





# County of Fairfax, Virginia


## MEMORANDUM

**DATE:** July 13, 2020

**TO:** Board of Supervisors

**FROM:** Dr. Gloria Addo-Ayensu   
Director, Health Department

**THROUGH:** Tisha Deeghan   
Deputy County Executive

Rachel Flynn   
Deputy County Executive

**SUBJECT:** Department of Health, Proposed Update to Food Code

The Health Department is proposing to amend the Fairfax County Code by adding a new Chapter 43.2, *Food Code*, comprised of sections numbered 43.2-1-1 through 43.2.6.2, and repealing Chapter 43.1, *Food and Food Service Establishments*.

### **Background:**

Since September 2006, when the Board of Supervisors adopted Chapter 43.1, *Food and Food Service Establishments*, the Food and Drug Administration (FDA) has updated the FDA Food Code based upon input from multiple stakeholders including federal, state and local regulators, industry, academia and consumers. The proposed Chapter 43.2, *Food Code*, considers the current science of food protection, emerging food safety issues and the 2016 Conference for Food Protection recommendations by incorporating, with modifications, the 2017 United States Food and Drug Administration Food Code.

The proposed Chapter 43.2, *Food Code*, is intended to safeguard public health and prevent foodborne illness by ensuring that food prepared and served by food establishments in Fairfax County are safe, unadulterated, and honestly presented when offered to the consumer. Additionally, it will allow a common language to be utilized by food establishments and the Health Department. The Virginia Department of Health (VDH) is in the final stages of an update to its Food Regulations to adopt the 2017 FDA Food Code. Pursuant to Code of Virginia § 32.1-34, Fairfax County can adopt and promulgate food regulations that are more but not less stringent than the VDH Food Regulations.



### **Proposed Code Updates:**

#### **Article 1: General Provisions**

- Adopts with modifications Chapter 1 through Chapter 8 and Annex 1 of the 2017 FDA Food Code.
- All new terms and corresponding definitions have been added to aid in code clarification and in certain cases to align with VDH definitions.
- The FDA Food Code prohibits food prepared in a private home to be used or offered in a food establishment. With our proposed update we approve certain cottage food products, prepared in a private home and registered with the Health Department, to be offered in a food establishment.
- Propose allowing refillable, returnable food containers – Shareware. Shareware are food containers that are constructed and designed for reuse when washed, rinsed, and sanitized, by a permitted facility, before they are to be reused.
- Open-air barbecue will be allowed by a permitted food establishment, a mobile food establishment, or a temporary food establishment at a single event. If the open-air barbecue is permanent it shall be equipped with an impervious and easily cleanable floor surface. Sanitary facilities must be within 200 feet in travel distance of the open-air barbecue.
- Presently a food establishment must apply for a variance to allow non-service dogs to enter an outdoor dining area. In our proposed update food establishments may allow dogs in an outdoor dining area without applying for a variance when specific conditions can be met and maintained.
- Conditional food permits may be issued to a food establishment without an annual permit if there has been a change of ownership and prior to the change of ownership when a permit has not been obtained. The terms of the conditional permit shall not exceed 3 months and is nonrenewable.
- The Health Department can issue temporary food establishment permits with a term of up to 12 months rather than only for the length of a single event. This is beneficial to food vendors who operate multiple times at the same location, such as at a farmers market.
- Youth athletic concessions stands, at youth athletic activities, are not subject to provisions of this Chapter, if such stands are promoted or sponsored by either a youth athletic association or by any charitable nonprofit organization or group thereof which has been recognized as being part of the recreational program of the county.
- Provisions have been added to Chapter 8 to strengthen compliance and enforcement proceeding following due process to control the five major foodborne risk factors by implementing appropriate public health interventions.

- An electronic copy of this Code will be made available when a permit is issued. A bound, printed copy will be available for a fee.
- All food establishments shall display, in a conspicuous place, a sticker notifying the public that food establishment is subject to inspection by the Health Department.
- The Health Department establishes a level of competency for its food establishment inspection staff to, at a minimum, meet the training and standardization requirements set forth by the FDA Procedures for Standardization of Retail Food Safety Inspection Officers.

### **Article 3: Mobile Food Vending from Virginia Department of Transportation (VDOT) Rights-of-Way**

- In 2016, Fairfax County made application to the Virginia Department of Transportation (VDOT) for a Land Use Permit to allow Mobile Food Vending in VDOT rights-of-way locations identified by the Fairfax County Department of Transportation. The most current Land Use Permit – Mobile Food Vending (LUP-MFV) issued by VDOT allows mobile food vending in specific rights-of-way locations in Tysons, Herndon, and Springfield. The Health Department administers the process for issuing the LUP-MFV in accordance with requirements prescribed by VDOT and in § 82-1-30 of the Fairfax County Code. The proposed Article 3 adds these requirements to the Food Code.

### **Article 4: Penalties**

- It shall be unlawful for a person to fail to comply with any provision of this Chapter, including a provision of the Food Code that applies to the person. Additionally, it is unlawful for any food establishment to fail to comply to a provision of this Chapter that applies to it. Except as otherwise noted each violation of this Chapter is punishable as a Class 3 misdemeanor in accordance with Virginia Law.

### **Article 5: Cottage Food Products**

- Approved cottage food products shall be registered before being offered for sale with the Health Department.
- Cottage food products are low risk food products not subject to time/temperature control for safety.
- Cottage food operators shall register their products annually with Fairfax County Health Department.

- Cottage food applicant shall provide sufficient evidence that the preparing and packaging of the products is in compliance with all applicable laws and regulations, including inspection requirements and Zoning approvals.
- Cottage food products prepared for direct sale must have a visible placard at the sales location and on the package labeling stating the food is registered and approved by the Health Department.
- Basic food safety training will be provided to a person who wishes to prepare or produce cottage food products, or they may take a food handler course that is accredited by the American National Standards Institute.
- The Health Department will not charge a fee exceeding the cost the department has incurred through administration of the class.

**Article 6: Fee Schedules**

- No increase in annual food establishment permit application and plan review fees.
- New fees for conformance verifications, compliance verifications, and basic food safety training.

On July 21, 2020, the Health Department will present the proposed Chapter 43.2, *Food Code*, to the Board of Supervisors Environmental Committee. The Health Department intends to request that the Board authorize a public hearing at its September 2020 meeting about the repeal of Chapter 43.1, *Food and Food Establishments*, and adoption of Chapter 43.2, *Food Code*.

Attachments: 3

- Attachment.1 - [2017 FDA Food Code, 2017 Supplement](#)
- Attachment.2 - Summary of FDA Food Code Changes
- Attachment.3 - Chapter 43.2 Food Code

cc: Bryan J. Hill, County Executive  
Jessica Werder, Deputy Director, Public Health Operations, Health Department  
Pieter Sheehan, Director, Division of Environmental Health  
Kambiz Agazi, Director, Office of Environmental & Energy Coordination

2017 FDA Food Code

<https://www.fda.gov/food/fda-food-code/food-code-2017>

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## Attachment 2

### Summary of Changes to the Food Code 2009-2018

This table provides a summary of the most significant changes to the Food and Drug Administration's (FDA) model Food Code since release of the 2009 and 2017 versions. Also included are the unique changes to the local code being proposed in the 2019 version. The current Fairfax County Food Code was an adoption of the version of the FDA code prior to the 2009 (2005).

