CITY of ALBUQUERQUE
TWENTY-FIFTH COUNCIL

COUNCIL BILL NO. O-22-37 ENACTMENT NO. _____

SPONSORED BY: Tammy Fiebelkorn

ORDINANCE

Adding A New Part To Chapter 9, Article 6 ROA 1994, Food And Beverages, To Be Known As The "Albuquerque Market Food Vendor Ordinance", And Establishing A Permitting Fee. (Fiebelkorn)

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

SECTION 1. A new Part 7 is hereby added to Chapter 9, Article 6 of the Revised Ordinances of Albuquerque, 1994, as follows:

"[§ 9-6-7-1 SHORT TITLE.

This part shall be known and may be cited as the "Albuquerque Market Food Vendor Ordinance."

§ 9-6-7-2 APPLICABILITY. This Article applies to any person registered with the New Mexico Secretary of State to do business as a food or produce vendor in the State of New Mexico and who vends food at a market or operates a market food establishment, unless such operation is otherwise covered by any other applicable food permit, including a mobile food unit permit (§ 9-6-1-3), Temporary Food Service Establishment permit (§ 9-6-1-4), Temporary Food Establishment (§ 9-6-2) or Raw Produce Vendor permit (§ 9-6-3-2). No permit is required by this Ordinance for a person to vend homemade food items produced and labeled in compliance with the Homemade Food Act.

§ 9-6-7-3 INTENT AND PURPOSES. The intent of Article 9-6-7 et seq. is to provide market food vendors participating in markets a permit system that has the efficiency and economic

benefit of a single permit and that may be accepted at markets across the City. Residents of Albuquerque and the surrounding communities benefit from the products sold at local markets.

§ 9-6-7-4 DEFINITIONS

For the purpose of §§ 9-6-7-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

2009 FOOD CODE. 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.

APPLICANT. A person submitting an application for a market food establishment permit.

APPROVED. Acceptable to the enforcement authority based on its determination as to conformance with the 2009 Food Code, appropriate standards, and good public health practice.

CITY. The City of Albuquerque.

COMMISSARY. A permanent food establishment with a valid permit which is used by a market food establishment to prepare food for sale at a market or a place in possession of a permit in which food, containers or supplies are kept or stored for use by a market food vendor.

ENFORCEMENT AUTHORITY. The Mayor or any designated agent(s) of the Mayor.

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.

MARKET. Any temporary gathering of vendors, whether a single or recurring event, organized by a market coordinator and operating at a single location, whose primary purpose is the selling of goods.

MARKET COORDINATOR. Any person responsible for the organization and supervision of a market.

MARKET FOOD ESTABLISHMENT. Any establishment at a market where food and food products are processed, prepared, packaged, stored, offered for sale, donated, or distributed for human consumption, or any place where food is prepared and intended for individual portion service and includes the site at which individual portions are provided, or both. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term does not include private homes where food is prepared or served for individual family consumption.

MARKET FOOD VENDOR. Any person, including their employees, representatives, and agents, operating a market food establishment.

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

PERMIT. The document issued by the enforcement authority that authorizes a person to operate a food establishment.

PERMIT HOLDER. The person responsible for the operation of the food establishment required to possess a valid permit to operate a food establishment.

PERSON. Any person, agent, firm, partnership, association, corporation, company, organization, or entity of any kind.

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

POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR SAFETY FOOD). A food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation as provided for in the 2009 Food Code.

SAFE TEMPERATURES. Temperatures as provided in the 2009 Food Code.

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

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

TABLEWARE. All multi-use eating and drinking utensils.

THIS ORDINANCE. The Albuquerque Market Food Vendor Ordinance.

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

VALID. Unexpired, financially compliant, not suspended, and not revoked.

VEND. The act of selling, trading, bartering or giving away.

§ 9-6-7-5 GENERAL REQUIREMENTS; ADOPTION BY REFERENCE OF THE 2009 FOOD CODE.

(A) Except to the extent that it is inconsistent with the Albuquerque Market Food Vendor Ordinance, 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

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Health Service, Food and Drug Administration to regulate the conduct of all market food vendors and market food establishments.

§ 9-6-7-6 GENERAL REQUIREMENTS.

(A) Before vending at a market, market food vendors shall have a valid annual market food establishment permit, or other approved food permits issued pursuant to the Food Sanitation Ordinance, ROA 1994 Chapter 9, Article 6, Part 1; the Retailers, Meat Markets and Wholesalers Ordinance, ROA 1994 Chapter 9, Article 6, Part 2; the Raw Produce Stands Ordinance, ROA 1994 Chapter 9, Article 6, Part 3; or the Mobile Food Units Ordinance, ROA 1994 Chapter 9, Article 6, Part 5.

