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

3 SECTION 1. A new Part 8 is hereby added to Chapter 9, Article 6 of the
4 Revised Ordinances of Albuquerque, 1994, as follows:

5 § 9-6-8-1 SHORT TITLE. This part shall be known and may be cited as the
6 "Albuquerque Raw Milk Ordinance."

7 § 9-6-8-2 APPLICABILITY. This part applies to any person who sells or offers
8 raw milk or raw milk product in the City.

9 § 9-6-8-3 INTENT AND PURPOSES. The intent of §§ 9-6-8-1 et seq. is to
10 provide for the sale of raw milk and raw milk products in Albuquerque and
11 reduce risks associated with sales of raw milk through regulation and
12 compliance with food safety principles and proper handling.

13 § 9-6-8-4 DEFINITIONS. For the purpose of §§ 9-6-8-1 et seq., the following
14 definitions shall apply unless the context clearly indicates or requires a
15 different meaning.

16 ADULTERATED. The condition of a food:

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

19 (2) If it bears or contains any added poisonous or deleterious substance,
20 for which no safe tolerance has been established by regulations, or in excess
21 of such tolerance if one has been established;

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

24 (4) If it has been produced, processed, prepared, packed or held under
25 unsanitary conditions, whereby it may have become contaminated with filth,
26 or whereby it may have been rendered diseased, unwholesome, or injurious to
27 health;

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

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

32 ADDRESS OF RECORD. The mailing address designated by the permit holder
33 to receive notices and correspondence from the ENFORCEMENT AUTHORITY.

1 **ANNIVERSARY DATE.** The first day of the calendar month in which the original
2 permit was issued.

3 **APPROVED.** Acceptable to the enforcement authority based on its
4 determination as to conformance with appropriate standards and good public
5 health practice.

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

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

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

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

16 **FOOD ESTABLISHMENT–GROCERY.** A specific type of food establishment
17 that purchases pre-packaged food and resells the same to consumers without
18 removing the food from packaging or further using, processing, or
19 manufacturing the food and whose primary function is the sale of food. **FOOD**
20 **ESTABLISHMENT–GROCERY** does not include those food establishments
21 whose primary function is to sell food to a highly susceptible population as
22 defined in Part 1-2 of the 2009 United States Food and Drug Administration
23 Model Food Code.

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

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

28 **MARKET.** Any temporary gathering of vendors, whether a single or recurring
29 event, organized by a market coordinator and operating at a single location,
30 whose primary purpose is the selling of goods as defined in the Albuquerque
31 Market Food Vendor Ordinance ROA 1994 Chapter 9, Article 6, Part 7.

32 **PACKAGED.** Bottled and capped, canned, cartoned, or securely wrapped.

1 PERMIT HOLDER. A person who is responsible for the operation who is
2 required to possess a valid raw milk permit.

3 PERSON. An individual, partnership, corporation, association, or any other
4 legal entity. This term means either the singular or the plural as the case may
5 be.

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

10 PULL DATE. The last day on which a product is to be sold or offered for
11 human consumption.

12 RAW MILK. Any milk which is not pasteurized or has not been treated or
13 manipulated in any manner to destroy pathogens.

14 RAW MILK PRODUCT. Any of the following products which have been derived
15 from raw milk and have not been treated or manipulated in any manner to
16 destroy pathogens: cream, flavored milk, and half and half.

17 RAW MILK PERMIT. A valid permit issued by the enforcement authority which
18 allows a person to vend raw milk or a raw milk product and includes the
19 following types of permits:

20 (1) Food Establishment-Grocery Raw Milk Permit: allows a Food
21 Establishment-Grocery to vend and distribute raw milk and raw milk product
22 from the Food Establishment-Grocery location.

23 (2) Market Food Establishment Raw Milk Permit: allows a person to vend
24 raw milk and raw milk product at any market.

25 RAW MILK VENDOR. Any person, including their employees, representatives,
26 and agents, operating a market food establishment in possession of a valid
27 Market Food Establishment Raw Milk Permit.

