

CITY of ALBUQUERQUE

TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. O-22-18 ENACTMENT NO. _____

SPONSORED BY: Tammy Fiebelkorn, by request

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ORDINANCE

AMENDING THE ALBUQUERQUE RETAILERS, MEAT MARKETS AND WHOLESALE ORDINANCE TO REGULATE EDIBLE CANNABIS PRODUCTS.

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

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

WHEREAS, fees need to be set for cannabis establishments.

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

SECTION 1. Section 9-6-2-1 et seq[,] is amended as follows.

§ 9-6-2-1 SHORT TITLE.

Sections 9-6-2-1 et seq. shall be known and may be cited as the "Retailer, Meat Market and Wholesaler Ordinance."

§ 9-6-2-2 DEFINITIONS.

For the purpose of §§ 9-6-2-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULTERATED. The condition of a food:

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

(2) If it bears or contains any added poisonous or deleterious substance, for which no safe tolerance has been established by regulations, or in excess of such tolerance if one has been established [;], except that an edible cannabis product, including an edible cannabis finished product which is manufactured, labeled, or sold by a cannabis establishment in compliance with the Cannabis

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1 Regulation Act, Chapter 26, Article 2C NMSA 1978 shall not be considered
2 adulterated solely on the basis of its cannabis content;]

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

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

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

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

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

16 **BULK FOOD.** ~~[P]~~[p]rocessed or unprocessed food in aggregate containers
17 from which quantities desired by the consumer are withdrawn.

18 **CORROSION-RESISTANT MATERIALS.** Those materials that maintain
19 sanitary surface characteristics under prolonged influence of the food to be
20 contacted, the normal use of cleaning compounds and bactericidal solutions,
21 and other conditions of the use environment.

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

25 **[EDIBLE CANNABIS FINISHED PRODUCT.** Any edible cannabis product that
26 is packaged and labeled for retail sale permitted under the Cannabis Regulation
27 Act, Chapter 26, Article 2C NMSA.]

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.** An individual permit holder, individuals having supervisory or
32 management duties and any person working in a food establishment.

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1 **EQUIPMENT.** All stoves, ovens, hoods, meat saws, slicers, mixers,
2 meatblocks, processing counters or tables, refrigerators, freezers, sinks,
3 warewashing machines, ice makers, and similar items, other than utensils, used
4 in the operation of a food establishment.

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

8 **FOOD.** Any raw, cooked, or processed edible substance, beverage or
9 ingredient used or intended for use or for sale in whole or in part for human
10 consumption to include ice, water, gum, confectionery and condiments.

11 **FOOD-CONTACT SURFACES.** Those surfaces of equipment and utensils with
12 which unpackaged foods other than fresh fruits and vegetables normally come
13 in contact, and those surfaces from which food may drain, drip, or splash back
14 onto surfaces normally in contact with food.

15 **FOOD ESTABLISHMENT.** Any [commercial] establishment where food and
16 food products are processed, prepared, packaged, stored, offered for sale,
17 donated, or distributed for off-the-premise consumption, to include, but not
18 limited to retail food stores, meat markets and warehouses.

19 ~~[FOOD ESTABLISHMENT—CANNABIS.~~ A specific and limited type of food
20 establishment, which is also a cannabis establishment licensed under the
21 Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where edible
22 cannabis finished products are offered for sale, donated, or distributed for off-
23 the-premise consumption, or where edible cannabis products or edible
24 cannabis finished products are stored, including warehouses.]

25 [FOOD ESTABLISHMENT—CANNABIS PLUS. A specific and limited type of
26 food establishment, which is also a cannabis establishment with a cannabis
27 consumption area, both licensed under the Cannabis Regulation Act, Chapter
28 26, Article 2C NMSA 1978, where edible cannabis finished products are offered
29 for sale, donated, or distributed for either off-the-premise consumption or in a
30 cannabis consumption area. The term also includes the place where edible
31 cannabis finished products are stored, including warehouses.]

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1 **GROSS SALES.** The total amount of money or the value of other
2 consideration received from selling food on a calendar year basis by each
3 establishment as defined in §§ 9-6-2-1 et seq.

4 **HAMBURGER.** Chopped fresh beef.

5 **HERMETICALLY SEALED CONTAINER.** A container which is designed and
6 intended to be secure against the entry of microorganisms and to maintain the
7 commercial sterility of its contents after processing.

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

10 **KITCHENWARE.** All multi-use utensils.

11 **LAW.** Federal, state, and local statutes, ordinances and regulations.

12 **MISLABELED.** The presence or absence of any written, printed, or graphic
13 matter upon or accompanying food or containers of food which is false,
14 misleading, or which violates any applicable labeling laws.

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

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

17 **PERSON.** An individual, partnership, corporation, association, or any other
18 legal entity. This term means either the singular or the plural as the case may
19 be.

20 **PERSON IN CHARGE.** The individual present in a food establishment who is
21 the apparent supervisor of the establishment at the time of inspection. If no
22 individual is the apparent supervisor, then any employee present is the person
23 in charge.

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

26 (1) The rapid and progressive growth of infectious or toxigenic
27 microorganisms; or

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

29 Exceptions to the above definition include: eggs with shell intact; foods with
30 a water activity value (Aw) of .85 or less; foods with a pH value of 4.6 or less; or
31 foods for which laboratory evidence acceptable to the regulatory authority
32 demonstrates that rapid and progressive growth of infectious or toxigenic
33 microorganisms cannot occur.

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1 **SAFE MATERIALS.** Articles manufactured from or composed of materials that
2 may not reasonably be expected to result, directly or indirectly, in their
3 becoming a component or otherwise affecting the characteristics of any food. If
4 materials used are food additives or color additives as defined in Section 201(s)
5 or (t) of the Federal Food, Drug, and Cosmetic Act, they are "safe" only if they
6 are used in conformity with regulations established pursuant to Section 409 or
7 Section 706 of the Act. Other materials are "safe" only if, as used, they are not
8 food additives or color additives as defined in Section 201(s) or (t) of the Federal
9 Food, Drug, and Cosmetic Act and are used in conformity with all applicable
10 regulations of the Food and Drug Administration.

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

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

17 **SEALED.** Free of cracks or other openings that permit the entry or passage of
18 moisture.

19 **SINGLE-SERVICE ARTICLES.** Cups, containers, lids or closures, and
20 packaging materials, including bags and all similar articles designed for one-
21 time, one-person use and then discarded. The term does not include *SINGLE*
22 *USE* articles such as number 10 cans, aluminum pie pans, bread wrappers and
23 similar articles into which food has been packaged by the manufacturer.

24 **SULFITING AGENTS.** Sulfur dioxide or any chemical which produces sulfur
25 dioxide when used to treat foods, including the following: sodium sulfite;
26 sodium bisulfite; potassium bisulfite; sodium metabisulfite; and potassium
27 metabisulfite.

28 **TEMPORARY FOOD ESTABLISHMENT.** A mobile food establishment vending
29 prepackaged frozen food which operates at a fixed location for a period of time
30 not to exceed seven days.

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

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1 **WAREWASHING.** The cleaning and sanitizing of food-contact surfaces of
2 equipment and utensils.

3 **WHOLESOME.** [In sound condition, clean, free from adulteration, free from
4 insects and insect fragments and otherwise suitable for use as human food.] [~~in~~
5 ~~sound condition, clean, free from adulteration, meets current Food and Drug~~
6 ~~Administration "Food Defect Action Levels" and is otherwise suitable for use~~
7 ~~as human food.]~~

8 **§ 9-6-2-3 FOOD CARE.**

9 **(A) Food Supplies.** Food shall be free from spoilage, filth, or other
10 contamination as to be safe for human consumption. Potentially hazardous
11 foods and hermetically sealed food shall not be home prepared or obtained from
12 sources other than commercial food processing establishments.

13 **(B) Special Requirements.**

14 **(1)** Fluid milk and fluid milk products used, stored, or sold shall be
15 pasteurized and shall meet the Grade "A" quality as established by law. Dry
16 milk and dry milk products shall be made from pasteurized milk and milk
17 products. Cheese from an approved processing plant that is aged a minimum
18 of 60 days is exempt from this requirement.

19 **(2)** Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall
20 be received and/or repacked in nonreturnable packages identified with the name
21 and address of the original shell stock processor, shucker-packer, or repacker,
22 or the interstate certification number issued according to law. Shell stock and
23 shucked shellfish shall be kept in the container in which they were received
24 until they are used or sold. Each container of unshucked shell stock (oysters,
25 clams, or mussels) shall be identified by an attached tag that states the name
26 and address of the original shell stock processor, the kind and quantity of shell
27 stock, and an interstate certification number issued by the state or foreign
28 shellfish control agency where applicable. The identification tag shall be kept
29 on file within the establishment for a period of 90 days from receipt of the shell
30 stock.

31 **(3)** Only clean whole eggs with shell intact and without cracks or checks,
32 or pasteurized liquid, frozen or dry eggs or pasteurized dry egg products shall
33 be used, except that hard-boiled peeled eggs, commercially prepared and

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1 packaged, may be used. Eggs with intact shells which have been hard-boiled
2 and air-cooled in the establishment are not considered to be potentially
3 hazardous food.

4 (4) Only ice which has been manufactured and/or packaged in an approved
5 facility shall be used and sold.

6 (5) A variance for a bake sale may be granted provided the grantee meets
7 the bake sale requirements promulgated by the enforcement authority.

8 (6) On premise application of sulfiting agents on food is prohibited in any
9 food establishment or by a contractor hired for the final preparation of food for
10 that establishment.

