

## ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Chapter 8.12 of the Lincoln Municipal Code entitled  
2 Child Care Facilities to update the provisions specifically governing the operation of small family  
3 child care homes by adding a new section numbered 8.12.005 to set forth the purpose of the chapter,  
4 amending Section 8.12.010 to add and amend definitions; amending Section 8.12.020 to add the  
5 requirement that the permit be posted and displayed; amending Section 8.12.030 regarding the  
6 permit requirements; adding a new Section 8.12.033 to require training in First Aid/CPR and disease  
7 and injury prevention by the operator; adding a new Section 8.12.035 to establish initial and renewal  
8 permit fees; amending Section 8.12.040 regarding issuing a permit; renumbering Section 8.12.050  
9 as Section 8.12.240 and amending the provisions regarding the appeal rights of an applicant or  
10 aggrieved person; repealing Section 8.12.060 regarding revocation or suspension of a permit;  
11 amending Section 8.12.070 to provide expiration dates of all permits; adding a new Section 8.12.075  
12 to establish fees for late renewal of a permit; repealing Section 8.12.080 regarding the posting of the  
13 permit; amending Section 8.12.090 to require health information for those aiding in the operation  
14 of small family child care homes; amending Section 8.12.095 to require parental notification of  
15 substitute child care; amending Section 8.12.100 regarding rules and regulations for the operation  
16 of the small family child care home; repealing Section 8.12.110 regarding entry for inspection;  
17 amending Section 8.12.115 regarding parental visits; renumbering Section 8.12.120 as Section  
18 8.12.260 and amending the penalty provisions for violations of this chapter; adding a new Section  
19 8.12.130 to prohibit the use of alcohol or controlled substances in a small family child care home  
20 during the hours of operation; adding a new Section 8.12.140 to prohibit smoking in a small family

1 child care home at all times; adding a new Section 8.12.150 to establish requirements for reporting  
2 changes in persons residing, employed or substituting in a small family child care home; adding a  
3 new Section 8.12.160 to provide for requests for variances to the adopted rules and regulations  
4 governing small family child care homes; adding a new Section 8.12.170 regarding inspections of  
5 small family child care homes; adding a new Section 8.12.180 to provide for the revocation or  
6 suspension of a permit; adding a new Section 8.12.190 to provide conditions for the reinstatement  
7 of a suspended permit; adding a new Section 8.12.200 to establish a reinstatement fee; adding a new  
8 Section 8.12.210 regarding applications for a new permit after a permit has been revoked; adding  
9 a new Section 8.12.220 to provide methods for service of notices; adding a new Section 8.12.230  
10 to provide for enforcement hearings; adding a new Section 8.12.250 to establish the liability of the  
11 small family child care home operator; amending the title of Chapter 8.12 to read “Small Family  
12 Child Care Homes”; and repealing Sections 8.12.010, 8.12.020, 8.12.030, 8.12.040, 8.12.050,  
13 8.12.070, 8.12.090, 8.12.095, 8.12.100, 8.12.115, and 8.12.120 of the Lincoln Municipal Code as  
14 hitherto existing.

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

16 Section 1. Chapter 8.12 of the Lincoln Municipal Code be amended by adding a new  
17 section numbered 8.12.005 to read as follows:

18 **8.12.005 Purpose.**

19 The City Council finds that small family child care homes in Lincoln and its corporate limits:

20 (a) Serve a uniquely vulnerable population, infants and children, at increased risk for  
21 illness and injury;

22 (b) Are expected to be safe, healthy and free of environmental hazards; and

23 (c) Are not regulated by the Nebraska Health and Human Services System.

1           It is therefore declared to be the public policy of this City to prevent and eliminate health and  
2 safety risks posed by the practice of child care by regulating these practices, providing rules and  
3 regulations, requiring small family child care home permits in order to operate, requiring  
4 inspections, providing standards for enforcement, and requiring training. The City Council  
5 authorizes the Health Director to administer and enforce this chapter within the city and within three  
6 miles of the corporate limits of the city and outside of any other organized city or village.

7           Section 2. That Section 8.12.010 of the Lincoln Municipal Code be amended to read as  
8 follows:

9       **8.12.010       Definitions.**

10           For the purpose of this chapter the following words shall have the following meanings:

11           **Board of Health** shall mean the Board of Health of the Lincoln-Lancaster County Health  
12 Department.

13           **Cardiopulmonary Resuscitation (CPR) Certificate** shall mean a currently valid certificate  
14 issued for successful completion of a CPR course certified through one of the following: American  
15 Heart Association; American Red Cross; National Safety Council; or Emergency Medical Planning  
16 America (Medic First Aid); or another body approved by the Health Director.

