

**2024 Rules of the
Albuquerque Food Service and Retail Ordinance**



Environmental Health Department
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Albuquerque, NM 87102

8/20/2024

1	Part 1. Authority	4
2	Part 2. Definitions	4
3	Part 3. Administrative Codes and Regulations Adoption.	14
4	Part 4. Pre-inspection Application Information.	15
5	Part. 5 Pre-Opening Inspection of Food Establishments.....	17
6	Part 6. Issuance of Permits; Payment of Permit Fees.	17
7	Part 7. Term and Scope of Permit.	18
8	Part 8. Permit Renewal.	18
9	Part 9. Fees.....	19
10	Part 10. Risk Categories and Inspection Frequency.	20
11	Part 11. Grading of Food Establishments.....	21
12	Part 12. Scoring of Food Establishments.	23
13	Part 13. Corrective Actions.....	23
14	Part 14. Construction, Remodeling, and Conversions.....	24
15	Part 15. Condemnation of Food and Equipment.	24
16	Part 16. Food Safety Training Requirements.	26
17	Part 17. General Sanitation	28
18	(E) Food Source.....	29
19	(F) Special Processes.....	29
20	(G) Food Protection.	29
21	(H) Pet dogs in outdoor dining areas; requirements.	30
22	Part 18. Permit Specific Requirements.....	31
23	(A) Cannabis Food Establishments.....	31
24	(B) Catering Food Establishments.	32
25	(C) Charitable Food Providers.....	33
26	(D) Commissaries.....	33
27	(E) Family Child Care Homes and Childcare Centers.	34
28	(F) Mobile Food Establishments.	35
29	(G) Processing Food Establishments	37
30	(H) Raw Milk.....	37
31	(I) Self-Service Food Establishments.....	40

1	(J) Retail Food Establishments.....	40
2	(K) Temporary Food Establishments and Market Food Establishments.	40
3	(L) Vending Machines.....	43
4		
5		
6		
7		
8		
9		
10		
11		
12		

Part 1. Authority

(A) These Rules are promulgated by the Environmental Health Department pursuant to Sections 9-6-1 to -19 ROA 1994 hereafter the “Albuquerque Food Service and Retail Ordinance” or “FSO.”

(B) In the event that these rules are in conflict with the provisions of the FSO, the provisions of the FSO shall prevail.

Part 2. Definitions

For the purpose of these Rules, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms include either the singular or the plural as the case may be.

ADDRESS OF RECORD. The mailing address designated by the Permit Holder to receive notices and correspondence from the Enforcement Authority.

ADULT DAY CARE CENTER. As defined in Title 8, Chapter 370, Part 20 of the New Mexico Administrative Code.

ADULT DAY CARE HOME. As defined in Title 8, Chapter 370, Part 20 of the New Mexico Administrative Code.

ADULT LIVING FACILITY. As defined in Title 7, Chapter 8, Part 2 of the New Mexico Administrative Code.

ADULTERATED. The condition of a Food if:

(A) It bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;

(B) If it bears or contains any added poisonous or deleterious substance, for which no safe tolerance has been established by regulations, or in excess of such tolerance if one has been established, except that an Edible Cannabis Product manufactured, labeled, and distributed by a cannabis Food Establishment in compliance with the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978 shall not be considered Adulterated solely on the basis of its cannabis content;

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

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

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

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

ADVANCED PREPARATION. Food preparation with multi-step handling of raw or pre-cooked ingredients including but not limited to the cooking, cooling, or re-heating of TCS Food for holding or immediate service, or where significant risk factors contributing to foodborne illness may occur as determined by the Enforcement Authority.

ANNIVERSARY DATE. The first day of the calendar month in which the original Permit was issued.

APPROVED. Acceptable to the Enforcement Authority based on its determination as to conformance with the Food Code, FSO, industry standards including but not limited to the American National Standards Institute and the National Sanitation Foundation Standards, other laws, and good public health practice.

BED AND BREAKFAST. An overnight lodging facility with no more than eight (8) guest rooms that are rented at market rates and breakfast is served, or as defined in Chapter 14, Article 16 section 7-1 of the Integrated Development Ordinance.

CATERING FOOD ESTABLISHMENT. A Food Establishment where a pre-arranged number of meals or Food products are prepared at one permitted premise for immediate service and consumption at another pre-arranged location and served, including the setup of a buffet, at the second prearranged location by the Food Establishment.

CERTIFIED FOOD PROTECTION MANAGER. An Employee that has supervisory and management responsibility and the authority to direct and control Food preparation and service that has shown proficiency in knowledge of required information through passing a test that is part of an accredited Food protection program.

CHARITABLE FOOD PROVIDER. A Person who donates Food on or off the premises of a Food Establishment and does not charge a fee for any Food. Charitable Food Provider

does not include Food Establishments providing complimentary Food to patrons as part of another service such as a conference, event, lodging, or similar circumstance.

CHILD CARE CENTER. As defined in Title 8, Chapter 16, Part 2 of the New Mexico Administrative Code.

CITY. The City of Albuquerque.

COMMERCIAL GRADE KITCHEN. A room, building, or any part thereof used for Food preparation that meets all the requirements of local building codes and the FSO, that is not a residential kitchen.

COMMISSARY. A permanent Food Establishment that acts as a base of operations for another Food Establishment where Food is stored, manufactured, Packaged, rePackaged, or prepared and intended for human consumption.

COMMISSARY TYPE 1 PERMIT. A Commissary without a Commercial Grade Kitchen whose services are restricted to storage of non-TCS prePackaged Food, Single-Service Articles, and chemicals necessary for the operations of the Food Establishment being serviced.

COMMISSARY TYPE 2 PERMIT. A Commissary with a Commercial Grade Kitchen; whose services allow for Limited Preparation, Advanced Preparation, or Special Processes.

CONCESSIONS FOOD ESTABLISHMENT. A Food Establishment that operates seasonally as part of a venue whose primary purpose is not the sale of Food.

CORE VIOLATION. A violation of a core item as defined in the Food Code or as otherwise prescribed in these rules.

CORRECTIVE ACTIONS. Written actions, as defined by the Enforcement Authority, that must be taken to bring a violation of the Food Code, FSO, or other laws into compliance within a specified time period.

EDIBLE CANNABIS FINISHED PRODUCT. Any Edible Cannabis Product that is Packaged and labeled for retail sale allowed under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978. "EDIBLE CANNABIS FINISHED PRODUCT" does not include unprocessed cannabis flowers or other unprocessed cannabis plant parts.

EDIBLE CANNABIS PRODUCT. Any Food containing cannabis allowed under Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978. "EDIBLE CANNABIS PRODUCT"

1 does not include unprocessed cannabis flowers or other unprocessed cannabis plant
2 parts.

3 EMPLOYEE. Includes the Permit Holder, Person In Charge, Person having supervisory
4 or management duties, Person on the payroll, family member, volunteer, Person
5 performing work under a contractual agreement, or any other Person working in a Food
6 Establishment.

7 FAMILY CHILD CARE HOME. As defined in Title 8, Chapter 16, Part 2 of the New Mexico
8 Administrative Code.

9 FOOD BANK. A Food Establishment operated by a non-profit organization that stores
10 Food for distribution to the public and does not charge for the food.

11 FOOD ESTABLISHMENT. Any place where Food is stored, processed, Packaged,
12 rePackaged, or prepared and intended for human consumption. The term includes any
13 such place regardless of whether the consumption is on or off the premises and
14 regardless of whether there is a charge for the Food.

15 (A) FOOD ESTABLISHMENT includes: Adult Day Care Home; Adult Day Care Center;
16 Bed And Breakfast; Catering Establishment; Charitable Food Providers;
17 Commissary; Concessions Food Establishment; Family Child Care Home; Food
18 Bank; Food Establishment Cannabis; Food Establishment Grocery; Food
19 Processing Establishment; Food Processing Establishment Cannabis; Market Food
20 Establishment; Mobile Food Establishment; Restaurants; Retail Establishment;
21 Retail Establishment Cannabis; Retail Establishment Cannabis Plus; Self-Service
22 Food Establishment; Temporary Food Establishment; Vending Machine;
23 Warehouse; Warehouse Cannabis.

24 (B) FOOD ESTABLISHMENT does not include:

25 (1) Any place where Food is produced, distributed, or prepared and exempt from
26 regulation pursuant to the Homemade Food Act, Chapter 25, Article 12 NMSA
27 1978;

28 (2) A kitchen in a private home;

29 (3) Home-delivery vehicle and service including but not limited to pizza delivery, third
30 party ordering and delivery services, and grocery delivery services; and

31 (4) A private home that receives catered or home-delivered Food.

