AMENDMENTS TO THE FAIRFAX COUNTY CODE
CONCERNING THE REGULATION OF CERTAIN FOOD
AND FOOD SERVICE ESTABLISHMENTS

AN ORDINANCE to amend the Fairfax County Code by adding a new Chapter (2017 Food Code)
comprised of new sections numbered 43.2-1-1 through 43.2-5-1 and by repealing Chapter
43.1 (Food and Food Service Establishments), relating generally to the regulation of food and
food service establishments.

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

1. That the Fairfax County Code is amended by adding a new Chapter 43.2 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 “2017 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 (“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 43.2-1-5, are hereby adopted
and incorporated in their entirety into this chapter as if fully set forth herein. In the event of
conflict or inconsistency between the provisions of this chapter and the Food Code, the
provisions of this chapter shall prevail and control.

(b) A certified copy of the FDA Food Code shall be maintained by the Regulatory Authority at the main
administrative office of the DEPARTMENT, and it shall be available for review by members of the
public. (34-97-43.1; 9-01-43.1; 14-01-43.1; 21-06-43.1.)

Section 43.2-1-4. - Modifications to FDA Food Code.

The following sections of the FDA Food Code, as incorporated into the Code of the County of
Fairfax, Virginia, are modified as follows:

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

Agent means a legally authorized representative of the owner.
Approved water supply means a waterworks which has a valid waterworks operation permit from the DEPARTMENT or a nonpublic water supply which is evaluated, tested and if found in reasonable compliance with the construction standards of the Private Well Regulations (12 VAC 5-630) and the bacteriological water quality standards of the Virginia Waterworks Regulations (12 VAC 5-590), accepted and approved by the DIRECTOR.

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

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

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

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

Compliance Verification means an activity conducted by the DEPARTMENT to verify that a PERMIT HOLDER is in compliance with a voluntary agreement established by the DEPARTMENT and the PERMIT HOLDER for correction of a PRIORITY ITEM, PRIORITY FOUNDATION ITEM, and/or CORE ITEM.

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

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

Cottage Food Operation means a private home that is deemed by the REGULATORY AUTHORITY to meet the requirements in Article 5 of this Chapter.

Department means Fairfax County Department of Health

Director means the Director of the Fairfax County Department of Health or the designee of the Director.

Division Director means the Director of Environmental Health Services for the Fairfax County Department of Health or the designee of the Division Director.

Enforcement Verification means an activity conducted by the DEPARTMENT to verify that the PERMIT HOLDER is complying with the directives made to the PERMIT HOLDER by the DEPARTMENT for correction of a PRIORITY ITEM, PRIORITY FOUNDATION ITEM, and/or CORE ITEM that remains out of compliance at the time of a COMPLIANCE VERIFICATION.

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

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

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

Mobile food establishment means a food establishment that is designed to be readily moveable from place to place and shall include pushcarts, trucks, trailers, or vans.
Open-air Barbecue means a piece of EQUIPMENT designed for barbecuing FOOD, where the FOOD is prepared out of doors by cooking directly over hot coals, heated lava, hot stones, gas flame, or other method approved by the DEPARTMENT, on EQUIPMENT suitably designed and maintained for use out of doors, that is operated by a TEMPORARY FOOD ESTABLISHMENT, or a MOBILE FOOD ESTABLISHMENT that remains fixed during the hours of operations at a community event or a FOOD ESTABLISHMENT.

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

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

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

Regulatory Authority means the DEPARTMENT or its authorized representative.

Shared-use Kitchen means a FOOD ESTABLISHMENT used by more than one PERMIT HOLDER where the secondary PERMIT HOLDER rents space and/or uses the kitchen by the hour or day to produce FOOD for their FOOD ESTABLISHMENT while fulfilling regulatory compliance. A shared-use kitchen may be regulated by the DEPARTMENT and/or by the Virginia Department of Agriculture and Consumer Services.

ShareWare means reusable takeout FOOD containers returned by the CONSUMER, to be cleaned, sanitized, and put back into circulation after use.

ShareWare establishment means an FOOD ESTABLISHMENT operation that collects, processes, stores, and distributes SHAREWARE to FOOD ESTABLISHMENTS.

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

(a) Section 2-102.12 shall be amended to read:

2-102.12 Food Protection Manager.

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

1. Passing a test that is part of an ACCREDITED PROGRAM; or
2. Passing a test that is administered by the REGULATORY AUTHORITY with issuance of a certificate as a limited food manager.

