

Chapter 9.2

FOOD AND FOOD HANDLING CODE*

* **Editors Note:** Ord. No. 02-16, adopted June 22, 2002, amended Ch. 9.2, in its entirety. Prior to inclusion of said ordinance, Ch. 9.2 pertained to similar subject matter. See the Code Comparative Table. Ord. No. 06-09, adopted June 10, 2006, amended Ch. 9.2, in its entirety, to read as herein set out.

Cross reference(s)--Building code, Ch. 3; electrical code, Ch. 7; fire prevention code, Ch 8; licenses generally, Ch. 11; plumbing and gas codes, Ch. 18; peddlers, vendors and canvassers, Ch. 30; public dance halls, Ch. 36, consumer protection, Ch. 50.

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ARTICLE I. GENERAL PROVISIONS

§ 9.2-1.1. Title.

This *chapter* shall be known and may be cited as "The Food and Food Handling Code" of Arlington County, Virginia.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-1.2. Purpose.

This *chapter* shall be liberally construed and applied to promote the purpose of safeguarding public health and ensuring that food is safe, unadulterated and properly presented when offered to the consumer.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-1.3. Adoption of the United States Food and Drug Administration/United States Public Health Service 2005 Food Code.

(a) Chapters 1 through 8, inclusive, and all appendices and annexes of the United States Food and Drug Administration/U.S. Public Health Service 2005 Food Code ("FDA Food Code"), as adopted and promulgated by the United States Food and Drug Administration/ Public Health Service ("FDA/USPHS"), including such chapters, appendices and annexes as may hereafter be amended from time to time, but excepting those sections of the FDA Food Code identified in section 9.2-1.5., are hereby adopted and incorporated in their entirety into this *chapter* as if fully set forth herein. In the event of conflict or inconsistency between this *chapter* and the FDA Food Code, the provisions of this *chapter* shall control. When used in the FDA Food Code, the term "Health Authority" shall mean the county manager as defined in § 9.2-1.4. of this *chapter*.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-1.4. Definitions.

The following words and phrases, when used in this *chapter*, including in the incorporated FDA Food Code, shall have the meanings given below, unless the context clearly indicates a different intention or it is otherwise expressly provided:

(1) Base of operation means a licensed food establishment that contains all of the necessary equipment and storage facilities to support the operation of a mobile food unit.

(2) Certificate means the document issued by the county manager, or the document issued by another jurisdiction or private vendor that is accepted by the county manager, which demonstrates that the individual identified on the certificate has been determined to be a certified food manager or a certified limited food manager.

(3) Certified food manager means a person who has passed an examination approved by the county manager, or an examination in another jurisdiction that is accepted by the county manager, and has received a certified food manager's certificate issued or recognized by the county manager.

(4) Certified limited food manager means a person who has passed an examination approved by the county manager, or an examination in another jurisdiction that is accepted by the county manager, and has received a certified limited food manager's certificate issued or recognized by the county manager.

(5) County manager means the County Manager of Arlington County, Virginia, or the designee of the county manager.

(6) Deleted

(7) License means the document issued by the county manager that authorizes a person to operate a food establishment.

(8) Limited food establishment means a food establishment that serves only hotdogs or frankfurter-type foods, prepackaged foods or foods that are not potentially hazardous foods.

(9) Limited service mobile food unit means a limited food establishment that is designed to be readily movable.

(10) Mobile food unit means a food establishment that is designed to be readily movable.

(11) Deleted

(12) Permit means the license issued by the County.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-1.5. Modifications to FDA Food Code.

(a) The following sections of the FDA Food Code, as amended, are hereby adopted and incorporated in their entirety into this *chapter* as if fully set forth herein:

(1) Deleted

(2) Deleted

(3) Deleted

(4) Section 8-802.10(A) of Annex 1 is amended to read as follows:

If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances exist that would justify an inspection order under LAW, to make an inspection that includes the recordation of information by any means of audio-visual recordation including (but not limited to) photography, tape-recording and videotaping.

