

July 22, 2016

POSITION STATEMENT: Permit and Transitional Permit Guidance

PURSUANT TO: N.C.G.S. 130A-248; 15A NCAC18A .2600

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QUESTION/ISSUE: Determining change of ownership, permitting protocols,
applicable status codes and respective fees.

This position statement replaces the 1997 “Hot Topics Video Questions” document.

DISCUSSION AND RATIONALE:

Local Health Departments have requested guidance on determining change of ownership, issuing and conditioning permits, and amending existing permits. In addition, to achieve uniform compliance, guidance is needed for transitional permits, assigning correct status codes, and collecting applicable fees. N.C.G.S. 130A-248(b) states in part, “No establishment shall commence or continue operation without a permit or transitional permit issued by the Department.” The North Carolina Food Code Manual, Section 8-301.11 states, “A PERSON may not operate a FOOD ESTABLISHMENT without a valid PERMIT to operate issued by the REGULATORY AUTHORITY.” In the Rules Governing the Food Protection and Sanitation of Food Establishments, permit requirements are stated in 15A NCAC 18A .2659.

RESPONSE / INTERPRETATION:

1. The North Carolina Food Code Manual, Section 8-302.12, requires a written application for a permit. The contents of the permit application are specified in Section 8-302.14. An application for a permit has been developed and is attached.
2. A company can change from incorporated (Inc.) to a limited liability corporation (LLC) with no permit change. This change is a modification in the corporation’s format and not a change of ownership.
3. The following tools may be used to verify ownership when a food establishment appears to have changed ownership, but the local health department has not been informed:
 - Privilege license
 - Utility bills
 - ABC permits
 - Tax records
4. Ownership change does not require a plan review unless a new owner or lessee proposes changes specified in Paragraph 8-201.11(C) of the North Carolina Food Code Manual.

5. An original permit may be amended for any of the following circumstances:
 - Change in menu or processes
 - On-site waste water (OSWW) system failure or repairs
 - Change in operation and/or equipment
 - During circumstances such as, emergencies, equipment repairs, or remodeling that temporarily may affect the operation of the food establishment (document accordingly)
 - Death of permit holder – an immediate family member may be designated the permit holder if they have been an operator or an employee of the establishment
 - Change of commissary associated with a mobile food unit or pushcart
 - A permitted food stand adds tables and not more than eight seats. (Position Statement: Act to Allow Food Stands to Provide Tables and Chairs for Customers to use while Consuming Drinks or Food upon the Premises, November 12, 2015.)
6. If an original permit is lost or damaged, a duplicate may be issued with reference to the original permit.
7. If a food establishment type changes, a new permit and new ID number is required. For example, a food stand changes to a restaurant.
8. When issuing a permit or transitional permit, conditions may be specified in accordance with 15A NCAC 18A .2669(c) including, but not limited to:
 - Menu limitations
 - Reason: size of the food establishment or equipment restrictions
 - Operating hours
 - Reason: 15A NCAC 18A .1949(b)
 - Seating limit
 - Reason: size of OSWW system
 - Certified operator for water supply
9. When issuing a transitional permit, the permittee must be informed in writing that the transitional period is no more than 180 days. The 180 days are calendar days, not working days or week days. A permanent permit may be issued at any time during the 180 days as long as the permit conditions are satisfied. When all transitional permit requirements have been met, a permit may be issued. During the transitional permit period the permittee should be periodically reminded of the expiration date. At the end of the transitional period, if the corrections specified on the transitional permit are not completed, the transitional permit will expire and the food establishment must close and be placed in “F” status. If all the corrections have been made after the establishment has been closed, a permit should be issued with an “I” status code and a new ID number.
10. Inspections are required during the transitional permit period. When violations are discovered during these inspections, the transitional permit cannot be amended. Inspection reports should cite deficiencies during the transitional permit period. The food establishment is responsible for achieving compliance with the rules during the transitional permit period.



11. If a food establishment closes, the permit is valid for one year from the first documented date of closure. Status code “C” should be used to verify closed status during the year. A transitional permit may be issued during the year the food establishment is in a “C” status.

12. If a food establishment closes, the permit is valid for one year from the first documented date of closure. If conditions of the food establishment are out of compliance with the rules (e.g., equipment removed or utilities disconnected) the permit should be revoked and placed in “G” status. A transitional permit may not be issued from a “G” status.

13. Application fees are not charged to food establishments. However, the Section collects an annual permit fee in accordance with N.C.G.S. 130A-248(d).

14. If a food establishment has not paid the required annual permit fee to Inspections, Statistics, and Fees and the permit has been suspended, a transitional permit may not be written to new owners. The new owners shall apply for a permit. If the annual fee is paid, a transitional permit can be issued to new owners.

15. Local health departments may collect fees for plan review in accordance with N.C.G.S. 130-248(f).

16. If a permit is denied, the attached Notice of Permit Denial should be used to document the noncompliant items and to notify the applicant of their right to a formal appeal.

Some permitting or transitional permitting questions may have to be handled on a case-by-case basis. Please consult your Environmental Health Regional Specialist for further assistance as needed.

REFERENCES:

N.C.G.S. 130A-248

Rules Governing the Food Protection and Sanitation of Food Establishments (15A NCAC 18A .2600)

North Carolina Food Code Manual

Rules Governing the Protection of Water Supplies (15A NCAC 18A .1700)

Rules Governing Sewage Treatment and Disposal Systems (15A NCAC 18A .1900)

11/12/15 Position Statement: Act to Allow Food Stands to Provide Tables and Chairs for Customers to use while Consuming Drinks or Food upon the Premises

12/31/2015 Position Statement: Certified Food Protection Manager Implementation

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.

