

ORDINANCE NO. _____

1 AN ORDINANCE amending Chapter 8.20 of the Lincoln Municipal Code to
2 adopt changes to conform the Lincoln Food Code to new State Food Code; and repealing
3 Sections 8.20.030, 8.20.050, 8.20.060, 8.20.110, 8.20.130, 8.20.140, 8.20.150, 8.20.190,
4 8.20.220, 8.20.230, and 8.20.320 of the Lincoln Municipal Code as hitherto existing.

5 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6 Section 1. That Section 8.20.030 of the Lincoln Municipal Code be amended
7 to read as follows:

8 **8.20.030 Definitions.**

9 (a) Except § 1-201.10(B)(~~2~~), (~~31~~), (~~32~~), (~~53~~), (~~68~~) (35), (36), (60), (76), (100), or as
10 provided below, the definitions of words and phrases in the ~~1995~~ 2001 recommendations of
11 the United States Public Health Service Food and Drug Administration "Food Code" shall
12 apply to the same words and phrases in the Lincoln Food Code.

13 (b) For purposes of this chapter, the following definitions shall apply:

14 **Additional food preparation facility** shall mean a separate food preparation facility
15 operated within or as an accessory to an approved food establishment owned and operated
16 by the same person.

17 **City** shall mean the City of Lincoln, Nebraska and the area within three miles of the
18 City of Lincoln, Nebraska.

19 **Food catering service** shall mean an operation that transports ready to eat food to
20 another location from an approved food establishment. Food catering ~~service~~ includes both
21 an operation that only delivers food and an operation that delivers and serves food.

22 **Food establishment** shall mean an operation that stores, prepares, packages, serves,
23 vends or otherwise provides food for human consumption. Food establishment includes:

- 24 (1) Additional food preparation facility;
- 25 (2) Temporary food ~~service~~ establishment;
- 26 (3) Farmer's market;

- 1 (4) Event market;
- 2 (5) Food catering ~~service~~, food concession booth or stand, mobile food
3 ~~service unit~~ and ~~street vendor~~ pushcart;
- 4 (6) Restaurant, coffee shop, diner, cafeteria, commissary, buffet, smorgas-
5 bord, short order cafe, luncheonette, grill, tea room, sandwich shop,
6 soda fountain, ice cream shop, popcorn stand, limited food service,
7 delicatessen, bakery, and similar establishments;
- 8 (7) Tavern, bar, cocktail lounge, bottle club, licensed beverage establish-
9 ment, and nightclub;
- 10 (8) Food service at a hospital, nursing home, institution, industry, or hotel;
- 11 (9) Food service operated by a church, charity, lodge, organization or club;
12 or
- 13 (10) Manufacturer of food for sale or distribution to the public not otherwise
14 approved.

15 The term **Food Establishment** shall not include:

- 16 (1) An establishment that offers only prepackaged foods that are not
17 potentially hazardous;
- 18 (2) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- 19 (3) A food processing plant;
- 20 (4) A salvage operation;
- 21 (5) A private home where food is prepared or served for personal use, a
22 small day care in the home, or a hunting lodge, guest ranch, bed and
23 breakfast, or other operation where no more than ten paying guests eat
24 meals in the home;
- 25 (6) A private home or other area where food that is not potentially hazard-
26 ous is prepared for sale or service at a community/cultural center,
27 religious, charitable, or fraternal organization's bake sale or similar
28 function.

- 1 (7) The location where food prepared by a caterer is served so long as the
2 caterer only minimally handles the food at the serving location.
3 (8) Retail market, grocery store, salvage operation, or convenience store.

4 **Food Handler Permits**

- 5 (1) **Level I Food Handler** shall mean any person who has satisfactorily
6 completed Level I Food Handler training involving the principles of
7 proper hygiene, cleaning and sanitizing according to the standards and
8 regulations adopted under Section 8.20.060 for non-food service
9 employees such as dishwashers and bus staff.
- 10 (2) **Level II Food Handler** shall mean any person who has satisfactorily
11 completed Level II Food Handler training involving the core knowledge
12 of food safety and sanitation according to the standards and regulations
13 adopted under Section 8.20.060 for food service employees such as wait
14 staff and cooks.
- 15 (3) **Level II Approved Inservice Food Handler** shall mean any person who
16 has satisfactorily completed Level II Food Handler training through a
17 Department-approved inservice training program involving the core
18 knowledge of food safety and sanitation according to the standards and
19 regulations adopted under Section 8.20.060 for food service employees
20 such as wait staff and cooks.
- 21 (4) **Level III Food Handler** shall mean any person who has satisfactorily
22 completed Level III Food Handler training according to the standards
23 and regulations adopted under Section 8.20.060 involving the in-depth
24 knowledge of food safety and sanitation for food service employees such
25 as supervisors and assistant managers.
- 26 (5) ~~Level III Restricted Food Manager~~ shall mean any person who has
27 satisfactorily completed Restricted Food Manager or Level III Food
28 Handler training according to the standards and regulations adopted
29 under Section 8.20.060 involving the thorough knowledge of food safety

1 and sanitation for Food Managers of food service establishments that do
2 not prepare and serve potentially hazardous foods.