(B) This does not apply to certain types of FOOD ESTABLISHMENTS deemed by the REGULATORY AUTHORITY to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of FOOD preparation.

(b) Section 2-102.20 shall be amended to read:
Section 2.102.20 Food Protection Manager Certification.

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

(c) Section 3-201.11 shall be amended to read:

Section 3.201.11 Compliance with Food Law.

(C) Except for an APPROVED COTTAGE FOOD OPERATION, FOOD prepared in a private home may not be offered for human consumption through direct sales to the CONSUMER or from a FOOD ESTABLISHMENT.

(d) Section 3-304.17 shall be amended to read:

Section 3-304.17 Refilling Returnables.

(A) Except as specified in ¶¶ (B) - (E) of this section, empty containers returned to a FOOD ESTABLISHMENT for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT. P

(B) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with FOOD if the FOOD container is:

(1) Designed and constructed for reuse and in accordance with the requirements specified under Part 4-1 and 4-2; P

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

(3) One that is provided by a SHAREWARE ESTABLISHMENT to a FOOD ESTABLISHMENT:

(4) Returned to the FOOD ESTABLISHMENT or a SHAREWARE ESTABLISHMENT by the CONSUMER after use:

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

(a) Cleaned as specified under Part 4-6 of this Code.

(b) Sanitized as specified under Part 4-7 of this Code; P and

(c) Visually inspected by a FOOD EMPLOYEE to verify that the container, as returned, meets the requirements specified under Part 4-1 and 4-2. P

(C) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with BEVERAGE if:
(1) The BEVERAGE is not a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(2) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;

(3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(4) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and

(5) The container is refilled by:

(a) An EMPLOYEE of the FOOD ESTABLISHMENT, or

(b) The owner of the container if the BEVERAGE system includes a contamination-free transfer process as specified under §§ 4-204.13(A), (B), and (D) that cannot be bypassed by the container owner.

(D) Consumer-owned, personal take-out BEVERAGE containers, such as thermally insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under §§ 4-204.13(A), (B), and (D).

(E) CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.

(e) Section 4-204.124 shall be added and reads as follows:

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

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

(A) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is operated on the same PREMISES as, in reasonable proximity to, and in conjunction with, a FOOD ESTABLISHMENT that is approved for FOOD PREPARATION, or a TEMPORARY FOOD ESTABLISHMENT or a MOBILE FOOD ESTABLISHMENT that is operating at a single event or celebration. The PERMIT HOLDER of the FOOD ESTABLISHMENT, TEMPORARY FOOD ESTABLISHMENT or MOBILE FOOD ESTABLISHMENT shall be deemed to be the PERMIT HOLDER of the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN, and shall be responsible for ensuring that it is operated in full compliance with this part.

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

(C) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is separated from public access to prevent FOOD contamination or injury to the public by using approved methods.
(D) If the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is a permanent structure, it shall be equipped with an impervious and EASILY CLEANABLE floor surface that extends a minimum of five feet from the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN facility on all open sides.

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

(f) Section 6-402.11 is amended to read:

Section 6-402.11 Convenience and Accessibility.

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). (14-01-43.1; 21-06-43.1)

(g) Section 6-501.115 shall be amended to read:

Section 6-501.115 Prohibiting Animals.

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

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

1. Edible FISH or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
2. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;
3. In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, SERVICE ANIMALS that are controlled by the disabled EMPLOYEE or PERSON if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL;
4. Pets in the common dining areas of institutional care facilities such as nursing homes; assisted living facilities; group homes; residential care facilities; and bed and breakfast facilities that are FOOD ESTABLISHMENTS at times other than during meals if:
   a. Effective partitioning and self-closing doors separate the common dining areas from FOOD storage or FOOD preparation areas;
   b. Condiments, EQUIPMENT, and UTENSILS are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
   c. Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service;
5. In areas that are not used for FOOD preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals; and
Dogs are allowed in outdoor dining areas if:

(a) The outdoor dining area is not fully enclosed with floor to ceiling walls and is not considered a part of the interior physical facility.

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

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

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

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

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

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

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

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

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

(h) Section 8-302.14 is amended to read:

Section 8-302.14 Contents of the Application.

A) The name, mailing address, telephone number, email address and signature of the PERSON applying for the PERMIT and the name, mailing address, location and phone number of the FOOD ESTABLISHMENT.

