

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 4, 2007 AGENDA

Subject:	Type:	Submitted By:
DISCUSSION — SMOKING BAN	RESOLUTION ORDINANCE RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

The City's Keno operator has requested that the City consider adopting a smoking ban policy similar to the one recently passed by the City of Ralston.

FISCAL IMPACT

N/A.

RECOMMENDATION

N/A.

BACKGROUND

As you may recall, LB 395 introduced during the 2007 legislative session would amend the Nebraska Clean Indoor Air Act by restricting smoking in any place of employment or public place in the State. During the session, a number of amendments were proposed, including an exemption provision for a metropolitan class city (Omaha) that had a smoking ban ordinance prior to January 1, 2007; and a provision for other cities or villages to adopt more or less stringent smoking ordinances. LB 395 was not adopted. (*Copies of both the original and amended bill are included in your packet*).

The City's Keno operator has expressed concern that if the Legislature passes a state-wide smoking ban, Omaha will be granted an exemption which will result in Omaha's keno operations having a competitive advantage over La Vista's keno operations.

This item has been placed on the Council agenda as a discussion item to give the Mayor and City Council an opportunity to discuss the merit of adopting a smoking ban ordinance similar to that passed recently by the City of Ralston, in the hope that by doing such La Vista would also be granted an exemption.

The Keno operator has been advised that this is being placed on the agenda and invited to attend this meeting.

Original

LB 395

LB 395

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.

Amended

LB 395

LB 395

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 395

FINAL READING

Introduced by Johnson, 37; Aguilar, 35; Hansen, 42; Kruse, 13;
Pankonin, 2; Preister, 5; Schimek, 27; Stuthman, 22;
Howard, 9

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; to
3 provide penalties; to provide operative dates; to provide
4 severability; and to outright repeal sections 71-5701,
5 71-5702, 71-5703, 71-5704, 71-5706, 71-5708, 71-5709, and
6 71-5712, Reissue Revised Statutes of Nebraska, section
7 71-5705, Revised Statutes Cumulative Supplement, 2006,
8 sections 71-5710, 71-5711, and 71-5713, Reissue Revised
9 Statutes of Nebraska, as amended by sections 630,
10 631, and 632, respectively, Legislative Bill 296, One
11 Hundredth Legislature, First Session, 2007, and section
12 71-5707, Revised Statutes Cumulative Supplement, 2006,

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1 as amended by section 629, Legislative Bill 296, One
2 Hundredth Legislature, First Session, 2007.
3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 21 of this act shall be known
2 and may be cited as the Nebraska Clean Indoor Air Act.

3 Sec. 2. The purpose of the Nebraska Clean Indoor Air Act
4 is to protect the public health and welfare by prohibiting smoking
5 in public places and places of employment. The act shall not be
6 construed to prohibit or otherwise restrict smoking in outdoor
7 areas. The act shall not be construed to permit smoking where it is
8 prohibited or otherwise restricted by other applicable law. The act
9 shall be liberally construed to further its purpose.

10 Sec. 3. For purposes of the Nebraska Clean Indoor Air
11 Act, the definitions found in sections 4 to 13 of this act apply.

12 Sec. 4. Employed means hired, contracted, subcontracted,
13 or otherwise engaged to furnish goods or services.

14 Sec. 5. Employee means a person who is employed by an
15 employer in consideration for direct or indirect monetary wages,
16 profit, or other remuneration.

17 Sec. 6. Employer means a person, nonprofit entity, sole
18 proprietorship, partnership, joint venture, corporation, limited
19 partnership, limited liability company, cooperative, firm, trust,
20 association, organization, or other business entity, including
21 retail establishments where goods or services are sold, who or
22 which employs one or more employees.

23 Sec. 7. Guestroom or suite means a sleeping room and
24 directly associated private areas, such as a bathroom, a living
25 room, and a kitchen area, if any, rented to the public for their

1 exclusive transient occupancy, including, but not limited to, a
2 guestroom or suite in a hotel, motel, inn, lodge, or other such
3 establishment.

