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1 required to safeguard public health and ensure that Food is safe,  
2 unadulterated, and honestly presented for consumption.

3 **§ 9-6-3 DEFINITIONS.**

4 For the purpose of this ordinance, the following definitions shall apply unless  
5 the context clearly indicates or requires a different meaning. Terms include  
6 either the singular or the plural as the case may be.

7 **APPLICANT.** A Person applying for a Permit.

8 **CITY.** The City of Albuquerque.

9 **COMPLIANCE PLAN.** A written agreement between the Permit Holder and the  
10 Enforcement Authority that outlines conditions and corrective actions that  
11 must be met to prevent suspension or revocation of a Food Establishment  
12 Permit.

13 **CLOSED SIGN.** The placard, sticker, or sign placed on a Food Establishment  
14 by the Enforcement Authority after issuing a Grade of Closed as defined in the  
15 Rules.

16 **ENFORCEMENT AUTHORITY.** The Mayor or the Mayor’s designated agent(s).

17 **ENFORCEMENT AUTHORITY** includes references to “Regulatory Authority” in  
18 the U.S. Food and Drug Administration Food Code.

19 **EXPIRATION DATE.** The date listed on a Permit marking the end of the Permit  
20 term.

21 **FOOD.** Any raw, cooked, or processed edible substance, ice, beverage, or  
22 ingredient used or intended for use or for sale in whole or in part for human  
23 consumption, or chewing gum.

24 **FOOD CODE.** Food Code as adopted by the Rules.

25 **FOOD ESTABLISHMENT.** Any place where Food is stored, processed,  
26 packaged, repackaged, or prepared and intended for human consumption.

27 **FOOD ESTABLISHMENT** includes any such place regardless of whether the  
28 consumption is on or off the premises, regardless of its permanence, and  
29 regardless of whether there is a charge for the Food. **FOOD ESTABLISHMENT**  
30 does not include:

- 31 (A) Any place where Food is produced, sold, distributed, or prepared
- 32 and exempt from regulation pursuant to the Homemade Food Act, Chapter 25,
- 33 Article 12 NMSA 1978;

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1 (B) A kitchen in a private home, except the Enforcement Authority may  
2 pursue a warrant for inspection of a kitchen in a private home pursuant to § 9-  
3 6-10(C) of This Ordinance when a private home kitchen is being used as a food  
4 establishment in violation of This Ordinance;

5 (C) Home-delivery vehicle and service including but not limited to pizza  
6 delivery, third party ordering and delivery services, or grocery delivery  
7 services; and

8 (D) A private home that receives catered or home-delivered Food.  
9 GRADE. The score showing the degree of compliance with This Ordinance,  
10 and the Rules, that a Food Establishment receives at the time of the most  
11 recent inspection.

12 IHO ORDINANCE. Independent Office of Hearings Ordinance, Chapter 2,  
13 Article 7, Part 8 ROA 1994.

14 IMMINENT HEALTH HAZARD. Any condition or circumstance which, in the  
15 judgment of the Enforcement Authority, could be immediately injurious to life,  
16 health, or safety; or as defined in the Food Code.

17 PERMIT. The document issued by the Enforcement Authority that authorizes a  
18 Person to operate a Food Establishment.

19 PERMIT HOLDER. The legal entity responsible for the operation of the Food  
20 Establishment such as the owner, owner’s agent, or other Person; or as  
21 defined in the Food Code.

22 PERSON. An individual, partnership, corporation, association, or any other  
23 legal entity.

24 PERSON IN CHARGE. The individual present in a Food Establishment who is  
25 the apparent supervisor of the Food Establishment at the time of inspection. If  
26 no individual is the apparent supervisor, then any employee present is the  
27 Person In Charge.

