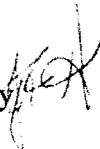


MEMORANDUM

October 2, 2015

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Action:** Bill 32-15, Vendors – Hours and Places of Operation

Planning, Housing and Economic Development Committee recommendation (3-0): Enact Bill 32-15 with amendments
--

Bill 32-15, Vendors – Hours and Places of Operation, sponsored by Lead Sponsors Councilmembers Riemer and Navarro, and Co-Sponsors Council Vice President Floreen, Council President Leventhal, Councilmembers Katz, Rice and Elrich was introduced on June 16, 2015. A public hearing was held on July 14 and a Planning, Housing and Economic Development Committee worksession was held on September 28.

Bill 32-15 would define “food service truck” and provide that vendors operating food service trucks may conduct business from 5:00 a.m. to 10:00 p.m. Currently, food truck operators are subject to the same allowed hours of operation as all other vendors under section 47-2(d):

Except for a prearranged appointment or with the Director's approval, a vendor must not conduct business before 9 a.m. nor after sunset. In this Section, "sunset" means the time established by the U.S. Naval Observatory for Washington D.C. and vicinity.

Background

The idea for this Bill originated in the Wheaton High School Innovation Lab, where students learn project management skills via a curriculum developed by Chief Innovation Officer Dan Hoffman, in partnership with MCPS. Students in the Innovation Lab select the projects they work on with guidance from the Chief Innovation Officer and a co-teacher at Wheaton High School, and use their skills to test out new ideas outside of the classroom. In the past, students have worked on projects with social media start-ups and developed new curriculum. In this case, they are addressing a challenge faced by small businesses - specifically food truck operators - in the County. They have engaged with the Chambers of Commerce, food truck operators and the Department of Permitting services to gather information and develop a solution that they feel will allow food truck operators to better serve the growing market for their product.

The students recognized that the current law restricts food truck operators to serving only lunch during the winter months, and largely precludes them from serving breakfast at all. They also recognized that the reliance on “sunset” as limit on evening operation created some confusion. To solve this problem, they recommended extending the operating hours for food trucks, both in the morning and the evening, to the specific times of 5:00 a.m. and 10:00 p.m. respectively. The solution embodied in this Bill was formulated by students based on their research and perspective, and not at the request of any of the various parties with whom they have consulted.

This Bill will be part of a pilot program of a new Council open government initiative, in partnership with the OpenGov Foundation.¹ As part of the Council’s consideration of the Bill, it will be posted on <https://montgomerycountymd.mymadison.io/> for review, comment and suggested changes by members of the public. This tool expands upon other recent steps taken by the Council to increase the amount of on-line information available to the public and increase public awareness and participation in the legislative process. The Council will evaluate the effectiveness the tool based on its experience with Bill 32-15.

Public Hearing and Correspondence

The Council held a public hearing on Bill 32-15 on July 14, at which there were five speakers. Che Rudell-Tabisola of the DMV Food Truck Association, and Missy Carr of the food truck “Go Fish!” testified in support of the Bill, saying that simply increasing allowed operating hours would be a big benefit to food truck operators, whose business is generally seasonal. Jane Redicker of the Greater Silver Spring Chamber of Commerce and Melvin Thompson of the Restaurant Association of Maryland opposed the Bill as drafted, saying more comprehensive regulation of food trucks is needed, and suggesting that the scope of the Bill should be broadened. Nadir Sharif, who was part of the team of Wheaton High School students that recommended the legislation, addressed the Council and suggested that the Council should listen to all stakeholders and perhaps engage in a broader conversation concerning food truck regulation.

There were six participants in the Madison open government pilot program to allow online review and comment on the Bill by the public. There were five expressions of support for the Bill in the program and none in opposition. The program also generated six suggestions, most of which were related to existing language in the County law regulating vendors. One suggestion was to perhaps use the word “mobile” rather than “itinerant” in the definition of “food service truck” in the Bill. Because the word “itinerant” is used in reference to a defined term in Chapter 15, governing eating and drinking establishments, the suggested change is not within the scope of this Bill. Another suggestion was to strike the words “or other slow moving vehicle” from existing law on line 17, in reference to vendors using pushcarts. Such a change may be worth considering, but making, or not making, it would have no bearing on the intent or effect of this Bill as it was introduced.

Another collaborator suggested removing the existing provision excluding from the definition of vendor a person under 16 years old that is under the direct supervision of a licensee. As with the suggestion relating to pushcarts, this change would not further the intent of Bill 32-15 as introduced and, because it would apply to all vendors (not only food trucks), its impact would

¹ <http://opengovfoundation.org/the-madison-project/>

need to be considered in that broad context. A collaborator suggested reducing the current 500 foot restriction on vendors operating in proximity to schools to 250 feet. As with the above suggestion related to persons under 16, this change would affect all vendors, which should be kept in mind if it is considered. The possibility of allowing food trucks to operate later than 10:00 p.m. on Friday and Saturday nights was also suggested. The District of Columbia allows food trucks to operate on Friday and Saturday until 1:00 a.m. the next day.² Staff believes that an extension of weekend operating hours would be more appropriate to consider in the future, if there is a demonstrated need.

Issues / Committee Recommendation

A decade ago, food trucks were relatively uncommon in the United States, outside of a few cities. In recent years, the number of food trucks operating has exploded nationwide, due perhaps to impact of the recent recession on brick-and-mortar establishments, the rise of social media, or some combination of the two. Montgomery County and the DC-Maryland-Virginia metropolitan area have seen substantial growth in this sector, with a regional food truck association³ and website,⁴ as well as a number of Montgomery County food trucks setting up a website⁵ to collectively promote their services.

