


City of Alexandria, Virginia

MEMORANDUM

DATE: APRIL 3, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: CONSIDERATION OF AN ORDINANCE TO AMEND TITLE 11, CHAPTER 2 OF THE CITY CODE TO ADOPT CHANGES TO THE FDA FOOD CODE, TO REQUIRE MOBILE FOOD UNITS TO BE CLEARLY IDENTIFIED, AND TO AMEND THE REQUIREMENTS FOR ISSUANCE OF A FOOD MANAGER CERTIFICATE

ISSUE: City Council consideration of an ordinance to amend Title 11, Chapter 2, of the Code of the City of Alexandria to adopt the 2005 FDA Food Code, to require mobile food units to be clearly identified, and to amend the requirements for issuance of a food manager's certificate.

RECOMMENDATION: That City Council pass this proposed ordinance (Attachment 1) on first reading and schedule it for public hearing, second reading and final passage on Saturday, April 14, 2007.

DISCUSSION: The United States Food and Drug Administration updates the Food Code every few years to reflect the most current scientific knowledge and new technologies. This revision is done with the input of the Conference for Food Protection which represents industry, academia and the regulatory community. Alexandria is currently operating under the 1999 Food Code. This proposed ordinance would adopt the 2005 Food Code, the most recent version.

The principal changes in the 2005 Food Code are in the areas of employee health policy requirements, the addition of norovirus as a foodborne illness of major concern, the lowering of the minimum hot holding temperature from 140°F to 135°F, the addition of new language on major food allergen labeling, the revision of requirements for reduced oxygen packaging, and the establishment of nationally recognized food manager certification exams.

Several local jurisdictions including Arlington and Fairfax Counties have already adopted the 2005 Food Code. The Restaurant Association of Metropolitan Washington supports the adoption of the 2005 Food Code.

The first nine proposed modifications to the Food Code in Section 11-2-5 reflect that the establishments in Alexandria should now all be in compliance with the requirement to maintain

refrigeration equipment at 41°F or below. The five year phase-in of this requirement in Alexandria began in 1997 and ended in 1992.

The tenth modification of the Food Code in Section 11-2-5 reflects the Virginia Uniform Statewide Building Code and requires that public toilets be provided for the public at all food establishments where there is on-premises seating. This modification also clarifies that access to these areas cannot be through kitchen areas and that toilet rooms must be separate from areas used to store or prepare food.

The eleventh modification of the Food Code in Section 11-2-5 allows the Health Department to post a web link to the FDA Food Code rather than requiring that each new establishment be given a hard copy of the Food Code. This modification will result in significant cost savings since copies of the Food Code currently retail at \$59.00 each.

The twelfth modification of the Food Code in Section 11-2-5 merely corrects the reference to a previous modification of the Food Code that allows other means of audio-visual documentation other than just photography. The reference should have been to a paragraph rather than a section of the Food Code.

The proposed change to Section 11-2-11 requires that mobile units conspicuously post clear identification on the sides and back of their unit and conspicuously display their permit whenever the unit is not in motion. This new requirement reflects the growing problem with unlicensed mobile food vendors operating in the city and provides police and other city employees with a clear way of identifying who is permitted and who is not.

The proposed change to 11-2-21 codifies the current practice of issuing permits on a calendar year basis and not prorating the fees. It also clears up the confusion caused by the absence of a reference to mandated fees in the code. No new fees are proposed.

The proposed change to 11-2-25 reflects that food manager certificates are now being issued for five years instead of three years. It also reflects that reexamination will now be required for renewal of the certificate. This change is to be consistent with Arlington and Fairfax Counties with whom we share a common vendor who issues food manager certificates for Northern Virginia. Reexamination is important since the Food Code is being regularly updated. The proposed change is supported by the Restaurant Association of Metropolitan Washington.