28 RULE. The Rules promulgated by the Enforcement Authority pursuant to This  
29 Ordinance.

30 TERM. The period of time during which a Food Establishment is authorized to  
31 operate under a Permit.

32 THIS ORDINANCE. The Albuquerque Food Service and Retail Ordinance.

33 VALID. Unexpired, not suspended, and not revoked.

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1 § 9-6-4 APPLICABILITY. The Albuquerque Retail and Food Service Ordinance  
2 applies to all Food Establishments operating for any period of time within the  
3 City. Food Establishment employees and applicants are required to comply  
4 with This Ordinance.

5 § 9-6-5 ENFORCEMENT AUTHORITY PROMULGATION OF RULES. The  
6 Enforcement Authority shall promulgate reasonable rules to carry out the  
7 intent and purpose of This Ordinance. Any such rules shall be adopted under  
8 the procedures of Chapter 2, Article 15 ROA 1994 and at minimum shall:

9 (A) adopt relevant Food safety requirements and equipment standards;

10 (B) establish processes for the condemnation of Food and equipment by  
11 the Enforcement Authority;

12 (C) establish procedures for the application, issuance, renewal,  
13 suspension, reinstatement, and revocation of Permits which regulations shall  
14 provide for prior notice to and a hearing for any applicant or Permit Holder  
15 when the Enforcement Authority's proposed action is to deny an application,  
16 or suspend or revoke a Permit;

17 (D) establish minimum appropriate Permit, penalty, and administrative  
18 fees;

19 (E) establish requirements for inspections of Food Establishments, and  
20 include provisions for inspections at a frequency based on prescribed risk  
21 categories with inspections occurring at least once every eighteen months;  
22 and

23 (F) establish a system of grading Food Establishments, utilizing scoring  
24 rubrics by which each violation of This Ordinance or the Food Code deducts a  
25 predetermined percentage from the overall total score and requiring Food  
26 Establishments to display the Grade as notice of compliance to the public;

27 (G) establish requirements for Food Establishment employees to be  
28 properly trained in Food safety; and

29 (H) place additional requirements or exempting requirements for each  
30 type of Food Establishment Permit to ensure reasonable public safety.

31 § 9-6-6 AVAILABILITY OF ORDINANCE AND FOOD CODE.

32 A copy of This Ordinance and any Rules shall be kept on file in the Office of  
33 the City Clerk, and be available for inspection by the public during regular

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1 business hours. A copy of the following shall be available to any individual  
2 upon request and the payment of a reasonable charge as set by the Chief  
3 Administrative Officer, to be not less than the actual cost per copy. The Rules  
4 shall be made available on the Enforcement Authority’s publicly available  
5 website.

6 **§ 9-6-7 PERMIT REQUIRED FOR FOOD ESTABLISHMENTS; APPLICATION.**

7 **(A) Permit Required.**

8 (1) No Person shall operate a Food Establishment in the City without a  
9 Valid Permit issued by the Enforcement Authority for that Food  
10 Establishment.

11 (2) The Permit Holder shall be responsible for ensuring that the Food  
12 Establishment complies with This Ordinance, the Rules, and other laws.

13 (3) Permit Holders shall not be responsible for the operations of other  
14 Permit Holders and their Food Establishments when they are located on  
15 the same premises.

16 (4) Each Permit Holder shall be responsible for ensuring shared  
17 facilities or equipment on the premises complies with This Ordinance, the  
18 Rules, and other laws.

19 (5) The Permit shall be posted in a conspicuous place on the premises  
20 of the Food Establishment and made available immediately upon request,  
21 for examination by the Enforcement Authority.

22 (6) No property owner shall allow a Food Establishment to operate on  
23 the premises of their property without a Valid Permit.

24 **(B) Pre-inspection Application.**

25 (1) All Applicants shall submit a pre-inspection application within a  
26 reasonable amount of time prior to the anticipated opening date of the  
27 Food Establishment to the Enforcement Authority in a manner consistent  
28 with the Rules.

29 (2) The pre-inspection application shall include all required information  
30 and supporting documentation and be on a paper or electronic form  
31 approved by the Enforcement Authority.