(B) Market food vendors shall be authorized by a market coordinator before vending at a market.

(C) If applicable, market food vendors shall be in possession of a valid City of Albuquerque business registration before vending at a market.

(D) Market food vendors shall comply with the requirements of §§ 9-6-7-1 et seq. and all other laws, regulations, and ordinances.

(E) Requirements.

(1) Market food establishments and their market food vendors shall comply with the regulations set forth in the 2009 Food Code as they pertain to temporary food establishments.

(2) The enforcement authority may impose additional requirements to protect against health hazards related to the conduct of the market food establishment, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of §§ 9-6-7-1 et seq.

(3) Food Safety.

(a) All market food establishments, with the exception of market food establishments vending only raw, uncut produce, shall operate out of a commissary and shall report at least each day of operation to such location for all supplies and for all cleaning and servicing operations. The preparation or service of potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish, at a market is limited to potentially hazardous food that has been prepared and packaged under conditions

meeting the requirements of §§ 9-6-7-1 et seq.; is obtained in individual servings; is stored at a safe temperature in facilities that meet the requirements of §§ 9-6-7-1 et seq.; and is served directly in the unopened container in which it was packaged.

(b) All foods vended at a market must be from an approved source and free from spoilage, filth, or other contamination as to be safe for human consumption. During transportation of food to the point of sale or distribution at a market, food must be kept at appropriate temperatures and protected from contamination.

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

(i) When a conventional handwashing sink is not available or in close proximity to the market food establishment, an approved temporary hand wash station shall be made available and consist of an insulated container that is equipped with a minimum 5 gallon capacity and a spigot to allow for the continuous flow of water; an adequate supply of potable water at a minimum temperature of 38°c (100°f); a wastewater container capable of properly retaining wastewater from the hand wash station; and an adequate supply of hand soap and paper towels.

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

(e) All market food establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

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(f) Food Display and Storage at a Market.

(i) All food displays and preparation areas shall be smooth, durable, and easily cleanable.

(ii) Food displays shall be confined to tables or to the bed of a vehicle. Food must be at least six inches above the ground.

(iii) Food contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination. Servicing areas shall be provided with overhead protection.

(g) Raw Animal foods; additional restrictions.

(i) A market food vendor shall not remove, or allow to be removed, raw animal foods from the original packaging in which the foods were placed at the food processing establishment from which they originated.

(ii) A market food vendor shall not vend unpackaged raw animal food products.

(iii) A market food vendor shall not vend raw animal food products in any condition other than frozen.

(iv) A market food vendor shall not vend raw animal foods unless they have the Federal USDA mark of inspection.

(h) Prohibited Sales. A market food vendor shall not vend live animals, seafood, shellfish, sushi, or sprouts.

§ 9-6-7-7 MARKET FOOD VENDOR APPLICATION; FEES.

(A) An applicant seeking an annual market food establishment permit shall submit a signed application and a copy of the market food establishment's business registration (if applicable) to the enforcement authority, on a form provided by the enforcement authority, by March 15 of each year. In the event that an applicant submits an application after March 15th of each year, the permit application shall be submitted to the enforcement authority at least five working days prior to the commencement of operations.

(B) The application shall include the following:

(1) The name, mailing address, telephone number, e-mail address, and signature of

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the applicant;

(2) The name, title, mailing address, telephone number, and e-mail address of the person in charge;

(3) A list of any valid permit held by the applicant, or a disclosure of a previous market food establishment permit held by the applicant for the same market food establishment within the last three years;

(4) When a commissary is required, the name, title, mailing address, telephone number, and e-mail address of the applicant's commissary;

(a) When the commissary is not owned and operated by the applicant, a copy of the commissary agreement that includes the following:

(i) A list of all services provided to the applicant by the commissary;

(ii) The name, title, mailing address, telephone number, and e-mail address of the commissary;

(iii) The name, title, mailing address, telephone number, and e-mail address of the applicant;

(iv) A statement signed by the applicant and commissary owner that:

(1) Attests to the accuracy of the information provided;

(2) Affirms that the applicant will:

(a) Visit the commissary for services on every day of market operations;

(b) Provide a copy of the current commissary agreement annually to the enforcement authority; and

(c) Comply with the requirements of §§ 9-6-7-1 et seq. and all other applicable laws and regulations.

(3) Affirms that the commissary owner will allow the enforcement authority access to the establishment and its records for the purpose of enforcing the Albuquerque Market Food Vendor Ordinance.

