

CITY of ALBUQUERQUE

NINETEENTH COUNCIL

COUNCIL BILL NO. O-10-18 ENACTMENT NO. _____

SPONSORED BY: Trudy Jones

1 **ORDINANCE**

2 **REPEALING §§ 9-6-1-3 THROUGH 9-6-1-8 OF THE FOOD SANITATION**
3 **ORDINANCE; ADOPTING BY REFERENCE THE 2009 EDITION OF THE “FOOD**
4 **CODE” AS RECOMMENDED BY THE FOOD AND DRUG ADMINISTRATION;**
5 **REPEALING § 9-6-1-12 AND REPLACING IT WITH A NEW SECTION**
6 **GOVERNING INSPECTIONS OF FOOD ESTABLISHMENTS; REPEALING § 9-6-**
7 **1-13 AND REPLACING WITH A SECTION GOVERNING COMPLIANCE**
8 **PROCEDURES; REPEALING § 9-6-1-18 AND REPLACING WITH A NEW**
9 **SECTION GOVERNING FEES UNDER THE FOOD SANITATION ORDINANCE.**

10 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
11 **ALBUQUERQUE:**

12 **SECTION 1. Sections 9-6-1-3 through 9-6-1-8 are repealed and renumber all**
13 **subsequent sections accordingly.**

14 **SECTION 2. Section 9-6-1-12 ROA 1994, is repealed and replaced with:**

15 **§ 9-6-1-12 INSPECTION OF FOOD SERVICE OR FOOD PROCESSING**
16 **ESTABLISHMENTS.**

17 **(A) Inspection Frequency. The Enforcement Authority shall determine**
18 **the frequency of inspections according to past compliance record of a food**
19 **establishment and the risk presented to consumers by the menu items**
20 **provided by the specific food establishment. The Enforcement Authority shall**
21 **inspect each establishment at least twice annually and shall make**
22 **reinspections as often as necessary for the enforcement of §§ 9-6-1-1 et seq.**

23 **(B) Access to Establishments. The Enforcement Authority, after proper**
24 **identification, shall be permitted to enter, at any reasonable time, any food**
25 **establishment within the city, for the purpose of making inspections to**
26 **determine compliance with §§ 9-6-1-1 et seq. The operator or person in charge**

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1 of the establishment shall be given an opportunity to accompany the
2 Enforcement Authority during the inspection. The Enforcement Authority
3 shall be permitted to examine the records of the establishment to obtain
4 pertinent information related to food source and supplies purchased, received
5 or used, and list of persons employed.

6 (C) Report of Inspections. Whenever an inspection of a food
7 establishment is made, the findings shall be recorded on an Enforcement
8 Authority Inspection Form. The Inspection Form Report shall summarize the
9 requirements of §§ 9-6-1-1 et seq. The original copy of the Inspection Form
10 Report shall be furnished to the person in charge of the establishment as soon
11 as possible after the inspection. The inspection form shall be signed by both
12 the Enforcement Authority and the person in charge. The completed
13 Inspection Form Report is a public document that shall be made available for
14 public disclosure at the Enforcement Authority's office to any person who
15 requests it.

16 (D) Correction of Violations.

17 (1) The Inspection Form Report shall specify a specific and
18 reasonable period of time for the correction of the violations found.
19 Correction of the violations shall be accomplished within the period specified.

20 (a) If an imminent health hazard exists, such as complete
21 lack of refrigeration or sewage back-up into the establishment, the
22 establishment shall immediately cease operations. Operations shall not be
23 resumed until authorized by the Enforcement Authority.

24 (b) In the case of temporary food-service establishments,
25 all violations shall be corrected within a time period as specified by the
26 Enforcement Authority. If the violations are not so corrected, the
27 establishment shall immediately cease food-service operation.

28 (c) The Inspection Form Report shall state that failure to
29 comply with any time limits for correction will require that the establishment
30 be downgraded.

31 (d) Whenever a food establishment is required under the
32 provisions of this division (D) to cease operations, it shall not resume
33 operations until such time as a reinspection determines that conditions

1 responsible for the requirements to cease operations no longer exist. A
2 reinspection shall be made within three working days following the day on
3 which it is requested.

4 (E) Service of Notice. Notices provided for under this division shall be
5 deemed to have been properly served when the original of the Inspection
6 Form Report or other written notice has been delivered personally to the
7 permit holder or person in charge, or such notice has been sent by registered
8 or certified mail, return receipt requested, to the last known address of the
9 permit holder. A copy of such notice shall be filed with the records of the
10 Enforcement Authority.