32 **(C) Pre-Opening Inspection of Food Establishment.** Upon receipt of a  
33 complete pre-inspection application, the Enforcement Authority shall

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1 contact the applicant to schedule a pre-opening inspection, if applicable,  
2 within a reasonable amount of time five (5) working days, to determine  
3 compliance with the provisions of This Ordinance.

4 (D) Issuance of Permits. The Enforcement Authority shall issue a Permit  
5 to any Applicant that demonstrates compliance with This Ordinance and  
6 other laws.

7 (E) Term of Permits. Permits are Valid until the Expiration Date.

8 (F) Renewal of Permits. Permits shall be renewed by the Permit Holder  
9 on or before the Expiration Date.

10 (1) Temporary Food Establishment and Market Food Establishment  
11 Permits, as defined in the Rules, are not renewable and a new pre-  
12 inspection application shall be submitted.

13 (G) Non-Transferrable. Permit Holders may not transfer Permits from one  
14 Person to another Person or from one location to another location. When a  
15 change in location or ownership of a Food Establishment occurs, a new  
16 pre-inspection application shall be submitted to and a new Permit shall be  
17 issued by the Enforcement Authority prior to operating as a Food  
18 Establishment.

19 (1) If after a change of location or ownership, a Food Establishment  
20 does not submit a new pre-inspection application prior to operating as a  
21 Food Establishment, a civil penalty ~~will~~may be assessed in addition to the  
22 first year Permit fee.

23 (H) Denial of Permit Issuance. The Enforcement Authority shall refuse to  
24 issue a Permit to any applicant who fails to comply with This Ordinance,  
25 the Rules, or other laws.

26 (1) Notice. Notice of Permit denial shall be provided in accordance with  
27 §9-6-16 of This Ordinance.

28 (2) Hearing. A Permit Holder may appeal the notice of Permit denial by  
29 filing written notice of appeal and requesting a hearing with the City Clerk's  
30 office within fifteen (15) business days of notice in accordance with §9-6-17  
31 of This Ordinance.

32 § 9-6-8 SUSPENSION, REVOCATION, REINSTATEMENT OF PERMITS, AND  
33 COMPLIANCE PLANS.

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1 (A) The Enforcement Authority may immediately suspend a Permit when  
2 the Enforcement Authority finds:

- 3 (1) The Food Establishment fails to comply with the requirements of  
4 This Ordinance, the Rules, or other laws;
- 5 (2) The Food Establishment is violating a condition of any Permit;
- 6 (3) An Imminent Health Hazard at the Food Establishment;
- 7 (4) A Food Establishment has failed to follow any corrective actions  
8 within the timeframe prescribed by the Enforcement Authority;
- 9 (5) A Food Establishment has violated a Safety Plan associated with a  
10 Special Process as they are defined in the Rules;
- 11 (6) A Food Establishment has violated a Compliance Plan;
- 12 (7) A Food Establishment employee has refused to allow the  
13 Enforcement Authority to enter the Food Establishment after proper  
14 identification has been tendered;
- 15 (8) The Enforcement Authority has issued a third notice of civil penalty  
16 to the Food Establishment for the same offense;
- 17 (9) The Enforcement Authority has issued a third Grade of  
18 Unsatisfactory, as defined in the Rules, to a Food Establishment during any  
19 36-month period under the same Permit;
- 20 (10) A commissary is allowing any Person to operate a Food  
21 Establishment on its premises that is not in possession of a Valid Permit;  
22 or
- 23 ~~(11) A Food Establishment is seeking a liquor license from the State of~~  
24 ~~New Mexico in accordance with the Liquor Control Act, § 60-3A-1 et seq.~~  
25 ~~NMSA 1978, and is found to be in operation without first obtaining an~~  
26 ~~inspection and being granted a Grade of Approved.~~ A Food Establishment  
27 that was issued a Permit, with a Variance, while seeking a liquor license  
28 from the State of New Mexico in accordance with the Liquor Control Act, §  
29 60-3A-1 et seq. NMSA 1978, is found to be in operation without first  
30 notifying the Enforcement Authority and passing a pre-opening inspection  
31 with a Grade of Approved or Conditional Approved.

