

ORDINANCE NO. 3949

AN ORDINANCE to repeal the current Chapter 2 (FOOD AND FOOD HANDLING ESTABLISHMENTS) of, and to add a new Chapter 2 (FOOD AND FOOD ESTABLISHMENTS) to, Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of The Code of the City of Alexandria, Virginia, 1981, as amended.

WHEREAS, the health and safety of the public requires the regulation of food and food establishments located within the City of Alexandria; and

WHEREAS, existing provisions of the city code that govern the cleanliness and sanitation of food and food establishments are based upon the 1976 Model Food Code of the U.S. Food and Drug Administration ("FDA") and do not adequately address problems with emerging pathogens, such as E. coli, and new technologies in the food packaging and food service industries; and

WHEREAS, the FDA has recently promulgated its 1997 Model Food Code, which incorporates nationally recognized health and sanitation standards designed to provide the greatest possible protection from and prevention of infectious and non-infectious food-borne diseases; and

WHEREAS, the regulatory scheme set out in the 1997 FDA Model Food Code is presently employed in numerous food industries, as well as the meat and poultry inspection systems of the federal government, and has been endorsed by the National Conference for Food Protection, the National Restaurant Association, the Restaurant Association of Metropolitan Washington, the Alexandria Chamber of Commerce, and the Human Services Committee and the Chief Administrative Officers Committee of the Northern Virginia Planning District Commission; and

WHEREAS, neighboring jurisdictions in Northern Virginia are planning to adopt the 1997 FDA Model Food Code, and the adoption and application in the City of Alexandria of this food code will help to establish uniform standards for the regulation of food and food establishments in the region; now, therefore

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 2 of Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, repealed.

Section 2. That Title 11 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding a new Chapter 2 to read as follows:

CHAPTER 2

Food and Food Establishments

ARTICLE A

General Provisions

Sec. 11-2-1 Title.

This chapter shall be known and may be cited as "The Food and Food Handling Code" of the City of Alexandria.

Sec. 11-2-2 Purpose.

This chapter shall be liberally construed and applied by the director to promote its underlying purpose of safeguarding public health and ensuring that food is safe, unadulterated and properly presented when offered to the consumer.

Sec. 11-2-3 Adoption of the United States Food and Drug Administration/Public Health Service 1997 Food Code.

(a) Chapters 1 through 8, inclusive, and all appendices and annexes of the United States Food and Drug Administration/Public Health Service 1997 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 11-2-5, 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 director or his designee.

(b) The director is hereby authorized to promulgate regulations consistent with this chapter that are designed to assist in the administration and enforcement of this chapter. In promulgating regulations, the director shall consider accepted standards of health, hygiene, sanitation, safety and physical plant management. Any regulations prepared by the director shall not become effective until they have been presented to and approved by city council.

(c) A certified copy of the FDA Food Code shall be maintained by the director at the main administrative office of the health department and shall be available for review by members of the public.

Sec. 11-2-4 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:

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

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

(c) "Certified food manager" means a person who has passed an examination approved by the director, or an examination in another jurisdiction that is accepted by the director, and has received a

certified food manager's certificate issued or recognized by the director.

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

(e) "Director" means the director of health or his designee.

(f) "Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption, and provides such food directly to a member of the public for consumption; provided, that "food establishment" shall not include the following:

(1) an establishment that offers only prepackaged foods that are not potentially hazardous;

(2) a produce stand that offers only whole, uncut fresh fruits and vegetables;

(3) a kitchen in a private home that prepares food that is not potentially hazardous for sale or consumption at a non-profit or charitable function if the consumer is informed, by means of a clearly visible sign at the point of sale or consumption, that the food was prepared in a kitchen that is not subject to regulation or inspection by the director;

(4) a kitchen in a private home that prepares and offers food to guests, for an exchange of consideration, if the home is owner-occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures or signs posted in the registration or dining area that the food is prepared in a kitchen that is not regulated and inspected by the director; or

(5) private homes or vehicles where food is prepared or served for noncommercial consumption by the owners, occupants or their guests.