FOOD ESTABLISHMENT CANNABIS. A specific, limited type of Food Establishment which is a cannabis establishment licensed under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where Edible Cannabis Product is prepared, or prepared and served, and intended for individual portion service. The term includes a licensed cannabis establishment with a licensed cannabis consumption area pursuant to the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978. The term does not include private homes.

FOOD ESTABLISHMENT CLASS A PERMIT. A Permit that is restricted to the provision of prePackaged Food only.

FOOD ESTABLISHMENT CLASS B PERMIT. A Permit that includes the provision of prePackaged Food and Food requiring Limited Preparation.

FOOD ESTABLISHMENT CLASS C PERMIT. A Permit that includes the provision of prePackaged Foods, Food requiring Limited Preparation, and Food requiring Advanced Preparation.

FOOD ESTABLISHMENT CLASS D PERMIT. A Permit that includes the provision of prePackaged Foods, Food requiring Limited Preparation, Food requiring Advanced Preparation, and Food requiring Special Processes during preparation.

FOOD HANDLER CARD. A card issued to an individual after successful completion of a Food Handler Training Program.

FOOD HANDLER TRAINING PROGRAM. An ANSI/ASTM E2659-09 accredited Food handler training certificate program.

FOOD PROCESSING ESTABLISHMENT. A Food Establishment that manufactures, packages, repackages, or labels Food for human consumption for wholesale or other off-site distribution of that food for retail, includes storage of Food manufactured by the Food Establishment.

FOOD PROCESSING ESTABLISHMENT CANNABIS. A specific, limited type of Food Processing Establishment which is also a cannabis establishment licensed under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where edible cannabis products are processed, prepared, Packaged, stored or distributed for human consumption excluding retail cannabis establishments and warehouses.

- 1 FOOD PROCESSING ESTABLISHMENT CLASS A PERMIT. A Permit issued to a
2 specific, limited type of Food Processing Establishment which only repackages non-TCS
3 Foods.
- 4 FOOD PROCESSING ESTABLISHMENT CLASS B PERMIT. A Permit issued to a Food
5 Processing Establishment that manufactures Food using Limited Preparation only.
- 6 FOOD PROCESSING ESTABLISHMENT CLASS C PERMIT. A Permit issued to a Food
7 Processing Establishment that manufactures Food using Advanced Preparation.
- 8 FOOD PROCESSING ESTABLISHMENT CLASS D PERMIT. A Permit issued to a Food
9 Processing Establishment that manufactures Food using Special Processes.
- 10 FOOD PROCESSING ESTABLISHMENT PLUS PERMIT. Can be added to any Food
11 Processing Establishment Permit to allow for the onsite retail sale of Food products
12 manufactured by the Food Processing Establishment.
- 13 HERMETICALLY SEALED CONTAINER. A container which is designed and intended to
14 be secure against the entry of microorganisms and to maintain the commercial sterility of
15 its contents after processing.
- 16 INFESTATION. The presence of any insects, rodents, or other pests which is indicated
17 by the observation of living or dead pests, rodent or other pest nesting materials, fecal
18 material, insect casings, eggs, or egg casings on Food contact surfaces, Food storage or
19 preparation area, to such extent that it indicates an active presence of pests and
20 constitutes an Imminent Health Hazard.
- 21 LIMITED PREPARATION. Food preparation that is restricted to assemble-serve and
22 reheat-serve.
23 (A) Limited Preparation includes steaming, boiling, or roasting hot dogs or corn; preparing
24 beverages that are for immediate service, in response to an individual consumer order,
25 portioning and hot or cold holding of commercially packaged bulk or single service food.
26 (B) Limited Preparation does not include cooling of cooked TCS Food, cutting of fresh
27 fruits or vegetables that become TCS once cut, for same day use, or on-premise cooking
28 and hot holding of TCS foods for later use.
- 29 MARKET. Any temporary gathering of vendors, whether a single or recurring event,
30 organized by a Market Coordinator and operating at a single location, whose primary
31 purpose is the selling of goods.

1 MARKET COORDINATOR. Any Person responsible for the organization and supervision
2 of a Market.

3 MARKET FOOD ESTABLISHMENT. A specific type of Food Establishment that operates
4 at a Market.

5 MARKET FOOD VENDOR. Any Person, including their employees, representatives, and
6 agents, operating a Market Food Establishment.

7 MICROBUSINESS. A company that employs no more than five (5) employees at any time
8 during the calendar year. Employees include part-time, temporary, or limited service
9 workers. For startup businesses, the responsible company official shall certify that the
10 business does not expect to employ more than five (5) employees in the first year of
11 operations. For existing businesses seeking certification as a Microbusiness, the
12 responsible company official shall submit the business's Form ES-903A, Quarterly Wage
13 and Contribution Report, submitted to the New Mexico Department of Workforce
14 Solutions, or Form TRD-31109, Quarterly Wage, Income Withholding and Workers'
15 Compensation Fee Report submitted to the New Mexico Taxation and Revenue
16 Department as proof of meeting the definition of Microbusiness.

17 MOBILE FOOD ESTABLISHMENT. A specific type of Food Establishment that is vehicle
18 mounted, fully enclosed, and designed to be readily movable from location to location.

19 MOBILE FOOD ESTABLISHMENT includes push carts, trailers, and smokers.

20 PACKAGED. Bottled and capped, canned, cartoned, or securely wrapped. PACKAGED
21 does not include wrapped or placed in a carry-out container to protect Food during service
22 or delivery to the consumer.

23 PRIMARY PERMIT. The Permit issued that represents the main function of the Food
24 Establishment.

25 PRIORITY FOUNDATION VIOLATION. A violation of a priority foundation item as defined
26 in the Food Code or as otherwise prescribed in these rules.

27 PRIORITY VIOLATION. A violation of a priority item as defined in the Food Code or as
28 otherwise prescribed in these rules.

29 PRIVATE EVENT. An event where Food is distributed and whose participants are limited
30 to invited guests.

1 PULL DATE. The end of the last day on which a product is to be sold or offered for human
2 consumption.

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

5 RAW MILK PERMIT. A Valid Permit issued by the Enforcement Authority which allows a
6 Person to Vend Raw Milk or a Raw Milk Product and includes the following types of
7 permits:

8 (A) Retail Food Establishment Raw Milk Permit: allows the Permit Holder of a Retail
9 Food Establishment Permit Class 4, 5, or 6 to Vend and distribute Raw Milk and
10 Raw Milk Product from the Retail Food Establishment Permit Class 4, 5, or 6
11 location.

12 (B) Market Food Establishment Raw Milk Permit: a specific type of Market Food
13 Establishment Permit that allows a Person to Vend Raw Milk and Raw Milk Product
14 at any Market.

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

18 RAW MILK VENDOR. Any Person, including their employees, representatives, or agents,
19 operating a Market Food Establishment in possession of a Valid Market Food
20 Establishment Raw Milk Permit.

21 REINSPECTION. One or more inspections conducted subsequent to an inspection that
22 resulted in a Grade of Unsatisfactory or Closed due to noncompliance with the Food
23 Code, the FSO, or other laws, specifically to determine whether compliance with such
24 regulations has been achieved.

25 REQUESTED INSPECTION. An inspection conducted in response to a Permit Holder's
26 request which may be accompanied by a fee.

27 RETAIL FOOD ESTABLISHMENT. A Food Establishment where Food and Food
28 products are offered for sale, donated, or distributed for off-the-premise consumption, to
29 include, but not limited to, grocery stores, meat markets, and warehouses.

30 RETAIL FOOD ESTABLISHMENT CANNABIS. A type of Retail Food Establishment
31 Cannabis, which is also a cannabis establishment licensed under the Cannabis

Regulation Act, Chapter 26, Article 2C NMSA 1978, where Edible Cannabis Finished Products are offered for sale, donated, or distributed for off-the-premise consumption, or where edible cannabis products or Edible Cannabis Finished Products are stored.

RETAIL FOOD ESTABLISHMENT CANNABIS PLUS. A type of Retail Food Establishment, which is also a cannabis establishment with a cannabis consumption area, both licensed under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where Edible Cannabis Finished Products are offered for sale, donated, or distributed for either off-the-premise consumption or in a cannabis consumption area. The term also includes the place where Edible Cannabis Finished products are stored.

RETAIL FOOD ESTABLISHMENT CLASS 1 PERMIT. 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.

RETAIL FOOD ESTABLISHMENT CLASS 2 PERMIT. 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.

RETAIL FOOD ESTABLISHMENT CLASS 3 PERMIT. 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.

RETAIL FOOD ESTABLISHMENT CLASS 4 PERMIT. 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.

RETAIL FOOD ESTABLISHMENT CLASS 5 PERMIT. A Retail Food Establishment Permit that includes the provision of TCS prePackaged Food, raw produce, Food requiring Limited Preparation, and Food requiring Advanced Preparation.