17           **City Council** shall mean the Lincoln City Council.

18           **Controlled Substance** shall mean substances as defined in Nebraska Revised Statutes,  
19 Section 28-401 as amended.

20           **Department** shall mean the Lincoln-Lancaster County Health Department.

21           **First Aid Certificate** shall mean a currently valid certificate issued for successful  
22 completion of a First Aid course certified through one of the following: American Heart

1 Association; American Red Cross; National Safety Council; or Emergency Medical Planning  
2 America (Medic First Aid), or another body approved by the Health Director.

3 **Health Director** shall mean the Director of the Lincoln-Lancaster County Health  
4 Department or authorized representative.

5 **Infant** shall mean a child under 13 months of age.

6 **Operator** shall mean a person who operates and manages a permitted small family child care  
7 home.

8 **Parent** shall mean an adoptive or biological parent, foster parent, legal guardian, or legal  
9 custodian of a minor.

10 **Person** as used herein shall include the plural thereof, and shall mean any individual, group,  
11 society, association, partnership, or corporation an individual, a corporation, an organization, a  
12 limited liability company, or other legal entity.

13 **Premises** shall mean the home or residential structure, including areas not used for child  
14 care, all attached and all outbuildings, and all areas included within the lot boundaries, except that  
15 if the small family child care home is in a multiple dwelling (more than two family dwelling) or in  
16 a two family dwelling (duplex), the term premises shall be limited to the area owned, occupied or  
17 leased by the by the operator.

18 **Small Family Child Care Home facility** shall mean any place, home, or institution premises  
19 where ~~two or three~~ less than four children from more than one family under the age of ~~twelve~~  
20 thirteen years, are received and cared for ~~during some portion of the day or night~~ at any time for  
21 payment or consideration, and where such children do not have their place of abode and are not  
22 related to the owner or operator of said place by blood, marriage, or adoption. Such term shall in-

1 ~~clude, but not be limited to, day care homes~~ the biological, adoptive, foster child, or grandchild of  
2 the operator. An operator may care for a total of three children under the age of eighteen months  
3 (including their own children), as long as no more than two children are under the age of thirteen  
4 months. Such term shall not include care provided on an irregular basis.

5 Substitute shall mean a person at least sixteen years of age, approved by the Health Director,  
6 who provides care for children in a permitted small family child care home when the operator is not  
7 available to provide care.

8 ~~Director shall mean the duly appointed acting and qualified Health Director of the City-~~  
9 ~~County Health Department or any assistants or inspectors duly appointed by the Director.~~

10 Section 3. That Section 8.12.020 of the Lincoln Municipal Code be amended to read  
11 as follows:

12 **8.12.020 Permit Required.**

13 It shall be unlawful for any person to establish, operate, or maintain a ~~child care facility~~ small  
14 family child care home without first ~~having procured~~ obtaining a permit ~~so to do~~ from the Health  
15 Director. The operator of a small family child care home shall conspicuously post or display the  
16 small family child care home permit so that it is readily viewable.

17 Section 4. That Section 8.12.030 of the Lincoln Municipal Code be amended to read  
18 as follows:

1 **8.12.030 ~~Application for Permit; Process; Requirements~~ Permit; Application.**

2 An application to operate a ~~child care facility~~ small family child care home shall be filed with  
3 the Health Director in writing upon forms provided for that purpose by the ~~city~~ Health Director. The  
4 Health Director shall not issue a permit until ~~such an~~ a complete application, together with the  
5 following information and materials, ~~is on file~~ has been received and reviewed:

6 (a) ~~Name, and address, and telephone number of the applicant; operator.~~

7 (b) ~~Location~~ Address of premises to be licensed; permitted.

8 (c) Name of ~~manager or person to be in direct charge of the child care facility;~~ small  
9 family child care home.

10 (d) Maximum number of children to be accommodated ~~in such facility~~.

11 ~~(e) A sketch, diagram, or print of the child care facility showing the arrangement of~~  
12 ~~rooms to be used by the children, including dimensions, and the outdoor play area, including~~  
13 ~~dimensions;~~

14 ~~(f) The names, addresses, and telephone numbers of three non-related references and~~  
15 ~~permission to contact them.~~

16 (g e) A list of any person who lives, resides, or is regularly present on the premises and  
17 a written statement signed by the applicant providing information concerning any felony or  
18 misdemeanor arrests and convictions or any pending criminal charges including criminal history  
19 information on cases or incidents involving police reports with or without court disposition relating  
20 to: (1) the applicant; (2) the applicant's spouse; (3) any other person, ~~related or not~~, who lives or  
21 resides on the premises where the ~~day care facility~~ small family child care home is located; and (4)  
22 any other person, ~~related or not~~, who will be present on the premises ~~where the day care facility is~~  
23 ~~located~~ during any hours of operation ~~of the child care facility~~.

