

## CHAPTER 8.20

### LINCOLN FOOD CODE

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**8.20.010 Title.**

Chapter 8.20 of the Lincoln Municipal Code may be cited as the “Lincoln Food Code.” (Ord. 16707 §1; December 5, 1994).

**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;
- (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;
- (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;
- (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.

**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.

**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).

#### **8.20.040 Administration; Publication.**

(a) The Health Director shall be responsible for administration, interpretation, and enforcement of the Lincoln Food Code, but such administration, interpretation, and enforcement shall not conflict with applicable laws or regulations of the United States or the State of Nebraska.

(b) The Health Director shall file the sanitation standards and regulations adopted under the provisions of this chapter and such additional sanitation standards and regulations as may be from time to time adopted hereunder in the office of the City Clerk. The Health Director may publish the Lincoln Food Code in booklet form. One copy of the most current edition of such booklet shall be filed in the office of the City Clerk.

(c) The Health Director shall be responsible for keeping and maintaining all appropriate records related to administration, interpretation and enforcement of the Lincoln Food Code. (Ord. 19225 §2; March 23, 2009: prior Ord. 16707 §4; December 5, 1994).

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

The standards and regulations set forth in *Neb. Rev. Stat.* §§ 81-2,239 to 81-2,292, the Nebraska Pure Food Act, as it existed as of March 8, 2012, "Food Code", are hereby adopted by reference and shall be applicable except where in direct conflict with a specific provision of this chapter or additional sanitation standards and regulations adopted under this chapter. (Ord. 19788 §7; October 8, 2012: prior Ord. 18955 §1; July 9, 2007: Ord. 18253 §2; October 6, 2003: Ord. 17590 §1; January 24, 2000: Ord. 17476 §1; March 1, 1999: Ord. 16707 §5; December 5, 1994).

#### **8.20.060 Additional Sanitation Standards and Regulations; Board of Health.**

(a) The Board of Health, following a public hearing at a regular Board of Health meeting, may adopt standards to reasonably apply the Lincoln Food Code including standards for:

- (1) Temporary food establishments;
- (2) Food catering;
- (3) Employee training;
- (4) Food handler permits;
- (5) Food manager permits;
- (6) Food vendors including food made in the home for sale to the public; or
- (7) Food Equipment.

(b) The Health Director shall implement such additional standards.

(c) The additional standards shall be:

- (1) At least as restrictive as this chapter and all applicable laws and regulations;
- (2) Provide the minimum public health and sanitation requirements; and

(3) Allow the use of equivalent health and sanitation practices if the practices conform to the additional standards.

(d) The Health Director may require that a person who uses equivalent health and sanitation practices submit sufficient evidence to substantiate that the practice is equivalent to the standards. (Ord. 19225 §3; March 23, 2009: prior Ord. 18253 §3; October 6, 2003: Ord. 17515 § 2; June 7, 1999: Ord. 17476 §3; March 1, 1999: Ord. 16707 §6; December 5, 1994).

**8.20.070 Preventing Contamination from Hands.**

Food handlers and food managers shall wash their hands as specified under Section 2-301.12 of the Nebraska Food Code as adopted by Neb. Rev. Stat. §81-2,257.01. Food shall be protected by preventing contamination from hands. Food handlers and food managers shall not have bare hand contact with ready to eat foods unless they are working in a food establishment that has received approval from the Health Director as specified in section (b) below.

(a) If the establishment serves a highly susceptible population, as defined by the Nebraska Food Code, no bare hand contact with ready-to-eat food shall be allowed.

(b) If the establishment does not serve a highly susceptible population, as defined by the Nebraska Food Code, the Health Director may approve bare hand contact of ready-to-eat food within said establishment if the owner of said food establishment provides proof to the Health Director that written policies and procedures have been established and implemented in said food establishment including all of the following:

(1) Documentation is maintained at the establishment that:

(i) All food handlers and food managers have acknowledged that if they have any illness involving gastrointestinal symptoms (vomiting or diarrhea) or have any diseases that are transmittable through food, they must:

(aa) report such symptoms or disease to the person in charge before they begin work;

(bb) cannot have bare hand contact with ready to eat foods for 48 hours after the cessation of symptoms; and

(cc) comply with exclusion and restriction requirements specified in the Nebraska Food Code Sections 2-201.12 and 2-201.13.

(ii) The owner acknowledges the responsibility to provide training and supervision and to ensure that no employee that has had vomiting or diarrhea in the prior 48 hours will be allowed to have bare hand contact with ready-to-eat foods during this time; and

(2) Every time a Food Handler or Food Manager enters a food establishment kitchen or food preparation area, and at times specified in Nebraska Food Code 2-301.14 prior to bare hand contact with ready-to-eat food, a double wash is required with the addition of one or more of the following control measures:

(i) Use of an incentive program such as paid leave that assists or encourages food handlers not to work when they are ill,

(ii) Use of an approved hand sanitizer,

(iii) Use of an individual or single use disposable nail brush, or

(iv) Use of other control measures approved by the Health Director.

(c) Bare hand contact of ready-to-eat food without meeting all the requirements of (b) above may be allowed when:

(1) Washing fruits and vegetables,

- (2) Handling ready-to-eat food at the time it is added as an ingredient prior to being cooked to the minimum temperatures specified in the Nebraska Food Code, and
- (3) Garnishing beverages.
- (d) Failure to comply with the written policies and procedures submitted to the Health Director pursuant to section b) above may result in Health Director taking action to rescind approval for bare hand contact of ready-to-eat foods by food handlers and food managers within said food establishment. (Ord. 20319 §1; April 18, 2016).

**8.20.080 Food Establishment; Permits Required.**

It shall be unlawful for any person to operate a food establishment without first obtaining a permit from the Health Director. The operation of a food establishment 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 Permits, Application.**

- (a) An application for a permit to operate a food establishment 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 Permits; Issuance.**

- (a) Upon receipt of an application and the applicable permit fee for a food establishment permit, the Health Director shall make an inspection to determine if the proposed food establishment complies with the Lincoln Food Code.
- (b) The Health Director shall complete the inspection and issue or deny the food establishment permit within a reasonable time not to exceed thirty days.
- (c) The Health Director shall issue a food establishment permit if the Health Director determines that the applicant complies with the Lincoln Food Code.
- (d) A food establishment 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 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 regulated under the Lincoln Food Code shall comply with all other applicable city ordinances relating to facility design, construction and operation. (Ord. 19225 §5; March 23, 2009; prior Ord. 16707 §10; December 5, 1994).

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

(a) All food establishment 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 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;
- (5) Convenience store;
- (6) Itinerant food vendor; and
- (7) 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) A food establishment 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).

**8.20.130 Temporary Food Establishment Permit; Types; Permit Conditions.**

(a) A single-event temporary food establishment permit shall only be valid for the time stated on the permit, and in no case longer than fourteen consecutive days.

(b) A farmers' market temporary food establishment permit shall be valid only for the time stated on the permit, and in no case longer than one year, and the farmers' market must operate as follows:

- (1) A food permit holder shall provide supervision and direction to vendors;
- (2) The food permit holder is responsible for the group of vendors named on the permit;
- (3) Food sales shall be limited to:
  - (i) Fresh fruits and vegetables allowed by the Nebraska Department of Agriculture; or
  - (ii) Other food the Health Director has expressly approved in writing on the temporary food establishment permit, if the food:
    - A. Is labeled to truthfully identify the food and the name and address of the vendor; and
    - B. Is packaged for sale before it is transported to the market site; and

(4) The Health Director may change the group members of an approved farmers' market temporary food establishment permit upon the request of the food permit holder.

(c) An event market temporary food establishment permit shall be valid only for the time stated on the permit, and in no case longer than fourteen days, and the event market must operate as follows:

- (1) A food permit holder shall provide supervision and direction to vendors;
- (2) The food permit holder is responsible for the group of vendors named on the permit; and
- (3) The Health Director may change the group members of an approved event market temporary food establishment permit upon the request of the food permit holder.

(d) The applicable permit conditions shall be set forth in writing on the temporary food establishment permit. (Ord. 19225 §8; March 23, 2009: prior Ord. 18253 §5; October 6, 2003: Ord. 17476 § 6; March 1, 1999: Ord. 16707 §13; December 5, 1994).

**8.20.140 Food Catering, Temporary Food Establishment, Pushcarts, and Mobile Food Unit; Permit Conditions.**

(a) Unless otherwise provided within the Lincoln Food Code, food catering services, temporary food establishments, pushcarts, and mobile food units shall comply with all the requirements for a food establishment.

(b) In addition, food catering, temporary food establishments, pushcarts, and mobile food units shall:

- (1) Transport food so that the food is protected from contamination;
- (2) Properly maintain adequate food temperatures of potentially hazardous food so bacterial growth is kept to a minimum during transport and during service at the destination; and
- (3) Limit food handling in delivery and on site service to only those employees properly permitted as a food manager or a food handler under the Lincoln Food Code.

(c) A food establishment catering permit does not allow the catering permit holder to sell food as a vendor. (Ord. 19225 §9; March 23, 2009: prior Ord. 18253 §6; October 6, 2003: Ord. 17476 §7; March 1, 1999: Ord. 16707 §14; December 5, 1994).

### **8.20.150 Food Establishment; 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 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.

(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 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).

### **8.20.170 Reinstatement Fee.**

Any person eligible for reinstatement as provided within the Lincoln Food Code shall pay a reinstatement fee as the City Council may, by resolution, from time to time establish or revise in addition to any other applicable fees. The Health Director shall not reinstate the permit until the reinstatement fee is paid. (Ord. 20074 §2; August 18, 2014: prior Ord. 19933 §21; October 21, 2013: Ord. 19788 §9; October 8, 2012: Ord. 19225 §11; March 23, 2009: Ord. 19141 §8; September 15, 2008: Ord. 18983 §10; August 27, 2007: Ord. 18800 §8; September 18, 2006: Ord. 18598 §4; August 22, 2005: Ord. 17515 § 5; June 7, 1999: Ord. 16707 §17; 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 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 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 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).

### **8.20.195 Food Handler and Food Manager Permits; Types.**

(a) A serve/clean food handler permit shall be required for any person serving food and/or cleaning at a food establishment. Employee positions shall include, but not be limited to wait staff, dishwasher, or bus staff.

(b) A prep/cook food handler permit shall be required for any person preparing potentially hazardous foods. Employee positions shall include, but not be limited to salad prep or cook staff.

(c) A restricted/shift food manager permit shall be required for any person working as a Person In Charge of a food establishment not serving potentially hazardous foods.

(d) A food protection manager permit shall be required for any person working as the Person In Charge of a food establishment serving potentially hazardous foods. (Ord. 19925 §14; March 23, 2009).

**8.20.197 Food Handler and Food Manager Permits: Application and Requirements.**

(a) An application for a food handler or a food manager permit shall be submitted to the Health Director on a form provided by the Health Director. Each application shall include:

- (1) The applicant's full name, date of birth, current mailing address, and telephone;
- (2) The signature of the applicant;
- (3) Verification of successfully completing the required food handler training course applicable to the permit; and
- (4) Such other pertinent information as requested on such form.

(b) Before a food handler or a food manager permit application can be approved, the applicant shall successfully complete a training and testing program as required by the Lincoln Food Code. (Ord. 19925 §15; March 23, 2009).

**8.20.210 Food Handler Permit and Food Manager Permit; Issuance.**

(a) Upon receipt of an application and the applicable permit fee for a food handler or food manager permit, the Health Director shall review the application to determine compliance with the provisions of the Lincoln Food Code.

