

**IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA**

CYNTHIA HARPER,

No. \_\_\_\_\_

Plaintiff,

v.

The CITY OF LINCOLN; JAMES BOWERS, RICHARD MEGINNIS, JANE RAYBOULD, TAMMY WARD, SÄNDRA WASHINGTON, ROY CHRISTENSEN, and BENNIE SHOBE, in their official capacities as members of the Lincoln City Council; LEIRION GAYLOR BAIRD, in her official capacity as the mayor of Lincoln; the LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT; and JUSTIN DANIEL, in his official capacity as the Environmental Public Health Supervisor for the Lincoln-Lancaster County Health Department,

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This constitutional challenge seeks to vindicate the right of Cynthia (“Cindy”) Harper, a Nebraska home baker, to sell cottage foods<sup>1</sup> free from preempted local regulations and inspections. In 2019, Nebraska enacted the Cottage Food Law (CFL), which exempted cottage-food producers from the state’s onerous food-establishment regulations. *See* Ex. A (Neb. Legislative Bill 304 (May 1, 2019) (amending Neb. Rev. Stat. §§ 81-2,239, -245.01). To operate under the CFL, a home baker must take a food-safety course, register with the state, and notify

<sup>1</sup> As used in this complaint, “cottage foods” means non-time/temperature control for safety foods (also known as not-potentially hazardous foods) that Nebraska allows to be produced in a home kitchen and sold directly to consumers. Examples include, but are not limited to, baked goods, breads, jams, honeys, syrups, pickles, popcorn, hard candies, dried herbs, and dried pastas.

customers that her goods were produced in a kitchen that was not regulated or inspected. Soon after the CFL went into effect, Cindy registered with the state and began selling home-baked sugar cookies and pound cakes to happy customers in Lincoln.

2. In passing the CFL, Nebraska was following the national trend of states expanding cottage-food freedom. Since 2015, over a dozen states have either adopted new cottage-food laws or relaxed existing ones. As a result, 49 states now allow cottage-food producers to sell their goods. Before 2019, however, Nebraska was one of just three states to limit sales to events like farmers markets or bake sales. The CFL brought Nebraska into the overwhelming majority of states that allow cottage-food sales from home. Cindy was one of several home bakers who asked the Legislature to pass the bill.

3. In December 2019, the City of Lincoln, acting through the Lincoln-Lancaster County Health Department, held an “information session” for cottage-food producers. Cindy attended. The City announced that it was in the process of drafting cottage-food regulations and that until the regulations passed, cottage-food sales at home or online—even with a valid state registration—were forbidden. On February 10, 2020, the City passed the Cottage Food Ordinance (CFO) “to regulate cottage food operations.” *See* Ex. B (amending Lincoln Municipal Code §§ 8.20.010, *et seq.*). The CFO requires cottage-food producers to pay annual fees, obtain a local permit, and pass inspections of their homes “at any reasonable time” and “as frequently as necessary.” A person who violates the CFO may be fined up to \$500, imprisoned for up to six months, or both.

4. Under Lincoln’s CFO, Cindy is banned from selling her treats directly to customers—despite the fact that she has a valid state registration—unless she obtains a local permit and passes an indefinite number of inspections. That is unconstitutional. Under Article

XI, Section 2 of the Nebraska Constitution, ordinances that conflict with state law are preempted and void. Lincoln's CFO conflicts with state law because it imposes the very burdens (regulations and inspections) that Nebraska's CFL was enacted to eliminate.

5. Accordingly, the Court should permanently enjoin Defendants from enforcing the CFO against Cindy and all other similarly situated cottage-food producers. Meanwhile, the Court should also temporarily enjoin Defendants from enforcing the CFO against Cindy to protect her from the untenable choice (*either comply with an invalid ordinance or forfeit your right to sell cottage foods from home*) the City has foisted upon her. A temporary injunction would ensure Cindy is not forced to abandon her rights until this Court can issue a final decision on the merits.

### **JURISDICTION AND VENUE**

6. Plaintiff seeks a declaratory judgment that Lincoln's CFO violates Article XI, Section 2 of the Nebraska Constitution because it conflicts with state law.

7. Plaintiff also seeks both permanent and temporary injunctive relief against Defendants' enforcement of the CFO. *See* Neb. Rev. Stat. §§ 25-1062, -1063.

8. This Court has jurisdiction over Plaintiff's claims and may grant the declaratory and injunctive relief requested under Article V, Section 9 of the Nebraska Constitution and Neb. Rev. Stat. §§ 24-302, 25-21,149.

9. Venue lies in this Court under Neb. Rev. Stat. § 25-403.01.

### **PARTIES**

10. Plaintiff Cindy Harper is a 57-year-old single woman who lives in Lincoln, Nebraska. Cindy is a state-registered cottage-food producer who would like to sell home-baked sugar cookies and pound cakes directly to customers from home. The income from cottage-food

sales would help Cindy financially, both in the short-term and as a long-term source of supplemental income once she retires.

11. Defendant the City of Lincoln is a charter city incorporated under Article XI, Section 2 of the Nebraska Constitution. The City enacted and enforces the CFO. Its corporate office is located at 555 S 10th St #111, Lincoln, NE 68508.

12. Defendants James Bowers, Richard Meginnis, Jane Raybould, Tammy Ward, Sändra Washington, Roy Christensen, and Bennie Shobe are sued in their official capacities as members of the Lincoln City Council. The City Council adopted the CFO on February 10, 2020. Its office is located at 555 S 10th St #111, Lincoln, NE 68508.

13. Defendant Leirion Gaylor Baird is sued in her official capacity as the mayor of the City of Lincoln. The mayor approves and enforces all City ordinances. *See* Lincoln City Charter, art. IV, §§ 12–13. Her office is located at 555 S 10th St #111, Lincoln, NE 68508.

14. Defendant the Lincoln-Lancaster County Health Department (LLCHD) is an interlocal agency of the City of Lincoln and Lancaster County formed under the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801, *et seq.* Defendant LLCHD is empowered to propose and enforce City ordinances related to public health. *See* Interlocal Agreement, City of Lincoln and Lancaster County (Apr. 15, 1998), <https://tinyurl.com/y9bx5xng> (last visited May 18, 2020). Its office is located at 3131 O St, Lincoln, NE 68510.

15. Defendant Justin Daniel is sued in his official capacity as the Environmental Public Health Supervisor for the LLCHD. Defendant Daniel drafted and enforces Lincoln’s CFO. His office is located at 3131 O St, Lincoln, NE 68510.

## FACTS

### Cottage Foods Are Safe

16. In Nebraska, cottage foods are non-time/temperature control for safety foods produced in a home kitchen. Neb. Rev. Stat. § 81-2, 245.01(7).