1           (h f) A written statement signed by the applicant providing that the applicant shall not  
2 knowingly allow any person, whether paid or as a volunteer, who has been convicted of, engaged  
3 in, admitted to, or against whom there is substantial evidence of crimes involving intentional bodily  
4 harm to another person, crimes against children, or crimes involving the illegal use of alcohol or any  
5 a controlled substance within the last seven ~~five~~ years; or crimes involving moral turpitude to be  
6 upon the child care facility premises during any hours of operation, of the child care facility. The  
7 statement shall also provide that the applicant shall not knowingly allow any person, whether paid  
8 or as a volunteer, who has engaged in or who has a history of behavior injurious to or which may  
9 endanger the health or morals of the children in care to be upon the child care facility premises  
10 during any hours of operation of the child care facility.

11           (g) A written statement signed by the applicant providing that the applicant shall have  
12 no other employment which will interfere with providing child care.

13           (i h) A signed health information report for the applicant and for each substitute, teacher,  
14 instructor, or employee on a form furnished by the city Health Director, indicating that the applicant  
15 has no physical condition which will adversely affect the applicant's ability to provide child care  
16 services. Such reports shall be required with each permit renewal.

17           (j i) A list of all substitutes, teachers, instructors, or employees who may be utilized by  
18 the applicant, including the names, addresses and telephone numbers. Such list shall be required  
19 annually with each renewal or as changes in staffing occur.

20           (j) Copies of original certificates of completion for required training for the applicant as  
21 specified in this chapter.

22           (k) The applicant shall certify in writing that all matters submitted as part of the  
23 application are complete, current, accurate, and true, and shall include a notarized written

1 authorization for review of pertinent law enforcement material relating to arrests or convictions as  
2 well as criminal history information relating to cases or incidents for which no court disposition was  
3 made. This authorization shall cover: (1) the applicant; (2) the applicant's spouse; (3) any other  
4 person, related or not, who lives or resides on the premises where the day care facility is located; and  
5 (4) any other person, related or not, who will be regularly present on the premises where the child  
6 care facility is located during any hours of operation of the child care facility. All such material and  
7 information reviewed shall be kept strictly confidential and shall be reviewed solely for enforcement  
8 of the provisions of this chapter.

9 (l) All applicable fees.

10 Section 5. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
11 a new section numbered 8.12.033 to read as follows:

12 **8.12.033 Operator Training, Certification, and Competency Requirements.**

13 Before a small family child care home permit shall be issued or renewed by the Health  
14 Director, the operator shall complete training approved by the Health Director. The operator shall  
15 hold a currently valid Cardiopulmonary Resuscitation (CPR) certificate and a First Aid certificate.  
16 In addition, training shall include: illness and injury prevention, mildly ill child care, medication  
17 administration, and the requirements of this chapter. Proof of competency in these areas may  
18 include passing a written or verbal test administered by or approved by the Health Director. Such  
19 training shall be completed before an initial small family child care home permit is issued and shall  
20 be required every two years thereafter or as determined by the Health Director, before a renewal  
21 permit is issued. Existing operators must obtain training by January 31, 2008.

22 Section 6. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
23 a new section numbered 8.12.035 to read s follows:

1 **8.12.035 Permit; Fees.**

2 The fee for a small family child care home permit shall be as follows:

|                                     | <u>Initial</u> | <u>Renewal</u> |
|-------------------------------------|----------------|----------------|
| <u>Small family child care home</u> | <u>\$75.00</u> | <u>\$50.00</u> |

5 Renewal of all small family child care home permits shall be required as in this chapter.

6 (a) Any person issued a new certificate of compliance after July 31 of each year shall pay  
7 70% of the annual fee.

8 (b) Fees shall be payable to the Lincoln-Lancaster County Health Department and the  
9 Health Director shall deposit the fees at the City Treasurer’s Office. The City Treasurer shall credit  
10 the fees to the Health Fund. No fees shall be refunded.