11 (C) *Food Protection.*

12 (1) General. At all times, including while being stored, prepared, displayed,
13 dispensed or transported, food shall be protected from potential contamination
14 by all agents, including dust, insects, rodents, unclean equipment and utensils,
15 unnecessary handling, coughs and sneezes, flooding, draining, and overhead
16 leakage or condensation. The temperature of all potentially hazardous food
17 shall be 45° F. (7° C.) or below, or 140° F. (60° C.), at all times, except as
18 otherwise provided in §§ 9-6-2-1 et seq. Retail food stock should be properly
19 rotated. Hermetically sealed packages shall be properly handled to maintain
20 container integrity. Spoiled, damaged, returned or detained food items shall be
21 segregated in designated areas pending final disposition. The sale of damaged
22 goods is permissible provided the requirements promulgated by the
23 enforcement authority for such sales are met.

24 (2) Emergency Occurrences. In the event of a fire, flood, or similar event
25 that might result in the contamination of food, or which might prevent
26 potentially hazardous food from being held at required safe temperatures, the
27 person in charge shall immediately contact the enforcement authority. Upon
28 receiving notice of this occurrence, the enforcement authority shall take
29 whatever action that it deems necessary to protect the public health.

30 (D) *Food Storage.*

31 (1) General.

32 (a) Food for on-site preparation, whether raw or prepared, if removed
33 from the container or package in which it was obtained, shall be enclosed in a

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1 clean, covered container except during necessary periods of
2 preparation. Fresh raw vegetables and fruits shall be exempted from
3 this requirement. Container covers shall be impervious and nonabsorbent. In
4 storage, sub-primal cuts of meat shall be protected by being covered with single
5 use wrapping material except that primal cuts, quarters or sides of meat or
6 processed meats such as country hams, slab bacon, and smoked or cured
7 sausages may be hung uncovered on clean, sanitized hooks or placed on clean,
8 sanitized metal racks in such a manner as to preclude contamination of any
9 food products in storage.

10 (b) Containers of food shall be stored a minimum of four inches above
11 the floor in a manner that permits easy cleaning of the storage area, or stored
12 on dollies, racks or pallets, provided such equipment is easily movable, either
13 by hand or with the use of pallet-moving equipment that is on the premises and
14 used. Cased food packaged in cans, glass or other waterproof containers need
15 not be elevated when the case of food is not exposed to floor moisture.

16 (c) Food and containers of food shall not be stored under leaking sewer
17 or water lines, or leaky automatic fire protection sprinkler heads.

18 (d) Packaged foods shall not be stored in contact with water or undrained
19 ice.

20 (e) A bulk food ingredient shall be stored in a container identifying it by
21 common name if ingredient identity is questionable and shall be dispensed by
22 an appropriate utensil.

23 (f) The storage of food in toilet rooms and vestibules, and garbage or
24 mechanical rooms is prohibited.

25 (2) Refrigerated/Frozen Storage.

26 (a) Refrigeration facilities or effectively insulated facilities shall be
27 provided to assure the maintenance of potentially hazardous food at required
28 temperatures during storage. Each mechanically refrigerated facility storing
29 potentially hazardous food shall be provided with a numerically scaled
30 indicating thermometer, accurate to $\pm 2^{\circ}$ F. (1° C.), located to measure the air
31 temperature in the warmest part of the facility and located to be easily
32 readable. Recording thermometers, accurate to $\pm 2^{\circ}$ F. (1° C.), may be used in
33 lieu of indicating thermometers.

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1 (b) Potentially hazardous food requiring refrigeration after preparation
2 shall be rapidly cooled from 140° F. (60° C.) to an internal temperature of 70° F.
3 (21° C.) within a two (2) hour period. A maximum internal temperature of 45° F.
4 (7° C.) shall be achieved within the next four hour period and maintained for the
5 duration of the storage. The total cooling period for potentially hazardous food
6 shall not exceed six hours, and shall require utilizing methods such as shallow
7 pans, agitation, quick chilling, or water circulation external to the food
8 container. Potentially hazardous foods to be transported shall be pre-chilled
9 and held at a temperature of 45° F. (7° C.) or below unless maintained in
10 accordance with division (D)(3) below.

11 (c) Frozen foods shall be kept frozen and should be stored at an internal
12 temperature of 0° F. (-18° C.) or below.

13 (d) Ice used as a cooling medium for food storage shall not be used or
14 sold for human consumption.

15 (3) Hot Storage.

16 (a) Hot food storage facilities shall be provided to assure the
17 maintenance of potentially hazardous food at the required temperature during
18 storage. Each hot food storage facility storing potentially hazardous food shall
19 be provided with a numerically scaled indicating thermometer, accurate to ±2°
20 F. (1° C.), located to measure the temperature in the coolest part of the facility
21 and located to be easily readable. Recording thermometers, accurate to ±2° F.
22 (1° C.), may be used in lieu of indicating thermometers.

23 (b) The internal temperature of potentially hazardous foods requiring hot
24 storage shall be 140° F. (60° C.) or above, except during necessary periods of
25 preparation. Potentially hazardous food to be transported shall be held at a
26 temperature of 140° F. (60° C.) or above, unless maintained in accordance with
27 division (2)(b) of this division (D).

28 (E) *Food Preparation and Processing.*

29 (1) General.

30 (a) Food shall be processed with a minimum of manual contact, with
31 suitable utensils, and on surfaces that prior to use have been cleaned, rinsed,
32 and sanitized to prevent cross-contamination.

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1 (b) Custards, cream fillings, including synthetics, and similar products
2 shall be kept at a temperature of 45° F. (7° C.) or below during storage, display
3 or transportation. Synthetic filled products may be excluded from this
4 requirement if scientific evidence is on file with the enforcement authority
5 indicating that the specific product will not support the growth of pathogenic
6 microorganisms. These synthetic filled products may be labeled to indicate that
7 refrigeration is not required.

8 (c) Potentially hazardous foods that have been cooked and then
9 refrigerated, shall be reheated rapidly to 165° F. (74° C.) or higher throughout
10 before being placed in a hot food storage facility. Steamtables, bain-maries,
11 "crock pots," warmers, and other hot food holding facilities are prohibited for
12 the rapid reheating of potentially hazardous foods.

- 13 (d) Potentially hazardous foods shall be thawed:
- 14 1. In a refrigerated unit at a temperature not to exceed 45° F. (7° C.); or
 - 15 2. Under running potable water at a temperature not exceeding 70° F.
16 (21° C.) and with sufficient water velocity to agitate and float off loose particles
17 in the overflow; or
 - 18 3. In a microwave oven as part of the continuous cooking process only
19 when the food will be transferred immediately to conventional cooking facilities,
20 or; when the entire cooking process takes place in a microwave oven; or
 - 21 4. As part of the conventional cooking process.

22 (e) Product Thermometers. Metal stem-type numerically scaled
23 indicating thermometers, accurate to ±2° F. (±1° C.), shall be provided and used
24 to assure the attainment and maintenance of proper internal cooking, holding,
25 or refrigeration temperatures of all potentially hazardous foods.

26 (2) Meat Processing. Chopped fresh beef, "hamburger," shall not contain
27 more than 30% fat with or without the addition of beef fat. Preservatives or dyes
28 shall not be added to chopped fresh beef or to any other fresh meat.

29 (F) *Food Display.*

30 (1) Potentially Hazardous Foods. Potentially hazardous foods shall be kept
31 at an internal temperature of 45° F. (7° C.) or below or at an internal temperature
32 of 140° F. (60° C.) or higher during display except that rare roast beef which is
33 offered for sale hot shall be held at a temperature of at least 130° F. (55° C.).

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1 (2) Frozen Foods. Foods intended for sale in a frozen state should be
2 stored at an internal temperature of 0° F. (-18° C.) or below with a tolerance of
3 10° F. (-12° C.) for short periods of time incidental to normal and good retail food
4 store operations and practices. Frozen foods on display shall be stored below
5 or behind product food lines according to cabinet manufacturers'
6 specifications.

7 (3) Display Equipment. Food on display, other than raw fruits and raw
8 vegetables, shall be protected from contamination by packaging, display cases
9 or similar equipment. All food shall be displayed above the floor in a manner
10 that will protect the food from contamination. Hot or cold food facilities shall
11 be provided to assure the maintenance of potentially hazardous food at the
12 required temperature during display.

13 (4) Dispensing Utensils. To avoid unnecessary manual contact with the
14 food, suitable dispensing utensils shall be used by employees or provided to
15 consumers who serve themselves unpackaged bulk food (other than raw fruits
16 or vegetables). These dispensing utensils shall be:

- 17 (a) Stored in the food with the dispensing utensil handle extended out of
18 the food; or
- 19 (b) Stored clean and dry; or
- 20 (c) Stored in running potable water.

21 (5) Food Sample Demonstrations. When food sample demonstrations and
22 food promotions are authorized in the retail food store, the person in charge
23 shall ensure that such activities comply with the applicable sanitation
24 provisions of §§ 9-6-2-1 et seq.

25 (G) *Food Transportation by Retail Food Stores.*

26 (1) General. When transporting food, the retail food store shall protect food
27 from contamination by covered containers or packaging. Foods in original
28 individual packages do not need to be overwrapped or covered if the original
29 package has not been torn or broken. During transportation, food shall meet
30 the applicable requirements of §§ 9-6-2-1 et seq. relating to food protection and
31 food storage.

32 (2) Transport Vehicle Identification. The name and address of persons
33 transporting food shall be legibly and conspicuously painted or permanently

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1 affixed in letters at least three inches high by one-half inch wide on each side
2 of all transportation vehicles operated by such person.

3 (3) All food transportation shall be in enclosed van-type vehicles.

4 (H) *Sale of Frozen Food from Temporary Food Establishments.*

5 (1) General. Temporary Food Establishments shall dispense only
6 prepackaged, frozen food products and shall comply with the following
7 requirements:

8 (a) Food shall be from an approved source.

9 (b) Breaking of packages and/or packaging of frozen goods in the mobile
10 unit is prohibited.

11 (c) Products shall be kept at 0° F. (-18° C.) or below.

12 (d) Products shall conform with labeling laws.