(g) "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.

(h) "Limited service mobile food unit" means a limited food establishment that is designed to be readily moveable.

(I) "Mobile food unit" means a food establishment that is designed to be readily moveable.

(j) "Permit" means the license issued by the director that authorizes a person to operate a food establishment.

(k) "Person in charge" means the individual present in a food establishment who is responsible for the food service operation at the time of inspection authorized by this chapter. If no single

individual is responsible for the food service operation, then any employee present shall be deemed the "person in charge."

Sec. 11-2-5 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) Section 3-301.11(B) is amended to read as follows:

Except when washing fruits and vegetables as specified under ' 3-302.15 or when otherwise APPROVED, FOOD EMPLOYEES should not contact exposed, READY-TO-EAT FOOD with their bare hands and should use suitable UTENSILS such as deli tissue, spatulas, tongs, SINGLE-USE gloves or dispensing EQUIPMENT.

(2) The opening paragraph of section 3-401.11(A) is amended to read as follows:

Except as specified under &(B) and &(C) of this section, or as otherwise ordered by the immediate consumer, raw animal FOODS such as eggs, FISH, MEAT, POULTRY, and FOODS containing these raw animal FOODS, shall be cooked to heat all parts of the FOOD to a temperature and for a time that complies with one of the following methods based on the FOOD that is being cooked.

(3) Section 3-401.11(C)(1) is amended to read as follows:

The FOOD is a raw animal FOOD such as raw egg; raw fish; raw-marinated FISH; raw MOLLUSCAN SHELLFISH; steak tartare; or a partially cooked FOOD such as lightly cooked FISH, rare MEAT, and soft cooked eggs that is served or offered for sale in a READY-TO-EAT form, and (I) the consumer orders the FOOD to be cooked in a manner other than as specified under &(A) and &(B) of this section, or (ii) the FOOD is prepared by alternative time/temperature combinations that provide equivalent heat lethality and result in safe FOOD.

(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 3-603.11, 8-201.11, 8-201.12, 8-303.10 and 8-304.10 are deleted of the FDA Food Code and are not adopted or incorporated into this chapter and shall be of no effect in the city.

## Article B

### Mobile Units

#### Sec. 11-2-11 General.

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

#### Sec. 11-2-12 Requirements for types of mobile food units.

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

(b) A limited service mobile food unit shall be equipped with a hand sink and a three-compartment sink. However, the director 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 director, 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 director. The director may waive the requirement for a three-compartment sink if the limited service mobile food unit has access to a three-compartment sink at the base of operation or only prepackaged foods are to be dispensed.

#### Sec. 11-2-13 Single service utensils.

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

#### Sec. 11-2-14 Base of operation.

Mobile food units and limited service mobile food units shall operate from a base of operation that possesses a food establishment permit issued in accordance with this chapter. However, the director 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 director may allow a mobile food unit or limited service mobile food unit to operate from a base of operation outside the City of Alexandria if the base of operation meets basic sanitation requirements and is permitted by another jurisdiction.

## Article C

### Compliance Procedures

#### Sec. 11-2-21 Permits for food establishments.

No person shall operate a food establishment who does not have a valid permit issued to him by the director. Only a person who complies with the requirements of this chapter shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be posted in every food establishment in a conspicuous place.

Sec. 11-2-22 Exemption.

The director 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 director may deem advisable upon determining that the operation of such service, service areas, events or affairs will not adversely affect the public health.

Sec. 11-2-23 Permits for vending machines.

(a) No person shall operate a vending machine, other than a controlled-location vending machine, without a valid permit issued by the director. Persons who do not comply with the requirements of this chapter shall not be entitled to receive or retain such a permit. Permits are not transferable.

(b) The operator's company name and service telephone number shall be displayed on each vending machine or conspicuously adjacent to the vending machine bank.