(i) Section 8-303.40 shall be added and read:

Section 8-303.40 Permit Revocation, Denial of Permit Renewal.

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

(1) Repeated or continuing violations of the provisions of this Code; or

(2) Failure to pay the permit fees pursuant to Article 4 of this Code; or

(3) Materially false statements made in the application for permit.

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

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

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

(j) Section 8-304.10 shall be amended to read as follows:

Section 8-304.10 Responsibilities of the DEPARTMENT.

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

(k) Section 8-304.11 shall be amended to read as follows:

Section 8-304.11 Responsibilities of the Permit Holder.

(K) Every FOOD ESTABLISHMENT shall display, without obstruction in a conspicuous place designated by the DEPARTMENT, notice stickers that inform the public that the FOOD ESTABLISHMENT is subject to inspection by the DEPARTMENT. Such notice stickers shall be displayed at each public entrance and each drive-up and/or walk-up window of every FOOD ESTABLISHMENT. Such notice to the public shall include, at a minimum, a statement that the FOOD ESTABLISHMENT is inspected by the DEPARTMENT.

(l) Section 8-402.10 is amended to read:

Section 8-402.10 Competency of Inspectors.

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

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

(m) Section 8-904.60 shall be added and read:

Section 8-904.60 Permit Suspension.

(A) The DIVISION DIRECTOR may suspend a permit for any of the following causes without prior notice or hearing:
The operation of the FOOD ESTABLISHMENT is deemed an imminent health hazard by the DEPARTMENT due to certain conditions, including, but not limited to, those circumstances set forth in Section 8-404.11(A); or

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

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

(B) When a permit is suspended, the FOOD ESTABLISHMENT operation shall cease immediately.

(C) A suspension shall become effective upon service of written notice to the permit holder or person in charge of the FOOD ESTABLISHMENT or TEMPORARY FOOD ESTABLISHMENT.

(D) The permit holder may make a written request for a hearing within ten (10) days after notice of suspension and the DIVISION DIRECTOR shall provide a hearing within ten (10) days after the request. If no request for a hearing is filed within ten (10) days, the suspension becomes final.

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

(n) Section 8-904.70 shall be added and read:

Section 8-904.70 Suspension And Revocation Hearing Procedure.

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

(B) Written notice of a suspension or revocation hearing shall be presented by the DIRECTOR either personally, or by certified mail, to the permit holder's last known address of record and shall state the date, time, and place of hearing, as well as setting forth the charges against the food establishment. A copy of the notice shall be filed in the records of the DEPARTMENT.

(C) The DIRECTOR shall have the power to swear witnesses. The permit holder or his legal counsel shall have the opportunity to present evidence and/or witnesses to the DEPARTMENT. A record of the hearing shall be made.

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

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

ARTICLE 2. – Mobile Food Establishments.

Section 43.2-2-1. – General Provisions.

Mobile food establishments shall comply with the requirements of this Chapter. All establishments are to be clearly identified with the trade name the establishment is operated under and contact phone number conspicuously displayed on both sides of the establishment. (34-97-43.1; 21-06-43.1.)

Section 43.2-2-2. - Requirements for types of mobile food establishments.
(a) A mobile food establishment shall be equipped with a hand sink and a three-compartment sink. However, the director may waive the requirement for a three-compartment sink if the menu items dispensed from the establishment do not require extensive preparation and the establishment has access to a three-compartment sink at the COMMISSARY.

(b) A mobile food establishment shall be equipped with a hand sink and a three-compartment sink. However, the Director may waive the requirement for a hand sink if only prepackaged foods are to be dispensed or if an alternate method to hand washing, approved by the director, is used. Such alternate methods may include, but are not limited to, use of disposable hand washing towelettes, disposable gloves, sanitizing solutions that meet the specifications of 21 C.F.R. § 178.1010 or other techniques approved by the Director. The Director may waive the requirement for a three-compartment sink if the limited service mobile food unit establishment has access to a three-compartment sink at the COMMISSARY or only prepackaged foods are to be dispensed. (34-97-43.1; 21-06-43.1.)

