

2024 Food Service and Retail Ordinance

Environmental Health Department
Consumer Health Protection Division

Food Service & Retail Ordinance

- ▶ In May 2024, City Council passed the new Food Service & Retail Ordinance
- ▶ The new ordinance replaces all existing City ordinances related to food safety
- ▶ The ordinance re-affirms the statutory authority of Environmental Health to issue permits and regulate the food industry in Albuquerque
- ▶ The ordinance also establishes the authority of EHD to create rules to administer the ordinance, and provides enforcement language

Objectives

- ▶ Unify prior Food Ordinance Suite - consistency and clarity, modernize
- ▶ Ensure greater consistency with State and Bernalillo County
- ▶ Update Permitting and Fee structure to Risk-Based Model
- ▶ Move Administrative Functions to Promulgated Rules Model
- ▶ Enforcement Updates - strengthen and ensure fair play
 - ▶ Civil Penalties
 - ▶ Criminal Penalties
 - ▶ Compliance Plans

Environmental Health Department

- ▶ Environmental Health Department is the authorized regulatory authority for food service within Albuquerque
- ▶ Distinct authority from State regulators based on Home Rule provisions
- ▶ EHD Food Safety program is budgeted from City General Fund (tax dollars and other City revenue)
- ▶ EHD follows the language and principles of the FDA Food Code (currently 2009, moving to 2022)

Unifying Ordinance Suite

- ▶ 9-6-1 Food Sanitation
- ▶ 9-6-2 Retailers, Meat Markets, and Wholesalers
- ▶ 9-6-3 Raw Produce Stands
- ▶ 9-6-4 Pure Food
- ▶ 9-6-5 Mobile Food Units
- ▶ 9-6-6 Food and Drink Vending Machines
- ▶ 9-6-7 Market Food Vendor
- ▶ 9-6-8 Raw Milk



- ▶ 9-6-1 Albuquerque Food Service and Retail Ordinance
- ▶ Rules of the Albuquerque Food Service and Retail Ordinance

Fees

- ▶ 2022 Internal Audit Report recommended increases to Albuquerque permit fees after review of comparable cities
- ▶ Per audit compliance, fee analysis was conducted based on comparable jurisdictions and fee models
- ▶ Most fees were on a sliding scale based on previous year's GRT
- ▶ Previous system created confusion for permittees and budget planning issues
- ▶ Fee Tables were included in the new Food Service and Retail Ordinance
- ▶ New ordinance, including fee tables, passed by Council legislation May 2024

Fees

All fees have been converted to flat fees based on the Permit Class or Type, if it is Primary or Secondary, and the Risk Category assigned

NEW FEES FOR SPECIAL SERVICES

- ▶ HACCP Review for Processors/Manufacturing
- ▶ Variance
- ▶ Inspection Upon Request
- ▶ Re-Inspection- When after downgrade or closure the next inspection does not pass, all subsequent inspections are accompanied by a fee.
- ▶ Civil Penalties

Enforcement

- ▶ All City ordinances must contain enforcement penalty provisions to be enforceable; the prior ordinance contained similar language
- ▶ Minor enforcement language clarifications
- ▶ Routine Compliance
 - ▶ Cease and Desist
 - ▶ Closure
 - ▶ Suspension
 - ▶ Revocation
 - ▶ Compliance Plans

Enforcement

- ▶ Civil Penalties
 - ▶ A citation with a fine
 - ▶ New enforcement option for administrative needs - increased efficiency
 - ▶ Refusal to admit inspector or interference with inspector duties
 - ▶ Operating without a permit or under suspended permit
- ▶ Criminal Penalties
 - ▶ For more serious enforcement action or continued non-compliance
 - ▶ General Penalty
 - ▶ Temporary Restraining Order
 - ▶ Injunction

Rules

- ▶ Today we are here to hear from stakeholders
- ▶ Questions, clarifications and general comment related to the published Rules document
- ▶ We will include all feedback in the record; however, this process does not have any influence or impact related to permit fees
- ▶ The Rules document contains permit-specific language and permit requirements for all categories of permits issued by EHD

2024 Proposed Rules of the Food Service and Retail Ordinance

Environmental Health Department
Consumer Health Protection Division

Overview

- ▶ Adopt 2022 FDA Food Code and other Food Safety Regulations
- ▶ Permitting Structure
- ▶ Define Risk Assessment
- ▶ Fee assessment
- ▶ Additional food safety requirements
- ▶ Permit specific requirements
- ▶ Inspection scoring and grading
- ▶ Suggested amendments based on written comments

