

ARLINGTON COUNTY CODE

Chapter 9.2

FOOD AND FOOD HANDLING CODE*

* **Editors Note:** Ord. No. 06-09, adopted June 10, 2006, amended Ch. 9.2, in its entirety. Ord. No. 10-17, adopted June 15, 2010, amended Ch. 9.2 to read as herein set out.

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ARTICLE I.

GENERAL PROVISIONS

§ 9.2-1. Title.

This chapter shall be known as and may be cited as "The Food and Food Handling Code of Arlington County".
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-2. 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)

§ 9.2-3. Incorporation of Prevailing Federal Food Code.

All chapters, appendices and annexes of the current and prevailing United States Food Code ("Food Code"), as adopted and promulgated by the Food and Drug Administration and Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services and the Food Safety and Inspection Service of the U.S. Department of Agriculture, including such chapters, appendices and annexes as may hereafter be added and/or amended from time to time, but excepting those sections of the Food Code identified in § 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 the provisions of this chapter and the Food Code, the provisions of this chapter shall prevail and control. When the provisions of the Food Code are applied through this chapter, the term "Health Authority" shall mean the County Manager.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-4. Definitions.

The following words and terms, when used in this chapter, including in the incorporated Food Code, shall have the following meanings unless the context clearly indicates otherwise:

“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.

“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 document has been determined to be a Certified Food Manager or a Certified Limited Food Manager.

“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.

“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.

“County Manager” means the County Manager of Arlington County, Virginia, or his designee.

“Food Establishment” means an operation that:

1. stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and
2. relinquishes possession of food to a consumer directly, or indirectly through a delivery services such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

“License” means the document issued by the County Manager that authorizes a person to operate a Food Establishment.

“Limited Food Establishment” means a Food Establishment that serves only foods that are not potentially hazardous, require no preparation, or utilize a preparation process that presents limited food safety risk, as determined by the County Manager.

“Limited Service Mobile Food Unit” means a Limited Food Establishment that is designed to be readily movable.

“Mobile Food Unit” means a Food Establishment that is designed to be readily movable.

“Person in Charge” means the individual present at a Food Establishment who is responsible for the Food Establishment’s operation at the time of an inspection.

“Temporary Food Establishment” means a Food Establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-5. Modifications to the Food Code.

A. The following sections of the Food Code are expressly not incorporated into this chapter:

1. § 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.

2. [Reserved.]

3. [Reserved.]

4. [Reserved.]

B. §§ 2-102.11(B) and 2-102.20 are deleted from the Food Code and are not adopted or incorporated into this chapter and shall be of no effect in Arlington County.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

ARTICLE II.

MOBILE UNITS

§ 9.2-6. 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-7. 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 unit’s 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 unit's 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-8. Single-Service Utensils.

Mobile Food Units and Limited Service Mobile Food Units shall dispense only single-service utensils for use by customers.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-9. Base of Operation.

Each Mobile Food Unit and Limited Service Mobile Food Unit shall operate from a Base of Operation that possesses a Food Establishment License issued in accordance with this chapter. The County Manager may allow a Mobile Food Unit or Limited Service Mobile Food Unit to operate from a Base of Operation located 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

ARTICLE III.

COMPLIANCE PROCEDURES

§ 9.2-10. 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 may be entitled to receive or retain a License. Licenses are not transferable.