32 (B) Suspension Procedure.

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1           (1) The Enforcement Authority shall notify the Permit Holder of the  
2 suspension and associated Grade of Closure in writing.

3           (2) When a Permit is suspended, the Enforcement Authority shall close  
4 the Food Establishment and post the Closed Sign in a conspicuous  
5 location, visible to the public.

6           (3) Upon suspension, the Permit Holder for the Food Establishment  
7 shall maintain or cause to be maintained the Closed Sign in an  
8 unobstructed manner in the location where the sign was originally posted  
9 by the Enforcement Authority.

10          (4) The Food Establishment shall not operate while the Food  
11 Establishment Permit is suspended.

12          (5) The Food Establishment shall remain closed and the Closed Sign  
13 shall remain in place until the suspension is modified in accordance with  
14 the IHO Ordinance, the suspension is vacated by the Enforcement  
15 Authority when the conditions leading to the suspension no longer exist, or  
16 the Permit is revoked.

17          (6) Notice. Notice of Permit suspension shall be provided in accordance  
18 with §9-6-16 of This Ordinance.

19          (7) Hearing. The Permit Holder may appeal the Permit suspension by  
20 filing written notice of appeal and requesting a hearing with the City Clerk's  
21 office within fifteen (15) business days of notice in accordance with §9-6-17  
22 of This Ordinance.

23          (C) Reinstatement of Suspended Permits. Any Person whose Permit has  
24 been suspended may at any time request a reinspection for the purpose of  
25 reinstatement of the Permit. The Enforcement Authority shall reinstate the  
26 Permit if, after performing a reinspection, the Enforcement Authority finds  
27 that the Permit Holder complies with the requirements of This Ordinance,  
28 the Rules, and other laws.

29          (D) Revocation of Permits.

30           (1) Permits may be revoked by the Enforcement Authority when:

31           (a) A Food Establishment Permit has been suspended and not  
32 reinstated; or



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1 (b) A Food Establishment receives the fourth Grade of  
2 Unsatisfactory, as defined in the Rules, within any thirty-six (36) month  
3 period under the same Permit; or

4 (c) A Food Establishment receives the third Grade of Closure, as  
5 defined in the Rules, within any thirty-six (36) month period under the same  
6 Permit.

7 (E) Revocation Procedure.

8 (1) The Enforcement Authority shall notify the Permit Holder of the  
9 revocation and closure in writing.

10 (2) When a Permit is revoked, the Enforcement Authority shall order the  
11 closure of the Food Establishment and post the Closed Sign in a  
12 conspicuous location, visible to the public. The Food Establishment shall  
13 not operate while the Food Establishment Permit is revoked.

14 (3) The Permit Holder for the Food Establishment shall maintain or  
15 cause to be maintained the Closed Sign in an unobstructed manner in the  
16 location where the sign was originally posted by the Enforcement  
17 Authority.

18 (4) The Food Establishment shall remain closed and the Closed Sign  
19 shall remain in place until the revocation is modified in accordance with the  
20 IHO Ordinance, or the revocation is vacated by the Enforcement Authority  
21 when the conditions leading to the suspension no longer exist.

22 (5) Notice. Notice of revocation shall be provided in accordance with §9-  
23 6-16 of This Ordinance.

24 (6) Hearing. The Permit Holder may appeal the Permit revocation by  
25 filing written notice of appeal and requesting a hearing with the City Clerk's  
26 office within fifteen (15) business days of notice in accordance with §9-6-17  
27 of This Ordinance.

28 (F) Compliance Plan. In lieu of suspension or revocation of a Permit, the  
29 Enforcement Authority may allow a Food Establishment to follow a  
30 Compliance Plan for current or past failure of the Food Establishment or  
31 Permit Holder to meet the requirements of This Ordinance.