<b>2009</b>	
<b>Change</b>	<b>First Appeared</b>
Terms for "critical" and "non-critical" items have been replaced with "Priority Item", "Priority Foundation Item", or a "Core Item"	Amended in the supplement to the 2009 FDA Food Code
Cut leafy greens are now included as foods that require time/temperature control for safety	Added in the 2009 FDA Food Code
Food employees are required to be aware of allergens	Added in the 2009 FDA Food Code
Hamburgers and other ground meats can no longer be served undercooked as an option a children's menu	Amended in 2009 Food Code
A definition for non-continuous cooking as a cooking process for raw animal foods has been provided	Added in the 2009 FDA Food Code
Requirements for effective cleaning and sanitizing have been clarified	Added in the 2009 FDA Food Code
<b>2013</b>	
<b>Change</b>	<b>First Appeared</b>
Food establishment must employ at least one Certified Food Protection Manager who has supervisory and management responsibilities	Added in the 2013 FDA Food Code
Terms for "potentially hazardous food" have been changed "Time/Temperature for Safety" (TCS)	Amended in the 2013 FDA Food Code
Procedures are required for employees when responding to a vomiting or diarrheal event in food establishment	Added in the 2013 Food Code
Wild mushrooms cannot be sold unless the establishment has been approved by the regulatory authority	Added in the 2013 FDA Food Code

Attachment 2

<b>2013 continued</b>	
<b>Change</b>	<b>First Appeared</b>
Requirements for non-continuous cooking of raw animal foods are specified	Added in the 2013 FDA Food Code
Thawing requirements for fish has been packaged using a reduced oxygen packing method	Amended in the 2013 FDA Food Code
Water sampling requirements for food establishments using a private well have been updated to be consistent with the office of drinking water requirements	Added in the 2013 FDA Food Code
Requirements are specified for food establishments allowing dogs in an outdoor dining area	Added in the 2013 FDA Food Code
<b>2017</b>	
<b>Change</b>	<b>First Appeared</b>
Requires Person in Charge (PIC) to be a Certified Food Protection Manager	Amended in the 2017 FDA Food Code
Addresses the use of bandages, finger cots, or finger stalls	Amended in the 2017 FDA Food Code
Harmonizes cooking time/temperatures parameters for intact and non-intact meat and poultry in accordance with U.S. Department of Agriculture's Food Safety and Inspection Service	Amended in the 2017 FDA Food Code
Updates procedures requiring retail food establishments to provide a written operation plan in order to continue operating during an extended water or electrical outage	Amended in the 2017 FDA Food Code
Written procedures are required for employees when responding to a vomiting or diarrheal event in food establishment	Amended in the 2017 FDA Food Code
<b>Unique Changes (proposed) from FDA Food Code</b>	
<b>Change</b>	<b>First Appeared</b>
Allow for a Cottage Food Industry	Proposed amendment in the 2019 Fairfax County Food Code
Allow for Outside Barbecuing	Proposed amendment in the 2019 Fairfax County Food Code



## Attachment 2

Allow for dogs in outside dining areas	Variance process in place since 2013
Allow for reuse of returnable take-home food containers (“shareware”)	Proposed amendment in the 2019 Fairfax County Food Code

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**CHAPTER 43.2 OF THE FAIRFAX COUNTY CODE  
RELATING TO FOOD**

**Draft of November 8, 2019**

**AN ORDINANCE** to amend the Fairfax County Code by adding a new Chapter 43.2, Food Code, and repealing Chapter 43.1, Food and Food Service Establishments, all relating to Food.

**Be it ordained by the Board of Supervisors of Fairfax County:**

**1. That a new Chapter 43.2, Food Code, is adopted, as follows:**

**CHAPTER 43.2. - Food Code**

**ARTICLE 1. - General Provisions**

**Section 43.2-1-1. - Title.**

This Chapter may be known and cited as the "Food Code" of Fairfax County, Virginia.

**Section 43.2-1-2. - Purpose.**

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

**Section 43.2-1-3. - Adoption of the United States Food and Drug Administration/Public Health Service 2017 Food Code.**

(A) Chapters 1 through 8, inclusive and Annex 1 of the 2017 United States Food Code (FDA 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 43.2-1-4, 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 FDA Food Code, the provisions of this chapter shall prevail and control.

1 (B) A certified copy of the FDA Food Code shall be maintained by the REGULATORY  
2 AUTHORITY at the main administrative office of the DEPARTMENT, and it shall be  
3 available for review by members of the public.  
4

5 **Section 43.2-1-4. - Modifications to the FDA Food Code.**  
6

7 The following sections of the FDA Food Code, as incorporated into the Code of the  
8 County of Fairfax, Virginia, are modified or added. Modifications to a single paragraph of a  
9 section of the FDA Food Code shall not affect the remaining paragraphs of that section.  
10

11 (A) Section 1-201.10 (B) shall be amended so that the following words and phrases,  
12 when used in this Chapter, including in the incorporated FDA Food Code, have the  
13 meanings given below, unless the context clearly indicates a different meaning:  
14

15 Agent means a legally authorized representative of the owner.

16 Approved water supply means a waterworks which has a valid waterworks operation  
17 permit from the DEPARTMENT and is currently compliant with all required sampling and  
18 testing requirements, or a nonpublic water supply which is evaluated, tested and if found in  
19 reasonable compliance with the construction standards set forth in Virginia Private Well  
20 Regulations (12 VAC 5-630, as amended) and the bacteriological water quality standards  
21 set forth in the Virginia Waterworks Regulations (12 VAC 5-590, as amended), accepted  
22 and approved by the DIVISION DIRECTOR.

23 Board of Supervisors means the Board of Supervisors of Fairfax County, Virginia.

24 Basic Food Safety Handler means a FOOD EMPLOYEE or a member of the general  
25 public who has passed a FOOD SAFETY TRAINING SCHOOL.

26 Catering Food Establishment means an approved FOOD ESTABLISHMENT that is serving  
27 or preparing FOOD at a location other than its permitted location for a contracted FOOD  
28 service event.

29 Commissary means a permitted FOOD ESTABLISHMENT that contains all of the  
30 necessary EQUIPMENT and storage facilities to support the operation of a catering FOOD  
31 ESTABLISHMENT or mobile food establishment. The commissary may be the operating base  
32 location to which a mobile FOOD ESTABLISHMENT returns regularly for services including, but  
33 not limited to, vehicle and EQUIPMENT cleaning, discharging liquid and solid wastes, refilling  
34 water tanks, and vehicle storage.

35 Compliance Verification.

36 (1) "Compliance Verification" means an activity conducted by the DEPARTMENT to  
37 establish that a PERMIT HOLDER is in compliance with a voluntary agreement initiated  
38 by the PERMIT HOLDER for correction of a PRIORITY ITEM, PRIORITY FOUNDATION ITEM  
39 and/or CORE ITEM.

40 (2) "Compliance Verification" includes an activity conducted by the DEPARTMENT  
41 following an appeal hearing requested by the PERMIT HOLDER to establish that the  
42 PERMIT HOLDER is complying with the voluntary agreed-upon directives made to the  
43 PERMIT HOLDER by the DIVISION DIRECTOR in an effort to avoid PERMIT revocation.

Attachment 3

1 Conditional Food Permit means a document issued by the DEPARTMENT that  
2 authorizes a PERSON to operate a FOOD ESTABLISHMENT while completing the requirement of  
3 sections 8-302.12, 8-302.13, and 8-302.14 and shall not be issued for greater than a three  
4 (3) month period.