17. A non-time/temperature control for safety food is “not potentially hazardous,” meaning it is shelf-stable and does not require refrigeration to prevent the growth of pathogenic microorganisms or the formation of toxins. *See* Time/Temperature Control for Safety Food, Neb. Dep’t of Agric., <https://tinyurl.com/y73te2nz> (last visited May 18, 2020).

18. Foods permitted under Nebraska’s CFL include, but are not limited to, baked goods, breads, jams, honeys, syrups, pickles, popcorn, hard candies, dried herbs, and dried pastas.

19. Cottage foods are safe for public consumption. As Senator Sue Crawford noted when introducing the CFL: “My staff spoke with food safety experts in each of our surrounding states and none of them reported any outbreaks of foodborne illness that have been linked to the sales of cottage foods or foods sold at farmers’ markets. National data reflects the same, no incidents of foodborne illness that have been linked to the sales of cottage food in the states that allow them. Cottage foods are simply not risky foods. These are foods which are inherently safe. They’re nonpotentially hazard foods. And there is no evidence to suggest that these foods pose [a] health and safety risk to the public.” *Hearing on LB 304 Before the Neb. Agric. Comm.*, 106th Leg., 1st Sess. 31 (Neb. 2019) (statement of Sen. Crawford), <https://tinyurl.com/yb8zwt5p> (last visited May 18, 2020).

### **Before 2019, Opportunities for Cottage Food Producers Were Limited**

20. In general, the Nebraska Pure Food Act requires businesses that prepare and sell food for human consumption to obtain a “food establishment” permit from the state Department of Agriculture. Neb. Rev. Stat. § 81-2,270(1).

21. To operate, food establishments must use commercial-grade kitchens and bathrooms, follow strict food-handling practices, and pass inspections. *See id.* §§ 81-2,259, -2,270, -2,272; *Requirements for Food Establishment Operations*, Neb. Dep’t of Agric., <https://tinyurl.com/y7kdk5al> (last visited May 18, 2020); *Information Needed for a Plan Review*, Neb. Dep’t of Agric., <https://tinyurl.com/y6w55oqu> (last visited May 18, 2020).

22. For the vast majority of cottage-food producers—including Cindy—these requirements would be prohibitively burdensome and expensive.

23. Moreover, state regulations are clear that “FOOD prepared in a private home may not be used or offered for human consumption in a FOOD ESTABLISHMENT.” *See* Neb. Food Code § 3-201.11(B), <https://tinyurl.com/yytfsfev> (last visited May 18, 2020).

24. Thus, the only way cottage-food producers can realistically operate is through an exemption from the definition of a “food establishment.” *See* Neb. Rev. Stat. § 81-2.245.01.

25. Before 2019, the Pure Food Act offered two narrow exemptions. Cottage-food producers could sell “at a religious, charitable, or fraternal organization’s bake sale or similar function” or “directly to the consumer at a farmers market” if they notified customers that their food was produced in a kitchen that was not regulated or inspected. Ex. A.

26. At the time, Nebraska was one of only three states to limit sales to events like farmers markets or bake sales. Moreover, because farmers markets operate only during the warmer months (and even then, only about two days per week, weather permitting), and facilitate

mostly one-time sales, Nebraska’s law made it almost impossible for cottage-food producers to grow their businesses.

27. Indeed, these were exactly the complaints of the home bakers who testified in favor of the Cottage Food Law. In her testimony, Cindy noted that “the biggest part of my business is really at the holiday time” and “[w]ithout a farmers’ market at that time of year, I’m limited in my capacity to fulfill orders.” *Hearing on LB 304 Before the Neb. Agric. Comm.*, 106th Leg., 1st Sess. 45 (Neb. 2019) (statement of Cindy Harper), <https://tinyurl.com/yb8zwt5p> (last visited May 18, 2020). Another baker noted that “[t]he way the law currently stands, it is restricting me from being able to pursue, not only this career but this huge passion of mine.” *Id.* at 47 (statement of Michelle Ware).

#### **Nebraska Enacts the Cottage Food Law to Reduce Barriers for Cottage Food Producers**

28. On April 29, 2019, the Nebraska Legislature unanimously passed the Cottage Food Law to expand cottage-food producers’ ability to operate free from unnecessary regulations.

29. The CFL amended the Pure Food Act’s definition of a “food establishment” to exclude “[a] private home or other area where food that is not time/temperature control for safety food is prepared for sale directly to the consumer.” Neb. Rev. Stat. § 81-2,245.01(7).

30. To sell directly to consumers at home or by mail (including online) under the CFL, a cottage-food producer must complete “a nationally accredited food safety and handling education course that covers topics such as food safety issues, regulations, and techniques to maintain a food-safe environment” (or a comparable course offered at a culinary school or by the

local government), register with the Department of Agriculture, and label goods with her name and address.<sup>2</sup> *Id.* §§ 81-2,245.01(7), -2,280.

31. The CFL also requires cottage-food producers to expressly notify consumers—as under the Pure Food Act’s previous exemptions—“that the food was prepared in a kitchen **that is not subject to regulation and inspection by the regulatory authority** and may contain allergens.” *Id.* § 81-2,245.01(7)(a) (emphasis added).

32. “Regulatory authority” means “the department or a political subdivision or state agency under contract with the department to perform regulatory functions authorized pursuant to the Nebraska Pure Food Act.” *Id.* § 81-2,252.

33. The City of Lincoln is under contract with the Nebraska Department of Agriculture to administer and enforce the Pure Food Act. Ex. C.

34. The City (including the LLCHD) is therefore a “regulatory authority” under the CFL. Indeed, the City’s own code states the same. *See* Lincoln Municipal Code § 8.20.030 (“Regulatory authority shall mean the Lincoln-Lancaster County Health Department when referring to the agency and the Health Director when referring to a person.”).

35. Thus, the CFL forecloses “regulation and inspection” of home kitchens in Lincoln used to produce cottage foods for sale directly to consumers. Neb. Rev. Stat. § 81-2,245.01(7)(a).

36. Broader language in the Pure Food Act (of which the CFL is a part) confirms this. *See id.* § 81-2,281(6) (“Regulatory activities performed by a political subdivision . . . under contract shall conform with the provisions of the act and such activities shall have the same effect as those performed by the [D]epartment [of Agriculture].”).

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<sup>2</sup> For sales “at a farmers market, fair, festival, craft show, or other public event,” cottage-food producers must also follow “any food safety and handling guidelines” that are “required by the county, city, or village where the food is sold.” Neb. Rev. Stat. § 81-2,245.01(7)(d).



