

CITY of ALBUQUERQUE

TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. O-22-19 ENACTMENT NO. _____

SPONSORED BY: Tammy Fiebelkorn, by request

1 ORDINANCE

2 AMENDING THE ALBUQUERQUE FOOD SANITATION ORDINANCE TO
3 REGULATE EDIBLE CANNABIS PRODUCTS.

4 WHEREAS, the Cannabis Regulation Act, NMSA 1978, §26-2C-1 et seq., was
5 signed into law by the New Mexico Legislature on April 12, 2021; and

6 WHEREAS, the current Food Sanitation Ordinance incorporates the Food
7 and Drug Administration's Food Code; and

8 WHEREAS, because cannabis is illegal at the federal level, edible cannabis
9 products would be considered adulterated and unfit for sale; and

10 WHEREAS, fees need to be set for cannabis establishments.

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

13 SECTION 1. Section 9-6-1-16 et seq[.] is amended as follows.

14 § 9-6-1-1 SHORT TITLE.

15 Sections 9-6-1-1 et seq. shall be known and may be cited as the "Food
16 Sanitation Ordinance."

17 § 9-6-1-2 DEFINITIONS.

18 For the purpose of §§ 9-6-1-1 et seq., the following definitions shall apply
19 unless the context clearly indicates or requires a different meaning.

20 **ADULTERATED.** The condition of a food if:

21 (1) It bears or contains any poisonous or deleterious substance in a
22 quantity which may render it injurious to health;

23 (2) If it bears or contains any added poisonous or deleterious
24 substance, for which no safe tolerance has been established by
25 regulations, or in excess of such tolerance if one has been established[;],
26 except that an edible cannabis product manufactured, labeled, and sold by

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

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

1 a cannabis establishment in compliance with the Cannabis Regulation Act,
2 Chapter 26, Article 2C NMSA 1978 shall not be considered adulterated
3 solely on the basis of its cannabis content;]

4 (3) If it consists in whole or in part of any filthy, putrid or
5 decomposed substance, or if it is otherwise unfit for human consumption;

6 (4) If it has been produced, processed, prepared, packed or held
7 under insanitary conditions, whereby it may have become contaminated
8 with filth, or whereby it may have been rendered diseased, unwholesome or
9 injurious to health;

10 (5) If it is in whole or in part the product of a diseased animal, or an
11 animal which has died otherwise than by slaughter;

12 (6) If its container is composed in whole or in part of any poisonous
13 or deleterious substance which may render the contents injurious to
14 health.

15 **APPROVED.** Acceptable to the enforcement authority based on its
16 determination as to conformance with appropriate standards and good public
17 health practice.

18 **COMMISSARY.** A processing establishment, restaurant, or any other place
19 in which food, containers or supplies are kept, handled, prepared, packaged or
20 stored.

21 **CORROSION-RESISTANT MATERIALS.** Those materials that maintain
22 acceptable surface characteristics under prolonged influence of the food to be
23 contacted, the normal use of cleaning compounds and bactericidal solutions
24 and other conditions of use.

25 **EASILY CLEANABLE.** That surfaces are readily accessible and made of
26 such material and finish and so fabricated that residue may be effectively
27 removed by normal cleaning methods.

28 **EDIBLE CANNABIS PRODUCT.** Any food containing cannabis permitted
29 under Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978.]

30 **ENFORCEMENT AUTHORITY.** The Mayor or his designated agent(s).

31 **EMPLOYEE.** The permit holder, individuals having supervisory or
32 management duties and any person working in a food-service and/or food
33 processing establishment.

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

1 **EQUIPMENT.** All stoves, ranges, hoods, meat saws, slicers, mixers,
2 meatblocks, tables, counters, refrigerators, sinks, dishwashing machines,
3 steamtables, or similar items, other than utensils, used in the operation of a
4 food-service or food processing establishment.

5 **EXTENSIVELY REMODELED.** Any remodeling involving structural
6 alteration of walls, replacement or modification of plumbing, or major
7 equipment replacement exclusive of normal maintenance and repairs.

8 **FOOD.** Any raw, cooked, processed edible substance, ice, beverage or
9 ingredient used or intended for use or for sale in whole or in part for human
10 consumption.

11 **FOOD-CONTACT SURFACES.** Those surfaces of equipment and utensils
12 with which food normally comes in contact, and those surfaces from which
13 food may drain, drip or splash back onto surfaces normally in contact with
14 food.

15 **FOOD PROCESSING ESTABLISHMENT.** A commercial establishment in
16 which food is processed, prepared, packaged, stored or distributed for human
17 consumption excluding meat markets, retail food stores and warehouses.

18 **[FOOD PROCESSING ESTABLISHMENT—CANNABIS. A specific, limited**
19 **type of food processing establishment which is also a cannabis establishment**
20 **licensed under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA**
21 **1978, where edible cannabis products are processed, prepared, packaged,**
22 **stored or distributed for human consumption excluding retail cannabis**
23 **establishments and warehouses.]**

24 **FOOD-SERVICE ESTABLISHMENT.** Any place where food is prepared and
25 intended for individual portion service and includes the site at which individual
26 portions are provided. The term includes any such place regardless of
27 whether consumption is on or off the premises and regardless of whether
28 there is a charge for the food. The term also includes delicatessen-type
29 operations that prepare sandwiches intended for individual portion
30 service. The term does not include private homes where food is prepared or
31 served for individual family consumption, retail food stores, limited facilities as
32 defined by §§ 9-6-1-1 et seq. or the location of food vending machines and
33 supply vehicles.

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

1 **[FOOD-SERVICE ESTABLISHMENT—CANNABIS. A specific, limited type of**
2 **food-service establishment which is a cannabis establishment licensed under**
3 **the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where edible**
4 **cannabis product is prepared, or prepared and served, and intended for**
5 **individual portion service. The term includes a licensed cannabis**
6 **establishment with a licensed cannabis consumption area pursuant to the**
7 **Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978. The term does**
8 **not include private homes.]**

9 **GROSS SALES.** The total amount of money or the monetary value of other
10 consideration received from selling food on a calendar year basis by each food
11 service establishment or by each food processing establishment as defined in
12 §§ 9-6-1-1 et seq.

13 **HAMBURGER.** Chopped fresh beef.