(c) All operators of vending machines shall:

(1) comply with the requirements of this chapter;

(2) maintain at the operator's headquarters, or at some other designated location within the city, a list of all vending machines operated by such operator within the city and the complete address of each machine location and of all commissaries or other establishments from which his machines are serviced, shall make this information available to the director upon request and shall keep it current;

(3) notify the director of each new vending machine location at which potentially hazardous food or hot or cold cup beverage vending machines have been placed in operation; and

(4) notify the director of any change in operations involving new types of vending machines or conversions of existing machines to dispense products other than those for which the machines were built.

Sec. 11-2-24 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.

Sec. 11-2-25 Issuance of food manager certificate.

(a) Any person desiring to obtain a certificate required by section 11-2-24 shall apply in writing on forms provided or accepted by the director. Such application shall include the name and address of the applicant, the location and type of the proposed food establishment and the signature of the applicant.

(b) A food manager certificate shall be issued only to a person who has passed a food manager certification examination approved by the director. The examination shall be conducted by the director or the director's designee. The designee may be a private vendor approved by the director as qualified to conduct the food manager certification examination. The director may also authorize the private vendor to issue a food manager certificate to any person who successfully completes the examination, and to process applications for renewal of the certificate.

(c) A food manager certificate shall be issued in the name of an individual applicant only, shall not be assignable or transferable, and shall be valid only for a period of three years from the date of issuance. Prior to the issuance of a food manager certificate, a fee of \$20, or another amount established by city council, shall be paid to the director of finance. In the event that the certificate is issued by a private vendor approved by the director, the fee shall be paid to such private vendor.

(d) A limited food manager certificate shall be issued only to a person who has successfully passed a limited food manager certification examination, given by the director or the director's designee, which tests the applicant's knowledge of food-handling techniques necessary for the safe operation of a limited food establishment. The designee may be a private vendor approved by the director as qualified to conduct the limited food manager certification examination. The director may also authorize the private vendor to issue a limited food manager certificate to any person who successfully completes the examination. A limited food manager certificate shall be issued in the name of an individual applicant only, shall not be assignable or transferable, and shall be valid only for a period of three years from the date of issuance. Prior to the issuance of a limited food service manager certificate, a fee of \$20, or other amount established by city council, shall be paid to the director of finance. If the certificate is issued by a private vendor approved by the director, the fee shall be paid to such private vendor.

(e) A food manager or a limited food manager shall be entitled to the renewal of his certificate for a subsequent three year period upon payment of a renewal fee of \$20, or other amount established by city council, provided that:

(1) an application for renewal is filed with the director, or with a private vendor authorized by the director to process renewal applications, not more than 30 days following the expiration date of the certificate; and

(2) if the applicant's certificate has been revoked or suspended during the preceding three years, the applicant shall retake and pass either a food manager certification examination approved by the director or a limited food manager certification examination given by the director or the director's designee, whichever is appropriate.

Sec. 11-2-26 Suspension of permit or certificate in emergencies.

(a) If he deems an emergency to exist, the director may without warning, notice or hearing, order the suspension of any permit or certificate issued under this chapter if the holder of the permit 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 permit 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 director, the suspension shall be terminated.

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

(c) The director, in lieu of suspending a permit, may suspend the applicability of the permit to a specific vending machine or machines, commissary or specific products.

Sec. 11-2-27 Revocation of permit or certificate.

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

(b) Prior to ordering the revocation, the director shall notify, in writing, the holder of the permit or certificate or the person in charge of the specific reasons for which the permit or certificate is to be revoked, and that the permit 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 director by the holder of the permit or certificate within such 10-day period. If no request for hearing is filed within the 10-day period, the permit or certificate shall be revoked by order of the director and the revocation shall be final.

Sec. 11-2-28 Service of notices.

A notice required by this chapter is properly served when it is delivered to the holder of the permit 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 permit or certificate. A copy of the notice shall be filed with the records of the health department.

Sec. 11-2-29 Closing of food establishments.