Food Safety Regulations

Concern: The Department received feedback regarding frustrations about inconsistencies with the New Mexico Environment Department and Bernalillo County

- ▶ Future Food Code updates would be through revision of Rules to ensure continued consistency
- ▶ Portions of the New Mexico Administrative Code are included in these rules
- ▶ The Good Manufacturing Practices, CFR 21 Part 110 is also adopted as it is by the State

Comparing Food Code Versions

2009



2013

- ▶ Reduced Oxygen Packaging Definition and Requirements of HACCP
- ▶ Updates to reportable illnesses
- ▶ Shellfish provisions updated

2013



2017

- ▶ Certified Food Protection Manager
- ▶ Updates Cooking Temperatures

2017



2022

- ▶ Pet dog allowance
- ▶ Food Donation
- ▶ Manufactured Food Cooking Instructions
- ▶ Food Allergens
- ▶ Emergency Plans?

Permitting Requirements

Concern: businesses having to wait for paperwork to process prior to being allowed to operate, even after passing an inspection

- ▶ Created a provisional permit that is issued immediately after passing a preopening inspection and is valid for 30-days
- ▶ In order to receive an official permit, payment must be made within those 30 days. Accommodates many facilities during changes of ownership.
- ▶ Failure to provide payment will result in the need to reapply.
- ▶ Non-transferable: except mobiles changing commissaries, one time inspection fee may be assessed.

Permitting Structure:

6 Main Permit Categories

▶ Food Establishments

- ▶ Based on Risk: Classes A - D
- ▶ Commissary Type 1 & 2
- ▶ Mobile Food Units: Class A-D

▶ Food Processing Establishments

- ▶ Based on Risk: Classes A - D

▶ Retail Food Establishments

- ▶ Based on risk & the primary function of the establishment; Classes 1-6
- ▶ Raw Milk permits

▶ Cannabis Permits

- ▶ Food Establishment Classes A-D
- ▶ Food Processor Classes A-D
- ▶ Retail Pre-packaged

▶ Charitable Food Establishments

▶ Temporary Permits

- ▶ Market Permits
- ▶ And risk assessments

Permit Classes

Permit types are risk based

CLASS A	CLASS B	CLASS C	CLASS D
FOOD ESTABLISHMENT Permit that is restricted to the provision of prepackaged Food only	FOOD ESTABLISHMENT, FOOD PROCESSOR, CATERING		
FOOD PROCESSOR Permit issued to a specific, limited type of Food Processing Establishment which only repackages non-TCS Foods.	A Permit that includes the provision of prepackaged food and food requiring Limited Preparation.	A Permit that includes the provision of prepackaged foods, food requiring Limited Preparation, and Food requiring Advanced Preparation.	A Permit that includes the provision of prepackaged foods, food requiring Limited Preparation, Food requiring Advanced Preparation, and Food requiring Special Processes during preparation.

Retail Permit Classes

RETAIL	
CLASS 1 A Retail Food Establishment Permit that is restricted to non-TCS prepackaged items and in which the sale or distribution of Food is not the primary function of the Food Establishment.	CLASS 2 A Retail Food Establishment Permit that is restricted to non-TCS prepackaged Food and the sale or distribution of Food is the primary function of the Food Establishment.
CLASS 3 A Retail Food Establishment Permit that includes the provision of TCS prepackaged Food, raw produce, and Food requiring Limited Preparation, and the sale or distribution of Food is not the primary function of the Food Establishment.	CLASS 4 A Retail Food Establishment Permit that includes the provision of TCS prepackaged Food, raw produce, and Food requiring Limited Preparation, and the sale or distribution of Food is the primary function of the Food Establishment.
CLASS 5 A Retail Food Establishment Permit that includes the provision of TCS prepackaged Food, raw produce, Food requiring Limited Preparation, and Food requiring Advanced Preparation.	
CLASS 6 A Retail Food Establishment Permit that includes the provision of prepackaged Foods, raw produce, Food requiring Limited Preparation, Food requiring Advanced Preparation, and Food requiring Special Processes during preparation.	

Risk Assessment and Inspection Frequency

Combination of the level of food preparation, high risk menus or service, and the population served, in line with recommendation of the food code.

CATEGORY

1



Food Establishments ***restricted to the distribution of prePackaged Food*** shall be considered risk category 1 and shall receive and ***pass an inspection at least once every eighteen (18) months.***

- ▶ A Food Establishment's risk category may be increased or decreased based on past performance.



CATEGORY

2

Food Establishments ***restricted to the distribution of prePackaged Food where the primary population served is highly susceptible***, or Food Establishments that include ***Limited Preparation of Food*** shall be risk category 2 and shall receive and ***pass an inspection at least once every twelve (12) months***.

