

ORDINANCE NO. _____

AN ORDINANCE TO BAN SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN THE CITY OF LEXINGTON, NEBRASKA AND WITHIN THE TWO MILE ZONING JURISDICTION; TO PROVIDE FOR AN EFFECTIVE DATE AND FOR PUBLICATION IN PAMPHLET FORM;

BE IT ORDAINED by the City Council of the City of Lexington, Nebraska:

Section 1. This Chapter shall be known as the Lexington Smoking Regulation Act.

Section 2. 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 City Manager and law enforcement to administer and enforce this Chapter within the City of Lexington, including the two mile zoning jurisdiction.

Section 3. Definitions; General Provisions.

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

- (a) Employed shall mean hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.
- (b) Employee shall mean a person who is employed by an employer in consideration for direct or indirect monetary wage(s), profit, or other remuneration.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) International No-Smoking Symbol shall mean a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- (g) 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."

- (h) 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.
- (i) 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."
- (j) 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.

Section 4. 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.

Section 5. 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 in 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.
- (b) A business may create a room within their building in which the business may allow employees and/or customers to smoke. This area shall require separate ventilation and smoke may not be allowed into adjoining spaces where smoking is prohibited. Employees shall not be required to enter this space as a term of their employment and customers shall not have to enter this space to conduct business or use facilities that are open to the general public such as restrooms. The entry to this area shall be clearly marked with a written smoking area sign and a sign with the international sign for smoking which is a burning cigarette.
- (c) This ordinance shall not apply to private, non-residential buildings on a farm or ranch business with annual gross income of less than \$500,000.
- (d) Proprietors shall conspicuously post or display required signs so that the signs are readily viewable by employees and the public.
- (e) This section shall not be interpreted or construed to permit smoking where smoking is otherwise restricted by other applicable laws.

Section 6. Enforcement.

The City Manager 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.

Section 7. 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.

Section 8. Grace Period.

Any place of employment or public place not in full compliance with this Chapter upon its effective date shall have until June 1, 2007 to comply with the requirements of this Chapter. No penalty shall be imposed against any proprietor or person for noncompliance with this chapter until June 1, 2007.

Section 9. 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.

Section 10. That Sections 1 through 9 of this ordinance shall be codified in the Lexington Municipal Code as Section 19-30 entitled "Lexington Smoking Regulation Act."

Section 11. That all ordinances or sections of ordinances in conflict herewith are hereby repealed.

Section 12. That this ordinance shall be published in pamphlet form and take effect and be in force as provided by law.

Passed and approved this _____ day of _____, _____.

CITY OF LEXINGTON, NEBRASKA,

BY: _____
Mayor

ATTEST:

City Clerk