11 Section 7. That Section 8.12.040 of the Lincoln Municipal Code be amended to read  
12 as follows:

13 **8.12.040 Permit; Issuance. ~~Issuance of Permit; Conditions~~**

14 (a) ~~Before a permit for any child care facility is issued, the director shall investigate the~~  
15 ~~application and determine whether or not said premises and the person to operate same conform to~~  
16 ~~all the requirements of this chapter, the rules and regulations adopted hereunder, all ordinances of~~  
17 ~~the City of Lincoln, and the laws of the State of Nebraska. Upon receipt of a complete application~~  
18 ~~as outlined in Section 8.12.030 and applicable fees, the Health Director shall review the application~~  
19 ~~to determine compliance with this chapter and any other applicable law or regulation.~~

20 (b) The Chief of Police or designated representative shall ~~file a written~~ provide a  
21 complete police record report with to the Health Director for the applicant, the applicant’s spouse,  
22 any other person who lives or resides on the premises, and any other person who will be present on  
23 the premises during the hours of operation. ~~indicating that the review of pertinent law enforcement~~

1 material as provided in Section 8.12.030 has been completed for each person for whom the applicant  
2 has submitted an appropriate authorization for such review. The report shall indicate any such  
3 person who has been convicted of, admitted to, or against whom there is substantial evidence of  
4 crime involving intentional bodily harm to another person, crimes against children, crimes involving  
5 illegal use of a controlled substance within the last seven years, or crimes involving moral turpitude  
6 by noting the date and type of such offense in the written report to the director.

7 (1) The Health Director may obtain and review other appropriate records related  
8 to such crimes as may be available through other law enforcement or human services agencies.

9 (2) The Health Director shall not issue a permit if the applicant, the applicant's  
10 spouse, any other person who lives or resides on the premises, or any other person who will be  
11 present on the premises during the hours of operation has been convicted of, engaged in, admitted  
12 to, or against whom there is substantial evidence of intentional bodily harm to another person, or  
13 crimes against children at any time in their past, or crimes involving the use of alcohol and/or any  
14 controlled substance within the last five years.

15 (c) ~~The director shall not issue a permit to any applicant who has been convicted of, who~~  
16 ~~has admitted to, or against whom there is substantial evidence of, crimes involving intentional bodily~~  
17 ~~harm to another person, crimes against children, crimes involving the illegal use of a controlled~~  
18 ~~substance within the last seven years, or crimes involving moral turpitude. The Health Director shall~~  
19 not approve any application to operate a small family child care home unless the operator is at least  
20 nineteen years of age.

21 (d) The Health Director shall not issue a small family child care home permit when  
22 information on the application is found to be incomplete, not current or inaccurate.

1           (e)    The Health Director shall not issue a permit if information provided on the health  
2 information report indicates the applicant, substitutes, teachers, instructors, or employees have a  
3 physical or mental health condition(s) which will adversely affect the person’s ability to care for or  
4 be in contact with children.

5           (f)    After receipt of a complete application for a new small family child care home permit,  
6 applicable fees, and completion of the review of all pertinent law enforcement material, the Health  
7 Director shall make an inspection of the applicant’s premises within fourteen days to determine if  
8 the proposed small family child care home complies with the provisions of this chapter, rules and  
9 regulations adopted pursuant to this chapter, and any other applicable laws or regulations.

10          (g)    If the applicant and the premises inspection results comply with the provisions of this  
11 chapter, all rules and regulations adopted pursuant to this chapter, and all other applicable laws and  
12 regulations, a permit to operate a small family child care home shall be issued.

13          (h)    Upon receipt of a complete application and all pertinent information for a renewal  
14 permit, renewal fees, and any appropriate renewal late fees the Health Director may issue the permit  
15 without conducting an inspection.

16          (i)    A permit issued hereunder is strictly limited to the applicant and premises specified  
17 in the permit.

18          (j)    A permit shall not be transferable from one person to another or from one premises to  
19 another.

20                   Section 8. That Section 8.12.060 of the Lincoln Municipal Code be and the same is  
21 hereby repealed.

22 **~~8.12.060 — Revocation or Suspension of Permit, Notice.~~**

1 ~~Any permit granted hereunder shall be subject to revocation or suspension in the following~~  
2 ~~manner:~~

3 ~~(a) The director shall notify the person holding said permit, setting forth wherein~~  
4 ~~permittee has failed to comply with this chapter and citing them to appear before the director at a~~  
5 ~~day and hour therein specified, which shall be not less than three but not more than fifteen days after~~  
6 ~~the notice provided herein. Such notice shall order the permittee to show cause, if any, why said~~  
7 ~~permit should not be revoked or suspended. The hearing need not be conducted according to the~~  
8 ~~technical rules relating to evidence and witnesses.~~