13 (e) All products shall be housed in the mobile unit and shall not be
14 removed from it until sold.

15 (2) Miscellaneous Requirements.

16 (a) On-street vending prohibited.

17 (b) All vehicles must be properly identified as required in division (G)(2)
18 of this section.

19 (c) The noise level created by the refrigeration unit must not exceed the
20 standards stipulated by law.

21 § 9-6-2-4 PERSONNEL.

22 (A) *Employee Health.* No person while infected with a disease in a
23 communicable form that can be transmitted by foods or who is a carrier of
24 organisms that cause such a disease or while affected with a boil, an infected
25 wound, or an acute respiratory infection shall work in a food establishment in
26 any capacity in which there is a likelihood of such person contaminating food
27 or food contact surfaces with pathogenic organisms or transmitting disease to
28 other persons.

29 (B) *Personal Cleanliness.* Employees shall thoroughly wash their hands and
30 exposed portions of their arms with soap and warm water before starting work,
31 during work as often as is necessary to keep them clean, after smoking, eating,
32 or using the toilet, and after handling raw meat, raw poultry or raw
33 seafood. Employees shall keep their fingernails trimmed and clean.

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1 (C) *Clothing.*

2 (1) General.

3 (a) Employees shall wear clean outer clothing.

4 (b) Employees shall use effective hair restraints where necessary to
5 prevent the contamination of food or food contact surfaces.

6 (D) *Employee Practices.*

7 (1) Employees shall consume food only in designated areas. An employee
8 eating area shall not be so designated if consuming food there may result in
9 contamination of other food, equipment, utensils, or other items needing
10 protection.

11 (2) Employees shall not use tobacco in any form, while engaged in food
12 handling operations, nor while in warewashing or food preparation
13 areas. Employees shall use tobacco only in designated areas. An employee
14 tobacco-use area shall not be designated for that purpose if the use of tobacco
15 there may result in contamination of food, equipment, utensils or other items
16 needing protection.

17 (3) When food is being manipulated by hand during a preparation process,
18 all hand jewelry, which cannot be adequately sanitized, and all insecure jewelry
19 shall be removed.

20 (4) Employees shall maintain a high degree of personal cleanliness and
21 shall conform to good hygienic practices during all working periods.

22 § 9-6-2-5 EQUIPMENT AND UTENSILS.

23 (A) *Materials.*

24 (1) General. Multi-use equipment and utensils shall be constructed and
25 repaired with safe materials, including finishing materials, shall be corrosion
26 resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and
27 durable under conditions of normal use. Single-service articles shall be made
28 from clean, sanitary, safe materials. Equipment, utensils, and single-service
29 articles shall not impart odors, color, or taste, nor contribute to the
30 contamination of food.

31 (2) Solder. If solder is used, it shall be composed of safe materials and be
32 corrosion resistant.

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1 (3) Wood. Hard maple or equivalent nonabsorbent wood that meets the
2 general requirements set forth in division (A)(1) above may be used for cutting
3 blocks and cutting boards. The use of wood as a food-contact surface under
4 other circumstances is prohibited.

5 (4) Plastics. Safe plastic or safe rubber or safe rubberlike materials that are
6 resistant under normal conditions of use to scratching, scoring, decomposition,
7 crazing, chipping and distortion, that are of sufficient weight and thickness to
8 permit cleaning and sanitizing by normal warewashing methods, and which
9 meet the general requirements set forth in division (A)(1) above are permitted
10 for repeated use.

11 (5) Single-Service. Reuse of single-service articles is prohibited.

12 (B) *Design and Fabrication.*

13 (1) General. All equipment and utensils, including plasticware, shall be
14 designed and fabricated for durability under conditions of normal use and shall
15 be resistant to denting, buckling, pitting, chipping, and crazing.

16 (a) Food-contact surfaces shall be easily cleanable, smooth, and free of
17 breaks, open seams, cracks, chips, pits, and similar imperfections, and free of
18 difficult-to-clean internal corners and crevices. Cast iron may be used as a
19 food-contact surface only if the surface is used for cooking. Threads shall be
20 designed to facilitate cleaning; ordinary "V" type threads are prohibited in food
21 contact surfaces, except that in equipment such as ice makers, hot oil cooking
22 equipment, or hot oil filtering systems, such threads shall be minimized.

23 (b) Equipment containing bearings and gears requiring unsafe lubricants
24 shall be designed and constructed so that the lubricant cannot leak, drip, or be
25 forced into food or onto food-contact surfaces. Only safe lubricants shall be
26 used on equipment designed to receive lubrication of bearings and gears on or
27 within food-contact surfaces.

28 (c) Sinks and drain boards shall be self-draining.

29 (2) Accessibility. Unless designed for in-place cleaning, food-contact
30 surfaces shall be accessible for cleaning and inspection:

31 (a) Without being disassembled; or

32 (b) By disassembling without the use of tools; or

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1 (c) By easy disassembling with the use of only simple tools such as
2 mallets, screwdrivers, or open-end wrenches which are kept near the
3 equipment.

4 (3) In-Place Cleaning. Equipment intended for in-place cleaning shall be so
5 designed and fabricated that:

6 (a) Cleaning and sanitizing solutions can be circulated throughout a fixed
7 system using an effective cleaning and sanitizing regimen; and

8 (b) Cleaning and sanitizing solutions will contact all interior food-contact
9 surfaces; and

10 (c) The system is self[-]draining or capable of being completely
11 evacuated.

12 (4) Pressure Spray Cleaning. Fixed equipment designed and fabricated to
13 be cleaned and sanitized by pressure spray methods shall have sealed electrical
14 wiring, switches, and connections.

15 (5) Nonfood-Contact Surfaces. Surfaces of equipment not intended for
16 contact with food, but which are exposed to splash or food debris or which
17 otherwise require frequent cleaning, shall be designed and fabricated to be
18 smooth, washable, free of unnecessary ledges, projections, or crevices, and
19 readily accessible for cleaning, and shall be of such material and in such repair
20 as to be easily maintained in a clean and sanitary condition.

21 (6) Maintenance of Equipment and Utensils. All equipment and utensils
22 shall be maintained in good repair to comply with the requirements of §§ 9-6-2-
23 1 et seq.

24 (C) *Equipment Installation and Location.*

25 (1) General. Equipment, including ice makers and ice storage equipment,
26 shall not be located under leaking sewer or water lines, open stairwells, or other
27 sources of contamination. This requirement does not apply to automatic fire
28 protection sprinkler heads that may be required by law.

29 (2) Aisles and Working Spaces. Aisles and working spaces between units
30 of equipment and between equipment and walls, shall be unobstructed and of
31 sufficient width to permit employees to perform their duties readily without
32 contamination of food or food-contact surfaces by clothing or personal

1 contact. All easily movable storage equipment such as pallets, racks, and
2 dollies shall be positioned to provide accessibility to working areas.

3 **§ 9-6-2-6 CLEANING, SANITIZATION AND STORAGE OF EQUIPMENT AND**
4 **UTENSILS.**

5 **(A) *Equipment and Utensil Cleaning and Sanitization.***

6 **(1) Cleaning Frequency.**

7 **(a) Utensils and food-contact surfaces of equipment shall be washed,**
8 **rinsed, and sanitized in that order after each use, and following any**
9 **interruptions of operations during which time contamination may have occurred**
10 **and between processing of different animal species or a change in processing**
11 **from raw to ready-to-eat foods and after final use each working day.**

12 **(b) Where equipment and utensils are used for the preparation of**
13 **potentially hazardous foods on a continuous or production-line basis, utensils**
14 **and the food-contact surfaces of equipment shall be washed, rinsed, and**
15 **sanitized, in that order, at intervals throughout the day on a schedule based on**
16 **food temperature, type of food, and amount of food particle accumulation.**

17 **(c) Nonfood-contact surfaces of equipment, including all cargo areas of**
18 **transport vehicles, including grocery push carts, shall be cleaned as often as is**
19 **necessary to keep the equipment free of accumulation of dust, dirt, food**
20 **particles, and other debris.**

21 **(2) Wiping Cloths.**

22 **(a) Moist cloths or sponges used for wiping food spills on food-contact**
23 **surfaces of equipment shall be clean and rinsed frequently in one of the**
24 **sanitizing solutions permitted in division (A)(3)(e) below and used for no other**
25 **purpose. These cloths and sponges shall be stored in the sanitizing solution**
26 **between uses.**

27 **(b) Moist cloths or sponges used for cleaning nonfood-contact surfaces**
28 **of equipment shall be clean and rinsed as specified in division (A)(2)(a) above**
29 **and used for no other purpose. These cloths and sponges shall be stored in**
30 **the sanitizing solution between uses.**

31 **(3) Manual Cleaning and Sanitizing.**

32 **(a) For manual washing, rinsing and sanitizing of utensils and equipment,**
33 **a sink with not fewer than three compartments shall be provided and used. Sink**

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1 compartments shall be large enough to accommodate most equipment and
2 utensils, and each compartment of the sink shall be supplied with hot and cold
3 potable running water. Fixed equipment and utensils and equipment too large
4 to be cleaned in sink compartments shall be washed manually or cleaned by
5 pressure spray methods.

6 (b) Easily movable dish tables or drain boards of 18 inches minimum
7 length shall be provided for proper handling of soiled utensils prior to washing
8 and for cleaned utensils following sanitizing and shall be located so as not to
9 interfere with the proper use of the warewashing facilities.

10 (c) Equipment and utensils shall be pre-flushed or pre-scraped and, when
11 necessary, pre-soaked to remove gross food particles and soil.

12 (d) When a three compartment sink is utilized for warewashing, the
13 operation shall be conducted in the following sequence:

- 14 1. Sinks shall be cleaned prior to use; and
- 15 2. Equipment and utensils shall be thoroughly washed in the first
16 compartment with a hot detergent solution that is kept clean; and
- 17 3. Equipment and utensils shall be rinsed free of detergent and
18 abrasives with clean water in the second compartment; and
- 19 4. Equipment and utensils shall be sanitized in the third compartment
20 according to one of the methods included in divisions (A)(3)(e)1. through 4.
21 below.

