



City of Grand Island

Tuesday, February 12, 2008

Council Session

Item I4

**#2008-55 - Consideration of Resolution for Proposed Ballot
Measure Banning Smoking**

Staff Contact: Dale Shotkoski

Council Agenda Memo

From: Jeff Pederson, City Administrator
Meeting: February 12, 2008
Subject: Proposed Ballot Measure Banning Smoking
Item #'s: I-4
Presenter(s): Jeff Pederson, City Administrator

Background

Various efforts have taken place in Grand Island for several years. In May of 2005 the Grand Island City Council heard a recommendation from the Health Department for a Smoking Limitation Ordinance, however no formal action has been taken to date to advance a local smoking limitation measure. In February of 2007, the Grand Island City Council adopted Resolution No. 2007-39 in support of LB 395. LB 395 failed to come to a vote in the 2007 Unicameral due to a successful filibuster which prevented a vote on the floor. Councilmember Hasse has requested Council consideration of a Resolution to place a smoking limitation on the spring Primary ballot. The attached Resolution would place a measure on the May 13, 2008 ballot which would essentially be the same ordinance currently in effect in Lincoln.

Discussion

At issue is whether or not the Unicameral will vote on LB 395 this session, although it is expected that the measure may come up on the floor for debate and vote as early as next week. It is our understanding that the prospect of a filibuster is very low due to a compromise that would delay implementation of the law for one year following signature by the Governor. Through the Primary Election process, Grand Island could put in place a local smoking limitation measure months ahead of when a State law might take effect.

Alternatives

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

1. Move to approve.

2. Move to deny.
3. Change the referendum date to coincide with the November 4 General Election.
4. Postpone the issue to future date to allow time to determine if the Legislature passes a State-wide ban this Session.
5. Revise the Resolution to duplicate the language of LB 395 rather than the language in the Lincoln Ordinance so as to be consistent with State law should LB 395 pass and become State law. (there are some differences between the Lincoln Ordinance and the language currently in LB 395).
6. Undertake a new process to review LB 395, the Lincoln Ordinance, and other models to determine what the Grand Island smoking limitation measure should consist of. (LB 395 would permit a locally-adopted Ordinance to supersede the new State law.

Recommendation

City Administration does not have a recommendation on this Resolution.

Sample Motion

Move to approve one of the six alternatives as stated above.

Chapter 8.50

Lincoln Smoking Regulation Act

Sections:

8.50.010	Title.
8.50.020	Purpose.
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8.50.080	Definition; Employer.
8.50.090	Definition; Guestroom or Suite.
8.50.100	Definition; Health Director.
8.50.110	Definition; Indoor Area.
8.50.120	Definition; International No-Smoking Symbol.
8.50.130	Definition; Place of Employment.
8.50.150	Definition; Proprietor.
8.50.160	Definition; Public Place.
8.50.180	Definition; Smoke or Smoking.
8.50.210	Smoking Prohibited; Exceptions.
8.50.220	Proprietor to Prohibit Smoking; Exceptions.
8.50.280	Enforcement.
8.50.290	Violations and Penalties.
8.50.300	Grace Period.
8.50.310	Severability.

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).

R E S O L U T I O N 2008-55

WHEREAS, a request has been made to ban smoking in all businesses, bars, restaurants and public places in Grand Island, Nebraska; and

WHEREAS, a model ordinance that may be adopted if a majority of the voters at the next general election approve this ballot measure is available for public inspection at the office of the Grand Island City Clerk; and

WHEREAS, the Mayor and City Council of the City of Grand Island wish to place this issue before the voters of the City of Grand Island for their decision at the statewide primary election on May 6, 2008; and

WHEREAS, it is recommended that the ballot language set forth below be adopted for such measure to be submitted at the statewide primary election scheduled for May 6, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

(1) Pursuant to Neb. Rev. Stat. §18-2520, in lieu of a separate special election, the following ballot shall be submitted at the statewide primary election on May 6, 2008:

(OFFICIAL SAMPLE BALLOT)
OFFICIAL MUNICIPAL ELECTION BALLOT

CITY OF GRAND ISLAND, NEBRASKA

Tuesday, May 6, 2008

Smoking Ban Proposal:

Shall the Mayor and City Council of the City of Grand Island, Nebraska, adopt an ordinance which would prohibit smoking in all enclosed public places within the City of Grand Island, and which would further prohibit smoking in all enclosed facilities within places of employment, and which would further prohibit smoking within ten (10) feet outside of an enclosed area where smoking is prohibited?

Vote for or against the foregoing proposal.

- ☐ FOR the proposal
- ☐ AGAINST the proposal

(2) The City Clerk is directed to immediately certify the above issue to the Election Commissioner in the

Approved as to Form <input type="checkbox"/> _____	
February 8, 2008	<input type="checkbox"/> City Attorney

manner and form provided in Neb. Rev. Stat. §18-2520.

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Adopted by the City Council of the City of Grand Island, Nebraska on February 12, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk