

# CITY of ALBUQUERQUE

## TWENTY SIXTH COUNCIL

COUNCIL BILL NO. O-24-15 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Brook Bassan, by request

1 **ORDINANCE**

2 **REPEALING CHAPTER 9, ARTICLE 6 R.O.A. 1994, FOOD AND BEVERAGES**  
3 **ORDINANCES, AND CREATING THE FOOD SERVICE AND RETAIL**  
4 **ORDINANCE.**

5 **WHEREAS, the Council wants to create a single ordinance governing food**  
6 **safety; and**

7 **WHEREAS, the Council wants to create consistency with the local food**  
8 **ordinances and the New Mexico administrative code; and**

9 **WHEREAS, the Council wants to create consistency with local food**  
10 **ordinances and national food safety standards; and**

11 **WHEREAS, the Council wants to update food safety regulations to keep the**  
12 **department in good standing with the voluntary national standards program.**

13 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**  
14 **ALBUQUERQUE:**

15 **SECTION 1. REPEAL**

16 **Chapter 9, Article 6 R.O.A. 1994 is hereby repealed in its entirety.**

17 **SECTION 2. NEW MATERIAL**

18 **Chapter 9, Article 6 is hereby added to read as follows:**

19 **as follows:**

20 **“§ 9-6-1 SHORT TITLE. This article shall be known and may be cited as the**  
21 **"Albuquerque Food Service and Retail Ordinance" and may be abbreviated as**  
22 **the “FSO”.**

23 **§ 9-6-2 PURPOSE. The intent of the Albuquerque Food Service and Retail**  
24 **Ordinance is to provide Food Establishments with clear and concise Food**  
25 **safety regulations and collect 100% of the cost of administrative enforcement**

[Bracketed/Underscored Material] - New  
[Bracketed/Strikethrough Material] - Deletion

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;

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.**

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

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 Establishment.

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

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

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

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

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

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

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

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

31 **(C) Pre-Opening Inspection of Food Establishment.** Upon receipt of a  
32 pre-inspection application, the Enforcement Authority shall contact the  
33 applicant to schedule a pre-opening inspection, if applicable, within a

1 reasonable amount of time, to determine compliance with the provisions of  
2 This Ordinance.

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

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

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

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

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

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

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

24 (1) Notice. Notice of Permit denial shall be provided in accordance with  
25 §9-6-16 of This Ordinance.

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

30 § 9-6-8 SUSPENSION, REVOCATION, REINSTATEMENT OF PERMITS, AND  
31 COMPLIANCE PLANS.

32 (A) The Enforcement Authority may immediately suspend a Permit when  
33 the Enforcement Authority finds:

- 1       (1)     The Food Establishment fails to comply with the requirements of
- 2     This Ordinance, the Rules, or other laws;
- 3       (2)     The Food Establishment is violating a condition of any Permit;
- 4       (3)     An Imminent Health Hazard at the Food Establishment;
- 5       (4)     A Food Establishment has failed to follow any corrective actions
- 6     within the timeframe prescribed by the Enforcement Authority;
- 7       (5)     A Food Establishment has violated a Safety Plan associated with a
- 8     Special Process as they are defined in the Rules;
- 9       (6)     A Food Establishment has violated a Compliance Plan;
- 10      (7)     A Food Establishment employee has refused to allow the
- 11     Enforcement Authority to enter the Food Establishment after proper
- 12     identification has been tendered;
- 13      (8)     The Enforcement Authority has issued a third notice of civil penalty
- 14     to the Food Establishment for the same offense;
- 15      (9)     The Enforcement Authority has issued a third Grade of
- 16     Unsatisfactory, as defined in the Rules, to a Food Establishment during any
- 17     36-month period under the same Permit;
- 18      (10) A commissary is allowing any Person to operate a Food Establishment
- 19     on its premises that is not in possession of a Valid Permit; or
- 20      (11) A Food Establishment is seeking a liquor license from the State of New
- 21     Mexico in accordance with the Liquor Control Act, § 60-3A-1 et seq. NMSA
- 22     1978, and is found to be in operation without first obtaining an inspection and
- 23     being granted a Grade of Approved.
- 24      (B)     Suspension Procedure.
- 25      (1)     The Enforcement Authority shall notify the Permit Holder of the
- 26     suspension and associated Grade of Closure in writing.
- 27      (2)     When a Permit is suspended, the Enforcement Authority shall close
- 28     the Food Establishment and post the Closed Sign in a conspicuous location,
- 29     visible to the public.
- 30      (3)     Upon suspension, the Permit Holder for the Food Establishment
- 31     shall maintain or cause to be maintained the Closed Sign in an unobstructed
- 32     manner in the location where the sign was originally posted by the
- 33     Enforcement Authority.

- 1       (4)     The Food Establishment shall not operate while the Food  
2     Establishment Permit is suspended.
- 3       (5)     The Food Establishment shall remain closed and the Closed Sign  
4     shall remain in place until the suspension is modified in accordance with the  
5     IHO Ordinance, the suspension is vacated by the Enforcement Authority when  
6     the conditions leading to the suspension no longer exist, or the Permit is  
7     revoked.
- 8       (6)     Notice. Notice of Permit suspension shall be provided in accordance  
9     with §9-6-16 of This Ordinance.
- 10      (7)     Hearing. The Permit Holder may appeal the Permit suspension by  
11     filing written notice of appeal and requesting a hearing with the City Clerk's  
12     office within fifteen (15) business days of notice in accordance with §9-6-17 of  
13     This Ordinance.
- 14      (C)     Reinstatement of Suspended Permits. Any Person whose Permit has  
15     been suspended may at any time request a reinspection for the purpose of  
16     reinstatement of the Permit. The Enforcement Authority shall reinstate the  
17     Permit if, after performing a reinspection, the Enforcement Authority finds that  
18     the Permit Holder complies with the requirements of This Ordinance, the  
19     Rules, and other laws.
- 20      (D)     Revocation of Permits.
- 21      (1)     Permits may be revoked by the Enforcement Authority when:
- 22      (a)     A Food Establishment Permit has been suspended and not  
23     reinstated; or
- 24      (b)     A Food Establishment receives the fourth Grade of Unsatisfactory,  
25     as defined in the Rules, within any thirty-six (36) month period under the same  
26     Permit; or
- 27      (c)     A Food Establishment receives the third Grade of Closure, as  
28     defined in the Rules, within any thirty-six (36) month period under the same  
29     Permit.
- 30      (E)     Revocation Procedure.
- 31      (1)     The Enforcement Authority shall notify the Permit Holder of the  
32     revocation and closure in writing.



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

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

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

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

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

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

(1) A Compliance Plan may be issued to a Food Establishment that receives a second Grade of Unsatisfactory or Closure, as defined in the Rules, from the Enforcement Authority, within a thirty-six (36) month period under the same Permit.

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

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

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

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

11       § 9-6-9 PERMIT RENEWAL.

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

16       (B)     Notice. Notice of fees due shall be provided in accordance with §9-6-  
17 16 of This Ordinance.

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

22       § 9-6-10 INSPECTION OF FOOD ESTABLISHMENTS; INVESTIGATION OF  
23 FOODBORNE ILLNESS.

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

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

31               (2) At the conclusion of each inspection, a copy of the inspection report  
32 shall immediately be furnished to the Permit Holder or Person In Charge of the

1 Food Establishment indicating the degree of compliance or noncompliance  
2 with the provisions of the Food Code, This Ordinance, and other laws.

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

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

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

12 (B) Investigation of Foodborne Illness. The Enforcement Authority is  
13 authorized to make such inspections of buildings, premises, and documents  
14 as deemed necessary to investigate and abate foodborne illness or any  
15 violation of This Ordinance which poses a threat to human health. For the  
16 purpose of making such inspections, the Enforcement Authority is authorized  
17 to enter, examine, or survey at all reasonable times and take samples of Food  
18 for testing. Such entry shall be made in a manner as to minimize  
19 inconvenience to the Person In Charge. In the event entry is denied or resisted  
20 the Enforcement Authority shall seek an order for this purpose from a court of  
21 competent jurisdiction.

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

25 (1) Issue a Civil Penalty pursuant to §9-6-19 of This Ordinance; and

26 (2) Proceed to obtain a search warrant by filing a complaint made before  
27 the Metropolitan Court or District Court upon oath or affirmation. The  
28 complaint shall:

29 (a) Set forth the particular building, premises, or portion thereof sought  
30 to be inspected;

31 (b) State that the owner or occupant of the building, premises, or portion  
32 thereof, has refused entry;

1 (c) State that inspection of the building, premises, or portion thereof is  
2 necessary to determine whether it complies with the requirements of § 9-6-1 et  
3 seq.;

4 (d) Set forth the particular provisions of § 9-6-1 et seq. sought to be  
5 enforced;

6 (e) Set forth any other reason necessitating the inspection, including  
7 knowledge or belief that a particular condition exists in the food establishment  
8 which constitutes a violation of § 9-6-1 et seq. or creates a hazard to human  
9 health;

10 (f) State that the complainant is authorized by the City to make the  
11 inspection.

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

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

18 (E) Corrective Actions. Upon inspection, the Enforcement Authority  
19 shall provide the Permit Holder or Person In Charge with a written description  
20 of any corrective actions to be taken, outlining the timeframe in which  
21 corrective actions must be completed for any violation of This Ordinance or  
22 other laws.

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

27 § 9-6-11 CONDEMNATION OF FOOD AND EQUIPMENT.

28 (A) It shall be unlawful for any Person within the City to sell, offer, or  
29 expose for sale, or to have in possession with intent to sell, any Food which is  
30 adulterated or misbranded. Samples of Food may be taken and examined by  
31 the Enforcement Authority as often as may be necessary to determine  
32 freedom from adulteration or misbranding. Food determined to be misbranded  
33 or adulterated may be condemned, and Food reasonably suspected to be

1 misbranded or adulterated may be embargoed in a manner consistent with the  
2 Rules.

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

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

11 §9-6-12 FOOD SAFETY TRAINING REQUIREMENTS. All Food Establishment  
12 employees shall be adequately trained in Food safety in a manner consistent  
13 with the Rules.

14 § 9-6-13 FOOD ESTABLISHMENTS OUTSIDE OF THE JURISDICTION OF THE  
15 ENFORCEMENT AUTHORITY.

16 (A) Food Establishments outside of the jurisdiction of the Enforcement  
17 Authority may vend food within the City if such Food Establishments conform  
18 to the provisions of This Ordinance or to substantially equivalent provisions.  
19 To determine the extent of compliance with such provisions, the Enforcement  
20 Authority may accept reports from responsible authorities in other  
21 jurisdictions where such Food Establishments are located.

22 (1) Food Establishments from other jurisdictions shall submit a signed  
23 Temporary Food Establishment Permit application or Market Food  
24 Establishment Permit application, City of Albuquerque business registration,  
25 and Food Establishment Permit from their home jurisdiction to the  
26 Enforcement Authority and the Temporary Food Establishment must pass an  
27 inspection performed by the Enforcement Authority with a Grade of Approved  
28 prior to acting as a Temporary Food Establishment or Market Food  
29 Establishment, as defined in the Rules, within the City.

30 § 9-6-14 ADMINISTRATION AND INTERPRETATION. The Enforcement  
31 Authority shall be responsible for the administration and enforcement of This  
32 Ordinance.

33 § 9-6-15 VARIANCES.

1 (A) A variance may be granted to a Food Establishment when it is  
2 presented with adequate proof that a provision of This Ordinance or the Rules  
3 creates an undue burden on the Food Establishment and granting of the  
4 variance will not result in a condition injurious to health or safety.

5 (1) Any Permit Holder seeking a variance shall submit a request to the  
6 Enforcement Authority, in writing, setting forth their reasons for the variance  
7 and stating the length of time for which they seek the variance.

8 (2) The Enforcement Authority shall review the request for variance and  
9 provide a written decision within a reasonable amount of time. The variance  
10 must be approved by the Enforcement Authority prior to commencement of  
11 the operation requiring the variance.