14 **HERMETICALLY SEALED CONTAINER.** A container designed and
15 intended to be secure against the entry of microorganisms and to maintain the
16 commercial sterility of its content after processing.

17 **INFLATION FACTOR.** An index by which established fees are either
18 increased or decreased relative to inflation.

19 **KITCHENWARE.** All multi-use utensils other than tableware.

20 **LIMITED FACILITY.** A residential dwelling meeting applicable zoning
21 requirements and other pertinent requirements of law, that provides lodging
22 and meals for remuneration.

23 **MISLABELED.** The presence of any written, printed, or graphic matter
24 upon or accompanying food or containers of food which is false, misleading,
25 or which violates any applicable federal, state or local labeling requirements.

26 **MOBILE FOOD UNIT.** A vehicle-mounted food service establishment
27 designed to be readily movable from location to location.

28 **PACKAGED.** Bottled, canned, cartoned, or securely wrapped.

29 **PERISHABLE FOOD.** Any food of such type or in such condition as may
30 spoil.

31 **PERSON.** An individual, partnership, corporation, association, nonprofit
32 organization, educational institution, governmental or any other legal
33 entity. This term means either the singular or the plural as the case may be.

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

1 **PERSON IN CHARGE.** The individual present in a food-service or food
2 processing establishment who is the apparent supervisor of the establishment
3 at the time of inspection. If no individual is the apparent supervisor, then any
4 employee present is the person in charge.

5 **POTENTIALLY HAZARDOUS FOOD.** Any food or food ingredient, natural or
6 synthetic, in a form capable of supporting:

7 (1) The rapid and progressive growth of infectious or toxicogenic
8 microorganisms; or

9 (2) The slower growth of *C. botulinum*.

10 Exceptions to the above definition include; eggs with shells intact; foods with a
11 water activity value of .85 or less; foods with a pH value of 4.6 or less; or foods
12 for which laboratory evidence (acceptable to the regulatory authority)
13 demonstrates that rapid and progressive growth of infectious and toxicogenic
14 microorganisms cannot occur.

15 **PUSH CART.** A nonself-propelled vehicle limited to the preparation and
16 serving of frankfurters, commissary wrapped food maintained at safe
17 temperatures or limited to serving nonpotentially hazardous food.

18 **SAFE TEMPERATURES.** As applied to potentially hazardous food means
19 temperatures of 45° F. (7° C.) or below and 140° F. (60° C.) or above.

20 **SANITIZATION.** Effective bactericidal treatment of clean surfaces of
21 equipment and utensils by a process that provides enough accumulative heat
22 or concentration of chemicals for enough time to reduce the bacterial count to
23 a safe level.

24 **SEALED.** Free of cracks or other openings that permit the entry or passage
25 of moisture.

26 **SINGLE-SERVICE ARTICLES.** Cups, containers, lids or closures, plates,
27 knives, forks, spoons, stirrers, paddles, straws, place mats, paper napkins,
28 doilies, wrapping material, toothpicks and all similar articles designed for one-
29 time, one-person use and then discarded. The term does not include **SINGLE**
30 **USE** articles such as number 10 cans, aluminum pie pans, bread wrappers and
31 similar articles into which food has been packaged by the manufacturer.

32 **SULFITING AGENTS.** Sulfur dioxide or any chemical which produces
33 sulfur dioxide when used to treat foods, including the following: sodium

1 sulfite; sodium bisulfite; potassium bisulfite; sodium metabisulfite; and
2 potassium metabisulfite.

3 **TABLEWARE.** All multi-use eating and drinking utensils.

4 **TEMPORARY FOOD-SERVICE ESTABLISHMENT.** A food-service
5 establishment which operates at a fixed location for a temporary period of time,
6 not to exceed 14 days, in connection with a celebration or single event.

7 **UTENSIL.** Any approved implement used in the preparation, storage,
8 transportation or service of food.

9 **WHOLESOME.** In sound condition, clean, free from adulteration, free from
10 insects and insect fragments and otherwise suitable for use as human food.

11 **§ 9-6-1-3 MOBILE FOOD UNITS OR PUSHCARTS.**

12 **(A) Mobile Food Service.**

13 **(1) General.**

14 **(a) Mobile food units and/or pushcarts processing food shall**
15 **comply with the requirements of this division (a) except as**
16 **otherwise provided in division (A)(1) and in division (A)(2)**
17 **below. The enforcement authority may impose additional**
18 **requirements to protect against health hazards related to the**
19 **conduct of the food-service establishment as a mobile**
20 **operation, may prohibit the sale of some or all potentially**
21 **hazardous food, and when no health hazard will result, may**
22 **waive or modify requirements of this part relating to physical**
23 **facilities, except those requirements of divisions (A)(4), (A)(5),**
24 **(B)(1), (C)(1), and (C)(2) below.**

25 **(b) The name and address of any person transporting food**
26 **for retail or wholesale shall be legibly painted or permanently**
27 **affixed in letters no less than three inches high by one-half**
28 **inch wide on each side of all transportation vehicles operated**
29 **by such person. The transportation of food in passenger**
30 **automobiles or pick-up trucks is prohibited. All food**
31 **transportation shall be in enclosed van-type vehicles.**

32 **(2) Restricted Operation. Mobile food units and/or pushcarts that**
33 **serve only food that is prepackaged in individual servings,**

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

1 transported and stored under conditions meeting the requirements
2 of §§ 9-6-1-1 et seq., or beverages that are not potentially hazardous
3 and are dispensed from individual sealed containers need not
4 comply with requirements of §§ 9-6-1-1 et seq. pertaining to the
5 necessity of water and sewage systems nor to those requirements
6 pertaining to the cleaning and sanitization of equipment and utensils
7 if the required equipment for cleaning and sanitization exists at its
8 commissary. Frankfurters shall not be prepared and served from
9 units or pushcarts not having water or sewer systems.

10 (3) Single-Service Articles. Mobile food units and/or pushcarts shall
11 provide only single-service articles for use by the consumer.

12 (4) Water System. A mobile food unit and/or pushcart requiring a
13 water system shall have a potable water system under pressure. The
14 system shall be of sufficient capacity to furnish enough hot and cold
15 water for food preparation, utensil cleaning and sanitization, and
16 handwashing, in accordance with the requirements of §§ 9-6-1-1 et
17 seq. The water inlet shall be located in such a position that it will not
18 be contaminated by waste discharge, road dust, oil, or grease, and it
19 shall be kept capped when not being filled. The water inlet shall be
20 provided with a transition connection of a size or type that will
21 prevent its use for any other service. All water distribution pipes or
22 tubing shall be constructed and installed in accordance with the
23 requirements of §§ 9-6-1-1 et seq.