4 Sec. 8. Indoor area means an area enclosed by a floor,
5 a ceiling, and walls on all sides that are continuous and solid
6 except for closeable entry and exit doors and windows and in which
7 less than twenty percent of the total wall area is permanently open
8 to the outdoors. For walls in excess of eight feet in height, only
9 the first eight feet shall be used in determining such percentage.

10 Sec. 9. Place of employment means an indoor area under
11 the control of a proprietor that an employee accesses as part
12 of his or her employment without regard to whether the employee
13 is present or work is occurring at any given time. The indoor
14 area includes, but is not limited to, any work area, employee
15 breakroom, restroom, conference room, meeting room, classroom,
16 employee cafeteria, and hallway. A private residence is a place of
17 employment when such residence is being used as a licensed child
18 care program and one or more children who are not occupants of such
19 residence are present.

20 Sec. 10. Proprietor means any employer, owner, operator,
21 supervisor, manager, or other person who controls, governs, or
22 directs the activities in a place of employment or public place.

23 Sec. 11. Public place means an indoor area to which the
24 public is invited or in which the public is permitted, whether or
25 not the public is always invited or permitted. A private residence

1 is not a public place.

2 Sec. 12. Smoke or smoking means the lighting of any
3 cigarette, cigar, pipe, or other smoking material or the possession
4 of any lighted cigarette, cigar, pipe, or other smoking material,
5 regardless of its composition.

6 Sec. 13. Tobacco retail outlet means a retail store that
7 sells only tobacco and related products and in which the sale of
8 other products is only incidental.

9 Sec. 14. Except as otherwise provided in sections 15, 16,
10 and 17 of this act, it is unlawful for any person to smoke in a
11 place of employment or a public place.

12 Sec. 15. The following indoor areas are exempt from
13 section 14 of this act:

14 (1) Guestrooms and suites that are rented to guests and
15 are designated as smoking rooms, except that not more than twenty
16 percent of rooms rented to guests in an establishment may be
17 designated as smoking rooms. All smoking rooms on the same floor
18 shall be contiguous, and smoke from such rooms shall not infiltrate
19 into areas where smoking is prohibited under the Nebraska Clean
20 Indoor Air Act;

21 (2) Indoor areas used in connection with a research
22 study on the health effects of smoking conducted in a scientific
23 or analytical laboratory under state or federal law or at a
24 college or university approved by the Coordinating Commission for
25 Postsecondary Education; and

2 Sec. 16. (1) In any city of the metropolitan class which
3 had an ordinance in effect on January 1, 2007, prohibiting smoking
4 in certain public places, the provisions of such ordinance shall
5 supersede the other provisions of the Nebraska Clean Indoor Air Act
6 enacted by this legislative bill until June 1, 2009, except that
7 the governing body of such city may, prior to such date, (a) repeal
8 such ordinance and become subject to such act at an earlier time or
9 (b) adopt a new ordinance pursuant to section 17 of this act.

13 Sec. 17. (1) On and after September 1, 2007, the
14 governing body of any city, village, or county, or the voters
15 of any city, village, or unincorporated area of any county as
16 provided in subsection (2) of this section, may adopt a nonsmoking
17 ordinance or resolution that is less stringent than or more
18 stringent than the Nebraska Clean Indoor Air Act enacted by this
19 legislative bill, except that such ordinance or resolution shall
20 not be less stringent than sections 71-5707 to 71-5709 as such
21 sections existed prior to September 1, 2007.

1 18-2501 to 18-2538, or (c) by petition meeting the requirements
2 of and subject to sections 32-628 to 32-630 and signed by at
3 least five percent of the registered voters residing in the
4 unincorporated area of such county on the day such petitions are
5 filed for verification. The election shall be conducted as provided
6 in sections 32-556 to 32-559.

