



Legislation Details (With Text)

**File #:** O-24-15  
**Type:** Ordinance  
**File created:** 3/18/2024  
**Status:** Enacted  
**In control:** City Council  
**Final action:** 5/6/2024  
**Enactment date:** 5/22/2024  
**Enactment #:** O-2024-012  
**Title:** F/S Repealing Chapter 9, Article 6, ROA 1994, Food And Beverages Ordinances, And Creating The Food Service And Retail Ordinance (Bassan, by request)  
**Sponsors:** Brook Bassan (By Request)  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. O-15, 2. O-15 Approved CS Bassan, 3. O-24-15 Amendments CC 5-6-24, 4. O-15 Approved FS Bassan, 5. O-15 Appendix A\_Updated\_April11, 6. O-15 Appendix B, 7. O-15 Appendices\_C through F, 8. FS O-15Enacted

Date	Ver.	Action By	Action	Result
5/22/2024	4	City Clerk	Published	
5/17/2024	4	Mayor	Signed by the Mayor	
5/9/2024	3	City Council	Sent to Mayor for Signature	
5/6/2024	2	City Council	Amended	Fail
5/6/2024	2	City Council	Motion	Pass
5/6/2024	2	City Council	Amended	Fail
5/6/2024	2	City Council	Substituted	Pass
5/6/2024	2	City Council	Motion	Pass
5/6/2024	2	City Council	Passed as Substituted	Pass
4/15/2024	2	City Council	Accepted Without Recommendation, As Substituted	
4/8/2024	1	Finance & Government Operations Committee	Substituted	Pass
4/8/2024	1	Finance & Government Operations Committee	Sent to Council Without Recommendation, as substituted	Pass
3/18/2024	1	President	Referred	
3/18/2024	1	City Council	Introduced and Referred	

**CITY of ALBUQUERQUE**  
**TWENTY SIXTH COUNCIL**

COUNCIL BILL NO. F/S O-24-15 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Brook Bassan, by request

## ORDINANCE

F/S Repealing Chapter 9, Article 6, ROA 1994, Food And Beverages Ordinances, And Creating  
The Food Service And Retail Ordinance (Bassan, by request)

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

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

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

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

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

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

### SECTION 1. REPEAL.

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

### SECTION 2. NEW MATERIAL.

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

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

§ 9-6-2 PURPOSE. The intent of the Albuquerque Food Service and Retail Ordinance is to  
provide Food Establishments with clear and concise Food safety regulations and, to the extent  
possible and consistent with the duties set out herein, collect 100% of the cost of administrative  
enforcement required to safeguard public health and ensure that Food is safe, unadulterated, and  
honestly presented for consumption.

§ 9-6-3 DEFINITIONS. For the purpose of this ordinance, the following definitions shall apply  
unless the context clearly indicates or requires a different meaning. Terms include either the  
singular or the plural as the case may be.

APPLICANT. A Person applying for a Permit.

CITY. The City of Albuquerque.

COMPLIANCE PLAN. A written agreement between the Permit Holder and the Enforcement

Authority that outlines conditions and corrective actions that must be met to prevent suspension or revocation of a Food Establishment Permit.

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

ENFORCEMENT AUTHORITY. The Mayor or the Mayor's designated agent(s). ENFORCEMENT AUTHORITY. Includes references to "Regulatory Authority" in the U.S. Food and Drug Administration Food Code.

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

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

FOOD CODE. Food Code as adopted by the Rules.

FOOD ESTABLISHMENT. Any place where Food is stored, processed, packaged, repackaged, or prepared and intended for human consumption. FOOD ESTABLISHMENT. Includes any such place regardless of whether the consumption is on or off the premises, regardless of its permanence, and regardless of whether there is a charge for the Food.

FOOD ESTABLISHMENT. Does not include:

- (A) Any place where Food is produced, sold, distributed, or prepared and exempt from regulation pursuant to the Homemade Food Act, Chapter 25, Article 12 NMSA 1978;
- (B) A kitchen in a private home, except the Enforcement Authority may pursue a warrant for inspection of a kitchen in a private home pursuant to § 9-6-10(C) of This Ordinance when a private home kitchen is being used as a food establishment in violation of This Ordinance;
- (C) Home-delivery vehicle and service including but not limited to pizza delivery, third party ordering and delivery services, or grocery delivery services; and
- (D) A private home that receives catered or home-delivered Food.

GRADE. The score showing the degree of compliance with This Ordinance, and the Rules, that a Food Establishment receives at the time of the most recent inspection.

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

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

PERMIT. The document issued by the Enforcement Authority that authorizes a Person to operate

a Food Establishment.

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

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

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

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

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

THIS ORDINANCE. The Albuquerque Food Service and Retail Ordinance.

VALID. Unexpired, not suspended, and not revoked.

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

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

- (A) Adopt relevant Food safety requirements and equipment standards;
- (B) Establish processes for the condemnation of Food and equipment by the Enforcement Authority;
- (C) Establish procedures for the application, issuance, renewal, suspension, reinstatement, and revocation of Permits which regulations shall provide for prior notice to and a hearing for any applicant or Permit Holder when the Enforcement Authority's proposed action is to deny an application, or suspend or revoke a Permit;
- (D) Establish procedures for the administration of fees, provisions for fee proration, and the assessment of secondary permit fees;
- (E) Establish requirements for inspections of Food Establishments, and include provisions for inspections at a frequency based on prescribed risk categories with inspections occurring at least once every eighteen months;
- (F) Establish a system of grading Food Establishments, utilizing scoring rubrics by which

each violation of This Ordinance or the Food Code deducts a predetermined percentage from the overall total score and requiring Food Establishments to display the Grade as notice of compliance to the public;

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

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

§ 9-6-6 AVAILABILITY OF ORDINANCE AND FOOD CODE. A copy of This Ordinance and any Rules shall be kept on file in the Office of the City Clerk, and be available for inspection by the public during regular business hours. A copy of the following shall be available to any individual upon request and the payment of a reasonable charge as set by the Chief Administrative Officer, to be not less than the actual cost per copy. The Rules shall be made available on the Enforcement Authority's publicly available website.