The issue regarding regulation of facilities feeding the homeless that was raised in Fairfax County has been resolved by action of the Virginia General Assembly. The legislation was signed into law on March 15 by Governor Kaine. These facilities are now exempt from regulation in all Virginia localities. As this change is in the Code of Virginia, rather than the Virginia Restaurant Regulations, there is no need to place this change in our local ordinance. The Alexandria Health Department has scheduled meetings with Christ House and the Carpenter's Shelter to advise them that they are exempt from regulation.

FISCAL IMPACT: None. No new fees are proposed. The implementation of these changes will not require additional staff or equipment.

ATTACHMENTS:

Attachment 1. Ordinance

Attachment 2. Letter of Support from Restaurant Association of Metropolitan Washington

STAFF:

Charles Konigsberg, Jr., M.D., M.P.H., Health Director

Bob Custard, R.E.H.S., Chief, Environmental Health Division

Mary Elliott O'Donnell, Assistant City Attorney

Introduction and first reading:	04/10/07
Public hearing:	04/14/07
Second reading and enactment:	04/14/07

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 11-2-3 (ADOPTION OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION/PUBLIC HEALTH SERVICE 1999 FOOD CODE) and Section 11-2-5 (MODIFICATIONS TO FDA FOOD CODE) of Article A (GENERAL PROVISIONS), Section 11-2-11 (GENERAL) of Article B (MOBILE UNITS), and Section 11-2-21 (PERMITS FOR FOOD ESTABLISHMENTS) and Section 11-2-25 (ISSUANCE OF FOOD MANAGER CERTIFICATE) of Article C (COMPLIANCE PROCEDURES) of Chapter 2 (FOOD AND FOOD ESTABLISHMENTS), Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY REGULATIONS) of The Code of the City of Alexandria, Virginia, 1981, as amended

Summary

The proposed ordinance amends the city's food safety ordinance to adopt the 2005 FDA Food Code, to require mobile food units to be clearly identified, and to amend the requirements for issuance of a food manager's certificate.

Sponsor

Alexandria Health Department
Environmental Health Division

Staff

Charles Konigsberg, Jr., M.D., M.P.H., Health Director
Bob Custard, R.E.H.S., Chief, Environmental Health Division
Mary Elliott O'Donnell, Assistant City Attorney

Authority

Alexandria City Charter, Section 2.04(h)

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

Letter of support from Restaurant Association of Metropolitan Washington

ORDINANCE NO. _____

1
2
3 AN ORDINANCE to amend and reordain Section 11-2-3 (ADOPTION OF THE UNITED
4 STATES FOOD AND DRUG ADMINISTRATION/PUBLIC HEALTH SERVICE 1999
5 FOOD CODE) and Section 11-2-5 (MODIFICATIONS TO FDA FOOD CODE) of Article
6 A (GENERAL PROVISIONS), Section 11-2-11 (GENERAL) of Article B (MOBILE
7 UNITS), and Section 11-2-21 (PERMITS FOR FOOD ESTABLISHMENTS) and Section
8 11-2-25 (ISSUANCE OF FOOD MANAGER CERTIFICATE) of Article C
9 (COMPLIANCE PROCEDURES) of Chapter 2 (FOOD AND FOOD
10 ESTABLISHMENTS), Title 11 (HEALTH, ENVIRONMENTAL AND SANITARY
11 REGULATIONS) of The Code of the City of Alexandria, Virginia, 1981, as amended.
12

13 WHEREAS, the health and safety of the public requires the regulation of food and
14 food establishments located within the City of Alexandria; and
15

16 WHEREAS, existing provisions of the city code that govern the cleanliness and
17 sanitation of food and food establishments are based upon the 1999 Model Food Code of the
18 United States Food and Drug Administration ("FDA"); and
19

20 WHEREAS, the FDA intends that its Model Food Code be updated and revised
21 every four years, in order to incorporate the most current scientific knowledge and new
22 technologies in the food packaging and food service industries; and
23

24 WHEREAS, the FDA has recently promulgated its 2005 Model Food Code, which
25 incorporates nationally recognized health and sanitation standards designed to provide the
26 greatest possible protection from and prevention of infectious and non-infectious food-borne
27 diseases; and
28

