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Title: Repealing §§ 9-6-1-3 Through 9-6-1-8 of The Food Sanitation Ordinance; Adopting By Reference The 2009 Edition of The "Food Code" As Recommended By The Food and Drug Administration; Repealing § 9-6-1-12 and Replacing It With A New Section Governing Inspections of Food Establishments; Repealing § 9-6-1-13 and Replacing With A Section Governing Compliance Procedures; Repealing § 9-6-1-18 and Replacing With A New Section Governing Fees Under The Food Sanitation Ordinance (Jones)
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9/13/2010	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass	Pass
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8/2/2010	1	City Council	Introduced and Referred	
8/2/2010	1	President	Referred	

CITY of ALBUQUERQUE NINETEENTH COUNCIL

COUNCIL BILL NO. O-10-18 ENACTMENT NO. _____

SPONSORED BY: Trudy Jones

ORDINANCE

Repealing §§ 9-6-1-3 Through 9-6-1-8 of The Food Sanitation Ordinance; Adopting By Reference

The 2009 Edition of The "Food Code" As Recommended By The Food and Drug Administration;
Repealing § 9-6-1-12 and Replacing It With A New Section Governing Inspections of Food
Establishments; Repealing § 9-6-1-13 and Replacing With A Section Governing Compliance
Procedures; Repealing § 9-6-1-18 and Replacing With A New Section Governing Fees Under The
Food Sanitation Ordinance (Jones)

REPEALING §§ 9-6-1-3 THROUGH 9-6-1-8 OF THE FOOD SANITATION ORDINANCE;
ADOPTING BY REFERENCE THE 2009 EDITION OF THE "FOOD CODE" AS RECOMMENDED
BY THE FOOD AND DRUG ADMINISTRATION; REPEALING § 9-6-1-12 AND REPLACING IT
WITH A NEW SECTION GOVERNING INSPECTIONS OF FOOD ESTABLISHMENTS;
REPEALING § 9-6-1-13 AND REPLACING WITH A SECTION GOVERNING COMPLIANCE
PROCEDURES; REPEALING § 9-6-1-18 AND REPLACING WITH A NEW SECTION
GOVERNING FEES UNDER THE FOOD SANITATION ORDINANCE.

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

SECTION 1. Sections 9-6-1-3 through 9-6-1-8 are repealed and renumber all subsequent
sections accordingly.

SECTION 2. Section 9-6-1-12 ROA 1994, is repealed and replaced with:

§ 9-6-1-12 INSPECTION OF FOOD SERVICE OR FOOD PROCESSING ESTABLISHMENTS.

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

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

(C) Report of Inspections. Whenever an inspection of a food establishment is made, the
findings shall be recorded on an Enforcement Authority Inspection Form. The Inspection Form

Report shall summarize the requirements of §§ 9-6-1-1 et seq. The original copy of the Inspection Form Report shall be furnished to the person in charge of the establishment as soon as possible after the inspection. The inspection form shall be signed by both the Enforcement Authority and the person in charge. The completed Inspection Form Report is a public document that shall be made available for public disclosure at the Enforcement Authority's office to any person who requests it.

(D) Correction of Violations.

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

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

(b) In the case of temporary food-service establishments, all violations shall be corrected within a time period as specified by the Enforcement Authority. If the violations are not so corrected, the establishment shall immediately cease food-service operation.

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

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

(E) Service of Notice. Notices provided for under this division shall be deemed to have been properly served when the original of the Inspection Form Report or other written notice has been delivered personally to the permit holder or person in charge, or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of such notice shall be filed with the records of the Enforcement Authority.

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

(1) Approved. An establishment that is operated in compliance with the

requirements of §§ 9-6-1-1 et seq as determined by the Enforcement Authority.