RETAIL FOOD ESTABLISHMENT CLASS 6 PERMIT. A Retail Food Establishment Permit that includes the provision of prePackaged Foods, raw produce, Food requiring Limited Preparation, Food requiring Advanced Preparation, self-service of TCS foods, and Food requiring Special Processes during preparation.

- 1 RETAIL FOOD ESTABLISHMENT PLUS PERMIT. A supplemental Retail Food
- 2 Establishment Permit that may be added to any other Retail Food Establishment Permit
- 3 to allow for on-site consumption with seating not to exceed ten (10) persons.
- 4 SAFE TEMPERATURES. Temperatures as provided in the Food Code.
- 5 SAFETY PLAN. The primary document in a preventive Food safety system that provides
- 6 a systematic approach to the identification of Food safety hazards that must be controlled
- 7 to prevent or minimize the likelihood of foodborne illness or injury during storage,
- 8 processing, Packaging, rePackaging, or preparation of Food for human consumption.
- 9 SEALED. Free of cracks or other openings that may allow the entry or passage of
- 10 moisture.
- 11 SECONDARY PERMIT. Any Food Permit issued as an addition to a Food Establishment
- 12 with a Primary Permit.
- 13 SELF-SERVICE FOOD ESTABLISHMENT. A specific and limited type of unattended
- 14 Food Establishment that offers prePackaged Food for customer self-service.
- 15 SIGNS OF INFESTATION. The presence of evidence indicating an Infestation on
- 16 nonFood contact surfaces, nonFood storage or preparation areas, or other such
- 17 locations, to such extent that without mediation an Imminent Health Hazard would result.
- 18 SINGLE-SERVICE ARTICLES. Cups, containers, lids or closures, and packaging
- 19 materials, including bags and all similar articles designed for one-time, one-Person use
- 20 and then discarded. The term does not include single use articles such as number 10
- 21 cans, aluminum pie pans, bread wrappers and similar articles into which Food has been
- 22 Packaged by the manufacturer.
- 23 SOUND AMPLIFYING EQUIPMENT. Any machine or device for the sound amplification
- 24 of the human voice, music, or any other sound. "Sound amplifying equipment" shall not
- 25 include warning devices on authorized emergency vehicles or horns or other warning
- 26 devices on any motor vehicles used only for traffic safety purposes.
- 27 SPECIAL PROCESSES. Actions taken during the storage, manufacturing, packaging, or
- 28 preparation of Food often using unusual technologies that are not fully addressed in the
- 29 Food Code.
- 30 TABLEWARE. All multi-use eating and drinking Utensils.

1 TAMPER-EVIDENT PACKAGING. A package having one or more indicators or barriers
2 to entry which, if breeched or missing, can reasonably be expected to provide visible
3 evidence to consumers that tampering has occurred.

4 TEMPORARY FOOD ESTABLISHMENT. A Food Establishment which operates at a
5 fixed location for a temporary period of time, not to exceed fourteen (14) days, in
6 connection with a single event and at a single location.

7 TIME/TEMPERATURE CONTROL FOR SAFETY FOOD or TCS. Food that requires time
8 or temperature control for safety to limit pathogenic microorganism growth or toxin
9 formation; or as otherwise defined in the Food Code.

10 UTENSIL. Any Approved implement used in the preparation, storage, transportation or
11 service of Food.

12 VARIANCE. A written document issued by the Enforcement Authority that authorizes a
13 modification or waiver of one or more requirements of these Rules, the Food Code, or the
14 FSO.

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

16 VENDING MACHINE. A self-service device that, upon insertion of a coin, paper currency,
17 token, card, or key, or by electronic transaction or optional manual operation, dispenses
18 unit servings of Food in bulk or in packages without the necessity of replenishing the
19 device between each vending operation.

20 VENDING MACHINE CLASS A REGISTRATION. A Vending Machine restricted to non-
21 TCS prePackaged Food.

22 VENDING MACHINE CLASS B PERMIT. A Vending Machine Permit that includes the
23 provision of TCS prePackaged Food.

24 WAREHOUSE. A specific type of Food Establishment where Food is stored and
25 distributed to other Food Establishments.

26 WAREHOUSE CANNABIS. A specific, limited type of Food Establishment which is a
27 cannabis establishment licensed under the Cannabis Regulation Act, Chapter 26, Article
28 2C NMSA 1978, where Edible Cannabis Product is stored and distributed to other Food
29 Establishments Cannabis.

30 **Part 3. Administrative Codes and Regulations Adoption.**

- 1 (A) The 2022 United States Food and Drug Administration Model Food Code January
2 18, 2023 Version as published by the U.S. Department of Health and Human Services
3 is hereby adopted and incorporated in its entirety.
- 4 (B) The following statutes, administrative codes, and regulations are adopted, and
5 incorporated as modifications to the 2022 Food Code:
 - 6 (1) Subsections (C), (D), (E), and (F) of 7.6.2.11 NMAC;
 - 7 (2) 7.6.2.12 NMAC;
 - 8 (3) Subsections (B) and (D) of 7.6. 2.13 NMAC; and
 - 9 (4) The Current Good Manufacturing Practices in Manufacturing, Packing, or Holding
10 Human Food, 21 C.F.R. § 110, Subparts (A), (B), and (C).
- 11 (C) The following sections of the Food Code are amended as follows:
 - 12 (1) A violation of section 5-205.15(B) shall be a Priority Violation when it is evident
13 that the leak is from a water source that is non-potable, wastewater, or used water;
14 and
 - 15 (2) A violation of 3-307.11 shall be a Priority Foundation Violation.
- 16 (D) When a conflict exists in a specific requirement between applicable sections of the
17 Food Code and the Albuquerque Food Service and Retail Ordinance or these Rules,
18 the Albuquerque Food Service and Retail Ordinance and the Rules shall control.

19
20 **Part 4. Pre-inspection Application Information.**

- 21 (A) An Applicant seeking a Permit shall submit a signed pre-inspection application, a copy
22 of the Food Establishment's City of Albuquerque business registration, and a copy of
23 the Food Establishment's State of New Mexico Taxation and Revenue Department
24 registration certificate to the Enforcement Authority. The pre-inspection application
25 shall be submitted to the Enforcement Authority at least five working days prior to the
26 commencement of operations.
 - 27 (1) In the case of an application for a Food Establishment who is also applying for a
28 license pursuant to the Liquor Control Act, Chapter 60, Article 3A NMSA 1978 or
29 the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, a pre-inspection
30 application is required. The Enforcement Authority may issue a Permit while the
31 application for a State issued liquor or cannabis license pursuant to the Liquor

Control Act or the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978 is pending. The Applicant shall contact the Enforcement Authority at least five (5) working days prior to the anticipated commencement of Food operations to schedule a pre-opening inspection of the Food Establishment.

(2) In order to receive a Market Food Establishment, Permit by April 1, an Applicant shall submit a pre-inspection application to the Enforcement Authority by March 15 of each year. In the event that an Applicant submits a pre-inspection application after March 15, the Applicant shall submit the Permit application to the Enforcement Authority at least five (5) business days prior to the anticipated opening date of the Market Food Establishment. Market Food Establishment pre-inspection applications received after March 15 may not be processed by April 1.

(B) The pre-inspection application shall include the following:

(1) The name, Address Of Record, all trade names under which the applicant conducts business, telephone number, and e-mail address of the proposed Permit Holder, and designated agent if different from the owner.

(a) The name, mailing address, telephone number, and e-mail address of the Applicant.

(b) A list of all Food items to be prepared, offered to the public, or sold.

(c) A list of any Valid Food Establishment Permits held by the Applicant, or a disclosure of any Food Establishment Permits previously held by the Food Establishment owner designated agent or Applicant within the last three years.

(d) The name, title, mailing address, telephone number, and e-mail address of the Applicant's Commissary when applicable.

(e) A copy of the current Commissary agreement, when the Commissary is not owned and operated by the Applicant, that includes the following:

(i) A list of all services provided to the Applicant by the Commissary;

(ii) Identification of the name, title, mailing address, telephone number, and e-mail address of the Commissary and Food Establishment; and

(iii) A statement signed by the Applicant and Commissary owner that attests to the accuracy of the information provided and affirms that the

Applicant will visit the Commissary on every day of operations.

(C) Corrections. Incomplete pre-inspection applications will not be considered. Incomplete pre-inspection applications will be returned to the Applicant with a list of missing information. The Enforcement Authority's determination that an application is incomplete does not constitute a denial of the pre-inspection application.

Part. 5 Pre-Opening Inspection of Food Establishments.

(A) The Enforcement Authority shall perform a pre-opening inspection of each Food Establishment seeking a Permit except in the following situations:

(1) Inspection shall be deferred until five (5) working days prior to the commencement of operations when a Food Establishment is seeking a liquor license from the State of New Mexico in accordance with the Liquor Control Act, Chapter 60, Article 3A NMSA 1978, or a cannabis license in accordance with under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, but the Food Establishment is not yet in operation.