(5) A list of all food items to be prepared or sold;

(6) The method for which any item will be prepared and the location at which it will be prepared;

(7) A statement signed by the applicant that:

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(a) Attests to the accuracy of the information provided in the application,

(b) Certifies that the applicant is not subject to the Homemade Food Act, and

(c) Affirms that the applicant shall:

(i) Notify the enforcement authority of any changes to the information provided,

(ii) Comply with all requirements set forth by §§ 9-6-7-1 et seq., and

(iii) Allow the enforcement authority access to the establishment and its records for the purpose of enforcing this ordinance.

(C) Corrections. In the event that the enforcement authority finds that an applicant needs to correct, amend, or supplement an application, the enforcement authority shall notify the applicant as soon as practicable. The enforcement authority's determination that an application requires a correction does not constitute a denial of the application.

(D) Fees.

(1) Temporary Fees. The enforcement authority is authorized to collect the fees in §9-6-7-7(D)(1) until such time as they are adjusted by rules adopted by the enforcement authority.

(a) Each market food establishment shall pay an annual permit fee of $50. Annual permit fees are due on or before the first working day of April of each year; provided, however, that no person shall engage in the operations of a market food establishment without first paying the permit fee. See also Section 9-6-7-8(C) Term and Scope of Permit.

(b) In the event that an applicant submits an application after the annual deadline, the enforcement authority may grant the permit and the permit fee shall be assessed in accordance with the following fee table:

Permit Type	Permit Effective Dates	Fee
Annual	April 1 - March 31	$50
Late Season	October 1 - March 31	$30

(2) Adjustment of Fees. Fees charged in relation to the Albuquerque Market Food Vendor Ordinance may be established by rules adopted by the enforcement

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authority. Any such rule shall be adopted under the procedures of Chapter 2, Article 15 ROA 1994.

§ 9-6-7-8 PERMITS; COMPLIANCE PROCEDURES.

(A) *Permits.* It shall be unlawful for any person to operate a market food establishment within the city who does not possess a valid market food establishment permit issued for that food establishment by the enforcement authority. Such permit shall be posted in a conspicuous location. Permits shall not be transferable.

(B) *Issuance of Permits.* The enforcement authority shall review the contents of the application and make a determination of approval or denial. The enforcement authority may require an inspection of the applicant's operations prior to the approval of the application. The applicant shall remit payment for the permit prior to the commencement of operations. If approved, a permit shall be issued following the payment of all applicable fees and compliance with the requirements §§ 9-6-7-1 et seq. and other laws, regulations and ordinances. Failure to pay the permit fee within 14 calendar days of permit approval will result in the cancellation of the application and the applicant must re-apply.

(C) *Term and Scope of Permit*. The term of each approved market food establishment permit shall begin on (i) April 1, if the market food establishment application was submitted on or before March 15, or (ii) the date of issuance. The term of each market food establishment permit shall end on March 31. A market food establishment permit authorizes a market food vendor to operate at any market, subject to the requirements of this ordinance and the market coordinator, within City limits.

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

(E) *Denial of Permit.* The enforcement authority may refuse to issue a permit to any applicant who fails to demonstrate, to the satisfaction of the enforcement authority, the ability to comply with or who fails to comply with the requirements of §§ 9-6-7-1 et seq. or of other laws, regulations or ordinances or any applicable rules or orders issued pursuant to a Civil Emergency or Public Health Emergency, as those terms are defined in state law

or ROA 1994, Chapter 2, Article 9, Part 1. In the event the enforcement authority denies a permit, the enforcement authority shall notify the applicant in writing, stating the reasons for which the permit was denied. An opportunity for a hearing to appeal the denial of a permit will be provided if a written request for hearing is filed with the City Clerk's office within fifteen working days. A hearing shall be held in accordance with subsection (J) of this ordinance.

(F) *Suspension of Permits.*

(1) Permits may be suspended by the enforcement authority for:

(a) Failure of the holder to comply with the requirements of §§ 9-6-7-1 et seq. or of other laws, regulations or ordinances or any applicable rules or orders issued pursuant to a Civil Emergency or Public Health Emergency, as those terms are defined in state law or ROA 1994, Chapter 2, Article 9, Part 1.

(b) Failure of the permit holder or operator to comply with corrective actions required by the enforcement authority, within a time period specified by the enforcement authority, after the enforcement authority has completed an inspection and found violations. If the violations are not corrected within the time period specified by the enforcement authority, the market food establishment shall immediately cease operation.

(2) The permit holder or operator shall be notified in writing that the permit is immediately suspended. A permit holder may appeal the suspension of a permit by making written request to the enforcement authority within fifteen working days of notice of suspended permit. A hearing shall be held in accordance with subsection (J) of this ordinance.