(2) Unsatisfactory. An establishment that is not operated in compliance with the requirements of §§ 9-6-1-1 et seq as determined by the Enforcement Authority. "Unsatisfactory" is a temporary grade with a maximum duration of five working days. The permit holder must take appropriate corrective actions within the five working day period to avoid permit suspension. Upon completion of the corrective actions and within the five working day period, the permit holder may request a reinspection to determine if the appropriate corrective actions result in a grade of "Approved." The Enforcement Authority shall re-inspect within five working days of receipt of a request for reinspection and upgrade the establishment if appropriate. Failure to meet the standards for a grade of Approved within this period of time shall lead to immediate suspension of the establishment's operating permit. The permit holder of an establishment with a suspended permit, upon correcting all existing violations, may request, and provide proof of payment for, a second reinspection to determine compliance with §§ 9-6-1-1 et seq. The Enforcement Authority shall reinspect within five working days of receipt of a request for the second reinspection and upgrade the establishment if appropriate. Failure to meet the standards for a grade of Approved within this period of time shall result in the establishment remaining on Permit suspension status, and lead to further enforcement action. Operating an establishment without a Permit or under a suspended Permit is subject to the penalty provisions of §§ 9-6-1-1 et seq. The Enforcement Authority may require the Food Establishment operator, Person in Charge, or other employees to attend approved food safety training.

SECTION 3. Section 9-6-13 ROA 1994, is repealed and replaced with:

§ 9-6-1-13 COMPLIANCE PROCEDURES.

(A) Permits. It shall be unlawful for any person to operate a food establishment within the city who does not possess a valid permit issued for that food establishment by the Enforcement Authority. Such permit shall be posted in a conspicuous location, and only such persons who comply with the requirements of §§ 9-6-1-1 et seq. and other applicable laws, regulations, and ordinances shall receive and retain such permit. Permits shall not be transferable from one person to another person or establishment. Permits for temporary food-service establishments shall be issued for a period of time not to exceed two weeks, to a specific person for a specific location and shall be issued only for specific Special Events.

(B) Issuance of Permits. The Enforcement Authority shall be contacted at least five working days prior to the anticipated opening date of the establishment for an inspection to

determine compliance with the provisions of §§ 9-6-1-1 et seq. When the inspection reveals that the requirements of §§ 9-6-1-1 et seq. and other applicable laws, regulations and ordinances have been met, a permit application is issued. The applicant must present this application to the City Treasurer within two days. A permit will be issued after compliance.

(C) Suspension of Permits.

(1) Permits may be suspended by the Enforcement Authority for

(a) Failure of the holder to comply with the requirements of §§ 9-6-1-1 et seq. or of other applicable laws, regulations or ordinances.

(b) An establishment's operating permit shall be immediately suspended in lieu of a third downgrading during any 36-month period under the same permit.

(c) Whenever a permit holder or operator has failed to comply with corrective actions required by the Enforcement Authority pursuant to the requirements of §§ 9-6-1-1 et seq. or of other applicable laws, regulations or ordinances.

(2) The permit holder or operator shall be notified in writing that the permit is immediately suspended. A hearing in accordance with this section shall be granted upon written request to the Enforcement Authority, if request is made within five working days of notice of suspended permit. The hearing shall be scheduled within five working days following receipt of the written request by the Enforcement Authority.

(3) Notwithstanding the other provisions of §§ 9-6-1-1 et seq., whenever the Enforcement Authority finds an imminent health hazard or other conditions in the operation of a food establishment which, in its judgment, constitute a substantial hazard to the public health, the Enforcement Authority may without any prior warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition, specifying the corrective action to be taken, and specifying the time period within which action shall be taken; and, if deemed necessary, such order shall state that the permit is immediately suspended and all food-service or food processing operations are to be immediately discontinued. Any person to whom such an order is issued shall comply immediately therewith. An opportunity for a hearing in accordance with this section shall be provided if a written request for a hearing is filed with the Enforcement Authority by the permit holder within five working days of such order. The hearing shall be scheduled within five working days following receipt of the written request by the Enforcement Authority.

(D) Reinstatement of Suspended Permits. Any person whose permit has been suspended may at any time make application for a reinspection for the purpose of reinstatement of the

permit. Within five working days following receipt of a written request for reinspection, the Enforcement Authority shall make a reinspection. If the Enforcement Authority deems that the permit holder complies with the requirements of §§ 9-6-1-1 et seq. and other applicable laws, regulations, and ordinances, the permit shall be reinstated.

(E) Revocation of Permits.

(1) A permit may be revoked by the Enforcement Authority for the following:

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

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

(F) Hearings. The hearings provided for in this ordinance shall be conducted by a Hearing Officer at a time and place designated by the Hearing Officer. Based upon the findings of such hearing, the Enforcement Authority shall sustain, modify, or rescind any official notice, order, or other action by the Enforcement Authority considered in the hearing. A written report by the Hearing Officer of their findings shall be furnished to the permit holder by the Enforcement Authority. 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 with the Enforcement Authority within ten days of the action.