(2) The Enforcement Authority may waive the pre-opening inspection for a Temporary Food Establishment or Market Food Establishment when the Enforcement Authority finds that waiver of the pre-opening inspection will not result in a condition injurious to health or safety.

Part 6. Issuance of Permits; Payment of Permit Fees.

(A) The Enforcement Authority shall issue a provisional Permit, Valid for thirty (30) days, when the Applicant receives a Grade of Approved or Conditional Approved from the Enforcement Authority during the pre-opening inspection.

(1) A provisional Permit Holder has thirty (30) days from the date of issuance of the provisional Permit to pay all applicable fees.

(2) Upon receipt of payment for all applicable fees, the Enforcement Authority shall issue a Permit and the Food Establishment's Grade sticker.

(3) The provisional Permit shall expire when payment is not made within the thirty (30) days. If a Permit Holder wishes to obtain a Food Establishment Permit after expiration, the Person must reapply for a Permit as outlined in Part 3 of these rules.

(a) When reapplying for a Permit after expiration of a provisional thirty (30) day

Permit, the Applicant shall make payment in full before being issued a permit and approved to operate.

(B) When an Applicant does not receive a Grade of Approved or Conditional Approved during the pre-opening inspection, the Enforcement Authority shall provide a written list of Corrective Actions to be taken. The Applicant may have up to thirty (30) days to request a Reinspection and receive a Grade of Approved or Conditional Approved.

(1) The initial pre-inspection application shall be denied when the Applicant fails to contact the Enforcement Authority to provide proof of the completion of the Corrective Actions provided by the Enforcement Authority at the pre-opening inspection and to request another pre-opening inspection prior to the expiration of the thirty (30) day Corrective Action timeframe.

(C) An Applicant seeking a liquor license from the State of New Mexico in accordance with the Liquor Control Act, Chapter 60, Article 3A NMSA 1978, or cannabis license in accordance with under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, shall remit payment for the Food Establishment Permit prior to issuance of the Permit.

(D) An Applicant for a Temporary Food Establishment or Market Food Establishment Permit shall remit payment for the Permit prior to the commencement of operations or within fourteen (14) calendar days of Permit approval, whichever occurs first.

Part 7. Term and Scope of Permit.

(A) A Permit shall be Valid and shall authorize a Food Establishment to operate for one calendar year from the Anniversary Date.

(B) Temporary Food Establishment Permits shall be Valid for the duration of the single event or celebration, not to exceed fourteen (14) days.

(1) Temporary Mobile Food Establishment permits shall be Valid for up to thirty (30) days from the date of issuance.

(2) Market Food Establishment permits issued on or before April 1 are through March 31. Market Food Establishment permits issued after April 1 are Valid from the date of issuance through March 31.

Part 8. Permit Renewal.

(A) A Food Establishment shall renew their Permit(s) on or before the Expiration Date by

1 paying the annual Permit fee.

2 (1) Any Permit operating under a Commissary agreement shall also submit a Valid
3 Commissary agreement at the time of Permit renewal.

4 (2) All Permit Holders shall verify and update any contact information and the
5 Address Of Record on file with the Enforcement Authority at the time of Permit
6 renewal.

7 (3) Any Food Establishment that wishes to permanently cease operations shall notify
8 the Enforcement Authority in writing within thirty (30) days of closure.

9 (B) The Enforcement Authority shall provide a notice and invoice for the amount due at
10 least thirty (30) days prior to the Expiration Date. The Permit Holder is required to
11 renew their Permit(s) regardless of whether the Enforcement Authority issues this
12 notice.

13 (1) The Enforcement Authority shall issue a new Permit to the Food Establishment
14 after receipt of full payment of all applicable fees.

15 (2) When fees are not paid in full prior to the Expiration Date of the Food
16 Establishment's Permit, the Food Establishment will be provided with a notice of
17 past due fees and invoice every thirty (30) days, up to ninety (90) days past the
18 Expiration Date.

19 (3) A Food Establishment that fails to pay its renewal fees within ninety (90) days of
20 the Food Establishment's Permit Expiration Date, shall have its Permit(s)
21 suspended.

22 (4) Following a notice of suspension, A Food Establishment that fails to pay its
23 renewal fees within ninety-five (95) days of the Food Establishment's Permit
24 Expiration Date shall have its Permit(s) revoked.

25 **Part 9. Fees.**

26 (A) Permit fees are non-refundable.

27 (B) First year Permit fees are due prior to the expiration of the provisional Permit.

28 (1) When a Permit is being added to an existing Food Establishment, the initial
29 Permit fee for the new Permit shall be prorated so that the Anniversary Date of
30 the new Permit is the same as the Anniversary Date of the existing Food
31 Establishment's Permit.

(2) The proration of fees shall be calculated on a monthly basis and permits issued after the 15th of the current month will not be assessed the monthly fee for that month.

(3) No Temporary Food Establishment Permit or Market Food Establishment Permit is Valid until all Permit fees are received by the Enforcement Authority.

(4) In the case where there is, under single ownership or management, more than one Food Establishment or more than one place within a Food Establishment where Food is prepared and served within a single building or structure, and separate inspections are required, as determined by the Enforcement Authority based on the Food Establishment's ability to meet the conditions of these Rules and the FSO independent of the Primary Permit, each such Food Establishment or place shall pay a separate annual fee. The Food Establishment or place that represents the main function of the Food Establishment shall be considered the Primary Permit for the purposes of determining fees.

(5) Mobile Food Establishments, Non-Profit Organizations designated as a 501(c) under 26 U.S. Code § 501, Adult Daycare Establishments, Child Daycare Establishments, and Microbusinesses shall become eligible for a .25 multiplier variance to the Primary Permit Fees of the FSO when determining the appropriate annual fee for the Permit issued to the establishment by the Enforcement Authority.

(C) Administrative Fees.

(1) Hazard Analysis and Critical Control Point (HACCP) plan review and Variance Requests fees are due at the time the HACCP or Variance Request is submitted to the Enforcement Authority for review.

(2) Requested Inspection and Re-inspection fees are due prior to the time the inspection is performed and the inspection shall not be performed until payment is received by the Enforcement Authority.

Part 10. Risk Categories and Inspection Frequency.

(A) Food Establishments shall be assigned a risk category based on the following criteria:

(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.

(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.

(3) 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.

(4) Food Establishments that include Advanced Preparation of Food and where the primary population served is highly susceptible, 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.

(B) A Food Establishment's risk category may be increased or decreased based on past performance of the Food Establishment to conform with the Food Code, the FSO, these rules, and other laws; service of high-risk Foods such as oysters, shellfish, or sushi; Food service practices such a buffet or serving a high-risk population; or based on the risk to public health.

Part 11. Grading of Food Establishments.

(A) Grades of Food Establishments shall be determined by the score issued after each inspection and remain in effect until the next inspection as follows:

(1) APPROVED. A Food Establishment that receives an inspection score of eighty-five (85) points or higher as determined by the Enforcement Authority showing compliance with the standards in the Food Code, the FSO, other industry standards, and other laws will receive a Grade of Approved and is able to operate.

(2) CONDITIONAL APPROVED. A Food Establishment that is found to be in violation of the standards in the Food Code, the FSO, other industry standards, and other laws by receiving an inspection score between seventy-five (75) and eighty-four (84) points will receive a Grade of Conditional Approved and the Food

Establishment is able to operate but is required to follow Corrective Actions issued by the Enforcement Authority.

(3) UNSATISFACTORY. A Food Establishment that meets minimum standards in the Food Code, the FSO, other industry standards, and other laws by receiving an inspection score between sixty-five (65) and seventy-four (74) points, having any 5 or more priority violations out of compliance during a single inspection, or any Priority Violation, Priority Foundation Violation, or Core Violation being out of compliance on a repeated basis within the last thirty-six (36) months as determined by the Enforcement Authority will receive a Grade of Unsatisfactory but is allowed to continue Food operations while following any Corrective Actions issued by the Enforcement Authority.

(a) Any Grade of Unsatisfactory issued to an establishment is subject to supervisory review based on evidence provided by the issuing Enforcement Authority employee.

(b) Unsatisfactory is a temporary grade with a maximum duration of five working days.

(4) CLOSED. A Food Establishment that receives an inspection score of sixty-four (64) or less due to failure to comply with the minimum standards of the Food Code, the FSO, or these rules, or the Enforcement Authority finding an imminent or substantial health hazard, shall receive a Grade of Closed and shall immediately cease operations until such time that Corrective Actions are completed to the satisfaction of the Enforcement Authority.

(a) Any Grade of Closed issued to an establishment is subject to supervisory review based on evidence provided by the issuing Enforcement Authority employee.