37. Moreover, this understanding was shared by those engaged in the legislative process. When the CFL was originally introduced, a representative of “all the local health directors in the state of Nebraska” opposed the CFL because it foreclosed local regulations and inspections of home kitchens. *Hearing on LB 304 Before the Neb. Agric. Comm.*, 106th Leg., 1st Sess. 48 (Neb. 2019) (statement of Adi Pour), <https://tinyurl.com/yb8zwt5p> (last visited May 18, 2020). In response, Senator Crawford reiterated that the law would not allow regulations or inspections for cottage-food sales. *Id.* at 58 (statement of Sen. Crawford). Senator Carol Blood even (twice) called the notion of home inspections for cottage-food sales “insulting.” *Id.* at 51–52 (statement of Sen. Blood).

38. In short, the CFL imposes basic statewide regulations for the sale of cottage foods from home, but specifically exempts cottage-food producers from the permitting and inspection requirements that govern restaurants.

39. The result is a system that allows cottage-food producers to sell from home, regardless of where in Nebraska they happen to live, as long as they take a short food-safety course, register with the state, label their goods, and notify consumers that their kitchens were not regulated or inspected.

40. As Senator Crawford stated at the outset, the point was “to make sure that **all citizens** can participate in the home cottage food industry without imposing . . . overly burdensome regulations.” *Hearing on LB 304 Before the Neb. Agric. Comm.*, 106th Leg., 1st Sess. 32 (Neb. 2019) (statement of Sen. Crawford), <https://tinyurl.com/yb8zwt5p> (last visited May 18, 2020) (emphasis added).

### **Cindy Harper Starts Operating Under the Cottage Food Law**

41. For Cindy, cooking and baking have been a lifelong passion. She fell in love with baking, in particular, as a child eating her grandmother's cookies, and believes that baking treats for others is a way of spreading love.

42. While Cindy's primary source of income over the past decade has been in the insurance industry, she would like to support herself—both now and in retirement—selling home-baked treats and believes others should be free to do the same.

43. That is why Cindy fought for the passage of the CFL (overcoming nerves and a fear of public speaking in the process) to ensure that she and thousands of others across the state would be free to support themselves selling cottage foods from home.

44. Thanks in part to Cindy's efforts, the CFL went into effect on September 1, 2019.

45. On September 16, 2019, Cindy registered with the Department of Agriculture to sell cottage foods under the CFL. *See Cottage Food Producer List*, Neb. Dep't of Agric., <https://tinyurl.com/y7fsq9cv> (last visited May 18, 2020).

46. Cindy specializes in decorative sugar cookies and pound cakes.

47. While Cindy has baked for most of her life, she gained her technical skills through a two-year culinary program at Southeast Community College in Lincoln.

48. In culinary school, Cindy learned foundational baking and cooking techniques and about the principles and best practices of hospitality management.

49. As a condition of graduation, Cindy obtained a ServSafe Food Protection Manager Certification from the National Restaurant Association, which certifies that she has mastered the sanitary practices necessary to safely prepare and serve food.

50. While in culinary school, Cindy also obtained a Food Protection Manager Permit from the LLCHD, which certifies that she has mastered the sanitary practices necessary to manage others in the process of safely preparing and serving food.

51. After graduating from culinary school, Cindy began teaching baking courses (mostly on weekends) through Southeast Community College's continuing-education program.

52. Cindy also took a position at a local elementary school managing the cafeteria, where she helped prepare and serve food to hundreds of children every day.

53. Because her position at the elementary school did not pay well, however, Cindy was eventually forced to take a position with the Nebraska Department of Labor in Lincoln.

54. But Cindy still holds hopes of starting and growing a cottage-food business.

55. Last fall, Cindy tested the waters by selling sugar cookies, pound cakes, and hard candies at farmers markets in Lincoln.

56. Cindy also began making plans to sell her treats online. She even chose a trade name (Creative Confections) and started researching how to open a digital store on Etsy.com.

### **Lincoln Enacts Additional Cottage Food Regulations**

57. In December 2019, the City of Lincoln announced it was drafting regulations to supplement the CFL and that until the regulations passed, cottage-food sales from home—even with a valid registration under state law—were forbidden.

58. On January 7, 2020, Defendant Daniel sent a letter to the LLCHD proposing “Changes to Lincoln Municipal Code . . . to Allow for the Regulation of Cottage Food Operations.” Ex. D. In the letter, Defendant Daniel notes that the CFL “did not include issuing permits, health and sanitation standards, or authority for inspection,” but that the proposed local regulations were intended to require permitting and inspection anyways.

59. On February 10, 2020, the Lincoln City Council passed Defendant Daniel’s proposed ordinance “to regulate cottage food operations.” CFO § 8.20.020(b).

60. The City’s CFO imposes several requirements beyond those listed in Nebraska’s CFL:

- Cottage-food producers must obtain an additional permit from the LLCHD. CFO § 8.20.080. Failure to do so is “declared a nuisance which may be abated as provided by law.” *Id.*
- To obtain a permit, cottage-food producers must pay a \$30 fee and pass an “inspection to determine compliance with the Lincoln Food Code.” CFO § 8.20.100(a).
- Under the Lincoln Food Code, cottage-food producers must comply with a host of food-handling and sanitation requirements. *See* CFO § 8.20.261(2). Moreover, cottage-food labels must include information beyond what the Cottage Food Law requires. *See* CFO § 8.20.135(d).
- Even after obtaining a permit, cottage-food producers must pass inspections of their homes and “related business records” “at any reasonable time” and “as frequently as necessary to assure compliance with the Lincoln Food Code.” CFO § 8.20.260(a)–(c).
- Cottage-food permits must be renewed annually. CFO § 8.20.110(a). The fee is \$30 per renewal. A producer who renews her permit up to 30 days late “shall pay a late fee of 100% of the annual fee in addition to the annual fee” (\$60 total). CFO § 8.20.160(c). A producer who renews her permit over 30 days late “shall pay a late fee of 200% of the annual fee in addition to the annual fee” (\$90 total). CFO § 8.20.160(d).

61. The City’s decision to impose requirements beyond those listed in the CFL—as Defendant Daniel indicated in his January 7, 2020 letter—was intentional. Whereas the CFL requires cottage-food producers to notify consumers “that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority” (which includes the City), Neb. Rev. Stat. § 81-2,245.01(7)(a), the “[p]urpose and intent” of the CFO was to “[r]equire permits” and “inspections of . . . cottage food operations.” CFO § 8.20.020(b)(4), (7).

62. The City's additional regulations do not make cottage foods sold in Lincoln any safer than cottage foods sold under the CFL in other cities throughout Nebraska.

### **INJURY TO PLAINTIFF**

63. Prior to the City's December 2019 announcement that cottage-food sales were banned pending enactment of the CFO, Cindy was selling cottage foods to consumers in person and by mail under the CFL.

64. But since December 2019, Cindy has been effectively prohibited from selling cottage foods from home under the CFL.

65. As a result, Cindy's cottage-food business has been crippled. Her sales of sugar cookies and pound cakes have dramatically declined, she has lost much-needed income, she is baking less than she otherwise would (and is therefore less happy), and she is unable to grow her business or to open a digital store.

66. Applying for the City's cottage-food permit is not an option. Cindy is unwilling to subject herself to the City's unnecessary and burdensome regulations or to open her home up to inspections "at any reasonable time" and "as frequently as necessary" just to sell perfectly safe baked goods.

67. Moreover, even if Cindy *was* willing to subject herself to these requirements, she cannot comply with both the CFL (requiring her to notify consumers that she is "not subject to regulation and inspection by the regulatory authority") and the CFO (imposing regulations and inspections by an entity defined as "the regulatory authority") at the same time.

68. Nor is violating the CFO an option, as the City began enforcement on February 25, 2020, and violators can be fined up to \$500 (per violation), thrown in jail for up to six months, or both. Lincoln Municipal Code § 8.20.340.

69. The CFO thus forces Cindy to make an untenable choice: *Either comply with an invalid ordinance or forfeit your right to sell cottage foods from home.* That is not a choice Cindy should have to make.

70. These harms have only been underscored by the COVID-19 pandemic. At the same time that Cindy’s interest in conducting online sales (to earn income while avoiding in-person contact) has increased, her unwillingness to allow strangers (who may be infected) into her home to inspect her baking of perfectly safe goods has also increased.

71. Cindy just wants to comply with the CFL—the law she fought for—and get back to selling her sugar cookies and pound cakes consistent with state law.

72. But for the CFO, Cindy would immediately resume selling sugar cookies and pound cakes directly to consumers from home.

73. But for the CFO, Cindy would immediately resume earning much-needed, home-based supplemental income from her cottage-food business.

74. But for the CFO, Cindy would immediately start growing her cottage-food business, including by opening up a digital store on Etsy.com.

**LEGAL CLAIM**  
**(Neb. Const. art. XI, § 2—State-Local Preemption)**

75. Article XI, Section 2 of the Nebraska Constitution provides: “Any city having a population of more than five thousand (5000) inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state[] . . . .”

76. Cities incorporated under Article XI, Section 2 may not pass ordinances that conflict with state law; such ordinances, if passed, are preempted and void.

77. Lincoln’s City Charter was adopted under Article XI, Section 2 of the Nebraska Constitution.

78. Lincoln's Cottage Food Ordinance conflicts with state law because it frustrates the Legislature's purpose in enacting the Cottage Food Law: to ensure that all Nebraskans, regardless of where they live, can sell cottage foods free from unnecessary regulations and inspections.

79. The CFO also conflicts with state law by imposing regulations and inspections on producers who are required, under the CFL, to notify customers that their "food was prepared in a kitchen that is not subject to regulation and inspection." Neb. Rev. Stat. § 81-2,45.01(7)(a).

80. The CFO also conflicts with state law because it prohibits the operation of a cottage-food producer who has complied with the requirements of the CFL but not with the requirements of the CFO.

81. The CFO also conflicts with state law because the Pure Food Act and the CFL (except where they expressly state to the contrary) preempt the field of cottage-food regulations in Nebraska and leave no room for local regulations and inspections.

82. Accordingly, Plaintiff asks the Court to enter a judgment declaring the CFO preempted by state law and void under Article XI, Section 2 of the Nebraska Constitution.

83. Unless Defendants are enjoined from enforcing the CFO, Plaintiff will suffer continuing and irreparable harm.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

A. For a declaratory judgment that Lincoln's Cottage Food Ordinance is preempted by state law and void under Article XI, Section 2 of the Nebraska Constitution;

B. For a permanent injunction barring Defendants from enforcing the CFO against Plaintiff and all other similarly situated cottage-food producers in Lincoln;

C. For a temporary injunction barring Defendants from enforcing the CFO against Plaintiff until this Court can issue a final decision on the merits;

D. For an award of \$1 in nominal damages in recognition of the economic, personal, and constitutional injuries Defendants have caused to Plaintiff;

E. For an award of attorneys' fees and court costs; and

F. For all other legal and equitable relief to which Plaintiff may be entitled.

RESPECTFULLY SUBMITTED this 19th day of May, 2020.

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# **COMPLAINT EXHIBIT A**

**LB 304**

## LEGISLATIVE BILL 304

Approved by the Governor May 01, 2019

Introduced by Crawford, 45; Blood, 3; Hansen, B., 16.

A BILL FOR AN ACT relating to the Nebraska Pure Food Act; to amend sections 81-2,239 and 81-2,245.01, Revised Statutes Cumulative Supplement, 2018; to exempt certain operations from the definition of a food establishment as prescribed; to require registration of certain operations; to harmonize provisions; and to repeal the original sections.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-2,239, Revised Statutes Cumulative Supplement, 2018, is amended to read:

81-2,239 Sections 81-2,239 to 81-2,292 and section 3 of this act and the provisions of the Food Code and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 and 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

Sec. 2. Section 81-2,245.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

81-2,245.01 Food establishment shall mean an operation that stores, prepares, packages, serves, sells, vends, delivers, or otherwise provides food for human consumption. The term does not include:

(1) An establishment or vending machine operation that offers only prepackaged soft drinks, carbonated or noncarbonated; canned or bottled fruit and vegetable juices; prepackaged ice; candy; chewing gum; potato or corn chips; pretzels; cheese puffs and curls; crackers; popped popcorn; nuts and edible seeds; and cookies, cakes, pies, and other pastries, that are not time/temperature control for safety foods;

(2) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(3) A food processing plant;

(4) A salvage operation;

(5) A private home where food is prepared or served for personal use, a small day care in the home, or a hunting lodge, guest ranch, or other operation where no more than ten paying guests eat meals in the home;

(6) A private home or other area where food that is not time/temperature control for safety food is prepared for ~~for sale or service at a religious, charitable, or fraternal organization's bake sale or similar function; or~~

(7) A private home or other area where food that is not time/temperature control for safety food is prepared ~~(b) for sale directly to the consumer including, but not limited to, at a farmers market, fair, festival, craft show, or other public event or for pick up at or delivery from such private home or other area, if: the~~

(a) The consumer is informed by a clearly visible notification placard at the sale location that the food was prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority and may contain allergens. For sales conducted at a farmers market, fair, festival, craft show, or other public event, such notification shall be at the sale location. For sales conducted for pick up at or delivery from a private home or other area, such notification shall be at such private home or other area, on the producer's web site if one exists, and in any print, radio, television, or Internet advertisement for such sales;

(b) The name and address of the producer is provided to the consumer on the package or container label;

(c) Product delivery is made directly from the producer to the actual customer in a person-to-person transaction or by United States mail or a commercial mail delivery service;

(d) The producer follows any food safety and handling guidelines for sale at a farmers market, fair, festival, craft show, or other public event required by the county, city, or village where the food is sold;

(e) Prior to conducting any food sales, the producer, other than one selling directly to the consumer at a farmers market, has successfully completed (i) a nationally accredited food safety and handling education course that covers topics such as food safety issues, regulations, and techniques to maintain a food-safe environment or (ii) a certified food safety and handling training course offered at a culinary school or as required by a county, city, or village to obtain a food handler permit;

(f) The producer, if using private well water to produce food sold under this subdivision (7), has had such well water tested for contamination by nitrates or bacteria prior to conducting any food production and sales; and

(g) The producer complies with section 3 of this act;

(8) (7) A private home or other area where food is prepared for distribution at a fundraising event for a charitable purpose if the consumer is informed by a clearly visible placard at the serving location that the food was prepared in a kitchen that is not subject to regulation and inspection by the

regulatory authority. This subdivision does not apply to a caterer or other establishment providing food for the event if the caterer or establishment receives compensation for providing the food;

(9) ~~(8)~~ The location where food prepared by a caterer is served so long as the caterer only minimally handles the food at the serving location;

(10) ~~(9)~~ Educational institutions, health care facilities, nursing homes, and governmental organizations which are inspected by a state agency or a political subdivision other than the regulatory authority for sanitation in the food preparation areas;

(11) ~~(10)~~ A pharmacy as defined in section 71-425 if the pharmacy only sells prepackaged pharmaceutical, medicinal, or health supplement foods that are not time/temperature control for safety or foods described in subdivision (1) of this section; and

(12) ~~(11)~~ An establishment which is not a commercial food establishment and which sells only commercially packaged foods that are not time/temperature control for safety foods.

Sec. 3. A producer of food described in subdivision (7) of section 81-2,245.01 shall register with the department prior to conducting any sales of food. The registration shall be made on forms prescribed by the department and include (1) the name, address, and telephone number of the producer, (2) the type of food safety and handling education or training course taken and the date of its successful completion, and (3) proof of private well water testing pursuant to subdivision (7)(f) of section 81-2,245.01, if applicable. This section shall not apply to a producer of food selling directly to the consumer at a farmers market.

Sec. 4. Original sections 81-2,239 and 81-2,245.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

# **COMPLAINT EXHIBIT B**

**Cottage Food Ordinance**

## 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.

1           **Food catering** shall mean an operation that transports ready to eat food to another location from  
2 an approved food establishment. Food catering includes both an operation that only delivers food and an  
3 operation that delivers and serves food.

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

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

19 The term **food establishment** shall not include:

- 20                   (1)     An establishment which is not a commercial food establishment and which sells  
21 only commercially prepackaged foods that are not potentially hazardous;
- 22                   (2)     A produce stand that only offers whole, uncut fresh fruits and vegetables;
- 23                   (3)     A private home where food is prepared or served for personal use, a child care, or  
24 a lodging facility where no more than ten paying guests eat meals in the home;
- 25                   (4)     A location where food prepared by a caterer is served so long as the caterer only  
26 minimally handles the food at the serving location.

1           **Food handler permit** shall mean a serve/clean food handler and/or a prep/cook food handler  
2 permit.

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

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

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

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

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

12          **Nonprofit organization** shall mean:

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

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

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

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

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

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

26          **Regulatory authority** shall mean the Lincoln-Lancaster County Health Department when referring  
27 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;

(4) The signature of the applicant or applicants; and

(5) 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 compliance~~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

1 establishment.

2 (iv) Event Market.

3 (v) Farmers<sup>2</sup> Market.

4 (5) Cottage Food Operation.

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

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

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

14 **8.20.160 Late Fees.**

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

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

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

24 (d) A cottage food operation permit holder who fails to renew the permit before it expires and  
25 fails to renew the permit within thirty days from the date of expiration shall pay a late fee of 200% of the  
26 annual fee in addition to the annual fee.

(e) 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:

1 8.20.191 Cottage Food Operation or Farmers Market Vendor; Food Handler Permit  
2 Requirements.

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

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

8 **8.20.260 Enforcement; Inspections.**

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

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

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

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

18 (e) The report shall:

19 (1) Set forth the specific conditions found,  
20 (2) Establish a specific and reasonable period of time for correction of the unsanitary  
21 conditions found, if any,

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

24 (4) State that the permit holder or Person in Charge may request a hearing before the  
25 Health Director upon such inspection findings and warning by filing a written request with the Health  
26 Director.



(f) 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 ~~food establishment~~ 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

1 in serious violation of the Lincoln Food Code and is thereby causing an immediate and substantial hazard  
2 to the public health.

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

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

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

9 **8.20.320 Notice; Service.**

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

12 (1) By personal service to:

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

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

16 (2) ~~Or b~~By certified mail, postage prepaid, return receipt requested to the permit  
17 holder's last known address.

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

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

23 Section 19. That Sections 8.20.020, 8.20.030, 8.20.080, 8.20.090, 8.20.100, 8.20.110,  
24 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  
25 Municipal Code as hitherto existing be and the same are hereby repealed.

26 Section 20. This ordinance shall be published, within fifteen days after the passage hereof,  
27 in one issue of a daily or weekly newspaper of general circulation in the City, or posted on the official

1 bulletin board of the City, located on the wall across from the City Clerk's office at 555 S. 10<sup>th</sup> Street, in  
2 lieu and in place of the foregoing newspaper publication with notice of passage and such posting to be given  
3 by publication one time in the official newspaper by the City Clerk. This ordinance shall take effect and  
4 be in force from and after its passage and publication or after its posting and notice of such posting given  
5 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

# **COMPLAINT EXHIBIT C**

**LLCHD Contract with  
Department of Agriculture**



# EXECUTIVE ORDER

NO. -- 093317

BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, Nebraska, the statutes of the State of Nebraska, and the Interlocal Agreement establishing the Lincoln-Lancaster County Health Department:

The attached Agreement between the City of Lincoln on behalf of the Lincoln-Lancaster County Health Department and the Nebraska Department of Agriculture for the Food Inspection Program for July 1, 2019 to June 30, 2020 is hereby approved and I have executed the same on behalf of the City of Lincoln.

The City Clerk is directed to return two copies of said agreement to the Lincoln-Lancaster County Health Department, attention Elaine Walsh.

Dated this 18<sup>th</sup> day of June, 2019.

Leirion Gaylor Baird, Mayor of Lincoln

Approved as to Form & Legality:

Law Department

Approved:

Interim Health Director

Finance Director

**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**LINCOLN/LANCASTER COUNTY HEALTH DEPARTMENT**

**#18-03-001**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter "Department") and the Lincoln/Lancaster County Health Department (hereafter, "LLCHD").

**PURPOSE:** The purpose of this Agreement is to conduct a cooperative program of inspection and regulation of Food Establishments (hereafter, "Establishments").

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Pure Food Act, Neb. Rev. Stat. §§81-2,239 to 81,292 (hereafter, Act). The provisions of the Act are to apply to all activities conducted under the terms of this Agreement. Those provisions are hereby incorporated into this Agreement by this reference thereto, as if they were fully set forth herein.

**SUPPLEMENTAL PROVISIONS:** Supplemental technical provisions are described and set forth in Attachment A which is attached and incorporated into this Agreement (hereafter, Attachment A).

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**A. DESCRIPTION OF WORK**

1. LLCHD agrees to:
  - a. Be responsible for the inspection and regulation, in conformance with the Act and this Agreement, of all food establishments located within Lancaster County (hereafter, Jurisdiction Area);
  - b. Perform the regulatory activities described in Attachment A;
  - c. Notify the Department immediately of the existence of any case of suspected foodborne illness which may have been caused by conditions regulated by the provisions of the Act



and of any food recalls in effect in Jurisdiction Area, regardless of who initiates the recall. When requested, LLCHD shall assist the Department in gathering information concerning recalls including follow-up research and investigation to ensure the recall product is not entering the food chain;

- d. Only allow Establishments which have complied with the permit requirements described in Attachment A to operate in Jurisdiction Area;
  - e. Maintain a satisfactory regulatory program as set forth in Attachment A;
  - f. Inspect all Establishments at a frequency allowed by the Act;
  - g. Provide the Department with current information relative to the status of all Establishments located within Jurisdiction Area. This information will be needed to enable the Department to maintain the Establishment listing in a current and accurate condition;
  - h. Provide the Department inspection reports as set forth in Attachment A; and
  - i. Report back to the Department regarding the findings and dispositions of complaints referred to LLCHD by the Department.
2. The Department agrees to:
- a. Retain the regulatory functions as described in Attachment A;
  - b. Notify LLCHD of any food recalls in effect in its Jurisdiction Area, regardless of who initiates the recall, and forward to LLCHD information on national recalls when the Department is notified of such a recall by another state or a federal agency;
  - c. Provide LLCHD with a listing of Establishments in its Jurisdiction Area. The listing shall contain current information regarding the licensing, sanitation, and general regulatory status of the Establishments;
  - d. Upon the request of LLCHD, supply LLCHD with all of the

report forms needed to conduct inspections; and

- e. Refer to LLCHD any complaints regarding conditions at Establishments in its Jurisdiction Area.

**B. ALLOWABLE COSTS and PAYMENTS**

1. The Department shall reimburse LLCHD for inspecting and regulating Establishments which are not required to pay local license or inspection fees to LLCHD. The types of Establishments which are not required to pay LLCHD inspection fees are listed in Attachment B. The Department agrees to pay LLCHD an amount equal to 80 percent of the inspection and late fees paid to the Department under the Act by these Establishments. Additionally, the Department agrees to pay LLCHD in an amount equal to 80 percent of the fees collected from Establishments for failing to apply for a permit prior to beginning operation. The Department further agrees to reimburse LLCHD for expenses associated with any training that is deemed necessary and provided by the Department in accordance with the policies of the Department;
2. The Department agrees to pay LLCHD within thirty (30) days following January 1, 2020 for the period July 1 to December 31, 2019 and within thirty (30) days following June 30, 2020 for the period January 1 to June 30, 2020. The amount of payment shall be based upon the fees paid to the Department during those time periods;
3. The source of funding to the Department for this Agreement is the Pure Food Cash Fund. Payment is contingent upon this funding availability;
4. LLCHD agrees not to seek reimbursement for inspecting and regulating Establishments which are required to pay local license or inspection fees to LLCHD; and
5. LLCHD agrees funds provided under this Agreement shall be used only for the purposes enumerated herein and any funds not fully utilized and earned pursuant to this Agreement during the Agreement period nor properly supported by the documentation required shall be returned to the Department.

C. AGREEMENT PERIOD:

The term of this Agreement is from July 1, 2019, to June 30, 2020, unless sooner terminated.

D. AGREEMENT PROVISIONS

1. Termination:

- a. The Department may immediately terminate this Agreement, in whole or in part, if LLCHD fails to perform its obligations under this Agreement in a timely and proper manner. The Department may, at its discretion, allow LLCHD to cure a failure or breach within the Department's specified period of time. Allowing LLCHD time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different time. In case of default of LLCHD, the Department may contract from other sources and hold LLCHD responsible for any excess cost occasioned thereby.
- b. This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to LLCHD, except that the Department agrees to pay LLCHD for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by LLCHD's termination.

2. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.

3. Relationship of Parties: The relationship of the Department and LLCHD under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and LLCHD that LLCHD is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.

4. Assignable: This Agreement is not assignable without the express written approval of the Department.
5. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
6. Indemnification:
  - a. General. LLCHD, to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter "the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses (hereafter "claim"), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of LLCHD, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement. The City of Lincoln does not waive its governmental immunity and preserves any and all defenses available to it;
  - b. Personnel. LLCHD shall, to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by LLCHD.
7. Authority to Enter Agreement: LLCHD warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind LLCHD accordingly.
8. Severability: If any term or condition of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not

be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be invalid.

9. Penalty for Breach: In the event that LLCHD fails to perform any substantial obligation under this Agreement, the Department may withhold all monies due and payable to LLCHD, without penalty, until such failure is cured or otherwise adjudicated.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. Records Available: The books of account, files, and other records of LLCHD which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of LLCHD. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, LLCHD shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.
2. Auditing Standard: The Department, under the Office of Management and Budget's Uniform Guidance, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include LLCHD providing recent audit reports to evaluate prior audit experiences and audit findings; the Department reviewing the subrecipient control environment; the Department requiring additional oversight reports; and LLCHD providing copies of invoices detailing how the Department funds were expended.

#### F. COMPLIANCE PROVISIONS

1. Nondiscrimination:
  - a. LLCHD, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for

employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. LLCHD guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. LLCHD shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

- b. It is further understood and agreed, that if LLCHD is in violation of this clause, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: LLCHD and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.
4. Drug Free: LLCHD, and any and all subcontractors, shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:
  - a. A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in the LLCHD's workplace;
  - b. The specific actions that will be taken against employees for violating the policy; and
  - c. A requirement that each employee receive a copy of the policy.
5. Immigration Verification: LLCHD, and any and all subcontractors, shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as E-Verify Program, or an equivalent federal program designated

by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of newly hired employees.

6. Early State Agreement Termination or Certification Regarding Debarment: LLCHD certifies that LLCHD is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). LLCHD further certifies that LLCHD has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If LLCHD has had an agreement terminated early by the State of Nebraska, LLCHD shall provide the agreement number, along with an explanation of why the agreement was terminated early. LLCHD also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. LLCHD shall immediately notify the Department if, during the term of this Agreement, the LLCHD becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing LLCHD written notice if LLCHD becomes debarred or if LLCHD has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement.

DEPARTMENT OF AGRICULTURE

5/10/19  
Date

Steve Wellman  
for Steve Wellman, Director

City of Lincoln

June 18, 2019  
Date

Leirion Gaylor Baird  
Leirion Gaylor Baird, Mayor

ATTACHMENT A  
Supplemental Technical Provisions

**Regulatory Activities/Functions**

- A. The regulatory activities which LLCHD is authorized to perform shall include the following:
1. The regulation of Establishments in the manner set out in the applicable portions of the Act.
  2. The detection of adulteration violations.
  3. The detection of misbranding violations.
  4. The detection of deceptive packaging violations.
  5. The detection of false advertising violations.
  6. The performance of inspections including Active Managerial Control (AMC) inspections.
  7. The taking of samples.
  8. The checking of records.
  9. The photocopying of documents.
  10. The photographing of conditions.
  11. The preparation, handling, and filing of reports and records.
  12. The issuance of warning letters.
  13. The issuance and enforcement of stop-sale, stop-use, or removal orders.
  14. The performance of any other related activities authorized or required by the Act.
- B. The regulatory functions which the Department will retain and for which LLCHD shall not be responsible are as follows:
1. The issuance, suspension and revocation of State Department of Agriculture permits and orders of probation.
  2. The performance of laboratory work.
  3. Inspections conducted under the authority of the Department's agreements with the Food and Drug Administration and the United States Department of Agriculture.



### Permit Requirements

- A. LLCHD shall not allow an Establishment to operate within its Jurisdiction Area until the permit required by the Nebraska Pure Food Act has been applied for and approved by LLCHD. LLCHD may verify that the permit has been issued by contacting the Department.
- B. In accordance with Neb. Rev. Stat. §§4-108 through 4-114, LLCHD shall not allow an Establishment operating as a sole proprietorship to operate within its jurisdiction until a United States Citizenship Attestation Form is completed by the applicant and the applicant can verify lawful presence in the United States. Information required is as follows:

United States Citizenship Attestation Form		
For the purpose of complying with <u>Neb. Rev. Stat.</u> §§4-108 through 4-114, I attest as follows:		
<input type="checkbox"/> I am a citizen of the United States.		
or		
<input type="checkbox"/> I am a qualified alien under the federal Immigration and Nationality Act, my immigration status and alien number are as follows: _____. A copy of my USCIS documentation is attached.		
I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete, and accurate, and I understand that this information may be used to verify my lawful presence in the United States.		
_____ Print Name	_____ Signature	_____ Date

### Standardizations

Environmental health specialists performing inspections of establishments regulated under this Agreement shall be standardized in food interpretations at least once every four (4) years as follows.

- A. The environmental health specialists shall be standardized by a Certified Evaluation Officer of the Department, a Food and Drug Administration (FDA) Certified Field Food Specialist, or by a Lincoln/Lancaster County Health Department Standardization Officer who is standardized annually by a Certified Evaluation Officer.
- B. The standardization shall be in accordance with the FDA Procedures for standardization of Retail Food Safety Inspection Officers Procedures Manual.

### **Inspections**

- A. Reports. Records of all electronic inspection reports prepared by LLCHD shall be sent to the Department, so the information can be entered into the State database for use in producing the establishment listing and other information tables. The electronic transfer of inspection records is to be sent to the Department on a monthly basis.
- B. Frequency. Inspection frequency shall meet the requirements of the Act. For AMC inspections, a written risk-based inspection schedule will be uniformly followed throughout the jurisdiction.

### **Sanitation Level**

It shall be the responsibility of the LLCHD to maintain a satisfactory Retail Food Protection Program sanitation level as required by the Act.

### **Evaluations**

LLCHD's regulatory program shall be evaluated by the Department each year based upon LLCHD's compliance with two of the FDA Retail Food Program Standards. The two standards to be used for the year shall be mutually agreed upon by the Department and LLCHD.

## Attachment B Inspection Fees

This Chart applies to Establishments within the city of Lincoln and a three-mile radius.  
(No Establishment outside of the three-mile radius pays inspection fees to LLCHD.)

Facility Type	Party to which Establishments Required to Pay Inspection Fees	Reimbursement to LLCHD
01 Restaurants	LLCHD	No reimbursement
02 Egg Handlers	NDA	80% reimbursement
03 Retail	NDA	80% reimbursement
04 Temporary	LLCHD	No reimbursement
05 Bakery	LLCHD	No reimbursement
08 Food Vending	LLCHD	No reimbursement
Vending not primary	NDA	80% reimbursement
09 Mobile Unit	LLCHD	No reimbursement
11 Convenience	NDA	80% reimbursement
12 Lic. Beverage	LLCHD	No reimbursement
13 Pushcart	LLCHD	No reimbursement.
14 Ltd. Food Serv.	LLCHD	No reimbursement
15 Commissary	LLCHD	No reimbursement
16 Caterer	LLCHD	No reimbursement
17 Itinerant Vendor	NDA	80% reimbursement

# **COMPLAINT EXHIBIT D**

**Daniel Letter to LLCHD  
January 7, 2020**

TO: Board of Health

FROM: Justin L. Daniel, REHS, CP-FS, Environmental Health Supervisor  
Food Safety Program

DATE: January 7, 2020

SUBJECT: Proposed Changes to Lincoln Municipal Code 8.20 Lincoln Food Code to Allow  
for the Regulation of Cottage Food Operations

In 2019, the Nebraska Legislature passed LB 304 which modified the Nebraska Food Code to allow the sale of food made in private homes directly to the public. This legislation has commonly been referred to as the cottage food law. The Lincoln-Lancaster County Health Department (LLCHD) is proposing to update the Lincoln Food Code to allow Cottage Food Operations in the City of Lincoln and the 3-Mile jurisdiction.

A Cottage Food Operation is defined as a person who produces cottage food products only in the kitchen of that person's primary domestic residence and only for sale directly to the consumer.

The proposed update on Cottage Food Operations sets standards that protect the public's health while allowing for economic opportunity. These standards include the issuance of a permit, the adoption of specific health and sanitation standards, and the authority for the Health Department to inspect the Cottage Food Operation or farmers market vendor for the purpose of determining compliance with regulatory requirements. The State legislation did not include issuing permits, health and sanitation standards, or authority for inspection. State legislation did include training requirements and water testing. Proposed local ordinance changes address these two aspects of public health protection with more specificity. Staff believe these additional regulations and standards will ensure a higher level of public health protection.

