



# City of Grand Island

Tuesday, February 13, 2007

Council Session

## Item I2

**#2007-39 - Approving Support of LB 395 - Nebraska Clean Indoor Air Act Relative to Smoking**

Staff Contact:

# **Council Agenda Memo**

**From:** Gary D. Greer, City Administrator  
**Meeting:** February 13, 2007  
**Subject:** LB 395 Nebraska Clean Air Act  
**Item #'s:** I-2  
**Presenter(s):** Gary D. Greer, City Administrator

## **Background**

For the last 5 years the city council has debated the possibility of increasing the restrictions on smoking in the city of Grand Island. During the retreat of January 20, 2007 the subject was again discussed and it was decided to have city administration draft language to be presented at study session for council consideration. The city attorney has prepared such language and was planning to present it at the February 20<sup>th</sup> study session.

## **Discussion**

In the mean time we have been contacted by State Senator Ray Aguliar to support a state wide smoking restriction bill (395) that he has proposed to the Unicameral. Attached is a copy of the proposed bill, a statement of intent and a fiscal note concerning implementing the bill. Additionally, a resolution of support that has been prepared by the senator's office is attached for council consideration. The session for the one hundredth legislature runs from January 3, 2007 to May 31, 2007. There will probably be considerable debate and modification to the presented bill over the next few weeks. If a bill is passed it would most likely cover the entire state. This could preempt any legislation established at the local level.

Therefore, if the city council wishes to support LB395, it would be appropriate to hold off on the February 20<sup>th</sup> study session. If a state wide ban passes it would most likely override a local restriction. If the bill incorporates an element of local control it would be appropriate to respond to this at a later time also.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve Resolution #2007-39 in support of LB 395.
2. Do not approve Resolution #2007-39 in support of LB 395.
3. Modify the resolution to meet the needs of the city council.
4. Table the issue for further study.

## **Recommendation**

City Administration recommends that the Council approve Resolution #2007-39 in support of LB 395 and postpone discussions concerning local smoking restrictions providing outcome of the bill.

## **Sample Motion**

Motion to approve Resolution #2007-39 in support of LB 395.



**Hundredth Legislature - First Session - 2007**  
**Introducer's Statement of Intent**  
**LB 395**

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**Chairperson:** Joel Johnson  
**Committee:** Health and Human Services  
**Date of Hearing:** February 1, 2007

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 395 amends the Nebraska Clean Indoor Air Act by restricting smoking in any place of employment or public place in the State of Nebraska. The legislation has been modeled after the City of Lincoln's ordinance was implemented in January 1, 2005. LB 395 seeks to protect employees and the public from the hazards of second hand smoke in all indoor worksites, including bars and restaurants.

LB 395 and is designed to protect the public health and implement a uniform law that all citizens follow. A uniform law will improve the health of all Nebraskans and prevent competition between cities and businesses that have different smoking laws.

The U.S. Surgeon General reported this year: "The scientific evidence that secondhand smoke causes serious diseases, including lung cancer, heart disease and respiratory illnesses, is massive and conclusive. There is no risk-free level of exposure to secondhand smoke. Exposure to secondhand smoke has substantial and immediate adverse effects on the cardiovascular system. Establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace."

Any person in violation of the act is guilty of a Class V misdemeanor for first offense and a Class IV misdemeanor for the second and any subsequent offenses.

**Principal Introducer:**

\_\_\_\_\_  
**Senator Joel T. Johnson**

PREPARED BY: Liz Hruska  
DATE PREPARED: January 28, 2007  
PHONE: 471-0053

**LB 395**

Revision: 00

# FISCAL NOTE

## LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *				
	FY 2007-08		FY 2008-09	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See below		See below	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See below		See below	

\*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

This bill would prohibit smoking in any place of employment or public place. The act provides for three exemptions. Those are: 1) private residences except when used as for child care, adult day care or a health care facility, 2) guestrooms and suites that are rented and designated as smoking and 3) areas used for research on the health effects of smoking. The Department of Regulation and Licensure is required to adopt rules and regulations for the law. The department is also required to provide information on the purposes and requirements of the law.