While a number of jurisdictions have struggled to modernize outdated vendor regulations in the face of the proliferation of food trucks and have enacted comprehensive food truck laws, Montgomery County has in place a regulatory framework that is protective of public health and public space. Bill 32-15 represents an attempt to remove one clear economic impediment to food truck operation – constantly changing and very limited permitted hours of operation.

How are food trucks currently regulated in the County?

Under Chapter 47 of the County Code, all vendors (including food truck operators), are required to have a vendor license issued by the Department of Permitting Services (DPS) (see §16-19). There are four types of vendor's licenses; a food truck generally operates under a "regular route vendor license."⁶ It is under Chapter 47 that every vendor's hours of operation are limited to between 9:00 am and sunset.

Under the regulations governing licensed vendors, every vendor is responsible for maintaining a clean vending area, including providing trash receptacles, and must comply with all other laws, ordinances and regulations that affect their activity.⁷ In addition to these general requirements, a regular route vendor must comply with a number of requirements related to parking, and must comply with the County noise ordinance.⁸ Vendor licenses generally have a term of one year (though there are 60 day licenses), with the annual fee calculated using a base rate plus a per-operator fee. A single operator license would be \$330.75.

² DCMR Title 24 Section 552

³ <http://www.dmvfta.org/>

⁴ <http://foodtruckfiesta.com/>

⁵ <http://www.mocofoodtrucks.com/>

⁶ The other types of vendor licenses are: (1) door-to-door; (2) site specific; and (3) sidewalk vendor/pushcart.

⁷ COMCOR 47.02.01.05.3(a)

⁸ COMCOR 47.02.01.05.3(c)

In addition to a vendor's license, a food truck operator must also have a Mobile Food Service Unit license issued by the Department of Health and Human Services (DHHS) under Chapter 15 of the County Code (see ©20-23). All food service licensees (stationary and mobile) must comply with a number of requirements governing food handling and hygiene, employee supervision, and equipment and fixture safety. A mobile unit must be inspected before licensing, and must have a "base of operation" that is itself a licensed food service facility. The fee schedule for Mobile Food Service Unit license is based on the classification of the license, and ranges from \$175.00 for certain seasonal facilities to \$525.00, and the term of the license (other than a seasonal/90 day license) is one year.

Is there a bigger regulatory problem that needs solving?

At the public hearing, the Council heard from both the Greater Silver Spring Chamber of Commerce and the Restaurant Association of Maryland that a "more fair and comprehensive regulatory structure" is needed. Specifically, the issues of proximity to brick-and-mortar restaurants and better enforcement of existing laws, and the creation of specific "food truck operating zones" were raised. Several jurisdictions have imposed restrictions on food trucks operating within a specific distance of brick-and-mortar restaurants.⁹ However, the legality of such a restriction has been challenged as an unconstitutional restraint on trade.¹⁰

The Executive branch has indicated that it intends to address location issues related to food trucks through regulation and, if necessary, legislation, and has provided this statement:

Bill 32-15 clarifies the hours of operations for food trucks in Montgomery County. This is needed to address changes in consumer preferences and modern business operations, and the County Executive supports clarification of the hours of operation and a clear regulatory definition of food trucks. The Executive branch will also explore the need for and location of food truck zones where enhanced food truck vending activity can be accommodated and what additional regulatory clarifications and changes, if any, are needed to allow food trucks to operate:

- Where they do not cause congestion or infringe upon already limited parking in high traffic areas;
- Where they can operate safely without creating dangerous situations for pedestrians or health concerns; and,
- Where they can operate successfully. Constricting food trucks to remote sites does no good for these small businesses.

⁹ For example, in its 2013 law, Baltimore County prohibited licensed food trucks from parking "within 200 feet of the public entrance of an open, operating restaurant." "Proximity restrictions" on food trucks in other jurisdictions generally range from 50 feet to 300 feet.

¹⁰ The U.S. Court of Appeals for the Sixth Circuit has stated "that protecting a discrete interest group from economic competition is not a legitimate government purpose." (*Craigsmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002)) Similarly, in response to another lawsuit, the Fifth Circuit ruled that "laws amounting to 'naked transfers of wealth' to politically favored insiders are unconstitutional." (*St. Joseph Abbey, et. al. v. Castille, et.al.*, 712 F.3d 215 (5th Cir. 2013)) The Ninth Circuit held that "mere economic protectionism for the sake of economic protectionism is irrational." (*Merrifield v. Lockyer*, 547 F.3d 978, 992 n.15 (9th Cir. 2008)) These are the precedents being used to litigate similar buffer rules around the country.

This may involve changes to regulations (including Chapter 31 and Chapter 47). Executive staff will explore these options so that any needed future action can be implemented to coincide with the effective date of Bill 32-15 and will continue working with a broad group of stakeholders to make sure that any proposed changes have been thoughtfully considered.

In view of the Executive's intention to continue to work with stakeholders on any additional needed measures pertaining to food truck operation, Council staff recommended enactment of Bill 32-15 with only the clarifying amendment discussed below.

Staff-recommended clarifying amendment.

Council staff recommended clarifying language to the definition of "food service truck" to make clear that the location of the truck is where food items are sold from the truck, and not necessarily from other vendors or sellers, as could be inferred from the current language.

Committee recommendation (3-0): *Amend lines 6-8 of the Bill as follows:*

Food service truck means an itinerant food service facility, licensed under Chapter 15, operating from a self-propelled motorized vehicle that is parked or temporarily located where food items are sold from the truck to the general public.