5 Conformance Verification means an activity conducted by the DEPARTMENT as part of  
6 a voluntary process initiated by the PERMIT HOLDER to verify that a PERMIT HOLDER is  
7 maintaining the conditions of an APPROVED VARIANCE or anytime a HACCP plan is required.  
8 This includes the review of a HACCP PLAN and other records that must be maintained by the  
9 PERMIT HOLDER and made available to the DEPARTMENT upon request.

10 Conference for Food Protection means the national conference held biennially to  
11 promote food safety and consumer protection by identifying and addressing problems in the  
12 production, processing, packaging, distribution, sale and service of foods and adopting  
13 sound, uniform procedures which will be accepted by food regulatory agencies and the  
14 food industry.

15 Cottage food operation.

16 (1) Cottage food operation means an enterprise that is operated by a COTTAGE FOOD  
17 OPERATOR within the registered area of a PRIVATE HOME where the COTTAGE FOOD  
18 OPERATOR resides and where COTTAGE FOOD PRODUCTS are prepared or packaged for  
19 DIRECT, INDIRECT OR DIRECT AND INDIRECT sale to consumers.

20 (2) Cottage food operation includes both of the following:

21 (a) A "Class A" COTTAGE FOOD OPERATION, which is a COTTAGE FOOD OPERATION that  
22 may engage only in DIRECT SALES of COTTAGE FOOD PRODUCTS from the COTTAGE  
23 FOOD OPERATION or other DIRECT SALES venues.

24 (b) A "Class B" COTTAGE FOOD OPERATION, which is a COTTAGE FOOD OPERATION that  
25 may engage in both DIRECT SALES and INDIRECT SALES of COTTAGE FOOD PRODUCTS  
26 from the COTTAGE FOOD OPERATION, from DIRECT SALES venues or from a third-  
27 party retail FOOD ESTABLISHMENT.

28 Cottage food operator means an individual who operates a COTTAGE FOOD OPERATION  
29 in his or her PRIVATE HOME and is the owner of the COTTAGE FOOD OPERATION.

30 Cottage food products means foods that are described in Section 43.2-5-1 and that  
31 are prepared for sale in the kitchen of a COTTAGE FOOD OPERATION.

32 Department means Fairfax County Department of Health

33 Director means the Director of the Fairfax County Department of Health or the  
34 designee of the Director. Division Director means the Director of Environmental Health  
35 Services for the Fairfax County Department of Health or the designee of the Division  
36 Director.

37 Direct sale means a transaction between a COTTAGE FOOD OPERATOR and a consumer,  
38 where the consumer purchases COTTAGE FOOD PRODUCTS directly from the COTTAGE FOOD  
39 OPERATION. Direct sales include, but are not limited to, transactions occurring at temporary  
40 food establishments, farmers market stands, and bake sales.

41 FDA Food Code means the 2017 Food Code, as adopted and promulgated by the  
42 United States Food and Drug Administration, Public Health Service, as that Code may be  
43 amended from time to time.

### Attachment 3

1 Foodborne disease outbreak means the occurrence of two or more cases of a similar  
2 illness resulting from the ingestion of a common food or a single case of illness such as one  
3 person ill from botulism or chemical poisoning.

4 Food Safety Training School means a minimum 90 minute program operated or  
5 approved by the DIVISION DIRECTOR that offers basic food safety instruction to FOOD  
6 EMPLOYEES and members of the general public. The FOOD SAFETY TRAINING SCHOOL may be  
7 required as part of an enforcement provision as determined by the DIVISION DIRECTOR. The  
8 FOOD SAFETY TRAINING SCHOOL does not fulfill any part of the ACCREDITED PROGRAM outlined  
9 in the Code.

10 Indirect sale means an interaction between a COTTAGE FOOD OPERATION, a third-party  
11 retailer, and a consumer, where the consumer purchases COTTAGE FOOD PRODUCTS made  
12 by the COTTAGE FOOD OPERATION from a third-party retailer that holds a valid PERMIT issued  
13 pursuant to this Chapter. Indirect sales include, but are not limited to, sales made to retail  
14 shops or to retail food facilities where food may be immediately consumed on the PREMISES.

15 Mobile Food Establishment means a FOOD ESTABLISHMENT that is designed to be  
16 readily moveable from place to place and shall include pushcarts, trucks, trailers, or vans.

17 Open-Air Barbecue means a piece of EQUIPMENT designed for barbecuing FOOD,  
18 where the FOOD is prepared out of doors by cooking directly over hot coals, heated lava,  
19 hot stones, gas flame, or other method approved by the DEPARTMENT, on EQUIPMENT  
20 suitably designed and maintained for use out of doors, that is operated by a TEMPORARY  
21 FOOD ESTABLISHMENT, or a MOBILE FOOD ESTABLISHMENT that remains fixed during the hours  
22 of operations at a community event or a FOOD ESTABLISHMENT.

23 Outdoor Wood-Burning Oven means an oven located out of doors, that utilizes wood  
24 as the primary fuel for cooking and is operated on the same PREMISES as, and in  
25 conjunction with, a FOOD ESTABLISHMENT.

26 Permit means the license issued by the DIVISION DIRECTOR that authorizes a PERSON  
27 to operate a FOOD ESTABLISHMENT.

28 Person in Charge means the individual present in a FOOD ESTABLISHMENT who is  
29 responsible for the food service operation at the time of inspection authorized by this  
30 Chapter. If no single individual is responsible for the food service operation, then any  
31 employee present shall be deemed the "person in charge".

32 Pop-up restaurant means a TEMPORARY FOOD ESTABLISHMENT operating in a space  
33 that is or was used as a FOOD ESTABLISHMENT to include underused kitchen facilities or a  
34 FOOD ESTABLISHMENT that has ceased operation in the last twelve (12) months.

35 Private home means a dwelling, including an apartment or other leased space, where  
36 individuals reside.

37 Registered area means the portion of a PRIVATE HOME that contains the PRIVATE  
38 HOME'S kitchen used for the preparation, packaging, storage, or handling of COTTAGE FOOD  
39 PRODUCTS and related ingredients or equipment, or both, and attached rooms within the  
40 home that are used exclusively for storage.

41 Regulatory Authority means the DEPARTMENT or another local, state, or federal  
42 enforcement agency having jurisdiction over the FOOD ESTABLISHMENT or COTTAGE FOOD  
43 OPERATION.

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1 Shared-use Kitchen means a FOOD ESTABLISHMENT used by more than one PERMIT HOLDER  
2 where the secondary PERMIT HOLDER rents space and/or uses the kitchen by the hour or day to  
3 produce FOOD for their FOOD ESTABLISHMENT while fulfilling regulatory compliance.

4 ShareWare means reusable takeout FOOD containers returned by the CONSUMER, to  
5 be cleaned, SANITIZED, after use and before the next use.

6 ShareWare Establishment means a FOOD ESTABLISHMENT operation that collects,  
7 processes, stores, and distributes SHAREWARE to FOOD ESTABLISHMENTS.

8 Utensil means a FOOD-CONTACT implement or container used in the storage,  
9 preparation, transportation, dispensing, sale, or service of FOOD, such as KITCHENWARE,  
10 SHAREWARE, or TABLEWARE that is multiuse, SINGLE-SERVICE, or SINGLE-USE; gloves used in  
11 contact with FOOD; temperature sensing probes of FOOD TEMPERATURE MEASURING DEVICES;  
12 and probe-type price or identification tags used in contact with FOOD.

