ORDINANCE NO. __________________

AN ORDINANCE amending Chapter 8.20 of the Lincoln Municipal Code relating to the
Lincoln Food Code by amending Sections 8.20.020, 8.20.030, 8.20.080, 8.20.090, 8.20.100, 8.20.110,
8.20.120, 8.20.150, 8.20.160, 8.20.190, 8.20.260, 8.20.264, 8.20.280, 8.20.300, and 8.20.320 to formally
codify already existing regulations for farmers markets and to allow for and to regulate cottage food
operations; by adding a new section numbered 8.20.135 entitled “Cottage Food Operations and Farmers
Market Vendors; Limitations; Labeling”; by adding a new section numbered 8.20.191 entitled “Cottage
Food Operations or Farmers Market Vendor; Food Handler Permit Requirements”; by adding a new section
numbered 8.20.261 entitled “Cottage Food Operations and Farmers Market Vendors; Inspection”; and
repealing Sections 8.20.020, 8.20.030, 8.20.080, 8.20.090, 8.20.100, 8.20.110, 8.20.120, 8.20.150,
8.20.160, 8.20.190, 8.20.260, 8.20.264, 8.20.280, 8.20.300, and 8.20.320 of the Lincoln Municipal Code as
hitherto existing.

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

Section 1. That Section 8.20.020 of the Lincoln Municipal Code be amended to read as
follows:

8.20.020 Purpose and Intent.

(a) The purpose of the Lincoln Food Code is to safeguard the public from potential health
hazards related to food.

(b) The City Council in adopting the Lincoln Food Code intends to:
(1) Classify and define food establishments and cottage food operations;
(2) Provide sanitation regulations for food, food equipment, and utensils;
(3) Provide sanitation regulations for the transportation, protection, storage,
processing, display, serving, and sale of food;
(4) Require permits for the operation of food establishments and cottage food
operations;
(5) Require employers to properly train employees in basic food sanitation;
(6) Require certification or permits for food managers and employees;

(7) Require inspection of food establishments and cottage food operations;

(8) Provide for the examination and condemnation of food;

(9) Provide standards for enforcement; and

(10) Authorize the Health Director to administer, interpret, and enforce the Lincoln Food Code.

Section 2. That Section 8.20.030 of the Lincoln Municipal Code be amended to read as follows:

8.20.030 Definitions.

(a) Except § 1-201.10(B)(35), (36), (60), (76), (100), or as provided below, the definitions of words and phrases in the 2005 recommendations of the United States Public Health Service Food and Drug Administration “Food Code” shall apply to the same words and phrases in the Lincoln Food Code.

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

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

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

Cottage food operation shall mean a person who produces cottage food products only in the kitchen of that person's primary residence and only for sale directly to the consumer. A cottage food operation shall not operate as a food service establishment, retail food store, or wholesale food manufacturer.

Cottage food operation permitted area shall mean the portion of a residence housing a kitchen where the preparation, packaging, storage, or handling of cottage food products occurs.

Cottage food products or farmers market food products shall mean non-time/temperature control for safety food produced for sale by a cottage food operation or a farmers market vendor.
Food catering shall mean an operation that transports ready to eat food to another location from an approved food establishment. Food catering includes both an operation that only delivers food and an operation that delivers and serves food.

Food establishment shall mean an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. Food establishment includes, but is not limited to:

1. Additional food preparation facility;
2. Temporary food establishment;
3. Farmers’ market;
4. Event market;
5. Food catering, food concession booth or stand, mobile food unit, and pushcart;
6. Restaurant, coffee shop, diner, cafeteria, commissary, buffet, smorgasbord, short order café, luncheonette, grill, tea room, sandwich shop, soda fountain, ice cream shop, popcorn stand, limited food service, delicatessen, bakery, and similar establishments;
7. Tavern, bar, cocktail lounge, bottle club, licensed beverage establishment, and nightclub;
8. Food service at a hospital, nursing home, institution, industry, or hotel;
9. Food service operated by a nonprofit organization; or
10. Manufacturer of food for sale or distribution to the public not otherwise approved.

The term food establishment shall not include:

1. An establishment which is not a commercial food establishment and which sells only commercially prepackaged foods that are not potentially hazardous;
2. A produce stand that only offers whole, uncut fresh fruits and vegetables;
3. A private home where food is prepared or served for personal use, a child care, or a lodging facility where no more than ten paying guests eat meals in the home;
4. A location where food prepared by a caterer is served so long as the caterer only minimally handles the food at the serving location.
Food handler permit shall mean a serve/clean food handler and/or a prep/cook food handler permit.

Food manager permit shall mean a food protection manager and/or a restricted/shift food manager permit.

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

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

Kitchen shall mean an area used to produce cottage food products or farmers market food products.

Lincoln Food Code shall mean this chapter, including all applicable laws and standards adopted by reference and all standards and regulations adopted pursuant to this chapter.

Nonprofit organization shall mean:

1. A nonprofit organization holding a certificate of federal tax exemption under Section 501 of the Internal Revenue Code;
2. A corporation subject to the provisions of Sections 21-1901 to 21-1991 Nebraska Revised Statutes; or
3. A nonprofit organization that conducts its major activities for charitable or community betterment purposes.

Occasional shall mean no more than twenty-four times during any twelve-month period.

Person shall mean an individual, firm, partnership, company, corporation, trustee, association, organization or other public or private entity. Person includes a nonprofit organization as defined in the Lincoln Food Code.

Person In Charge shall mean the individual who is responsible for the operation of the food establishment and who is present at the food establishment or is readily accessible to communicate with employees and the Health Director.

Regulatory authority shall mean the Lincoln-Lancaster County Health Department when referring to an agency and the Health Director when referring to a person.
Residence shall mean a single-family dwelling or an area within a two-family or multiple dwelling where a single person or family resides. A residence does not include any group or communal residential setting within any type of structure, or outbuilding, shed, barn, or other similar structure.

Temporary food establishment shall mean a food establishment that:

1. Complies with the permit conditions for an event market; or
2. Complies with the permit conditions for a farmers’ market; or
3. Complies with the permit conditions for a single-event.

Vendor shall mean a retail food establishment selling food to an end use consumer such as a food concessions booth or stand, mobile food unit, or pushcart.

Section 3. That Section 8.20.080 of the Lincoln Municipal Code be amended to read as follows:

8.20.080 Food Establishment and Cottage Food Operation; Permits Required.

It shall be unlawful for any person to operate a food establishment or a cottage food operation without first obtaining a permit from the Health Director. The operation of a food establishment or a cottage food operation without the required permit is hereby declared a nuisance which may be abated as provided by law. The permit holder shall conspicuously post or display the permit so that it is readily open to view by any person patronizing such establishment.

Section 4. That Section 8.20.090 of the Lincoln Municipal Code be amended to read as follows:

8.20.090 Food Establishment and Cottage Food Operation Permits; Application.

(a) An application for a permit to operate a food establishment or a cottage food operation shall be submitted to the Health Director on forms provided by the Health Director.

(b) Each application shall include:

1. The applicant’s full name, mailing address, and a statement identifying the applicant as an individual, partnership, firm, or corporation;
2. If the applicant is a partnership, the name and mailing address of each partner;
3. The name, location, and type of proposed food establishment;
The signature of the applicant or applicants; and

Such other pertinent information as requested on such forms.

Section 5. That Section 8.20.100 of the Lincoln Municipal Code be amended to read as follows:

8.20.100 Food Establishment and Cottage Food Operation Permits; Issuance.

(a) Upon receipt of an application and the applicable permit fee for a food establishment or cottage food operation permit, the Health Director shall make an inspection to determine if the proposed food establishment complies with the Lincoln Food Code.