This packet contains:	<u>Circle #</u>
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Legislative Request Report	5
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DPS -- Regular Route Vendor license info/application	16
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Bill No. 32-15
Concerning: Vendors – Hours and
Places of Operation
Revised: 09/28/2015 Draft No. 2
Introduced: June 16, 2015
Expires: December 16, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Riemer and Navarro
Co-Sponsors: Council Vice President Floreen, Council President Leventhal, Councilmembers Katz,
Rice and Elrich

AN ACT to:

- (1) amend the hours of operation allowed for vendors operating food service trucks;
and
- (2) generally amend the County law regarding vendors.

By amending

Montgomery County Code
Chapter 47, Vendors
Sections 47-1 and 47-2

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec 1. Sections 47-1 and 47-2 are amended as follows:

47-1. Definitions.

In this Chapter, the following words have the meanings indicated:

[(a)] *Director* means the Director of the Department of Permitting Services or the Director's designee.

Food service truck means an itinerant food service facility, licensed under Chapter 15, operating from self-propelled motorized vehicle that is parked or temporarily located where food items are sold from the truck to the general public.

[(b) (1)] *Vendor* means any person who sells, offers to sell, or solicits orders for any goods (including perishable foods) or services:

[(A)](1) on any public street, sidewalk, or other public property or right-of-way;

[(B)](2) door-to-door in a vehicle or on foot;

[(C)](3) from a vehicle, or temporary stand or structure, that is parked or otherwise temporarily located while goods are sold or services dispensed; or

[(D)](4) from a pushcart or other slow-moving vehicle.

[(2)] *Vendor* does not include a person who:

[(A)](1) is invited to a residence or business by prior appointment with an owner or legal occupant of the premises to provide goods or services to the owner or legal occupant;

[(B)](2) takes orders solely for the delivery of newspapers, or supplies or sells newspapers through newsracks;

[(C)](3) is 16 years old or younger if the minor:

[(i)](A) is under the direct supervision of a vendor licensed under this Chapter; and

[(ii)](B) complies with the non-licensing provisions of this Chapter;

[(D)](4) sells or solicits orders for goods or services to businesses for use in the business or for resale;

[(E)](5) is a participant in not more than 4 "garage" type sales in a calendar year;

[(F)](6) sells or offers to sell goods or services at an agricultural fair, craft or antique show, trade show, or similar exhibition if the sponsor of the show is licensed under this Chapter;

[(G)](7) represents a:

[(i)](A) charitable organization as defined in State law (Business Regulation Article, Section 6-101);

[(ii)](B) state or local government agency; or

[(iii)](C) franchisee under Chapter 8A; or

[(H)](8) is participating in a government-sponsored or sanctioned program or event.

47-2. Hours and places of operation.

* * *

(d) Except for a prearranged appointment or with the Director's approval, a vendor other than a vendor operating a food service truck must not conduct business before 9 a.m. nor after sunset. In this Section, "sunset" means the time established by the U.S. Naval Observatory for Washington D.C. and vicinity.

(e) A vendor operating a food service truck must not conduct business before 5 a.m. nor after 10 p.m.

(f) Unless permitted by the Director and the school principal for a special event, a vendor must not sell or offer to sell any item on a public road or

56 right-of-way within 500 feet of any public or private elementary or
57 secondary school.

58 *Approved:*

59

George Leventhal, President, County Council

Date

60 *Approved:*

61

Isiah Leggett, County Executive

Date

62 *This is a correct copy of Council action.*

63

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 32-15

Vendors – Hours and Places of Operation

DESCRIPTION:	Bill 32-15 would amend the hours of operation allowed for vendors operating food service trucks.
PROBLEM:	Vendors using food trucks are restricted to operating between 9:00am and sunset, meaning that for parts of the year they can only serve lunch. This limitation hurts the viability of operating a food truck in the County
GOALS AND OBJECTIVES:	Create a provision in the law which extends the hours in which vendors using food trucks may operate, while retaining the existing hours of operation for other vendors.
COORDINATION:	Department of Permitting Services
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Josh Hamlin, 240-777-7892
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Violation of Chapter 47 is a class A violation

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ROCKVILLE, MARYLAND

MEMORANDUM

July 31, 2015

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 32-15, Vendors - Hours and Places of Operation

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Diane Jones, Department of Permitting Services
David Platt, Department of Finance
Alex Espinosa, Office of Management and Budget
Dennis Hetman, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 32-15, Vendors – Hours and Places of Operations

1. Legislative Summary:

Bill 32-15 expands food service truck vendor hours of operation to allow sales to occur between 5:00 a.m. to 10:00 p.m. daily. Currently vendors using food trucks are restricted to operating between 9:00 a.m. and sunset.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Bill 32-15 is not expected to affect County revenues or expenditures. According to information provided by the Department of Permitting Services (DPS), there were 43 permits issued in fiscal year 2015 of which 13 were for site specific food vendors and 30 were for food vendors with regular routes. The cost for a permit was \$509.25 for a site specific food vendor and \$389.55 for a food vendor with regular routes. DPS assumes that the number of food vendor applications will not be affected by the expansion of permitted working hours. Also, DPS notes that no applicants withdrew their application because of the current restriction of hours of operations.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

There are no additional revenue or expenditure estimates as a result of the Bill.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

There is no impact to retiree pension or group insurance costs.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Bill No. 32-15 does not authorize future spending.

6. An estimate of the staff time needed to implement the bill.

No additional staff time will be required to implement the Bill.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

The Bill does not result in the addition of any new staff responsibilities.