LLCHD held two public meetings during the month of December for public input. As a result, the cottage food operations and farmers market vendors will be regulated consistently, including having similar training requirements, permitting and inspections. Per guidance from the City Attorney's Office, the previous version of regulations has been incorporated into Lincoln Municipal Code 8.20 Lincoln Food Code format.

Staff recommends that the BOH approve the proposed changes to LMC 8.20 Lincoln Food Code to allow for the regulation of Cottage Food Operations and take to the City Council.
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#### 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. (Ord. [16707](#) §2; December 5, 1994).

#### 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.

**Residence** shall mean a single-family dwelling or an area within a rental unit 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.

**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.

**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. (Ord. [19225](#) §1; March 23, 2009; prior Ord. [18253](#) §1; October 6, 2003; Ord. [17515](#) § 1; June 7, 1999; Ord. [17476](#) §1; March 1, 1999; Ord. [16707](#) §3; December 5, 1994).

#### **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. (Ord. [16707](#) §8; December 5, 1994).



**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;
  4. The signature of the applicant or applicants; and
  5. Such other pertinent information as requested on such forms.

(Ord. 16707 §9; December 5, 1994).

**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 compliance~~ 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 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. A cottage food operation shall comply with LMC 27.70.010 Home Occupations and other applicable city ordinances and state laws that apply to conducting a business from one's home residence.
- g-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. (Ord. [19225](#) §5; March 23, 2009: prior Ord. [16707](#) §10; December 5, 1994).

**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 establishment, 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. (Ord. [19925](#) §6; March 23, 2009: prior Ord. [18253](#) §4; October 6, 2003: Ord. [17476](#) §4; March 1, 1999: Ord. [16707](#) §11; December 5, 1994).

**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.

~~4.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.

~~e.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. (Ord. [19225](#) §7; March 23, 2009: prior Ord. [17476](#) §5; March 1, 1999: Ord. [16707](#) §12; December 5, 1994).

#### **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.

#### **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.

**v.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. (Ord. [20074](#) §1; August 18, 2014: prior Ord. [19968](#) §3; December 16, 2013: Ord. [19933](#) §1; October 21, 2013: Ord. [19788](#) §8; October 8, 2012: Ord. [19611](#) §5; September 12, 2011: Ord. [19447](#) §6; September 13, 2010: Ord. [19302](#) §11; September 14, 2009: Ord. [19225](#) §10; March 23, 2009: Ord. [19141](#) §6; September 15, 2008: Ord. [18983](#) §8; August 27, 2007: Ord. [18800](#) §6; Sept. 18, 2006: Ord. [18598](#) §2; Aug. 22, 2005: Ord. [18253](#) §7; Oct. 6, 2003: Ord. [17515](#) § 3; June 7, 1999: Ord. [17476](#) §8; March 1, 1999: Ord. [16707](#) §15; Dec. 5, 1994).

**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.

~~b-e.~~

- ~~e.~~ 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. (Ord. [19141](#) §7; September 15, 2008: prior Ord. [18983](#) §9; August 27, 2007: Ord. [18800](#) §7; September 18, 2006: Ord. [18598](#) §3; August 22, 2005: Ord. [17515](#) § 4; June 7, 1999: Ord. [16707](#) §16; December 5, 1994).

**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.  
(Ord. [19303](#) §1; September 14, 2009: prior Ord. [19225](#) §13; March 23, 2009: Ord. [18253](#) §8; October 6, 2003: Ord. [17476](#) §9; March 1, 1999: Ord. [16707](#) §19; December 5, 1994).

#### **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.

#### **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.
- f. 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. (Ord. [19225](#) §21; March 23, 2009: prior Ord. [17476](#) §14; March 1, 1999: Ord. [16707](#) §26; December 5, 1994).

#### **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 (i.e. eggs);
- 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; and

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.

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

#### **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. (Ord. [19225](#) §23; March 23, 2009; prior Ord. [17476](#) §16; March 1, 1999).



#### 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 ~~food establishment 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. (Ord. [19225](#) §25; March 23, 2009: prior Ord. [16707](#) §28; December 5, 1994).

#### 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. (Ord. [19303](#) §2; September 14, 2009: prior Ord. [19225](#) §27; March 23, 2009: Ord. [16707](#) §30; December 5, 1994).

#### 8.20.320 Notice; Service.

- a. The Health Director may serve notice authorized or required by the Lincoln Food Code as follows:
  - i. 1. By personal service to a permit holder or Person in Charge wherever they may be found; or; or
  - ii. ~~For a temporary food establishment permit, a food permit holder or Person in Charge at the location where the temporary food establishment is located.~~
  2. ~~Or b~~ 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~~ may 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. (Ord. [19225](#) §29; March 23, 2009: prior Ord. [18253](#) §11; October 6, 2003: Ord. [16707](#) §32; December 5, 1994).



**IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA**

CYNTHIA HARPER,

Plaintiff,

v.

The CITY OF LINCOLN; JAMES BOWERS,  
RICHARD MEGINNIS, JANE RAYBOULD,  
TAMMY WARD, SÄNDRA WASHINGTON,  
ROY CHRISTENSEN, and BENNIE SHOBE, in  
their official capacities as members of the  
Lincoln City Council; LEIRION GAYLOR  
BAIRD, in her official capacity as the mayor of  
Lincoln; the LINCOLN-LANCASTER  
COUNTY HEALTH DEPARTMENT; and  
JUSTIN DANIEL, in his official capacity as the  
Environmental Public Health Supervisor for the  
Lincoln-Lancaster County Health Department,

Defendants.

No. \_\_\_\_\_

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**PRAECIPE FOR SUMMONS**

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TO THE CLERK OF THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA:

Please issue summons, to be served by U.S. Postal Service, Certified Mail, return receipt requested, along with a copy of the foregoing Complaint and the accompanying exhibits to the following Defendants:

**1. City of Lincoln**

Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508

**2. James Bowers**

Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508

3. **Richard Meginnis**  
Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508
4. **Jane Raybould**  
Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508
5. **Tammy Ward**  
Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508
6. **Sandra Washington**  
Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508
7. **Roy Christensen**  
Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508
8. **Bennie Shobe**  
Teresa J. Meier, City Clerk  
County-City Building  
555 S 10th St., Rm 111  
Lincoln, NE, 68508
9. **Mayor Leirion Gaylor Baird**  
Teresa J. Meier, City Clerk  
555 South 10th St., Suite 301,  
Lincoln, NE 68508
10. **Lincoln-Lancaster County Health Department**  
Patricia D. Lopez, Interim Health Director  
3131 O St.  
Lincoln, NE, 68510

**11. Justin Daniel, Environmental Public Health Supervisor**

Lincoln-Lancaster County Health Department  
3131 O St.  
Lincoln, NE, 68510

RESPECTFULLY SUBMITTED this 19th day of May, 2020.

By: s/ David A. Lopez  
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