Section 43.2-2-3. Adoption of National Fire Protection Association Standard 96, Annex B


Section 43.2-2-4. Commissary

Mobile food establishments shall operate from a COMMISSARY that possesses a food establishment permit issued in accordance with this Chapter. However, the Director may waive this requirement if the mobile food establishment meets all construction standards applicable to the food items served by the unit. The Director may allow a mobile food establishment to operate from a COMMISSARY outside of Fairfax County, Virginia, if the base of operation meets basic sanitation requirements and is permitted by another jurisdiction. (34-97-43.1; 21-06-43.1.)

ARTICLE 3 – Mobile Food Vending from VDOT Rights-of-Way

Section 43.2-3-1. General Provisions.

(a) For the purpose of this Article, Mobile Food Vending involves the sale of food from the curb side of a self-contained mobile food vehicle or trailer legally parked in a single parking space on a public street to customers on the curbside of a public street. Vending from a pushable cart shall not be permitted under this Article. Mobile Food Vending will be to pedestrians only.

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

(c) A Mobile Food Vending Permittee or Mobile Food Vendor is the holder of a Food Establishment Permit for Mobile Food Vending and/or the person(s) responsible for a Mobile Food Vending Vehicle.

(d) Mobile Food Vending is subject to all of the provisions of this Article. All other sales of goods or services from any vehicle parked upon any street or other right of way used for transportation purposes is prohibited.

(e) Mobile Food Vending is subject to all of the provisions in Article 2 of this Chapter, Mobile Units.

Section 43.2-3-2. Food Establishment Permit for Mobile Food Vending
Each application for a Food Establishment Permit for Mobile Food Vending (Permit) shall be completed on forms provided by the Director and accompanied by the application fee set by Article 6 of this Chapter.

Each Permit shall be valid for a period of one year, unless the permit is revoked or suspended in accordance with this Chapter. After the expiration of such permit, any person seeking to continue Mobile Food Vending operations in the County must submit a renewal application and a renewal fee.

The Permit requires compliance with all DEPARTMENT and Department of Cable and Consumer Services permits, licenses, and regulations.

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

The Permit may only be issued by the Director upon his determination that the applicant has submitted a completed application, paid the required application fee, obtained all other required permits, and is fully in compliance with all relevant laws, ordinances, and regulations.

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

Mobile Food Vending is permitted only in accordance with a valid Permit issued by the Director and with all state requirements as specified in the VDOT LUP-MFV and as set forth below:

1. The occupation of state maintained highway right-of-way by Mobile Food Vending Vehicles shall be restricted to non-limited access highways having a speed limit of 35 miles per hour or less.

2. Mobile Food Vending Vehicles must be located in a single legal parking space. Such parking space may be a general use space or, if the County has designated reserved parking spaces for this purpose, a space reserved for Mobile Food Vending operations.

3. Mobile Food Vending Vehicles shall not be parked so as to obstruct sight lines at intersections or entrances to highways as determined by the Police Department. Mobile Food Vending Vehicles shall not impact minimum intersection or stopping sight distances (whichever applies to the adjacent intersection).

4. All Mobile Food Vending operations must be conducted adjacent to sidewalks with a width of five (5) feet or greater or, at locations with sidewalks that are less than five (5)
feet wide, a level passable surface of at least six (6) feet (including the width of the
sidewalk). The location and operation of Mobile Food Vending Vehicles shall not
interfere with pedestrian or vehicle traffic.

(5) Mobile Food Vendors shall not be authorized to place, put, or affix advertisements upon
the highway right-of-way.

(6) Vending directly to motor vehicle occupants or to pedestrians on the travel-way side of
the Mobile Food Vending Vehicle is prohibited. Vending will solely be to pedestrians and
only from the sidewalk side of the Mobile Food Vending Vehicle.

(7) Prior to issuance of this permit, the permit applicant must provide proof of insurance to
protect against liability for personal injury and property damage up to one million dollars
($1,000,000) for each occurrence and two million dollars ($2,000,000) aggregate. Fairfax
County, Virginia, must be named as an additional insured. Said insurance must remain
valid as long as the permit holder occupies state maintained highway rights-of-way in
accordance with the permit. Proof of insurance shall be maintained in all Mobile Food
Vending Vehicles and made readily available for inspection by the County and/or VDOT.