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

(A) Permit Required.

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

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

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

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

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

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

(B) Pre-inspection Application.

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

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

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

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

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

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

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

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

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

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

(1) Notice. Notice of Permit denial shall be provided in accordance with § 9-6-17 of This Ordinance.

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

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

(A) The Enforcement Authority may immediately suspend a Permit when the Enforcement

Authority finds:

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

(B) Suspension Procedure.

- (1) The Enforcement Authority shall notify the Permit Holder of the suspension and associated Grade of Closure in writing.
- (2) When a Permit is suspended, the Enforcement Authority shall close the Food Establishment and post the Closed Sign in a conspicuous location, visible to the public.
- (3) Upon suspension, the Permit Holder for the Food Establishment shall maintain or cause to be maintained the Closed Sign in an unobstructed manner in the location where the sign was originally posted by the Enforcement Authority.
- (4) The Food Establishment shall not operate while the Food Establishment Permit is suspended.

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

(6) Notice. Notice of Permit suspension shall be provided in accordance with § 9-6-1 of This Ordinance.

(7) Hearing. The Permit Holder may appeal the Permit suspension by filing written notice of appeal and requesting a hearing with the City Clerk's office within fifteen (15) business days of notice in accordance with § 9-6-18 of This Ordinance.

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

(D) Revocation of Permits.

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

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

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

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

(E) Revocation Procedure.

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

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

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

(4) The Food Establishment shall remain closed and the Closed Sign shall remain in place until the revocation is modified in accordance with the IHO Ordinance, or the revocation is



vacated by the Enforcement Authority when the conditions leading to the suspension no longer exist.

(5) Notice. Notice of revocation shall be provided in accordance with § 9-6-17 of This Ordinance.

(6) Hearing. The Permit Holder may appeal the Permit revocation by filing written notice of appeal and requesting a hearing with the City Clerk's office within fifteen (15) business days of notice in accordance with § 9-6-18 of This Ordinance.

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

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

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

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

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

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

#### § 9-6-9 PERMIT RENEWAL.

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

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

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

§ 9-6-10 PERMIT AND ADMINISTRATIVE FEES.

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

- (1) Appendix C. Primary Permits
- (2) Appendix D. Secondary Permits
- (3) Appendix E. Standalone Permits
- (4) Appendix F. Administrative Fees

§ 9-6-11 INSPECTION OF FOOD ESTABLISHMENTS; INVESTIGATION OF FOODBORNE ILLNESS.

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

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

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

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

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

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

(B) Investigation of Foodborne Illness. The Enforcement Authority is authorized to make

such inspections of buildings, premises, and documents as deemed necessary to investigate and abate foodborne illness or any violation of This Ordinance which poses a threat to human health. For the purpose of making such inspections, the Enforcement Authority is authorized to enter, examine, or survey at all reasonable times and take samples of Food for testing. Such entry shall be made in a manner as to minimize inconvenience to the Person In Charge. In the event entry is denied or resisted the Enforcement Authority shall seek an order for this purpose from a court of competent jurisdiction.

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

(1) Issue a Civil Penalty pursuant to § 9-6-20 of This Ordinance; and

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

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

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

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

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

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

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

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

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

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

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

#### § 9-6-12 CONDEMNATION OF FOOD AND EQUIPMENT.

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

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

(C) Hearing. A Permit Holder may appeal the notice of the condemnation of Food or equipment, or embargo of Food or equipment by filing written notice of appeal and requesting a hearing with the City Clerk's office within fifteen (15) business days of notice in accordance with § 9-6-18 of This Ordinance.

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

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

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

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

§ 9-6-15 ADMINISTRATION AND INTERPRETATION. The Enforcement Authority shall be responsible for the administration and enforcement of This Ordinance.

§ 9-6-16 VARIANCES.

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

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

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

(B) Notice. Notice of the Variance approval or denial shall be provided in accordance with § 9-6-17 of This Ordinance.

(C) Hearing. A Permit Holder may appeal the notice of the Variance approval or denial, or embargo of Food or equipment by filing written notice of appeal and requesting a hearing with the City Clerk's office within fifteen (15) business days of notice in accordance with § 9-6-18 of This Ordinance.

§ 9-6-17 SERVICE OF NOTICE.

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

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

§ 9-6-18 HEARINGS.

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

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

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

§ 9-6-19 JUDICIAL REVIEW. The exclusive remedy of any party dissatisfied with any final decision of the Independent Hearing Officer is to file a petition with the District Court within thirty (30) days after service receipt of written notice of the decision of the concerned party. The petition for review shall be limited to the record.

§ 9-6-20 CIVIL VIOLATIONS; CRIMINAL VIOLATIONS; ADDITIONAL REMEDIES; INJUNCTIVE RELIEF.

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

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

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

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

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

- (a) The address where the violation occurred;
- (b) The approximate time the violation occurred;
- (c) A brief narrative of the circumstances surrounding the violation;
- (d) A statement regarding whether this is the first, second, third or subsequent offense within a consecutive 36-month period;
- (e) A name and phone number or title of City employee from whom the Permit Holder can obtain further information;
- (f) The address where payment for the violation may be made;

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

(h) The ordinance section or rule violated.

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

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

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

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

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

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

X:\CL\SHARE\CL-Staff\Legislative Staff\Legislation\26 Council\O-15 FSfinal.docx