



Zoning Administrator | Department of Planning and Zoning
Town of Vienna
127 Center Street, South
Vienna, Virginia 22180-5719
p: (703) 255-6341
e: DPZ@viennava.gov

ZONING ADMINISTRATOR INTERPRETATION AND DETERMINATION

June 13, 2024

INTERPRETATION AND DETERMINATION:

The use of residential kitchens for the production of food for resale, direct or indirect, is regulated by the Fairfax County Department of Health, and not classified as a “heavy manufacturing” or “restaurants” within the relevant Fairfax County code sections; home-based food production uses are defined as “Cottage Food Operations” through Fairfax County. “Cottage Food Operations” is not prohibited in Section 18-327 Home-Based Business. Therefore, the Zoning Administrator Determination is that “Cottage Food Operations” is a permitted home-based business.

BACKGROUND:

The purpose of this Zoning Interpretation and Determination is to provide clarification regarding home-based businesses producing food in accordance with the Cottage Food Operations regulations is permitted in accordance with the Town of Vienna Zoning and Subdivision Ordinance that became effective as Chapter 18 in the Town Code on January 1, 2024.

Article 3 (Uses), Section 18-327 Home-Based Business, states “Manufacturing, heavy, which relates to the handling, processing, packing, or serving of food directly or indirectly to the public” is not permitted as a home-based business. No definition is given for “Manufacturing, heavy” in Article 9.

Cottage Food Operations, per Fairfax County ordinance Chapter 43.2. Food Code, is not equivalent to “*Manufacturing, heavy*,” a term not defined in the Town Code, or a “*restaurant*” as defined in the Town of Vienna Code.

RELEVANT CODE SECTIONS:

Town of Vienna

Article 3 – Uses

Section 18-305 Accessory Uses Table

USE TYPES	DISTRICTS AND ZONES															SPECIFIC USE STANDARDS
	RESIDENTIAL				NON-RESIDENTIAL AND MIXED USES											
	RS-16	RS-12.5	RS-10	RMU	AW	AE	AC/AC-0	M	CS/CS-0	NM	T	GS	CP	PR	PC	
P = PERMITTED / C = CONDITIONAL / - = NOT PERMITTED (See Article 2 for Zone and District Names)																
Home-Based Business	P	P	P	P	P	P	P	-	P	P	-	P	-	-	-	§18-327

Section 18-327 Home-Based Business

1. The following uses are not permitted as home-based businesses:
 - A. Vehicle service and repair;
 - B. Plant nurseries and greenhouses;
 - C. Manufacturing, heavy, which relates to the handling, processing, packing, or serving of food directly or indirectly to the public;
 - D. Medical or dental laboratory;
 - E. Restaurant or food services;
 - F. Bulk storage of flammable liquids;
 - G. Funeral homes;
 - H. Boardinghouses;
 - I. Massage therapist or massage therapy establishments; and
 - J. Boarding establishments, kennels, breeding of animals, and animal care facilities.

Article 9 - Definitions

Restaurant means a commercial establishment, located inside an enclosed building, where meals are primarily prepared to order and served individually for consumption within such building to patrons seated at tables or counters, or in booths, or may be prepared for carry-out, or curbside pick-up. A snack bar or refreshment stand at a nonprofit community swimming pool, playground, playing field, park or similar recreational activity shall not be deemed to fall within the definition of a restaurant.

Fairfax County

Please note: This memorandum is not a determination of the Fairfax County code as it relates to the “Cottage Food” regulations and definitions. These regulations and definitions provided are not exhaustive, and only provided as reference. These regulations are subject to change.

CHAPTER 43.2. Food Code

ARTICLE 1. General Provisions

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

Cottage food operation.

- (1) *Cottage food operation* means an enterprise that is operated by a cottage food operator within the registered area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect or direct and indirect sale to consumers.
- (2) *Cottage food operation* includes both of the following:
 - (a) A "Class A" cottage food operation, which is a cottage food operation that may engage only in direct sales of cottage products, as may be allowed by the Fairfax County Zoning Ordinance or other direct sales venues.
 - (b) A "Class B" cottage food operation, which is a cottage food operation that may engage in both direct sales, as may be allowed by the Fairfax County Zoning Ordinance and indirect sales of cottage food products from the cottage food operation, from direct sales venues or from a third-party retail food establishment.

Cottage food operator means an individual who operates a cottage food operation in his or her private home and is the owner of the cottage food operation.

Cottage food products means foods that are described in Section 43.2-5-1 and that are prepared for sale in the kitchen of a cottage food operation.

Direct sale means a transaction between a cottage food operator and a consumer, where the consumer purchases cottage food products directly from the cottage food operation. Direct sales include, but are not limited to, transactions occurring at temporary food establishments, farmers market stands, and bake sales.

Indirect sale means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit issued pursuant to this Chapter. Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed on the premises.

ARTICLE 5. Cottage Food Products.

Section 43.2-5-1. General Provisions.

For the purpose of this Article, a cottage food operation involves the use of a private home as an approved food source as specified in Section 43.2-1-4 of this Chapter and as allowed by the Fairfax County Code. cottage food products shall be registered with the regulatory authority in accordance with Section 43.2-5-2 as approved low risk food products that are not subject to time/temperature control for safety. Cottage food products include only 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) cottage food products not already listed, for which a product assessment is conducted by the regulatory authority, verifies that the food product is not a hazard to public health and approved by the division director.

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

- (A) Cottage food products as described in Section 43.2-5-1 must be registered with the Department before being offered for direct or indirect sale.
- (B) A cottage food operator, food establishment or other applicant shall register the cottage food products on an annual basis on forms provided by the Department.
- (C) The applicant shall provide evidence satisfactory to the Division Director that the Cottage Food Operation preparing or packaging the Cottage Food Products is in compliance with all applicable local, state and federal laws and regulations, including, without limitation, inspection requirements and Fairfax County zoning approvals.
- (D) Cottage food products prepared or packaged for direct sales shall be identified with:
 - (1) A clearly visible placard at the sales or service location that the food is registered and approved by the department, or
 - (2) Product labeling containing the same information in subparagraph (1).
- (E) Cottage Food Products are subject to all provisions of this Article and the Zoning Ordinance of the Code of Fairfax County, Virginia. (03-21-43.2.)

Signed,



Andrea West, CZA
Zoning Administrator