13  
14 (B) Paragraph 2-102.12(A) shall be amended to read:

15  
16 2-102.12 Food Protection Manager.

17  
18 (A) It shall be unlawful to operate a FOOD ESTABLISHMENT unless it is under the  
19 immediate control of a FOOD protection manager who has shown proficiency  
20 through:

21  
22 (1) Passing a test that is part of an ACCREDITED PROGRAM; or

23  
24 (2) Passing a test that is administered by the REGULATORY AUTHORITY with  
25 issuance of a certificate as a limited food manager.

26  
27 (C) Paragraph 2-102.20(B) shall be amended to read:

28  
29 2.102.20 Food Protection Manager Certification.

30  
31 (B) A FOOD ESTABLISHMENT that has a PERSON IN CHARGE that is certified by a  
32 FOOD protection manager certification program that is evaluated and listed by  
33 a Conference for Food Protection recognized accrediting agency as  
34 conforming to the Conference for Food Protection Standards for  
35 Accreditation of FOOD Protection Manager Certification Programs is deemed  
36 to comply with ¶ 2-102.12(A)(1).

37  
38 (D) Paragraph 3-201.11(B) shall be amended to read:

39  
40 3.201.11 Compliance with Food Law.

41

Attachment 3

1 (B) Except for COTTAGE FOOD PRODUCTS that are APPROVED, FOOD prepared in a  
2 private home may not be offered for human consumption from a FOOD  
3 ESTABLISHMENT.<sup>P</sup>  
4

5 (E) Paragraph 3-304.17(B) shall be amended to add a new subparagraph (3) and to  
6 renumber the remaining subparagraphs as (4) and (5):  
7

8 3-304.17(B) Refilling Returnables.  
9

10 (1) Designed and constructed for reuse and in accordance with the  
11 requirements specified under Part 4-1 and 4-2:<sup>P</sup>  
12

13 (2) One that was initially provided by the FOOD ESTABLISHMENT to the  
14 CONSUMER, either empty or filled with FOOD by the FOOD ESTABLISHMENT,  
15 for the purpose of being returned for reuse; or  
16

17 (3) One that is provided by a SHAREWARE ESTABLISHMENT to a FOOD  
18 ESTABLISHMENT;  
19

20 (4) Returned to the FOOD ESTABLISHMENT, SHAREWARE ESTABLISHMENT or a  
21 SHAREWARE drop/return station by the consumer after use;  
22

23 (5) Subject to the following steps before being refilled with FOOD:  
24

25 (a) Cleaned as specified under Part 4-6 of this Code;  
26

27 (b) Sanitized as specified under Part 4-7 of this Code;<sup>P</sup>  
28

29 (c) Visually inspected by the FOOD EMPLOYEE to verify that the container,  
30 as returned, meets the requirements specified under Part 4-1 and 4-2.<sup>P</sup>  
31

32 (F) Section 4-204.124 shall be added and reads as follows:  
33

34 4-204.124 Open-Air Barbecue/Outdoor Wood-Burning Oven.  
35

36 An OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN shall meet all of the  
37 following requirements:  
38

39 (A) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is operated on the  
40 same PREMISES as, in reasonable proximity to, and in conjunction with, a  
41 FOOD ESTABLISHMENT that is approved for FOOD PREPARATION, or a TEMPORARY  
42 FOOD ESTABLISHMENT or a MOBILE FOOD ESTABLISHMENT that is operating at a  
43 single event or celebration. The PERMIT HOLDER of the FOOD ESTABLISHMENT,



Attachment 3

1 TEMPORARY FOOD ESTABLISHMENT or MOBILE FOOD ESTABLISHMENT shall be  
2 deemed to be the PERMIT HOLDER of the OPEN-AIR BARBECUE or OUTDOOR  
3 WOOD-BURNING OVEN, and shall be responsible for ensuring that it is operated  
4 in full compliance with this part.

5  
6 (B) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is not operated in,  
7 or out of, any motor vehicle, or in any area or location that may constitute a  
8 fire HAZARD, as determined by the DIVISION DIRECTOR.

9  
10 (C) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is separated from  
11 public access to prevent FOOD contamination or injury to the public by using  
12 approved methods.

13  
14 (D) If the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is a permanent  
15 structure, it shall be equipped with an impervious and EASILY CLEANABLE floor  
16 surface that extends a minimum of five feet from the OPEN-AIR BARBECUE or  
17 OUTDOOR WOOD-BURNING OVEN facility on all open sides.

18  
19 (E) Sanitary facilities, including, but not limited to, toilet facilities and  
20 handwashing facilities shall be available for use within 200 feet in travel  
21 distance of the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN and  
22 shall comply with all provisions of this part.

23  
24 (G) Section 6-402.11 shall be amended to read:

25  
26 6-402.11 Convenience and Accessibility.

27  
28 Public toilet rooms shall be provided for CONSUMERS whenever seating for  
29 CONSUMERS is provided on the PREMISES. CONSUMERS shall not be permitted to gain  
30 access to toilet rooms by passing through a kitchen, food preparation, food  
31 storage, or utensil washing area. Toilet rooms shall be conveniently located and  
32 accessible to EMPLOYEES during all hours of operation. Toilet rooms must be  
33 entirely separate and apart from any rooms or areas used for utensil washing or  
34 for the manufacture, storage, and handling of food products. Public and  
35 employee toilet facilities shall be installed according to and in the number  
36 required by the Virginia Uniform Statewide Building Code (VUSBC).

37  
38 (H) Section 6-501.115 shall be amended to add a new subparagraph (6) to paragraph  
39 (B) and a new paragraph (D):

40  
41 6-501.115 Prohibiting Animals.  
42

Attachment 3

1 (A) Except as specified in ¶¶ (B) and (C) of this section, live animals shall not be  
2 allowed on the PREMISES of a FOOD ESTABLISHMENT. <sup>Pf</sup>

3  
4 (B) Live animals may be allowed in the following situations if the contamination  
5 of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-  
6 SERVICE and SINGLE-USE ARTICLES cannot result:

7  
8 (1) Edible FISH or decorative fish in aquariums, shellfish or crustacea on  
9 ice or under refrigeration, and shellfish and crustacea in display tank  
10 systems;

11  
12 (2) Patrol dogs accompanying police or security officers in offices and  
13 dining, sales, and storage areas, and sentry dogs running loose in outside  
14 fenced areas;

15  
16 (3) In areas that are not used for FOOD preparation and that are usually  
17 open for customers, such as dining and sales areas, SERVICE ANIMALS that  
18 are controlled by the disabled EMPLOYEE OR PERSON if a health or safety  
19 HAZARD will not result from the presence or activities of the SERVICE ANIMAL;  
20

21 (4) Pets in the common dining areas of institutional care facilities such as  
22 nursing homes; assisted living facilities; group homes; residential care  
23 facilities; and bed and breakfast facilities that are FOOD ESTABLISHMENT at  
24 times other than during meals if:

25  
26 (a) Effective partitioning and self-closing doors separate the common  
27 dining areas from FOOD storage or FOOD preparation areas;

28  
29 (b) Condiments, EQUIPMENT, AND UTENSILS are stored in enclosed  
30 cabinets or removed from the common dining areas when pets are  
31 present; and

32  
33 (c) Dining areas including tables, countertops, and similar surfaces are  
34 effectively cleaned before the next meal service;

35  
36 (5) In areas that are not used for FOOD preparation, storage, sales,  
37 display, or dining, in which there are caged animals or animals that are  
38 similarly restricted, such as in a variety store that sells pets or a tourist  
39 park that displays animals; and

40  
41 (6) Dogs are allowed in outdoor dining areas if:

42  
43 (a) The outdoor dining area is not fully enclosed with floor to ceiling walls

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1 and is not considered a part of the interior physical facility.