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

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

(d) A food handler or food manager permit is not transferable from one person to another person. (Ord. 19225 §17; March 23, 2009; prior Ord. 16707 §21; December 5, 1994).

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

(a) All food handler permits shall be valid for two years after the date of issuance.

(b) A restricted/shift food manager permit shall be valid for two years after the date of issuance.

(c) A food protection manager permit shall be valid for three years after the date of issuance.

(d) Failure to comply with the food handler permit or food manager permit requirements as required by the Lincoln Food Code may be grounds for suspension of the related food establishment permit. (Ord. 19225 §18; March 23, 2009; prior Ord. 18253 §9; October 6, 2003; Ord. 17515 §6; June 7, 1999; Ord. 16707 §22; December 5, 1994).

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

(a) The City Council may, by resolution, from time to time establish or revise fees to be paid by any applicant for the following:

- (1) Food Handler Permit.
- (2) Restricted/Shift Food Manager Permit.
- (3) Food Protection Manager Permit.

(b) Fees shall be payable to the Health Department 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 §3; August 18, 2014; prior Ord. 19225 §19; March 23, 2009; Ord. 18598 §5; August 22, 2005; Ord. 18430 §1; August 23, 2004; Ord. 18253 §10; October 6, 2003; Ord. 17515 §7; June 7, 1999; Ord. 16707 §23; December 5, 1994).

#### **8.20.245 Diagnosed or ill Food Employees; Duty to Notify Health Director**

The Person In Charge shall notify the Health Director as soon as possible, but not to exceed two hours, after the time they know of a food employee who is diagnosed or is suspected of having an illness due to Salmonella, Shigella, Norovirus, Enterohemorrhagic or Shiga Toxin-producing Escherichia coli, Hepatitis A virus, Campylobacter, Listeria, Yersinia, Clostridium Perfringens, or Bacillus Cereus. (Ord. 19225 §20; March 23, 2009; prior Ord. 17476 §12; March 1, 1999).

#### **8.20.260 Enforcement; Inspections.**

(a) The Health Director shall inspect food establishments 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.

(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 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).

#### **8.20.262 Food Establishment, Food Processing Plant, or Salvage Operation; Construction, Conversion, or Remodeling; Plans and Specifications; Requirements.**

(a) No food establishment shall be constructed, converted, or remodeled except in accordance with plans and specifications approved by the Health Director.

(b) Prior to construction of, conversion to, or remodeling of a food establishment, properly prepared plans and specifications for such construction, conversion, or remodeling shall be submitted to the Health Director for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, type and model of proposed fixed equipment and facilities, and description of the type of food to be served or sold.

(c) The Health Director shall review and approve the plans and specifications according to the requirements of the Lincoln Food Code.

(d) Information submitted for review that the applicant designates as “confidential” and that is not submitted to other city departments or otherwise a public record under applicable law shall be treated by the Health Director as records that contain material that may be exempt from disclosure under *Neb. Rev. Stat. § 84-712.05(3)*, because disclosure could reasonably be expected to give advantage to business competitors and serve no public purpose. The Health Director’s acceptance of such information shall neither constitute, nor be construed as an agreement or acquiescence by the Health Director that the designation is necessary, appropriate, or justified in any way. If any party requests the Health Director to disclose the information or brings suit seeking to compel disclosure of the information, the Health Director’s sole obligation hereunder is to notify the applicant of the request. (Ord. 19225 §22; March 23, 2009; prior Ord. 17476 §15; March 1, 1999).

#### **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; (ii) type of food establishment; (iii) inspection date; (iv) status of required food manager and food handler permits.
- (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 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).

#### **8.20.270 Examination and Condemnation of Food; Hold Orders.....**

(a) The Health Director may examine food as necessary to determine compliance with the Lincoln Food Code.

(b) If the Health Director finds that food is being manufactured, processed, distributed, offered for sale, or sold without a required permit or in violation of the adulteration, misbranding, deceptive packaging, or false advertising provisions, the Health Director may issue and enforce a written stop-sale, stop-use, hold or removal order to the Person In Charge of such food if the order is necessary for the protection of the public health, safety, or welfare.