9 ~~(b) The applicant and the director may:~~

10 ~~(1) Call and examine witnesses on any matter relevant to the issues of the~~  
11 ~~hearing;~~

12 ~~(2) Introduce documentary and physical evidence;~~

13 ~~(3) Cross examine opposing witnesses on any matter relevant to the issues of the~~  
14 ~~hearing; and~~

15 ~~(4) Rebut evidence.~~

16 ~~(c) If the director determines that a violation of this chapter has occurred, the director~~  
17 ~~may order the permit revoked or suspended permanently or for an appropriate period of time not to~~  
18 ~~exceed thirty days, or may order such other action against the permittee as the director may~~  
19 ~~determine proper. Such decision shall be final and binding upon the city and upon the licensee, and~~  
20 ~~such decision may be appealed to district court as provided by state law.~~

21 Section 9. That Section 8.12.070 of the Lincoln Municipal Code be amended to read  
22 as follows:

1     **8.12.070     Permit; Term and Expiration. Term of Permit; Nontransferable**

2             All permits initially granted under this chapter prior to April 7, 1981, shall continue to expire  
3     on the thirty-first day of May following date of issuance and each year thereafter, unless sooner  
4     revoked. Permits granted on or after April 7, 1981, shall expire one year following date of issuance,  
5     unless sooner revoked. No permit shall be assignable or transferable as to permittee. Permits may  
6     be transferred to new locations upon application, inspection, and approval as provided by this  
7     chapter for the original permitted premises. All permits previously granted under this chapter shall  
8     expire on January 31, 2007, unless sooner revoked. Thereafter, all permits granted under the  
9     provisions of this chapter, shall expire on January 31 of each year following the date of issuance,  
10    unless revoked prior thereto as provided in this chapter.

11            Section 10. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
12    a new section numbered 8.12.075 to read as follows:

13    **8.12.075     Permit, Renewal; Late Fees.**

14            (a)    An operator who fails to renew the permit before it expires, but within thirty days of  
15    the date of expiration, shall pay a late fee of ten dollars in addition to the renewal fee.

16            (b)    An operator who fails to renew the permit before it expires and fails to renew the  
17    permit within thirty days from the date of expiration shall pay a late fee of twenty dollars in addition  
18    to the renewal fee.

19            (c)    An operator who fails to renew the permit before it expires is operating without a  
20    valid permit and shall be subject to appropriate enforcement action as determined by the Health  
21    Director.

22            Section 11. That Section 8.12.080 of the Lincoln Municipal Code be and the same  
23    is hereby repealed.

1 ~~8.12.080 — Permit to be Posted.~~

2 ~~It shall be unlawful for any person to operate and maintain any such home unless there be~~  
3 ~~at all times posted in a conspicuous place at such home the permit issued therefor in accordance with~~  
4 ~~the provisions of this chapter.~~

5 Section 12. That Section 8.12.090 of the Lincoln Municipal Code be amended to  
6 read as follows:

7 **8.12.090 Permittee and Substitutes, Employees, Teachers, Other Persons; Certificate**  
8 **Health Information Required.**

9 It shall be unlawful for any permittee operator to operate or to employ or allow any person  
10 to participate in the care of children or the operation of any such child care facility a small family  
11 child care home until and unless such person shall have furnished to the Health Director a signed  
12 health information report upon a form furnished by the city and such person has been approved by  
13 the Health Director to participate in a small family child care home. indicating that such person has  
14 no physical condition which will adversely affect the individual's ability to care for and be in contact  
15 with children. Every such operator or person employed in the operation of any such home shall  
16 furnish such report once each year, and at such other times as the director may require. If any such  
17 person is found by the Health Director to not have the ability to care for and or be in contact with  
18 children, such person shall not be employed in or allowed to participate in the care of children or  
19 the operation of the small family child care home connection with such facility, and if he or she be  
20 the permittee of such facility, the permit shall be forthwith cancelled and revoked without notice of  
21 hearing notwithstanding the provisions of Section 8.12.060 hereof. Any person who shall refuse to  
22 furnish such information report shall not be employed in or about such facility or allowed to  
23 participate in the care of children or the operation of the small family child care home.

1                   Section 13. That Section 8.12.095 of the Lincoln Municipal Code be amended to  
2 read as follows:

3 **8.12.095       Substitutes, ~~Employees, Parental Notification; Requirements. List; Information~~**  
4 **~~Required.~~**

5                   ~~A permittee~~ The operator shall have at least one substitute. The operator shall maintain a  
6 current list of all substitute teachers, instructors, or employees persons who may be utilized by the  
7 applicant employed by the operator or provide care or instruction in the small family child care  
8 home. For any person included on the list, a permittee The operator shall provide and keep current  
9 records which shall include, but not be limited to for such persons, including:

- 10                   (a)     The name, address, and telephone number ~~of each substitute;~~  
11                   (b)     The qualifications of all substitutes.