(3) Immediate Suspension for Imminent Health Hazard. Notwithstanding the other provisions of §§ 9-6-7-1 et seq., whenever the enforcement authority finds an imminent health hazard or other conditions in the operation of a market 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. A permit holder

may appeal the suspension by requesting a hearing within fifteen working days of the notice of suspension. A hearing shall be held in accordance with subsection (J) of this ordinance.

(G) *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. At the next date of the market food establishment's operations following receipt of a written request for reinspection, and subject to availability of the enforcement authority, the enforcement authority shall make a reinspection. If the enforcement authority deems that the permit holder complies with the requirements of §§ 9-6-7-1 et seq. and other applicable laws, regulations, and ordinances, the permit shall be reinstated.

(H) *Revocation of Permits.*

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

(a) For failure of an establishment to correct violations, upon reinspection, when the establishment's permit has been suspended for failure to meet the requirements of this §§ 9-6-7-1 et seq.

(b) For the second suspension within any 36-month period for any market food establishment.

(c) For refusal of inspection of the establishment after proper identification has been tendered by the enforcement authority.

(d) For interference with or harassment of the enforcement authority in the performance of its duties.

(2) Prior to revoking a permit, 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 after service of such notice, unless a written request for a hearing is filed with the City Clerk's office by the permit holder within such five working day period in accordance with subsection (J) of this ordinance. The hearing shall be scheduled within five working days following receipt of the written request by the City Clerk's office. The permit shall be deemed suspended from the date of notice of revocation until the issuance of the hearing officer's decision.

(I) *Application for a New Permit After Revocation.*

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(1) A permit holder may, after 90 calendar days following permit revocation, submit a written application to the enforcement authority for a new permit and shall pay all applicable fees for a new permit and any outstanding fees associated with the revoked permit.

(2) The permit fee due for the new permit shall be determined by the date the new permit is issued by the enforcement authority.

(J) *Hearings.* The hearings provided for in this ordinance shall be conducted by the Independent Hearing Officer in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8. 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 working days of the action and in accordance with the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8. A nonrefundable hearing fee of $50.00 shall accompany each application for hearing conducted by the hearing officer requested pursuant to this ordinance.

(K) *Judicial Review.* The exclusive remedy for any party to appeal a final decision of the hearing officer is to file a petition to the District Court within 30 days after service of written notice of the decision of the concerned party. The petition for review shall be limited to the record.

(L) *Injunctive Relief.* As an additional remedy, if any person, permit holder, or market food establishment violates the provisions of §§ 9-6-7-1 et seq., the enforcement authority may seek injunctive relief in a court of competent jurisdiction.

(M) *Issuance of Citations.* Citations may be issued by the enforcement authority for failure to comply with any requirement set forth in §§ 9-6-7-1 et seq.

§ 9-6-7-9 VARIANCES.

The enforcement authority may grant an individual variance from the limitations prescribed in §§ 9-6-7-1 et seq. whenever it is found upon presentation of adequate proof, that compliance with that specific part of §§ 9-6-7-1 et seq. will impose an undue economic burden or hardship upon the business and that granting of the variance will not result in a condition injurious to health or safety. Any person seeking a variance shall do so in writing, setting forth their reasons for the variance and stating the length of time for which they seek the variance. The enforcement authority shall promptly investigate the petition and make a determination as to the disposition thereof. The party

seeking this variance shall be given a decision within ten working days following receipt of the request by the enforcement authority. A permit holder may appeal the enforcement authority's decision by requesting a hearing within fifteen working days of the decision. A hearing shall be held in accordance with the provisions of the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

§ 9-6-7-10 AVAILABILITY OF ORDINANCE.

A copy of the "Albuquerque Market Food Vendor Ordinance" [i.e., §§ 9-6-7-1 et seq.] is now on file in the Office of the City Clerk and is available for inspection by the public during regular business hours. A copy of the ordinance [i.e., §§ 9-6-7-1 et seq.] shall be available to any individual upon request and the payment of a reasonable charge as set forth by the Chief Administrative Officer, to be not less than the actual cost per copy.

§ 9-6-7-11 PENALTY.

Every person convicted of a violation of any provision of §§ 9-6-7-1 et seq. shall be guilty of a petty misdemeanor and shall be subject to the penalty provisions set forth in § 1-1-99 of this code of ordinances. Every violation of §§ 9-6-7-1 et seq. shall be a petty misdemeanor. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.]"

SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, work 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.

SECTION 3. COMPILATION. Section 1 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994, as a new Part 7 of Chapter 9, Article 6 titled "Albuquerque Market Food Vendor Ordinance."

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect after publication by title and general summary on January 1, 2023.

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