The requirement that the department provide a program clarifying the purpose of the law and its requirements may require the addition of a half-time environmental health specialist and half-time staff assistant. Personnel costs would be \$56,021 in FY 08 and \$45,860 in FY 09. A brochure would be made available to comply with this section. The cost would be \$2,100 in FY 08.

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
LEGISLATIVE BILL 395

Introduced by Johnson, 37; Aguilar, 35; Hansen, 42; Kruse, 13;  
Pankonin, 2; Preister, 5; Schimek, 27; Stuthman, 22;

Read first time January 16, 2007

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to public health; to repeal the current  
2 Nebraska Clean Indoor Air Act and adopt a new act;  
3 to create penalties; to provide severability; and to  
4 outright repeal sections 71-5701, 71-5702, 71-5703,  
5 71-5704, 71-5706, 71-5708, 71-5709, 71-5710, 71-5711,  
6 71-5712, and 71-5713, Reissue Revised Statutes of  
7 Nebraska, and sections 71-5705 and 71-5707, Revised  
8 Statutes Cumulative Supplement, 2006.  
9 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 25 of this act shall be known  
2 and may be cited as the Nebraska Clean Indoor Air Act.

3           Sec. 2. The Legislature declares it to be the public  
4 policy of this state to encourage smoke-free places of employment  
5 and public places to reduce the health and safety risks posed  
6 by smoking in such places. The purposes of the Nebraska Clean  
7 Indoor Air Act are (1) to protect the public health and welfare  
8 by prohibiting smoking in public places and places of employment  
9 and (2) to guarantee the right of nonsmokers to breathe smoke-free  
10 air and to recognize that the need to breathe smoke-free air has  
11 priority over the desire to smoke. The Legislature authorizes the  
12 Director of Regulation and Licensure of the Nebraska Health and  
13 Human Services System, local health departments, and state and  
14 local law enforcement to administer and enforce the act within  
15 the State of Nebraska. Nothing in the act shall be construed to  
16 restrict or prohibit the governing body of a county, city, or  
17 village from establishing and enforcing ordinances at least as  
18 stringent as, or more stringent than the act.

19           Sec. 3. The Nebraska Legislature finds that:

20           (1) The 2006 United States Surgeon General's Report,  
21 The Health Consequences of Involuntary Exposure to Tobacco Smoke,  
22 has concluded that (a) secondhand smoke exposure causes disease  
23 and premature death in children and adults who do not smoke,  
24 (b) children exposed to secondhand smoke are at an increased  
25 risk for sudden infant death syndrome, acute respiratory problems,

1 ear infections, and asthma attacks and that smoking by parents  
2 causes respiratory symptoms and slows lung growth in their  
3 children, (c) exposure of adults to secondhand smoke has immediate  
4 adverse effects on the cardiovascular system and causes coronary  
5 heart disease and lung cancer, (d) there is no risk-free level  
6 of exposure to secondhand smoke, (e) establishing smoke-free  
7 workplaces is the only effective way to ensure that secondhand  
8 smoke exposure does not occur in the workplace, because ventilation  
9 and other air cleaning technologies cannot completely control the  
10 exposure of nonsmokers to secondhand smoke, and (f) evidence from  
11 peer-reviewed studies shows that smoke-free policies and laws do  
12 not have an adverse economic impact on the hospitality industry;

13 (2) Secondhand smoke is particularly hazardous to elderly  
14 people, individuals with cardiovascular disease, and individuals  
15 with impaired respiratory function, including asthmatics and those  
16 with obstructive airway disease;

17 (3) The United States Surgeon General has determined that  
18 the simple separation of smokers and nonsmokers within the same  
19 air space may reduce, but does not eliminate, the exposure of  
20 nonsmokers to secondhand smoke; and

21 (4) Hundreds of communities in the United States,  
22 plus numerous states, including California, Delaware, Florida,  
23 Massachusetts, Montana, New Jersey, New York, and Washington,  
24 have enacted laws requiring workplaces, restaurants, bars, and  
25 other public places to be smoke free, as have numerous countries,



1 including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda,  
2 and Uruguay.

3           Sec. 4. For purposes of the Nebraska Clean Indoor Air  
4 Act, the definitions in sections 5 to 15 of this act shall apply.

5           Sec. 5. Employed means hired, contracted, subcontracted,  
6 or otherwise engaged to furnish goods or services.