3 (6) **Food Manager** shall mean any person who has satisfactorily completed
4 Food Manager training according to the standards and regulations
5 adopted under Section 8.20.060 involving the thorough knowledge of
6 food safety and sanitation for career food service employees such as
7 managers and owners.

8 **Food permit holder** shall mean the person named as the permittee of an approved food
9 establishment.

10 **Health Director** shall mean the Director of the Lincoln-Lancaster County Health
11 Department or an authorized representative of the Director.

12 **Nonprofit organization** shall mean:

13 (1) A nonprofit organization holding a certificate of federal tax exemption
14 under Section 501 of the Internal Revenue Code;

15 (2) A corporation subject to the provisions of Sections 21-1901 to 21-1991
16 Nebraska Revised Statutes; or

17 (3) A nonprofit organization that conducts its major activities for charitable
18 or community betterment purposes.

19 **Person** shall mean an individual, firm, partnership, company, corporation, trustee,
20 association organization or other public or private entity. Person includes a nonprofit
21 organization as defined in this chapter.

22 **Person In Charge** shall mean the permit holder or a permitted Food Manager
23 designated by the permit holder as the person responsible for the operation of a food
24 establishment.

25 ~~**Pushcart** shall mean a small, wheeled, manually propelled vehicle or cart used for the
26 limited purposes of preparing and serving frankfurters, serving commissary-wrapped food
27 maintained at proper temperatures, or serving food other than Potentially Hazardous Food.~~

28 **Regulatory Authority** shall mean the Lincoln/Lancaster County Health Department
29 when referring to an agency and the Health Director when referring to a person.

30 **Temporary food service establishment** shall mean a food establishment that:

- 1 (1) Complies with the permit conditions for an Event Market; or
- 2 (2) Complies with the permit conditions for a Farmer's Market; or
- 3 (3) Complies with all applicable regulations for a food establishment and is
- 4 in operation for no more than fourteen consecutive days.

5 **Vendor** shall mean a retail food establishment selling food to an end use consumer
6 such as a food concessions booth or stand, mobile food ~~service unit~~ or ~~street vendor~~ pushcart.

7 Section 2. That Section 8.20.050 of the Lincoln Municipal Code be amended
8 to read as follows:

9 **8.20.050 Sanitation Standards and Regulations Adopted.**

10 (a) The standards and regulations set forth in Neb. Rev. Stat. §§ 81-2,239 to 81-
11 2,292, the Nebraska Pure Food Act, as it existed as of August 28, 1999 April 17, 2003, "Food
12 Code", are hereby adopted by reference and shall be applicable except where in direct conflict
13 with a specific provision of this chapter or additional sanitation standards and regulations
14 adopted under this chapter.

15 (b) The standards and regulations set forth in Neb. Rev. Stat. §§ 81-2,257.01 and
16 81-2,258, of the Nebraska Pure Food Act referring to the Food Salvage Code, as it existed as
17 of August 28, 1999, "Food Salvage Code" are hereby adopted by reference and shall be
18 applicable except where in direct conflict with a specific provision of this chapter or additional
19 sanitation standards and regulations adopted under this chapter.

20 Section 3. That Section 8.20.060 of the Lincoln Municipal Code be amended
21 to read as follows:

22 **8.20.060 Additional Sanitation Standards and Regulations; Publication.**

23 (a) The Board of Health, following a public hearing at a regular Board of Health
24 meeting, may adopt standards in addition to those adopted pursuant to Section 8.20.050 to
25 reasonably apply the Lincoln Food Code including standards for:

- 26 (1) Temporary food ~~services~~ establishments;
- 27 (2) Food catering;
- 28 (3) Employee training;
- 29 (4) Level I, Level II, Level II Approved Inservice Food Handler, and Level III
- 30 Food Handlers ~~and Level III Restricted Food Manager~~;

- 1 (5) Food Managers and Restricted Food Managers;
- 2 (6) Food vendors including food made in the home for sale to the public; or
- 3 (7) Food Equipment.
- 4 (b) The Health Director shall implement such additional standards.
- 5 (c) The additional standards shall be:
 - 6 (1) Consistent with the Lincoln Food Code;
 - 7 (2) Provide the minimum public health and sanitation requirements; and
 - 8 (3) Allow the use of equivalent health and sanitation practices if the
 - 9 practices conform to the additional standards.
- 10 (d) The Health Director may require that a person who uses equivalent health and
- 11 sanitation practices submit sufficient evidence to substantiate that the practice is equivalent
- 12 to the standards.

