

(SUBSTITUTE NO. 1)
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 8.48.130 to provide definitions for
7 employee, employer, guestroom or suite, health director, indoor area, international no-
8 smoking symbol, place of employment, proprietor, public place, smoke or smoking,
9 respectively; adding a new section numbered 8.48.135 to make it unlawful for any person to
10 smoke in a place of employment or a public place and to provide exceptions therefor; adding
11 a new section numbered 8.48.140 to make it unlawful for a proprietor of any place regulated
12 by this chapter to allow smoking in any place of employment or public place and providing
13 exceptions therefor; adding a new section numbered 8.48.145 to prohibit proprietors from
14 allowing a person under the age of eighteen to enter a place of employment or public place
15 where smoking is allowed; adding a new section numbered 8.48.150 to require the posting
16 of "no smoking" signs; adding a new section numbered 8.48.160 to provide for the
17 enforcement of the provisions of the chapter; adding a new section 8.48.170 to provide
18 penalties for violations of the chapter; adding a new section numbered 8.48.180 to provide
19 for severability of the chapter; and providing that this ordinance shall become effective six
20 months after City Council approval.

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

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

4 **8.48.010 Title.**

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

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

8 **8.48.020 Purpose.**

9 The City Council does hereby find and declare that the purpose of this Chapter is to
10 protect the health and welfare of employees and the public by prohibiting smoking in places
11 of employment and public places.

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

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

18 **8.48.030 Definitions; General Provisions.**

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

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

1 **8.48.040** **Definition; Employee.**

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

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; Employer.**

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

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

14 **8.48.060** **Definition; Guestroom or Suite.**

15 Guestroom or suite shall mean sleeping rooms and directly associated private areas,
16 such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their
17 exclusive transient occupancy at a hotel or motel.

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

20 **8.48.070** **Definition; Health Director.**

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

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

3 **8.48.080** **Definition; Indoor Area.**

4 Indoor area shall mean the area within a structure enclosed or closed in by a roof and
5 three or more walls, windows, or other impermeable surfaces that form a continuous
6 perimeter, with appropriate openings for ingress and egress. The roof, wall, or windows of
7 the structure are not required to be solid or permanent, nor are the walls or windows required
8 to be attached or extended to the roof to be considered an indoor area.

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

11 **8.48.090** **Definition; International No-Smoking Symbol.**

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

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

16 **8.48.100** **Definition; Place of Employment.**

17 Place of employment shall mean an indoor area under the control of a proprietor that
18 an employee accesses as part of the course of employment without regard to whether work
19 is occurring at any given time. The indoor area shall include, but is not limited to, work areas,
20 employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee
21 cafeterias, and hallways. A private residence shall not be considered a “place of employ-
22 ment”.

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

3 **8.48.110** **Definition; Proprietor.**

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

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

9 **8.48.120** **Definition; Public Place.**

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

13 Section 12.3 That Title 8 of the Lincoln Municipal Code be amended by adding
14 a new section numbered 8.48.123 to read as follows:

15 **8.48.123** **Definition: Smoke Shop.**

16 Smoke shop shall mean any place of employment or public place devoted primarily
17 to the sale of tobacco products and/or smoking accessories.

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

20 **8.48.130** **Definition; Smoke or Smoking.**

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

1 Section 13.5. That Title 8 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 8.48.135 to read as follows:

3 **8.48.135 Smoking Prohibited; Exceptions.**

4 It shall be unlawful for any person to smoke in a place of employment or a public
5 place, except as designated by a proprietor pursuant to Section 8.48.140.

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

8 **8.48.140 Proprietor to Prohibit Smoking; Exceptions.**

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

11 (1) Guestrooms or suites at a hotel or motel may be designated as smoking
12 rooms provided, however, that not more than twenty percent (20%) of the total guestrooms
13 or suites may be so designated.