7           Sec. 6. Employee means a person who is employed by an  
8 employer in consideration for direct or indirect monetary wages,  
9 profit, or other remuneration.

10           Sec. 7. Employer means a person, nonprofit entity, sole  
11 proprietorship, partnership, joint venture, corporation, limited  
12 partnership, limited liability company, cooperative, firm, trust,  
13 association, organization, or other business entity formed for  
14 profit-making purposes, including retail establishments where goods  
15 or services are sold, who employs one or more employees.

16           Sec. 8. Guestroom or suite means sleeping rooms and  
17 directly associated private areas, such as bathrooms, living  
18 rooms, and kitchen areas, if any, rented to the public for  
19 their exclusive transient occupancy including, but not limited to,  
20 guestrooms or suites in hotels, motels, inns, lodges, or other such  
21 establishments.

22           Sec. 9. Health director includes (1) the state health  
23 officer, the Director of Regulation and Licensure or, if a chief  
24 medical officer is appointed pursuant to section 81-3201, the chief  
25 medical officer, (2) local health officers, the health directors

1 of local public health departments as defined in section 71-1626  
2 or the medical advisor to the board of health of a county, city,  
3 or village, and (3) authorized representatives of the state health  
4 officer and local health officers.

5       Sec. 10. Indoor area means an area enclosed by a  
6 floor, ceiling, and floor-to-ceiling walls on all sides that  
7 are continuous and solid except for closeable entry and exit doors  
8 and windows.

9       Sec. 11. International no-smoking symbol means a  
10 pictorial representation of a burning cigarette enclosed in a red  
11 circle with a red bar across it.

12       Sec. 12. Place of employment means an indoor area under  
13 the control of a proprietor that an employee accesses as part  
14 of the course of employment without regard to whether work is  
15 occurring at any given time. The indoor area shall include, but  
16 is not limited to, work areas, employee breakrooms, restrooms,  
17 conference rooms, meeting rooms, classrooms, employee cafeterias,  
18 and hallways. A private residence is not a place of employment.

19       Sec. 13. Proprietor means any employer, owner, operator,  
20 supervisor, manager or any other person who controls, governs, or  
21 directs the activities in a place of employment or public place.

22       Sec. 14. Public place means an indoor area to which the  
23 public is invited or in which the public is permitted, whether or  
24 not the public is always invited or permitted. A private residence  
25 is not a public place.

1           Sec. 15. Smoke or smoking means the lighting of any  
2 cigarette, cigar, or pipe or the possession of any lighted  
3 cigarette, cigar, or pipe, regardless of its composition.

4           Sec. 16. It is unlawful for any person to smoke in a  
5 place of employment or a public place.

6           Sec. 17. Smoking is prohibited within a distance of  
7 twenty feet outside entrances, operable windows, and ventilation  
8 systems of enclosed areas where smoking is prohibited, to insure  
9 that tobacco smoke does not enter those areas.

10          Sec. 18. Notwithstanding any other provision of the  
11 Nebraska Clean Indoor Air Act, the following areas shall be exempt  
12 from sections 16 and 17 of this act:

13           (1) Private residences, except when used as a childcare,  
14 adult day care, or health care facility;

15           (2) Guestrooms and suites that are rented to guests and  
16 are designated as smoking rooms, except that not more than twenty  
17 percent of rooms rented to guests in an establishment may be  
18 designated as smoking rooms. All smoking rooms on the same floor  
19 shall be contiguous and smoke from these rooms shall not infiltrate  
20 into areas where smoking is prohibited under the act. The status  
21 of rooms as smoking or nonsmoking cannot be changed, except to add  
22 additional nonsmoking rooms; and

23           (3) Areas used as part of a research study on the  
24 health effects of smoking conducted in a scientific or analytical  
25 laboratory either governed by state or federal law or at a

1 college or university approved by the Coordinating Commission for  
2 Postsecondary Education. The proprietor shall post a temporary sign  
3 on all entrances to the laboratory indicating that smoking is being  
4 allowed for research purposes.