29 WHEREAS, the regulatory scheme set out in the 2005 FDA Model Food Code is
30 presently employed in numerous food industries, as well as the meat and poultry inspection
31 systems of the federal government, and has been endorsed by the National Conference for Food
32 Protection, the National Restaurant Association, and the Restaurant Association of Metropolitan
33 Washington; and
34

35 WHEREAS, neighboring jurisdictions in Northern Virginia have adopted the 2005
36 FDA Model Food Code, and the adoption of this code by the City of Alexandria will help to
37 establish uniform standards for the regulation of food and food establishments in the region;
38 now, therefore
39

40 THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:
41

42 **Section 1.** That Section 11-2-3 of The Code of the City of Alexandria, Virginia,
43 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:
44

45 **Sec. 11-2-3 Adoption of the United States Food and Drug Administration/Public Health**
46 **Service ~~1999~~2005 Food Code.**

1
2 (a) Chapters 1 through 8, inclusive, and all appendices and annexes of the United States
3 Food and Drug Administration/Public Health Service ~~1999~~2005 Food Code ("FDA Food Code,
4 as adopted and promulgated by the United States Food and Drug Administration/Public Health
5 Service ("FDA/USPHS"), including such chapters, appendices and annexes as may hereafter be
6 amended from time to time, but excepting the portions of the FDA Food Code addressed in
7 section 11-2-5(a) and ~~(c)~~(b), are hereby adopted and incorporated in their entirety into this
8 chapter as if fully set forth herein. In the event of conflict or inconsistency between this chapter
9 and the FDA Food Code, the provisions of this chapter shall control. When used in the FDA
10 Food Code, the term "Health Authority" shall mean the director or his designee.
11

12 (b) The director is hereby authorized to promulgate regulations consistent with this chapter
13 that are designed to assist in the administration and enforcement of this chapter. In promulgating
14 regulations, the director shall consider accepted standards of health, hygiene, sanitation, safety
15 and physical plant management. Any regulations prepared by the director shall not become
16 effective until they have been presented to and approved by city council.
17

18 (c) A certified copy of the FDA Food Code shall be maintained by the director at the main
19 administrative Environmental Health Division office of the health department and shall be
20 available for review by members of the public.
21

22 **Section 2.** That Section 11-2-5 of The Code of the City Of Alexandria, Virginia,
23 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:
24

25 **Sec. 11-2-5 Modifications to FDA Food Code.**
26

27 (a) The portions of the FDA Food Code addressed in this subsection are not adopted by
28 incorporation into this chapter. Rather, they are modified in the manner set out below, and their
29 modified versions shall apply in the city:
30

31 ~~(1) Section 3-301.11(B) of the FDA Food Code is modified to read as follows:-~~
32

33 ~~Except when washing fruits and vegetables as specified under § 3-302.15 or when~~
34 ~~otherwise APPROVED, FOOD EMPLOYEES should not contact exposed, READY-TO-EAT~~
35 ~~FOOD with their bare hands and should use suitable UTENSILS such as deli tissue, spatulas,~~
36 ~~tongs, SINGLE-USE gloves or dispensing EQUIPMENT.~~
37

38 ~~(2) Section 3-501.16(c)(2) of the FDA Food Code is modified to read, "Within 3 years of~~
39 ~~the REGULATORY AUTHORITY'S adoption of this Code, the EQUIPMENT is upgraded or~~
40 ~~replaced to maintain FOOD at a temperature of 5°C (41°F) or less."~~
41

42 (1) Paragraph 3-501.12 (A) of the FDA Food Code is modified to read as follows:
43

44 Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less.
45

46 (2) Paragraph 3-501.13(A) of the FDA Food Code is modified to read as follows:
47

48 Under refrigeration that maintains the FOOD temperature at 5°C (41°F) or less.
49

50 (3) Subparagraph 3-501.13(B)(3) of the FDA Food Code is modified to read as follows:
51