(b) The Health Director shall complete the inspection and issue or deny the food establishment or cottage food operation permit within a reasonable time not to exceed thirty days.

(c) The Health Director shall issue a food establishment or a cottage food operation permit if the Health Director determines that the applicant complies with the Lincoln Food Code.

(d) A food establishment or a cottage food operation permit issued under the Lincoln Food Code is strictly limited to the person and premises or facility specified in the food establishment or cottage food operation permit application.

(e) A food establishment or a cottage food operation permit is not transferable from one person to another person or from one premises or facility to another premises or facility.

(f) The Health Director shall require separate permits as follows:

(1) If several food establishments are located at the same address but are owned by different persons, each person shall obtain a separate food establishment permit.

(2) If one person operates several food establishments at different addresses, that person shall obtain a separate food establishment permit for each address.

(g) A food establishment or a cottage food operation regulated under the Lincoln Food Code shall comply with all other applicable city ordinances relating to facility design, construction, and operation.

(h) A cottage food operation which has a private water supply must have the supply tested prior to permitting and at least annually thereafter. The water shall be considered acceptable if the Nitrate-Nitrogen results are less than 10 mg/ml and no coliform bacteria are identified. Results of the testing shall
be maintained for a period of five years. If the water supply is determined to be unacceptable, the Health Director may approve an alternate source of water for food preparation, sanitizing utensils and food preparation surfaces, and handwashing. The Health Director may require more frequent testing as deemed necessary or require additional testing for other water contaminants.

Section 6. That Section 8.20.110 of the Lincoln Municipal Code be amended to read as follows:

8.20.110 Food Establishment and Cottage Food Operation Permits; Term and Expiration.

(a) All food establishment and cottage food operation permits, except those issued for temporary food establishments, shall expire on the thirty-first day of May each year.

(b) The Health Director may approve the renewal of food establishment and cottage food operation permits, except those issued for temporary food establishments, without making a reinspection.

(c) A temporary food establishment permit shall be valid only for the time stated on the permit, and in no case longer than one year.

Section 7. That Section 8.20.120 of the Lincoln Municipal Code be amended to read as follows:

8.20.120 Food Establishment; Exemptions.

(a) The following food establishments which possess a valid permit from the State of Nebraska or an agency of the United States Government shall be exempt from obtaining a permit from the Health Director:

(1) Salvage operation;
(2) Food processing plant;
(3) Food storage establishment;
(4) Commercial food establishment;
(5) Retail food store;
(6) Convenience store;
(7) Itinerant food vendor; and
(8) Vending machine operation;
(b) The following operations by a nonprofit organization shall not require a food establishment permit:

(1) Occasional bake sales of food that is not potentially hazardous.

(2) Sales of manufactured, prepackaged foods that are not potentially hazardous and which have been prepared in an approved food preparation facility.

(3) Service of food that is not potentially hazardous which is limited to the members and guests of the nonprofit organization.

(4) Occasional service of potentially hazardous food on the nonprofit organization’s own premises or at a location where a permanent food service facility is located and used by the nonprofit organization. Permanent food service facility shall mean a kitchen facility located at a church, meeting hall, or other place of public assembly that is specifically equipped for food service to a large number of people. Except, when a nonprofit organization sells potentially hazardous food to the public at a location where there is no permanent food service facility, the nonprofit organization shall obtain a temporary food establishment permit.

(c) Any person that sells food exclusively at a permitted Farmers Market or Event Market shall be exempt from holding a cottage food operation permit.

(d) A food establishment or cottage food operation exempted by this section shall not be relieved of any other obligations including, but not limited to, handling of food under safe and sanitary conditions.

Section 8. That Chapter 8.20 of the Lincoln Municipal Code be amended by adding a new section numbered 8.20.135 to read as follows:

8.20.135 Cottage Food Operations and Farmers Market Vendors; Limitation; Labeling.

Cottage food operations and farmers market vendors shall ensure:

(a) Food products must be sold directly to the consumer. Direct sales at farmers markets, craft fairs, charitable organization functions, and similar events are permitted. Sales to grocery stores, restaurants, or wholesale are prohibited.