22 (e) The food-contact surfaces of all equipment and utensils shall be
23 sanitized by:

- 24 1. Immersion for at least one-half minute in clean, hot water of a
25 temperature of at least 170° F. (77° C.); or
- 26 2. Immersion for at least one minute in a clean solution containing at
27 least 50 parts per million of available chlorine as a hypochlorite and having a
28 temperature of at least 75° F. (24° C.); or
- 29 3. Immersion for at least one minute in a clean solution containing at
30 least 12.5 parts per million of available iodine and having a pH not higher than
31 5.0 and at a temperature of at least 75° F. (24° C.); or
- 32 4. Immersion in a clean solution containing any other chemical
33 sanitizing agent approved by both the city and state health authorities that will

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1 provide the equivalent bactericidal effect of a solution containing at least 50
2 parts per million of available chlorine as a hypochlorite at a temperature of at
3 least 75° F. (24° C.) for one minute; or

4 5. Treatment with steam free from materials or additives harmful to
5 human health in the case of equipment too large to sanitize by immersion, but
6 in which steam can be confined; or

7 6. Rinsing, spraying, or swabbing with a chemical sanitizing solution of
8 at least twice the strength required for that particular sanitizing solution in the
9 case of equipment too large to sanitize by immersion.

10 (f) When hot water is used for sanitizing, the following facilities shall be
11 provided and used:

12 1. An integral heating device or fixture installed in, on, or under the
13 sanitizing compartment of the sink capable of maintaining the water at a
14 temperature of at least 170° F. (77° C.); and

15 2. A numerically scaled indicating thermometer, accurate to ±2° F. (1°
16 C.), convenient to the sink for frequent checks of water temperature; and

17 3. Dish baskets of such size and design to permit complete immersion
18 of utensils and equipment in the hot water.

19 (g) When chemicals are used for sanitization, they shall not have
20 concentrations higher than the maximum permitted by Federal regulations and
21 a test kit or other device that accurately measures the parts per million
22 concentration of the solution shall be provided and used by establishment
23 operators.

24 (4) Mechanical Cleaning and Sanitizing. Mechanical cleaning and
25 sanitizing if done shall meet the requirements as set forth in §§ 9-6-1-1 et seq.

26 (5) Drying. After sanitization, all equipment and utensils shall be air[-]
27 dried.

28 (6) Retail Food Stores Without Proper Cleaning Facilities. All retail food
29 stores which do not have facilities for proper cleaning and sanitizing of utensils
30 and equipment shall not prepare or package food for sale, or dispense
31 unpackaged food other than raw fruits and vegetables.

32 (B) *Equipment and Utensil Handling and Storage.*

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1 (1) Handling. Cleaned and sanitized equipment and utensils shall be
2 handled in a way that protects them from contamination.

3 (2) Storage.

4 (a) Cleaned and sanitized utensils and equipment shall be stored at least
5 four inches above the floor in a clean, dry location in a way that protects
6 them from splash, dust, and other means of contamination. The food-contact
7 surfaces of fixed equipment shall also be protected from
8 contamination. Equipment and utensils shall not be placed under leaking sewer
9 or water lines, or leaky automatic fire protection sprinkler heads.

10 (b) Utensils shall be air dried before being stored or shall be stored in a
11 self-draining position.

12 (c) Stored utensils shall be covered or inverted wherever practical.

13 (3) Single-Service Articles.

14 (a) Single-service articles shall be stored at least four inches above the
15 floor in closed cartons or containers which protect them from contamination
16 and shall not be placed under leaking sewer or water lines, or leaky automatic
17 fire protection sprinkler heads.

18 (b) Single-service articles shall be handled in a manner that prevents
19 contamination of surfaces which may come in contact with food.

20 (4) Prohibited Storage Areas. The storage of food, equipment, utensils or
21 single-service articles in locker rooms, toilet rooms and vestibules and garbage
22 or mechanical rooms is prohibited.

23 **§ 9-6-2-7 SANITARY FACILITIES AND CONTROLS.**

24 (A) *Water Supply.*

25 (1) General. The water supply shall be from the city water system or an
26 approved private system. Hot and cold running water, under pressure, shall be
27 provided in all areas where food is prepared, and equipment, utensils, or
28 containers are washed. Ice used for any purpose shall be made from water
29 which comes from an approved source, and shall be used only if it has been
30 manufactured, stored, transported, and handled in an approved manner.

31 (2) Transportation. All potable water not provided directly by a piping
32 system to the food service establishment from the source shall be transported
33 in a bulk water transport system and shall be delivered to a closed water

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1 system. Both of these systems shall be constructed and operated according to
2 law.

3 (3) Bottled and Packaged Water. Bottled and packaged potable water shall
4 be obtained from a source that complies with law, and shall be handled and
5 stored in a way that protects it from contamination.

6 (4) Steam. Steam used in contact with food or food-contact surfaces shall
7 be free from any materials or additives other than those specified by law.

8 (B) Sewage.

9 (1) General. All sewage shall be disposed of in the city sewerage system
10 except in those cases where the city system is not available, at which time a
11 private system may be installed meeting all requirements of the law.

12 (C) Plumbing.

13 (1) General. Plumbing shall be sized, installed, and maintained according
14 to law. There shall be no cross-connections between the potable water supply
15 and any nonpotable water supply (as defined within §§ 6-2-1 et seq., Cross-
16 Connection Prevention and Control), questionable water supply or any source
17 of contamination or pollution (as defined within §§ 6-2-1 et seq., Cross-
18 Connection Prevention and Control) except as provided by §§ 6-2-1 et seq.,
19 Cross-Connection Prevention and Control.

20 (2) Nonpotable Water System. A nonpotable water system is permitted
21 only for purposes such as air-conditioning and fire protection and only if the
22 system is installed according to law and the nonpotable water does not contact,
23 directly or indirectly, food, potable water, equipment that contacts food, or
24 utensils. The piping of any nonpotable water system shall be durably identified
25 so that it is readily distinguishable from piping that carries potable water.

26 (3) Backflow. The potable water system shall be installed to preclude the
27 possibility of backflow. Backflow prevention assemblies (as defined within §§
28 6-2-1 et seq., Cross-Connection Prevention and Control) shall be installed to
29 protect against backflow at all fixtures and equipment where an approved air
30 gap separation (as defined within §§ 6-2-1 et seq., Cross-Connection Prevention
31 and Control) is not provided. To be approved, an air gap separation shall be at
32 least twice the diameter of the water supply inlet and the fixture's flood level rim
33 but in no case less than 1 inch (2.54 cm). Hose attachments to faucets are

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1 prohibited unless an approved atmospheric vacuum breaker (as defined within
2 §§ 6-2-1 et seq., Cross-Connection Prevention and Control) is installed.

3 (4) Grease Traps. Where grease traps are required they shall be installed
4 and maintained according to law.

5 (5) Garbage Grinders. If used, garbage grinders shall be installed and
6 maintained according to law.

7 (6) Drains. There shall be no direct connection between the sewerage
8 system and any drains originating from equipment in which food is placed.

9 (D) *Toilet Facilities.*

10 (1) Toilet Installation. Toilet facilities shall be installed according to law,
11 shall be the number required by law, shall be conveniently located and shall be
12 accessible to employees at all times.

13 (2) Toilet Design. Toilets and urinals shall be designed to be easily
14 cleanable.

15 (3) Toilet Rooms. Toilet rooms shall be completely enclosed and shall have
16 tight-fitting, self-closing, doors which shall be closed except during cleaning or
17 maintenance. Toilet rooms shall be kept clean, in good repair and free of
18 objectionable odors.

19 (4) Toilet Fixtures. Toilet fixtures shall be kept clean and in good repair. A
20 supply of toilet tissue shall be provided at each toilet at all times. Easily
21 cleanable receptacles shall be provided for waste materials. Toilet rooms used
22 by women shall have covered waste receptacles.

23 (E) *Handwashing Facilities.*

24 (1) Lavatory Installation. Lavatories shall be located in or immediately
25 adjacent to toilet rooms or vestibules and shall be at least the number required
26 by law. Each lavatory shall be provided with hot and cold running water from a
27 mixing-type faucet. Any self-closing, slow-closing or metering type faucet used
28 shall be designed to provide a flow of water for at least fifteen seconds without
29 the need to reactivate the faucet. A minimum of one lavatory or handwash
30 facility shall be installed in the food processing area of every food
31 establishment. Lavatories shall be accessible to employees at all times. Sinks
32 used for food preparation or for washing equipment or utensils shall not be
33 used for handwashing.

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1 (2) Handwashing Supplies. A supply of hand cleansing soap or detergent
2 shall be available at each handwashing facility. A supply of sanitary towels or
3 a hand drying device with heated air shall be conveniently located near each
4 handwashing area. Common towels are prohibited. If disposable towels are
5 used, easily cleanable waste receptacles shall be conveniently located near the
6 handwashing facilities.

7 (3) Lavatory Maintenance. Lavatories, soap dispensers, and all related
8 facilities shall be kept clean and in good repair.

9 (F) *Garbage and Refuse.*

10 (1) Containers.

11 (a) Garbage and refuse shall be kept in durable, easily cleanable, insect-
12 proof and rodent-proof containers that do not leak and do not absorb
13 liquids. Plastic bags and wet strength paper bags may be used to line these
14 containers, and may be used for storage inside the food store.

15 (b) Containers used in food preparation and utensil washing areas shall
16 be kept covered after they are filled and during nonrush business hours.

17 (c) Containers stored outside the establishment, including dumpsters,
18 compactors and compactor systems, shall be easily cleanable, shall be
19 provided with tight-fitting lids, doors or covers, and shall be kept covered when
20 not in actual use. Dumpsters need not have closed lids when contents are
21 bagged or dry. In containers designed with drains, drain plugs shall be in place
22 at all times, except during cleaning.