2  
3 (b) The outdoor dining area is equipped with an entrance that is separate  
4 from the main entrance to the FOOD ESTABLISHMENT and the separate  
5 entrance serves as the sole means of entry for patrons accompanied  
6 by dogs.

7  
8 (c) A sign stating that dogs are allowed in the outdoor dining area is  
9 posted at each entrance to the outdoor dining area in such a manner  
10 as to be clearly observable by the public.

11  
12 (d) A sign within the outdoor dining area stating the requirements as  
13 specified in subdivisions (6)(e) – (g) of this subparagraph is provided  
14 in such a manner as to be clearly observable by the public.

15  
16 (e) FOOD and water provided to dogs is served using EQUIPMENT that is  
17 not used for service of FOOD to persons or is served in SINGLE-USE  
18 ARTICLES.

19  
20 (f) Dogs are not allowed on chairs, seats, benches, or tables.

21  
22 (g) Dogs are kept on a leash or within a pet carrier and under the control  
23 of an adult at all times.

24  
25 (h) The FOOD ESTABLISHMENT provides effective means for cleaning up  
26 dog vomitus and fecal matter.

27  
28 (C) Live or dead FISH bait may be stored if contamination of FOOD; clean  
29 EQUIPMENT, UTENSILS, AND LINENS; and unwrapped SINGLE-SERVICE and  
30 SINGLE-USE ARTICLES cannot result.

31  
32 (D) In bed and breakfast facilities that are not FOOD ESTABLISHMENT, live animals  
33 shall be allowed in the facility but shall not be fed using the same EQUIPMENT  
34 or UTENSILS that are used for CONSUMERS.

35  
36 (l) Section 8-301.11.2 shall be added and reads as follows:

37  
38 8-301.11.2 Conditional Food Permit.

39  
40 The DEPARTMENT may issue a CONDITIONAL FOOD PERMIT to a person operating a  
41 FOOD ESTABLISHMENT without an annual PERMIT only under the following  
42 conditions.

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1           (A) The FOOD ESTABLISHMENT:  
2

3                   (1) Has changed ownership within the past 12 months and prior to  
4                   change of ownership operated under a duly issued annual PERMIT, or  
5

6                   (2) Has opened within the past 12 months and the DEPARTMENT has  
7                   determined that its operation under a CONDITIONAL FOOD PERMIT will not  
8                   compromise public health.  
9

10           (B) The person operating the FOOD ESTABLISHMENT has submitted an application  
11           for an annual PERMIT, an application fee, as required by this Code  
12

13           (C) The CONDITIONAL FOOD PERMIT shall be issued for a nonrenewable term not to  
14           exceed 3 months.  
15

16           (D) The person operating a FOOD ESTABLISHMENT under a CONDITIONAL FOOD  
17           PERMIT shall comply with the requirements of Section 8-304.11 of this Code.  
18

19   (J) Section 8-301.12 shall be added and reads as follows:  
20

21           8-301.12 Permits for Food Establishments.  
22

23           (A) No person shall operate a FOOD ESTABLISHMENT unless that person  
24           possesses a valid PERMIT issued by the DIVISION DIRECTOR. Only a person  
25           who complies with the requirements of this Chapter shall be entitled to  
26           receive or retain such a PERMIT. PERMITS are not transferable. A valid PERMIT  
27           shall be posted in every FOOD ESTABLISHMENT in a conspicuous place in the  
28           public view. FOOD ESTABLISHMENT PERMITS are issued for a calendar year and  
29           expire on December 31 regardless of the month of issue.  
30

31           (B) An initial application fee and an annual renewal application fee shall be  
32           assessed for each permitted FOOD ESTABLISHMENT, including temporary food  
33           stands operating less than 14 days, in accordance with Section 43.2-6-1 of  
34           this Chapter. A portion of this fee is designated to support a program of food  
35           safety education to include, for example, but not be limited to a quarterly  
36           newsletter, food advisories, and food safety publications. Such fee shall not  
37           be applicable to FOOD ESTABLISHMENTS operated by the Office of Food and  
38           Nutrition Services of the Fairfax County School Public Schools; or to any  
39           Fairfax County agency; however, such fees shall apply to private vendors  
40           subcontracted by Fairfax County to operate FOOD ESTABLISHMENTS. The  
41           application fee shall be based on a calendar year and shall be due and  
42           payable on or before December 31 or upon initial application. The fee shall

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1 not be prorated. A temporary FOOD ESTABLISHMENT PERMIT is valid for the  
2 specified PERMIT period (up to 12 months).

3  
4 (C) Establishments failing to file the required application for renewal of the  
5 PERMIT will be operating without a valid PERMIT and will be subject to  
6 immediate closure in accordance as specified in ¶ 8-301.12(D).

7  
8 (D) The DEPARTMENT shall have the power to order the immediate closure of any  
9 FOOD ESTABLISHMENT operated without a PERMIT as required by this Chapter.  
10 Issuance of such a closure order shall not be a prerequisite to any action in  
11 law or equity authorized by this provision.

12  
13 (K) Section 8-301.13 shall be added and reads as follows:

14  
15 8-301.13 Exemptions.

16  
17 (A) The DIVISION DIRECTOR may exempt coffee and related beverage service and  
18 service areas and such onetime events or affairs from such provisions or  
19 requirements of this Chapter as the DIVISION DIRECTOR may deem advisable  
20 upon determining that the operation of such service, service areas, events or  
21 affairs will not adversely affect the public health.

22  
23 (B) The provisions of this chapter shall not apply to youth athletic concession  
24 stands at youth athletic activities, if such stands are promoted or sponsored  
25 by either a youth athletic association or by any charitable nonprofit  
26 organization or group thereof which has been recognized as being part of the  
27 recreational program of the county by ordinance or resolution of the BOARD  
28 OF SUPERVISORS.

29  
30 (L) Paragraph 8-302.14(A) shall be amended to read:

31  
32 8-302.14 Contents of the Application.

33  
34 (1) The name, mailing address, telephone number, email address and signature  
35 of the PERSON applying for the PERMIT and the name, mailing address,  
36 location and phone number of the FOOD ESTABLISHMENT.

37  
38 (M) Section 8-303.40 shall be added and reads as follows:

39  
40 8-303.40 Permit Revocation, Denial of Permit Renewal.