12                   The operator shall notify parents at least twelve hours in advance when substitute child care  
13 will be provided. This notification shall not apply in cases of emergency, such as an acute personal  
14 illness or a death in the family.

15                   Section 14. that Section 8.12.100 of the Lincoln Municipal Code be and the same  
16 is hereby repealed.

17 **8.12.100       ~~Operation of Facility; Rules and Regulations.~~**

18                   The Health Director may from time to time promulgate such rules and regulations as deemed  
19 necessary for the operation of ~~such child care facility~~ a small family child care home; provided, such  
20 rules and regulations shall not be effective until approved by resolution of the City Council after  
21 report and recommendation of the Board of Health.

22                   Section 15. That Section 8.12.110 of the Lincoln Municipal Code be and the same  
23 is hereby repealed.

1 ~~8.12.110 Entry for Inspection.~~

2 ~~The director shall have the right and is hereby empowered to enter upon the premises of any~~  
3 ~~such child care facility to inspect the same and all accommodations and facilities connected~~  
4 ~~therewith.~~

5 Section 16. That Section 8.12.115 of the Lincoln Municipal Code be amended to  
6 read as follows:

7 **8.12.115 Facility Open to Parental Visits; Notice to Parents Required.**

8 ~~A permittee~~ The operator shall be required to notify all parents or guardians that the ~~child~~  
9 ~~care facility~~ small family child care home is open to visits by parents or guardians of the children  
10 enrolled during the hours of operation.

11 Section 17. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
12 a new section numbered 8.12.130 to read as follows:

13 **8.12.130 Operator and Employees; Use of Alcohol or Controlled Substances Prohibited.**

14 Alcohol or controlled substances shall not be consumed in any area of the home designated  
15 for child care during the hours of operation. The operator, employee or substitute shall not use,  
16 consume or be under the influence of alcohol or a controlled substance while providing child care.

17 Section 18. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
18 a new section numbered 8.12.140 to read as follows:

19 **8.12.140 Smoking: Prohibited.**

20 Smoking shall not be allowed in any inside area of the small family child care home at any  
21 time.

22 Section 19. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
23 a new section numbered 8.12.150 to read as follows:

1 **8.12.150** **Changes in Persons Residing, Employed, or Substituting; Requirements.**

2 (a) Within ten business days of when a new person takes up abode in or is regularly  
3 present in the small family child care home, the operator shall provide a written statement signed  
4 by the applicant providing information concerning any felony or misdemeanor arrests and  
5 convictions or any pending criminal charges including criminal history information on cases or  
6 incidents involving police reports with or without court disposition relating to such person. The  
7 Health Director shall review and approve or deny such a change within thirty business days.

8 (b) When changes are proposed to be made in substitutes, staff, teachers or employees  
9 in a small family child care home, a signed health information report and a signed statement on  
10 felonies and misdemeanors must be provided for each person and approved by the Health Director  
11 before any such person is allowed to provide child care, teach or otherwise be involved in direct  
12 contact with children. The Health Director shall review and approve or deny such personnel  
13 changes within ten business days from receiving all required information.

14 Section 20. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
15 a new section numbered 8.12.160 to read as follows:

16 **8.12.160** **Variances.**

17 Requests for a variance from the rules and regulations adopted pursuant to Section 8.12.100  
18 must be submitted in writing as an alternative compliance plan to the Health Director. The Health  
19 Director shall act on the request for a variance within thirty days.

20 Section 21. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
21 a new section numbered 8.12.170 to read as follows:

1     **8.12.170     Enforcement, Inspection.**

2             (a)     The Health Director shall conduct an inspection of each small family child care home  
3     before an initial permit is issued.

4             (b)     The Health Director shall conduct periodic inspections of each small family child  
5     care home.

6             (c)     An operator shall permit the Health Director to inspect at any reasonable time for the  
7     purpose of determining compliance with the provisions of this chapter and to investigate any  
8     outbreaks of illness, disease or injury events.

9             (d)     The Health Director shall record the inspection findings on an inspection report. The  
10    Health Director shall furnish the original inspection report to the operator.