1 For a period of time that does not allow thawed portions of READY-TO-EAT FOOD to
2 rise above 5°C (41°F).

3
4 (4) Subparagraph 3-501.13(B)(4) of the FDA Food Code is modified to read as follows:

5
6 For a period of time that does not allow thawed portions of a raw animal FOOD requiring
7 cooking as specified under ¶ 3-401.11 (A) or (B) to be above 5°C (41°F) for more than 4 hours
8 including:

9
10 (a) The time the food is exposed to the running water and the time needed for
11 preparation for cooking, or

12
13 (b) The time it takes under refrigeration to lower the FOOD temperature to 5°C (41°F) as
14 specified under Subparagraph 3-501.16(A)(2).

15
16 (5) Subparagraph 3-501.14(A)(2) of the FDA Food Code is modified to read as follows:

17
18 Within a total of 6 hours from 57° (135°F) to 5°C (41°F) or less.

19
20 (6) Paragraph 3-501.14(B) of the FDA Food Code is modified to read as follows:

21
22 POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR SAFETY
23 FOOD) shall be cooled within 4 hours to 5°C (41°F) or less if prepared from ingredients at
24 ambient temperature, such as reconstituted FOODS and canned tuna.

25
26 (7) Paragraph 3-501.14(C) of the FDA Food Code is modified to read as follows:

27
28 Except as specified under ¶(D) of this regulation, a POTENTIALLY HAZARDOUS FOOD
29 (TIME/TEMPERATURE CONTROL FOR SAFETY FOOD) received in compliance with
30 LAWS allowing a temperature above 5°C (41°F) during shipment from the supplier as specified
31 in ¶3-202.11(B), shall be cooled within 4 hours to 5°C (41°F) or less.

32
33 (8) Subparagraph 3-501.16(A)(2) of the FDA Food Code is modified to read as follows:

34
35 At a temperature of 5°C (41°F) or less.

36
37 (9) Subparagraph 3-501.17(A)(1) of the FDA Food Code is modified to read as follows:

38
39 5°C (41°F) or less for a maximum of 7 days.

40
41 (10) Section 6-402.11 of the FDA Food Code is modified to read as follows:

42
43 Public toilet rooms shall be provided for CONSUMERS whenever seating for CONSUMERS is
44 provided on the premises. CONSUMERS shall not be permitted to gain access to toilet rooms by
45 passing through a kitchen, food preparation, food storage, or utensil washing area. Toilet rooms
46 shall be conveniently located and accessible to EMPLOYEES during all hours of operation.
47 Toilet rooms must be entirely separate and apart from any rooms or areas used for utensil
48 washing or for the manufacture, storage, and handling of food products. Public and employee
49 toilet facilities shall be installed according to and in the number required by the Virginia
50 Uniform Statewide Building Code (VUSBC).

1 (11) Paragraph 8-304.10 (A) of the FDA Food Code is modified to read as follows:

2
3 A copy of the version of FDA Food Code adopted in Section 11-2-3 above shall be maintained
4 for public inspection in the office of the Alexandria Health Department's Environmental Health
5 Division. A link to the full text of the version of FDA Food Code adopted in Section 11-2-3
6 above shall be placed on the Alexandria Health Department's website.

7
8 ~~(3)~~ Section(12) Paragraph 8-802.10(A) of Annex 1 of the FDA Food Code is modified to read as
9 follows:

10
11 If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other circumstances
12 exist that would justify an inspection order under LAW, to make an inspection that includes the
13 recording of information by any means of audio-visual recording including (but not limited
14 to) photography, tape-recording and videotaping.