24 (5) Waste Retention. If liquid waste results from operation of a
25 mobile food unit and/or pushcart, the waste shall be stored in a
26 permanently installed retention tank that is of at least 15% larger
27 capacity than the water supply tank. Liquid waste shall only be
28 discharged as provided in division (C)(2)(b) of this section. All
29 connections on the vehicle for servicing mobile food unit waste
30 disposal facilities shall be of a different size or type than those used
31 for supplying potable water to the mobile food unit. The waste
32 connection shall be located lower than the water inlet connection to
33 preclude contamination of the potable water system.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

(B) Commissary.

(1) Base of Operations.

(a) Mobile food units and/or pushcarts shall operate from a commissary or other fixed food-service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations.

(b) The commissary or other fixed food service or food processing establishment, used as base of operation for mobile food units or pushcarts, shall be constructed and operated in compliance with the requirements of §§ 9-6-1-1 et seq.

(C) Servicing Area and Operations.

(1) Servicing Area.

(a) A mobile food unit and/or pushcart servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or pushcart or where mobile food units do not contain waste retention tanks.

(b) The surface of the servicing area shall be constructed of a smooth, nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean and be graded to drain.

(c) The construction of the walls and ceilings of the servicing area is exempted from the provisions of §§ 9-6-1-1 et seq. dealing with construction and maintenance of physical facilities.

(2) Servicing Operations.

(a) Potable water servicing equipment shall be installed according to the city code and shall be stored and handled in a

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

1 way that protects the water and equipment from
2 contamination.
3 (b) The mobile food unit liquid waste retention tank, where
4 used, shall be thoroughly flushed and drained during the
5 servicing operation. All liquid waste shall be discharged to a
6 sanitary sewerage disposal system.

7 **§ 9-6-1-4 TEMPORARY FOOD SERVICE ESTABLISHMENTS.**

8 (A) *Temporary Food-Service Establishments.*

9 (1) General. A temporary food-service establishment shall comply
10 with the requirements of §§ 9-6-1-1 et seq., except as otherwise
11 provided in this division (1). The enforcement authority may impose
12 additional requirements to protect against health hazards related to the
13 conduct of the temporary food-service establishment, may prohibit the
14 sale of some or all potentially hazardous foods, and when no health
15 hazard will result, may waive or modify requirements of §§ 9-6-1-1 et
16 seq.

17 (2) Restricted Operations.

18 (a) These provisions are applicable whenever a temporary
19 food-service establishment is permitted under the provisions of
20 division (A)(1) above to operate without complying with all the
21 requirements of this part.

22 (b) Only those potentially hazardous foods requiring limited
23 preparation, such as hamburgers and frankfurters that require
24 only seasoning and cooking, shall be prepared or served. The
25 preparation or service of other potentially hazardous foods,
26 including pastries filled with cream or synthetic cream,
27 custards, and similar products, and salads or sandwiches
28 containing meat, poultry, eggs or fish is prohibited. This
29 prohibition does not apply, however, to any potentially
30 hazardous food that has been prepared and packaged under
31 conditions meeting the requirements of §§ 9-6-1-1 et seq.; is
32 obtained in individual servings; is stored at a temperature of
33 45° F. (7° C.) or below, or at a temperature of 140° F. (60° C.) or

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

1 above; in facilities that meet the requirements of §§ 9-6-1-1 et
2 seq.; and is served directly in the unopened container in which
3 it was packaged.

4 (3) Ice. Ice that is consumed or that contacts food shall have been
5 made under conditions meeting the requirements of §§ 9-6-1-1 et
6 seq. The ice shall be obtained only in chipped, crushed or cubed form
7 and in single-use safe plastic or wet strength paper bags filled and
8 sealed at the point of manufacture. The ice shall be held in these bags,
9 until it is dispensed, in a way that protects it from contamination. The
10 bags shall be stored at least four inches off the ground.

11 (4) Equipment.
12 (a) Equipment shall be located and installed in a way that
13 prevents food contamination and that also facilitates cleaning
14 the establishment.

15 (b) Food contact surfaces of equipment shall be protected
16 from contamination by consumers and other contaminating
17 agents. Effective shields for such equipment shall be
18 provided, as necessary, to prevent contamination.

19 (5) Single-Service Articles. All temporary food-service establishments
20 without effective facilities for cleaning and sanitizing tableware shall
21 provide only single-service articles for use by the consumer.

22 (6) Water. Enough potable water shall be available in the
23 establishment for food preparation, for cleaning and sanitizing utensils
24 and equipment, and for handwashing. A heating facility located on the
25 premises and capable of producing enough hot water for these
26 purposes shall be provided where applicable.

27 (7) Wet Storage. The storage of packaged food in contact with water
28 or undrained ice is prohibited. Wrapped sandwiches shall not be stored
29 in direct contact with ice.

30 (8) Waste. All sewage, including liquid waste, shall be disposed of
31 according to applicable city ordinances.

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

1 (9) Handwashing. A convenient handwashing facility shall be available
2 for employee handwashing; soap and individual paper towels shall be
3 available on the premises.

4 (10) Floors. Floors shall be constructed of concrete, asphalt, tight
5 wood or other similar cleanable material kept in good repair. Dirt or
6 gravel, when graded to drain, may be used as sub-flooring when
7 covered with clean, removable platforms or duckboards, or covered
8 with wood chips, shavings or other suitable materials effectively treated
9 to control dust and shall be changed at intervals to maintain a sanitary
10 condition.

11 (11) Walls and Ceilings of Food Preparation Areas. Ceilings shall be
12 made of wood, canvas, or other materials that protect the interior of the
13 establishment from the weather.

14 § 9-6-1-5 LIMITED FACILITIES.

15 (A) *LIMITED FACILITIES* include, but are not limited to, facilities such as
16 bed and breakfast homes, boarding and lodging houses, and adult
17 residential shelter care facilities.