11            (e)     The inspection report shall:

12                   (1)     Set forth specific conditions found;

13                   (2)     Establish a specific and reasonable period of time for correction of violations  
14    of the provisions of this chapter, if any;

15                   (3)     State that failure to correct the violations within the period of time specified  
16    may result in immediate suspension or revocation of the permit and prosecution for violation of this  
17    chapter; and

18                   (4)     State that the operator may request a hearing before the Health Director upon  
19    such inspection findings by filing a written request with the Health Director.

20            (f)     A warning notice may be issued for violations that the Health Director determines  
21    pose an imminent health risk. Such warning notice shall:

22                   (1)     Set forth specific conditions found;

1           (2)    Establish a specific and reasonable period of time for correction of such  
2 violations:

3           (3)    State that failure to comply with the warning notice may result in immediate  
4 suspension or revocation of the permit and prosecution for violation of this chapter; and

5           (4)    State that operator may request a hearing before the Health Director upon  
6 such inspection findings and warning notice by filing a written request with the Health Director  
7 within three business days.

8           (g)    After the time period given for correction in the inspection report or warning notice,  
9 the Health Director may reinspect the establishment to determine compliance.

10          (h)    The completed inspection report form and the warning notice are public documents  
11 that shall be made available for public disclosure to any person who requests it according to law.

12                   Section 22. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
13 a new section numbered 8.12.180 to read as follows:

14 **8.12.180        Revocation or Suspension of Permit.**

15                   It shall be a condition of any permit issued under this chapter that it may be suspended or  
16 revoked at any time by the Health Director for the violation of the statutes of the State of Nebraska  
17 or any of the provisions of this chapter or ordinances of the City by causing an imminent or  
18 substantial hazard to children in care or to public health. Any permits granted under this chapter  
19 shall be subject to suspension or revocation in the following manner:

20           (a)    The Health Director shall notify the operator as provided in this chapter.

21           (b)    The Health Director may suspend the permit for an appropriate period of time not to  
22 exceed ninety days.

23           (c)    The suspension or revocation shall be effective immediately upon notice.

1           (d)    The operator shall have a right to a hearing in which the Health Director shall  
2 conduct in accordance with this chapter.

3           (e)    It shall be unlawful to continue to provide or permit child care after the operator  
4 receives notice of suspension or revocation.

5           (f)    Actions for reinstatement, hearing, or appeal shall not stay or delay the suspension  
6 or revocation in any manner.

7                   Section 23. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
8 a new section numbered 8.12.190 to read as follows:

9    **8.12.190       Suspended Permit; Reinstatement.**

10           (a)   Any operator whose small family child care home permit has been suspended may  
11 apply for reinstatement of such permit. The application shall provide the same information as for  
12 a new permit and shall include a statement signed by the operator that the conditions causing  
13 suspension of the permit have been corrected.

14           (b)   The Health Director shall review the application as for a new permit, except, the  
15 Health Director shall make the premises inspection within five business days after receiving the  
16 completed application for reinstatement and the reinstatement fee. The Health Director shall make  
17 a determination if a small family child care home permit shall be reinstated within ten business days  
18 after receiving the application for reinstatement and the reinstatement fee.

19           (c)   The Health Director shall reinstate the permit if the conditions causing suspension  
20 of the permit have been corrected and upon payment of any reinstatement fee provided for in this  
21 chapter.

22                   Section 24. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
23 a new section numbered 8.12.200 to read as follows:

1     **8.12.200**        **Suspended Permit; Reinstatement Fee.**

2             Any operator eligible for reinstatement as provided in this chapter, shall pay a reinstatement  
3 fee of \$25.00 in addition to any other applicable fees. The Health Director shall not reinstate the  
4 permit until the reinstatement fee is paid.

5             Section 25. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
6 a new section numbered 8.12.210 to read as follows:

7     **8.12.210**        **Revoked Permit; Application for New Permit.**

8             Any operator who has had their permit revoked by the Health Director does not qualify for  
9 reinstatement. The operator must make an application for a new permit and cannot obtain a new  
10 permit until at least ninety days have passed since the date of the revocation notice.

11            Section 26. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
12 a new section numbered 8.12.220 to read as follows:

13     **8.12.220**        **Notice; Service.**

14             The Health Director may serve notice as follows:

15             (a)    By personal service to the operator; or

16             (b)    By certified mail, postage prepaid, return receipt requested to the operator's last  
17 known address.

18            Section 27. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
19 a new section numbered 8.12.230 to read as follows:

20     **8.12.230**        **Enforcement Hearings.**

21             (a)    Unless a different time frame is agreed upon between the Health Director and the  
22 operator, the Health Director shall conduct hearings no later than:

1           (1)   Five business days after a request for a hearing after a suspension or  
2 revocation; or

3           (2)   Fourteen business days after any other request.