(b) Mobile Food Vending Operations may be conducted for a maximum of four (4) hours on any one
(1) day at any one (1) location, including set-up and break-down. For purposes of this limitation,
a Food Truck Vending Zone, once established, shall be considered one location, such that
vending twice in one day within the same zone shall not be permitted. Vending twice in one day
within the same block of a public street also shall not be permitted. Upon the completion of the
four hour window of operations, or completion of break-down of operations, whichever occurs
earlier, Mobile Food Vending Vehicles, which includes trailers, must be moved or removed from
the parking space from which such vehicle or trailer was operating. Exceptions to this time
limitation shall not be made for logistical difficulties involving trailers.

(c) Mobile Food Vending Operations shall be prohibited between the hours of 10 p.m. and 7 a.m. the
following day and except that no such vending operations shall be permitted prior to 9 a.m. on
Sundays or federal holidays. Upon the establishment of Food Truck Vending Zones, the hours of
operation for such Zones, as determined and approved by the Fairfax County Executive or his
designee, shall supersede the time limitations established by this provision with respect to Mobile
Food Vending Operations within such Zones.

(d) Mobile Food Vending Vehicles shall not be parked or otherwise located in any fire lane, travel
lane, or in the entrance or exit of any property.

(e) Mobile Food Vendors shall ensure that the vicinity around a Mobile Food Vending Vehicle is kept
clean and free of trash and debris. Mobile Food Vendors shall also provide receptacles in the
immediate area of any stationary location from which mobile food vending operations are taking
place for the disposal of waste materials or other litter created, they shall request customers to
place all waste and litter in the receptacles, and they shall remove and dispose of all of the waste
materials and litter anywhere in the vicinity of the Mobile Food Vending Vehicle. No tables,
seating, umbrellas, propane tanks, cooking implements, signs or other accessories are allowed
outside of the mobile food truck.
Mobile Food Vendors may engage in mobile food vending only on marked streets within the Mobile Food Vending Zones approved by the Board of Supervisors.

(1) The maximum width of any Mobile Food Vending Zone is eight (8) feet. A zone shall meet all the minimum requirements specified in the VDOT LUP-MFV.

(2) Mobile Food Vendors shall strictly adhere to any lottery or other priority system, if any such system is established by the Board, that dictates when and where Mobile Food Vendors are permitted to operate within Mobile Food Vending Zones.

(3) The County Executive or his designee is authorized to temporarily or permanently suspend any mobile food vending operations within a designated Mobile Food Vending Zone, including part or all of such Zone, to protect the public health, safety, or welfare or in accordance with Section 43.2-2-5, below. Notice of such suspension or termination shall be provided electronically to Permittees to the electronic mail address they have on file with the County or by removal of signs that designated the location as an authorized location for mobile food vending operations.

(3) The Board may create additional Mobile Food Vending Zones or eliminate existing zones based on recommendations submitted to the Board by the Director of the Fairfax County Department of Health or on recommendations made by individual Board members.

(g) Mobile Food Vending Operations shall be permitted only within areas zoned for commercial or industrial use or in any planned zoning district allowing for mixed use. Mobile Food Vending within any residential neighborhood or within 500 feet of any residentially zoned area is not permitted.

(h) Mobile Food Vendors shall strictly comply with all Holiday Restrictions designated by the County Executive.

(i) Mobile Food Vending operations shall not block or divert roadway drainage.

(j) The shoulders, ditches, sidewalks, roadsides, drainage facilities, and pavement shall be kept in an operable condition satisfactory to VDOT and shall not be adversely impacted by Mobile Food Vending operations.

(k) The operation of any loudspeaker or other amplification device from, within, or in the immediate vicinity of any Mobile Food Vending Vehicle is prohibited.

(l) No Mobile Food Vending Vehicle shall park on any public street or public rights-of-way in the County after its Permit has been suspended or revoked until such time, if any, as such Permit has been reinstated or a new Permit issued.

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

VDOT has reserved the right, in the VDOT LUP-MFV, to suspend any or all mobile food vending operations on state maintained highway rights-of-way in response to public safety or operational concerns. VDOT shall be held harmless from any resulting monetary losses by the County or by any and all Mobile Food Vendors resulting from such suspension. The County also reserves the right to suspend any or all mobile food vending operations on state maintained highway rights-of-way in response to public safety or operational concerns and/or to implement a suspension initiated by VDOT. The County shall be held harmless, in the event of any such suspension of Mobile Food Vending operations on state maintained highway rights-of-way whether initiated by VDOT or the County, from any resulting monetary losses incurred by any and all Mobile Food Vendors.
The operation of any Mobile Food Vehicle in any manner that constitutes a breach of the peace or creates a danger to the health, safety, and welfare of the public shall constitute cause for automatic suspension of a Food Establishment Permit for Mobile Food Vending in accordance with this Chapter.