8. An estimate of costs when an additional appropriation is needed.

Bill 32-15 will not require an additional appropriation.

9. A description of any variable that could affect revenue and cost estimates.

A favorable reaction by the small business community could result in additional food service truck vendor license applications. The expanded hours of operations could result in complaints that could require reallocation of staff resources in order to investigate.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

It would be speculative to provide a range of revenues because data is not available.

11. If a bill is likely to have no fiscal impact, why that is the case.

As written, Bill No. 32-15 simply expands the hours of operation for food service truck vendors. If complaints requiring investigation outside of core work hours occur, DPS believes inspector work hours can be adjusted without the need for additional resources.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis: (Enter name and department).

Ehsan Motazedi, DPS

Hadi Mansouri, DPS

Barbara Suter, DPS

David Platt, Finance

Dennis Hetman, DPS

Jennifer A. Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

7/30/15
Date

Economic Impact Statement
Bill 32-15, Vendors – Hours and Places of Operation

Background:

This legislation would amend the hours of operation allowed for vendors operating food services trucks (food vendors). Bill 32-15 defines a food service truck as an "itinerant food service facility, licensed Chapter 15, operating from self-propelled motorized vehicle that is parked or temporarily located where food items are sold to the general public." The proposed legislation would extend the hours of operation from 9:00 a.m. to sunset to between 5:00 a.m. and 10:00 p.m.

1. The sources of information, assumptions, and methodologies used.

Sources of information include:

- Department of Permitting Services (DPS), and
- Bureau of Labor Statistics (BLS), U.S. Department of Labor.

According to information provided by DPS, there were 43 permits issued in fiscal year 2015 of which 13 were for site specific food vendors and 30 were for food vendors with regular routes. The cost for a permit was \$465.55 for a site specific food vendor and \$389.55 for a food vendor with regular routes. DPS assumes that there is no indication that the number of applications will increase due to an expansion of permitted working hours. Also DPS noted that no applicants of note withdrew their application because of the current restriction of hours of operations.

Data on the amount of sales revenue by vendors operating food services trucks are not available for those vendors operating in Montgomery County and those operators whose place of residency is in Montgomery County. However, Finance did obtain economic data on vending machine operators (NAICS Code: 4542) for Montgomery County. The economic data included total wage income for those self-employed and employees in NAICS Code 4542. Finance used these data as a proxy for the economic impact of Bill 32-15. Bill 32-15 increases the daily hours of operation by an additional eight (8) hours -- four (4) hours in the morning and four (4) hours past sunset (assuming the average sunset for the year is 6 p.m.) Finance assumes that the operators of food services truck will use those additional permitted hours either in the morning or in the evening but not both. Therefore, the hours of operation will increase from the current nine (9) hours per day or 45 hours per week to 13 hours per day or 65 hours per week-- or an increase in the hours of operation per week by nearly 45 percent. Based on the data from DPS on the number of permits, the increase in the number of hours of operation and data from BLS, Finance estimates that total wages would increase from \$1.818 million per year to \$2.626 million per year or nearly 45 percent assuming no increase in the number of permits and all vendors choose to operate with the additional hours.

Economic Impact Statement
Bill 32-15, Vendors – Hours and Places of Operation

2. A description of any variable that could affect the economic impact estimates.

The variables that could affect the economic impact are the current total wage income earned by food service truck operators. Data presented in paragraph #1 is based on income data for vending machine operators which are the only data available for Montgomery County. The second variable that could affect the economic impact estimate is the increase in the number of food service trucks. However, DPS assumes that Bill 32-15 would not increase the number of trucks.

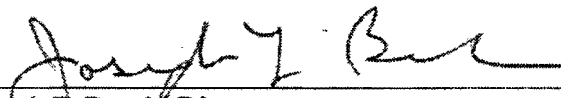
3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Based on information provided by DPS and data obtained from BLS, Bill 32-15 could have a positive impact on the wage income of current food service truck operators due to an increase in their hours of operation from 45 hours per week to 65 hours per week. As stated previously, the specific amount of the increase is based on data pertaining to vending machine operators. Finally, the economic impact is based on wage income as a proxy for operating revenue because such data were not readily available. However, if the additional level of food purchases by customers in the early morning or evening are merely substituted from fast-food restaurants to vendor trucks, there would be no net economic impact on employment, spending, savings, investment, incomes, and property values in the County.

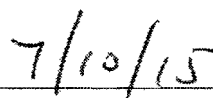
4. If a Bill is likely to have no economic impact, why is that the case?

See #3.

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance; Ehsan Motazed, Department of Permitting Services.



Joseph F. Beach, Director
Department of Finance



Date



GOFISHTRUCK.COM

Thank you for having me today to share my experience as a business owner, specifically a food truck owner in Montgomery County. My name is Missy Carr. I am a life-long resident of Montgomery County. I am an entrepreneur, Chef, business owner, wife, mother and food truck owner. Over the last two decades I've had three food related businesses in the County. I have had failures and tasted success.

I started my culinary career working in local restaurants waiting tables and as a manager. I am a graduate of the prestigious L'Academie De Cuisine located here in MoCo. Upon graduating from L'Academie, I ventured into entrepreneurship, first with a small catering business for several years before becoming a wife and mother. After a few years of being home with my three children, I started a brick and mortar business, a meal prep kitchen in the Kentlands from 2006-2010. That business ultimately failed due to some poorly timed decisions and the market crash of 2009. After losing tens of thousands of dollars, I was hesitant to do another business, but I am an entrepreneur and I had the bug to get back. Starting a food truck was not only a "popular" idea in 2011, it was feasible financially and for my lifestyle. It is true that the cost to open a food truck is far less than a brick and mortar, but it should be noted that our earning potential is far less as well. The food truck business here is very seasonal, with most trucks operating 9 months of the year, with a peak season of 6 months.