23 (d) There shall be a sufficient number of containers to hold all the
24 garbage and refuse that accumulates.

25 (e) Soiled containers shall be cleaned at a frequency to prevent insect
26 and rodent attraction. Each container shall be thoroughly cleaned on the inside
27 and outside in a way that does not contaminate food, equipment, utensils or
28 food preparation areas. Suitable facilities, including hot water and detergent,
29 or steam shall be provided and used for washing containers. Liquid waste from
30 compacting or cleaning operations shall be disposed of as sewage. Disposal
31 of these wastes onto open fields, parking lots or streets is prohibited.

32 (2) Storage.

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1 (a) Garbage and refuse on the premises shall be stored in a manner to
2 make them inaccessible to insects and rodents. Outside storage of unprotected
3 plastic bags or wet strength paper bags or baled units containing garbage or
4 refuse is prohibited. Cardboard or other packaging material not containing
5 garbage or food wastes need not be stored in covered containers.

6 (b) Garbage or refuse storage rooms, if used, shall be constructed of
7 easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall
8 be insect and rodent proof, and shall be large enough to store all the garbage
9 and refuse containers necessitated by disposal pick-up frequency.

10 (c) Outside storage areas or enclosures shall be large enough to store
11 the garbage and refuse containers that accumulate and shall be kept
12 clean. Garbage and refuse containers, dumpsters and compactor systems
13 located outside, shall be stored on or above a smooth surface that is kept clean
14 and maintained in good repair.

15 (d) Storage areas shall be kept clean and not constitute an odor, fly or
16 any other type of nuisance.

17 (3) Disposal. Garbage and refuse shall be disposed of often enough to
18 prevent the development of objectionable odors and the attraction of insects
19 and rodents.

20 (G) *Insect and Rodent Control.*

21 (1) General. Effective measures shall be utilized to minimize the presence
22 of rodents, flies, cockroaches, or other insects on the premises. The premises
23 shall be maintained in a condition that prevents the harborage or feeding of
24 insects or rodents.

25 (2) Openings. Openings to the outside shall be effectively protected
26 against the entrance of animals and insects by tight-fitting, self-closing doors;
27 or closed windows or screening. Controlled air currents, or other approved
28 means may be used to prevent the entry of insects during periods of
29 delivery. Screen doors shall be self-closing, and screens for windows, doors,
30 skylights, transoms, intake and exhaust air ducts, and other openings to the
31 outside shall be tight-fitting and free of breaks. Screening material shall not be
32 less than 16 mesh to the inch. Food establishments handling only food which

1 must be pared or peeled before using may be exempt from the screening
2 requirements.

3 **§ 9-6-2-8 CONSTRUCTION AND MAINTENANCE OF PHYSICAL ACTIVITIES.**

4 **(A) Floors.**

5 **(1) Floor Construction.**

6 (a) Floors and floor coverings of all food preparation, food storage, and
7 warewashing areas, and the floors of all walk-in refrigerators, dressing rooms,
8 locker rooms, toilet rooms and vestibules, shall be constructed of smooth,
9 durable material such as concrete, terrazzo, ceramic tile, durable grades of
10 linoleum or plastic, or tight-fitting wood impregnated with plastic, and shall be
11 maintained in good repair.

12 (b) Floors which are water flushed or which receive discharges of water
13 or other fluid wastes or are in areas where pressure spray methods for cleaning
14 are used, shall be provided with trapped drains, properly installed. Such floors
15 shall be constructed only of sealed concrete, terrazzo, ceramic tile or similar
16 materials and shall be graded to drain.

17 (c) In all new or extensively remodeled establishments utilizing concrete,
18 terrazzo, ceramic or quarry tile, or similar floor materials, and where water flush
19 cleaning methods are used, the junctures between walls and floors shall be
20 coved and sealed. In all other cases, the juncture between walls and floors shall
21 not present an open seam of more than 1/32 inch.

22 (d) The floor of each walk-in refrigerator shall be graded to drain all parts
23 of the floor to the outside through a waste pipe, or doorway or equipped with a
24 floor drain. Floor drains shall not have a direct connection to the sewer and
25 shall be installed so as to prevent backflow.

26 (2) Floor Carpeting. Carpeting, if used as a floor covering, shall be of
27 closely woven construction, properly installed, easily cleanable, and
28 maintained in good repair. Carpeting is prohibited in food preparation and
29 warewashing areas where it would be exposed to large amounts of grease and
30 water, in food storage areas, and in toilet room areas where urinals or toilet
31 fixtures are located.

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1 (3) Prohibited Floor Covering. The use of sawdust, wood shavings, or
2 similar material as a floor covering is prohibited. Meat markets may use
3 sawdust as an anti-slip covering in the processing area.

4 (4) Mats and Duckboard. Mats and duckboards shall be of nonabsorbent,
5 grease resistant materials, and of such size, design, and construction to
6 facilitate cleaning.

7 (5) Utility Line Installation. Exposed utility service lines and pipes shall be
8 installed in a way that does not obstruct or prevent cleaning of the floor. In all
9 new or extensively remodeled establishments, installation of exposed
10 horizontal utility service lines and pipes on the floor is prohibited.

11 (B) *Walls and Ceilings.*

12 (1) Maintenance. Walls and ceilings, including doors, windows, skylights,
13 and similar closures, shall be maintained in good repair.

14 (2) Construction. The walls, including nonsupporting partitions, wall
15 coverings, and ceilings of walk-in refrigerators, food preparation areas,
16 warewashing areas, toilet rooms and vestibules shall be light colored, smooth,
17 nonabsorbent and easily cleanable. Concrete or pumice blocks used for
18 interior wall construction in these locations shall not be struck and shall be
19 finished and sealed to provide an easily cleanable surface.

20 (3) Exposed Construction. Studs, joists, and rafters shall not be exposed
21 in those areas listed in division (B)(2) above. If exposed in other rooms or areas,
22 they shall be finished to provide an easily cleanable surface.

23 (4) Utility Line Installation. Utility service lines and pipes shall not be
24 exposed on walls or ceilings in those areas listed in division (B)(2)
25 above. Exposed utility service lines and pipes shall be installed in a way that
26 does not obstruct or prevent cleaning of the walls and ceilings.

27 (5) Attachments. Light fixtures, vent covers, wall mounted fans, decorative
28 materials, and similar equipment attached to walls and ceilings shall be easily
29 cleanable and shall be maintained in good repair.

30 (6) Covering Material Installation. Wall and ceiling covering materials shall
31 be attached and sealed in a manner so as to leave no open spaces and cracks
32 and shall be easily cleanable.

33 (C) *Cleaning Physical Facilities.*

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1 (1) **General.** Floors, mats, duckboards, walls, ceilings, and attached
2 equipment and decorative materials shall be kept clean. Cleaning of floors,
3 walls, and ceilings, except emergency cleaning of floors, shall be done as often
4 as necessary, but preferably during periods when the least amount of food is
5 exposed. Only dustless methods of cleaning floors, walls and ceilings shall be
6 used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting
7 sweeping compounds with brooms.

8 (2) **Service Sinks.** In new or extensively remodeled establishments, at least
9 one utility sink or curbed cleaning facility with a floor drain shall be provided
10 and used for the cleaning of mops or similar wet floor cleaning tools and for the
11 disposal of mop water or similar liquid wastes. The use of handwashing or
12 warewashing facilities or food preparation sinks for this purpose is prohibited.

13 (D) **Lighting.**

14 (1) **General.**

15 (a) Permanently fixed artificial light sources shall be installed to provide
16 at least 30 foot candles of light on all food preparation surfaces and at
17 warewashing work levels.

18 (b) Permanently fixed artificial light sources shall be installed to provide,
19 at a distance of 30 inches from the floor:

- 20 1. At least 20 foot candles of light in sales areas, utensil and equipment
21 storage areas and in handwashing and toilet areas; and
- 22 2. At least 20 foot candles of light in walk-in refrigerators, dry food
23 storage areas, and in all other areas.

24 (2) **Protective Shielding.** Shielding to protect against broken glass falling
25 onto food shall be provided for all artificial lighting fixtures located over, by, or
26 within open food preparation, and display facilities, and facilities where utensils
27 and equipment are cleaned and stored.

28 (E) **Ventilation.** All rooms shall have sufficient ventilation to keep them free
29 of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and
30 fumes. Ventilation systems shall be installed and operated according to law
31 and, when vented to the outside, shall not create a harmful or unlawful
32 discharge. Intake and exhaust air ducts shall be maintained to prevent the
33 entrance of dust, dirt, and other contaminating materials.

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1 (F) *Dressing Rooms and Locker Areas.*

2 (1) Dressing Rooms and Areas. If employees routinely change clothes
3 within the establishment, rooms or areas shall be designated and used for that
4 purpose. These designated rooms or areas shall not be used for food
5 preparation, display, or for warewashing or storage of utensils and equipment.

6 (2) Locker Area. Lockers or other suitable facilities may be provided and
7 used for the orderly storage of employee clothing and other
8 belongings. Lockers or other suitable facilities may be located only in the
9 designated dressing rooms or, in food storage rooms or areas containing only
10 completely packaged food or packaged single service articles.

11 (G) *Poisonous or Toxic Materials.*

12 (1) Materials Permitted. Only those poisonous or toxic materials necessary
13 for the maintenance of the establishment, including the cleaning and
14 sanitization of equipment and utensils, and the control of insects and rodents,
15 shall be present in retail food stores, except those items being held or offered
16 for retail sale.

17 (2) Labeling of Materials. Containers of poisonous or toxic materials shall
18 be prominently and distinctly labeled according to law for easy identification of
19 contents.

20 (3) Storage of Materials.