18 (B) The health authority may waive or modify any requirement pertaining
19 to the design or construction of the physical facilities, or other section of
20 §§ 9-6-1-1 et seq., when no threat to public health or safety will result.

21 § 9-6-1-6 CLEANING AND SANITIZATION REQUIREMENTS FOR FOOD
22 ESTABLISHMENTS AND EDIBLE CANNABIS ESTABLISHMENTS.

23 In the event that both food and edible cannabis products are processed,
24 prepared, packed, stored, distributed, or prepared and intended for individual
25 portion service in the same facility, a person shall ensure that:

26 (A) Equipment, food contact surfaces, and utensils are cleaned and
27 sanitized in a manner consistent with sections 4-6 and 4-7 of the 2009 FDA
28 Food Code when alternating between preparation of edible cannabis
29 products to food, or

30 (B) Separate equipment, food contact surfaces, and utensils for food and
31 edible cannabis products are used; and

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

1 (C) A person washes their hands in a manner consistent with section 2-
2 301.12 of the 2009 FDA Food Code when alternating between the
3 preparation of edible cannabis products and food; and

4 (D) When required to wear gloves consistent with the 2009 FDA Food
5 Code, a person changes gloves when alternating between handling edible
6 cannabis products and food.]

7 § 9-6-1-~~[6]~~^[7] INSPECTION OF FOOD SERVICE OR FOOD PROCESSING
8 ESTABLISHMENTS.

9 (A) *Inspection Frequency.* The enforcement authority shall determine the
10 frequency of inspections according to past compliance record of a food
11 establishment and the risk presented to consumers by the menu items
12 provided by the specific food establishment. The enforcement authority
13 shall inspect each establishment at least twice annually and shall make
14 reinspections as often as necessary for the enforcement of §§ 9-6-1-1 et
15 seq.

16 (B) *Access to Establishments.* The enforcement authority, after proper
17 identification, shall be permitted to enter, at any reasonable time, any food
18 establishment within the city, for the purpose of making inspections to
19 determine compliance with §§ 9-6-1-1 et seq. The operator or person in
20 charge of the establishment shall be given an opportunity to accompany
21 the enforcement authority during the inspection. The enforcement
22 authority shall be permitted to examine the records of the establishment to
23 obtain pertinent information related to food source and supplies
24 purchased, received or used, and list of persons employed.

25 (C) *Report of Inspections.* Whenever an inspection of a food
26 establishment is made, the findings shall be recorded on an Enforcement
27 Authority Inspection Form. The Inspection Form Report shall summarize
28 the requirements of §§ 9-6-1-1 et seq. The original copy of the Inspection
29 Form Report shall be furnished to the person in charge of the
30 establishment as soon as possible after the inspection. The inspection
31 form shall be signed by both the enforcement authority and the person in
32 charge. The completed Inspection Form Report is a public document that

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

1 shall be made available for public disclosure at the enforcement authority's
2 office to any person who requests it.

3 **(D) Correction of Violations.**

4 (1) The Inspection Form Report shall specify a specific and
5 reasonable period of time for the correction of the violations
6 found. Correction of the violations shall be accomplished within the
7 period specified.

8 (a) If an imminent health hazard exists, such as complete
9 lack of refrigeration or sewage back-up into the
10 establishment, the establishment shall immediately cease
11 operations. Operations shall not be resumed until
12 authorized by the enforcement authority.

13 (b) In the case of temporary food- service establishments,
14 all violations shall be corrected within a time period as
15 specified by the enforcement authority. If the violations are
16 not so corrected, the establishment shall immediately cease
17 food-service operation.

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

21 (d) Whenever a food establishment is required under the
22 provisions of this division (D) to cease operations, it shall
23 not resume operations until such time as a reinspection
24 determines that conditions responsible for the requirements
25 to cease operations no longer exist. A reinspection shall be
26 made within three working days following the day on which it
27 is requested.

28 **(E) Service of Notice.** Notices provided for under this division shall be
29 deemed to have been properly served when the original of the
30 Inspection Form Report or other written notice has been delivered
31 personally to the permit holder or person in charge, or such notice has
32 been sent by registered or certified mail, return receipt requested, to the

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

1 last known address of the permit holder. A copy of such notice shall be
2 filed with the records of the enforcement authority.

3 (F) *Grading of Establishments.* Every food establishment in the city
4 shall display, in a conspicuous location designated by the enforcement
5 authority, and which is readily visible to the public, a placard stating the
6 grade received at the time of the most recent inspection of the
7 establishment. Grades of establishments shall be as follows:

8 (1) **Approved.** An establishment that is operated in compliance
9 with the requirements of §§ 9-6-1-1 et seq as determined by the
10 enforcement authority.

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

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

1 establishment remaining on permit suspension status, and lead
2 to further enforcement action. Operating an establishment
3 without a permit or under a suspended permit is subject to the
4 penalty provisions of §§ 9-6-1-1 et seq. The enforcement
5 authority may require the food establishment operator, person in
6 charge, or other employees to attend approved food safety
7 training.

8 § 9-6-1-~~7~~8 COMPLIANCE PROCEDURES.

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

23 (B) *Issuance of Permits.* The enforcement authority shall be contacted at
24 least five working days prior to the anticipated opening date of the
25 establishment for an inspection to determine compliance with the
26 provisions of §§ 9-6-1-1 et seq. When the inspection reveals that the
27 requirements of §§ 9-6-1-1 et seq. and other applicable laws, regulations
28 and ordinances have been met, a permit application is issued. The
29 applicant ~~[must present this application to the City Treasurer within two~~
30 ~~days]~~ shall remit payment for the permit within five days of the
31 enforcement authority’s approval of the application. If an applicant fails to
32 pay after thirty days following the enforcement authority’s approval of the

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

1 application, the enforcement authority may cancel the application]. A
2 permit will be issued after compliance.

3 (C) [Denial of Permit. The enforcement authority may refuse to issue a
4 permit to any person who fails to demonstrate, to the satisfaction of the
5 enforcement authority, the ability to comply with or who fails to comply
6 with the requirements of §§ 9-6-1-1 et seq. and other laws, regulations and
7 ordinances applicable to the proposed operation. In the event the
8 enforcement authority denies a permit, the enforcement authority shall
9 notify the applicant in writing, stating the reasons for which the permit
10 application is denied.