11 (F) Grading of Establishments. Every food establishment in the city
12 shall display, in a conspicuous location designated by the Enforcement
13 Authority, and which is readily visible to the public, a placard stating the grade
14 received at the time of the most recent inspection of the establishment.
15 Grades of establishments shall be as follows:

16 (1) Approved. An establishment that is operated in compliance
17 with the requirements of §§ 9-6-1-1 et seq as determined by the Enforcement
18 Authority.

19 (2) Unsatisfactory. An establishment that is not operated in
20 compliance with the requirements of §§ 9-6-1-1 et seq as determined by the
21 Enforcement Authority. "Unsatisfactory" is a temporary grade with a
22 maximum duration of five working days. The permit holder must take
23 appropriate corrective actions within the five working day period to avoid
24 permit suspension. Upon completion of the corrective actions and within the
25 five working day period, the permit holder may request a reinspection to
26 determine if the appropriate corrective actions result in a grade of
27 "Approved." The Enforcement Authority shall re-inspect within five working
28 days of receipt of a request for reinspection and upgrade the establishment if
29 appropriate. Failure to meet the standards for a grade of Approved within this
30 period of time shall lead to immediate suspension of the establishment's
31 operating permit. The permit holder of an establishment with a suspended
32 permit, upon correcting all existing violations, may request, and provide proof
33 of payment for, a second reinspection to determine compliance with §§ 9-6-1-1

1 et seq. The Enforcement Authority shall reinspect within five working days of
2 receipt of a request for the second reinspection and upgrade the
3 establishment if appropriate. Failure to meet the standards for a grade of
4 Approved within this period of time shall result in the establishment remaining
5 on Permit suspension status, and lead to further enforcement action.
6 Operating an establishment without a Permit or under a suspended Permit is
7 subject to the penalty provisions of §§ 9-6-1-1 et seq. The Enforcement
8 Authority may require the Food Establishment operator, Person in Charge, or
9 other employees to attend approved food safety training.

10 SECTION 3. Section 9-6-13 ROA 1994, is repealed and replaced with:

11 § 9-6-1-13 COMPLIANCE PROCEDURES.

12 (A) Permits. It shall be unlawful for any person to operate a food
13 establishment within the city who does not possess a valid permit issued for
14 that food establishment by the Enforcement Authority. Such permit shall be
15 posted in a conspicuous location, and only such persons who comply with the
16 requirements of §§ 9-6-1-1 et seq. and other applicable laws, regulations, and
17 ordinances shall receive and retain such permit. Permits shall not be
18 transferable from one person to another person or establishment. Permits for
19 temporary food-service establishments shall be issued for a period of time not
20 to exceed two weeks, to a specific person for a specific location and shall be
21 issued only for specific Special Events.

22 (B) Issuance of Permits. The Enforcement Authority shall be contacted
23 at least five working days prior to the anticipated opening date of the
24 establishment for an inspection to determine compliance with the provisions
25 of §§ 9-6-1-1 et seq. When the inspection reveals that the requirements of §§
26 9-6-1-1 et seq. and other applicable laws, regulations and ordinances have
27 been met, a permit application is issued. The applicant must present this
28 application to the City Treasurer within two days. A permit will be issued after
29 compliance.

30 (C) Suspension of Permits.

31 (1) Permits may be suspended by the Enforcement Authority for

32 (a) Failure of the holder to comply with the requirements of §§
33 9-6-1-1 et seq. or of other applicable laws, regulations or ordinances.

1 (b) An establishment's operating permit shall be immediately
2 suspended in lieu of a third downgrading during any 36-month period under
3 the same permit.

4 (c) Whenever a permit holder or operator has failed to comply
5 with corrective actions required by the Enforcement Authority pursuant to the
6 requirements of §§ 9-6-1-1 et seq. or of other applicable laws, regulations or
7 ordinances.

8 (2) The permit holder or operator shall be notified in writing that the
9 permit is immediately suspended. A hearing in accordance with this section
10 shall be granted upon written request to the Enforcement Authority, if request
11 is made within five working days of notice of suspended permit. The hearing
12 shall be scheduled within five working days following receipt of the written
13 request by the Enforcement Authority.