(b) The Enforcement Authority may issue a Grade of Closed to a portion of a Food Establishment affected by an Imminent Health Hazard when the Food Establishment demonstrates that Food safety is not affected by the partial Closure and the Enforcement Authority determines that no threat to public health will result from allowing other Food operations to continue.

(c) When a facility is issued a Grade of Closed due to an imminent or substantial health hazard the Food Establishment shall be reopened under the grade the establishment would have received without the imminent health hazard.

Part 12. Scoring of Food Establishments.

(A) Each inspection shall be scored out of one-hundred (100) points with a predetermined point value deducted for each violation applicable to their Food operations.

(1) The Enforcement Authority shall deduct six (6) points from the total score for each Priority Violation;

(2) The Enforcement Authority shall deduct three (3) points from the total score for each Priority Foundation Violation; and

(3) The Enforcement Authority shall not deduct points from the total score but shall mark each Core Violation as out of compliance.

(B) Food Establishments shall be provided a score during each inspection based on the scoring rubric.

(C) Scoring Rubric. If multiple violations apply to the same infraction, only the highest violation score will apply.

Part 13. Corrective Actions.

(A) A Food Establishment shall provide evidence of compliance with Corrective Actions through the submission of work orders, photographs, receipts, and/or reinspection. When compliance with Corrective Actions cannot be verified through the presentation of documentary evidence alone, the Enforcement Authority shall perform a reinspection of the Food Establishment within the timeframe provided. When the reinspection does not result in a Grade of Approved or Conditional Approved, any subsequent reinspection required to verify compliance with the Corrective Actions the Food Establishment may be assessed a fee as specified in Appendix F. Fees are due at the time the request for reinspection is made.

(B) The Enforcement Authority may grant an extension of the Corrective Action timeframe when the Permit Holder can demonstrate reasonable efforts to comply with the Corrective Actions. In order to be granted an extension, the Permit Holder

shall request an extension of the Corrective Action timeframe in writing. The Enforcement Authority shall review the request and provide a written determination approving or denying the request. If the request for extension is approved the Enforcement Authority shall provide a written addendum with a new timeframe.

(C) Food Safety Training Required. When a Food Establishment receives a Grade of Unsatisfactory or Closed, the Food Establishment's Food Employees shall complete an Approved Food safety training.

(D) Infestation Corrective Actions.

(1) Food Establishments shall hire a professional pest control applicator licensed through the New Mexico Department of Agriculture to treat any Infestation.

(2) Food Establishments shall remove rodent droppings in accordance with current Centers for Disease Control and Prevention recommendations published on the Enforcement Authority's website.

(3) Food Establishments that receive a Grade of Closed due to Infestation shall remain closed for a minimum of two (2) calendar days and shall not be Reinspected until such time professional pest control reports and documentation of other completed Corrective Actions are provided to the Enforcement Authority.

(4) Reinspection may occur prior to two (2) calendar days and without the presentation of professional pest control records when a Food Establishment receives a Grade of Closed due to Signs Of Infestation.

Part 14. Construction, Remodeling, and Conversions.

(A) Prior to when a Food Establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a Food Establishment, the appropriate permits shall be obtained from the City of Albuquerque's Planning Department in accordance with the Uniform Administrative Code of the City of Albuquerque.

(B) Following the completion of construction, extensive remodeling, or conversion; the Food Establishment shall pass an inspection conducted by the Enforcement Authority prior to the commencement of operations.

Part 15. Condemnation of Food and Equipment.

(A) If after examination, the Enforcement Authority determines or has reason to suspect

that Food is Adulterated or misbranded:

(1) The Food Establishment may be issued a Grade of Closed for an Imminent Health Hazard;

(2) The Food may be discarded voluntarily by the Person In Charge; or

(3) Upon written notice to the Permit Holder or Person In Charge at the time of inspection, the Enforcement Authority may label and seal such Food as "embargoed." Such labeled and sealed Food shall then be separated from other Food and shall not be used in the operations of the Food Establishment or distributed until the Enforcement Authority has examined the Food and determined whether such Food is safe for human consumption. After making a determination, the Enforcement Authority may remove the label and seal, or may require the Permit Holder or Person In Charge of the Food to denature, remove, or destroy such Food or to bring the Food into compliance with the requirements of the Food Code, the FSO, these rules, or other laws.

(4) If the suspected Adulterated or misbranded Food has been distributed, the Permit Holder shall be given the opportunity to recall the Food voluntarily at the Permit Holder's expense. If the Permit Holder refuses to recall the suspected Food, the Enforcement Authority may order a mandatory recall of the suspected Food and recover the cost associated with mandatory recall from the Permit Holder.

(a) Food Processing Establishments and Food Establishments manufacturing Food for distribution to other Food Establishments under their control shall have recall procedures prepared and on file at the Food Establishment where the Food was manufactured. Procedures shall include plans for recalling products which may be injurious to human health; for identifying products which may be injurious to human health; for identifying, collecting, warehousing, and controlling products; for determining the effectiveness of recalls; and for notifying the Enforcement Authority, and if applicable, the Food and Drug Administration, and United States Department of Agriculture of any recalls.

(B) If after examination, the Enforcement Authority determines or has reason to suspect that a Food Utensil or piece of Food equipment is worn, defective, unsanitary, or otherwise injurious to health:

(1) The Food Utensil or piece of Food equipment shall be discarded voluntarily by the Person In Charge;

(2) Such Utensil or equipment may be labeled “condemned” by the Enforcement Authority. The Utensil or Food equipment so labeled shall not thereafter be used for Food storage, preparation, handling, or serving; or

(3) The Enforcement Authority may require the Food Establishment to bring the condemned Utensil or Food equipment into compliance with the requirements of these rules, the Food Code, the FSO, or to remove it from the Food Establishment.

(a) Upon presentation of sufficient evidence that the condemned Utensil or Food equipment has been brought into compliance with requirements of this these rules, the Food Code, or the FSO, the Enforcement Authority shall remove the “condemned” label and allow the Utensil or Food equipment to be used for Food storage, preparation, handling, or serving.

(C) Removal of Seal. An “embargoed” or “condemned” label, tag, or seal, having once been affixed by the Enforcement Authority to Food or equipment, shall be removed only by the Enforcement Authority except as otherwise provided by law.

Part 16. Food Safety Training Requirements.

(A) All Food Establishments shall have at least one Certified Food Protection Manager.

(1) A Certified Food Protection Manager shall pass a test accredited and listed by the Conference for Food Protection, and such Employee shall have supervisory and management responsibility with the authority to direct and control Food preparation and service.

(2) The Enforcement Authority may waive this requirement for certain types of Food Establishments deemed by the Enforcement Authority to pose minimal risk of causing or contributing to Foodborne illness based on the nature of the operation and extent of Food preparation.

(3) A single Certified Food Protection Manager may be responsible for more than a

single Food Establishment, provided that a Variance is Approved by the Enforcement Authority as specified in §9-6-16 of the FSO.

(4) A Person In Charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program, evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the conference for food protection standards for accreditation of food protection manager certification programs, is deemed to comply with paragraph 2-102.11(B) of the FDA Food Code.

(5) A Food Establishment that has an employee that is certified by a food protection manager certification program, evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the conference for food protection standards for accreditation of food protection manager certification programs, is deemed to comply with paragraph 2-102.12 of the FDA Food Code.

(6) The Certified Food Protection Manager requirements of Part 16 of these rules shall become effective ninety (90) days after the effective date of these rules.

(B) Food Handler Cards. Employees who handle open Food shall demonstrate their knowledge of safe Food handling practices through passing a test from a Food Handler Training Program, Approved by the Enforcement Authority, and possess a Valid Food Handler Card within thirty (30) days of employment in a Food Establishment unless:

(1) The Food Employee is a Certified Food Protection Manager;

(2) The Food Employee does not prepare or handle TCS Food, provided that at a minimum, the Permit Holder assures the Food Employee complies with Part 16 of these Rules; or

(3) The Food Employee is working as a Food Employee or volunteer of a Temporary Food Establishment or Charitable Food Provider, provided that at minimum, the Person In Charge is a Certified Food Protection Manager or has a Valid Food Handler Card, either of which shall be obtained prior to the issuance of a Temporary Food Establishment Permit or Charitable Food Provider Permit, and the Person In Charge ensures the Food Employee complies with Part 16 of these rules.

(4) The Food Handler Card requirements of Part 16 of these rules shall become effective ninety (90) days after the effective date of these rules.

(C) Food handler cards shall be kept by the Food Employee on their Person while working as a Food Employee or volunteer for a Food operation, or a copy shall be kept on file by the current employer and upon request be immediately made available for inspection by the Enforcement Authority.