15
16 ~~(b) The provisions contained in section 3-603.11 of the FDA Food Code shall become~~
17 ~~effective on May 13, 2000.~~

18
19 ~~(c)(b) Subparagraph 3-501.17(A)(2) and Sections 6-202.18, 8-201.11, 8-201.12, and~~
20 ~~8-303.10 and 8-304.10 of the FDA Food Code are not adopted or incorporated into this chapter~~
21 ~~and shall be of no effect in the city.~~

22
23 **Section 3.** That Section 11-2-11 of The Code of the City Of Alexandria, Virginia,
24 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

25
26 **Sec. 11-2-11 General.**

27
28 Mobile food units and limited service mobile food units shall comply with the requirements of
29 this chapter. All mobile food units are to be clearly identified with the unit trade name and
30 contact phone number conspicuously displayed on both sides and the back of the unit. The
31 permit issued under this chapter shall be posted in a conspicuous place so as to be visible to the
32 public whenever the unit is not in motion.

33
34 **Section 4.** That Section 11-2-21 of The Code of the City Of Alexandria, Virginia,
35 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

36
37 **Sec. 11-2-21 Permits for food establishments.**

38
39 (a) No person shall operate a food establishment who does not have unless that person
40 possesses a valid permit issued to him by the director. Only a person who complies with the
41 requirements of this chapter shall be entitled to receive or retain such a permit. Permits are not
42 transferable. A valid permit shall be posted in every food establishment in a conspicuous place.
43 Food establishment permits are issued for a calendar year and expire on December 31 regardless
44 of the month of issue.

45
46 (b) An initial application fee and an annual renewal application fee shall be assessed for
47 each permitted food establishment including temporary food stands operating less than 14 days.
48 These fees shall be in the amounts established by the General Assembly of the Commonwealth
49 of Virginia and/or the Alexandria City Council. Such fees shall not be applicable to food
50 establishments operated by the Alexandria City Public Schools. The application fees shall be

1 based on a calendar year and shall be due and payable on or before December 31 or upon initial
2 application. The fees shall not be prorated.

3
4 (c) Establishments failing to file the required application for renewal of the permit will
5 be operating without a valid permit and will be subject to immediate closure in accordance with
6 Section 11-2-29 of this chapter.

7
8 **Section 5.** That Section 11-2-25 of The Code of the City Of Alexandria, Virginia,
9 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

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

11
12
13 (a) Any person desiring to obtain a certificate required by section 11-2-24 shall apply in
14 writing on forms provided or accepted by the director. Such application shall include the name
15 and address of the applicant, the location and type of the proposed food establishment and the
16 signature of the applicant. The director may designate a private vendor to issue, on the director's
17 behalf, a food manager certificate to any person who successfully complies with the provisions
18 of this Chapter.

19
20 (b) A food manager certificate shall be issued only to a person who has passed a food
21 manager certification examination approved by the director from a food protection manager
22 certification program that is evaluated and listed by a Conference for Food Protection recognized
23 accrediting agency. The examination shall be conducted by the director or the director's
24 designee. The designee may be a private vendor or vendors approved by the director as qualified
25 to conduct the food manager certification examination. The director may also authorize the
26 private vendor to issue a food manager certificate to any person who successfully completes the
27 examination, and to process applications for renewal of the certificate.

28
29 (c) A limited food manager certificate shall be issued in the name of an individual
30 applicant only, shall not be assignable or transferable, and shall be valid only for a period of
31 three years from the date of issuance. Prior to the issuance of a food manager certificate, a fee of
32 \$20, or another amount established by city council, shall be paid to the director of finance. In
33 the event that the certificate is issued by a private vendor approved by the director, the fee shall
34 be paid to such private vendor only to a person who has passed a limited food manager
35 certification examination approved by the director.