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

30 THIS ORDINANCE. The Albuquerque Raw Milk Ordinance.

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

32 VEND. The act of selling, trading, bartering or giving away. This term means
33 either the singular or the plural as the case may be.

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

3 **§ 9-6-8-2 PERMIT REQUIRED.**

4 (A) No person within the City shall vend or store raw milk or raw milk
5 product without a valid raw milk permit issued by the Enforcement Authority.
6 Raw milk and raw milk product may only be sold by a Food Establishment-
7 Grocery or a Raw Milk Vendor directly to consumers.

8 (B) Raw milk permits shall be posted in a conspicuous location, visible
9 to the public.

10 (C) Raw milk permits shall not be transferable.

11 **§ 9-6-8-3 GENERAL REQUIREMENTS.**

12 (A) A Food Establishment–Grocery shall possess a valid Food
13 Establishment-Grocery Raw Milk permit and any required permit from the New
14 Mexico Department of Agriculture.

15 (B) A Raw Milk Vendor shall possess a valid Market Food Establishment
16 Raw Milk permit and any valid permit from the New Mexico Department of
17 Agriculture pursuant to Title 21, Chapter 34, Part 2 of the New Mexico
18 Administrative Code and a raw milk permit prior to vending or storing raw milk
19 or raw milk product at a market.

20 **§ 9-6-8-4 PERMIT APPLICATION AND ISSUANCE.**

21 (A) An applicant seeking a raw milk permit shall submit a signed
22 application and a copy of the establishment’s City of Albuquerque business
23 registration (if applicable) to the enforcement authority, on a form provided by
24 the enforcement authority.

25 (B) The enforcement authority shall review the contents of the
26 application and make a determination of approval or denial. The enforcement
27 authority may require an inspection of the applicant’s operations prior to the
28 approval of the application. The applicant shall remit payment for the raw milk
29 permit prior to the commencement of vending raw milk or raw milk product. If
30 approved, a raw milk permit shall be issued following the payment of all
31 applicable fees and compliance with the requirements of this ordinance and
32 other laws, regulations and ordinances.

1 (C) Denial of permit. The enforcement authority may refuse to issue a
2 raw milk permit to any applicant who fails to demonstrate, to the satisfaction
3 of the enforcement authority, the ability to comply with or who fails to comply
4 with the requirements of this ordinance or of other laws, regulations or
5 ordinances or any applicable rules or orders issued pursuant to a Civil
6 Emergency or Public Health Emergency, as those terms are defined in state
7 law or ROA 1994, Chapter 2, Article 9, Part 1. In the event the enforcement
8 authority denies a raw milk permit, the enforcement authority shall notify the
9 applicant in writing, stating the reasons for which the permit was denied. An
10 opportunity for a hearing to appeal the denial of a raw milk permit will be
11 provided if a written request for hearing is filed with the City Clerk's office
12 within 15 working days. A hearing shall be held in accordance with § 9-6-8-10
13 ROA 1994.

14 (D) Term and scope of permit.

15 (1) Food Establishment-Grocery Raw Milk permits shall be valid for one
16 calendar year from the anniversary date.

17 (2) The term of each approved Market Food Establishment Raw Milk
18 permit shall begin on (i) April 1, if the market food establishment application
19 was submitted on or before March 15, or (ii) the date of issuance. The term of
20 each market food establishment raw milk permit shall end on March 31. A
21 Market Food Establishment Raw Milk permit authorizes a Raw Milk Vendor to
22 operate at any market within City limits.

23 § 9-6-8-5 RIGHT OF INSPECTION.

24 (A) The ENFORCEMENT AUTHORITY shall make such inspections of
25 food establishments as necessary to assure compliance with this ordinance. A
26 copy of the inspection report shall immediately be furnished to the permit
27 holder or person in charge indicating the degree of compliance or
28 noncompliance with the provisions of this ordinance.

29 (B) No person shall refuse to allow the enforcement authority, after
30 presentation of proper identification, to inspect fully any and all premises or
31 facilities at any reasonable time, and no person shall molest or resist the
32 enforcement authority in the discharge of its duties whether in inspections for
33 application approval or for enforcement of this ordinance.