12 (B) Notice. Notice of the Variance approval or denial shall be provided in  
13 accordance with §9-6-16 of This Ordinance.

14 (C) Hearing. A Permit Holder may appeal the notice of the Variance  
15 approval or denial, or embargo of Food or equipment by filing written notice of  
16 appeal and requesting a hearing with the City Clerk's office within fifteen (15)  
17 business days of notice in accordance with §9-6-17 of This Ordinance.

18 § 9-6-16 SERVICE OF NOTICE.

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

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

30 § 9-6-17 HEARINGS.

31 (A) A hearing provided for in This Ordinance shall be conducted by an  
32 Independent Hearing Officer in accordance with the provisions in the IHO  
33 Ordinance.

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

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

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

14 § 9-6-19 CIVIL VIOLATIONS; CRIMINAL VIOLATIONS; ADDITIONAL REMEDIES;  
15 INJUNCTIVE RELIEF.

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

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

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

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

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

- 31 (a) The address where the violation occurred;  
32 (b) The approximate time the violation occurred;  
33 (c) A brief narrative of the circumstances surrounding the violation;

1 (d) A statement regarding whether this is the first, second, third or  
2 subsequent offense within a consecutive 36-month period;

3 (e) A name and phone number or title of City employee from whom the  
4 Permit Holder can obtain further information;

5 (f) The address where payment for the violation may be made;

6 (g) A statement that the Permit Holder has the right to contest the  
7 validity of the civil violation by filing a written request for hearing with the City  
8 Clerk's office within fifteen (15) days of the date of mailing of the notice of civil  
9 penalty. A hearing shall be granted in accordance with the provisions in the  
10 IHO Ordinance, Chapter 2, Article 7, Part 8 ROA 1994; and

11 (h) The ordinance section or rule violated.

12 (B) Criminal Penalties. Any Person who violates any provision of this  
13 article is guilty of a petty misdemeanor and upon conviction thereof, shall be  
14 punished by a fine of not less than \$250.00 nor more than \$500.00 and up to  
15 thirty (30) days in jail for each violation. Each day in which any violation shall  
16 occur shall constitute a separate offense. Prosecution or conviction under this  
17 section shall not preclude any civil remedy or relief for a violation of This  
18 Ordinance. Once cited for an offense, an additional citation may be issued for  
19 each day the violation continues.

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

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

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

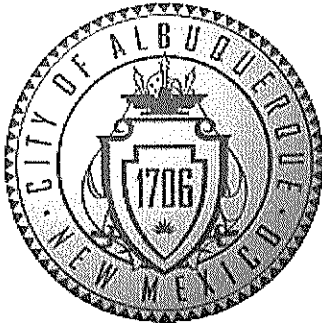


1    **SECTION 4. Compilation. Section 2 of This Ordinance shall amend, be**  
2    **incorporated in and made part of the Revised Ordinances of Albuquerque,**  
3    **New Mexico, 1994.**

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

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Mayor Timothy M. Keller

# CITY OF ALBUQUERQUE


## Albuquerque, New Mexico

### Office of the Mayor

#### INTER-OFFICE MEMORANDUM

March 4, 2024

**TO:** Dan Lewis, President, City Council

**FROM:** Timothy M. Keller, Mayor 

**SUBJECT:** Proposed Repeal and Replace of Food Ordinance Suite

The attached legislation is a proposed ordinance, the Food Service and Retail Ordinance. The legislation would repeal the existing suite of food ordinances 9-6-1 through 9-6-8 and replace them with this unified and updated comprehensive ordinance. This legislation will also provide a foundation for adoption of the most current FDA Food Code.

Currently, the Environmental Health Department permits food producers and food service vendors under a set of ordinances that cover different types of food businesses with different permit types and permit requirements. This arrangement is confusing to the regulated community and leads to inconsistent and inefficient regulation for EHD personnel. In addition to streamlining the ordinance language, several revisions are included that would strengthen EHD's ability to provide enforcement of ordinance requirements, ensuring a fair and equitable playing field for regulated businesses.