14 (3) Notwithstanding the other provisions of §§ 9-6-1-1 et seq.,
15 whenever the Enforcement Authority finds an imminent health hazard or other
16 conditions in the operation of a food establishment which, in it's judgment,
17 constitute a substantial hazard to the public health, the Enforcement Authority
18 may without any prior warning, notice, or hearing, issue a written notice to the
19 permit holder or operator citing such condition, specifying the corrective
20 action to be taken, and specifying the time period within which action shall be
21 taken; and, if deemed necessary, such order shall state that the permit is
22 immediately suspended and all food-service or food processing operations
23 are to be immediately discontinued. Any person to whom such an order is
24 issued shall comply immediately therewith. An opportunity for a hearing in
25 accordance with this section shall be provided if a written request for a
26 hearing is filed with the Enforcement Authority by the permit holder within five
27 working days of such order. The hearing shall be scheduled within five
28 working days following receipt of the written request by the Enforcement
29 Authority.

30 (D) Reinstatement of Suspended Permits. Any person whose permit has
31 been suspended may at any time make application for a reinspection for the
32 purpose of reinstatement of the permit. Within five working days following
33 receipt of a written request for reinspection, the Enforcement Authority shall

1 make a reinspection. If the Enforcement Authority deems that the permit
2 holder complies with the requirements of §§ 9-6-1-1 et seq. and other
3 applicable laws, regulations, and ordinances, the permit shall be reinstated.

4 (E) Revocation of Permits.

5 (1) A permit may be revoked by the Enforcement Authority for the
6 following:

7 (a) For failure of an establishment which has received a Grade
8 of "Unsatisfactory" to meet the requirements of an "Approved" Grade within
9 the required time period.

10 (b) For the fourth downgrading or the second suspension in
11 lieu of downgrading within any 36-month period under the same permit.

12 (c) For refusal of entry to the establishment after proper
13 identification has been tendered by the Enforcement Authority.

14 (d) For interference with the Enforcement Authority in the
15 performance of its duties.

16 (2) A permit may be revoked after an opportunity for a hearing in
17 accordance with this section has been provided by the Enforcement Authority.
18 Prior to such action, the Enforcement Authority shall notify the permit holder
19 in writing, stating the reasons for which the permit is subject to revocation
20 and advising that the permit shall be revoked at the end of five working days
21 following service of such notice, unless a written request for a hearing is
22 received by the Enforcement Authority by the permit holder within such five
23 working day period. The hearing shall be scheduled within five working days
24 following receipt of the written request by the Enforcement Authority.

25 (F) Hearings. The hearings provided for in this ordinance shall be
26 conducted by a Hearing Officer at a time and place designated by the Hearing
27 Officer. Based upon the findings of such hearing, the Enforcement Authority
28 shall sustain, modify, or rescind any official notice, order, or other action by
29 the Enforcement Authority considered in the hearing. A written report by the
30 Hearing Officer of their findings shall be furnished to the permit holder by the
31 Enforcement Authority. Any action of the Enforcement Authority for which a
32 hearing is not otherwise provided for in this ordinance, which action adversely

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1 impacts the permit holder, is subject to review under this section if a hearing
2 request is filed with the Enforcement Authority within ten days of the action.

3 (G) Judicial Review. The exclusive remedy or any party dissatisfied with
4 any final decision of the Hearing Officer should file a petition to the District
5 Court within 30 days after receipt of written notice of the decision of the
6 concerned party.

7 (H) Injunctive Relief. As an additional remedy, if any food establishment
8 violates the provisions of §§ 9-6-1-1 et seq., the Enforcement Authority may
9 seek injunctive relief in a court of competent jurisdiction.

10 (I) Issuance of Citations. Citations may be issued by the Enforcement
11 Authority for failure to comply with any requirement set forth in §§ 9-6-1-1 et
12 seq.

13 (J) A nonrefundable hearing fee of \$50.00 shall accompany each
14 application for hearing conducted by the Hearing Officer requested pursuant
15 to this section.

16 SECTION 4. Section 9-6-18 ROA 1994, is repealed and replaced with:
17 § 9-6-1-18 FEES.

18 (A) Adjustment of Fees. Fees charged in relation to the Food Sanitation
19 Ordinance shall be established by rules adopted by the Enforcement
20 Authority. Any such rule shall be adopted under the procedures of Chapter 2,
21 Article 15 ROA 1994.

22 (B) Temporary Fees: The Enforcement Authority is authorized to collect the
23 following fees until such time they are adjusted as outlined in §9-6-1-18 (A).
24 These fees are for the purpose of paying the costs reasonably incurred in
25 administering and enforcing the Food Sanitation Ordinance.

26 (1) Permanent Food Service Establishment. Each permanent
27 food-service establishment shall pay an annual fee of 3/10 of 1% of its gross
28 sales for the previous twelve months, provided that no food-service
29 establishment shall pay an annual fee greater than \$700 nor less than \$200
30 except that:

31 (a) For the first twelve months of operation or portion
32 thereof, the fee shall be \$200.

