

EXHIBIT NO. 1

17
6-12-10


~~18~~
~~6-8-10~~

City of Alexandria, Virginia

MEMORANDUM

DATE: MAY 26, 2010

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 AND TO AMEND THE REQUIREMENT REGARDING DEMONSTRATION OF KNOWLEDGE BY A CERTIFIED FOOD MANAGER

ISSUE: City Council consideration of an ordinance to amend Title 11, Chapter 2, of the Code of the City of Alexandria to adopt the 2009 FDA Food Code and to amend the requirement regarding demonstration of knowledge by a Certified Food Manager (CFM).

RECOMMENDATION: That City Council pass this proposed ordinance (Attachment I) on first reading and schedule it for public hearing, second reading and final passage on Saturday, June 12, 2010.

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 2005 Food Code. This proposed ordinance would adopt the 2009 Food Code, the most recent version. The Restaurant Association of Metropolitan Washington supports the adoption of the 2009 Food Code. (Attachment II)

The principal 2009 Food Code revisions:

- Prohibit the sale of undercooked, comminuted meat (sausages, frankfurters, bratwurst and others) from a children's menu;
- Revise the definition of "potentially hazardous foods" by adding "cut tomatoes" and "cut leafy greens;"
- Replace the classification of violations as "critical" and "non-critical" with a classification of violations as "priority," "priority-foundational" and "core;"
- Add "food allergy awareness" as a part of the food safety training of employees by the Person in Charge;

- Amend the Food Code to exempt frozen, commercially processed and packaged raw animal foods from separate storage or display from ready-to-eat foods;
- Add a new section on non-continuous cooking of raw animal foods that specifies the criteria for using a non-continuous cooking process;
- Allow the use of a high velocity blade of non-heated, pressurized air for hand drying;
- Clarify that establishments are expected to be free of pests;
- Reduce the minimum hot holding temperature from 140°F to 135°F;
- Reduce the minimum cooling and cold holding temperatures from 45°F to 41°F

This proposed ordinance also will update the definition of “limited food establishment” to mean a food establishment that serves only foods that are not potentially hazardous, require no preparation, or utilize a food preparation process that presents limited food safety risk. The previous definition was outdated.

This proposed ordinance will also require Certified Food Managers to be able to demonstrate their food safety knowledge during the course of a regulatory food safety inspection. This change brings Alexandria’s requirements in line with the requirements applicable to Certified Food Managers in Fairfax and Arlington Counties. This is accomplished by not adopting Paragraph 2-102.11(B) and Section 2-102.20 of the 2009 FDA Food Code which exempts those who have passed a food protection manager program examination from having to be able to respond correctly to food safety questions as they relate to their specific food operation if they have violations of priority items during an inspection.

This proposed ordinance also eliminates language regarding plan review in Sec. 11-2-51(a) of the ordinance that is duplicated in the 2009 Food Code.

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

ATTACHMENTS:

Attachment I: Proposed ordinance

Attachment II: Letter of support from Restaurant Association of Metropolitan Washington

STAFF:

David Wilder, M.D., Acting Health Director

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

Mary Elliott O’Donnell, Assistant City Attorney

Introduction and first reading: 06/08/2010
Public hearing: 06/12/2010
Second reading and enactment: 06/12/2010

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 11-2-3 (a) (ADOPTION OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION/PUBLIC HEALTH SERVICE 2005 FOOD CODE), Section 11-2-4 (g) (DEFINITIONS) and Section 11-2-5 (MODIFICATIONS TO FDA FOOD CODE) of Article A (GENERAL PROVISIONS) and Section 11-2-51(a) (SUBMISSION OF PLANS, SPECIFICATIONS AND OTHER DATA; INSPECTION PRIOR TO OPERATION; FEES) of Article E (REVIEW OF PLANS AND SPECIFICATIONS) 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 2009 FDA Food Code, to revise the definition of “limited food establishment”, and to revise the requirement regarding demonstration of knowledge by Certified Food Managers.