1 (C) The permit holder or person in charge of the establishment shall be
2 given an opportunity to accompany the enforcement authority during the
3 inspection.

4 (D) The enforcement authority shall be permitted to examine and obtain
5 copies of the records of the food establishment to obtain pertinent information
6 related to food source and supplies received, pest control, and list of persons
7 employed.

8 § 9-6-8-6 FOOD SAFETY.

9 (A) Raw milk and raw milk product shall be wholesome; free from
10 adulteration, spoilage, filth, and any other contamination.

11 (B) Raw milk and raw milk product shall be received packaged from a
12 facility in possession of a valid permit from the New Mexico Department of
13 Agriculture pursuant to Title 21, Chapter 34, Part 2 of the New Mexico
14 Administrative Code and shall be kept in the hermetically sealed container in
15 which the raw milk or raw milk product was received until vended;

16 (C) Raw milk and raw milk product may only be vended to a consumer
17 for personal consumption;

18 (D) Except in a private home, a person in possession of a raw milk
19 permit shall not allow raw milk or raw milk product to be served to any person,
20 removed from any package, offered as a sample, or used as an ingredient in
21 any food establishment;

22 (E) All packaged raw milk or raw milk product shall be conspicuously
23 labeled or marked as "RAW MILK" in addition to all legally required labels or
24 markings, and shall meet the labeling requirements as specified in 21.34.2.12
25 NMAC now adopted and incorporated herein;

26 (F) Raw milk and raw milk product shall be displayed separately from
27 and shall not be commingled with pasteurized milk or other pasteurized dairy
28 product;

29 (G) The length of the pull date of raw milk or raw milk product shall not
30 exceed five (5) days including the date the raw milk or raw milk product was
31 packaged;

1 (H) The permit holder shall maintain, for 90 days, and make available for
2 inspection by the enforcement authority, adequate and contemporaneous
3 records identifying:

4 (1) The name and address of facility in possession of a valid
5 permit from the New Mexico Department of Agriculture pursuant to Title 21,
6 Chapter 34, Part 2 of the New Mexico Administrative Code where raw milk or
7 raw milk product were obtained;

8 (2) The pull date of raw milk or raw milk product offered for
9 human consumption; and

10 (3) The location(s) where raw milk or raw milk product were
11 distributed by the permit holder.

12 (I) The permit holder shall maintain, for 90 days, and make available for
13 inspection by the enforcement authority, adequate and contemporaneous
14 temperature logs of raw milk and raw milk product while being stored, vended,
15 held, or transported;

16 (J) Any person vending raw milk and raw milk product at a market shall:

17 (1) Have a placard displayed at the point of sale and any location
18 offering raw milk or raw milk product that is easily visible to the public and
19 that conforms to the labeling requirements as specified in 21.34.2.12(C)
20 NMAC; and

21 (2) Transport and store raw milk and raw milk product in an on-
22 site powered refrigeration unit at 41°F or lower; and

23 (3) Any person selling raw milk and raw milk product at a market
24 shall not display raw milk or raw milk product outside of the on-site powered
25 refrigeration unit.

26 **§ 9-6-8-7 PERMIT SUSPENSION AND REVOCATION.**

27 (A) Suspension of raw milk permits.

28 (1) Raw milk permits may be suspended whenever the
29 enforcement authority finds:

30 (a) The permit holder has failed to comply with corrective
31 actions required by the enforcement authority, within a time period specified
32 by the enforcement authority, after the enforcement authority has completed
33 an inspection and found violations. If the violations are not corrected within

1 the time period specified by the enforcement authority, the food establishment
2 shall immediately cease the vending of raw milk or raw milk product;

3 (b) For refusal of inspection of the establishment after
4 proper identification has been tendered by the enforcement authority;

5 (c) For interference with or harassment of the enforcement
6 authority in the performance of its duties;

7 (d) Raw milk or raw milk product vended were not obtained
8 from a raw milk distributor in possession of a valid permit from the New
9 Mexico Department of Agriculture pursuant to Title 21, Chapter 34, Part 2 of
10 the New Mexico Administrative Code;

11 (e) Raw milk or raw milk product are offered for human
12 consumption past the pull date;

13 (f) Raw milk or raw milk product are offered for sale
14 without the proper markings, labels, and signage;

15 (g) The permit holder has failed to comply with a recall of
16 raw milk or raw milk product;

17 (h) The permit holder has offered for sale raw milk or raw
18 milk product that is known to contain unsafe levels of coliforms or bacterial
19 colonies;

20 (i) The raw milk or raw milk product markings, label, or
21 signage contain any misleading statement(s);

22 (j) Any violation of this ordinance; or

23 (k) It is necessary to prevent or stop an imminent health
24 hazard.