(D) Alternative to Food Handler Cards. The Enforcement Authority may approve a Food Establishment's training program to be used in lieu of requiring a Food Handler Card training of its Food Employees when the training program is found to be comparable to a Food Handler Card training course. A Food Employee must complete the Food Establishment's Approved training program at least once every three years. This exemption is only valid during the Food Employee's time of employment with the Food Establishment that administered the training;

(1) A Food Employee must be trained in safe Food handling by the Certified Food Protection Manager within thirty (30) days of employment at the Food Establishment and the Food Establishment must maintain records of training including the name of the Certified Food Protection Manager, date of training, and name(s) of Food employees. Such records shall be maintained on file and made available to the Enforcement Authority upon request; and

(2) Records of the training shall be maintained for the duration of the Food Employee's employment.

Part 17. General Sanitation

(A) The Permit Holder has the duty to take all necessary, reasonable, and usual precautions to keep, place, and preserve the Food Establishment in such condition, and to conduct and maintain the Food Establishment in such sanitary manner, that it shall not be dangerous or deleterious to the public or in violation of the FSO, and all other laws.

(B) All parts, equipment, and facilities of every Food Establishment, and all vehicles used in transporting Food, shall be kept in a clean, healthful, and sanitary condition, and in compliance with the FSO.

(C) All Food equipment in a Food Establishment shall be certified by the American

National Standards Institute, the National Sanitation Foundation, or comply with comparable standards.

(D) 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.

(E) Food Source.

(1) A Food Establishment shall obtain all Food from an Approved source.

(2) Nothing in the FSO or these rules shall be construed to prohibit the donation or distribution of Food pursuant to NMSA 1978, §41-10-3.

(F) Special Processes.

(1) Any Food Establishment that performs Advanced Preparation that includes Special Processes requires a written safety plan.

(2) A safety plan may include Hazard Analysis and Critical Control Point plans, Standard Operating Procedures, or Variances.

(3) It is a Civil Penalty for a Food Establishment to prepare Food in any other manner than those practices in the written safety plan.

(G) Food Protection.

(1) TCS Foods shall be kept at Safe Temperatures at all times and Food Establishments shall maintain adequate and contemporaneous temperature logs of TCS Foods while being stored, thawed, cooled, prepared, displayed, dispensed, or transported.

(2) Food Establishments shall calibrate measuring equipment in accordance with the manufacturer recommendations and shall maintain adequate and contemporaneous calibration logs for calibration of equipment.

(3) Food Establishments shall date mark raw meat or raw meat products that have been combined with ready-to-eat Food, as defined in the Food Code, in the same manner as prescribed by section 3-501.17 of the Food Code.

(4) A Food Establishment shall store liquid milk, liquid milk products, and shellfish at forty-one degrees Fahrenheit (41°F) or less.

(5) Food Establishments shall not use raw unpasteurized eggs that have been cracked and combined together (pooled eggs). Food Establishments shall only

combine enough raw eggs for immediate service in response to a customer's order; or use pooled eggs mixed with other ingredients immediately before cooking, such as in baking batters.

(6) Food Establishments shall properly rotate Retail Food stock with the first in, first out method.

(7) Food Establishments shall segregate spoiled, damaged, returned, embargoed, or condemned Food items in designated areas pending final disposition.

(H) Pet dogs in outdoor dining areas; requirements.

(1) A Food Establishment may allow pet dogs in outdoor dining areas designated by the Food Establishment if the following requirements are met:

(a) No pet dog shall be allowed in any area where Food is prepared;

(b) Patrons shall keep their pet dogs on a leash and patrons shall have full control of their pet dogs at all times;

(c) Pet dogs shall not be allowed on chairs, tables, or other furnishings;

(d) Pet dogs shall only use designated water dishes or Single-Service Articles such as water dishes; and

(e) Signs shall be posted to place the public on notice that the designated outdoor dining area is available for the use of patrons with pet dogs.

(i) Signs shall be at a minimum eight and one-half inches by eleven inches in size and use type that is uniform in size and no smaller than necessary to fill the sign to within two inches of the borders.

(ii) Signs shall contain language reasonably designed to inform the public that dogs are allowed in outdoor dining areas and may be present.

(iii) Signs shall be posted prominently and be easily visible in both the area where dogs are allowed and at each entrance of the Food Establishment.

(2) Food Employees shall:

(a) Wash hands when inadvertently coming into contact with a pet dog. Food Employees are prohibited from touching, petting, or otherwise handling pet dogs.

(b) 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.

(3) Nothing in this section shall be interpreted to prohibit a Food Establishment from excluding any pet dog from a Food Establishment or impacting the rights of service animals.

Part 18. Permit Specific Requirements.

(A) Cannabis Food Establishments.

(1) Applicants and Permit Holders for Food Establishment Cannabis, Food Processing Establishment Cannabis, Retail Food Establishment Cannabis, Retail Food Establishment Cannabis Plus, and Warehouse Cannabis Permits shall:

(a) Submit a copy of the Certificate of Occupancy for any location occupied by the Food Establishment as part of the pre-inspection application;

(b) Submit a copy of the Zoning Approval Letter issued by the City for any location occupied by the Food Establishment as part of the pre-inspection application;

(c) Provide a copy of any license issued to the Food Establishment under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978 prior to operating as a Food Establishment;

(d) Provide a copy of any City of Albuquerque business registration issued to the Food Establishment, prior to operating as a Food Establishment;

(2) Cannabis Food Establishments found to be operating as a Food Establishment without having received a grade of Approved or Conditional Approved during a pre-opening inspection shall have its Permit(s) suspended.

(3) In the event that both Food and Edible Cannabis Products are processed, prepared, packed, stored, distributed, or prepared and intended for individual portion service in the same Food Establishment, the Permit Holder shall ensure that:

(a) Equipment, Food contact surfaces, and utensils are cleaned and sanitized in a manner consistent with sections 4-6 and 4-7 of the Food Code when

alternating between preparation of Edible Cannabis Products to Food; or separate equipment, Food contact surfaces, and utensils for Food and Edible Cannabis Products are used;

(b) A Person washes their hands in a manner consistent with section 2-301.12 of the Food Code when alternating between the preparation of Edible Cannabis Products and Food; and

(c) When required to wear gloves consistent with the Food Code, a Person changes gloves when alternating between handling Edible Cannabis Products and Food.

(B) Catering Food Establishments.

(1) Catering Food Establishments operating as an extension of a permitted Food Establishment do not require a separate catering Permit when delivering Food for service by the customer, but shall comply with (ii) and (v) of this section.

(2) All Catering Food Establishments are required to maintain, for ninety (90) days, and make available for inspection by the Enforcement Authority, adequate and contemporaneous records identifying:

(a) Dates, times, and menus for all events; and

(b) Temperatures for TCS Foods while in transport and at the time of delivery and service.

(3) Catering Food Establishments shall operate from a Commissary with a Commissary Type 2 Permit and shall report each day of operation. All catering activities that occur prior to service must occur at the Approved Commissary.

(4) Catering Food Establishment Class C and D Permits require that applicable standard operating procedures, safety plans, and transportation plans be submitted to and Approved by the Enforcement Authority.

(5) Catering Food Establishments shall construct, equip, and maintain all vehicles carrying Food and Food products so as to protect the purity and wholesomeness of the transported products. Personal vehicles are prohibited for use with a Food catering operation.

(a) Catering Food Establishments shall provide the license plate number for their registered transportation vehicle(s), if applicable, with their pre-

1 inspection application.

2 (6) Catering Food Establishments shall discard Food products that have been cooked
3 or prepared at the event at the end of each day.

4 (7) Acceptable booth enclosure for all Food activities is required where Food service
5 occurs outdoors.

6 (8) Catering Food Establishments shall protect all Foods offered for customer self-
7 service, such as a buffet, from contamination by the use of packaging, Food
8 guards, display cases, or other effective means. In addition, Foods that have
9 been offered in this manner shall not be offered for human consumption after the
10 completion of each day.

11 (C) Charitable Food Providers.

12 (1) Charitable Food Providers shall renew their Permits annually and Charitable Food
13 Providers are subject to inspection by the Enforcement Authority.

14 (2) Charitable Food Providers shall prepare all TCS Food in a Commercial Grade
15 kitchen that complies with the Food Code and the FSO.

16 (3) Charitable Food Providers shall keep, and make readily available to the
17 Enforcement Authority for inspection, records of all Food items prepared and
18 distributed, and locations where those Food items were delivered or provided to
19 the public.

20 (4) When Food is being distributed off the premises of a Commercial Grade Kitchen
21 the Person In Charge must be in possession of a Valid Charitable Food Provider
22 Permit.

23 (D) Commissaries.

24 (1) No Food Establishment shall act as a Commissary for another Food
25 Establishment without first obtaining a Commissary Permit from the Enforcement
26 Authority unless the Commissary is in possession of a Valid Food Establishment
27 Permit and the Food Establishment requiring a Commissary is owned by the same
28 Permit Holder.