I started Go Fish in the summer of 2011. I was the second "Modern truck" in the County and the challenge to reach customers in the County was daunting. As a professional Chef, I pride myself on providing my customers with the best quality food I can at a reasonable price. I knew if I could do that consistently and survive long enough, I would be successful. Today Go Fish is profitable, debt free and growing. We are adding revenue streams through catering, school lunch programs and product development. All of this translates into jobs for more County residents.

As a "middle aged" mother, people often ask why I have a food truck vs. opening a brick and mortar. The answer for me is simple. 1) Money...the cost of entry and the risk is much lower than a brick and mortar. My food truck provided has provided me and others with a path to small business ownership when a brick and mortar was financially out of reach. 2) Flexibility....I have three children now ages 10-13. The food truck business allows me the flexibility to make additional income for my family, yet still be available for my children and all of their activities and interests. 3) Happiness...of all of the food businesses and many food related positions I've had, this one is the most pleasant. Our customers are happy to see us, they love our food & they appreciate our service. It's simply fun and very gratifying.

Today there are more than one dozen active trucks operating in Montgomery County, and many of them, like me, vend exclusively in MoCo. Each of these trucks represents a small business, like mine, with an owner operator, like me, who strives each day to provide the best quality product and service for the residents of Montgomery County. The residents are responding in a very positive way evidenced by the fact that the number of trucks who can support themselves in the County is on the rise. There are more challenges ahead as the industry grows. In my opinion, increasing the evening vending hours is a big step in the right direction.



14

**Testimony of
The Greater Silver Spring Chamber of Commerce
Public Hearing – Bill 32-15 Vendors – Hours and Places of Operation
Montgomery County Council Public Hearing
Tuesday, July 14, 2015**

Council President Leventhal, members of the Council, good afternoon. For the record, my name is Jane Redicker and I am President of the Greater Silver Spring Chamber of Commerce. Our 40 member restaurants in greater Silver Spring include the vast majority of locally owned and operated food establishments in the downtown Silver Spring area.

Based on the feedback we have received from our member restaurants, the Greater Silver Spring Chamber of Commerce must oppose Bill 32-15 as currently written.

Our concerns date back to 2006, when the original sidewalk vendor legislation was enacted. While our Chamber supports the entrepreneurial spirit of the food truck movement, we have always believed that the new law neither appreciated, nor took into account, the legitimate concerns of traditional brick-and-mortar restaurants, many owned and operated by Montgomery County residents who made substantial financial investments – far greater than that required by a food truck vendor – to create a successful business.

What is needed is a more fair and comprehensive regulatory structure that addresses both the needs of the food truck vendors and the concerns of existing restaurants. For example, while the current regulation seems to recognize the concept of unfair competition by limiting the number of licensees who can sell a particular type of goods in a certain district, it does not give the same consideration to concerns about unfair competition from food trucks operating within close proximity to traditional brick-and-mortar restaurants. Many of our restaurant members would like reasonable restrictions on operating distances from bricks-and-mortar establishments, as have been adopted in other jurisdictions. We have also heard the call for better enforcement of existing laws: prohibiting food trucks from ignoring, and getting away with, parking in no-parking zones or at expired meters, or “permanently” setting up shop in specific locations.

This is why we cannot support a re-definition of “Food Trucks” and the accompanying expansion of their hours without a comprehensive effort to understand and address the concerns of all stakeholders.

And finally, I would be remiss if I did not make one last point. While the proponents of this bill assert that they have been in touch with Chambers of Commerce, our Chamber never had the opportunity to add our thoughts and opinions to the discussion. I did receive one email from a student at the school. I replied that I was not able to schedule a time to talk right away because I was short staffed and had other obligations to our members. I asked that he follow up within a couple of weeks. But I never heard back. If I had, I would have applauded this effort, explained that neither our Chamber nor our members are opposed to food trucks, tried to explain the complexities and challenges that food trucks present for some of our bricks and mortar restaurants, and suggested some changes in the current law that would benefit both. Unfortunately I never had that opportunity because no one ever contacted me again.

But now, I welcome the opportunity to work with Council, to involve our stakeholder restaurant members in an effort to develop a system to insure that restaurants and food trucks can peacefully coexist in our community.

Council Bill 32-15

Vendors – Hours and Places of Operation

July 14, 2015

Position: OPPOSE

Mr. President and Members of the Montgomery County Council:

On behalf of the Montgomery County members of the *Restaurant Association of Maryland*, we oppose Council Bill 32-15 as it is currently drafted. Extending food truck operating hours without also addressing the myriad other issues involving this subject is shortsighted and will undoubtedly create additional issues that will need to be resolved.

We are not opposed to food trucks. In fact, a few of our members in other jurisdictions use food trucks as an extension of their brick-and-mortar operations, and some restaurants have grown out of successful food truck operations. However, a fair and appropriate regulatory structure is necessary to ensure that restaurants and food trucks can peacefully coexist.

If this legislation achieves its goal, more food trucks will be attracted to Montgomery County. For this reason, the scope of this legislation should be more comprehensive to include reasonable restrictions on operating distances from brick-and-mortar restaurants, and other regulatory controls to prevent the typical problems associated with an influx of food trucks. We have successfully worked with stakeholders and public officials in Baltimore City and Baltimore County to create such controls in those jurisdictions, and we hope to do the same in Montgomery County.