(b) Sections 2-102.11(B) and 2-102.20 are deleted of the FDA Food Code and are not adopted or incorporated into this *chapter* and shall be of no effect in the county.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

ARTICLE II. MOBILE UNITS**§ 9.2-2.1. General.**

Mobile food units and limited service mobile food units shall comply with the requirements of this *chapter*.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-2.2. Requirements for types of mobile food units.

(a) A mobile food unit shall be equipped with a hand sink and a three (3) compartment sink. However, the county manager may waive the requirement for a three (3) compartment sink if the menu items dispensed from the unit do not require extensive preparation and the unit has access to a three (3) compartment sink at the base of operation.

(b) A limited service mobile food unit shall be equipped with a hand sink and a three (3) compartment sink. However, the county manager may waive the requirement for a hand sink if only prepackaged foods are to be dispensed or if an alternate method to hand washing, approved by the county manager, is used. Such alternate methods may include, but are not limited to, use of disposable hand washing towelettes, disposable gloves, sanitizing solutions that meet the specifications of 21 C.F.R. 178.1010 or other techniques approved by the county manager. The county manager may waive the requirement for a three (3) compartment sink if the limited service mobile food unit has access to a three (3) compartment sink at the base of operation or only prepackaged foods are to be dispensed.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-2.3. Single service utensils.

Mobile food units and limited service mobile food units shall dispense only single service utensils for use by the customer.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-2.4. Base of operation.

Mobile food units and limited service mobile food units shall operate from a base of operation that possesses a food establishment license issued in accordance with this *chapter*. However, the county manager may waive this requirement if the mobile food unit or limited service mobile food unit meets all construction standards applicable to the food items served by the unit. The county manager may allow a mobile food unit or limited service mobile food unit to operate from a base of operation outside the County of Arlington if the base of operation meets basic sanitation requirements and is licensed by another jurisdiction.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

ARTICLE III. COMPLIANCE PROCEDURES

§ 9.2-3.1. Licenses for food establishments.

(a) No person shall operate a food establishment who does not have a valid license issued to him by the county manager. Only a person who complies with the requirements of this *chapter* shall be entitled to receive or retain such a license. Licenses are not transferable.

(b) An annual application fee of one hundred dollars (\$100.00) shall be assessed for each licensed food establishment. Such fee shall not be applicable to food establishments operated by the Arlington County Public Schools; however, such fees shall apply to private vendors subcontracted by the county to operate food establishments. The annual fee with the exception of mobile units shall be based on a calendar year and shall be due and payable in the month of December or upon initial application. The annual fee for mobile units shall be due and payable in the month of June or upon initial application. The application fee shall not be prorated. An additional fee of twenty-five dollars (\$25.00) shall be assessed for food establishment renewal applications received after December 31 and for mobile food unit renewal applications received after June 30.

(c) Establishments failing to file the required application for renewal of their license will be operating without a valid license and will be subject to immediate closure in accordance with Section 9.2-3.8 of this section.

(Ord. No. 02-16, 6-22-02; Ord. No. 03-11, 4-26-03; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.2. Exemption.

The county manager may exempt coffee and related beverage service and service areas and such one-time events or affairs from such provisions or requirements of this *chapter* as the county manager may deem advisable upon determining that the operation of such service, service areas, events or affairs will not adversely affect the public health.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.3. Food manager certificate and responsibility.

(a) It shall be unlawful to operate a food establishment unless it is under the immediate control of a certified food manager; provided, that a limited food establishment shall not be in violation of this subsection if it is under the immediate control of a certified limited food manager.

(b) The food manager or limited food manager shall be responsible for training food service personnel in sanitary food-handling techniques and proper methods of food protection, and for ensuring that good public health and food protection practices and sanitary techniques in manufacturing, storing, serving and transporting foods are used at all times on the premises under his control.

(c) Except that a temporary food establishments shall not be required to be under the immediate control of a certified food manager or certified limited food manager.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.4. Issuance of food manager certificate.

(a) Any person desiring to obtain a certificate required by Section 9.2-3.3. shall apply in writing on forms provided or accepted by the county manager. Such application shall include the name and address of the applicant, and the signature of the applicant.

(1) The county manager may, by specific contract, issued in accordance with appropriate administrative procedures, designate a private vendor to issue, on the county manager's behalf, a food manager certificate to any person who successfully complies with the provisions of this *chapter*.