29 (2) Food Establishments whose primary function is the service of Food to highly
30 susceptible populations shall not act as a Commissary for any other Food
31 Establishment.

(3) All Commissaries shall provide separate designated and labeled spaces for the proper storage of Food, Food containers, and Food supplies to each Food Establishment serviced.

(4) When Food preparation is conducted at the Commissary, the Commissary must be equipped with adequate cleaning and sanitizing equipment for use by Food Establishments.

(5) Commissary facilities servicing Mobile Food Establishments must provide for the sanitary disposal of liquid waste; handling and disposal of garbage, grease, and rubbish originating from the Food Establishment; and facilities for filling the potable water holding tank. Those commissaries with an outdoor servicing area shall include an adequate area for washing and storing of the Mobile Food Establishment and sufficient electrical outlets.

(6) Any Person operating a Commissary shall maintain and make available for inspection by the Enforcement Authority:

(a) A list of all Food Establishments making use of the Commissary with a copy of their current Permit; and

(b) Logs of visits for each Food Establishment making use of the Commissary for the duration of the Food Establishment's use of the Commissary, plus one calendar year.

(E) Family Child Care Homes and Adult Day Care Homes.

(1) Family Child Care Homes and Adult Day Care Homes serving six or fewer persons are exempt from the requirement to obtain a Permit from the Enforcement Authority.

(F) Childcare Centers.

(1) Child Care Centers may not allow children in the kitchen except under careful supervision.

(2) If Food is brought to a Childcare Center from a child's home, the Childcare Center shall label it with the child's name and refrigerate, if necessary. A Childcare Center shall label and refrigerate bottles of infant formula or breast milk.

(3) Nothing in this section shall be interpreted to require a Child Care Center to accept Food from a child's home.

1 (7) Mobile Food Establishments.

2 (1) Push Carts are limited to the preparation and serving of hot dogs, or food
3 packaged commercially or at an approved commissary, maintained at Safe
4 Temperatures or limited to serving non-TCS food.

5 (2) Smokers permitted as a Mobile Food Establishment are limited to the service of
6 Food Packaged commercially or at an approved Commissary, maintained at Safe
7 Temperatures and served to the consumer in the original Packaging.

8 (3) Trailers must be fully enclosed or be limited to the preparation and serving of hot
9 dogs, Food Packaged commercially or at an approved Commissary, maintained
10 at Safe Temperatures and served to the consumer in the original Packaging.

11 (4) Mobile Food Establishments shall provide the license plate number for their
12 registered vehicle, if applicable, with their pre-inspection application.

13 (5) Mobile Food Establishments shall operate from a Commissary and shall report to
14 the Commissary each day of operation, or as otherwise provided by these Rules.
15 The Commissary used must be in possession of a Commissary Permit issued by
16 the Enforcement Authority unless otherwise exempt under these rules. The use
17 of a private residence for the storage of food utensils and equipment or Food is
18 prohibited.

19 (6) Mobile Food Establishments may submit a request to modify its Commissary from
20 one location to another location within the City by submitting a written request on
21 a form provided by the Enforcement Authority. The Enforcement Authority shall
22 review the request and make a determination within a reasonable time.

23 (a) The Mobile Food Establishment may be required to receive a Grade of
24 Approved or Conditional Approved during an inspection at the new
25 Commissary prior to approval of the request.

26 (7) The following acts are prohibited:

27 (a) The operation of any Mobile Food Establishment between the hours of 2:30
28 am and 7:00 am.

29 (b) The operation of any Mobile Food Establishment on the property of a
30 residence unless the Mobile Food Establishment has obtained a Temporary
31 Food Permit from the Enforcement Authority to participate in a private event;

- 1 (c) The operation of any Mobile Food Establishment on the residential side of
- 2 any street for a period longer than five minutes, unless the Mobile Food
- 3 Establishment is participating in a private event;
- 4 (i) Mobile Food Establishments shall obtain, keep, and make available for
- 5 inspection by the Enforcement Authority, an event agreement with the
- 6 owner or occupant of the residence listing the date and times the event
- 7 will occur;
- 8 (d) Operating a Mobile Food Establishment for more than twelve (12) days in any
- 9 calendar year from the same residential street.
- 10 (e) The vending or serving of Food to students of public, private or parochial
- 11 schools from a Mobile Food Establishment on a public street, thoroughfare,
- 12 boulevard or alley or other public way in the City is prohibited within 900 feet
- 13 from the outermost boundary of the grounds of any public, private, or
- 14 parochial school during school hours or school events, and within one hour
- 15 before school begins or ends. The 900 feet is to be measured by the most
- 16 direct traveled route from the nearest boundary of the school grounds to the
- 17 Mobile Food Establishment;
- 18 (f) Mobile Food Establishments using any sound amplifying equipment before
- 19 10:00 a.m. or after sunset;
- 20 (i) Mobile Food Establishments shall comply with all applicable noise
- 21 regulations as a condition of the Permit.
- 22 (g) Mobile Food Establishments using amplified sound soliciting their products
- 23 on the same residential street more than once before noon and more than
- 24 once after noon in any twenty-four-hour day.
- 25 (h) This section shall not prohibit the sale and delivery of Food or any Food
- 26 product to a house, business, manufacturing plant, construction site,
- 27 institution, or any place of like nature.
- 28 (8) Parking.
- 29 a. Mobile Food Establishments shall comply with all applicable parking and
- 30 zoning regulations as a condition of the Permit.

(i) Mobile Food Establishment permits may be suspended or revoked for repeat violations of applicable parking or zoning regulations.

b. Where parking stalls have been marked by sign, meter, or painted lines on the pavement, a Mobile Food Establishment shall pay all applicable parking fees and shall not exceed the boundaries of the painted lines.

c. It is a violation of these rules to violate City of Albuquerque Traffic Code § 8-5-1-42, ROA 1994 *Mobile Food Units on Public Streets*.

(8) Processing Food Establishments. Any Processing Food Establishment Permitted after the enactment of These Rules shall not:

(a) Have open rafters over any area where Food is exposed;

(b) Have garage type doors that open directly into an area where Food is exposed;

(c) Conduct any step of processing in an area where access is granted to the general public.

(9) Raw Milk.

(a) General Requirements.

(a) A Retail Food Establishment shall possess a Valid Retail Food Establishment Raw Milk Permit and any required Permit from the New Mexico Department of Agriculture.

(b) Retail Food Establishment Raw Milk Permits shall not be granted to any Retail Food Establishment whose primary function is to serve a highly susceptible population as defined in Part 1-9 of the Food Code.

(c) A Raw Milk Vendor shall possess a Valid Market Food Establishment Raw Milk Permit and any Valid Permit from the New Mexico Department of Agriculture pursuant to Title 21, Chapter 34, Part 2 of the New Mexico Administrative Code and a Raw Milk Permit prior to vending or storing Raw Milk or Raw Milk Product at a Market.

(b) Food Safety.

(a) Raw milk and Raw Milk Product shall be wholesome; free from adulteration, spoilage, filth, and any other contamination.

- 1 (b) Raw milk and Raw Milk Product shall be received Packaged from a facility in
- 2 possession of a Valid Permit from the New Mexico Department of Agriculture
- 3 pursuant to Title 21, Chapter 34, Part 2 of the New Mexico Administrative Code
- 4 and shall be kept in the Hermetically Sealed Container in which the Raw Milk
- 5 or Raw Milk Product was received until vended;
- 6 (c) Raw milk and Raw Milk Product may only be vended to a consumer for
- 7 personal consumption;
- 8 (d) Except in a private home, a Person in possession of a Raw Milk Permit shall
- 9 not allow Raw Milk or Raw Milk Product to be served to any Person, removed
- 10 from any package, offered as a sample, or used as an ingredient in any Food
- 11 Establishment;
- 12 (e) All Packaged Raw Milk or Raw Milk Product shall be conspicuously labeled or
- 13 marked as "RAW MILK" in addition to all legally required labels or markings,
- 14 and shall meet the labeling requirements as specified in 21.34.2.12 NMAC
- 15 now adopted and incorporated herein;
- 16 (f) Raw milk and Raw Milk Product shall be displayed separately from and shall
- 17 not be commingled with pasteurized milk or other pasteurized dairy product;
- 18 and
- 19 (g) The length of the pull date of Raw Milk or Raw Milk Product shall not exceed
- 20 five (5) days including the date the Raw Milk or Raw Milk Product was
- 21 Packaged.
- 22 (h) The Permit Holder shall maintain, for ninety (90) days, and make available for
- 23 inspection by the Enforcement Authority, adequate and contemporaneous
- 24 records identifying:
- 25 (i) The name and address of facility in possession of a Valid Permit from the
- 26 New Mexico Department of Agriculture pursuant to Title 21, Chapter 34,
- 27 Part 2 of the New Mexico Administrative Code where Raw Milk or Raw Milk
- 28 Product were obtained;
- 29 (ii) The Pull Date of each Raw Milk or Raw Milk Product offered for human
- 30 consumption; and