The director shall order the closure of (1) any food establishment which is operated without the permit required by section 11-2-21, or is operated without a certified food manager being in control as required by section 11-2-24, or (2) any vending machine operated without the permit required by section 11-2-23. 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 revoked. The sheriff of the city shall enforce the closure order until it is rescinded by the director in writing. Upon receipt of satisfactory proof of compliance with the written requirements set forth in the closure order, the director shall immediately issue a written rescission of the order.

Sec. 11-2-30 Hearings.

The hearings provided for in this chapter shall be conducted by the director at a time and place designated by him. Any oral testimony given at a hearing shall be summarily reported or recorded. The director 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 permit or certificate by the director.

Sec. 11-2-31 Application after revocation.

Whenever a revocation of a permit or certificate has become final, the holder of the revoked permit or certificate may submit a written application for a new permit or certificate.

Article D

Civil Penalty

Sec. 11-2-41 Penalties.

(a) It shall be unlawful for a person to fail to comply with any provision of this chapter, including a provision of the FDA Food Code, that applies to the person. It also shall be unlawful for any food establishment, limited food establishment, mobile food unit or limited service mobile food unit to fail to comply with any provision of this chapter that applies to it. A person who fails to comply with any provision applicable to him shall be in violation of this chapter. The owner of any such food establishment or mobile food unit which fails to comply with any applicable provision shall be in violation of this chapter. For each violation, the person or owner shall be liable for a civil penalty. Each day that a violation exists or persists shall constitute a separate violation of this chapter.

(b) The civil penalty for any violation of this chapter shall be \$50; provided, that the penalty for the second and any subsequent violation of the same regulation, in any 12-month period at the same site by the same person or food establishment or mobile food unit, shall be \$100.

Sec. 11-2-42 Procedures.

(a) Upon determining that one or more violations of this chapter have occurred, the director or the director's designee shall cause a written notice of the violation or violations to be delivered to the person who is in violation of this chapter and, in the case of an owner of a food establishment or mobile food unit who is in violation of this chapter, to the owner or to the person in charge of the food establishment or mobile food unit. The notice shall, with respect to each violation, contain the following information:

(1) a description of the violation, with a citation to the city code or FDA Food Code section that has been violated;

(2) a statement of the amount of the civil penalty to be assessed; and

(3) a statement that the person or owner in violation may elect either (I) to make an appearance in person, or in writing by mail, to the treasurer of the city by a specific date, admit liability for or plead no contest to the violation, abate the violation, and pay the civil penalty established for the violation, or (ii) to contest the violation by filing with the director, within 10 days of receipt of the notice, a written notice of the election to contest the violation, in which case the person or owner shall be entitled to an administrative hearing before the director.

(b) If, after an administrative hearing, the director finds that a violation of this chapter has occurred, the person or owner found to be in violation shall, within 10 days of the finding, pay the civil penalty originally assessed.

(c) If a person or owner charged with a violation of this chapter does not elect to admit liability or plead no contest and to pay the assessed penalty, or, following an administrative hearing which results in a finding that a violation has occurred, does not pay the assessed penalty, the violation shall be tried in the Alexandria General District Court upon a warrant in debt or a motion for judgment, with the same right of appeal as provided in civil actions at law.

(d) A plea of no contest to, and a finding or admission of liability for, a violation of this chapter shall not be deemed a criminal conviction.

(e) The remedies provided in this section are cumulative and not exclusive. The designation of a violation of this chapter as a civil violation shall not be construed as prohibiting city officials from initiating appropriate administrative or civil procedures to prevent, correct, restrain or abate violations of the chapter.

## Article E

### Review of Plans and Specifications

Sec. 11-2-51 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 director for his review prior to commencement of such construction, remodeling or conversion. The director 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 director may require additional plans or information, as needed, depending on the nature and extent of the proposed construction, remodeling or conversion. The director shall approve the plans and specifications if they meet the requirements of this chapter and the FDA Food Code. The director'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 director.

(b) Whenever plans and specifications are required to be submitted and approved, the director 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 \$135, or another amount established by city council, shall be paid to the director upon submission of plans.

Section 3. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY  
Mayor

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