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

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

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

1 (ii) An employee nonsmoking breakroom shall be provided that has
2 at least the same amenities as the smoking breakroom; and

3 (iii) The smoking breakroom shall not serve as a work area for any
4 employee nor should an employee be required to enter the smoking breakroom in order to
5 reach the employee's work area; and

6 (iv) The smoking breakroom shall be separated from the rest of the
7 place of employment or public place, and from any other adjacent or connect place of
8 employment or public place, by solid walls, floors, ceiling, and doors equipped with
9 automatic closing mechanisms; and

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

14 (vi) The smoking breakroom air shall be immediately exhausted to the
15 outside of the building by an exhaust fan rather than being recirculated within the smoking
16 breakroom; and

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

19 (4) In a smoke shop, provided that it meets the following requirements:

20 (i) The smoke shop shall be separated from any adjacent or
21 connected place of employment or public place by solid walls, floors, ceiling, and doors
22 equipped with automatic closing mechanisms; and

1 (ii) The smoke shop shall be at negative pressure with respect to any
2 adjacent or connected place of employment or public place to prohibit the flow of air from
3 the smoke shop into another place of employment or public place; and

4 (iii) The smoke shop air shall be immediately exhausted to the outside
5 of the building by an exhaust fan rather than being recirculated within the smoke shop; and

6 (iv) No person under the age of eighteen shall be allowed to enter
7 the smoke shop.

8 (v) The smoke shop shall not sell or serve alcoholic beverages.

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) An affirmative defense to this section, on behalf of the proprietor is that when
13 a proprietor has verbally requested a person to refrain from smoking within a public place or
14 place of employment and the proprietor has taken every reasonable step to prohibit the person
15 from smoking. "Reasonable step" shall not require the physical ejection of a person by the
16 proprietor from the place of employment or public place; or the requesting of a person to
17 refrain from smoking when circumstances involve a risk of physical harm to the proprietor.

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

20 Section 14.5. That Title 8 of the Lincoln Municipal Code be amended by adding
21 a new section numbered 8.48.145 to read as follows:

1 **8.48.145** **Age Limitation.**

2 No proprietor shall allow a person under the age of eighteen in any area within a place
3 of employment or public place where a proprietor allows smoking pursuant to Section
4 8.48.140.

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** **Signs Required; Requirements.**

8 (a) A proprietor shall post at least one sign at all entrances used by employee(s) or
9 the public containing the international no smoking symbol or the words "No Smoking." If
10 smoking is allowed in conformance with this Chapter within a place of employment or public
11 place, then the appropriate signage shall be posted as follows:

12 (1) Pursuant to Section 8.48.140(a)(1), if a guestroom or suite is to be
13 designated as a smoking room, the proprietor shall post a sign which indicates smoking is
14 allowed within the guestroom or suite. The sign shall include the words "Smoking Allowed".
15 Each letter shall be one inch or larger in size. There shall be a separately posted sign on each
16 entrance of the guestroom or suite.

17 (2) Pursuant to Section 8.48.140(a)(2), if research is being conducted that
18 requires a person to smoke, the proprietor shall post a temporary sign on all entrances used
19 by employee(s) or the public indicating that smoking is being allowed for the purposes of the
20 research.

21 (3) Pursuant to Section 8.48.140(a)(3), the proprietor of a place of
22 employment or a public place that has designated a smoking breakroom shall post on all

1 entrances of the smoking breakroom signs indicating that smoking is allowed. The signs shall
2 include the words "Smoking Allowed". Each letter shall be one inch or larger in size.

3 (4) Pursuant to Section 8.48.140(a)(4), the proprietor of a smoke shop that
4 allows smoking shall post permanent signs on all entrances used by employee(s) or the public
5 indicating that smoking is allowed. The signs shall include the words "Smoking Allowed".
6 Each letter shall be one inch or larger in size.

7 (b) Proprietors shall conspicuously post or display a sign so that it is readily
8 viewable by employee(s) and the public.

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

11 **8.48.160 Enforcement.**

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

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 Violations and Penalties.**

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

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

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

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

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

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

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

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

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

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

1 (e) The violations of any of the provisions of this Chapter by a proprietor shall be
2 cause sufficient to justify the revocation or suspension of any permit or license that the
3 proprietor has received from the City of Lincoln for the place of employment or public place.
4 Such revocation or suspension shall be cumulative with the penalty imposed by this Chapter,
5 any other ordinance of the City of Lincoln, and any other penalty imposed by law.

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

8 **8.48.180 Severability.**

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

12 Section 19. That Sections 1 through 18 hereof be codified in the Lincoln
13 Municipal Code as Chapter 8.48, the Lincoln Smokefree Air Act.

14 Section 20. That the operative date of this ordinance shall be six months after
15 City Council approval.

16 Section 21. That this ordinance shall take effect and be in force from and after
17 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2003: _____ Mayor