(b) A food manager certificate shall be issued only to a person who has passed a food manager certification examination from a food protection manager certification program that is evaluated and listed by an accrediting agency recognized by the Conference for Food Protection.

(c) A food manager certificate shall be issued in the name of the individual applicant, shall not be assignable or transferable, shall be valid for a period of five years from the date of notification of the successful completion of an approved exam and shall remain the property of the issuing authority.

(d) A food manager certificate shall be renewed for a five year period upon passing a food manager certification examination from a food protection manager certification program that is evaluated and listed by an accrediting agency recognized by the conference for Food Protection.

(e) A limited food manager certificate shall be issued only to a person who has passed a limited food manager certification examination approved by the county manager.

(f) A limited food manager certificate shall be issued in the name of an individual applicant, shall not be assignable or transferable, shall be valid only for a period of five years from the date of notification of the successful completion of the approved exam and shall remain the property of the issuing authority.

(g) A limited food manager certificate shall be renewed for a five year period upon passing a limited food manager certification examination approved the county manager.

(h) If the applicant's certificate has been revoked or suspended during the preceding five years, the applicant shall retake and pass either a food manager certification examination from a food protection manager certification program that is evaluated and listed by an accrediting agency recognized by the Conference for Food Protection or a limited food manager certification examination approved by the county manager, whichever is appropriate.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.5. Suspension of license or certificate in emergencies.

(a) If he deems an emergency to exist, the county manager may without warning, notice or hearing, order the suspension of any license or certificate issued under this *chapter* if the holder of the license or certificate does not comply with the requirements of this *chapter*, or if the operation of the food establishment does not comply with the requirements of this *chapter*, or if the operation of the food establishment otherwise constitutes a substantial and imminent hazard to public health. Suspension is effective upon service of the notice required by subsection (b) of this section. When a license is suspended, all food-handling operations at the food establishment shall immediately cease. When a certificate is suspended, food-handling operations shall immediately cease unless another certified food manager or, where appropriate, certified limited food manager is present and in control. If the reason for the suspension is eliminated prior to the suspension being sustained by the county manager, the suspension shall be terminated.

(b) Whenever a license or certificate has been ordered suspended, the holder of the license or certificate or the person in charge shall be notified in writing that the license or certificate is suspended effective upon service of the notice and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the county manager by the holder of the license or certificate within ten (10) days. The holder of the license or certificate shall be afforded an opportunity for a hearing within twenty (20) days of receipt by the county manager of a request for a hearing from the holder. If no written request for a hearing is filed within ten (10) days, the suspension is sustained. The county manager may end a suspension at any time if the reason for suspension no longer exists.

(c) The county manager, in lieu of suspending a license, may suspend the applicability of the license to a specific commissary or specific products.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.6. Revocation of license or certificate.

(a) The county manager may, after providing the opportunity for a hearing, order the revocation of a license or certificate issued under this *chapter* for serious or repeated violations of any of the requirements of this *chapter* or for interference with the county manager in the performance of his duty.

b) Prior to ordering the revocation, the county manager shall notify, in writing, the holder of the license or certificate or the person in charge of the specific reasons for which the license or certificate is to be revoked, and that the license or certificate shall be revoked on the tenth day following service of the notice unless a written request for a hearing is filed with

the county manager by the holder of the license or certificate within such ten (10) day period. If no request for a hearing is filed within the ten (10) day period, the license or certificate shall be revoked by order of the county manager and the revocation shall be final.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.7. Service of notices.

A notice required by this *chapter* is properly served when it is delivered to the holder of the license or certificate or to the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the license or certificate. A copy of the notice shall be filed with the records of the health department.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.8. Closing of food establishments.

The county manager shall order the closure of (i) any food establishment which is operated without the license required by section 9.2-3.1., or is operated without a certified food manager being in control as required by section 9.2-3.3. The closure order shall be in writing, shall specifically state the reason for the closure and shall clearly specify the compliance requirements necessary to have the order rescinded. The sheriff of the county shall enforce the closure order until it is rescinded by the county manager in writing. Upon receipt of satisfactory proof of compliance with the written requirements set forth in the closure order, the county manager shall immediately issue a written rescission of the order.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.9. Hearings.