Sponsor

Staff

David M. Wilder, D.O., M.P.H., Interim 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. _____

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AN ORDINANCE to amend and reordain Section 11-2-3 (a) (ADOPTION OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION/PUBLIC HEALTH SERVICE 2005 FOOD CODE), Section 11-2-4 (g) (DEFINITIONS) and Section 11-2-5 (MODIFICATIONS TO FDA FOOD CODE) of Article A (GENERAL PROVISIONS) and Section 11-2-51(a) (SUBMISSION OF PLANS, SPECIFICATIONS AND OTHER DATA; INSPECTION PRIOR TO OPERATION; FEES) of Article E (REVIEW OF PLANS AND SPECIFICATIONS) 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.

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 safeguard public health in food establishments are based upon the 2005 Model Food Code of the United States Food and Drug Administration ("FDA"); and

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

WHEREAS, the FDA has recently promulgated its 2009 Model Food Code, which incorporates nationally recognized public health 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 2009 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 and the National Restaurant Association; and

WHEREAS, a new definition of "limited food establishment" is needed to reflect the wider array of food products and food preparation processes now being served in limited food establishments; and

WHEREAS, assessment of the food safety knowledge of Certified Food Managers should be required as part of the ongoing regulatory evaluation process,

WHEREAS, neighboring jurisdictions in Northern Virginia are planning to adopt the 2009 FDA Model Food Code, and the adoption of this code by the City of Alexandria will help to establish uniform standards for the regulation of food and food establishments in the region; now, therefore

1 THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:
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3 **Section 1.** That Subsection 11-2-3 (a) of The Code of the City of Alexandria,
4 Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as
5 follows:
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7 Sec. 11-2-3 Adoption of the United States Food and Drug Administration/Public Health Service
8 20059 Food Code.
9

10 (a) Chapters 1 through 8, inclusive, and all appendices and annexes of the United States
11 Food and Drug Administration/Public Health Service 20059 Food Code ("FDA Food Code, as
12 adopted and promulgated by the United States Food and Drug Administration/Public Health
13 Service ("FDA/USPHS"), including such chapters, appendices and annexes as may hereafter be
14 amended from time to time, but excepting the portions of the FDA Food Code addressed in
15 section 11-2-5(a) and (b), are hereby adopted and incorporated in their entirety into this chapter
16 as if fully set forth herein. In the event of conflict or inconsistency between this chapter and the
17 FDA Food Code, the provisions of this chapter shall control. When used in the FDA Food Code,
18 the term "Health Authority" shall mean the director or his designee.
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20 **Section 2.** That Subsection 11-2-4(g) of The Code of the City of Alexandria,
21 Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as
22 follows:
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24 Sec. 11-2-4 Definitions.
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26 (g) "Limited food establishment" means a food establishment that serves only ~~hotdogs or~~
27 ~~frankfurter type foods, prepackaged foods or foods that are not potentially hazardous foods. ,~~
28 require no preparation, or utilize a food preparation process that presents limited food safety risk
29 as determined by the director.
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31 **Section 3.** That Section 11-2-5 of The Code of the City of Alexandria, Virginia,
32 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:
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34 Sec. 11-2-5 Modifications to FDA Food Code.
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36 (a) The portions of the FDA Food Code addressed in this subsection are not adopted by
37 incorporation into this chapter. Rather, they are modified in the manner set out below, and their
38 modified versions shall apply in the city:
39

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

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

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

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

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

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

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

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

7 ~~(a) The time the food is exposed to the running water and the time needed for
8 preparation for cooking, or~~

9 ~~(b) The time it takes under refrigeration to lower the FOOD temperature to 5°C
10 (41°F) as specified under Subparagraph 3-501.16(A)(2).~~

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

12 ~~Within a total of six hours from 57° (135°F) to 5°C (41°F) or less.~~

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

14 ~~POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL
15 FOR SAFETY FOOD) shall be cooled within four hours to 5°C (41°F) or less if
16 prepared from ingredients at ambient temperature, such as reconstituted FOODS
17 and canned tuna.~~