- (iii) The location(s) where Raw Milk or Raw Milk Product were distributed by the Permit Holder.
- (i) The Permit Holder shall maintain, for ninety (90) days, and make available for inspection by the Enforcement Authority, adequate and contemporaneous temperature logs of Raw Milk and Raw Milk Product while being stored, vended, held, or transported.
- (j) Any Person vending Raw Milk and Raw Milk Product at a Market shall:
 - (i) Have a placard displayed at the point of sale and any location offering Raw Milk or Raw Milk Product that is easily visible to the public and that conforms to the labeling requirements as specified in 21.34.2.12(C) NMAC; and
 - (ii) Transport and store Raw Milk and Raw Milk Product in an on-site powered refrigeration unit at 41°F or lower;
 - (iii) Not display Raw Milk or Raw Milk Product outside of the on-site powered refrigeration unit.
- (c) Suspension of Raw Milk Permits. Raw milk Permits may be suspended whenever the Enforcement Authority finds:
 - a. Raw milk or Raw Milk Product vended were not obtained from a Raw Milk distributor in possession of a Valid Permit from the New Mexico Department of Agriculture pursuant to Title 21, Chapter 34, Part 2 of the New Mexico Administrative Code;
 - b. Raw milk or Raw Milk Product are offered for human consumption past the Pull Date;
 - c. Raw milk or Raw Milk Product are offered for sale without the proper markings, labels, or signage;
 - d. The Permit Holder has failed to comply with a recall of Raw Milk or Raw Milk Product;
 - e. The Permit Holder has offered for sale Raw Milk or Raw Milk Product that the Permit Holder knows to contain unsafe levels of coliforms or bacterial colonies; or
 - f. The Raw Milk or Raw Milk Product markings, label, or signage contain any

1 misleading statement(s).

2 ~~10~~ Self-Service Food Establishments.

3 (a) Self-Service Food Establishments located in a place where no Food
4 Employee is present shall:

5 a. Place TCS Food in a device equipped with a digital temperature measuring
6 device and notification system that can be remotely monitored, and an
7 automatic shut off switch that prevents consumers from continuing to access
8 Food when unsafe Temperatures have been detected for a period of time as
9 listed in the Food Code 4-204.111; and

10 b. Serve Food in Tamper-Evident Packaging.

11 ~~11~~ Retail Food Establishments.

12 (a) Retail Food Establishment Class 1 permits are exempt from the inspection
13 frequency requirements in Part 9(A)(1), but are subject to periodic inspection by
14 the Enforcement Authority.

15 (b) Retail Food Establishments shall receive Food containing CBD or Hemp
16 Packaged from a facility in possession of a Valid Permit from the New Mexico
17 Environment Department pursuant to the Hemp Manufacturing Act, Chapter 76,
18 Article 24 NMSA 1978, and sell the product in the same package as it was
19 received.

20 ~~12~~ Temporary Food Establishments and Market Food Establishments.

21 (1) Temporary Food Establishment Permits are not required for Private Events where
22 the Food being distributed is limited to non-TCS Food, is provided by a Food
23 Establishment in possession of a Valid Food Establishment Permit, or the number
24 of participants is limited to twenty-five (25) persons or less.

25 (2) No Market Coordinator shall allow a Temporary Food Establishment or Market
26 Food Establishment to operate at their Market without a Valid Permit issued by
27 the Enforcement Authority.

28 (3) Temporary Food Establishments and Market Food Establishments are subject to
29 inspection each day of operation.

30 (4) All Temporary Food Establishments and Market Food Establishments, with the
31 exception of Food Establishments vending only raw, uncut produce, shall operate

out of a Commissary and shall report at least once each day of operation to the Commissary for all supplies, cleaning, and servicing operations.

(5) Temporary Food Establishment Permits are Valid for one location for up to fourteen (14) consecutive days. Temporary Food Establishments shall obtain a Permit for each location, each time the Food Establishment locates or relocates at the same or other location.

(6) All Temporary Food Establishments and Market Food Establishments, operating on private property shall provide an agreement, signed by the property owner, to the Enforcement Authority when submitting a permit application.

(7) Market Food Establishment Permits authorize a Market Food Vendor to operate at any Market in the City.

(8) Food Safety.

a. Food must be kept at Safe Temperatures and protected from contamination during transportation of Food from the Commissary to a Temporary Food Establishment or Market Food Establishment.

b. Enough potable water shall be available in each Temporary Food Establishment or Market Food Establishment for Food preparation, cleaning and sanitizing utensils and equipment, and handwashing.

(i) When a conventional handwashing sink is not available or in close proximity to the Temporary Food Establishment or 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 five (5) gallon capacity and a spigot to allow for the continuous flow of water; a wastewater container capable of properly retaining wastewater from the hand wash station; and an adequate supply of hand soap and paper towels.

(ii) Each Temporary Food Establishment and Market Food Establishment without effective facilities for cleaning and sanitizing Tableware shall provide only Single-Service Articles for use by the consumer.

c. Temporary Food Establishments or Market Food Establishments using ice that is consumed or that contacts Food shall use ice that has been made

under conditions meeting the requirements of the FSO. 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 (4) inches off the ground.

d. Food Display and Storage.

(i) All Temporary Food Establishment and Market Food Establishment Food displays and preparation areas shall be smooth, durable, and easily cleanable.

(ii) Temporary Food Establishment and Market Food Establishment Food displays shall be confined to tables or to the bed of a vehicle. Food must be at least six (6) inches above the ground.

(iii) Temporary Food Establishment and Market Food Establishment 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.

e. Retail of Raw Animal Foods; Additional Restrictions.

(i) A Temporary Food Establishment or Market Food Establishment shall not remove, or allow to be removed, raw animal Foods from the original packaging in which the Foods were Packaged.

(ii) A Temporary Food Establishment or Market Food Establishment shall not Vend raw animal Food products in any condition other than frozen.

(iii) A Temporary Food Establishment or Market Food Establishment shall not Vend raw animal Foods unless they have the Federal USDA mark of inspection. A copy of the Valid Federal USDA mark of inspection shall be provided with the pre-inspection application.

(f) Prohibited Sales. A Temporary Food Establishment or Market Food Establishment shall not Vend live animals, uncooked seafood, uncooked shellfish, or cannabis products.

113) Vending Machines.

(1) Class A Vending Machines are exempt from the requirement to obtain a Permit, but shall register with the Enforcement Authority, and comply with these rules and the FSO.

(a) Each Vending Machine shall display the registration number assigned by the Enforcement Authority and a statement informing the public that the machine is not subject to inspection and include contact information where requests for inspection can be directed.

(2) Vending machines located on the premises of a permitted Food Establishment and operated under the control of the Permit Holder are exempt from the requirement to obtain a Permit.

(3) Each Applicant and Permit Holder for a Vending Machine Permit or registration shall maintain, and make available for inspection by the Enforcement Authority, a current list of machines by location to be covered by the Permit. The list shall provide the unique identifiers and locations for all machines, frequency of service, type of machine (class A or B), and the permitted Commissary or other Food Establishment from which each machine is serviced.

(4) A permanent sign, visible to consumers, showing the Permit number assigned by the Enforcement Authority to the Permit Holder, the Permit Holder's business name, a unique identifier assigned to the machine by the Permit Holder, and a telephone number that consumers may use to contact the Permit Holder, of an Approved size and style, shall be permanently and conspicuously affixed to each Vending Machine.

(5) Commissary Required. Every Permit Holder or registrant of a Vending Machine shall designate and use an Approved Commissary for all Food storage. Vending Machine Permit Holders or registrants that operate their own Commissary shall obtain the appropriate Permit for that Food Establishment. Water vending machines do not require a Commissary.

(6) Notwithstanding the other provisions of the FSO, a Permit Holder for a Vending Machine may submit a request to modify its Commissary from one location to another location within the City by submitting a written request on a form provided

1 by the Enforcement Authority. The Enforcement Authority shall review the
2 request and make a determination within a reasonable time.

3 (a) The Vending Machine establishment may be required to receive a score of
4 Approved during an inspection at the new Commissary prior to approval of
5 the request.

6 (7) The Vending Machine Permit Holder shall notify the Enforcement Authority
7 whenever adding new types of vending machines, or converting existing Vending
8 Machines to dispense TCS Food other than those for which the Vending Machine
9 Permit was issued.

12 **APPROVED**

DocuSigned by:

13 

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15 Dr. Samantha Sengel

Date

Chief Administrative Officer