13 Section 4. That Section 8.20.110 of the Lincoln Municipal Code be amended
14 to read as follows:

15 **8.20.110 Food Establishment Permits; Term and Expiration.**

- 16 (a) All food establishment permits, except those issued for temporary food ~~service~~
17 establishments, shall expire on the thirty-first day of May each year.
- 18 (b) The Health Director may approve the renewal of food establishment permits,
19 except those issue for temporary food ~~service~~ establishments, without making a reinspection.
- 20 (c) ~~Single-event Temporary food service establishment~~ permits, except those issued
21 for farmer's markets, shall be valid only for the time stated on the permit, and in no case
22 longer than fourteen consecutive days.
- 23 (d) A permit for a farmer's market shall be valid only for the time stated on the
24 permit, and in no case longer than one year.

25 Section 5. That Section 8.20.130 of the Lincoln Municipal Code be amended
26 to read as follows:

27 **8.20.130 ~~Temporary Food Service~~ Farmer's Market and Event Market; Permit**
28 **Conditions.**

- 29 (a) A temporary food ~~service~~ establishment shall be a Farmer's Market if the
30 temporary food ~~service~~ establishment operation:

1 (1) Consists of more than one vendor operating under the supervision and
2 direction of one approved person, the permit holder, who is responsible for the group of
3 vendors named on the permit; and

4 (2) Limits food sales to:

5 (i) Fresh fruits and vegetables permitted by the Nebraska Department
6 of Agriculture or

7 (ii) Other food the Health Director has expressly approved in writing on
8 the permit if the food:

9 A. Is labeled to truthfully identify the food and the name and
10 address of the vendor,

11 B. Is packaged for sale before it is transported to the market site.

12 (b) A temporary food ~~service~~ establishment is an Event Market if the temporary food
13 ~~service~~ establishment operation:

14 (1) Consists of more than one vendor operating under the supervision and
15 direction of the permit holder who shall be responsible for the group of vendors named on the
16 permit, and

17 (2) The permit holder is a sponsor of the event; and

18 (3) The event market is in operation for no more than fourteen (14)
19 consecutive days.

20 (c) The Health Director may change the group members of an approved Farmer's
21 Market or Event Market permit upon the request of the permit holder.

22 (d) The applicable permit conditions shall be set forth in writing on the permit.

23 Section 6. That Section 8.20.140 of the Lincoln Municipal Code be amended
24 to read as follows:

25 **8.20.140 Food Catering, ~~Services~~ Temporary Food Establishment, Pushcarts, and Mobile**
26 **Food Unit; Permit Conditions.**

27 (a) Unless otherwise provided in Section 8.20.060, food catering, ~~services~~
28 temporary food establishments, pushcarts, and mobile food catering services units shall
29 comply with all the requirements for a food establishment.

1 (b) In addition, a food catering, ~~service~~ temporary food establishments, pushcarts,
2 and mobile food ~~catering service~~ units shall:

3 (1) Transport food so that the food is protected from contamination;

4 (2) Properly maintain adequate food temperatures of potentially hazardous
5 food so bacterial growth is kept to a minimum during transport and during service at the
6 destination; and

7 (3) Limit food handling in delivery and on site service to only those
8 employees properly permitted as a Food Manager or a Food Handler under the Lincoln Food
9 Code.

10 (c) A food establishment catering permit does not allow the catering permit holder
11 to sell food as a vendor.

12 Section 7. That Section 8.20.150 of the Lincoln Municipal Code be amended
13 to read as follows:

14 **8.20.150 Food Establishment; Permit Fees**

15 (a) Any person who secures a food establishment permit under the Lincoln Food
16 Code shall pay the appropriate fee as follows:

17 (1) Food Establishment:

18	Food establishment – new permit	\$295.00
19	Food establishment – renewal	\$195.00
20	Each additional food preparation facility	
21	(new or renewal)	\$ 90.00

22 (2) Mobile Food Unit:

23	New or renewal as additional facility	\$ 90.00
----	---	----------

24 (3) Food Catering Services:

25	Operating as an additional food preparation facility to	
26	an approved food establishment:	
27	New or renewal	\$ 90.00

28 (4) Temporary Food ~~Service~~ Establishment:

29	(a) Operating for a single event not to exceed fourteen	
30	consecutive days	
31	Temporary food service <u>establishment</u>	\$ 75.00

1		With a related food establishment	\$ 35.00
2		Nonprofit organization	\$ 35.00
3	(b)	Operating annually for more than one single	
4		event not to exceed fourteen consecutive days	
5		Temporary food service <u>establishment</u>	\$250.00
6		Non-Profit Organization	\$125.00
7	(c)	Operating as an additional food preparation	
8		facility to an approved food establishment	
9		New or renewal	\$ 90.00
10			
11	(5)	Event Market:	
12		One to five vendors	\$ 75.00
13		Each additional five vendors	\$ 75.00
14	(6)	Farmer's Market:	
15		Basic Fee	\$ 35.00
16		Plus: Vendor fee for each vendor	
17		selling foods other than fruits, vege-	
18		tables and products permitted by the	
19		Nebraska Department of Agriculture	\$ 5.00

20 (b) Any person issued a new food establishment permit, other than a temporary
21 food ~~service~~ establishment permit, after November 30 of each year shall pay 70% of the yearly
22 fee.