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

19 ~~Except as specified under ((D) of this regulation, a POTENTIALLY
20 HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR SAFETY
21 FOOD) received in compliance with LAWS allowing a temperature above 5°C
22 (41°F) during shipment from the supplier as specified in (3-202.11(B), shall be
23 cooled within four hours to 5°C (41°F) or less.~~

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

25 ~~At a temperature of 5°C (41°F) or less.~~

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

27 ~~5°C (41°F) or less for a maximum of seven days.~~

28 ~~(101)~~ Section 6-402.11 of the FDA Food Code is modified to read as follows:

29 Public toilet rooms shall be provided for CONSUMERS whenever seating for
30 CONSUMERS is provided on the premises. CONSUMERS shall not be permitted
31 to gain access to toilet rooms by passing through a kitchen, food preparation, food
32 storage, or utensil washing area. Toilet rooms shall be conveniently located and
33 accessible to EMPLOYEES during all hours of operation. Toilet rooms must be
34 entirely separate and apart from any rooms or areas used for utensil washing or for
35 the manufacture, storage, and handling of food products. Public and employee
36 toilet facilities shall be installed according to and in the number required by the
37 Virginia Uniform Statewide Building Code (VUSBC).

38 ~~(112)~~ Paragraph 8-304.10 (A) of the FDA Food Code is modified to read as follows:

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

44 ~~(123)~~ Paragraph 8-902.10(A) of Annex 1 of the FDA Food Code is modified to read as
45 follows:

1 If admission to the PREMISES of a FOOD ESTABLISHMENT is denied or other
2 circumstances exist that would justify an inspection order under LAW, to make an
3 inspection that includes the recordation of information by any means of audio-
4 visual recordation including (but not limited to) photography, tape-recording and
5 videotaping.
6

7 ~~(b) Subparagraph 3-501.17(A)(2) and Paragraph 2-102.11(B) and Sections, 2-102.20 &~~
8 ~~201.11, & 201.12, and 8-303.10~~ of the FDA Food Code are not adopted or incorporated into this
9 chapter and shall be of no effect in the city.

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11 **Section 4.** That Subsection 11-2-51(a) of The Code of the City of Alexandria,
12 Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as
13 follows:
14

15 Sec. 11-2-51 Submission of plans, specifications and other data; inspection prior to operation;
16 fees.

17 (a) Whenever a food establishment is constructed or remodeled or whenever an existing
18 structure is converted to use as a food establishment, plans and specifications for such
19 construction, remodeling, or conversion shall be submitted to the director for his review prior to
20 commencement of such construction, remodeling or conversion. ~~The director shall verify that the~~
21 ~~plans and specifications conform to the requirements of this chapter and the FDA Food Code.~~
22 ~~The plans and specifications shall include the intended menu, anticipated volume of food to be~~
23 ~~stored, prepared, and sold or served, the proposed layout and arrangement of the facilities,~~
24 ~~plumbing plans, mechanical plans, electrical plans, finish schedules, lighting schedules, and the~~
25 ~~types, model numbers, locations, dimensions, performance capacities and installation~~
26 ~~specifications of proposed fixed equipment and facilities. The director may require additional~~
27 ~~plans or information, as needed, depending on the nature and extent of the proposed construction,~~
28 ~~remodeling or conversion.~~ The director shall approve the plans and specifications if they meet the
29 requirements of this chapter and the FDA Food Code. The director's approval of any plans or
30 specifications shall not be viewed to be a determination that said plans or specifications are free
31 from error. The owner shall have final responsibility for the accuracy and completeness of the
32 plans and specifications, as well as for subsequent construction and installation. ~~No food~~
33 ~~establishment shall be constructed, remodeled or converted except in accordance with plans and~~
34 ~~specifications approved by the director.~~
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36 **Section 5.** That this ordinance shall become effective on July 1, 2010.
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38 WILLIAM D. EUILLE, Mayor
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40 Introduction: June 8, 2010

41 First Reading: June 8, 2010

42 Publication:

43 Public Hearing: June 12, 2010

44 Second Hearing: June 12, 2010

45 Final Passage:



May 20, 2010

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 2009 Food Code in Alexandria.