Prior to any Committee work session on this legislation, we suggest that a workgroup of stakeholders and appropriate County agency staff be created to address concerns and make recommendations on issues including, but not limited to, the following:

1. As with operating restrictions placed upon sidewalk/pushcart vendor licensees in Montgomery County, appropriate restrictions for food truck operators should be created to ensure against unfair competition from food trucks operating within close proximity to traditional brick-and-mortar restaurants. Such restrictions were adopted in both Baltimore City and Baltimore County.
2. After much controversy surrounding the operation of food trucks in Baltimore City and the District of Columbia, specific food truck operating zones were also created in these jurisdictions. A similar option should be considered for Montgomery County. Prince George's County is also considering such an approach in their pending legislation to create food truck hubs.

3. Food truck parking at meters and along the public right-of-way has been controversial in other jurisdictions. Such parking issues should also be considered in Montgomery County, especially as it relates to enforcement of expired/time-limited meters, truck size/parking spaces utilized, and generally the use of parking spaces that may otherwise be used by customers of other restaurant/retail businesses.
4. It is unclear how food truck vendors are currently licensed by the Montgomery County Department of Permitting Services (DPS). We were told by DPS staff that food trucks are currently licensed as either Regular Route Vendors (vehicle must be continuously moving unless stopped only to serve customers), or as a Site Specific Vendor (vehicle may operate only at a specific location along the public right-of-way or on private property). Given these two licensing options, we are not sure how a food truck that operates at multiple locations in the County is currently licensed.
5. Clear licensing/enforcement/complaint processes should also be established so that valid licenses/permits for food trucks can be clearly identified during operation, allowing other business owners and customers to distinguish between legitimate and rogue food truck operators. Health Department licensing procedures, inspection frequency and sanitation certification should also be reviewed.

This subject clearly needs a lot more discussion. We hope to work with the bill sponsors and other stakeholders on these and related issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Melvin R. Thompson", followed by a long horizontal flourish line.

Melvin R. Thompson
Senior Vice President

My name is Nadir Sharif and I am testifying on behalf of myself and a group of students from Wheaton High School. I'm testifying regarding the need for clarity and expansion of the hours of operations for food trucks. The aspiration of having more food opportunities in our home of Montgomery County, MD is the main focus of our student project. We have researched the issue and came upon a solution that will benefit food trucks.

We have spent a lot of time researching legislation, ranging from Baltimore and other nearby areas to farther places such as Chicago, in order to find out how we can improve legislation in this area. In doing this, it has led us to start contacting relevant stakeholders to receive more information and feedback on potential solutions. After our extensive research, we've reached a consensus that changing the time would be beneficial for food trucks.

Food trucks are a form of small business that need help to become more viable in Montgomery County. Currently, they are only limited to an always changing time period during the day. This prevents them from expanding their business and thriving. We have proposed clarifying and expanding their operating times to provide them a more stable operating environment. For people who are going to work in the morning, this provides them an opportunity to get food before they get to work. It also provides food options in developing areas where there is not a currently strong restaurant presence.

This time change may also expand economic opportunities in the areas that they are put in. They work well as low cost incubators, allowing entrepreneurs to test concepts and ideas. Many food truck owners are family-owned businesses which give a sense of community and unity. They can also create a more personal and intimate experience for customers.

We understand that this particular issue, hours of operation, is only one aspect of a complex issue. We do not wish to create conflict between brick and mortar restaurants and food trucks. We only wish to see an environment where both of these forms of business can be successful. We welcome a conversation that goes beyond the hours of operation and looks at other complementary solutions. No doubt you will hear from some of the Chambers of Commerce and the restaurant association. We encourage you to listen to their feedback on this bill along with the food truck owners. We are confident that the County will take this bill as an opportunity to listen to the solutions from all of these stakeholders and craft something that is a win-win for all.

Thank you for your time and consideration.

[DPS > Licenses > Regular Route Vendor License](#)

Department of Permitting Services

Regular Route Vendor License

When is a Regular Route Vendor License Required?

A regular route vendor's license is required if an individual sells or offers to sell goods or services along a street on a repeating schedule, stopping only to dispense products, unless otherwise permitted by regulations under Chapter 47 of the Montgomery County Code.

What is the Regular Route Vendor's License Application Process?

A completed "[Application for vendor/operator](#)" must be submitted for review.

A vehicle registration card, as appropriate and a valid driver's license are required to process the application.

The selling of prepared foods or prepackaged food and beverages of any kind requires a Food Service Permit from the Licensure & Regulatory Services Section of the Department of Health and Human Services.

What will a Regular-Route License Cost?

1. ONE YEAR

	<u>Base Fee</u>	<u>5%</u>	<u>Total</u>
1. One year Base Rate	\$245.00	\$12.25	= \$257.25
2. Operator Fee (each)	\$70.00	\$3.50	= <u>\$73.50</u>

\$330.75

1. SIXTY DAY or DAILY RATE

1. Temporary Sales Base Rate	\$175.00	\$8.75	= \$183.75
3. Operator Fee (each)	\$70.00	\$3.50	= <u>\$73.50</u>

\$257.25

An additional 5% Automation Enhancement Fee is included on the cost(s) listed above.

When Will a Regular-Route License be Ready for Pick-Up?

Normally, a license can be issued within two business days from the date of application if no other Department approval is needed.

What is Future Delivery?

A future-delivery vendor solicits orders for goods or services which will be delivered at a later time. A \$1,305.00 surety bond must be posted in conjunction with this license application.