21 (a) Poisonous or toxic materials necessary for the maintenance of the
22 establishment consist of the following two categories:

- 23 1. Insecticides and rodenticides;
- 24 2. Detergents, sanitizers, related cleaning or drying agents, caustics,
25 acids, polishes, and other chemicals.

26 (b) Each of the two categories shall be stored and located to be physically
27 separated from each other. All poisonous or toxic materials shall be stored in
28 cabinets or in similar physically separated compartments or facilities used for
29 no other purpose. To preclude potential contamination, poisonous or toxic
30 materials shall not be stored above food, food equipment, utensils or single
31 service articles, except that this requirement does not prohibit the convenient
32 availability of detergent or sanitizers at warewashing facilities.

33 (4) Use of Materials.

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1 (a) Bactericides, cleaning compounds, or other compounds intended for
2 use on food-contact surfaces shall not be used in a way that leaves a toxic
3 residue on such surfaces, nor in a way that constitutes a hazard to employees
4 or other persons.

5 (b) Poisonous or toxic materials shall not be used in a way that
6 contaminates food, equipment, or utensils, nor in a way other than in full
7 compliance with the manufacturers' labeling.

8 (5) Personal Medications. Personal medications, except unopened
9 packages held for sale, shall not be stored in food storage, preparation or
10 display areas.

11 (6) First Aid Supplies. First aid supplies shall be stored in a way that
12 prevents them from contaminating food and food-contact surfaces.

13 (7) Display of Materials. Poisonous or toxic materials offered for retail sale
14 shall be separated from food.

15 (H) *Premises.*

16 (1) General.

17 (a) Food establishments and all parts of the property used in connection
18 with operations of the establishment shall be kept free of litter.

19 (b) The walking and driving surfaces of all exterior areas of food
20 establishments shall be surfaced with concrete, asphalt or with gravel or similar
21 material effectively treated to facilitate maintenance and minimize dust. These
22 surfaces shall be graded to facilitate drainage and kept free of litter.

23 (c) Only articles necessary for the operation and maintenance of the food
24 establishments shall be stored on the premises.

25 (d) The traffic of unnecessary persons through the food preparation and
26 warewashing areas is prohibited.

27 (2) Living Areas. No operation of a food establishment shall be conducted
28 in any room used as living or sleeping quarters. Food operations shall be
29 separated from any living or sleeping quarters by complete partitioning and
30 solid, self-closing doors.

31 (3) Laundry Facilities.

32 (a) If provided, laundry facilities in a food establishment shall be
33 restricted to the washing and drying of linens, cloths, uniforms, and aprons

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1 necessary to the operation. If such items are laundered on the premises, an
2 electric or gas dryer shall be provided and used.

3 (b) Separate rooms shall be provided for laundry facilities except that
4 such operations may be conducted in storage rooms containing only packaged
5 foods or packaged single service articles, provided equipment is properly
6 vented.

7 (4) Linens and Clothes Storage.

8 (a) Clean clothes and linens shall be stored in a clean place and protected
9 from contamination until used.

10 (b) Soiled clothes and linens shall be kept in nonabsorbent containers or
11 washable laundry bags until removed for laundering and shall be stored to
12 prevent contamination of food equipment and utensils.

13 (5) Cleaning Equipment Storage. Maintenance and cleaning tools such as
14 brooms, mops, vacuum cleaners and similar equipment shall be maintained and
15 stored in a way that does not contaminate food, utensils, equipment, or linens
16 and shall be stored in an orderly manner to facilitate the cleaning of that
17 location.

18 (6) Animals. Live animals shall be excluded from within the food
19 operational premises and from immediately adjacent areas under the control of
20 the permit holder. This exclusion does not apply to edible fish, crustacea,
21 shellfish, or fish in aquariums. Patrol dogs accompanying security or police
22 officers shall also be permitted in offices, storage areas and outside store
23 premises. Sentry dogs may be permitted to run loose in outside fenced
24 areas. Guide dogs accompanying blind or deaf persons shall be permitted in
25 sales areas.

26 § 9-6-2-9 INSPECTION OF FOOD ESTABLISHMENTS.

27 (A) *Inspection Frequency.* The enforcement authority shall determine the
28 frequency of inspections according to past compliance records of a food
29 establishment and the risk presented to consumers by the food items provided
30 by the specific food establishment. The enforcement authority shall inspect
31 each establishment at least once annually [~~inspect each establishment at least~~
32 ~~once every four months~~] and shall make as many reinspections as are
33 necessary for the enforcement of §§ 9-6-2-1 et seq.

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1 (B) *Access to Establishments.* The enforcement authority, after proper
2 identification, shall be permitted to enter, at any reasonable time, any food
3 establishment within the city, for the purpose of making inspections to
4 determine compliance with §§ 9-6-2-1 et seq. The operator or person in charge
5 of the establishment shall be given an opportunity to accompany the
6 enforcement representative on his inspection. The enforcement authority shall
7 be permitted to examine the records of the establishment to obtain pertinent
8 information related to food source and supplies purchased, received or used
9 and list of persons employed.

10 (C) *Report of Inspections.* Whenever an inspection of a food establishment
11 is made, the findings shall be recorded on an enforcement authority inspection
12 form. The inspection report form shall summarize the requirements of §§ 9-6-2-
13 1 et seq. and shall set forth a weighted point value for each requirement. The
14 original copy of the inspection report form shall be furnished to the person in
15 charge of the establishment as soon as possible after the inspection. The
16 inspection form shall be signed by both the enforcement authority and the
17 person in charge. The completed inspection report form is a public document
18 that shall be made available for public disclosure at the enforcement authority's
19 office to any person who requests it.

20 (D) *Correction of Violations.* The inspection report form shall specify a
21 reasonable period of time for the correction of the violations found. Correction
22 of the violations shall be accomplished within the period specified.

23 (1) If an imminent health hazard exists, such as complete lack of
24 refrigeration or sewage back-up into the establishment, the establishment shall
25 immediately cease operations. Operations shall not be resumed until
26 authorized by the enforcement authority.

27 (2) The report of inspection shall state that failure to comply with any time
28 limits for corrections will require that the establishment be downgraded.

29 (3) Whenever a food establishment is required under the provisions of this
30 division (D) to cease operations, it shall not resume operations until such time
31 as a reinspection determines that conditions responsible for the requirements
32 to cease operations no longer exist. A reinspection shall be made within three
33 working days following the day on which it is requested.

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1 (E) *Service of Notices.* Notices provided for under this division shall be
2 deemed to have been properly served when the original of the inspection report
3 form or other written notice has been delivered personally to the permit holder
4 or person in charge, or such notice has been sent by registered or certified mail,
5 return receipt requested, to the last known address of the permit holder. A copy
6 of such notice shall be filed with the records of the enforcement authority.

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

12 (1) *Approved.* An establishment that is operated in compliance with the
13 requirements of §§ 9-6-2-1 et seq.

14 (2) *Unsatisfactory.* An establishment having two consecutive violations of
15 the same 4 or 5 point item and/or four consecutive violations of the same 1 or 2
16 point item, and/or four or more violations of 4 or 5 point items during any one
17 inspection. "Unsatisfactory" is a temporary grade with a maximum of ten days
18 duration; failure to meet the standards for a higher grade within this period of
19 time shall lead to immediate suspension of the establishment's operating
20 permit. Immediately following each inspection, the enforcement authority shall
21 post the appropriate grade based upon the inspection findings, and shall issue
22 an appropriate notice to the operator. The permit holder or operator of any
23 establishment, the grade of which has been lowered may, upon correcting all
24 violations, request an inspection for the purpose of regrading the
25 establishment. The enforcement authority shall, within five working days
26 following receipt of a request for reinspection, make an inspection and
27 thereafter as many additional inspections as may be deemed necessary to
28 assure that the applicant is complying with the higher grade requirements; and,
29 if the findings include compliance, shall award the higher grade. The
30 enforcement authority may require the establishment operator, or his
31 management designee, to attend an approved food service seminar.

32 § 9-6-2-10 COMPLIANCE PROCEDURES.

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1 (A) *Permits*. It shall be unlawful for any person to operate a food
2 establishment within the city who does not possess a valid permit issued to him
3 by the enforcement authority. Such permit shall be posted in a conspicuous
4 place, and only such persons who comply with the requirements of §§ 9-6-2-1
5 et seq. and other applicable laws, regulations, and ordinances shall receive and
6 retain such permit. Permits shall not be transferable from one person to
7 another person or place.

8 (B) *Issuance of Permits*. The enforcement authority shall be contacted at
9 least two working days prior to the anticipated opening date of the
10 establishment for an inspection to determine compliance with the provisions of
11 §§ 9-6-2-1 et seq. When the inspection reveals that the requirements of §§ 9-6-
12 2-1 et seq. and other applicable laws, regulations and ordinances have been
13 met, a permit application is issued. The applicant ~~[must present this application~~
14 ~~to the City Treasurer within two days]~~ [shall remit payment for the permit within
15 five days of the enforcement authority's approval of the application. If an
16 applicant fails to pay after thirty days following the enforcement authority's
17 approval of the application, the enforcement authority may cancel the
18 application]. A permit will be issued after compliance.

19 (C) [Denial of Permit. The enforcement authority may refuse to issue a permit
20 to any person who fails to demonstrate, to the satisfaction of the enforcement
21 authority, the ability to comply with or who fails to comply with the requirements
22 of §§ 9-6-2-1 et seq. and other laws, regulations and ordinances applicable to
23 the proposed operation. In the event the enforcement authority denies a permit,
24 the enforcement authority shall notify the applicant in writing, stating the
25 reasons for which the permit application is denied.

26 (1) Service of Notices. Notices provided for under this division shall be
27 deemed to have been properly served when the original of the inspection
28 report form or other written notice has been delivered personally to the
29 permit applicant, or such notice has been sent by registered or certified mail,
30 return receipt requested, to the last known address of the permit
31 applicant. A copy of such notice shall be filed with the records of the
32 enforcement authority.