32 (1) A Compliance Plan may be issued to a Food Establishment that  
33 receives a second Grade of Unsatisfactory or Closure, as defined in the

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1 Rules, from the Enforcement Authority, within a thirty-six (36) month period  
2 under the same Permit.

3 (2) A Compliance Plan shall be on a form approved by the Enforcement  
4 Authority and include all written requirements for operation of the Food  
5 Establishment, and be signed by the Enforcement Authority and the Permit  
6 Holder.

7 (a) The Enforcement Authority may amend a Compliance Plan  
8 when a Food Establishment submits a written request to the Enforcement  
9 Authority and the Enforcement Authority determines that the amendment  
10 will not pose a risk to public health.

11 (3) Each Compliance Plan shall remain in place until the Food  
12 Establishment has received three consecutive Grades of Approved or all  
13 applicable fees have been paid in full.

14 (G) Application for a New Permit After Revocation. After a Permit is  
15 revoked, a former Permit Holder may submit a pre-inspection application  
16 consistent with This Ordinance for a new Permit only after ninety (90) days  
17 have passed after the revocation date, any outstanding fees from the revoked  
18 Permit are paid, and the former Permit Holder demonstrates to the  
19 Enforcement Authority that all previously issued corrective actions have been  
20 completed.

21 **§ 9-6-9 PERMIT RENEWAL.**

22 (A) Permit Renewal. To renew a permit, A Food Establishment shall pay  
23 to the Enforcement Authority the annual fee in full prior to the Expiration Date.  
24 At the time of Permit renewal, the Permit Holder shall update information as  
25 required by the Rules.

26 (B) Notice. Notice of fees due shall be provided in accordance with §9-6-  
27 16 of This Ordinance.

28 (C) Hearing. A Permit Holder may appeal the notice of Permit fees due by  
29 filing written notice of appeal and requesting a hearing with the City Clerk's  
30 office within fifteen (15) business days of notice in accordance with §9-6-17 of  
31 This Ordinance.

32 **§ 9-6-10 INSPECTION OF FOOD ESTABLISHMENTS; INVESTIGATION OF**  
33 **FOODBORNE ILLNESS.**

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1 (A) Right of Inspection. The Enforcement Authority shall make such  
2 inspections of Food Establishments as necessary to assure compliance with  
3 This Ordinance and the Rules. Inspection frequency shall be based on the risk  
4 category of each Food Establishment.

5 (1) The Enforcement Authority may make more frequent inspections of  
6 Food Establishments in response to citizen complaints regarding unsafe  
7 conditions or foodborne illness.

8 (2) At the conclusion of each inspection, a copy of the inspection report  
9 shall immediately be furnished to the Permit Holder or Person In Charge of  
10 the Food Establishment indicating the degree of compliance or  
11 noncompliance with the provisions of the Food Code, This Ordinance, and  
12 other laws.

13 (3) The Permit Holder or Person In Charge of the Food Establishment  
14 may accompany the Enforcement Authority during the inspection.

15 (4) The Enforcement Authority shall be permitted to examine and obtain  
16 copies of the records of the Food Establishment, pertinent information  
17 related to Food source and supplies received, pest control records, and a  
18 list of Food Establishment employees and their training records.

19 (5) It is a civil penalty pursuant to §9-6-19 of This Ordinance for any  
20 Person to molest or resist the Enforcement Authority in the discharge of its  
21 duties.

22 (B) Investigation of Foodborne Illness. The Enforcement Authority is  
23 authorized to make such inspections of buildings, premises, and documents  
24 as deemed necessary to investigate and abate foodborne illness or any  
25 violation of This Ordinance which poses a threat to human health. For the  
26 purpose of making such inspections, the Enforcement Authority is authorized  
27 to enter, examine, or survey at all reasonable times and take samples of Food  
28 for testing. Such entry shall be made in a manner as to minimize  
29 inconvenience to the Person In Charge. In the event entry is denied or resisted  
30 the Enforcement Authority shall seek an order for this purpose from a court of  
31 competent jurisdiction.