Application Package

Application

[Vendor Application](#)

Fees and Taxes

Fee Schedules

[Executive Regulations](#)

Automation Enhancement Fee

[Automation Fee](#)

Credit Card Authorization Form

[Credit Card Authorization Form](#)

Bonds

No Bonds at this time

Codes, Standards, Executive Regulations

Search Chapter 47

[Montgomery County Code](#)

Guidelines, Memorandum of Understandings, Interpretations

None at this time

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Inspection Requirements

Inspections Arranged at Time of Application

Frequently Asked Questions311 Web Portal: Enter key word
"Vendor"<http://www3.montgomerycountymd.gov/311>**Online Permitting Status Information and Inspections**

Online Data Search

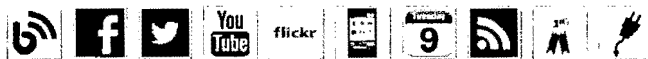
[Search DPS](#)**Call for More Information**

In Montgomery County

311

Outside of Montgomery County

240-777-0311

Other Agencies to ContactOther Agencies and Utilities to
Contact[Allegheny Power](#)[American Institute of Architects \(AIA\)](#)[American National Standards Institute \(ANSI\)](#)[American Society of Heating, Refrigerating & Air Conditioning Engineers \(ASHRAE\)](#)[Baltimore Gas & Electric Co. \(BG&E\)](#)[Board of Appeals](#)[Historical Society](#)[International Code Council \(ICC\)](#)[Maryland Department of Assessments and Taxation](#)[Maryland Department of the Environment](#)[Maryland Division of State Documents](#)[Masonry Institute of America \(MIA\)](#)[Miss Utility](#)[National Glass Association \(NGA\)](#)[MNCPPC: Historic Area Work Permits](#)[MNCPPC: MC Atlas](#)[MNCPPC: Zoning](#)[Municipalities](#)[National Fire Prevention Association \(NFPA\)](#)[Potomac Electric Power Company \(PEPCO\)](#)[Recycling](#)[U.S. Department of Energy \(DOE\) by Pacific Northwest National Laboratory \(PNNL\)](#)[Verizon](#)[Washington Gas Light Co.](#)[WSSC](#) ☒

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Last Edited: 09/09/2015



Department of Permitting Services
Zoning and Site Plan Enforcement
255 Rockville Pike, 2nd Floor
Rockville, MD 20850-4166
Phone: 311 in Montgomery County or (240) 777-0311
Fax (240)-777-6262
<http://www.montgomerycountymd.gov/permittingservices>



Application for Vendors License

A. License Information

LICENSE NO: _____ CONTACT I.D. NO: _____

☐ New License ☐ Renewal License

B. Type of License

☐ Door-to-Door Vendor ☐ Site Specific Vendor ☐ Regular Route Vendor ☐ Sidewalk Vendor / Pushcart

C. Location of Vending Site/Property: (Site specific vendors only).

House Number _____ Street _____

Town/City _____ Zip _____

D. Applicant Information

Name of Applicant _____ Daytime Phone # _____

Address _____ City _____ State _____ Zip _____

Email Address _____

Business Name _____ Day Phone # _____ Evening Phone # _____

Contact Person _____ Daytime Phone # _____

E. Vendor Applicant Only

Name of Cross Street: _____

☐ CAP ☐ Signs ☐ ROW
☐ M Site ☐ Private Property

Zone: _____

Types of Goods Being Sold: _____

Operators ID: _____

Days of the Week: _____

Hours Open From: _____ to _____

CHECK THOSE THAT APPLY BELOW

☐ One Day License

☐ Sixty Day License

☐ One Year License

☐ Agricultural Cert. Required

☐ Health Dept. Cert. Required

☐ Bond Required



Department of Permitting Services
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Application for Vendors License

D. Affidavits

- I hereby declare and affirm under the penalty of perjury, that all matters and facts set forth in the vendor license application are true and correct to the best of my knowledge, information and belief. I agree to comply with Chapter 59, and the regulations of Chapter 47 of the Montgomery County Code, as amended, to take whatever action is required by the Department to bring the vendor operation into compliance if complaints of non-compliance are received and verified.

Signature of Applicant

Date

Printed Name of Applicant

- I hereby declare and affirm, under the penalty of perjury that:
 - I have read and understand Chapter 47 of the Montgomery County Code and the Executive Regulations, and I have been provided access to a copy of these documents.
 - I understand the conditions applicable to _____ vending activity.
 - I agree to abide by all the rules and procedures set forth in these documents.

Signature of Applicant

Date

Printed Name of Applicant

- HOLD HARMLESS AFFIDAVIT FOR THE PUBLIC RIGHT OF WAY** – The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purpose of this paragraph, County includes its boards, agencies, agents, officials and employees.

Signature of Applicant

Date

Witness

DATE

OFFICE USE ONLY

Approved: _____

Date

Disapproved: _____

Revoked: _____

NOTES:



Food and Facilities Licensing

Licensing Services - Mobile Food Service Unit

Who must apply for a mobile unit license?

Anyone who plans to sell or give away food from a non-fixed location must first obtain a Montgomery County Food Service License. The only exception to the law is the sale of fresh produce or live crustaceans.

What is a mobile unit?

A mobile unit is a truck, trailer or cart where food or drink is prepared, served or sold.

When must one apply for a mobile unit license?

A license must be obtained prior to operating. The application and fee are to be submitted at least 10 days prior to an event. The mobile unit must pass an inspection before it can be licensed.

How does one obtain a mobile unit license?

Download, complete and return the [Special Food Service Facility \(Mobile Unit\) License Application](#)

Where are mobile units inspected?