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

5 ~~[(D)]~~ *Suspension of Permits.* Permits may be suspended by the
6 enforcement authority for failure of the holder to comply with the requirements
7 of §§ 9-6-2-1 et seq. or of other applicable laws. An establishment’s operating
8 permit shall be immediately suspended in lieu of a third downgrading during
9 any 36-month period under the same business management. Whenever a
10 permit holder or operator has failed to comply with any notice issued under the
11 provisions of this section, the permit holder or operator shall be notified in
12 writing that the permit is, upon service of this notice, immediately suspended,
13 and that an opportunity for a hearing will be provided if a written request for
14 hearing is filed with ~~[the enforcement authority by the permit holder within five~~
15 ~~working days.]~~ [City’s Clerk’s office within fifteen working days.]

16 Notwithstanding the other provisions of §§ 9-6-2-1 et seq., whenever the
17 enforcement authority finds an imminent health hazard or other conditions in
18 the operation of a food establishment which, in his judgment, constitute a
19 substantial hazard to the public health, he may without any prior warning,
20 notice, or hearing, issue a written notice to the permit holder or operator citing
21 such condition, specifying the corrective action to be taken, and specifying the
22 time period within which such action shall be taken; and, if deemed necessary,
23 such order shall state that the permit is immediately suspended and all
24 operations are to be immediately discontinued. Any person to whom such an
25 order is issued shall comply immediately therewith, and shall be granted a
26 hearing ~~[within five working days,]~~ upon written request ~~[to the enforcement~~
27 ~~authority]~~ [in accordance with the provisions in the IHO Ordinance, ROA 1994,
28 Chapter 2, Article 7, Part 8].

29 ~~[(D)]~~ [(E)] *Reinstatement of Suspended Permits.* Any person whose permit
30 has been suspended, may at any time, make application for a reinspection for
31 the purpose of reinstatement of the permit. Within five working days following
32 receipt of a request of reinspection, the enforcement authority shall make a

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1 reinspection. If the applicant complies with the requirements of §§ 9-6-2-1 et
2 seq. and other applicable laws, the permit shall be reinstated.

3 ~~[(E)]~~ [(F)] *Revocation of Permits.* For three or more suspensions within a
4 60-month period under the same business management; for failure of an
5 establishment which has received a Grade of "Unsatisfactory" to meet the
6 requirements of an "Approved" Grade within the required time period; for the
7 fourth downgrading or second suspension in lieu of downgrading within any
8 36-month period under the same business management; for refusal of entry
9 after proper identification has been tendered; or for interference with the
10 enforcement authority in the performance of his duties, the permit may be
11 revoked after an opportunity for a hearing has been provided by the
12 enforcement authority. Prior to such action, the enforcement authority shall
13 notify the permit holder in writing, stating the reasons for which the permit is
14 subject to revocation and advising that the permit shall be revoked at the end
15 of five working days following the service of such notice, unless a written
16 request for a hearing is filed with the City Clerk's office~~[with the enforcement~~
17 ~~authority]~~ by the permit holder within such five working-day period. The
18 hearing shall be scheduled within five working days following receipt of the
19 written request by the City Clerk's office. A permit may be suspended for cause
20 pending its revocation or a hearing relative thereto. A permit may be revoked
21 after a hearing in lieu of a third suspension within a 60-month period.

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

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

28 ~~[(F)]~~ [(H)] *Hearings.* The hearings provided for in this division shall be
29 conducted by the Independent Hearing Officer in accordance with the
30 provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]
31 ~~[enforcement authority at a time and place designated by him. Based upon the~~
32 ~~record of such hearing, the enforcement authority shall sustain, modify, or~~
33 ~~rescind any official notice or order considered in the hearing. A written report~~

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1 ~~of the hearing decision shall be furnished to the permit holder by the~~
2 ~~enforcement authority.] [Any action of the enforcement authority for which a~~
3 ~~hearing is not otherwise provided for in this ordinance, which action adversely~~
4 ~~impacts the permit holder, is subject to review under this section if a hearing~~
5 ~~request is filed within fifteen working days of the action and in accordance with~~
6 ~~the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.]~~

7 ~~[(G)] [(I)]~~ *Judicial Review.* The exclusive remedy for any party dissatisfied
8 with any final decision of the ~~enforcement authority shall be filing of a~~ ~~Petition~~
9 ~~for Writ of Certiorari] [hearing officer is to file a petition] to the District Court~~
10 within 30 days after [service of] written notice of the decision of the concerned
11 party. The petition for review shall be limited to the record.

12 ~~[(H)] [(J)]~~ *Injunctive Relief.* As an additional remedy, if any food
13 establishment violates the provisions of §§ 9-6-2-1 et seq., the enforcement
14 authority may seek injunctive relief in a court of competent jurisdiction.

15 ~~[(I)] [(K)]~~ *Issuance of Citations.* Citations may be issued by the
16 enforcement authority for failure to comply with any requirement set forth in §§
17 9-6-2-1 et seq.

18 ~~[(J)] [(L)]~~ A nonrefundable hearing fee of \$50.00 shall accompany each
19 application for hearing conducted by the hearing officer pursuant to this
20 section.

21 **§ 9-6-2-11 EXAMINATION AND CONDEMNATION OF FOOD.**

22 Samples of food, drink, and other substances may be taken and examined by
23 the enforcement authority as often as necessary to determine freedom from
24 unwholesomeness, adulteration or mislabeling. Samples submitted for
25 laboratory analysis shall be submitted to a laboratory approved by and under
26 cognizance of a federal or state agency. The enforcement authority may, upon
27 written notice to the owner or person in charge, place a hold order on any food
28 which he determines or has probable cause to believe to be unwholesome or
29 otherwise adulterated or mislabeled. The enforcement authority shall tag, label
30 or otherwise identify any food subject to the hold order and permit it to be
31 suitably stored unless storage is not possible without risk to the public health,
32 in which case immediate destruction shall be ordered and accomplished. It
33 shall be unlawful for any person to remove or alter a hold order, notice or tag

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1 placed on the food by the enforcement authority, and neither such food nor the
2 containers thereof shall be relabeled, repacked, reprocessed, altered, disposed
3 of, or destroyed without permission of the enforcement authority, except on
4 order by a court of competent jurisdiction. The hold order shall state that a
5 request for a hearing may be filed within ~~[ten]~~ [fifteen working] days and that if
6 no hearing is requested~~[,]~~ the food shall be destroyed at the owner's
7 expense. [A hearing shall be held in accordance with the provisions in the IHO
8 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] After the owner or person in
9 charge has had a hearing as requested, and on the basis of the enforcement
10 authority's examination in the event a written request for a hearing is not
11 received, the hold order may be vacated or the owner or person in charge of the
12 food may be directed by written order to denature or destroy such food or bring
13 it into compliance with the provisions of §§ 9-6-2-1 et seq. or shall be stayed if
14 the order is appealed to a court of competent jurisdiction within three days.

15 § 9-6-2-12 FOOD ESTABLISHMENTS OUTSIDE JURISDICTION OF THE
16 ENFORCEMENT AUTHORITY.

17 Food from food establishments located outside the jurisdiction of the
18 enforcement authority may be sold within the city if such establishments
19 conform to the provisions of §§ 9-6-2-1 et seq. or to substantially equivalent
20 provisions. To determine the extent of compliance with such provisions, the
21 enforcement authority may accept reports from responsible authorities in other
22 jurisdictions where such establishments are located.

23 § 9-6-2-13 PLAN REVIEW OF FUTURE CONSTRUCTION.

24 When a food establishment is hereafter constructed or extensively remodeled,
25 or when an existing structure is converted for use as a food establishment,
26 properly prepared plans and specifications for such construction, remodeling,
27 or alteration showing layout, arrangement, and construction materials or work
28 areas, and the location, size, and type of fixed equipment and facilities shall be
29 submitted to the enforcement authority for approval and to other appropriate
30 city agencies before such work is begun.

31 § 9-6-2-14 PROCEDURE WHEN INFECTION IS SUSPECTED.

32 When the enforcement authority has reasonable cause to suspect possibility
33 of disease transmission from any food establishment employee, the

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1 enforcement authority shall secure a morbidity history of the suspected
2 employee, or make such other investigation as may be indicated, and take
3 appropriate action. The enforcement authority may require any or all of the
4 following measures:

- 5 (A) The immediate exclusion of the employee from the food establishment;
- 6 (B) The immediate closure of the food establishment concerned until, in the
7 opinion of the enforcement authority, no further danger of disease outbreak
8 exists;
- 9 (C) Restriction of the employee's services to some area of the establishment
10 where there would be no danger of transmitting disease; and
- 11 (D) Adequate medical and laboratory examinations of the employee and of
12 other employees.

13 **§ 9-6-2-15 INSPECTION AND TRANSFER FEES.**

14 [(A) *Adjustment of Fees.* Fees charged in relation to the Retailers, Meat
15 Markets, and Wholesalers Ordinance shall be established by rules adopted by
16 the enforcement authority. Any such rule shall be adopted under the
17 procedures of Chapter 2, Article 15 ROA 1994.

18 [(B) *Temporary Fees.* The enforcement authority is authorized to collect the
19 following fees until such time as they are adjusted as outlined in § 9-6-2-15(A).
20 These fees are for the purpose of paying the costs reasonably incurred in
21 administering and enforcing the Retailers, Meat Markets and Wholesalers
22 Ordinance.]

23 **[(A)[C)] *Inspection Fee[s].***

24 [(1)] Each permanent food establishment shall pay an annual inspection fee
25 of 2/10 of 1% of its gross sales for the [calendar year ending the previous
26 December 31] [previous 12 months], provided that such fee shall not be less
27 than \$100 nor more than \$400 except that:

28 [(1)[a)] For the first calendar year of operation or portion thereof, the
29 inspection fee shall be \$100 prorated quarterly, but not less than \$50.

