

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Chapter 8.24 of the Lincoln Municipal Code relating  
2 to the Noise Control Ordinance by amending Section 8.24.150 to increase the permit fee for a  
3 variance to the provisions of LMC Section 8.24.090 relating to noise disturbances; and repealing  
4 Section 8.24.150 of the Lincoln Municipal Code as hitherto existing.

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

6 Section 1. That Section 8.24.150 of the Lincoln Municipal Code be amended to read  
7 as follows:

8 **8.24.150 Variances.**

9 (a) The health officer shall have the authority to grant an initial variance to the strict  
10 application of Section 8.24.090 for a period of not to exceed fifteen calendar days. Any person  
11 seeking such a variance shall file an application with the health officer and shall submit a permit fee  
12 of ~~\$110.00~~ \$115.00. The application shall contain the information which demonstrates that bringing  
13 the source of sound or activity for which the variance is sought into compliance with this ordinance  
14 would constitute an unreasonable hardship on the applicant, on the community, or on other persons.

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

20 (c) Any individual who claims to be adversely affected by allowance of any requested  
21 extension of a variance may, prior to the end of the two-day period after posting of the property, file  
22 a statement with the health officer containing any information to support the claim. If the health  
23 officer finds that a sufficient controversy exists regarding an application, a public hearing shall be

1 held. All such hearings shall be held within five days after the period for filing claims under this  
2 subsection has ended.

3 In determining whether to grant or deny any application, the health officer shall balance the  
4 hardship to the applicant, the community, and other persons of not granting the variance or extension  
5 against the adverse impact to the health, safety, and welfare of persons affected, the adverse impact  
6 on property affected, and any other adverse impacts of granting the variance or extension.  
7 Applicants for variances or extensions and persons contesting extensions may be required to submit  
8 any information the health officer may reasonably require. In granting or denying an application,  
9 the health officer shall place on public file a copy of the decision and the reasons for denying or  
10 granting the variance or extension and the criteria to be considered in deciding whether to grant  
11 variances and extensions.

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

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

21 (d) Any person who is aggrieved by a decision or order of the health officer under this  
22 ordinance may appeal such decision or order to the Air Pollution Control Advisory Board by filing  
23 a notice of appeal with the board secretary within fifteen days from the date of the issuance of such  
24 decision or order by the health officer.

1           The secretary of the Air Pollution Control Advisory Board, having received a properly  
2 submitted notice of appeal, shall notify the chairman of the Air Pollution Control Advisory Board  
3 and establish a date for the appeals hearing. The secretary shall then notify the person making the  
4 appeal, and any person who appeared before or filed a statement with the health officer, in writing  
5 of the time and place of the hearing, which shall, in no event, be more than fifteen days from the date  
6 of the filing of the notice of appeal with the board secretary. The Air Pollution Control Advisory  
7 Board shall, within seven days of the concluding date of the appeals hearing, file with the health  
8 officer a written final decision, either affirming the decision of the health officer, or modifying or  
9 reversing same. A copy of said decision shall be forwarded to the appellant.

10           Section 2. That Section 8.24.150 of the Lincoln Municipal Code as hitherto existing  
11 be and the same is hereby repealed.

12           Section 3. That this ordinance shall take effect and be in force from and after passage  
13 and publication in one issue of a daily or weekly newspaper of general circulation in the City,  
14 according to law.

Introduced by:  
  
\_\_\_\_\_

Approved as to Form & Legality:  
  
\_\_\_\_\_  
City Attorney

Approved this ___ day of _____, 2013:  _____ Mayor
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