

CITY of ALBUQUERQUE

TWENTY SIXTH COUNCIL

COUNCIL BILL NO. F/S 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16 Chapter 9, Article 6 R.O.A. 1994 is hereby repealed in its entirety.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[, to the extent possible and consistent with the duties
26 set out herein,] collect 100% of the cost of administrative enforcement

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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;]~~[establish procedures for the administration of fees, provisions for fee
19 proration, and the assessment of secondary permit fees;]

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

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

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

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

32 § 9-6-6 AVAILABILITY OF ORDINANCE AND FOOD CODE.

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1 A copy of This Ordinance and any Rules shall be kept on file in the Office of
2 the City Clerk, and be available for inspection by the public during regular
3 business hours. A copy of the following shall be available to any individual
4 upon request and the payment of a reasonable charge as set by the Chief
5 Administrative Officer, to be not less than the actual cost per copy. The Rules
6 shall be made available on the Enforcement Authority’s publicly available
7 website.

8 **§ 9-6-7 PERMIT REQUIRED FOR FOOD ESTABLISHMENTS; APPLICATION.**

9 (A) Permit Required.

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

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

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

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

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

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

25 (B) Pre-inspection Application.

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

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

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1 (C) Pre-Opening Inspection of Food Establishment. Upon receipt of a
2 complete pre-inspection application, the Enforcement Authority shall contact
3 the applicant to schedule a pre-opening inspection, if applicable, within a
4 ~~reasonable amount of time~~five (5) working days, to determine compliance with
5 the provisions of This Ordinance.

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

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

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

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

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

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

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

27 (1) Notice. Notice of Permit denial shall be provided in accordance with
28 §9-6-1~~[7]~~[6] of This Ordinance.

29 (2) Hearing. A Permit Holder may appeal the notice of Permit denial by
30 filing written notice of appeal and requesting a hearing with the City Clerk's
31 office within fifteen (15) business days of notice in accordance with §9-6-
32 ~~1[8]~~[7] of This Ordinance.

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1 § 9-6-8 SUSPENSION, REVOCATION, REINSTATEMENT OF PERMITS, AND
2 COMPLIANCE PLANS.

3 (A) The Enforcement Authority may immediately suspend a Permit when
4 the Enforcement Authority finds:

5 (1) The Food Establishment fails to comply with the requirements of
6 This Ordinance, the Rules, or other laws;

7 (2) The Food Establishment is violating a condition of any Permit;

8 (3) An Imminent Health Hazard at the Food Establishment;

9 (4) A Food Establishment has failed to follow any corrective actions
10 within the timeframe prescribed by the Enforcement Authority;

11 (5) A Food Establishment has violated a Safety Plan associated with a
12 Special Process as they are defined in the Rules;

13 (6) A Food Establishment has violated a Compliance Plan;

14 (7) A Food Establishment employee has refused to allow the
15 Enforcement Authority to enter the Food Establishment after proper
16 identification has been tendered;

17 (8) The Enforcement Authority has issued a third notice of civil penalty
18 to the Food Establishment for the same offense;

19 (9) The Enforcement Authority has issued a third Grade of
20 Unsatisfactory, as defined in the Rules, to a Food Establishment during any
21 36-month period under the same Permit;

22 (10) A commissary is allowing any Person to operate a Food
23 Establishment on its premises that is not in possession of a Valid Permit; or

24 ~~(11) A Food Establishment is seeking a liquor license from the State of~~
25 ~~New Mexico in accordance with the Liquor Control Act, § 60-3A-1 et seq.~~
26 ~~NMSA 1978, and is found to be in operation without first obtaining an~~
27 ~~inspection and being granted a Grade of Approved.~~ A Food Establishment that
28 was issued a Permit, with a Variance, while seeking a liquor license from the
29 State of New Mexico in accordance with the Liquor Control Act, § 60-3A-1 et
30 seq. NMSA 1978, is found to be in operation without first notifying the
31 Enforcement Authority and passing a pre-opening inspection with a Grade of
32 Approved or Conditional Approved.

33 (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 location,
5 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 unobstructed
8 manner in the location where the sign was originally posted by the
9 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 the
14 IHO Ordinance, the suspension is vacated by the Enforcement Authority when
15 the conditions leading to the suspension no longer exist, or the Permit is
16 revoked.

17 (6) Notice. Notice of Permit suspension shall be provided in accordance
18 with §9-6-~~1~~⁶ 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-
22 ~~1~~⁸~~7~~ 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 that
27 the Permit Holder complies with the requirements of This Ordinance, the
28 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 period
3 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 conspicuous
12 location, visible to the public. The Food Establishment shall not operate while
13 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 Authority.

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

21 (5) Notice. Notice of revocation shall be provided in accordance with §9-
22 6-1[7][6] of This Ordinance.

23 (6) Hearing. The Permit Holder may appeal the Permit revocation by
24 filing written notice of appeal and requesting a hearing with the City Clerk's
25 office within fifteen (15) business days of notice in accordance with §9-6-
26 1[8][7] of This Ordinance.

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

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

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1 from the Enforcement Authority, within a thirty-six (36) month period under the
2 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 will
10 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 ~~17~~[6] 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-
31 ~~1~~[8]~~[7]~~ of This Ordinance.

32 **§9-6-10 PERMIT AND ADMINISTRATIVE FEES.**

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1 [(A) Permit and administrative fees shall be paid by the Food
2 Establishments in accordance with the type of Food Establishment, Class, and
3 Risk Category, as defined in the Rules at the rates in the following Appendices
4 attached to this Article:

- 5 (1) Appendix C. Primary Permits
- 6 (2) Appendix D. Secondary Permits
- 7 (3) Appendix E. Standalone Permits
- 8 (4) Appendix F. Administrative Fees]

9 § 9-6-1[1][0] INSPECTION OF FOOD ESTABLISHMENTS; INVESTIGATION OF
10 FOODBORNE ILLNESS.

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

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

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

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

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

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

31 (B) Investigation of Foodborne Illness. The Enforcement Authority is
32 authorized to make such inspections of buildings, premises, and documents
33 as deemed necessary to investigate and abate foodborne illness or any

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1 violation of This Ordinance which poses a threat to human health. For the
2 purpose of making such inspections, the Enforcement Authority is authorized
3 to enter, examine, or survey at all reasonable times and take samples of Food
4 for testing. Such entry shall be made in a manner as to minimize
5 inconvenience to the Person In Charge. In the event entry is denied or resisted
6 the Enforcement Authority shall seek an order for this purpose from a court of
7 competent jurisdiction.

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

- 11 (1) Issue a Civil Penalty pursuant to §9-6-~~[20]~~[19] of This Ordinance; and
- 12 (2) Proceed to obtain a search warrant by filing a complaint made before
13 the Metropolitan Court or District Court upon oath or affirmation. The
14 complaint shall:

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

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

19 (c) State that inspection of the building, premises, or portion
20 thereof is necessary to determine whether it complies with the requirements of
21 § 9-6-1 et seq.;

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

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

28 (f) State that the complainant is authorized by the City to make
29 the inspection.

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

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

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

9 (F) It is a civil penalty pursuant to §9-6-~~[20]~~^[49] of This Ordinance for any
10 Person to threaten, intimidate, use violence, or use physical force to
11 intentionally obstruct, impede, or interfere with any City employee while in the
12 performance of the employee’s duties as authorized by This Ordinance.

13 § 9-6-1~~[2]~~^[4] CONDEMNATION OF FOOD AND EQUIPMENT.

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

22 (B) Notice. Notice of the condemnation of Food or equipment, or
23 embargo of Food or equipment, shall be provided in accordance with §9-6-
24 1~~[7]~~^[6] of This Ordinance.

25 (C) Hearing. A Permit Holder may appeal the notice of the condemnation
26 of Food or equipment, or embargo of Food or equipment by filing written
27 notice of appeal and requesting a hearing with the City Clerk’s office within
28 fifteen (15) business days of notice in accordance with §9-6-1~~[8]~~^[7] of This
29 Ordinance.

30 §9-6-1~~[3]~~^[2] FOOD SAFETY TRAINING REQUIREMENTS. All Food

31 Establishment employees shall be adequately trained in Food safety in a
32 manner consistent with the Rules.

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1 § 9-6-1~~[4]~~^[3] FOOD ESTABLISHMENTS OUTSIDE OF THE JURISDICTION OF
2 THE ENFORCEMENT AUTHORITY.

3 (A) Food Establishments outside of the jurisdiction of the Enforcement
4 Authority may vend food within the City if such Food Establishments conform
5 to the provisions of This Ordinance or to substantially equivalent provisions.
6 To determine the extent of compliance with such provisions, the Enforcement
7 Authority may accept reports from responsible authorities in other
8 jurisdictions where such Food Establishments are located.

9 (1) Food Establishments from other jurisdictions shall submit a signed
10 Temporary Food Establishment Permit application or Market Food
11 Establishment Permit application, City of Albuquerque business registration,
12 and Food Establishment Permit from their home jurisdiction to the
13 Enforcement Authority and the Temporary Food Establishment must pass an
14 inspection performed by the Enforcement Authority with a Grade of Approved
15 prior to acting as a Temporary Food Establishment or Market Food
16 Establishment, as defined in the Rules, within the City.

17 § 9-6-1~~[5]~~^[4] ADMINISTRATION AND INTERPRETATION. The Enforcement
18 Authority shall be responsible for the administration and enforcement of This
19 Ordinance.

20 § 9-6-1~~[6]~~^[5] VARIANCES.

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

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

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

32 (B) Notice. Notice of the Variance approval or denial shall be provided in
33 accordance with §9-6-1~~[7]~~^[6] of This Ordinance.

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1 (C) Hearing. A Permit Holder may appeal the notice of the Variance
2 approval or denial, or embargo of Food or equipment by filing written notice of
3 appeal and requesting a hearing with the City Clerk’s office within fifteen (15)
4 business days of notice in accordance with §9-6-1[8][7] of This Ordinance.

5 § 9-6-1[7][6] SERVICE OF NOTICE.

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

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

17 § 9-6-1[8][7] HEARINGS.

18 (A) A hearing provided for in This Ordinance shall be conducted by an
19 Independent Hearing Officer in accordance with the provisions in the IHO
20 Ordinance.

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

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

29 § 9-6-1[9][8] JUDICIAL REVIEW. The exclusive remedy of any party dissatisfied
30 with any final decision of the Independent Hearing Officer is to file a petition
31 with the District Court within thirty (30) days after service receipt of written
32 notice of the decision of the concerned party. The petition for review shall be
33 limited to the record.

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1 § 9-6-~~[20]~~~~[19]~~ CIVIL VIOLATIONS; CRIMINAL VIOLATIONS; ADDITIONAL
2 REMEDIES; INJUNCTIVE RELIEF.

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

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

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

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

14 (3) Upon determination by the Enforcement Authority that a violation of
15 This Ordinance has occurred, the Enforcement Authority shall serve a notice
16 of civil penalty in accordance with §9-6-1~~[7]~~~~[6]~~ of This Ordinance. The notice
17 shall contain the following information:

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

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1 (B) Criminal Penalties. Any Person ~~who~~is convicted of a violation of
2 ~~violates~~ any provision of this article is guilty of a petty misdemeanor and upon
3 conviction thereof, shall be punished by a fine of not less than \$250.00 nor
4 more than \$500.00 and up to thirty (30) days in jail for each violation. Each day
5 in which any violation ~~shall occurs~~ shall constitute a separate offense.
6 Prosecution or conviction under this section shall not preclude any civil
7 remedy or relief for a violation of This Ordinance. Once cited for an offense, an
8 additional citation may be issued for each day the violation continues.

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

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

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

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

24 SECTION 5. Effective Date. This ordinance shall take effect on August 1,
25 2024 after publication by title and general summary.

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