30 [(2)[b)] In the case where there is, under single ownership or
31 management, more than one food establishment or more than one place
32 within an establishment where food is processed, prepared, packaged,
33 stored or offered for sale, and separate inspections are required, as

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1 determined by the enforcement authority, each such food establishment
2 shall pay a separate annual fee. The food establishment with the higher
3 gross receipts shall be considered the primary establishment for the
4 purposes of §§ 9-6-2-1 et seq. The inspection fee for each additional food
5 establishment shall not exceed \$200. [Separate permits are required for
6 permanent food establishments and permanent food establishments—
7 cannabis and permanent food establishments—cannabis plus. In no case
8 shall a permanent food establishment—cannabis or permanent food
9 establishments—cannabis plus permit be considered as a primary or
10 secondary permit for the purposes of calculating inspection fees for
11 permanent food establishments.]

12 [(2) Each permanent food establishment—cannabis or permanent food
13 establishment—cannabis plus shall pay an annual inspection fee of 2/10 of
14 1% of its gross sales for the previous 12 months, provided that such fee shall
15 not be less than \$100 nor more than \$400 except that:

16 [(a) For the first calendar year of operation or portion thereof, the
17 inspection fee shall be \$100 prorated quarterly, but not less than \$50.

18 [(b) In the case where there is, under single ownership or
19 management, more than one permanent food establishment—cannabis
20 or permanent food establishment—cannabis plus or more than one place
21 within an establishment where edible cannabis finished product is
22 offered for sale, donated, or distributed for off-the-premises consumption
23 or in a cannabis consumption area, or where edible cannabis products or
24 edible cannabis finished products are stored, including warehouses, and
25 separate inspections are required, as determined by the enforcement
26 authority, each such permanent food establishment—cannabis or
27 permanent food establishment—cannabis plus shall pay a separate
28 annual fee. The permanent food establishment—cannabis or permanent
29 food establishment—cannabis plus with the higher gross receipts shall
30 be considered the primary permanent food establishment—cannabis or
31 permanent food establishment—cannabis plus for the purposes of §§ 9-
32 6-2-1 et seq. The inspection fee for each additional permanent food
33 establishment—cannabis or permanent food establishment—cannabis

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1 plus shall not exceed \$200. Separate permits are required for permanent
2 food establishments and permanent food establishments—cannabis and
3 permanent food establishments—cannabis plus. In no case shall a
4 permanent food establishment—cannabis or permanent food
5 establishment—cannabis plus permit be considered as a primary or
6 secondary permit for the purposes of calculating inspection fees for
7 permanent food establishments.]

8 (3) Retail outlets handling only prepackaged milk or milk products shall pay
9 an annual inspection fee of \$15.

10 (4) Temporary food establishments shall pay a fee of \$50 for each location,
11 each time the unit locates or relocates at the same or other location.

12 (B) ~~[(Transfer Fee. A transfer fee of \$50 shall be assessed when there is a~~
13 ~~new owner, lessee, or operator of a food establishment and the annual~~
14 ~~inspection fee has been prepaid. Such fee shall be due within 15 days of the~~
15 ~~commencement of operations by the new owner, lessee or operator.]~~

16 ~~[(C)]~~ *Payment of Fees.*

17 (1) Inspection fees are due ~~[on or before April 15 of each year]~~ [annually];
18 provided, however, that no person shall engage in the operation of a food
19 establishment without first paying an inspection fee. The first year's fee shall
20 be the amount of \$100 prorated on a quarterly basis but shall not be less than
21 \$50 except for those which are subject to a fixed fee as provided in divisions
22 (A)(3) and (4) and (B) of this section. Thereafter, fees based on gross sales will
23 be calculated on the actual gross sales for the ~~[calendar year ending the~~
24 ~~previous December 31]~~ [previous 12 months]. A late charge of 1½% of the
25 inspection fee shall be assessed for each month or fraction thereof that the
26 inspection fee remains unpaid after the due date; provided, however, that the
27 minimum late charge shall be \$15.

28 (2) In the event that any person fails to pay the inspection fee or transfer
29 fee by the due date, or remits an amount less than the correct amount of
30 inspection fee, the Mayor shall determine the amount of the inspection fee due,
31 using such statement or other available information. The Mayor shall thereupon
32 give written notice to such person of the amount due, which amount shall be
33 paid within five working days of receipt of such notice. Any such person may

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1 protest the amount so determined by the Mayor within ~~[five]~~ [fifteen] working
2 days of receipt of such notice [pursuant to the provisions in the IHO Ordinance,
3 ROA 1994, Chapter 2, Article 7, Part 8]. ~~[The Mayor shall give at least five~~
4 ~~working days[']~~ ~~notice of the hearing at which protestant may appear at the~~
5 ~~hearing and 'present evidence of the amount of gross sales done. Based upon~~
6 ~~the evidence presented at such hearing, the Mayor shall determine the amount~~
7 ~~due, if any, and protestant shall pay such amount within five working days of~~
8 ~~the Mayor's determination.]~~

9 (3) In the event that the inspection fee is not paid by the ~~[April 15]~~ due date
10 or within ~~[five]~~ [fifteen] working days of the Mayor's determination on any
11 protest filed, the Mayor may file a complaint before the Metropolitan Court,
12 alleging a violation of §§ 9-6-2-1 et seq. and may also take such action as
13 necessary to collect the inspection fee including any late charges.

14 (4) The Mayor is authorized and empowered to make inspections and
15 audits of the books and related records of any person subject to the provisions
16 of §§ 9-6-2-1 et seq.; and every such person shall maintain good and accurate
17 books and related records of the gross sales of business done, which books
18 and records shall be made available for inspection and audit as may be deemed
19 necessary by the Mayor in the administration of any of the provisions of §§ 9-6-
20 2-1 et seq.

21 (5) Notices provided for under this division shall be deemed to have been
22 properly served when written notice has been delivered personally to the permit
23 holder or person in charge, or such notice has been sent by registered or
24 certified mail, return receipt requested, to the last known address of the permit
25 holder. A copy of such notice shall be filed with the records of the enforcement
26 authority.

27 (6) In addition to the remedies provided above, the Mayor may suspend or
28 revoke any permit issued pursuant to §§ 9-6-2-1 et seq. for failure to pay that
29 inspection fee including any late charges. [Upon suspension or revocation of
30 any permit, the permit holder may appeal a suspension or revocation by filing
31 written notice of appeal to the City Clerk's office within fifteen working days of
32 service of notice. A hearing shall be granted in accordance with the provisions
33 in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.] ~~[If the Mayor has~~

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1 ~~reasonable cause to believe that a person has failed to pay the inspection fee~~
2 ~~including any late charges, the Mayor shall give the permit holder 15 days~~
3 ~~written notice of a hearing to be held before the Mayor to determine whether or~~
4 ~~not the permit shall be suspended or revoked. At the hearing, the permit holder~~
5 ~~shall have the right to present evidence which may aid the Mayor in determining~~
6 ~~whether the inspection fee including any late charges has been paid. If, after~~
7 ~~such hearing, the Mayor finds the inspection fee including any late charges has~~
8 ~~not been paid, the Mayor shall suspend or revoke the permit and cause to be~~
9 ~~filed within five working days after the hearing, in the office of the City Clerk and~~
10 ~~served upon the permit holder, a written statement of the facts upon which such~~
11 ~~finding is based.] Any permit that has been suspended or revoked for~~
12 nonpayment of the inspection fee including any late charges shall be reinstated
13 upon payment of the inspection fee including any late charges.

14 (7) Lien. The city may file a lien against the personal and real property of
15 the permit holder for any delinquent permit fee and/or penalty.

16 (8) Administrative Review. An administrative review shall be conducted by
17 the Mayor of the costs of services and fees every even-numbered
18 year. Recommendations on these costs shall be made to the Council for
19 necessary and appropriate adjustments in fees.

20 § 9-6-2-16 DISCLOSURE OF INFORMATION.

21 It is unlawful for any present or previous city official, employee or agent to
22 reveal the New Mexico Gross Receipts Tax Identification Number, any gross
23 receipts information, or any payment information pertaining to any person or
24 entity regulated by city ordinance to anyone except as provided by Section 7-1-
25 8 NMSA 1978.

26 § 9-6-2-17 ADMINISTRATION AND INTERPRETATION.

27 The enforcement authority shall be responsible for the administration and
28 enforcement of §§ 9-6-2-1 et seq. Rules and regulations to carry out the intent
29 and purpose of §§ 9-6-2-1 et seq. shall be prescribed by the enforcement
30 authority pursuant to standards created in §§ 9-6-2-1 et seq.

31 § 9-6-2-18 VARIANCES.

32 The enforcement authority may grant an individual variance from the
33 limitations prescribed in §§ 9-6-2-1 et seq. whenever it is found upon

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

10 § 9-6-2-19 AVAILABILITY OF ORDINANCE.

11 A copy of the "Retailer, Meat Market and Wholesaler Ordinance" [i.e., §§ 9-6-
12 2-1 et seq.] is now on file in the Office of the City Clerk and is available for
13 inspection by the public during regular business hours. A copy of the
14 ordinance [i.e., §§ 9-6-2-1 et seq.] shall be available to any individual upon
15 request and the payment of a reasonable charge as set forth by the Chief
16 Administrative Officer, to be not less than the actual cost per copy.

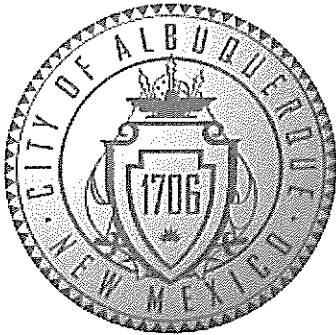
17 § 9-6-2-99 PENALTY.

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

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

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

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




CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

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.

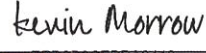
The following improvements are anticipated:

- 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.