions;
19 (t) Early childhood care facilities with sixteen or more children, or with fifteen or fewer
20 children not meeting the specified conditions for a permitted conditional use under Section
21 27.24.030;
22 (u) Connection of single-family dwelling to accessory building for the physically
23 handicapped;
24 (v) Alternative to imprisonment facilities;
25 (w) Children's homes.

26 Section 15. That Title 27 of the Lincoln Municipal Code be amended by adding a
27 new section numbered 27.63.750 to read as follows:

1 **27.63.750 Permitted Special Use: Alternative to Imprisonment Facility.**

2 Alternative to imprisonment facilities may be allowed by special permit in the AGR, R-1,
3 R-2, R-3, R-4, R-5, R-6, R-7, and R-8 zoning districts.

4 Section 16. That Title 27 of the Lincoln Municipal Code be amended by adding a
5 new section numbered 27.63.760 to read as follows:

6 **27.63.760 Permitted Special Use: Children's Home.**

7 Children's homes may be allowed by special permit in the AGR, R-1, R-2, R-3, R-4, R-5,
8 R-6, R-7, and R-8 zoning districts.

9 Section 17. That Sections 27.03.300, 27.03.310, 27.09.040, 27.11.040, 27.13.040,
10 27.15.040, 27.17.040, 27.19.040, 27.21.040, 27.23.040 and 27.24.040 of the Lincoln Municipal
11 Code as hitherto existing be and the same are hereby repealed.

12 Section 18. Pursuant to Article VII, Section 7 of the City Charter, this ordinance
13 shall be posted on the official bulletin board of the City in lieu of and in place of newspaper
14 publication with notice of passage and such posting to be given by publication one time in the
15 official newspaper by the City Clerk. This ordinance shall take effect and be in force from and after
16 its passage and publication as herein and in the City Charter provided.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2005:

Mayor

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 1 of the Lincoln Municipal Code to create a new
2 Chapter 1.28, Reasonable Accommodation.

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

4 Section 1. That Title 1 of the of the Lincoln Municipal Code be amended by adding
5 a new section numbered 1.28.010 to read as follows:

6 **1.28.010 Purpose.**

7 This chapter provides a procedure to request reasonable accommodation for persons with
8 disabilities or handicaps seeking equal access to housing under the Rehabilitation Act, the
9 Americans With Disabilities Act, the Federal Fair Housing Amendments Act and the Nebraska Fair
10 Housing Act (the Acts) in the application of building codes, fire or safety codes, zoning laws, and
11 other land use regulations, policies and procedures.

12 Section 2. That Title 1 of the of the Lincoln Municipal Code be amended by adding
13 a new section numbered 1.28.020 to read as follows:

14 **1.28.020 Applicability.**

15 A request for reasonable accommodation may be made by any person with a disability or
16 handicap, as defined in the Acts, or by an entity acting on behalf of a person or persons with
17 disabilities or handicaps to provide or secure equal access to housing when the application of a
18 building code, fire or safety code, zoning law or other land use regulation, policy or practice acts as
19 a barrier to fair housing opportunities. As defined in the Acts, a person with a disability or handicap
20 is a person who has a physical or mental impairment that limits or substantially limits one or more

1 major life activities; anyone who is regarded as having such impairment; or anyone who has a record
2 of such impairment.

3 A request for reasonable accommodation may include a modification or exception to the
4 rules, standards and practices for the construction, siting, development and use of housing or
5 housing-related facilities that would eliminate regulatory barriers and provide a person with a
6 disability or handicap with equal opportunity to housing of their choice. Requests for reasonable
7 accommodation shall be made in the manner prescribed by Section 1.28.030 (Application
8 Requirements).

9 Section 3. That Title 1 of the of the Lincoln Municipal Code be amended by adding
10 a new section numbered 1.28.030 to read as follows:

11 **1.28.030 Application Requirements.**

12 Requests for reasonable accommodation shall be submitted on an application form provided
13 by the City Clerk, or in the form of a letter to the City Clerk, and shall contain the following
14 information:

15 (a) The applicant's name, address and telephone number.

16 (b) The street address and legal description or Assessor's Parcel Number of the
17 property for which the request is being made.

18 (c) The current actual use of the property.