25 (B) The permit holder and person in charge shall be notified in writing
26 that the permit is immediately suspended. A permit holder may appeal the
27 suspension of a permit by making written request to the enforcement authority
28 within 15 working days of notice of suspended permit. A hearing shall be held
29 in accordance with § 9-6-8-10 ROA 1994.

30 (C) Reinstatement of suspended permits. Any person whose raw milk
31 permit has been suspended may at any time make application for a
32 reinspection for the purpose of reinstatement of the raw milk permit. At the
33 next date of operations following receipt of a written request for reinspection,

1 and subject to availability of the enforcement authority, the enforcement
2 authority shall make a reinspection. If the enforcement authority deems that
3 the permit holder complies with the requirements of this ordinance and other
4 laws, regulations, and ordinances, the permit shall be reinstated.

5 (D) Revocation of raw milk permits. A raw milk permit may be revoked by
6 the enforcement authority for the following:

7 (1) For failure of an establishment to correct violations, upon
8 reinspection, when the establishment's permit has been suspended for failure
9 to meet the requirements of this ordinance; or

10 (2) For three or more suspensions within any 60-month period for
11 any raw milk permit.

12 (E) The permit holder and person in charge shall be notified in writing
13 that the raw milk permit is immediately revoked, stating the reasons for which
14 the raw milk permit is revoked. A permit holder may appeal the revocation of a
15 raw milk permit by making written request to the City Clerk's office within 15
16 working days of notice of a revoked raw milk permit. A hearing shall be held in
17 accordance with § 9-6-8-10 ROA 1994.

18 (F) Application for a new raw milk permit after revocation.

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

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

27 **§ 9-6-8-8 INSPECTION FEES.**

28 (A) Adjustment of Fees. Fees charged in relation to the Raw Milk
29 Ordinance shall be established by rules adopted by the enforcement authority.
30 Any such rule shall be adopted under the procedures of Chapter 2, Article 15
31 ROA 1994.

32 (B) Temporary Fees. The enforcement authority is authorized to collect
33 the following fees until such time as they are adjusted as outlined in § 9-6-8-

1 7(A). These fees are for the purpose of paying the costs reasonably incurred in
2 administering and enforcing the Raw Milk Ordinance.

3 (1) Food Establishment-Grocery Raw Milk permits shall be
4 assessed an annual inspection fee of \$80.

5 (2) Market Food Establishment Raw Milk permits shall be
6 assessed a fee of \$50.

7 § 9-6-8-9 SERVICE OF NOTICE.

8 (A) All notices issued by the enforcement authority shall be served upon
9 the permit holder and left with the person in charge, when applicable, or such
10 notice shall be sent by registered or certified mail, return receipt requested, to
11 the last known address of record. A copy of such notice shall be filed with the
12 records of the enforcement authority. Service is complete when notice has
13 been provided to the person in charge.

14 (B) The notice shall state the specific reason(s) for the enforcement
15 authority's action(s). The notice shall state the action(s) to be taken in a
16 specified timeline unless the permittee files a written request with the City
17 Clerk for hearing within fifteen (15) days pursuant to the provisions in the IHO
18 Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

19 § 9-6-8-10 HEARINGS. The Independent Hearing Officer shall conduct the
20 hearings provided for in this ordinance in accordance with the provisions in
21 the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8. Any enforcement
22 action adversely impacting a permit holder that is not specifically provided for
23 in this section is nonetheless subject to review under this section if a hearing
24 request is filed within 15 working days of the action and in accordance with
25 the provisions in the IHO Ordinance, ROA 1994, Chapter 2, Article 7, Part 8.