- ▶ A Food Establishment's risk category may be increased or decreased based on past performance.



Food Establishments that include ***Limited Preparation of Food and where the primary population served is highly susceptible***, or Food Establishments that include ***Advanced Preparation of Food*** shall be risk category 3 and shall receive and ***pass an inspection at least once every six (6) months***.

- ▶ A Food Establishment's risk category may be increased or decreased based on past performance.



CATEGORY

4

Food Establishments that include ***Advanced Preparation of Food and where the primary population served is highly susceptible, Self-Service Food Establishments that offer TCS Foods,*** or Food Establishments that include ***Special Processes*** shall be risk category 4 and shall receive and ***pass an inspection at least once every four (4) months.***

- ▶ A Food Establishment's risk category may be increased or decreased based on past performance.

Fees Based on Risk

Concern: Fees based on gross receipts was confusing and difficult to verify, created delays in sending permits

5 Fee Rubrics:

- Food Establishments
- Food Processing
- Commissaries
- Catering
- Retail Food

<u>Food Establishment</u>		Risk Category			
		1	2	3	4
Class Code	A	\$200	\$600		
	B		\$700	\$800	
	C			\$900	\$1,000
	D				\$1,100
Months between Inspections		18	12	6	4

Certified Food Protection Managers and Food Handler Cards

Copied NMED's amendment to the 2022 Food Code regarding Certified Food Protection Managers and the requirements for Food Handler Cards

- ▶ Unless approved by the Department, at least one employee at each permitted food establishment that has supervisory and management responsibility and has authority to direct and control food preparation and service must be a Certified Food Protection Manager
- ▶ Food Employees (persons who handle food, utensils, and food contact surfaces), who do not qualify for an exemption as outlined below, or do not possess a valid Certified Food Protection Manager certification, must have a food handler card

Allergens

- ▶ Sesame added as a major allergen
- ▶ Food items packaged at retail:
 - ▶ Food that is packaged retail must declare the major food allergens they contain on the label.
- ▶ Unpackaged foods:
 - ▶ Unpackaged food must have written notification to consumers of the presence of major food allergens as an ingredient in the unpackaged food items.
 - ▶ Written notification can be provided in many forms such as: physical or electronic means, including, but not limited to, brochures, deli case or menu notifications, label statements, table tents, placards, or other effective written means.
- ▶ Bulk foods:
 - ▶ Bulk Foods that are available for consumer self-dispensing need to be prominently labeled in plain view of the consumer with the name of the food sources from which the major food allergens are derived unless the food source is already part of the common or usual name of the ingredient.
- ▶ Employee food safety training programs:
 - ▶ Training must include food allergy awareness of the nine (9) major food allergens and should consider developing operational specific allergen training programs for employees.

Food Handler Card Exemptions

- ▶ Provided the permit holder (facility owner or designee) provides training and maintains record of training:
 - ▶ Food Employees who only handle non-TCS foods are exempt
 - ▶ Employees or volunteers who occasionally function as Food Employees are exempt
 - ▶ Food Employees, or volunteers working as Food Employees at Temporary Events are exempt

Food Handler Card Alternatives

- ▶ The Environmental Health Department may approve an entity's (Company's) training program to be used in lieu of requiring a food handler card of its food employees that require Food Handler Cards.
 - ▶ Food employee must complete entity's approved training program at least every three years.
 - ▶ Exemption is only valid during the food employee's time of employment with entity that administered the training.

Pet Dogs in Outdoor Dining Areas

Concern: Consistency with NMED and BernCo, creating a compliant path forward for a common practice.

- ▶ Already allowed by NMED and adopted by BernCo this year
 - ▶ **Pet dogs shall only use designated water dishes or single service articles as water dishes;**
 - ▶ Food employees shall:
 - ▶ Wash hands **when inadvertently** coming into contact with a pet dog. **Touching, petting, or otherwise handling pet dogs is prohibited.**
 - ▶ Immediately clean up accidents involving pet waste in a manner consistent with FDA Food Code section 2-501.11 and with equipment designated for the cleaning of pet waste. Pet waste shall be disposed of in outdoor covered receptacles.