19 (d) The basis for the claim that the individual (or group of individuals, if
20 application is made by an entity acting on behalf of a person or persons with disabilities or
21 handicaps) is considered disabled or handicapped under the Acts.

1 (e) The law, provision, regulation or policy from which reasonable
2 accommodation is being requested.

3 (f) Why the requested accommodation is necessary to make the specific property
4 accessible to the individual or group of individuals.

5 Upon the filing of the application for request for reasonable accommodation, the City
6 Council shall refer a request for reasonable accommodation from a zoning law or other land use
7 regulation policy or practice to the Planning Commission. If the request is for reasonable
8 accommodation from a building code, fire code, or safety code, the City Council shall refer the
9 request to the Board of Appeals established under said code to hear appeals of orders, decisions,
10 determinations, made by the code official relative to the application or interpretation of such code.
11 The Planning Commission or such Board of Appeals are hereinafter referred to in this chapter as the
12 Reviewing Authority.

13 Section 4. That Title 1 of the of the Lincoln Municipal Code be amended by adding
14 a new section numbered 1.28.040 to read as follows:

15 **1.28.040 Reviewing Authority and Procedure.**

16 The Reviewing Authority shall hold a public hearing on the request and make a
17 recommendation and report to the City Council within 45 days from the date of referral regarding
18 granting, granting with modifications, or denying the request for reasonable accommodation in
19 accordance with Section 1.28.050 (Findings and Decision). Failure of the Reviewing Authority to
20 submit its report and recommendation to the City Council within said 45 days shall be deemed to
21 be a recommendation of approval, unless the delay is at the request of or due to the default of the
22 applicant.

1 Section 5. That Title 1 of the of the Lincoln Municipal Code be amended by adding
2 a new section numbered 1.28.050 to read as follows:

3 **1.28.050 Findings and Decision.**

4 Upon receiving the report from the Reviewing Authority or upon failure of the Reviewing
5 Authority to timely submit its report, the City Council after public hearing shall take final action
6 upon the application and may grant, grant with modifications, or deny the request for reasonable
7 accommodation consistent with the Acts and based upon consideration of the following:

8 (1) Whether the housing which is the subject of the request will be used by an
9 individual or a group of individuals considered disabled or handicapped under the Acts, and that the
10 accommodation requested is necessary to make specific housing available to the individual or group
11 of individuals with a disability or handicap under the Acts.

12 (2) Whether there are alternative reasonable accommodations available that would
13 provide an equivalent level of benefit, or if alternative accommodations would be suitable based on
14 the circumstances of this particular case.

15 (3) Whether the requested reasonable accommodation would impose an undue
16 financial or administrative burden on the City.

17 (4) If applicable, whether the requested reasonable accommodation would be
18 consistent with the Comprehensive Plan land use designation of the property which is the subject
19 of the reasonable accommodation request, and with the general purpose and intent of the zoning
20 district in which the use is located.

21 (5) Whether the requested reasonable accommodation substantially affects the
22 physical attributes of the property.

1 In granting a request for reasonable accommodation, the City may impose any conditions of
2 approval deemed reasonable and necessary to ensure that the reasonable accommodation would
3 comply with the findings required above.

4 Section 6. That Title 1 of the of the Lincoln Municipal Code be amended by adding
5 a new section numbered 1.28.060 to read as follows:

6 **1.28.060 Notice of Request for Reasonable Accommodation.**

7 For public hearings required to be held by the Reviewing Authority and the City Council,
8 notice shall be given as provided in Lincoln Municipal Code Section 27.81.050, subsections (a), (b),
9 and (c); provided that no recommendation of the Reviewing Authority or decision of the City
10 Council shall be void or invalidated or effected in any way, for any irregularity, defect, error, or
11 failure on the part of the City Clerk to cause notice to be given as required in Section 27.81.050(c).

12 It shall not be necessary to give further notice of adjourned or continued public hearings.

13 Section 7. That Sections 1 through 6 of this ordinance be codified in the Lincoln
14 Municipal Code as Chapter 1.28, Reasonable Accommodation.

15 Section 8. That this ordinance shall take effect and be in force from and after its
16 passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

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Approved this ___ day of _____, 2005:

Mayor