11 (1) Service of Notices. Notices provided for under this ordinance shall
12 be deemed to have been properly served when the original of the
13 inspection report form or other written notice has been delivered
14 personally to the permit applicant, or such notice has been sent by
15 registered or certified mail, return receipt requested, to the last known
16 address of the permit applicant. A copy of such notice shall be filed
17 with the records of the enforcement authority.

18 (2) An opportunity for a hearing will be provided if a written request for
19 hearing is filed with the City Clerk’s office within fifteen working days.
20 A hearing shall be granted in accordance with the provisions in the IHO
21 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]

22 ~~[(D)]~~ *Suspension of Permits.*

- 23 (1) Permits may be suspended by the enforcement authority for:
- 24 (a) Failure of the holder to comply with the requirements of §§ 9-6-1-
25 1 et seq. or of other applicable laws, regulations or ordinances.
 - 26 (b) An establishment's operating permit shall be immediately
27 suspended in lieu of a third downgrading during any 36-month
28 period under the same permit.
 - 29 (c) Whenever a permit holder or operator has failed to comply with
30 corrective actions required by the enforcement authority pursuant to
31 the requirements of §§ 9-6-1-1 et seq. or of other applicable laws,
32 regulations or ordinances.

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

1 (2) The permit holder or operator shall be notified in writing that the
2 permit is immediately suspended. A hearing in accordance with this
3 section shall be granted upon written request to the enforcement
4 authority, if request is made within five working days of notice of
5 suspended permit. The hearing shall be scheduled within five working
6 days following receipt of the written request by the enforcement
7 authority.
8 (3) Notwithstanding the other provisions of §§ 9-6-1-1 et seq.,
9 whenever the enforcement authority finds an imminent health hazard or
10 other conditions in the operation of a food establishment which, in its
11 judgment, constitute a substantial hazard to the public health, the
12 enforcement authority may without any prior warning, notice, or
13 hearing, issue a written notice to the permit holder or operator citing
14 such condition, specifying the corrective action to be taken, and
15 specifying the time period within which action shall be taken; and, if
16 deemed necessary, such order shall state that the permit is immediately
17 suspended and all food-service or food processing operations are to be
18 immediately discontinued. Any person to whom such an order is
19 issued shall comply immediately therewith. An opportunity for a
20 hearing in accordance with this section shall be provided if a written
21 request for a hearing is filed with the enforcement authority by the
22 permit holder within five working days of such order. The hearing shall
23 be scheduled within five working days following receipt of the written
24 request by the enforcement authority.
25 ~~[(D)]~~ [(E)] *Reinstatement of Suspended Permits.* Any person whose
26 permit has been suspended may at any time make application for a
27 reinspection for the purpose of reinstatement of the permit. Within five
28 working days following receipt of a written request for reinspection, the
29 enforcement authority shall make a reinspection. If the enforcement
30 authority deems that the permit holder complies with the requirements of
31 §§ 9-6-1-1 et seq. and other applicable laws, regulations, and ordinances,
32 the permit shall be reinstated.
33 ~~[(E)]~~ [(F)] *Revocation of Permits.*

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

(1) A permit may be revoked by the enforcement authority for the following:

- (a) For failure of an establishment which has received a Grade of "Unsatisfactory" to meet the requirements of an "Approved" Grade within the required time period.
- (b) For the fourth downgrading or the second suspension in lieu of downgrading within any 36-month period under the same permit.
- (c) For refusal of entry to the establishment after proper identification has been tendered by the Enforcement Authority.
- (d) For interference with the Enforcement Authority in the performance of its duties.

(2) A permit may be revoked after an opportunity for a hearing in accordance with this section has been provided by the enforcement authority. Prior to such action, the enforcement authority shall notify the permit holder in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be revoked at the end of five working days following service of such notice, unless a written request for a hearing is ~~[received by the enforcement authority]~~ [filed with the City Clerk's office] by the permit holder within such five working day period. The hearing shall be scheduled within five working days following receipt of the written request by the ~~[enforcement authority]~~ [City Clerk's office].

[(G)] [Application for a New Permit After Revocation.]

- (1) After a permit is revoked, the former permit holder may submit a written application to the enforcement authority for a new permit and shall pay all applicable fees.
- (2) The annual fee due date for the new permit shall be determined by the date the permit is issued by the enforcement authority.

[(F)] [(H)] Hearings. The hearings provided for in this ordinance shall be conducted by [the Independent Hearing Officer in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[a hearing officer at a time and place designated by the hearing officer.]~~ ~~[Based upon the findings of such hearing, the enforcement~~

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

1 authority shall sustain, modify, or rescind any official notice, order, or
2 other action by the enforcement authority considered in the hearing. A
3 written report by the hearing officer of their findings shall be furnished to
4 the permit holder by the enforcement authority.] Any action of the
5 enforcement authority for which a hearing is not otherwise provided for in
6 this ordinance, which action adversely impacts the permit holder, is
7 subject to review under this section if a hearing request is filed within
8 fifteen working days of the action and in accordance with the provisions in
9 the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] [with the
10 enforcement authority within ten days of the action.]

11 ~~[(G)]~~ [(I)] *Judicial Review.* The exclusive remedy or any party dissatisfied
12 with any final decision of the hearing officer [is to file] ~~[should]~~ a petition to
13 the District Court within 30 days after ~~[service]~~ [receipt] of written notice of
14 the decision of the concerned party. [The petition for review shall be limited
15 to the record.]

16 ~~[(H)]~~ [(J)] *Injunctive Relief.* As an additional remedy, if any food
17 establishment violates the provisions of §§ 9-6-1-1 et seq., the enforcement
18 authority may seek injunctive relief in a court of competent jurisdiction.

19 ~~[(I)]~~ [(K)] *Issuance of Citations.* Citations may be issued by the
20 enforcement authority for failure to comply with any requirement set forth
21 in §§ 9-6-1-1 et seq.

22 ~~[(H)]~~ [(L)] A nonrefundable hearing fee of \$50.00 shall accompany each
23 application for hearing conducted by the hearing officer requested
24 pursuant to this section.]

25 § 9-6-1-~~8~~9 EXAMINATION AND CONDEMNATION OF FOOD.