ARTICLE 4. - Compliance Procedures; Application Fee.

Section 43.2-4-1. - Permits for Food Establishments.

(A) No person shall operate a food establishment unless that person possesses a valid permit issued by the DIRECTOR. Only a person who complies with the requirements of this Chapter shall be entitled to receive or retain such a permit. Permits are not transferable. A valid permit shall be posted in every food establishment in a conspicuous place in the public view. Food establishment permits are issued for a calendar year and expire on December 31 regardless of the month of issue.

(B) An initial application fee and an annual renewal application fee shall be assessed for each permitted food establishment, including temporary food stands operating less than 14 days in accordance with Section 43.2-5-1 of this Chapter. A portion of this fee is designated to support a program of food safety education to include, for example, but not be limited to a quarterly newsletter, food advisories, and food safety publications. Such fee shall not be applicable to food establishments operated by the Office of Food and Nutrition Services of the Fairfax County School Public Schools; or to any Fairfax County agency; however, such fees shall apply to private vendors subcontracted by Fairfax County to operate food establishments. The application fee shall be based on a calendar year and shall be due and payable on or before December 31 or upon initial application. The fee shall not be prorated. An additional fee shall be assessed for renewal applications received after December 31.

(C) Establishments failing to file the required application for renewal of the permit will be operating without a valid permit and will be subject to immediate closure in accordance with Section 43.2-3-1D of this Chapter. (34-97-43.1; 14-01-43.1; 21-06-43.1; 23-09-43.1.)

Section 43.2-4-1D shall be added and read:

Section 43.2-4-1D Operating Without A Permit.

(a) The DEPARTMENT shall have the power to order the immediate closure of any FOOD ESTABLISHMENT operated without a permit as required by this Code. Issuance of such a closure order shall not be a prerequisite to any action in law or equity authorized by this provision.

(b) Any person engaged in the business of operating a FOOD ESTABLISHMENT without a permit as required by this Code shall be subject to a fine of five hundred dollars ($500.00) for each offense. Each day a FOOD ESTABLISHMENT operates without a permit shall constitute a separate offense. The fine provided by this paragraph shall be in addition to any other remedy available to Fairfax County, including injunctive relief.

Section 43.2-4-2. - Exemptions.

(a) The DIRECTOR may exempt coffee and related beverage service and service areas and such one time events or affairs from such provisions or requirements of this Chapter as the DIRECTOR may deem advisable upon determining that the operation of such service, service areas, events or affairs will not adversely affect the public health.

(b) The provisions of this chapter shall not apply to youth athletic concession stands at youth athletic activities, 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 by ordinance or resolution of the BOARD OF SUPERVISORS.
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. It also shall be unlawful for any food establishment, limited food establishment, mobile food unit or limited service mobile food unit to fail to comply with any provision of this Chapter that applies to it. A person who fails to comply with any applicable provision shall be in violation of this Chapter. The owner of any such food establishment or mobile food unit which fails to comply with any applicable provision shall be in violation of this Chapter. Each violation of this Chapter is punishable as a Class 1 misdemeanor in accordance with Virginia law. The criminal penalty provided in this Section shall be in addition to the administrative remedies set forth elsewhere in this Chapter. (34-97-43.1; 21-06-43.1.)


Section 43.2-6-1. General Provisions.

For the purpose of this Article, a COTTAGE FOOD OPERATIONS involves the use of a private home as an approved food source as specified in ¶ 3-201.11(B) of this Chapter and as allowed by the Fairfax County Code. A COTTAGE FOOD OPERATIONS shall be registered with the REGULATORY AUTHORITY as an approved source of low risk food products that are not subject to time/temperature control for safety. Cottage food products include the following:

1. Baked goods, without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries, cakes, and tortillas;
2. Candy, such as brittle and toffee;
3. Chocolate-covered nonperishable foods, such as nuts and dried fruits;
4. Dried fruit;
5. Dried pasta;
6. Dry baking mixes;
7. Fruit pies, fruit empanadas, and fruit tamales;
8. Granola, cereals, and trail mixes;
9. Herb blends and dried mole paste;
10. Honey and sweet sorghum syrup;
11. Jams, jellies, preserves, and fruit butter that comply with the standard in Part 150 of Title 21 of the Code of Federal Regulations;
12. Nut mixes and nut butters;
13. Popcorn;
14. Vinegar and mustard;
15. Roasted coffee and dried tea;
16. Waffle cones and pizelles;
17. Cotton candy;
18. Candied apples;
19. Confections such as salted caramel, fudge, marshmallow bars, chocolate covered marshmallow, nuts, and hard candy, or any combination thereof;
20. Buttercream frosting, buttercream icing, buttercream fondant, and gum paste that do not contain eggs, cream, or cream cheese;
21. Dried or dehydrated vegetables;
22. Dried vegetarian-based soup mixes;
23. Vegetable and potato chips;
24. Ground chocolate;
25. Seasoning salt;
26. Flat icing;
27. Marshmallows that do not contain eggs;
28. Popcorn balls;
29. Dried grain mixes;
30. Fried or baked donuts and waffles;
31. Dried hot chocolate (dried powdered mixes or molded hardened cocoa pieces);
32. Fruit infused vinegar (containing only high-acid fruits such as apple, crabapple, nectarine, peach, plum, quince, blackberry, blueberry, cherry, cranberry, grape, huckleberry, gooseberry, loganberry, pomegranate, pineapple, raspberry, strawberry, tomatillo, youngberry, grapefruit, kumquat, lemon, lime, orange);
33. Dried fruit powders; and
34. A food product not already listed for which a product assessment is conducted and verifies that the food product is not time/temperature control for safety.

Section 43.2-6-2. Registration of Cottage Food Operations.

A person who wants to operate a COTTAGE FOOD OPERATION and meets the requirements in Section 43.2-5-1 shall complete a registration process with the DEPARTMENT. The registration process shall be renewed on an annual basis. A registration fee set by Article 6 shall apply for both the initial and renewal registration.

Section 43.2-6-3. Classification of Cottage Food Operations.

(A) Class A COTTAGE FOOD OPERATION may engage in direct sales of cottage food products. A direct sale is a transaction between the COTTAGE FOOD OPERATION operator and the CONSUMER. Direct sales may take place at bake sales, farmers’ markets, and community events.

(B) Class B COTTAGE FOOD OPERATION may engage in direct and indirect sales of cottage food products. An indirect sale is where a CONSUMER purchases a cottage food product made by a cottage food operator at a third-party retailer. A retail food facility that holds a valid health permit including markets, restaurants, bakeries, and delis are third-party retailers.

Section 43.2-6-4. Food Safety Training Requirements.

The DEPARTMENT shall provide training for specifically designed for the owners and operators of COTTAGE FOOD OPERATION. A training fee set by Article 7 of this Chapter shall apply to each individual who attends the COTTAGE FOOD OPERATIONS training.

Section 43.2-6-5. Inspection Requirements.

(A) The REGULATORY AGENCY shall conduct preoperational inspections of both Class A and Class B COTTAGE FOOD OPERATIONS.

(B) The REGULATORY AGENCY shall conduct an inspection of a Class B COTTAGE FOOD OPERATION at least once annually.
(C) The REGULATORY AGENCY shall require a Class A COTTAGE FOOD OPERATION to inform CONSUMERS by a clearly visible placard at the sales or service location that the FOOD is prepared in a kitchen that is registered and APPROVED by the DEPARTMENT.

**ARTICLE 7. - Fee Schedules**

**Section 43.2-7-1. - Fee Schedule; Annual.**

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

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Fee</th>
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<tbody>
<tr>
<td>Annual Food Establishment Application</td>
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<tr>
<td>Annual Food Establishment Application, Renewal after December 31</td>
<td>$50.00</td>
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<tr>
<td>Temporary Event Application (annual fee)</td>
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**Section 43.2-7-2. - Fee Schedule; Supplemental.**

<table>
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<tr>
<th>Fee Type</th>
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<tbody>
<tr>
<td>Conformance Verification</td>
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<tr>
<td>Compliance Verification</td>
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<tr>
<td>Enforcement Verification</td>
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<tr>
<td>Plan Submission Review</td>
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<tr>
<td>Operating without a permit</td>
<td>$500.00 per occurrence</td>
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<tr>
<td>Food Safety Training School</td>
<td>$15.00</td>
</tr>
<tr>
<td>Cottage Food Operations Registration Fee</td>
<td>$40.00</td>
</tr>
</tbody>
</table>