36
37 (d) A limited food manager certificate shall be issued only to a person who has
38 successfully passed a limited food manager certification examination, given by the director or
39 the director's designee, which tests the applicant's knowledge of food-handling techniques
40 necessary for the safe operation of a limited food establishment. The designee may be a private
41 vendor approved by the director as qualified to conduct the limited food manager certification
42 examination. The director may also authorize the private vendor to issue a limited food manager
43 certificate to any person who successfully completes the examination. A limited food manager
44 certificate shall be issued in the name of an individual applicant only, shall not be assignable or
45 transferable, and shall be valid only for a period of three years from the date of issuance. Prior
46 to the issuance of a limited food service manager certificate, a fee of \$20, or other amount
47 established by city council, shall be paid to the director of finance. If the certificate is issued by
48 a private vendor approved by the director, the fee shall be paid to such private vendor. A food
49 manager certificate, or a limited food manager certificate, shall be issued in the name of an
50 individual applicant only, shall not be assignable or transferable, and shall be valid only for a

1 period of five years from the date of notification of the successful completion of the approved
2 exam.

3
4 ~~(c) A food manager or a limited food manager shall be entitled to the renewal of his~~
5 ~~certificate for a subsequent three year period upon payment of a renewal fee of \$20, or other~~
6 ~~amount established by city council, provided that:~~

7
8 ~~(1) an application for renewal is filed with the director, or with a private vendor~~
9 ~~authorized by the director to process renewal applications, not more than 30 days following the~~
10 ~~expiration date of the certificate; and~~

11
12 ~~(2) if the applicant's certificate has been revoked or suspended during the preceding~~
13 ~~three years, the applicant shall retake and pass either a food manager certification examination~~
14 ~~approved by the director or a limited food manager certification examination given by the~~
15 ~~director or the director's designee, whichever is appropriate.~~

16
17 (e) A food manager certificate shall remain the property of the issuing authority.

18
19 (f) A food manager certificate shall be renewed for a five (5) year period upon passing a
20 food manager certification examination from a food protection manager certification program
21 that is evaluated and listed by a Conference for Food Protection recognized accrediting agency.

22
23 (g) A limited food manager certificate shall be renewed for a five (5) year period upon
24 passing a limited food manager certification examination approved by the director.

25
26 (h) If the applicant's certificate has been revoked or suspended during the preceding five
27 years, the applicant shall retake and pass either a food manager certification examination from a
28 food protection manager certification program that is evaluated and listed by a Conference for
29 Food Protection recognized accrediting agency or a limited food manager certification
30 examination approved by the director, whichever is appropriate. The director may, at his
31 discretion, designate a specific vendor to administer the examination.

32
33 **Section 6.** That this ordinance shall become effective upon the date and at the time
34 of its final passage.

35
36 WILLIAM D. EUILLE
37 Mayor

38
39 Introduction: 04/10/07
40 First Reading: 04/10/07
41 Publication:
42 Public Hearing:
43 Second Hearing:
44 Final Passage:

45
46 N.B. Underlining is not part of the ordinance but denotes material that is new or amended.
47 Strike-outs or dashes are not part of the ordinance but denote material that is being deleted.



RAMW

Restaurant Association Metropolitan Washington

1200 17th Street, NW | Suite #110 | Washington, DC 20036 | Tel—202.331.5990 | Fax—202.659.8701 | www.ramw.org

November 16, 2006

Bob Custard, R.E.H.S.
Environmental Health Manager
Alexandria Health Department
4480 King Street
Alexandria, VA 22302

Dear Mr. Custard:

The Restaurant Association Metropolitan Washington supports the adoption of the 2005 Food Code in Alexandria. Adoption by January 1 will allow a smooth transition from a three-year to a five- year Food Managers Certification program with all jurisdictions implementing at the same time. As recommended by RAMW, recertification will require reexamination.

The United States Food and Drug Administration updates the Food Code every few years to reflect the most current scientific knowledge and new technologies. This revision is done with the input of the Conference for Food Protection which represents industry, academia and the regulatory community. Alexandria is currently operating under the 1999 Food Code. This proposed ordinance would adopt the 2005 Food Code, the most recent version.

Several local jurisdictions including Arlington and Fairfax Counties have already adopted the 2005 Food Code and therefore the adoption by Alexandria will create a uniform regional policy.

Public food safety is a critical issue and we are please to work in collaboration with the Environmental Health Department of Alexandria.

Sincerely,

Lynne Breaux
President

11