



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

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September 27, 2018

POSITION STATEMENT: An Act Allowing Food Establishments to use Outdoor Grills for Food Preparation
PURSUANT TO: Session Law 2017-18, Senate Bill 24; N.C.G.S. 130A-248(c2)
SOURCE: Shane Smith, REHS
Branch Head, Food Protection and Facilities Branch
ISSUE: Guidance for Food Preparation on Outdoor Grills at Food Establishments
(REPLACES POSITION STATEMENT DATED JULY 12, 2017)

DISCUSSION AND RATIONALE:

Senate Bill 24 amended N.C.G.S. 130-248 by adding a new subsection to read:

"(c2) Notwithstanding any provision of this Part, a food establishment may use an outdoor grill to prepare food for customers for sample or sale if all of the following criteria are met:

- 1) The outdoor grill is located on the premises of the food establishment and is continuously supervised by a food employee when the grill is in use.
- 2) The outdoor grill has a cooking surface made of stainless steel or cast iron, meets sanitation requirements for equipment in a food establishment, and is stationed on a concrete or asphalt foundation.
- 3) The outdoor grill is not operated within 10 feet of combustible construction.
- 4) All open food and utensils are provided with overhead protection or otherwise equipped with individual covers, such as domes, chafing lids, or cookers with hinged lids.
- 5) The outdoor grill is located in an enclosed area and protected from environmental contamination when not in operation.
- 6) The outdoor grill and concrete or asphalt foundation are cleaned daily on any day that the grill is in operation.
- 7) Raw meat, poultry, and fish are prepared in a pre-portioned or ready-to-cook form inside the food establishment and may only be handled indirectly with utensils when using the outdoor grill. Food prepared on the outdoor grill is processed inside the food establishment."

Local health departments have requested guidance regarding the approval of outdoor grills at food establishments. Further, questions have been asked concerning which regulated establishments the law applies to.

"Food establishment" means an operation that:

- a) stores, prepares, packages, serves, vends food directly to the consumer, or otherwise provides FOOD for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides FOOD directly to a CONSUMER or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or FOOD bank; and
- b) relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

The definition includes:

- a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the REGULATORY AUTHORITY; and

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- b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the PREMISES.

RESPONSE / INTERPRETATION:

It is anticipated that in most cases plan review will not be needed. However, plan review may be required in accordance with Subparagraph 8-201.11(C) of the Code if the regulatory authority determines that plans and specifications are necessary to ensure compliance with the law and applicable rules. The following guidance should be used when assessing the food establishment for compliance with the amended law.