Mobile Units must be inspected prior to licensing. Inspections are conducted at 255 Rockville Pike, MD 20850

What is a Base of Operation?

The mobile unit must have a base of operation. A base of operation must be from a licensed food service facility. A private dwelling may not be used as a base of operation.

What must the Base of Operation provide?

A base of operation must provide:

- A source of potable water, potable water hoses and clean connections.
- A method of disposal of sewage acceptable to the approving authority.
- Clean, adequate, and covered trash receptacles.
- Refrigerated and dry food storage areas, if needed.
- Storage area for single service articles.
- If necessary, utensil washing facility.

Fee

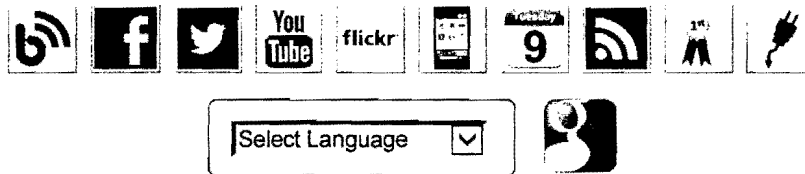
To determine the appropriate fees, please see the [Fee Schedule](#)

Process

- Submit the application, attachments, and appropriate fee. A letter from the base of operation (a licensed food service facility) stating that the applicant has permission to use the facility for cleaning and storage is required.
- Incomplete applications will be returned to the applicant.
- The mobile unit must be brought to 255 Rockville Pike, Rockville, MD 20850 for inspection prior to operating. If the unit is to receive an annual license, upon passing the inspection, a special sticker will be attached to the unit. Mobile unit inspections are offered Monday through Friday, from 8:00 a.m. - noon and 1:00 p.m. - 3:00 p.m.
- The license will be mailed to the applicant.
- A vendor's permit from the Department of Permitting Services may be required. They are located at 255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850, 240-777-6256.

Personnel within the Licensure & Regulatory Services section are available to discuss questions during regular working hours (Monday through Friday) 8:00 a.m. to 4:00 p.m. at 240-777-3986.

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**Montgomery County Department of Health and Human Services
Licensure and Regulatory Services**

255 Rockville Pike, 1ST Floor, Suite 100, Rockville, Maryland 20850
Phone: 240-777-3986 Fax: 240-777-3088
www.montgomerycountymd.gov/licensure

MOBILE FOOD SERVICE FACILITY LICENSE APPLICATION
(UNITS OPERATING AT A SITE SPECIFIC LOCATION MUST MOVE FROM LOCATION DAILY)

TODAY'S DATE: _____

One Year License: New ☐ Renewal ☐ **90 Day License:** New ☐ Renewal ☐
(Operational dates printed on the license)

Name of Facility: _____

Trailer: ☐ Motor Vehicle: ☐ Cart: ☐ Food Sold: Pre-Packaged Only ☐ Open or Potentially Hazardous: ☐

Motor Vehicle Tag No.: _____ State: _____ VIN: _____ Federal Tax ID: _____

Owner/Corporation Name: _____ Telephone No.: _____

Address of Owner/Corporation: _____

Working Hours and Days Open for Business: _____

Workers' Compensation Insurance Company Name: _____ Policy/Binder No.: _____

Check here ☐ if this facility is operated by a sole proprietor with no employees, or by members of a partnership or LLC, and a Certificate of Compliance has been obtained.

Base of Operation Name: _____ Telephone No.: _____

Base of Operation Address: _____

Contact Person at Base of Operation: _____

Attach a copy of the establishment's current Health Department operating permit and an original letter signed by the owner granting the applicant permission to use the facility as the Base of Operation.

I hereby certify that the above information is accurate and complete:

Signature of Owner or Agent

Printed Name

Payment Method: ☐ Check ☐ Money Order ☐ Visa ☐ Mastercard Make checks or money orders payable to "Montgomery County, Maryland". Cash is not accepted. Credit card payments may be faxed to 240-777-4531 (confidential fax line).

Fee: \$ _____ Credit Card No: _____ Exp. Date: _____

Credit Cardholder's Name: _____ 3 Digit Security Code: _____ Amount Charged: \$ _____

I agree to pay the indicated total amount according to card issuer agreement:

Cardholder's Signature: _____

**LICENSES ARE NOT TRANSFERABLE FROM LOCATION TO LOCATION OR PERSON TO PERSON.
ALL LICENSES EXPIRE ONE YEAR AFTER DATE OF ISSUANCE.**

OFFICE USE ONLY:

Receipt No: _____ Amount Paid: _____ Date Issued: _____
Check No./Money Order: _____ Expires: _____ Staff Initials: _____

FEE SCHEDULE

Type of License	Fee
(A) Low Priority (Facilities that serve commercially packaged potentially hazardous foods directly to the consumer; or non-potentially hazardous food that is cut, assembled, or packaged on the premises, such as candy, popcorn, and baked goods; or hand dipped ice cream)	\$200.00
(B) Moderate Priority (Facilities that serve potentially hazardous food that is prepared requiring the food to pass through the temperature danger zone, 41°F to 135°F, one time before service, such as cooking, hot holding, and then serving; or facilities that cut, assemble, or package on the premises, such as meats)	\$375.00
(C) High Priority (Facilities that serve potentially hazardous food that is prepared a day or more in advance of service; or using food preparation methods that require the food to pass through the temperature danger zone, 41°F to 135°F, two or more times before service, such as cooking, cooling, and then reheating)	\$525.00
(F) Mobile Facilities, Event Series, or Seasonal or Pool Snack Bars operating for more than 14 days but less than 90 days with operating dates printed on the license:	\$175.00