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 2005 Food Code. This proposed ordinance would adopt the 2009 Food Code, the most recent version.

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

Sincerely,

Lynne Breaux
President

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ORDINANCE NO. 4668

AN ORDINANCE to amend and reordain Section 11-2-3 (a) (ADOPTION OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION/PUBLIC HEALTH SERVICE 2005 FOOD CODE), Section 11-2-4 (g) (DEFINITIONS) and Section 11-2-5 (MODIFICATIONS TO FDA FOOD CODE) of Article A (GENERAL PROVISIONS) and Section 11-2-51(a) (SUBMISSION OF PLANS, SPECIFICATIONS AND OTHER DATA; INSPECTION PRIOR TO OPERATION; FEES) of Article E (REVIEW OF PLANS AND SPECIFICATIONS) 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.

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 safeguard public health in food establishments are based upon the 2005 Model Food Code of the United States Food and Drug Administration ("FDA"); and

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

WHEREAS, the FDA has recently promulgated its 2009 Model Food Code, which incorporates nationally recognized public health 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 2009 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 and the National Restaurant Association; and

WHEREAS, a new definition of "limited food establishment" is needed to reflect the wider array of food products and food preparation processes now being served in limited food establishments; and

WHEREAS, assessment of the food safety knowledge of Certified Food Managers should be required as part of the ongoing regulatory evaluation process,

WHEREAS, neighboring jurisdictions in Northern Virginia are planning to adopt the 2009 FDA Model Food Code, and the adoption of this code by the City of Alexandria 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 Subsection 11-2-3 (a) of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-2-3 Adoption of the United States Food and Drug Administration/Public Health Service 2009 Food Code.

(a) Chapters 1 through 8, inclusive, and all appendices and annexes of the United States Food and Drug Administration/Public Health Service 2009 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 the portions of the FDA Food Code addressed in section 11-2-5(a) and (b), 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.

Section 2. That Subsection 11-2-4(g) of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-2-4 Definitions.

(g) "Limited food establishment" means a food establishment that serves only foods that are not potentially hazardous, require no preparation, or utilize a food preparation process that presents limited food safety risk as determined by the director.

Section 3. That Section 11-2-5 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 11-2-5 Modifications to FDA Food Code.

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

- (1) Section 6-402.11 of the FDA Food Code is modified to read as follows:
Public toilet rooms shall be provided for CONSUMERS whenever seating for CONSUMERS is provided on the premises. CONSUMERS shall not be permitted to gain access to toilet rooms by passing through a kitchen, food preparation, food storage, or utensil washing area. Toilet rooms shall be conveniently located and accessible to EMPLOYEES during all hours of operation. Toilet rooms must be entirely separate and apart from any rooms or areas used for utensil washing or for

the manufacture, storage, and handling of food products. Public and employee toilet facilities shall be installed according to and in the number required by the Virginia Uniform Statewide Building Code (VUSBC).

(2) Paragraph 8-304.10 (A) of the FDA Food Code is modified to read as follows:
A copy of the version of FDA Food Code adopted in Section 11-2-3 above shall be maintained for public inspection in the office of the Alexandria Health Department's Environmental Health Division. A link to the full text of the version of FDA Food Code adopted in Section 11-2-3 above shall be placed on the Alexandria Health Department's website.

(3) Paragraph 8-902.10(A) of Annex 1 of the FDA Food Code is modified 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) Paragraph 2-102.11(B) and Section 2-102.20 of the FDA Food Code are not adopted or incorporated into this chapter and shall be of no effect in the city.

Section 4. That Subsection 11-2-51(a) of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

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 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.-

Section 5. That this ordinance shall become effective on July 1, 2010.

WILLIAM D. EUILLE
Mayor

Final Passage: June 12, 2010