5 Sec. 19. A proprietor shall:

6 (1) Post no-smoking signs or the international no-smoking  
7 symbol clearly and conspicuously in every place of employment and  
8 public place where smoking is prohibited by the Nebraska Clean  
9 Indoor Air Act;

10 (2) Post at every entrance a conspicuous sign clearly  
11 stating that smoking is prohibited in every place of employment and  
12 public place where smoking is prohibited by the act; and

13 (3) Remove all ashtrays from any place where smoking is  
14 prohibited by the act.

15 Sec. 20. (1) No person or employer shall discharge,  
16 refuse to hire, or in any manner retaliate against an employee,  
17 applicant for employment, or customer because that employee,  
18 applicant, or customer exercises any rights afforded by the  
19 Nebraska Clean Indoor Air Act or reports or attempts to prosecute  
20 a violation of the act.

21 (2) An employee who works in a place where an employer  
22 allows smoking does not waive or otherwise surrender any legal  
23 rights the employee has against the employer or any other party.

24 Sec. 21. A health director or law enforcement officer may  
25 inspect a place of employment or public place at any reasonable

1 time to determine compliance with the Nebraska Clean Indoor Air  
2 Act.

3           Sec. 22. (1) A person who smokes in a place of employment  
4 or a public place in violation of the Nebraska Clean Indoor Air  
5 Act is guilty of a Class V misdemeanor for the first offense and a  
6 Class IV misdemeanor for the second and any subsequent offenses.

7           (2) A proprietor who fails, neglects, or refuses to  
8 perform a duty under the act is guilty of a Class V misdemeanor for  
9 the first offense and a Class IV misdemeanor for the second and any  
10 subsequent offenses.

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

14           (4) Every act or omission constituting a violation of the  
15 act by an employee or agent of a proprietor is deemed to be the  
16 act or omission of such proprietor, and such proprietor shall be  
17 punished in the same manner as if the act or omission had been  
18 committed by such proprietor.

19           Sec. 23. (1) The Department of Regulation and Licensure  
20 shall engage in a continuing program to explain and clarify the  
21 purposes and requirements of the Nebraska Clean Indoor Air Act  
22 to citizens affected by it, and to guide proprietors in their  
23 compliance with it. The program may include publication of a  
24 brochure for affected persons explaining the provisions of the act.

25           (2) The Department of Regulation and Licensure shall

1 adopt and promulgate rules and regulations necessary and  
2 reasonable to implement the Nebraska Clean Indoor Air Act. The  
3 department shall consult with interested persons and professional  
4 organizations before promulgating such rules and regulations.

5       Sec. 24. The Nebraska Clean Indoor Air Act shall not be  
6 interpreted or construed to permit smoking where it is otherwise  
7 restricted by other applicable law.

8       Sec. 25. The Nebraska Clean Indoor Air Act shall be  
9 liberally construed to further its purposes.

10       Sec. 26. If any section in this act or any part of any  
11 section is declared invalid or unconstitutional, the declaration  
12 shall not affect the validity or constitutionality of the remaining  
13 portions.

14       Sec. 27. The following sections are outright repealed:  
15 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,  
16 71-5709, 71-5710, 71-5711, 71-5712, 71-5713, Reissue Revised  
17 Statutes of Nebraska, and sections 71-5705 and 71-5707, Revised  
18 Statutes Cumulative Supplement, 2006.

RESOLUTION 2007-39

WHEREAS, the City of Grand Island has the duty to provide a healthy atmosphere to individuals and considers the public health and welfare of residents and visitors of vital importance to a thriving community; and

WHEREAS, smoking and second hand smoke are proven to be detrimental to the health of those who smoke and those who breath second-hand smoke as evidenced in higher incidents of heart and lung diseases in both adults and children who are exposed to such smoke; and

WHEREAS, government policy can encourage residents and visitors to engage in behavior that is respectful of their own health and others; and

WHEREAS, the cost of health care for individuals and the community can be reduced by breathing air free from pollution from smoking; and

WHEREAS, a statewide government policy regarding a smoking ban can provide a level playing field for businesses across the state.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that we support Legislative Bill 395, introduced by Senator Johnson in the 100<sup>th</sup> Legislature of Nebraska, and encourage the passage of Legislative Bill 395 this year.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 13, 2007.

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Margaret Hornady, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☐ _____
February 8, 2007	☐ City Attorney