1 (b) In the case where there is, under single ownership or
2 management, more than one food-service establishment or more than one
3 place within an establishment where food is prepared or served within a single
4 building or structure, and separate inspections are required, as determined by
5 the Enforcement Authority, each such food-service establishment or place
6 shall pay a separate annual fee. The food service location with the higher
7 gross receipts shall be considered the primary establishment for the purposes
8 of §§ 9-6-1-1 et seq. The fee for each additional food service establishment or
9 place shall be \$200.

10 (2) Temporary Food-Service Establishments. Each temporary
11 food-service establishment shall pay a fee of \$25 for each event and each
12 location. The application for a Temporary Food Service Establishment and fee
13 shall be submitted five Working Days prior to the commencing of operation.

14 (3) Food Processing Establishments. Each food processing
15 establishment shall pay an annual fee of 3/10 of 1% of its gross sales for the
16 previous twelve months provided that no food processing establishment shall
17 pay a fee greater than \$700 nor less than \$200 except that:

18 (a) For the first twelve months of operation the fee shall be
19 \$200.

20 (b) In the case where there is, under single ownership or
21 management, more than one food processing establishment or place, or more
22 than one place within an establishment where food is processed, prepared,
23 packaged, stored or distributed within a single building or structure, and
24 separate inspections are required, as determined by the Enforcement
25 Authority, each such food processing establishment or place shall pay a
26 separate annual fee. The food processing establishment location with the
27 higher gross receipts shall be considered the primary establishment for the
28 purposes of §§ 9-6-1-1 et seq. The fee for each additional food processing
29 establishment or place shall be \$200.

30 (4) Limited Facilities. Each limited facility shall pay an annual fee
31 of \$120.

1 (5) Not-for-Profit Facilities. Each food establishment that is not-
2 for-profit or wherein no gross receipts are generated shall pay an annual fee of
3 \$120.

4 (6) Not-For-Profit Distribution Center. Facilities, such as food
5 banks, that have acquired not-for-profit status, which distribute food items
6 directly to consumers, are not assessed an annual fee; however, permits are
7 renewed annually according to anniversary date of the issuance of the permit.

8 (7) Mobile Prepackaged Vendors. Each mobile prepackaged
9 vendor shall pay an annual fee of \$120 for each unit.

10 (8) Mobile restaurants shall pay an annual fee of \$120 for each
11 unit.

12 (9) Fees for Unscheduled Inspections. In addition to the annual
13 fees provided by this section, all persons engaged in the sale or processing of
14 food shall pay reasonable fees and costs when the Enforcement Authority is
15 required to reinspect as the result of an enforcement action.

16 (a) Reinspections. A reinspection fee shall be due and
17 payable whenever:

18 (i) The Enforcement Authority has given written notice
19 of a Food Sanitation Ordinance violation or violations to the permit holder of a
20 food establishment and the notice contains a reinspection date by which the
21 violation or violations must be corrected; and

22 (ii) The violation or violations have not been corrected
23 by the reinspection date provided on the notice of violation; and

24 (iii) An additional re-inspection is necessary to
25 determine that the violation or violations have been corrected.

26 (iv) Enforcement actions may include, but are not
27 limited to, complaint substantiated reinspections, reinspections resulting in a
28 food establishment grading score of "Unsatisfactory", an imminent health
29 hazard, or an epidemiological investigation.

30 (b) Owner Initiated Inspection. A permit holder may request
31 an owner initiated inspection no later than three working days following the
32 receipt of the Food Establishment Grading Score of an initial routine
33 inspection. The Enforcement Authority shall provide a written notice of an

1 additional reinspection fee to cover the cost of conducting the reinspection.
2 This fee shall be paid at City Treasury prior to the time of request of a owner
3 initiated inspection to the Enforcement Authority.

4 (c) Requests for special services and reinspections shall be
5 made on forms provided by the Enforcement Authority.

6 (d) Failure to pay such fee shall result in a permit suspension.

7 (10) Payment of Fees.

8 (a) Annual fees are due on or before the anniversary date of
9 the issuance of the permit each year; provided, however, that no person shall
10 engage in the operations of a food establishment without first paying an
11 annual fee. The first year's fee shall be \$200 except for those which are
12 subject to a fixed fee as provided for in this section. Thereafter, fees based on
13 gross sales will be calculated on the actual gross sales for the previous twelve
14 months. A late charge of 1½% of the annual fee will be assessed for each
15 month or fraction thereof that the annual fee remains unpaid after the due
16 date; provided, however, that the minimum late charge shall be \$15.