23 (c) Fees shall be payable to the Health Director and the Health Director shall
24 deposit the fees at the City Treasurer's Office. The City Treasurer shall credit the fees to the
25 Health Fund.

26 Section 8. That Section 8.20.190 of the Lincoln Municipal Code be amended
27 to read as follows:

28 **8.20.190 Food Manager Permits and Food Handler Permits; Required.**

29 It shall be unlawful for the Person in Charge to:

30 (a) Operate a food establishment without at least one Food Manager, or Restricted
31 Food Manager where allowed, in charge of the operation ~~and~~; or

1 (b) Operate a food establishment without at least one Food Manager, or Restricted
2 Food Manager where allowed, of or Level III Food Handler on active duty on the premises;
3 or

4 ~~(b)~~ (c) Knowingly permit a person to work as an employee if such person does not hold
5 a valid Food Manager or Food Handler permit.

6 Section 9. That Section 8.20.220 of the Lincoln Municipal Code be amended
7 to read as follows:

8 **8.20.220 Food Handler or Food Manager Permit; Term and Expiration.**

9 (a) A Level I or Level II Food Handler or Level II Approved Inservice Food Handler
10 permit shall be valid for one year after the date of issuance.

11 (b) A Level III Food Handler ~~or Level III Restricted Food Manager~~ permit shall be
12 valid for two years after the date of issuance.

13 (c) A Restricted Food Manager permit shall be valid for three years after the date
14 of issuance.

15 ~~(c)~~ (d) A Food Manager permit shall be valid for three years after the date of issuance.

16 ~~(d)~~ (e) Failure to comply with the Food Handler permit or Food Manager permit
17 requirements as required by the Lincoln Food Code and the applicable sanitation standards
18 and regulations may be grounds for suspension of the related food establishment permit.

19 Section 10. That Section 8.20.230 of the Lincoln Municipal Code be amended
20 to read as follows:

21 **8.20.230 Food Handler and Food Manager Permit Fees.**

22 (a) Any person who secures a Food Handler or Food Manager permit under the
23 Lincoln Food Code shall pay the appropriate fee as follows:

- 24 (1) Level I or Level II Food Handler Permit Fee \$ 5.00
- 25 (2) Level II Approved Inservice Food Handler Permit Fee \$ 5.00
- 26 (3) Level III Food Handler Permit Fee \$ 20.00
- 27 (4) ~~Level III~~ Restricted Food Manager Permit Fee \$ 20.00
- 28 (5) Food Manager Permit Fee \$ 20.00

1 (b) Fees shall be payable to the Health Department and the Health Director shall
2 deposit the fees at the City Treasurer's Office. The City Treasurer shall credit the fees to the
3 Health Fund.

4 Section 11. That Section 8.20.320 of the Lincoln Municipal Code be amended
5 to read follows:

6 **8.20.320 Notice; Service.**

7 (a) The Health Director may serve notice authorized or required by the Lincoln
8 Food Code as follows:

9 (1) By personal service to:

10 (i) The food permit holder, owner, manager or other person in charge
11 of a food establishment; or

12 (ii) For a temporary food ~~service~~ establishment, a permit holder, owner,
13 manager or other person in charge of a food establishment at the location where the
14 temporary food ~~service~~ establishment is located.

15 (2) Or by certified mail, postage prepaid, return receipt requested to the food
16 permit holder's or permittee's last known address.

17 (b) The person making personal service may provide a written declaration under
18 penalty of perjury identifying the person served and the time, date, and manner of service as
19 proof of service.

20 (c) If the service on a food establishment is to a person other than the food permit
21 holder, the Health Director may send a copy of the notice to the food permit holder by regular
22 mail. The copy is not required as a part of the notice, and receipt of the copy does not affect
23 the notice.

24 Section 12. That Sections 8.20.030, 8.20.050, 8.20.060, 8.20.110, 8.20.130,
25 8.20.140, 8.20.150, 8.20.190, 8.20.220, 8.20.230, and 8.20.320 of the Lincoln Municipal
26 Code as hitherto existing be and the same is hereby repealed.

27 Section 13. That this ordinance shall take effect and be in force from and after
28 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Approved this ___ day of _____, 2003:

Mayor