(c) The order shall specifically describe the nature of the violation found and the actions needed to be taken to bring the food into compliance with the Lincoln Food Code. The order shall clearly advise the Person In Charge of the food that he or she may request an immediate hearing before the Health Director on the matter. If the order directs the involuntary and immediate disposal or destruction of any food, the Person In Charge of such food shall be afforded an opportunity to be heard on the matter and an opportunity to appeal any order of the Health Director prior to the disposal or destruction; however, if the Health Director determines that no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstance, the Health Director may issue an order against articles of food that are

perishable, even if the practical result of the order is to bring about the involuntary disposal of such food.

(d) Unless specifically provided herein, actions for reinstatement, hearing, or appeal shall not stay or delay the suspension or other orders as provided in this section in any manner.

(e) No person shall knowingly use, sell, move, transfer, relabel, alter, or give away food subject to the order without the written permission of the Health Director.

(f) No person, other than the Health Director, shall remove, alter, deface, or conceal a tag or notice without the written permission of the Health Director. (Ord. 19225 §24; March 23, 2009; prior Ord. 17476 § 17; March 1, 1999; prior Ord. 16707 §27; December 5, 1994).

#### **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 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).

#### **8.20.290 Enforcement Hearings.**

(a) Unless the Lincoln Food Code provides otherwise, the Health Director shall conduct hearings allowed or required under the Lincoln Food Code as soon as practicable, but in no event later than:

(1) Three days after a request for hearing after a suspension or revocation; or

(2) Fourteen days after any other request.

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

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

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

(2) Introduce documentary and physical evidence;

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

(4) Rebut evidence.

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

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

(f) The Health Director's decision shall be final and binding upon the City and upon the person making the request. The Health Director's decision may be appealed to district court as provided by law. (Ord. 19225 §26; March 23, 2009; prior Ord. 16707 §29; 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).

### **8.20.310 Application for Reinstatement After Suspension.**

(a) Any person whose permit has been suspended may apply for reinstatement of such permit. The application shall provide the same information as for a new permit and shall also include a statement signed by the applicant that the conditions causing suspension of the permit have been corrected.

(b) The Health Director shall inspect or review the application as for a new permit except that the Health Director shall make the inspection within three days after receiving the application for reinstatement.

(c) The Health Director shall reissue the permit if the conditions causing suspension of the permit have been corrected and payment of the reinstatement fee has been received.

(d) Actions for reinstatement, hearing, or appeal shall not stay or delay the suspension provided in this section in any manner. (Ord. 19303 §3; September 14, 2009: prior Ord. 19225 §28; March 23, 2009: Ord. 17515 § 8; June 7, 1999: Ord. 17476 §18; March 1, 1999: Ord. 16707 §31; 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:

(1) By personal service to:

(i) A permit holder or Person in Charge; or

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

(2) Or 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 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).

**8.20.330 Appeals.**

(a) If the Health Director denies any application or fails or refuses to issue a permit under this chapter within forty-five days from the date of application, such decision may be appealed to district court as provided by state law.

(b) Any person aggrieved by any final decision of the Health Director in the administration or enforcement of this chapter may appeal such decision to the district court as provided by state law. (Ord. 16707 §33; December 5, 1994).

**8.20.340 Penalty.**

Any person who is found to have violated any provision of the Lincoln Food Code adopted hereunder shall be subject to a fine of no more than \$500.00, or imprisonment in the county jail for a period not to exceed six months, or both such fine and imprisonment. Each day that a violation of the Lincoln Food Code continues is punishable as a separate and distinct offense. Said penalty shall not be exclusive and in addition to prosecution of any violation, the City Attorney may also institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance resulting from violations of the Lincoln Food Code. (Ord. 19225 §30; March 23, 2009; prior Ord. 16707 §34; December 5, 1994).