26 Samples of food, drink, and other substances may be taken and examined by
27 the enforcement authority as often as necessary to determine freedom from
28 unwholesomeness, adulteration or misbranding. Samples submitted for
29 laboratory analysis shall be submitted to a laboratory approved by and under
30 cognizance of a federal or state agency. The enforcement authority may, upon
31 written notice to the owner or person in charge, place a hold order on any food
32 which he determines or has probable cause to believe to be unwholesome or
33 otherwise adulterated or misbranded. The enforcement authority shall tag,

1 label or otherwise identify any food subject to the hold order and permit it to be
2 suitably stored. It shall be unlawful for any person to remove or alter a hold
3 order, notice or tag placed on the food by the enforcement authority, and
4 neither such food nor the containers thereof shall be relabeled, repacked,
5 reprocessed, altered, disposed of, or destroyed without permission of the
6 enforcement authority, except on order by a court of competent
7 jurisdiction. The hold order shall state that a request for a hearing may be filed
8 within ~~ten~~ fifteen working days and that if no hearing is requested the food
9 shall be destroyed at the owner's expense. After the owner or person in
10 charge has had a hearing as requested, and on the basis of evidence produced
11 at such hearing, or on the basis of the enforcement authority's examination in
12 the event a written request for a hearing is not received, the hold order may be
13 vacated or the owner or person in charge of the food may be directed by
14 written order to denature or destroy such food or bring it into compliance with
15 the provisions of §§ 9-6-1-1 et seq. An order to destroy or denature food shall
16 be stayed if the order is appealed to a court of competent jurisdiction within
17 three days.

18 § 9-6-1-~~9~~10 FOOD-SERVICE ESTABLISHMENTS OUTSIDE JURISDICTION
19 OF THE ENFORCEMENT AUTHORITY.

20 Food from food-service establishments or food processing establishments
21 located outside the jurisdiction of the enforcement authority may be sold
22 within the city if such establishments conform to the provisions of §§ 9-6-1-1 et
23 seq. or to substantially equivalent provisions. To determine the extent of
24 compliance with such provisions, the enforcement authority may accept
25 reports from responsible authorities in other jurisdictions where such
26 establishments are located.

27 § 9-6-1-~~10~~11 PLAN REVIEW OF FUTURE CONSTRUCTION.

28 When a food-service establishment or food processing establishment is
29 hereafter constructed or extensively remodeled, or when an existing structure
30 is converted for use as a food-service establishment, properly prepared plans
31 and specifications for such construction, remodeling, or alteration, showing
32 layout, arrangement, and construction materials of work areas, and the
33 location, size, and type of fixed equipment and facilities shall be submitted to

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

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

1 the enforcement authority for approval and to other appropriate city agencies
2 before such work is begun.

3 **§ 9-6-1-~~[11]~~[12] PROCEDURE WHEN INFECTION IS SUSPECTED.**

4 When the enforcement authority has reasonable cause to suspect possibility of
5 disease transmission from any food-service or food processing establishment
6 employee, the enforcement authority shall secure a morbidity history of the
7 suspected employee, or make such other investigation as may be indicated,
8 and take appropriate action. The enforcement authority may require any or all
9 of the following measures:

- 10 (A) The immediate exclusion of the employee from any food-service or
11 food processing establishment;
- 12 (B) The immediate closure of the food-service or food processing
13 establishment concerned until, in the opinion of the enforcement authority,
14 no further danger of disease outbreak exists;
- 15 (C) Restriction of the employee's services to some area of the
16 establishment where there would be no danger of transmitting disease; and
- 17 (D) Adequate medical and laboratory examinations of the employee and of
18 other employees.

19 **§ 9-6-1-~~[12]~~[13] FEES.**

20 (A) *Adjustment of Fees.* Fees charged in relation to the Food Sanitation
21 Ordinance shall be established by rules adopted by the enforcement
22 authority. Any such rule shall be adopted under the procedures of Chapter
23 2, Article 15 ROA 1994.

24 (B) *Temporary Fees.* The enforcement authority is authorized to collect
25 the following fees until such time as they are adjusted as outlined in § ~~[9-6-~~
26 ~~1-18(A)]~~ [9-6-1-12(A)]. These fees are for the purpose of paying the costs
27 reasonably incurred in administering and enforcing the Food Sanitation
28 Ordinance.

- 29 (1) *Permanent Food Service Establishment.* Each permanent food-
30 service establishment shall pay an annual fee of 3/10 of 1% of its gross
31 sales for the previous 12 months, provided that no food-service
32 establishment shall pay an annual fee greater than \$700 nor less than
33 \$200 except that:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

(a) For the first 12 months of operation or portion thereof, the fee shall be \$200.

(b) In the case where there is, under single ownership or management, more than one food- service establishment or more than one place within an establishment where food is prepared or served within a single building or structure, and separate inspections are required, as determined by the enforcement authority, each such food-service establishment or place shall pay a separate annual fee. The food service location with the higher gross receipts shall be considered the primary establishment for the purposes of §§ 9-6-1-1 et seq. The fee for each additional food service establishment or place shall be \$200[.] [except that in no case shall a permanent food service establishment—cannabis permit be considered as a primary or secondary permit for the purposes of calculating inspection fees for permanent food service establishment permits.]

[(2) Permanent Food Service Establishment—Cannabis. Each permanent food-service establishment shall pay an annual fee of 3/10 of 1% of its gross sales for the previous 12 months, provided that no permanent food service establishment—cannabis shall pay an annual fee greater than \$700 nor less than \$200 except that:

(a) For the first 12 months of operation or portion thereof, the fee shall be \$200.

(b) In the case where there is, under single ownership or management, more than one food service establishment—cannabis or more than one place within an establishment where edible cannabis products are prepared or served within a single building or structure, and separate inspections are required, as determined by the enforcement authority, each such food service establishment—cannabis shall pay a separate annual fee. The food service establishment—cannabis location with the higher gross receipts shall be considered the primary food service establishment—cannabis for the purposes of §§ 9-6-1-1 et seq. The fee for each

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

1 additional food service establishment—cannabis shall be \$200,
2 except that in no case shall a permanent food service
3 establishment—cannabis permit be considered as a primary or
4 secondary permit for the purposes of calculating inspection fees for
5 permanent food service establishment permits.]

6 [(2)] [(3)] Temporary Food-Service Establishments. Each temporary
7 food-service establishment shall pay a fee of \$25 for each event and
8 each location. The application for a temporary food service
9 establishment and fee shall be submitted five working days prior to the
10 commencing of operation.