41  
42 (A) The DIVISION DIRECTOR may revoke or may deny the renewal of a permit for any  
43 one (1) or more of the following reasons:

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- 1  
2 (1) Repeated or continuing violations of the provisions of this Code; or  
3  
4 (2) Failure to pay the permit fees pursuant to Article 4 of this Code; or  
5  
6 (3) Materially false statements made in the application for permit.  
7

8 (B) The DIVISION DIRECTOR shall give ten (10) days' written notice of any  
9 revocation or denial of permit renewal and shall state in that notice that the  
10 PERMIT HOLDER may schedule an informal meeting with the DIVISION DIRECTOR  
11 to be held within that ten (10) day period, and that based on that informal  
12 meeting the DIVISION DIRECTOR may stay or rescind the written notice.  
13

14 (C) Whenever a revocation or a denial of permit renewal has become effective,  
15 the PERMIT HOLDER may:  
16

17 (1) Re-apply for a permit under Section 8-302.11 after the expiration of the  
18 penalty period imposed by the DEPARTMENT in accordance with Section 8-  
19 603.10; and/or  
20

21 (2) Make a written request to the DIRECTOR for a hearing within ten (10)  
22 days and the DIRECTOR shall provide a hearing within ten (10) days after  
23 the request, and if no request for a hearing is filed within ten (10) days,  
24 revocation or refusal to renew becomes final.  
25

26 (N) Paragraph 8-304.10(A) shall be amended to read:  
27

28 8-304.10 Responsibilities of the DEPARTMENT.  
29

30 (A) At the time a PERMIT is first issued, the REGULATORY AUTHORITY shall make  
31 available an electronic version of this Code to the PERMIT HOLDER so that the  
32 PERMIT HOLDER is notified of the compliance requirements and the conditions of  
33 retention, as specified under Section 8-304.11, that are applicable to the  
34 PERMIT. (A bound, printed copy of this Code will be made available for a fee.)  
35

36 (O) Paragraph 8-304.11(K) shall be amended to read:  
37

38 8-304.11 Responsibilities of the PERMIT HOLDER.  
39

40 (K) Every FOOD ESTABLISHMENT shall display, without obstruction in a  
41 conspicuous place designated by the DEPARTMENT, notice stickers that inform  
42 the public that the FOOD ESTABLISHMENT is subject to inspection by the

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1            DEPARTMENT. Such notice stickers shall be displayed at each public entrance  
2            and each drive-up and/or walk-up window of every FOOD ESTABLISHMENT.  
3            Such notice to the public shall include, at a minimum, a statement that the  
4            FOOD ESTABLISHMENT is inspected by the DEPARTMENT.

5  
6            (P) Section 8-402.10 shall be amended to read:

7  
8            8-402.10 Competency of Inspectors.

9  
10            (A) An authorized representative of the DIRECTOR who inspects a FOOD  
11            ESTABLISHMENT or conducts plan review for compliance with this Chapter  
12            shall have the knowledge, skills, and ability to adequately perform the  
13            required duties. For the purposes of this section, competency shall be  
14            demonstrated when an environmental health specialist is deemed by the  
15            DIVISION DIRECTOR to meet the training and standardization requirements  
16            specified by the FDA Procedures for Standardization of Retail Food Safety  
17            Inspection Officers.

18  
19            (B) The DEPARTMENT shall ensure that authorized representatives who inspect a  
20            FOOD ESTABLISHMENT or conduct plan review for compliance with this Chapter  
21            have access to training and continuing education as needed to properly  
22            identify violations and apply this Chapter.

23  
24            (Q) Section 8-904.60 shall be added and reads as follows:

25  
26            8-904.60 Permit Suspension.

27  
28            (A) The DIVISION DIRECTOR may suspend a PERMIT for any of the following causes  
29            without prior notice or hearing:

30  
31            (1) The operation of the FOOD ESTABLISHMENT is deemed an imminent  
32            health hazard by the DEPARTMENT due to certain conditions, including, but  
33            not limited to, those circumstances set forth in Section 8-404.11(A); or

34  
35            (2) Interference with the DEPARTMENT in the performance of its duties,  
36            including denial of access, in accordance with Section 8-402.20; or

37  
38            (3) In accordance with Section 8-501.20(C).

39  
40            (B) When a PERMIT is suspended, the FOOD ESTABLISHMENT operation shall cease  
41            immediately.

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1           (C) A suspension shall become effective upon service of written notice to the  
2           PERMIT HOLDER or person in charge of the FOOD ESTABLISHMENT OR TEMPORARY  
3           FOOD ESTABLISHMENT.

4  
5           (D) The PERMIT HOLDER may make a written request for a hearing within ten (10)  
6           days after notice of suspension and the DIVISION DIRECTOR shall provide a  
7           hearing within ten (10) days after the request. If no request for a hearing is  
8           filed within ten (10) days, the suspension becomes final.

9  
10           (E) The DIVISION DIRECTOR may end the suspension at any time if it is determined  
11           that the reason for suspension no longer exists.

12  
13           (R) Section 8-904.70 shall be added and reads as follows:

14  
15           8-904.70 Suspension and Revocation Hearing Procedure.

16  
17           (A) The DIRECTOR shall hear appeals from the decision to suspend, revoke, or  
18           deny the renewal of any PERMIT issued pursuant to this Code in accordance  
19           with Section 8-904.60 and Section 8-303.40.

20  
21           (B) Written notice of a suspension or revocation hearing shall be presented by  
22           the DIRECTOR either personally, or by certified mail, to the PERMIT HOLDER'S last  
23           known address of record and shall state the date, time, and place of hearing,  
24           as well as setting forth the charges against the FOOD ESTABLISHMENT. A copy  
25           of the notice shall be filed in the records of the DEPARTMENT.

26  
27           (C) The DIRECTOR shall have the power to swear witnesses. The PERMIT HOLDER or  
28           his legal counsel shall have the opportunity to present evidence and/or  
29           witnesses to the DEPARTMENT. A record of the hearing shall be made.

30  
31           (D) The DIRECTOR shall issue a decision, in writing, to uphold either the  
32           suspension, revocation or non-renewal of the PERMIT; to invoke a penalty in  
33           accordance with Section 8-603.10; or to find in favor of the PERMIT HOLDER  
34           within five (5) working days of the conclusion of the hearing.

35  
36           (E) The decision of the DIRECTOR is final and appealable per Section 8-602.10.

37  
38           **ARTICLE 2. - Mobile Food Establishments.**

39  
40           **Section 43.2-2-1. - General Provisions.**

41



1 MOBILE FOOD ESTABLISHMENT shall comply with the requirements of this Chapter. All  
2 establishments are to be clearly identified with the trade name the establishment is  
3 operated under and contact phone number conspicuously displayed on both sides of the  
4 establishment.

5  
6 **Section 43.2-2-2. - Requirements for types of mobile food establishments.**

7  
8 (A) A MOBILE FOOD ESTABLISHMENT shall be equipped with a hand sink and a  
9 three-compartment sink. However, the director may waive the requirement  
10 for a three-compartment sink if the menu items dispensed from the  
11 establishment do not require extensive preparation and the establishment  
12 has access to a three-compartment sink at the COMMISSARY.

13  
14 (B) A MOBILE FOOD ESTABLISHMENT shall be equipped with a hand sink and a  
15 three-compartment sink. However, the Director may waive the requirement  
16 for a hand sink if only prepackaged foods are to be dispensed or if an  
17 alternate method to hand washing, approved by the director, is used. Such  
18 alternate methods may include, but are not limited to, use of disposable hand  
19 washing towelettes, disposable gloves, sanitizing solutions that meet the  
20 specifications of 21 C.F.R. § 178.1010 or other techniques approved by the  
21 DIVISION DIRECTOR. The DIVISION DIRECTOR may waive the requirement for a  
22 three-compartment sink if the limited service MOBILE FOOD ESTABLISHMENT has  
23 access to a three-compartment sink at the COMMISSARY or only prepackaged  
24 foods are to be dispensed.