This ordinance would further clarify what permit types are needed for different situations and would align inspection frequency with the relative risk of each food preparation method and consumer group associated with a business.

The following improvements are anticipated:

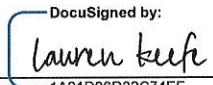
- Adoption of current FDA Food Code and risk-based inspection frequency
- Enhanced enforcement language and mechanisms to ensure consistent and equitable compliance enforcement for all businesses
- Simplification and fee structure and refinement of inspection grading

Approved:

  
Samantha Sengel, EdD  
Chief Administrative Officer

Date

Approved as to Legal Form:

  
Lauren Keefe  
City Attorney

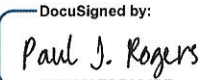
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Date

Recommended:

  
Paul J. Rogers  
Interim Director, EHD

DocuSigned by:

3/8/2024 | 8:41 AM MST

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Date

## **Cover Analysis**

### **1. What is it?**

A proposed new ordinance intended as a repeal-and-replace for existing food safety ordinances 9-6-1 through 9-6-8, to be known as the Food Service & Retail Ordinance

### **2. What will this piece of legislation do?**

This legislation would repeal the existing disparate suite of food safety ordinances, 9-6-1 through 9-6-8, and replace them with a single unified and comprehensive ordinance that would cover all aspects of the repealed sections. The new ordinance would simplify permitting and enforcement and provide a foundation for adoption of the current FDA Food Code. It will also simplify the permit structure and align inspection frequency with the risk-based approach that EHD has adopted

### **3. Why is this project needed?**

This project is needed to adopt a newer Food Code (The City of Albuquerque currently follows the 2009 FDA Food Code; the current version is 2022). It is also needed to unify and simplify the existing ordinances to provide more consistent and equitable enforcement, and to align the ordinance with current best practices followed by EHD

### **4. How much will it cost and what is the funding source?**

No new costs are anticipated as a direct result of this legislation, as it is a replacement of existing ordinances

### **5. Is there a revenue source associated with this contract? If so, what level of income is projected?**

A variety of permit fees, which vary with the permit type, will provide revenue. This is consistent with the current ordinance, and revenue will continue to be derived from fees as in the past

**6. What will happen if the project is not approved?**

The food permitting and inspection would remain as it is currently. This would mean that food safety regulation will be inconsistent in Albuquerque compared to Bernalillo County and the rest of the state. Enforcement pitfalls in the current ordinance would continue to exist, and inspection frequency would not be aligned with best practices followed by EHD

**7. Is this service already provided by another entity?**

Food safety regulation is already provided by EHD, this will simply update and enhance the ordinance language the Department relies on

**FISCAL IMPACT ANALYSIS**

TITLE: EHD - Food Service and Retail Ordinance

R: O:

FUND: 110

DEPT: 5614000

- ☒ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☐ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	2024	Fiscal Years 2025	2026	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses		-		-
Property		-	-	-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input checked="" type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Revenue from program	0			0
Amount of Grant	-	-	-	
City Cash Match	0			
City Inkind Match	0			
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

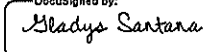
\* Range if not easily quantifiable.

Number of Positions created	0	0	0
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**COMMENTS:** No new costs are anticipated as a direct result of this legislation, as it is a replacement of existing ordinances.**COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:**

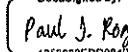
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**PREPARED BY:**

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 Gladys Santana 3/7/2024 | 2:08 PM MST  
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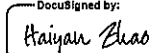
FISCAL ANALYST

**APPROVED:**

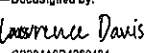
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DIRECTOR (date)

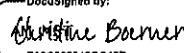
**REVIEWED BY:**

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 Haiyan Zhao 3/8/2024 | 9:34 AM  
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EXECUTIVE BUDGET ANALYST

DocuSigned by:  
  
 Lawrence Davis 3/8/2024 | 10:28 AM  
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BUDGET OFFICER (date)

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 Christine Boerner 3/8/2024 | 10:36 AM MST  
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CITY ECONOMIST