Permit Specific Requirements

- ▶ Each food establishment is unique and poses different food safety challenges. Specific requirements are outlined for:
 - ▶ Cannabis - Required to have a State Permit
 - ▶ Catering - Required to have logs of events, work out of a commissary
 - ▶ Commissaries - Requires logs for visitation and storage spaces
 - ▶ Mobiles - Requires logs and license plate
 - ▶ Processing - physical facilities
 - ▶ Raw Milk - labeling requirements
 - ▶ Temporary Food - permit limits, booth setup
 - ▶ Vending Machines - electronic monitoring for TCS foods

Grading of Food Establishments

- ▶ Violation categories consistent with Food Code - this will reduce minor violations carrying equal weight to major violations
 - ▶ Priority
 - ▶ Priority Foundation
 - ▶ Core
- ▶ Code reference style of grading ensures a more equitable score
- ▶ Changes to grading categories:
 - ▶ Ensure consistency and avoid downgrades for minor issues
 - ▶ Provide a Yellow Sticker (Conditional Approved) to cover marginal cases that would otherwise result in a Red Sticker (Downgrade) when not required

Grading of Food Establishments

▶ APPROVED.

- ▶ A Food Establishment that receives an **inspection score of 85 points** or higher showing compliance with the standards in the Food Code, §9-6-1 et seq. ROA 1994, other industry standards, and other laws will receive a grade of Approved and is able to operate.

▶ CONDITIONAL APPROVED.

- ▶ A Food Establishment that is found to be in violation of the standards in the Food Code, §9-6-1 et seq. ROA 1994, other industry standards, and other laws by receiving an **inspection score between 75 and 84 points** will receive a grade of Conditional Approved and the Food Establishment able to operate but is required to follow corrective actions within a timeframe provided in writing.

Grading of Food Establishments

► UNSATISFACTORY.

- A Food Establishment that meets minimum standards in the Food Code, §9-6-1 et seq. ROA 1994, other industry standards, and other laws by receiving an inspection **score between 65 and 74 points**, having any **5 or more priority violations** out of compliance during a single inspection, or any violation being out of compliance on a repeated basis within the last 36 months, will receive a grade of Unsatisfactory but is allowed to continue food operations while following any corrective actions provided.

► CLOSURE.

- A Food Establishment that receives an inspection **score of 64 or less**, or the Enforcement Authority finds an **imminent or substantial health hazard**, the Food Establishment shall receive a grade of and shall immediately cease operations until such time corrective actions are completed to the satisfaction of the Enforcement Authority.

Grading of Food Establishments

A New Grading Rubric

- ▶ Will have multiple inspection types (Retail Prepackaged will have only the violations that apply)
- ▶ Core Items will NOT be scored
 - ▶ They can affect enforcement when repeatedly found in violation
- ▶ Priority Foundation items are worth 3 points
- ▶ Priority items are worth 6 points
- ▶ Each code reference is a separate violation

Highly Susceptible Populations	3-801.11(A), (B), (C), (E)	Pasteurized Foods, Prohibited Re-Service, and Prohibited Food: Juice, Eggs, Partially Cooked
Highly Susceptible Populations	3-801.11(D)	Pasteurized Foods, Prohibited Re-Service, and Prohibited Food, No Barehand Contact
Highly Susceptible Populations	3-801.11(G)	Pasteurized Foods, Prohibited Re-Service, and Prohibited Food, Re-Service
Hot & Cold Water Availability & Pressure	5-103.11	Water Capacity-Quantity and Availability
Hot & Cold Water Availability & Pressure	5-103.12	Water Pressure
Hot & Cold Water Availability & Pressure	5-104.11	Water System-Distribution, Delivery, and Retention

Grading of Food Establishments

A New Grading Rubric

		PRIORITY FOUNDATION VIOLATIONS					
		0	1	2	3	4	
PRIORITY VIOLATIONS	0						APPROVED
	1						
	2						
	3						UNSATISFACTORY
	4						
	5						CLOSED
	6						

Amendments

- ▶ Part 7 (B)(1)
- ▶ Summary: Change three (3) months to thirty (30) days
 - ▶ Published Language: Temporary Mobile Food Establishment permits shall be Valid for up to three (3) months from the date of issuance.
 - ▶ Amendment: Temporary Mobile Food Establishment permits shall be Valid for up to thirty (30) days from the date of issuance.

Amendments

- ▶ Part 17 (D)
- ▶ Summary: Remove “slow cooker” from the prohibition to use hot holding equipment as cooking or reheating equipment.
 - ▶ Published Language: A Food Establishment shall not use steam tables, slow cookers, or other hot holding devices in cooking, heating, or reheating. Food shall only be cooked, heated, or reheated as specified under Sections 3-401 and 3-403 of the Food Code.
 - ▶ Amendment: A Food Establishment shall not use steam tables or other hot holding devices in cooking, heating, or reheating. Food shall only be cooked, heated, or reheated as specified under Sections 3-401 and 3-403 of the Food Code.