25  
26 **Section 43.2-2-3. - Commissary.**

27  
28 MOBILE FOOD ESTABLISHMENTS shall operate from a COMMISSARY that possesses a FOOD  
29 ESTABLISHMENT PERMIT issued in accordance with this Chapter. However, the Director may  
30 wave this requirement if the MOBILE FOOD ESTABLISHMENT meets all construction standards  
31 applicable to the food items served by the unit. The DIVISION DIRECTOR may allow a MOBILE  
32 FOOD ESTABLISHMENT to operate from a COMMISSARY outside of Fairfax County, Virginia, if  
33 the base of operation meets basic sanitation requirements and is permitted by another  
34 jurisdiction.

35  
36 **ARTICLE 3 - Mobile Food Vending from Virginia Department of Transportation**  
37 **(VDOT) Rights-of-Way.**

38  
39 **Section 43.2-3-1. - General Provisions.**

40  
41 (A) For the purpose of this Article, Mobile Food Vending involves the sale of food  
42 from the curb side of a self-contained mobile food vehicle or trailer legally  
43 parked in a single parking space on a public street to customers on the

1 curbside of a public street. Vending from a pushable cart shall not be  
2 permitted under this Article. Mobile Food Vending will be to pedestrians  
3 only.

4  
5 (B) For the purpose of this Article, a Mobile Food Vending Vehicle is a self-  
6 contained mobile food vehicle or trailer from which Mobile Food Vending  
7 occurs. A Mobile Food Vending Vehicle includes, without limitation, food  
8 trucks that operate from a single lawful parking space on a public street.  
9 Under the regulations of this Chapter, a Mobile Food Vending Vehicle is also  
10 considered a Mobile Unit.

11  
12 (C) A Mobile Food Vending Permittee or Mobile Food Vendor is the holder of a  
13 FOOD ESTABLISHMENT PERMIT for Mobile Food Vending and/or the person(s)  
14 responsible for a Mobile Food Vending Vehicle.

15  
16 (D) Mobile Food Vending is subject to all of the provisions of this Article and  
17 Section 82-1-30 of the Code of Fairfax County, Virginia.

18  
19 **Section 43.2-3-2. - Food Establishment Permit for Mobile Food Vending.**

20  
21 (A) Each application for a FOOD ESTABLISHMENT PERMIT for Mobile Food Vending  
22 (PERMIT) shall be completed on forms provided by the DIVISION DIRECTOR and  
23 accompanied by the application fee set by Article 6 of this Chapter.

24  
25 (B) Each PERMIT shall be valid for a period of one year, unless the PERMIT is  
26 revoked or suspended in accordance with this Chapter. After the expiration  
27 of such PERMIT, any person seeking to continue Mobile Food Vending  
28 operations in the County must submit a renewal application and a renewal  
29 fee.

30  
31 (C) The PERMIT requires compliance with all DEPARTMENT and Department of Cable  
32 and Consumer Services PERMITS, licenses, and regulations.

33 (D) A valid PERMIT must be displayed in plain view on the exterior or the interior  
34 of the Mobile Food Vending Vehicle. A copy of the Virginia Department of  
35 Transportation (VDOT) Land Use PERMIT for Mobile Food Vending issued to  
36 Fairfax County, Virginia (LUP-MFV), shall also be maintained in every Mobile  
37 Food Vending Vehicle.

38 (E) The PERMIT may only be issued by the DIVISION DIRECTOR upon his  
39 determination that the applicant has submitted a completed application, paid

1 the required application fee, obtained all other required PERMITS, and is fully  
2 in compliance with all relevant laws, ordinances, and regulations.  
3

4 **Section 43.2-3-3. - Civil Liability.**  
5

6 A Permittee holding a FOOD ESTABLISHMENT PERMIT for Mobile Food Vending  
7 (Permittee) shall be civilly liable to the County for any and all expenses or damages  
8 incurred by VDOT or the County as a result of any violation of the Commonwealth  
9 Transportation Board's regulations as provided for in Virginia Code Ann. § 33.2-210, which  
10 remain unpaid for more than ten (10) days following written notice from the County of such  
11 expenses or damages. Further, a Permittee shall be civilly liable to the County for any and  
12 all costs incurred by the County or VDOT relating to litter pick-up or disposal or restoration  
13 of the right of way, if such costs remain unpaid for more than ten (10) days following written  
14 notice from the County of such costs. Failure to pay such costs following written notice  
15 may result in legal action.  
16

17 **Section 43.2-3-5. - Suspension of Operation within Rights-of-Way.**  
18

19 VDOT has reserved the right, in the VDOT LUP-MFV, to suspend any or all mobile  
20 food vending operations on state maintained highway rights-of-way in response to public  
21 safety or operational concerns. VDOT shall be held harmless from any resulting monetary  
22 losses by any and all Mobile Food Vendors resulting from such suspension. The County  
23 also reserves the right to suspend any or all mobile food vending operations on state-  
24 maintained highway rights-of-way in response to public safety or operational concerns  
25 and/or to implement a suspension initiated by VDOT. The County shall be held harmless,  
26 in the event of any such suspension of Mobile Food Vending operations on state-  
27 maintained highway rights-of-way whether initiated by VDOT or the County, from any  
28 resulting monetary losses incurred by any and all Mobile Food Vendors.  
29

30 **Section 43.2-3-6. - Suspension of Mobile Food Vending Permit.**  
31

32 The operation of any Mobile Food Vehicle in violation of this Article or the terms and  
33 conditions of the Mobile Food Vending PERMIT in any manner that constitutes a breach of  
34 the peace or creates a danger to the health, safety, and welfare of the public may constitute  
35 cause for automatic suspension of a FOOD ESTABLISHMENT PERMIT for Mobile Food Vending  
36 in accordance with this Chapter.  
37

38 **ARTICLE 4. - Penalties.**  
39

40 **Section 43.2-4-1. - Penalties.**  
41

42 It shall be unlawful for a person to fail to comply with any provision of this Chapter,  
43 including a provision of the Food Code that applies to the person. It also shall be unlawful

1 for any FOOD ESTABLISHMENT to fail to comply with any provision of this Chapter that applies  
2 to it. A person who fails to comply with any applicable provision shall be in violation of this  
3 Chapter. The owner of any such FOOD ESTABLISHMENT which fails to comply with any  
4 applicable provision shall be in violation of this Chapter. Except as otherwise provided,  
5 each violation of this Chapter is punishable as a Class 3 misdemeanor in accordance with  
6 Virginia law. The criminal penalty provided in this Section shall be in addition to the  
7 administrative remedies set forth elsewhere in this Chapter.