The hearings provided for in this *chapter* shall be conducted by the county manager at a time and place designated by him. Any oral testimony given at a hearing shall be reported or recorded. The county manager shall make a finding based upon the hearing record and shall issue, sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the license or certificate by the county manager.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-3.10. Application after revocation.

Whenever a revocation of a license or certificate has become final, the holder of the revoked license or certificate may submit a written application for a new license or certificate. The establishment for which an application for a new permit is submitted after revocation shall meet all applicable provisions of this chapter.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

ARTICLE IV. PENALTIES

§ 9.2-4.1. Penalties, injunction, civil penalties and charges for violations.

(a) Any person willfully violating, or refusing, failing, or neglecting to comply with any provision of the FDA Food Code, or order of the county manager, or any provision of this *chapter*, shall be guilty of a Class 3 misdemeanor unless a different penalty is specified. Each day of violation shall constitute a separate offense.

(b) Any person violating, or failing, neglecting, or refusing to obey any provision of the FDA Food Code, or any lawful order of the county manager, or any provision of this *chapter*, may be compelled in a proceeding instituted in an appropriate court by the county manager to obey and comply with such provisions of the FDA Food Code, order of the county manager, or provision of this *chapter*. The proceeding may be by injunction, mandamus, or other appropriate remedy.

(c) Without limiting the remedies which may be obtained pursuant to subsection (b) of this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection (b) shall be subject, in the discretion of the court, to a civil penalty not to exceed ten thousand dollars (\$10,000.00) for each violation. Each day of violation shall constitute a separate offense.

(d) With the consent of any person who has violated or failed, neglected, or refused to obey any provision of the FDA Food Code, or order of the county manager, or any provision of this *chapter*, the county manager may provide, in an

order issued by the county manager against such person, for the payment of civil charges for past violations in specific sums not to exceed the limit set forth in subsection (C) of this section. Such civil charges shall be in place of any appropriate civil penalty which could be imposed under subsection (c).
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

ARTICLE V. REVIEW OF PLANS AND SPECIFICATIONS

§ 9.2-5.1. Submission of plans, specifications and other data; inspection prior to operation; fees.

(a) Whenever a food establishment is constructed or remodeled or whenever an existing structure is converted to use as a food establishment, plans and specifications for such construction, remodeling, or conversion shall be submitted to the county manager for his review prior to commencement of such construction, remodeling or conversion. The county manager shall verify that the plans and specifications conform to the requirements of this *chapter* and the FDA Food Code. The plans and specifications shall include the intended menu, anticipated volume of food to be stored, prepared, and sold or served, the proposed layout and arrangement of the facilities, plumbing plans, mechanical plans, electrical plans, finish schedules, lighting schedules, and the types, model numbers, locations, dimensions, performance capacities and installation specifications of proposed fixed equipment and facilities. The county manager may require additional plans or information, as needed, depending on the nature and extent of the proposed construction, remodeling or conversion. The county manager shall approve the plans and specifications if they meet the requirements of this *chapter* and the FDA Food Code. The county manager's approval of any plans or specifications shall not be viewed to be a determination that said plans or specifications are free from error. The owner shall have final responsibility for the accuracy and completeness of the plans and specifications, as well as for subsequent construction and installation. No food establishment shall be constructed, remodeled or converted except in accordance with plans and specifications approved by the county manager.

(b) Whenever plans and specifications are required to be submitted and approved, the county manager shall inspect the food establishment prior to its beginning operation to determine compliance with the approved plans and specifications and with the requirements contained in this *chapter*.

(c) A fee of two-hundred dollars (\$200.00) shall be paid to the county manager upon submission of plans.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-5.2. Affect of repeal.

The repeal of *Chapter* 9 shall not affect any act, duty, penalty, requirement, right, obligation or offense established under *Chapter* 9 which was pending prior to the date of the repeal of *Chapter* 9.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)

§ 9.2-5.3. Validity of *chapter*.

The provisions of this *chapter* are severable, and if any provision of this *chapter* or any application thereof is held invalid, that invalidity shall not affect any other provision or application of this *chapter* which can be given effect without the invalid provision or application.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, Effective 7-1-06)