(b) Food products sold shall be limited to non-time/temperature control for safety food.
(c) The Health Director shall maintain and provide a list of commonly acceptable and unacceptable foods. Acidified foods and low acid canned foods shall not be allowed.

(d) Food products which are pre-packaged shall have a label affixed containing the following information (printed in English):

• The name and address of the cottage food operation or farmers market vendor;

• "Made by a Cottage Food Operation" or "Made by a Farmers Market Vendor";

• The common name of the food;

• The ingredients of the food product;

• The net weight or net volume of the food; and

• Allergen information or a statement that the food may contain allergens.

Section 9. That Section 8.20.150 of the Lincoln Municipal Code be amended to read as follows:

8.20.150 Food Establishment and Cottage Food Operation; Permit Fees

(a) The City Council may, by resolution, from time to time establish or revise fees to be paid by any person who secures a food establishment or cottage food operation permit under the Lincoln Food Code for any of the following:

(1) Food Establishment:

Food establishment.

Additional food preparation facility.

(2) Mobile Food Unit.

(3) Food Catering Services operating as an additional food preparation facility to an approved food establishment.

(4) Temporary Food Establishment:

(i) Operating for a single event not to exceed fourteen consecutive days.

(ii) Operating annually for more than one single event not to exceed fourteen consecutive days.

(iii) Operating as an additional food preparation facility to an approved food
establishment.

(iv) Event Market.

(v) Farmers' Market.

(5) Cottage Food Operation.

(b) Any person issued a new food establishment permit, other than a temporary food establishment permit, after November 30 and before April 15 of each year shall pay 67% of the new permit fee. Any person issued a new food establishment permit, other than a temporary food establishment permit, on or after April 15 and before June 1 shall pay the new permit fee and such permit shall be valid until May 31 of the following year.

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

Section 10. That Section 8.20.160 of the Lincoln Municipal Code be amended to read as follows:

8.20.160 Late Fees.

(a) A food establishment permit holder who fails to renew the permit before it expires, but within 30 days of the date of expiration shall pay a late fee of 33% of the annual fee in addition to the annual fee.

(b) A food establishment permit holder who fails to renew the permit before it expires and fails to renew the permit within thirty days from the date of expiration shall pay a late fee of 67% of the annual fee in addition to the annual fee.

(c) A cottage food operation permit holder who fails to renew the permit before it expires, but within 30 days of the date of expiration, shall pay a late fee of 100% of the annual fee in addition to the annual fee.

(d) A cottage food operation permit holder who fails to renew the permit before it expires and fails to renew the permit within thirty days from the date of expiration shall pay a late fee of 200% of the annual fee in addition to the annual fee.
A food establishment permit holder who fails to renew the permit before it expires is operating without a valid permit and shall be subject to appropriate enforcement action by the Health Director.

Section 11. That Section 8.20.190 of the Lincoln Municipal Code be amended to read as follows:

8.20.190 Food Establishment; Staffing and Records Requirements.

(a) In a food establishment serving potentially hazardous food, a food establishment must have the following minimum staffing:

(1) A Person In Charge with a valid food protection manager permit; and
(2) A person with either a valid food manager permit or a prep/cook food handler permit working on the premises during operation of the food establishment.

(b) In a food establishment not serving potentially hazardous food, a food establishment must have the following minimum staffing:

(1) One Person In Charge with a valid food manager permit; and
(2) One person with a valid food manager permit or a food handler permit working on the premises during operation of the food establishment.

(c) A food establishment permit holder shall arrange for and require all employees to have valid food handler permit and/or food manager permit as required by the Lincoln Food Code.

(d) A food establishment permit holder shall maintain an up to date list of all employees working in the food establishment on a form provided or approved by the Health Director. The form shall include the employee’s name, date of hire, food handler or food manager permit number, and expiration date. The form shall be made available to the Health Director upon request.