17 (b) In the event that any person fails to pay the annual fee
18 by the due date, or remits an amount less than the correct amount of the fee
19 due, the Enforcement Authority shall determine the amount of the fee due
20 using such statement or other available information. The Enforcement
21 Authority shall thereupon give written notice to the permit holder of the
22 amount due, which amount shall be paid within five working days of receipt of
23 such notice. Any party aggrieved by the Enforcement Authority's
24 determination as to the amount due may request a hearing pursuant to
25 Section 9-6-1-13.

26 (c) In the event that the annual fee is not paid within five
27 working days of the Hearing Officer's determination of any requested hearing
28 filed, the Enforcement Authority may suspend the permit and may also take
29 such action as necessary to collect the annual fee, including any late charges,
30 or reinspection fee.

31 (d) The Enforcement Authority is authorized and
32 empowered to make inspections and audits of the books and related records
33 of any permit holder subject to the provisions of §§ 9-6-1-1 et seq.; and every

1 such permit holder shall maintain good and accurate books and related
2 records of the gross sales of business done, which books and records shall
3 be made available for inspection and audit as may be deemed by the
4 Enforcement Authority in the administration of any of the provisions of §§ 9-6-
5 1-1 et seq.

6 (e) Notices provided for under this section shall be deemed
7 to have been properly served when written notice has been delivered
8 personally to the permit holder or person in charge, or such notice has been
9 sent by registered or certified mail, return receipt requested, to the last known
10 address of the permit holder. A copy of such notice shall be filed with the
11 records of the Enforcement Authority.

12 (f) In addition to the remedies provided above, the
13 Enforcement Authority may suspend or revoke any permit issued pursuant to
14 §§ 9-6-1-1 et seq. for failure to pay the annual fee, including any late charges,
15 or reinspection fee.

16 (g) Lien. The city may file a lien against the personal and
17 real property of the permit holder for any delinquent fees and/or penalties.

18 SECTION 5. Section 9-6-1-22 ROA 1994, is repealed and replaced with:

19 “§ 9-6-1-22 ADOPTION BY REFERENCE OF FOOD CODE.

20 Except to the extent that it is inconsistent with the Food Sanitation Ordinance,
21 §§ 9-6-1-1 et seq., The City of Albuquerque does hereby adopt by reference,
22 the Food Code, 2009 Recommendations of the United States Public Health
23 Service/Food and Drug Administration as published by the U.S. Department of
24 Health and Human Services, Public Health Service, Food and Drug
25 Administration to regulate the conduct of all food establishments.”

26 SECTION 6. Chapter 9, Article 6, Part 1, ROA 1994 is amended to add as a new
27 section to read:

28 “§ 9-6-1-23 AVAILABILITY OF ORDINANCE AND FOOD CODE.

29 (A) A copy of the "Food Sanitation Ordinance" i.e., §§ 9-6-1-1 et seq. is now
30 on file in the Office of the City Clerk/Recorder and is available for inspection
31 by the public during regular business hours. A copy of the ordinance i.e., §§ 9-
32 6-1-1 et seq. shall be available to any individual upon request and the payment

1 of a reasonable charge as set by the Chief Administrative Officer, to be not
2 less than the actual cost per copy.

3 (B) A copy of the Food Code, 2009 Recommendations of the United States
4 Public Health Service/Food and Drug Administration as published by the U.S.
5 Department of Health and Human Services, Public Health Service, Food and
6 Drug Administration as adopted by this ordinance are on file in the Office of
7 the City Clerk, and are available for inspection by the public during regular
8 business hours. A copy of the codes shall be available to any individual upon
9 request and the payment of a reasonable charge as set by the Chief
10 Administrative Officer, to be not less than the actual cost per copy."

11 SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
12 clause, word or phrase of this ordinance is for any reason held to be invalid or
13 unenforceable by any court of competent jurisdiction, such decision shall not
14 affect the validity of the remaining provisions of this ordinance. The Council
15 hereby declares that it would have passed this ordinance and each section,
16 paragraph, sentence, clause, word or phrase thereof irrespective of any
17 provision being declared unconstitutional or otherwise invalid.

18 SECTION 8. COMPILATION. This ordinance shall be incorporated in and made
19 part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

20 SECTION 9. EFFECTIVE DATE. This ordinance shall take effect five days after
21 publication by title and general summary.

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