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1 (C) Refusal of Entry. If entry of the Enforcement Authority is refused,  
2 after presentation of proper identification, to fully inspect any and all premises  
3 or facilities at any reasonable time, the Enforcement Authority may:

- 4 (1) Issue a Civil Penalty pursuant to §9-6-19 of This Ordinance;
- 5 and
- 6 (2) Proceed to obtain a search warrant by filing a complaint made before  
7 the Metropolitan Court or District Court upon oath or affirmation. The  
8 complaint shall:

- 9 (a) Set forth the particular building, premises, or portion thereof  
10 sought to be inspected;
- 11 (b) State that the owner or occupant of the building, premises, or  
12 portion thereof, has refused entry;
- 13 (c) State that inspection of the building, premises, or portion  
14 thereof is necessary to determine whether it complies with the  
15 requirements of § 9-6-1 et seq.;
- 16 (d) Set forth the particular provisions of § 9-6-1 et seq. sought to  
17 be enforced;
- 18 (e) Set forth any other reason necessitating the inspection,  
19 including knowledge or belief that a particular condition exists in the food  
20 establishment which constitutes a violation of § 9-6-1 et seq. or creates a  
21 hazard to human health;
- 22 (f) State that the complainant is authorized by the City to make  
23 the inspection.

24 (D) Grading of Food Establishments. The Enforcement Authority shall  
25 issue an appropriate score and associated Grade to each Food Establishment  
26 at the conclusion of each inspection.

- 27 (1) Every Food Establishment shall display, in a conspicuous location,  
28 which is readily visible to the public, a placard stating the Grade received  
29 at the time of the most recent inspection of the Food Establishment.

30 (E) Corrective Actions. Upon inspection, the Enforcement Authority  
31 shall provide the Permit Holder or Person In Charge with a written description  
32 of any corrective actions to be taken, outlining the timeframe in which

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1 corrective actions must be completed for any violation of This Ordinance or  
2 other laws.

3 (F) It is a civil penalty pursuant to §9-6-19 of This Ordinance for any  
4 Person to threaten, intimidate, use violence, or use physical force to  
5 intentionally obstruct, impede, or interfere with any City employee while in the  
6 performance of the employee’s duties as authorized by This Ordinance.

7 **§ 9-6-11 CONDEMNATION OF FOOD AND EQUIPMENT.**

8 (A) It shall be unlawful for any Person within the City to sell, offer, or  
9 expose for sale, or to have in possession with intent to sell, any Food which is  
10 adulterated or misbranded. Samples of Food may be taken and examined by  
11 the Enforcement Authority as often as may be necessary to determine  
12 freedom from adulteration or misbranding. Food determined to be misbranded  
13 or adulterated may be condemned, and Food reasonably suspected to be  
14 misbranded or adulterated may be embargoed in a manner consistent with the  
15 Rules.

16 (B) Notice. Notice of the condemnation of Food or equipment, or  
17 embargo of Food or equipment, shall be provided in accordance with §9-6-16  
18 of This Ordinance.

19 (C) Hearing. A Permit Holder may appeal the notice of the condemnation  
20 of Food or equipment, or embargo of Food or equipment by filing written  
21 notice of appeal and requesting a hearing with the City Clerk’s office within  
22 fifteen (15) business days of notice in accordance with §9-6-17 of This  
23 Ordinance.

24 **§9-6-12 FOOD SAFETY TRAINING REQUIREMENTS.** All Food Establishment  
25 employees shall be adequately trained in Food safety in a manner consistent  
26 with the Rules.