(e) A food establishment permit holder shall provide the minimum applicable training for employees of the food establishment as required by the Lincoln Food Code.

Section 12. That Chapter 8.20 of the Lincoln Municipal Code be amended by adding a new section numbered 8.20.191 to read as follows:
8.20.191 Cottage Food Operation or Farmers Market Vendor; Food Handler Permit

Requirements.

(a) All persons involved in food preparation shall hold a valid food handler permit, food manager permit, or a certificate of attendance at a farmers market vendor training or a cottage food operation training issued by the Health Director.

Section 13. That Section 8.20.260 of the Lincoln Municipal Code be amended to read as follows:

8.20.260 Enforcement; Inspections.

(a) The Health Director shall inspect food establishments and cottage food operations as frequently as necessary to assure compliance with the Lincoln Food Code.

(b) The Health Director shall have the authority to inspect at any reasonable time for the purpose of determining compliance with the Lincoln Food Code.

(c) The Health Director shall have the authority to inspect and examine related business records for (1) employees, and (2) food and supplies purchased, received, or used at the food establishment and cottage food operations.

(d) The Health Director shall record the inspection findings on an inspection report. The Health Director shall furnish the original inspection report to a permit holder or Person in Charge.

(e) The report shall:

(1) Set forth the specific conditions found,

(2) Establish a specific and reasonable period of time for correction of the unsanitary conditions found, if any,

(3) State that failure to comply with the warning notice may result in immediate suspension of the permit and prosecution for violation of the Lincoln Food Code; and

(4) State that the permit holder or Person in Charge may request a hearing before the Health Director upon such inspection findings and warning by filing a written request with the Health Director.
After the time period given for correction of the unsanitary conditions found, the Health Director shall reinspect the food establishment and cottage food operations to determine compliance with the warning notice.

Section 14. That Chapter 8.20 of the Lincoln Municipal Code be amended by adding a new section numbered 8.20.261 to read as follows:

8.20.261 Cottage Food Operations and Farmers Market Vendors; Inspection.

(1) The Health Director may inspect a cottage food operation or farmers market vendor at any reasonable time for the purpose of determining compliance with regulatory requirements. The inspection may include any area in which food is cooked, held, packaged, prepared, stored, or sold. Inspections may be conducted to investigate a complaint, inadequate labeling, or a report of foodborne illness. Inspections may be conducted to gather information regarding persons with communicable diseases which can be transmitted through food.

(2) The Health Director shall inspect for and ask the permittee to verify the following:

(a) That only non-time/temperature control for safety food is produced and sold;

(b) Ingredients used in the preparation of food products that require time/temperature control must be held at safe temperatures;

(c) That no person other than the permittee, or a person under the direct supervision of the permittee who also holds a valid food handler permit, food manager permit, or certificate of attendance at a cottage food operation or farmers market vendor training issued by the Health Director, may be engaged in the processing, preparing, packaging, or handling of any food products;

(d) That no preparation, packaging, or handling of food products is occurring in the kitchen concurrent with any other domestic activities such as family meal preparation, dishwashing, clothes washing or ironing, kitchen cleaning, or guest entertainment;

(e) That children who are not toilet trained are not allowed in the kitchen during the preparation, packaging, or handling of any food products;
(f) That no pets are allowed in the kitchen at any time during the preparation, packaging, or
handling of any food products;

(g) That all food contact surfaces, equipment, and utensils used for the preparation, packaging,
or handling of any cottage food products are smooth, nonabsorbent, easily cleanable, and
properly washed, rinsed, and sanitized before each use;

(h) That all food preparation and food equipment storage areas are maintained free of rodents
and insects;

(i) That all persons involved in the preparation and packaging of food products:

(i) Will not prepare food products when ill and must be symptom free for at least 48
hours after having vomiting or diarrhea before preparing food products;

(ii) Will wash their hands before any food preparation and food packaging activities;

and

(iii) Will prevent bare hand contact with ready-to-eat foods through the use of single-
service gloves, bakery papers, tongs, or other utensils.

