

Chapter 8.50

Lincoln Smoking Regulation Act

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8.50.010 Title.

This Chapter shall be known as the Lincoln Smoking Regulation Act. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §1; June 28, 2004).

8.50.020 Purpose.

The City Council does hereby declare it to be the public policy of this City to encourage places of employment and public places to reduce the health and safety risks posed by smoking in places of employment and public places. The City Council authorizes the Health Director of the Lincoln-Lancaster County Health Department and law enforcement to administer and enforce this Chapter within the City of Lincoln. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §2; June 28, 2004).

8.50.030 Definitions; General Provisions.

For the purposes of this Chapter, the following words and phrases shall have the meaning ascribed to them by this Chapter. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §3; June 28, 2004).

8.50.060 Definition; Employed.

Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish goods or services. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §6; June 28, 2004).

8.50.070 Definition; Employee.

Employee shall mean a person who is employed by an employer in consideration for direct or indirect monetary wage(s), profit, or other remuneration. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §7; June 28, 2004).

8.50.080 Definition; Employer.

Employer shall mean a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, co-op, firm, trust, association, organization, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, who employs one or more employees. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §8; June 28, 2004).

8.50.090 Definition; Guestroom or Suite.

Guestroom or suite shall mean sleeping rooms and directly associated private areas, such as bathrooms, living rooms, and kitchen areas, if any, rented to the public for their exclusive transient occupancy including, but not limited to, guestrooms or suites in hotels, motels, inns, lodges, or other such establishments. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §9; June 28, 2004).

8.50.100 Definition; Health Director.

Health Director shall mean the Director of the Lincoln-Lancaster County Health Department or authorized representative(s). (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §10; June 28, 2004).

8.50.110 Definition; Indoor Area.

Indoor area shall mean an area enclosed by a floor, ceiling, and floor to ceiling walls on all sides that are continuous and solid except for closeable entry/exit doors and windows. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §11; June 28, 2004).

8.50.120 Definition; International No-Smoking Symbol.

International no-smoking symbol shall mean a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §12; June 28, 2004).

8.50.130 Definition; Place of Employment.

Place of employment shall mean an indoor area under the control of a proprietor that an employee accesses as part of the course of employment without regard to whether work is occurring at any given time. The indoor area shall include, but is not limited to, work areas, employee breakrooms, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence shall not be considered a "place of employment." (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §13; June 28, 2004).

8.50.150 Definition; Proprietor.

Proprietor shall mean any employer, owner, operator, supervisor, manager or any other person who controls, governs, or directs the activities in a place of employment or public place. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §15; June 28, 2004).

8.50.160 Definition; Public Place.

Public Place shall mean an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence shall not be considered a "public place." (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §16; June 28, 2004).

8.50.180 Definition; Smoke or Smoking.

Smoke or smoking shall mean the lighting of any cigarette, cigar, or pipe; or the possession of any lighted cigarette, cigar, or pipe, regardless of its composition. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §18; June 28, 2004).

8.50.210 Smoking Prohibited; Exceptions.

It shall be unlawful for any person to smoke in a place of employment or a public place, except as designated by a proprietor pursuant to this Chapter. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §21; June 28, 2004).

8.50.220 Proprietor to Prohibit Smoking; Exceptions.

(a) It shall be unlawful for any proprietor of any place of employment or public place to allow smoking except as follows:

(1) Guestrooms or suites, provided the following requirements are met:

(i) The number of rooms or suites designated for smoking shall be no greater than 20% of the total number of guestrooms or suites.

(ii) Each guestroom or suite where smoking is allowed shall have a permanent sign posted containing the words "smoking allowed" on each entrance.

(2) As part of a study conducting research into the health effects of smoking in a scientific or analytical laboratory either governed by state or federal law or at a college or university approved by the Nebraska Coordinating Commission for Post Secondary Education. The proprietor shall post a temporary sign on all entrances to the laboratory indicating that smoking is being allowed for the purposes of research.

(b) Proprietors shall conspicuously post or display required signs so that the signs are readily viewable by employees and the public.

(c) This section shall not be interpreted or construed to permit smoking where smoking is otherwise restricted by other applicable laws. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §22; June 28, 2004).

8.50.280 Enforcement.

The Health Director and law enforcement agencies are hereby authorized to inspect a place of employment or public place at any reasonable time to determine compliance with this Chapter. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §28; June 28, 2004).

8.50.290 Violations and Penalties.

(a) A person who smokes in a place of employment or a public place in violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a minimum fine of:

- (1) One hundred dollars (\$100) and costs for the first offense;
- (2) Two hundred dollars (\$200) and costs for the second offense;
- (3) Five hundred dollars (\$500) and costs for the third and subsequent offenses.

(b) A proprietor of a place of employment or public place upon whom a duty is placed by the provisions of this Chapter, who shall fail, neglect, or refuse to perform such duty, or who shall knowingly violate any of the provisions hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a minimum fine of:

- (1) One hundred dollars (\$100) and costs for the first offense;
- (2) Two hundred dollars (\$200) and costs for the second offense;
- (3) Five hundred dollars (\$500) and costs for the third and subsequent offenses.

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

(d) Every act or omission of whatever nature constituting a violation of any of the provisions of this Chapter by an officer, manager, supervisor, agent, or employee of any proprietor, if said act or omission is made with the authorization, knowledge, or approval of the proprietor, shall be deemed and held to be the act or omission of such proprietor, and said proprietor shall be punishable in the same manner as if said act or omission had been committed by such proprietor personally. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §29; June 28, 2004).

8.50.300 Grace Period.

Any place of employment or public place not in full compliance with this Chapter upon its effective date shall have until November 1, 2004 to comply with the requirements of this Chapter. No penalty shall be imposed against any proprietor or person for noncompliance with this chapter until November 1, 2004. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §30; June 28, 2004).

8.50.310 Severability.

Each section and subsection of this Chapter is hereby declared to be independent of every other section or subsection of this Chapter and invalidity of any section or subsection of this Chapter shall not invalidate any other section or subsection thereof. (Adopted by Referendum, certified November 17, 2004: Ord. 18396 §31; June 28, 2004).