27 **§ 9-6-13 FOOD ESTABLISHMENTS OUTSIDE OF THE JURISDICTION OF THE  
28 ENFORCEMENT AUTHORITY.**

29 (A) Food Establishments outside of the jurisdiction of the Enforcement  
30 Authority may vend food within the City if such Food Establishments conform  
31 to the provisions of This Ordinance or to substantially equivalent provisions.  
32 To determine the extent of compliance with such provisions, the Enforcement

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1 Authority may accept reports from responsible authorities in other  
2 jurisdictions where such Food Establishments are located.  
3 (1) Food Establishments from other jurisdictions shall submit a signed  
4 Temporary Food Establishment Permit application or Market Food  
5 Establishment Permit application, City of Albuquerque business  
6 registration, and Food Establishment Permit from their home jurisdiction to  
7 the Enforcement Authority and the Temporary Food Establishment must  
8 pass an inspection performed by the Enforcement Authority with a Grade  
9 of Approved prior to acting as a Temporary Food Establishment or Market  
10 Food Establishment, as defined in the Rules, within the City.  
11 § 9-6-14 ADMINISTRATION AND INTERPRETATION. The Enforcement  
12 Authority shall be responsible for the administration and enforcement of This  
13 Ordinance.  
14 § 9-6-15 VARIANCES.  
15 (A) A variance may be granted to a Food Establishment when it is  
16 presented with adequate proof that a provision of This Ordinance or the Rules  
17 creates an undue burden on the Food Establishment and granting of the  
18 variance will not result in a condition injurious to health or safety.  
19 (1) Any Permit Holder seeking a variance shall submit a request to the  
20 Enforcement Authority, in writing, setting forth their reasons for the  
21 variance and stating the length of time for which they seek the variance.  
22 (2) The Enforcement Authority shall review the request for variance and  
23 provide a written decision within a reasonable amount of time. The  
24 variance must be approved by the Enforcement Authority prior to  
25 commencement of the operation requiring the variance.  
26 (B) Notice. Notice of the Variance approval or denial shall be provided in  
27 accordance with §9-6-16 of This Ordinance.  
28 (C) Hearing. A Permit Holder may appeal the notice of the Variance  
29 approval or denial, or embargo of Food or equipment by filing written notice of  
30 appeal and requesting a hearing with the City Clerk's office within fifteen (15)  
31 business days of notice in accordance with §9-6-17 of This Ordinance.  
32 § 9-6-16 SERVICE OF NOTICE.

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1 (A) Notice shall be deemed properly served when a true copy of the  
2 inspection report or other notice has been provided to the Person In Charge or  
3 sent to the Permit Holder at the Address Of Record via certified mail  
4 whichever occurs first. A copy of such notice shall be filed with the records of  
5 the Enforcement Authority.

6 (B) The notice shall state the specific reasons for the Enforcement  
7 Authority's actions, specify the corrective actions to be taken, and specify the  
8 time period within which action shall be taken. The notice shall include a  
9 provision that the Enforcement Authority will take action unless the Permit  
10 Holder files a written request with the City Clerk for hearing within fifteen (15)  
11 days pursuant to the provisions in the IHO Ordinance.

12 § 9-6-17 HEARINGS.

13 (A) A hearing provided for in This Ordinance shall be conducted by an  
14 Independent Hearing Officer in accordance with the provisions in the IHO  
15 Ordinance.

16 (B) Any action of the Enforcement Authority for which a hearing is not  
17 otherwise provided for in This Ordinance, which action adversely impacts the  
18 Permit Holder, is subject to review under this section if a hearing request is  
19 filed within fifteen (15) business days of the action and in accordance with the  
20 provisions in the IHO Ordinance.

21 (C) A nonrefundable hearing fee of \$50.00 shall accompany each  
22 application for hearing conducted by the Independent Hearing Officer  
23 requested pursuant to this section.

24 § 9-6-18 JUDICIAL REVIEW. The exclusive remedy of any party dissatisfied  
25 with any final decision of the Independent Hearing Officer is to file a petition  
26 with the District Court within thirty (30) days after service receipt of written  
27 notice of the decision of the concerned party. The petition for review shall be  
28 limited to the record.