8  
9 **ARTICLE 5. - Cottage Food Products.**

10  
11 **Section 43.2-5-1. - General Provisions.**

12  
13 For the purpose of this Article, a COTTAGE FOOD OPERATION involves the use of a private  
14 home as an approved food source as specified in Section 43.2-1-4 of this Chapter and as  
15 allowed by the Fairfax County Code. COTTAGE FOOD PRODUCTS shall be registered with the  
16 REGULATORY AUTHORITY in accordance with Section 43.2-5-2 as approved low risk food  
17 products that are not subject to time/temperature control for safety. COTTAGE FOOD  
18 PRODUCTS include only the following:

- 19 (1) Baked goods, without cream, custard, or meat fillings, such as breads,  
20 biscuits, churros, cookies, pastries, cakes, and tortillas;  
21 (2) Candy, such as brittle and toffee;  
22 (3) Chocolate-covered nonperishable foods, such as nuts and dried fruits;  
23 (4) Dried fruit;  
24 (5) Dried pasta;  
25 (6) Dry baking mixes;  
26 (7) Fruit pies, fruit empanadas, and fruit tamales;  
27 (8) Granola, cereals, and trail mixes;  
28 (9) Herb blends and dried mole paste;  
29 (10) Honey and sweet sorghum syrup;  
30 (11) Jams, jellies, preserves, and fruit butter that comply with the standard  
31 in Part 150 of Title 21 of the Code of Federal Regulations;  
32 (12) Nut mixes and nut butters;  
33 (13) Popcorn;  
34 (14) Vinegar and mustard;  
35 (15) Roasted coffee and dried tea;  
36 (16) Waffle cones and pizelles;  
37 (17) Cotton candy;  
38 (18) Candied apples;  
39 (19) Confections such as salted caramel, fudge, marshmallow bars, chocolate  
40 covered marshmallow, nuts, and hard candy, or any combination thereof;  
41 (20) Buttercream frosting, buttercream icing, buttercream fondant, and gum  
42 paste that do not contain eggs, cream, or cream cheese;

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- 1 (21) Dried or dehydrated vegetables;
- 2 (22) Dried vegetarian-based soup mixes;
- 3 (23) Vegetable and potato chips;
- 4 (24) Ground chocolate;
- 5 (25) Seasoning salt;
- 6 (26) Flat icing;
- 7 (27) Marshmallows that do not contain eggs;
- 8 (28) Popcorn balls;
- 9 (29) Dried grain mixes;
- 10 (30) Fried or baked donuts and waffles;
- 11 (31) Dried hot chocolate (dried powdered mixes or molded hardened cocoa
- 12 pieces);
- 13 (32) Fruit infused vinegar (containing only high-acid fruits such as apple,
- 14 crabapple, nectarine, peach, plum, quince, blackberry, blueberry, cherry,
- 15 cranberry, grape, huckleberry, gooseberry, loganberry, pomegranate,
- 16 pineapple, raspberry, strawberry, tomatillo, youngberry, grapefruit, kumquat,
- 17 lemon, lime, orange);
- 18 (33) Dried fruit powders; and
- 19 (34) COTTAGE FOOD PRODUCTS not already listed, for which a product assessment
- 20 is conducted by the REGULATORY AUTHORITY, verifies that the food product is
- 21 not a hazard to public health and approved by the DIVISION DIRECTOR.
- 22

#### **Section 43.2-5-2. - Registration of Cottage Food Products.**

- 23
- 24
- 25 (A) COTTAGE FOOD PRODUCTS as described in Section 43.2-5-1 must be registered with
- 26 the DEPARTMENT before being offered for direct or indirect sale.
- 27
- 28 (B) A COTTAGE FOOD OPERATOR, FOOD ESTABLISHMENT or other applicant shall register the
- 29 COTTAGE FOOD PRODUCTS on an annual basis on forms provided by the Department.
- 30
- 31 (C) The applicant shall provide evidence satisfactory to the DIVISION DIRECTOR that the
- 32 COTTAGE FOOD OPERATION preparing or packaging the COTTAGE FOOD PRODUCTS is
- 33 in compliance with all applicable local, state and federal laws and regulations,
- 34 including, without limitation, inspection requirements and Fairfax County zoning
- 35 approvals.
- 36
- 37 (D) COTTAGE FOOD PRODUCTS prepared or packaged for DIRECT SALES shall be identified
- 38 with:
- 39
- 40 (1) A clearly visible placard at the sales or service location that the FOOD is
- 41 registered and APPROVED by the DEPARTMENT, or
- 42
- 43 (2) Product labeling containing the same information in subparagraph (1).

1  
2 **Section 43.2-5-3. - Food Safety Training for the Preparation of Cottage Food**  
3 **Products.**  
4

5 (A) The DEPARTMENT may provide technical assistance, and develop, maintain, and  
6 deliver commodity-specific training related to the safe processing and packaging of  
7 COTTAGE FOOD PRODUCTS.  
8

9 (B) A person who prepares or packages COTTAGE FOOD PRODUCTS should complete a  
10 BASIC FOOD SAFETY HANDLER course within three months of registration that is:  
11

12 (1) Instructed by the DEPARTMENT to protect the public health. The course will not  
13 exceed three hours in length. The DEPARTMENT shall ensure that COTTAGE FOOD  
14 OPERATORS are properly notified of the location, date, and time of the classes  
15 offered; or  
16

17 (2) Listed as one of the American National Standards Institute (ANSI) accredited  
18 food handler courses that are currently required for retail food facility food  
19 handlers.  
20

21 (C) The DEPARTMENT may collect a fee not exceeding the reasonable costs that the  
22 DEPARTMENT incurs through the administration of the training described in Section  
23 43.2-5-3(A) to protect the public health.  
24

25 **ARTICLE 6. - Fee Schedules.**  
26

27 **Section 43.2-6-1. - Fee Schedule; Annual.**  
28

29 The following fees shall be paid to the DEPARTMENT (i) annually by December 31 for  
30 facilities operating 12-months a year, or (ii) prior to the issuance of the operating PERMIT for  
31 facilities operating on a seasonal schedule or facilities operating on a temporary basis  
32

<u>Fee Type</u>	<u>Fee</u>
<u>Annual Food Establishment Application</u>	<u>\$40.00</u>
<u>Temporary Event Application (annual fee)</u>	<u>\$40.00</u>
<u>Conditional Permit</u>	<u>\$40.00</u>

38  
39 **Section 43.2-6-2. - Fee Schedule; Supplemental.**  
40

<u>Fee Type</u>	<u>Fee</u>
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Attachment 3

1	<u>Conformance Verification</u>	<u>\$25.00</u>
2	<u>Compliance Verification</u>	<u>\$65.00</u>
3	<u>Food Safety Training School</u>	<u>\$15.00</u>
4	<u>Plan Submission Review</u>	<u>\$40.00</u>

- 5
- 6
- 7 **2. That Fairfax County Code Chapter 43.1, Food and Food Service**
- 8 **Establishments, is repealed.**
- 9
- 10 **3. That the repeal of Chapter 43.1 shall not affect the validity of any act or**
- 11 **violation done or committed before the repeal of that Chapter; or any**
- 12 **liquidated damage, penalty, sanction, or forfeiture incurred, or any right**
- 13 **established, accrued, or accruing, under that Chapter before the repeal; or any**
- 14 **notice of violation or enforcement action initiated pursuant to that Chapter**
- 15 **before the repeal. Any such acts, violations, liquidated damages, penalties,**
- 16 **sanctions, forfeitures, rights, enforcement actions shall be governed by**
- 17 **Chapter 43.1, which is continued in effect for that purpose.**
- 18
- 19 **4. That the provisions of this ordinance are severable, and if any provision of**
- 20 **this ordinance or any application thereof is held invalid, that invalidity shall**
- 21 **not affect the other provisions or applications of this ordinance that can be**
- 22 **given effect without the invalid provision or application.**
- 23
- 24 **5. That the provisions of this ordinance shall take effect on \_\_\_\_\_.**
- 25
- 26
- 27
- 28

29 GIVEN under my hand this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

30 \_\_\_\_\_

31 Jill G. Cooper

32 Clerk for the Board of Supervisors

33

34