- 1) The outdoor grill shall be located on the premises of the food establishment. Premises, defined in the North Carolina Food Code Manual (Code), includes the physical facility, its contents, and the contiguous land or property under the control of the permit holder. The definition also includes the physical facility, its contents, and the land or property if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison. Food establishments that can grill outdoors include all establishments that hold a .2600 permit and food establishments that are inspected on the Food Establishment Inspection Report.
- 2) A mobile food unit is a food establishment. If the operator of a mobile food establishment requests to use a grill, the commissary and mobile food unit should be evaluated for compliance with the amended law, the .2600 rules, and the Code.
- 3) When the outdoor grill is in use, it must be continuously supervised by a food employee. This statement means the grill may not be left unattended while food is being cooked on the grill. If the grill is left unattended, it is a violation of Section 3-305.14 and shall be marked as a violation of #37 on the Food Establishment Inspection Report.
- 4) The outdoor grill shall have a cooking surface made of stainless steel or cast iron and meet the sanitation requirements for equipment in a food establishment. The grill is not required to meet NSF/ANSI Standards. The grill is required to meet Parts 4-1 and 4-2 (including Section 4-205.10) of the Code. An expanded metal grilling surface may be used if it is stainless steel or cast iron and meets the Code requirements. The law, nor the Code, specify a requirement for the fuel source; therefore, the permit holder should contact the appropriate local or state code enforcement office.
- 5) A smoker could be used if it meets the sanitation requirements and is used to grill food.
- 6) Session Law 2017-18 does not replace the requirements in .2663(c) Outdoor Dining and Beverage Facilities or .2664 Supplemental Cooking Rooms in the Rules Governing the Food Protection and Sanitation of Food Establishments.
- 7) The outdoor grill shall be stationed on a concrete or asphalt foundation. This requirement includes brick and cement if it meets the same characteristics as concrete or asphalt.
- 8) The outdoor grill cannot be operated within 10 feet of combustible construction. Therefore, the permit holder should contact the appropriate local or state code enforcement office concerning the placement of the outdoor grill.
- 9) All open food and utensils shall be protected either by overhead protection or otherwise equipped with individual covers. If a grill is not located underneath a protective covering but has an individual cover and is continuously monitored, that should be considered adequate protective covering. Examples of acceptable overhead protection are roofs or other permanent structures, canopies, or awnings. The permit holder should contact the appropriate local or state code enforcement office concerning acceptable construction of overhead protection.
- 10) If there is no overhead protection, the food and utensils must be protected by individual covers. Examples of individual covers include cookers with hinged lids and individual covers, such as domes or chafing lids. If the food is uncovered and not being continuously monitored, it is a violation of Section 3-305.14 and shall be marked as a violation of #37 on the Food Establishment Inspection Report.
- 11) When not in operation, the outdoor grill shall be stored in an enclosed area and protected from environmental contamination. The law does not require the grill to be mobile. The enclosed area shall meet Section 6-202.16 and the equipment storage requirements in Subparagraphs 4-903.11(A)(1) and (2) of the Code. The cleaning frequency of the outdoor grill and concrete or asphalt foundation shall be daily on any day the grill is in operation. Therefore, the outdoor grill does not have to be cleaned as specified in Paragraph 4-602.11 of the Code. The cleaning of the outdoor grill shall be done in accordance with Part 4-603 of the Code.
- 12) Raw meat, poultry, and fish must be prepared in a pre-portioned or ready-to-cook form inside the food establishment and may only be handled indirectly with utensils when using the outdoor grill. For example, hamburger shall be pattied in the food establishment then cooked on the outside grill. Because the food is pre-portioned, or in a ready-to-cook form, a handwashing sink is not required outside.

- 13) For the purposes of cleaning, the outdoor grill shall have an approved method to drain and dispose of grease and sewage.
- 14) Food that has been cooked on the outdoor grill must be processed inside the food establishment. As stated in the law, the grill shall be continuously supervised by a food employee when the grill is in use. When the grill is in use, it is the responsibility of the person in charge to prevent unauthorized access to food, equipment, and utensils. Paragraph 2-103.11(B) states, "PERSONS unnecessary to the FOOD ESTABLISHMENT operation are not allowed in the FOOD preparation, FOOD storage, or WAREWASHING areas, except that brief visits and tours may be authorized by the PERSON IN CHARGE if steps are taken to ensure that exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination." If consumers are observed at the grill while the food being cooked, it is a violation of Code Paragraph 2-103.11(B) and shall be marked as a violation of #1 on the Food Establishment Inspection Report.
- 15) A lighting requirement is not specified in the law. Therefore, if lighting is provided it shall comply with Section 6-202.11 of the Code. Lighting is required for nighttime operation. There is not a minimum foot candle requirement.
- 16) Live animals are prohibited and are only allowed as specified in Section 6-501.115.
- 17) If a food establishment is currently using an outdoor grill, conduct an assessment for compliance with the law and applicable rules. If the food establishment is out of compliance and does not make any attempt to comply an Intent to Suspend should be issued.

There are two guidance documents developed by the Conference for Food Protection. "Outdoor Cooking Guidance for Plan Review 2014" and "Outdoor Cooking Checklist 2014" can be accessed at the link below. Parts of the documents are applicable, and the checklist could be amended to meet the requirements specified in the law and applicable rules.

There will be scenarios and questions will arise that will need to be addressed on a case by case basis. Please contact your Environmental Health Regional Specialist if you need assistance.

REFERENCES:

Rules Governing the Food Protection and Sanitation of Food Establishments, 15A NCAC 18A .2600
North Carolina Food Code Manual

Recommended Guidance for Permanent Outdoor Cooking at Permanent Food Establishments, 2014

<http://www.foodprotect.org/guides-documents/recommended-guidance-for-permanent-outdoor-cooking-at-permanent-food-est/>

NOTE: Position statements are policy documents to clarify how to interpret or enforce a law or rule. They are not enforceable on their own but are intended to promote uniform interpretation and enforcement of the underlying law or rule.