4           (b)   The Health Director may appoint a suitable hearing officer to hear the matter. Such  
5 hearing officer shall make recommendations based on the evidence presented at the hearing for the  
6 Health Director's final determination of the matter.

7           (c)   The hearing need not be conducted according to the technical rules relating to  
8 evidence and witnesses. The operator requesting the hearing and the Health Director may:

9           (1)   Call and examine witnesses on any matter relevant to the issues of the  
10 hearing;

11           (2)   Introduce documentary and physical evidence;

12           (3)   Cross examine opposing witnesses on any matter relevant to the issues of the  
13 hearing; and

14           (4)   Rebut evidence.

15           (d)   The Health Director may uphold, reverse, or modify the act or findings prompting  
16 the request. The Health Director may take such other reasonable action as the Health Director may  
17 determine proper in relation to the request.

18           (e)   The Health Director shall make a final determination within ten business days after  
19 the hearing.

20           (f)   The Health Director's decision shall be final and binding upon the City and upon the  
21 operator making the request. The Health Director's decision may be appealed to the district court  
22 as provided by law.

1           Section 28. That Section 8.12.050 of the Lincoln Municipal Code be and the same  
2 is hereby renumbered and shall be relocated within Chapter 8.12 as Section 8.12.240 and that  
3 Section 8.12.050 renumbered as 8.12.240 be amended to read as follows:

4 **8.12.050 8.12.240 Denial of Application; Appeals.**

5           (a) Should the Health Director deny any application or fail or refuse to issue a permit for  
6 a ~~child care facility~~ small family child care home within ~~forty-five~~ sixty days from the date of  
7 receiving a complete application as specified in Section 8.12.030, such decision may be appealed  
8 to district court as provided by state law.

9           (b) Any person aggrieved by a final decision of the Health Director in the administration  
10 or enforcement of this chapter may appeal such decision to the district court as provided by state  
11 law.

12           Section 29. That Chapter 8.12 of the Lincoln Municipal Code be amended by adding  
13 a new section numbered 8.12.250 to read as follows:

14 **8.12.250 Liability of Operator.**

15 Every act or omission of whatsoever nature constituting a violation of any of the provisions  
16 of this chapter, by an operator, operator's spouse, any other person, related or not, who lives or  
17 resides on the premises where the small family child care home is located and/or any substitute,  
18 teacher, instructor, employee of the said operator if said act is committed or omission is made with  
19 the authorization, knowledge, or approval of the operator, shall be deemed and held to be the act of  
20 such operator, and said operator shall be punishable in the same manner as if said act or omission  
21 had been done or omitted by such operator personally.

22           Section 30. That Section 8.12.120 of the Lincoln Municipal Code be and the same  
23 is hereby renumbered and shall be relocated within Chapter 8.12 as Section 8.12.260 and that  
Section 8.12.120 renumbered as Section 8.12.260 be amended to read as follows:

1 ~~8.12.120~~ **8.12.260** **Penalty for Violations.**

2 Any person upon whom a duty is placed by the provisions of this chapter who shall fail,  
3 neglect, or refuse to perform such duty or who shall violate any of the provisions of this chapter shall  
4 be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to  
5 exceed \$100.00 who is found to have violated any provision of this chapter shall be subject to a fine  
6 of no more than \$500.00, or imprisonment in the county jail for a period not to exceed six months,  
7 or both such fine and imprisonment. Each day that a violation of this chapter continues shall  
8 constitute a separate and distinct offense and shall be punishable as such is punishable as a separate  
9 and distinct offense. In addition to any penalty sought or obtained under this chapter or other  
10 applicable law, the City Attorney may institute injunctive or other appropriate civil proceedings  
11 necessary to obtain compliance or to abate any nuisance resulting from violations of this chapter.

12 Section 31. That the title of Chapter 8.12 of the Lincoln Municipal Code be amended  
13 to read “Small Family Child Care Homes”.

14 Section 32. That Sections 8.12.010, 8.12.020, 8.12.030, 8.12.040, 8.12.050, 8.12.070,  
15 8.12.090, 8.12.095, 8.12.100, 8.12.115, and 8.12.120 of the Lincoln Municipal Code as hitherto  
16 existing be and the same are hereby repealed.

17 Section 33. That this ordinance shall take effect and be in force from and after its  
18 passage and publication according to law.

Introduced by:

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Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2006:

\_\_\_\_\_  
Mayor