B. An application or annual License renewal fee of forty dollars (\$40.00) shall be assessed for each licensed Food Establishment, Limited Food Establishment, Limited Service Mobile Food Unit, and Mobile Food Unit. A person who operates a Temporary Food Establishment at a local festival, fair, or other special event and who is not otherwise licensed to operate a Food Establishment, Limited Food Establishment, Limited Service Mobile Food Unit or Mobile Food Unit pursuant to this section shall be assessed an application or annual License renewal fee of forty dollars (\$40.00). Such fees shall not be applicable to Food Establishments, Limited Food Establishments, Limited Service Mobile Food Units, and Mobile Food Units operated by the Arlington County Public Schools; however, such fees shall apply to private vendors subcontracted by the County to operate Food Establishments, Limited Food Establishments, Limited Service Mobile Food Units, and Mobile Food Units. The fees specified above for Food Establishment and Limited Food Establishments shall be assessed on a calendar year and shall be due and payable in the month of December or upon initial application. The annual fee specified above for Mobile Food Units basis and Limited Service Mobile Food Units shall be due and payable in the month of June or upon initial application. Neither an application fee nor a License renewal fee shall be prorated. An additional fee of twenty-five dollars (\$25.00) shall be assessed for Food Establishment and Limited Food Establishment renewal applications received after December 31, and for Mobile Food Unit and Limited Service Mobile Food Unit renewal applications received after June 30 of the then-current calendar year.

C. Establishments that fail to file the required application for issuance or renewal of their respective Licenses will be operating without a valid License and will be subject to immediate closure in accordance with § 9.2-3.8.

(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; Ord. No. 08-20, 10-18-08, effective 11-1-08; Ord. No. 10-17, 6-15-10, effective 7-1-10; Ord. No. 10-19, 10-23-10; Ord. No 11-10, 10-15-11)

§ 9.2-11. 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)

§ 9.2-12. 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, however, that a Limited Food Establishment will not be in violation of this subsection if that Limited Food Establishment is under the immediate control of a Certified Limited Food Manager.

B. The Certified Food Manager or Certified 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 food are used at all times on the premises under his control.

C. 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-13. Issuance of Food Manager Certificate.

A. Any person desiring to obtain a Certificate required by § 9.2-12 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.

The County Manager may, by a 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 (5) 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 may be renewed for a five (5) year period upon the holder passing a food manager certification examination administered by 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 (5) 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 may be renewed for a five (5) year period upon the holder passing a limited food manager certification examination approved by the County Manager.

H. If an applicant's Certificate has been revoked or suspended during the preceding five (5) 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 deemed appropriate by the County Manager.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-14. 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 pursuant to 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 shall be 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 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 of notice to the holder of the License or Certificate. 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. If no written request for a hearing is filed within ten (10) days, the suspension shall be sustained. The County Manager may end a suspension at any time if the reason for the 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-15. 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 pursuant to 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 (10th) 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-16. 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 Public Health Division of the Arlington County Department of Human Services.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-17. Closing of Food Establishments.

The County Manager shall order the closure of any Food Establishment which is operated without the License required by § 9.2-10., or is operated without a Certified Food Manager being in control as required by § 9.2-12. 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 Arlington 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-18. 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 by the County Manager to the holder of the License or Certificate.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-19. 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 Food Establishment for which an application for a new License 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)

ARTICLE IV.

PENALTIES

§ 9.2-20. 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 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 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 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, writ of 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 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 pursuant to subsection C.

(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

ARTICLE V.

REVIEW OF PLANS AND SPECIFICATIONS

§ 9.2-21. 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 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 Food Code. The County Manager's approval of any plans or specifications shall not constitute a determination that the 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 it beginning operation in order to determine compliance with the approved plans and specifications and with the requirements contained in this chapter and the Food Code.

C. A plan and specification review fee of forty dollars (\$40.00) shall be paid by the applicant to the Treasurer of Arlington County upon an applicant's submission of plans or specifications.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10; Ord. No. 11-10, 10-15-11)

§ 9.2-22. Effect of Repeal.

The repeal of Chapter 9.2 shall not affect any act, duty, penalty, requirement, right, obligation or offense established pursuant to Chapter 9.2 which was pending prior to the date of the repeal of Chapter 9.2.
(Ord. No. 02-16, 6-22-02; Ord. No. 06-09, 6-10-06, effective 7-1-06; Ord. No. 10-17, 6-15-10, effective 7-1-10)

§ 9.2-23. Validity of Chapter.

The provisions of this chapter are severable, and if any provision of this chapter or any application thereof is held invalid by a court of competent jurisdiction, 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; Ord. No. 10-17, 6-15-10, effective 7-1-10)