(j) That smoking or electronic cigarette use is not allowed in the kitchen at any time during
the preparation of food products; and

(k) That Health Director guidance will be followed on cleanup of vomiting and diarrheal
events.

Section 15. That Section 8.20.264 of the Lincoln Municipal Code be amended to read as
follows:

8.20.264 Inspection Reporting Requirements.

(a) The Health Director shall document on an inspection report form:

(1) Administrative information such as, but not limited to, the following: (i) name and
address of food establishment or cottage food operation; (ii) type of food establishment or cottage food
operation; (iii) inspection date; (iv) status of required food manager permit and food handler permits, or
certificate of attendance at a farmers market vendor training or a cottage food operation training issued by
the Health Director.
(2) Specific factual observations of violative conditions, omissions, or other deviations from the requirements of the Lincoln Food Code that require correction by the permit holder; and

(3) Whether the violations listed are critical or repeated.

(b) The Health Director shall specify on the inspection report form the time frame for correction of the violations.

(c) All procedures and requirements related to the inspection of food establishments or cottage food operations apply to salvage operations.

(d) The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

Section 16. That Section 8.20.280 of the Lincoln Municipal Code be amended to read as follows:

**8.20.280 Revocation or Suspension of Permit.**

Any permit granted under the Lincoln Food Code shall be subject to revocation or suspension in the following manner:

(a) The Health Director shall notify the permit holder as provided in the Lincoln Food Code

(b) If the Health Director determines that the permit holder is in violation of the Lincoln Food Code, the Health Director may revoke or suspend the permit for an appropriate period of time not to exceed ninety days.

(c) The Health Director shall conduct the hearing in accordance with the Lincoln Food Code.

Section 17. That Section 8.20.300 of the Lincoln Municipal Code be amended to read as follows:

**8.20.300 Revocation or Immediate Suspension; Cause; Effective Date.**

(a) The Health Director may revoke or suspend any permit issued under the Lincoln Food Code if the Health Director finds that a permit holder, Person in Charge, or the food establishment itself is
in serious violation of the Lincoln Food Code and is thereby causing an immediate and substantial hazard to the public health.

(b) The Health Director shall provide the notice as provided within the Lincoln Food Code. The revocation or suspension shall be effective immediately upon notice.

c) It shall be unlawful to operate or cause, permit or allow any permitted operations under a revoked or suspended permit after service upon the permit holder.

Section 18. That Section 8.20.320 of the Lincoln Municipal Code be amended to read as follows:

8.20.320 Notice; Service.

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

(1) By personal service to:

(i) A permit holder or Person in Charge wherever they may be found; or

(ii) For a temporary food establishment, a food permit holder or Person in Charge at the location where the temporary food establishment is located.

(2) By certified mail, postage prepaid, return receipt requested to the permit holder’s last known address.

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

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

Section 19. That Sections 8.20.020, 8.20.030, 8.20.080, 8.20.090, 8.20.100, 8.20.110, 8.20.120, 8.20.150, 8.20.160, 8.20.190, 8.20.260, 8.20.264, 8.20.280, 8.20.300, and 8.20.320 of the Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

Section 20. This ordinance shall be published, within fifteen days after the passage hereof, in one issue of a daily or weekly newspaper of general circulation in the City, or posted on the official
bulletin board of the City, located on the wall across from the City Clerk’s office at 555 S. 10th Street, in lieu and in place of the foregoing newspaper publication with notice of passage and such posting to be given by publication one time in the official newspaper by the City Clerk. This ordinance shall take effect and be in force from and after its passage and publication or after its posting and notice of such posting given by publication as herein and in the City Charter provided.

Introduced by:

____________________________________

Approved as to Form & Legality:

________________________________________
City Attorney

Approved this ___ day of _____________, 2020:

________________________________________
Mayor