(G) Judicial Review. The exclusive remedy or any party dissatisfied with any final decision

of the Hearing Officer should file a petition to the District Court within 30 days after receipt of written notice of the decision of the concerned party.

(H) Injunctive Relief. As an additional remedy, if any food establishment violates the provisions of §§ 9-6-1-1 et seq., the Enforcement Authority may seek injunctive relief in a court of competent jurisdiction.

(I) Issuance of Citations. Citations may be issued by the Enforcement Authority for failure to comply with any requirement set forth in §§ 9-6-1-1 et seq.

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

SECTION 4. Section 9-6-18 ROA 1994, is repealed and replaced with:

§ 9-6-1-18 FEES.

(A) Adjustment of Fees. Fees charged in relation to the Food Sanitation Ordinance shall be established by rules adopted by the Enforcement Authority. Any such rule shall be adopted under the procedures of Chapter 2, Article 15 ROA 1994.

(B) Temporary Fees: The Enforcement Authority is authorized to collect the following fees until such time they are adjusted as outlined in §9-6-1-18 (A). These fees are for the purpose of paying the costs reasonably incurred in administering and enforcing the Food Sanitation Ordinance.

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

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

(b) In the case where there is, under single ownership or management, more than one food-service establishment or more than one place within an establishment where food is prepared or served within a single building or structure, and separate inspections are required, as determined by the Enforcement Authority, each such food-service establishment or place shall pay a separate annual fee. The food service location with the higher gross receipts shall be considered the primary establishment for the purposes of §§ 9-6-1-1 et seq. The fee for each additional food service establishment or place shall be \$200.

(2) Temporary Food-Service Establishments. Each temporary food-service establishment shall pay a fee of \$25 for each event and each location. The application for a

Temporary Food Service Establishment and fee shall be submitted five Working Days prior to the commencing of operation.

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

(a) For the first twelve months of operation the fee shall be \$200.

(b) In the case where there is, under single ownership or management, more than one food processing establishment or place, or more than one place within an establishment where food is processed, prepared, packaged, stored or distributed within a single building or structure, and separate inspections are required, as determined by the Enforcement Authority, each such food processing establishment or place shall pay a separate annual fee. The food processing establishment location with the higher gross receipts shall be considered the primary establishment for the purposes of §§ 9-6-1-1 et seq. The fee for each additional food processing establishment or place shall be \$200.

(4) Limited Facilities. Each limited facility shall pay an annual fee of \$120.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) Payment of Fees.

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

(b) In the event that any person fails to pay the annual fee by the due date, or remits an amount less than the correct amount of the fee due, the Enforcement Authority shall determine the amount of the fee due using such statement or other available information. The Enforcement Authority shall thereupon give written notice to the permit holder of the amount due, which amount shall be paid within five working days of receipt of such notice. Any party aggrieved by the Enforcement Authority's determination as to the amount due may request a hearing pursuant to Section 9-6-1-13.

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

(d) The Enforcement Authority is authorized and empowered to make inspections and audits of the books and related records of any permit holder subject to the provisions of §§ 9-6-1-1 et seq.; and every such permit holder shall maintain good and accurate books and related records of the gross sales of business done, which books and records shall be made available for inspection and audit as may be deemed by the Enforcement Authority in the administration of any of the provisions of §§ 9-6-1-1 et seq.

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

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

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

SECTION 5. Section 9-6-1-22 ROA 1994, is repealed and replaced with:

"§ 9-6-1-22 ADOPTION BY REFERENCE OF FOOD CODE.

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

SECTION 6. Chapter 9, Article 6, Part 1, ROA 1994 is amended to add as a new section to read:

"§ 9-6-1-23 AVAILABILITY OF ORDINANCE AND FOOD CODE.

(A) A copy of the "Food Sanitation Ordinance" i.e., §§ 9-6-1-1 et seq. is now on file in the Office of the City Clerk/Recorder and is available for inspection by the public during regular business hours. A copy of the ordinance i.e., §§ 9-6-1-1 et seq. 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.

(B) A copy of the Food Code, 2009 Recommendations of the United States Public Health Service/Food and Drug Administration as published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration as adopted by this ordinance are on file in the Office of the City Clerk, and are available for inspection by the public during regular business hours. A copy of the codes 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."

SECTION 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any 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 8. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 9. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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