29 § 9-6-19 CIVIL VIOLATIONS; CRIMINAL VIOLATIONS; ADDITIONAL REMEDIES;  
30 INJUNCTIVE RELIEF.

31 (A) Civil Violations. The Enforcement Authority may impose a civil  
32 penalty for any failure to correct a violation of This Ordinance or the Rules  
33 after proper notice has been given.

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1 (1) Civil violations of this article shall subject the Permit Holder of the  
2 Food Establishment to the following penalties for offenses during any  
3 thirty-six (36) consecutive-month period:

- 4 (a) a civil fine of \$250.00 for the first offense;
- 5 (b) a civil fine of \$500.00 for the second offense; and
- 6 (c) a civil fine of \$1,000.00 for the third and subsequent offenses.

7 (2) Each calendar day during which the civil violation occurs shall  
8 constitute a separate and distinct offense.

9 (3) Upon determination by the Enforcement Authority that a violation of  
10 This Ordinance has occurred, the Enforcement Authority shall serve a  
11 notice of civil penalty in accordance with §9-6-16 of This Ordinance. The  
12 notice shall contain the following information:

- 13 (a) The address where the violation occurred;
- 14 (b) The approximate time the violation occurred;
- 15 (c) A brief narrative of the circumstances surrounding the  
16 violation;
- 17 (d) A statement regarding whether this is the first, second, third or  
18 subsequent offense within a consecutive 36-month period;
- 19 (e) A name and phone number or title of City employee from  
20 whom the Permit Holder can obtain further information;
- 21 (f) The address where payment for the violation may be made;
- 22 (g) A statement that the Permit Holder has the right to contest the  
23 validity of the civil violation by filing a written request for hearing with the  
24 City Clerk's office within fifteen (15) days of the date of mailing of the  
25 notice of civil penalty. A hearing shall be granted in accordance with the  
26 provisions in the IHO Ordinance, Chapter 2, Article 7, Part 8 ROA 1994; and
- 27 (h) The ordinance section or rule violated.

28 (B) Criminal Penalties. Any Person ~~who~~is convicted of a violation of  
29 ~~violates~~ any provision of this article is guilty of a petty misdemeanor and upon  
30 conviction thereof, shall be punished by a fine of not less than \$250.00 nor  
31 more than \$500.00 and up to thirty (30) days in jail for each violation. Each day  
32 in which any violation ~~shall occur~~s shall constitute a separate offense.  
33 Prosecution or conviction under this section shall not preclude any civil



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1 remedy or relief for a violation of This Ordinance. Once cited for an offense, an  
2 additional citation may be issued for each day the violation continues.

3 (C) Enforcement. The Enforcement Authority is hereby authorized to  
4 undertake the enforcement activities authorized by This Ordinance.

5 (D) Injunctive Relief. As an additional remedy, if any Food Establishment  
6 violates the provisions of This Ordinance, the Enforcement Authority may  
7 seek injunctive relief in a court of competent jurisdiction.

8 SECTION 3. Severability Clause. If any section, paragraph, sentence, clause,  
9 phrase or word of This Ordinance is for any reason held to be invalid or  
10 unenforceable by a court of competent jurisdiction, such decision shall not  
11 affect the validity of the remaining provisions of This Ordinance. The Council  
12 hereby declares that it would have passed This Ordinance and each section,  
13 paragraph, sentence, clause, word or phrase thereof irrespective of any  
14 provision being declared unconstitutional or otherwise invalid.

15 SECTION 4. Compilation. Section 2 of This Ordinance shall amend, be  
16 incorporated in and made part of the Revised Ordinances of Albuquerque,  
17 New Mexico, 1994.

18 SECTION 5. Effective Date. This ordinance shall take effect on August 1, 2024  
19 after publication by title and general summary.