11 [(3)] [(4)] Food Processing Establishments. Each food processing
12 establishment shall pay an annual fee of 3/10 of 1% of its gross sales
13 for the previous 12 months provided that no food processing
14 establishment shall pay a fee greater than \$700 nor less than \$200
15 except that:

- 16 (a) For the first 12 months of operation the fee shall be \$200.
- 17 (b) In the case where there is, under single ownership or
18 management, more than one food processing establishment or
19 place, or more than one place within an establishment where food
20 is processed, prepared, packaged, stored or distributed within a
21 single building or structure, and separate inspections are required,
22 as determined by the enforcement authority, each such food
23 processing establishment or place shall pay a separate annual
24 fee. The food processing establishment location with the higher
25 gross receipts shall be considered the primary establishment for
26 the purposes of §§ 9-6-1-1 et seq. The fee for each additional food
27 processing establishment or place shall be \$200[.] [, except that in
28 no case shall a food processing establishment—cannabis permit
29 be considered as a primary or secondary permit for the purposes
30 of calculating inspection fees for food processing establishments.]

31 [(4)] [(5)] [Food Processing Establishments—Cannabis. Each food
32 processing establishment—cannabis shall pay an annual fee of 3/10 of
33 1% of its gross sales for the previous 12 months provided that no food

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

1 processing establishment—cannabis shall pay a fee greater than \$700
2 nor less than \$200 except that:

3 (a) For the first 12 months of operation or portion thereof, the fee
4 shall be \$200.

5 (b) In the case where there is, under single ownership or
6 management, more than one food processing establishment—
7 cannabis, or more than one place within an establishment where
8 edible cannabis product is processed, prepared, packaged, stored
9 or distributed within a single building or structure, and separate
10 inspections are required, as determined by the enforcement
11 authority, each such food processing establishment—cannabis
12 shall pay a separate annual fee. The food processing
13 establishment—cannabis location with the higher gross receipts
14 shall be considered the primary food processing establishment—
15 cannabis for the purposes of §§ 9-6-1-1 et seq. The fee for each
16 additional food processing establishment—cannabis shall be
17 \$200, except that in no case shall a food processing
18 establishment—cannabis permit be considered as a primary or
19 secondary permit for the purposes of calculating inspection fees
20 for food processing establishments.]

21 [(6)] Limited Facilities. Each limited facility shall pay an annual fee of
22 \$120.

23 [(5)] [(7)] Not-for-Profit Facilities. Each food establishment that is not-
24 for-profit or wherein no gross receipts are generated shall pay an annual
25 fee of \$120.

26 [(6)] [(8)] Not-For-Profit Distribution Center. Facilities, such as food
27 banks, that have acquired not-for-profit status, which distribute food
28 items directly to consumers, are not assessed an annual fee; however,
29 permits are renewed annually according to anniversary date of the
30 issuance of the permit.

31 [(7)] [(9)] Mobile Prepackaged Vendors. Each mobile prepackaged
32 vendor shall pay an annual fee of \$120 for each unit.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

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

~~[(9)]~~ ~~[(11)]~~ Fees for Unscheduled Inspections. In addition to the annual fees provided by this section, all persons engaged in the sale or processing of food shall pay reasonable fees and costs when the enforcement authority is required to reinspect as the result of an enforcement action.

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

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

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

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

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

(b) Owner[-]Initiated Inspection. A permit holder may request an owner[-]initiated inspection no later than three working days following the receipt of the Food Establishment Grading Score of an initial routine inspection. The enforcement authority shall provide a written notice of an additional reinspection fee to cover the cost of conducting the reinspection. This fee shall be paid at City Treasury prior to the time of request of an owner[-]initiated inspection to the enforcement authority.

(c) Requests for special services and reinspections shall be made on forms provided by the enforcement authority.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

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

~~[(10)]~~ [(12)] Payment of Fees.

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

(b) In the event that any person fails to pay the annual fee by the due date, or remits an amount less than the correct amount of the fee due, the enforcement authority shall determine the amount of the fee due using such statement or other available information. The enforcement authority shall thereupon give written notice to the permit holder of the amount due, which amount shall be paid within five working days of receipt of such notice. Any party aggrieved by the enforcement authority's determination as to the amount due may request a hearing [within fifteen days of service of written notice of the amount due pursuant to the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8].

(c) In the event that the annual fee is not paid within five working days of the hearing officer's determination of any requested hearing filed, the enforcement authority may suspend the permit and may also take such action as necessary to collect the annual fee, including any late charges, or reinspection fee.

(d) The enforcemnt authority is authorized and empowered to make inspections and audits of the books and related records of any permit holder subject to the provisions of §§ 9-6-1-1 et seq.; and every such permit holder shall maintain good and accurate books and related records of the gross sales of business done, which

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

1 books and records shall be made available for inspection and audit
2 as may be deemed by the enforcement authority in the
3 administration of any of the provisions of §§ 9-6-1-1 et seq.

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

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

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

18 § 9-6-1-~~[13]~~[14] DISCLOSURE OF INFORMATION.

19 It is unlawful for any present or previous City Official, employee or agent to
20 reveal the New Mexico Gross Receipts Tax Identification Number, any gross
21 receipts information, or any payment information pertaining to any person or
22 entity regulated by city ordinance to anyone except as provided by Section 7-1-
23 8 NMSA 1978.

24 § 9-6-1-~~[14]~~[15] ADMINISTRATION AND INTERPRETATION.

25 The enforcement authority shall be responsible for the administration and
26 enforcement of §§ 9-6-1-1 et seq. Rules and regulations to carry out the intent
27 and purpose of §§ 9-6-1-1 et seq. shall be prescribed by the enforcement
28 authority pursuant to standards created in §§ 9-6-1-1 et seq., subject to
29 establishment hearing and review procedures.

30 § 9-6-1-~~[15]~~[16] VARIANCES.

31 The enforcement authority may grant an individual variance from the
32 limitations prescribed in §§ 9-6-1-1 et seq. whenever it is found upon
33 presentation of adequate proof, that compliance with that specific part of §§ 9-

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

1 6-1-1 et seq. will impose an undue economic burden or hardship upon the
2 business and that granting of the variance will not result in a condition
3 injurious to health or safety. Any person seeking a variance shall do so in
4 writing, setting forth their reasons for the variance and stating the length of
5 time for which they seek the variance. The enforcement authority shall
6 promptly investigate the petition and make a determination as to the
7 disposition thereof. The party seeking this variance shall be given a decision
8 within ten working days following receipt of the request by the enforcement
9 authority.