26 § 9-6-8-11 JUDICIAL REVIEW. The exclusive remedy for any party to appeal
27 a final decision of the hearing officer is to file a petition to the District Court
28 within 30 days after service of written notice of the decision of the concerned
29 party. The petition for review shall be limited to the record.

30 § 9-6-8-12 INJUNCTIVE RELIEF. As an additional remedy, if any person or
31 permit holder violates the provisions of this ordinance, the enforcement
32 authority may seek injunctive relief in a court of competent jurisdiction.

1 § 9-6-8-13 AVAILABILITY OF ORDINANCE. A copy of the "Albuquerque Raw
2 Milk Ordinance" (i.e., §§ 9-6-8-1 et seq.) is now on file in the Office of the City
3 Clerk and is available for inspection by the public during regular business
4 hours. A copy of the ordinance (i.e., §§ 9-6-8-1 et seq.) shall be available to
5 any individual upon request and the payment of a reasonable charge as set
6 forth by the Chief Administrative Officer, to be not less than the actual cost
7 per copy.

8 § 9-6-8-14 PENALTY. Every person convicted of a violation of any provision
9 of §§ 9-6-8-1 et seq. shall be guilty of a petty misdemeanor and shall be
10 subject to the penalty provisions set forth in § 1-1-99 of this code of
11 ordinances. Every violation of §§ 9-6-8-1 et seq. shall be a petty
12 misdemeanor. Each day such violation is committed or permitted to continue
13 shall constitute a separate offense and shall be punishable as such
14 hereunder.”

15 SECTION 2. Section 9-6-2-3 ROA 1994, the food care section of the Retailer,
16 Meat Market and Wholesaler Ordinance, is amended as follows:

17 § 9-6-2-3 FOOD CARE.

18 (B) *Special Requirements.*

19 (1) Fluid milk and fluid milk products used, stored, or sold shall be
20 pasteurized and shall meet the Grade “A” quality as established by law except
21 a food establishment – grocery or person in possession of a market food
22 establishment raw milk permit may sell raw milk or raw milk product as
23 permitted in the Albuquerque Raw Milk Ordinance ROA 1994 Chapter 9, Article
24 6, Part 8. Dry milk and dry milk products shall be made from pasteurized milk
25 and milk products. Cheese from an approved processing plant that is aged a
26 minimum of 60 days is exempt from this requirement.

27 SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph,
28 sentence, clause, work or phrase of this ordinance is for any reason held to be
29 invalid or unenforceable by any court of competent jurisdiction, such decision
30 shall not affect the validity of the remaining provisions of this ordinance.

31 SECTION 4. COMPILATION. Section 1 of this ordinance shall be
32 incorporated in and made part of the Revised Ordinances of Albuquerque,
33 New Mexico, 1994, as a new Part 8 of Chapter 9, Article 6 titled “Albuquerque

1 Raw Milk Ordinance.” Section 2 of this this ordinance shall be incorporated in
2 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994,
3 Section 9-6-2-3 ROA 1994, the Food Care section of the Retailer, Meat Market
4 and Wholesaler Ordinance.

5 SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five days
6 after publication by title and general summary.

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1 PASSED AND ADOPTED THIS 20th DAY OF November, 2023
2 BY A VOTE OF: 7 FOR 2 AGAINST.

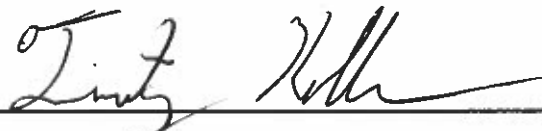
3
4 For: Bassan, Davis, Grout, Jones, Lewis, Peña, Sanchez
5 Against: Benton, Fiebelkorn

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7 _____
8 Pat Davis, President
9 City Council

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12 APPROVED THIS 5 DAY OF December, 2023
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17 Bill No. O-23-86

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19 _____
20 Timothy M. Keller, Mayor
21 City of Albuquerque
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26 ATTEST:

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28 _____
29 Ethan Watson, City Clerk
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