7 (3) Any ordinance or resolution adopted by the governing
8 body of any city, village, or county under subsection (1) of this
9 section without being submitted to the voters under subsection (2)
10 of this section shall take effect ninety days after its adoption
11 unless, within such ninety-day period, such governing body receives
12 a petition signed by at least five percent of the registered
13 voters residing in such city, village, or unincorporated area of
14 such county on the date the ordinance or resolution was adopted
15 requesting that such ordinance or resolution be repealed. Upon
16 verification of the signatures on such petition, the ordinance or
17 resolution shall be repealed.

18 (4) A copy of any ordinance or resolution adopted by a
19 city, village, or county under this section shall be provided to
20 the Department of Health and Human Services and to the local public
21 health department as defined in section 71-1626 of such city,
22 village, or county.

23 Sec. 18. A proprietor of a place of employment or public
24 place where smoking is prohibited under the Nebraska Clean Indoor
25 Air Act shall take necessary and appropriate steps to ensure

1 compliance with the act at such place.

2 Sec. 19. (1) The Department of Health and Human Services
3 or a local public health department as defined in section
4 71-1626 may institute an action in any court with jurisdiction
5 to enjoin a violation of the Nebraska Clean Indoor Air Act. Any
6 interested party may report possible violations of the act to such
7 departments.

8 (2) No person or employer shall discharge, refuse to
9 hire, or in any manner retaliate against an employee, applicant
10 for employment, or customer because such employee, applicant, or
11 customer reports or attempts to report a violation of the act.

12 (3) The Department of Health and Human Services or a
13 local public health department may waive provisions of the Nebraska
14 Clean Indoor Air Act upon good cause shown and shall provide for
15 appropriate protection of the public health and safety in the
16 granting of such waivers.

17 Sec. 20. (1) A person who smokes in a place of employment
18 or a public place in violation of the Nebraska Clean Indoor Air
19 Act is guilty of a Class V misdemeanor for the first offense and
20 a Class IV misdemeanor for the second and any subsequent offenses.
21 A person charged with such offense may voluntarily participate, at
22 his or her own expense, in a smoking cessation program approved by
23 the Department of Health and Human Services, and such charge shall
24 be dismissed upon successful completion of the program.

25 (2) A proprietor who fails, neglects, or refuses to

1 perform a duty under the Nebraska Clean Indoor Air Act is guilty
2 of a Class V misdemeanor for the first offense and a Class IV
3 misdemeanor for the second and any subsequent offenses.

4 (3) Each day that a violation continues to exist shall
5 constitute a separate and distinct violation.

6 (4) Every act or omission constituting a violation of
7 the Nebraska Clean Indoor Air Act by an employee or agent of a
8 proprietor is deemed to be the act or omission of such proprietor,
9 and such proprietor shall be subject to the same penalty as if the
10 act or omission had been committed by such proprietor.

11 Sec. 21. The Department of Health and Human Services
12 shall adopt and promulgate rules and regulations necessary to
13 implement the Nebraska Clean Indoor Air Act. The department shall
14 consult with interested persons and professional organizations
15 before adopting such rules and regulations.

16 Sec. 22. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
17 13, 14, 15, 18, 19, 20, 21, and 24 of this act become operative
18 on June 1, 2008. Sections 16, 17, 22, and 23 of this act become
19 operative on September 1, 2007.

20 Sec. 23. If any section in this act or any part of any
21 section is declared invalid or unconstitutional, the declaration
22 shall not affect the validity or constitutionality of the remaining
23 portions.

24 Sec. 24. The following sections are outright repealed:
25 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,

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1 71-5709, and 71-5712, Reissue Revised Statutes of Nebraska,
2 section 71-5705, Revised Statutes Cumulative Supplement, 2006,
3 sections 71-5710, 71-5711, and 71-5713, Reissue Revised Statutes of
4 Nebraska, as amended by sections 630, 631, and 632, respectively,
5 Legislative Bill 296, One Hundredth Legislature, First Session,
6 2007, and section 71-5707, Revised Statutes Cumulative Supplement,
7 2006, as amended by section 629, Legislative Bill 296, One
8 Hundredth Legislature, First Session, 2007.