10 ~~§ 9-6-1-[16]~~[17] ADOPTION BY REFERENCE OF FOOD CODE.

11 Except to the extent that it is inconsistent with the Food Sanitation Ordinance,
12 §§ 9-6-1-1 et seq., the City of Albuquerque does hereby adopt by reference the
13 Food Code, 2009 Recommendations of the United States Public Health
14 Service/Food and Drug Administration as published by the U.S. Department of
15 Health and Human Services, Public Health Service, Food and Drug
16 Administration to regulate the conduct of all food establishments.

17 ~~§ 9-6-1-[17]~~[18] AVAILABILITY OF ORDINANCE AND FOOD CODE.

18 (A) A copy of the “Food Sanitation Ordinance” [i.e., §§ 9-6-1-1 et seq.] is
19 now on file in the Office of the City Clerk/Recorder and is available for
20 inspection by the public during regular business hours. A copy of the
21 ordinance [i.e., §§ 9-6-1-1 et seq.] shall be available to any individual upon
22 request and the payment of a reasonable charge as set by the Chief
23 Administrative Officer, to be not less than the actual cost per copy.

24 (B) A copy of the Food Code, 2009 Recommendations of the United States
25 Public Health Service/Food and Drug Administration as published by the
26 U.S. Department of Health and Human Services, Public Health Service,
27 Food and Drug Administration as adopted by this article are on file in the
28 Office of the City Clerk, and are available for inspection by the public
29 during regular business hours. A copy of the codes shall be available to
30 any individual upon request and the payment of a reasonable charge as set
31 by the Chief Administrative Officer, to be not less than the actual cost per
32 copy.

33 § 9-6-1-99 PENALTY.

1 Every person convicted of a violation of any provision of §§ 9-6-1-1 et seq.
2 shall be guilty of a misdemeanor and shall be subject to the penalty provisions
3 set forth in § 1-1-99 of this code of ordinances. Every violation of §§ 9-6-1-1 et
4 seq. shall be a misdemeanor. Each day such violation is committed or
5 permitted to continue shall constitute a separate offense and shall be
6 punishable as such hereunder.

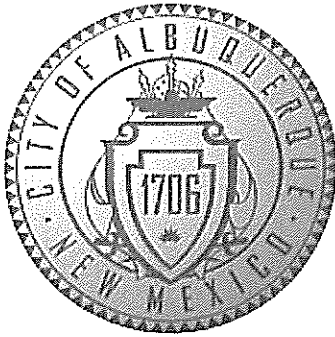
7 SECTION 2. Severability Clause. If any section, paragraph, sentence,
8 clause, work or phrase of this ordinance is for any reason held to be invalid or
9 unenforceable by any court of competition jurisdiction, such decision shall not
10 affect the validity of the remaining provisions of this ordinance.

11 SECTION 3. Compilation. Section 1 of this ordinance shall amend, be
12 incorporated in and made part of the Revised Ordinances of Albuquerque, New
13 Mexico, 1994.

14 SECTION 4. Effective Date. This ordinance shall take effect sixty days after
15 publication by title and general summary.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

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




Mayor Timothy M. Keller

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

INTER-OFFICE MEMORANDUM

March 17, 2022

TO: Isaac Benton, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: Proposed Revisions to Food Sanitation Ordinance and Retailer Meat Markets and Wholesalers Ordinance to Accommodate Legalized Cannabis Industry


The attached set of proposed ordinance revisions is intended to accommodate changing regulatory requirements pursuant to the legalization of recreational cannabis in New Mexico.

Amendments to the Food Sanitation Ordinance and the Retailers, Meat Markets and Wholesalers Ordinance will create new categories of permits that are specific to the manufacture and sale of edible cannabis products within the City's jurisdiction. In addition, these amendments are necessary to clarify that cannabis added to food products for human consumption will not be considered an adulterant as is stated in the Federal Food Code that the City of Albuquerque has adopted.


The following improvements are anticipated:

- Regulatory oversight of specific elements of the cannabis industry pertaining to edibles, not otherwise covered by State regulation
- Clarification of existing food ordinance applicability to the emerging cannabis industry
- Improvement to compliance and permitting language to ensure that enforcement is consistent and straightforward


Approved:

 3/25/22
Sarita Nair Date
Chief Administrative Officer

Approved as to Legal Form:

DocuSigned by:
 3/21/2022 | 5:33 PM MDT
EE0980CFDBA0443
Kevin A. Morrow Date
Acting City Attorney

Recommended:

DocuSigned by:
 3/21/2022 | 8:03 AM MDT
5ADC9418F54D40D
Angel Martinez Jr. Date
Director, EHD

Cover Analysis

1. What is it?

Amendments to the Food Sanitation Ordinance and the Retailers, Meat Markets and Wholesalers Ordinance to accommodate legalized cannabis edibles in New Mexico

2. What will this piece of legislation do?

This legislation amends the existing ordinances to ensure that regulatory requirements are clear and consistent and will accommodate changes in regulation pursuant to legalized cannabis. New categories of food permits are also created that are specific to the emerging cannabis edibles industry.

3. Why is this project needed?

The City needs this legislation to ensure that existing food ordinance requirements do not interfere with the implementation of legalized recreational cannabis, especially in the edibles market, and to provide for safety considerations related to the manufacture and sale of cannabis products not otherwise covered under State regulation.

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

No new costs are anticipated as a direct result of this legislation; however, new enforcement resources will be required for the enforcement of all time, place and manner local regulations. These costs will be reflected in the proposed FY23 budget.

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

The implementation of new local food permits that are specific to manufacture and sale of cannabis edibles is expected to generate some revenue; however, it is not yet possible to estimate the amount of this revenue as the interest in this type of industry is not yet established.

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

Business owners entering the cannabis industry will be faced with conflicting regulatory language, and the community will be less protected from health and safety considerations related to the industry. In addition, the community at large would be dependent on the State for all regulation related to this industry, which does not cover all aspects that could pose hazards to consumers and constituents.

7. Is this service already provided by another entity?

No.