

## Part 6. Regulation of Food and Lodging Facilities.

### § 130A-247. Definitions.

The following definitions shall apply throughout this Part:

- (1) "Establishment" means (i) an establishment that prepares or serves drink, (ii) an establishment that prepares or serves food, (iii) an establishment that provides lodging, (iv) a bed and breakfast inn, or (v) an establishment that prepares and sells meat food products as defined in G.S. 106-549.15(14) or poultry products as defined in G.S. 106-549.51(26).
- (1a) "Permanent house guest" means a person who receives room or board for periods of a week or longer. The term includes visitors of the permanent house guest.
- (1b) "Private bar" is as defined in G.S. 18B-1000(4a).
- (2) "Private club" means an organization that (i) maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest, and is either incorporated as a nonprofit corporation in accordance with Chapter 55A of the General Statutes or is exempt from federal income tax under the Internal Revenue Code as defined in G.S. 105-130.2(1) or (ii) meets the definition of a private club set forth in G.S. 18B-1000(5).
- (3) "Regular boarder" means a person who receives food for periods of a week or longer.
- (4) "Establishment that prepares or serves drink" means a business or other entity that prepares or serves beverages made from raw apples or potentially hazardous beverages made from other raw fruits or vegetables or that otherwise puts together, portions, sets out, or hands out drinks for human consumption.
- (5) "Establishment that prepares or serves food" means a business or other entity that cooks, puts together, portions, sets out, or hands out food for human consumption.
- (5a) "Bed and breakfast home" means a business in a private home of not more than eight guest rooms that offers bed and breakfast accommodations for a period of less than one week and that meets all of the following criteria:
  - a. Does not serve food or drink to the general public for pay.
  - b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals, only to overnight guests of the home.
  - c. Includes the price of breakfast in the room rate. The price of additional meals served shall be listed as a separate charge on the overnight guest's bill rate at the conclusion of the overnight guest's stay.
  - d. Is the permanent residence of the owner or the manager of the business.
- (6) "Bed and breakfast inn" means a business of at least nine but not more than 12 guest rooms that offers bed and breakfast accommodations for a period of less than one week, and that meets all of the following requirements:
  - a. Does not serve food or drink to the general public for pay.
  - b. Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals only to overnight guests of the business.
  - c. Includes the price of breakfast in the room rate. The price of additional meals served shall be listed as separate charge on the overnight guest's bill at the conclusion of the guest's stay.
  - d. Is the permanent residence of the owner or the manager of the business.
- (7) "Limited food services establishment" means an establishment as described in G.S. 130A-248(a4), with food handling operations that are restricted by rules adopted by the Commission pursuant to G.S. 130A-248(a4) and that prepares or serves food only in conjunction with amateur athletic events. Limited food service establishment also includes lodging facilities that serve only reheated food that has already been pre-cooked.
- (8) "Temporary food establishment" means an establishment not otherwise exempted from this part pursuant to G.S. 130A-250 that (i) prepares or serves food, (ii) operates for a period of time not to exceed 30 days in one location, and (iii) is affiliated with and endorsed by a transitory fair, carnival, circus, festival, public exhibition, or agritourism business. For purposes of this subdivision, "agritourism" means the same as in G.S. 153A-340(b)(2a). Notwithstanding the time limit set out in this subdivision, a local health department may, upon the request of a temporary food establishment,

grant a one-time, 15-day extension of the establishment's permit if the establishment continues to meet all of the requirements of its permit and applicable rules.

- (10) "Brewery" means an establishment licensed under G.S. 18B-1104 that is not engaged in the preparation of food on the premises. For purposes of this subdivision, the term "food" does not include beverages. (1983, c. 891, s. 2; 1987, c. 367; 1991, c. 733, s. 1; 1993, c. 262, s. 1; c. 513, s. 12; 1995, c. 123, s. 12; c. 507, s. 26.8(f); 1999-247, ss. 3, 4; 2013-360, s. 12E.1(a); 2013-413, ss. 7, 11(a); 2014-115, s. 17; 2014-120, s. 21(a); 2017-211, ss. 4(a), (b); 2018-5, s. 38.10(g); 2018-114, s. 2; 2019-49, s. 7; 2019-182, s. 15(a).)

### **§ 130A-248. Regulation of food and lodging establishments.**

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of establishments that prepare or serve drink or food for pay and establishments that prepare and sell meat food products or poultry products. However, any establishment that prepares or serves food or drink to the public, regardless of pay, shall be subject to the provisions of this Article if the establishment that prepares or serves food or drink holds an ABC permit, as defined in G.S. 18B-101, meets any of the definitions in G.S. 18B-1000, and does not meet the definition of a brewery as provided in G.S. 130A-247(10) or a private bar as provided in G.S. 130A-247(1b) or a private club as provided in G.S. 130A-247(2).

(a1) For the protection of the public health, the Commission shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other establishments that provide lodging for pay.

(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of bed and breakfast homes, as defined in G.S. 130A-247, and rules governing the sanitation of bed and breakfast inns, as defined in G.S. 130A-247. In carrying out this function, the Commission shall adopt requirements that are the least restrictive so as to protect the public health and not unreasonably interfere with the operation of bed and breakfast homes and bed and breakfast inns.

(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

- (1) Sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, ventilation equipment, and other areas and items;
- (2) Requirements for:
  - a. Lighting and water supply;
  - b. Wastewater collection, treatment, and disposal facilities; and
  - c. Lavatory and toilet facilities, food protection, and waste disposal;
- (3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces. A requirement imposed under this subdivision to sanitize multiuse eating and drinking utensils and other food-contact surfaces does not apply to utensils and surfaces provided in the guest room of the lodging unit for guests to prepare food while staying in the guest room.
- (3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;
- (4) The methods of food preparation, transportation, catering, storage, and serving;
- (5) The health of employees;
- (6) Animal and vermin control; and
- (7) The prohibition against the offering of unwrapped food samples to the general public unless the offering and acceptance of the samples are continuously supervised by an agent of the entity preparing or offering the samples or by an agent of the entity on whose premises the samples are made available. As used in this subdivision, "food samples" means unwrapped food prepared and made available for sampling by and without charge to the general public for the purpose of promoting the food made available for sampling. This subdivision does not apply to unwrapped food prepared and offered in buffet, cafeteria, or other style in exchange for payment by the general public or by the person or entity arranging for the preparation and offering of such unwrapped food. This subdivision shall not apply to open air produce markets nor to farmer market facilities operated on land owned or leased by the State of North Carolina or any local government.

The rules shall contain a system for grading establishments, such as Grade A, Grade B, and Grade C. The rules shall be written in a manner that promotes consistency in both the interpretation and application of the grading system.

(a4) For the protection of the public health, the Commission shall adopt rules governing the sanitation of limited food service establishments. In adopting the rules, the Commission shall not limit the number of days that limited food service establishments may operate. Limited food service establishment permits shall be issued only to political subdivisions of the State, establishments operated by volunteers that prepare or serve food in conjunction with amateur athletic events, or for establishments operated by organizations that are exempt from federal income tax under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code.

(a5) The Department of Health and Human Services may grant a variance from rules adopted pursuant to this section in accordance with the United States Food and Drug Administration Food Code 2009 if the Department determines that the issuance of the variance will not result in a health hazard or nuisance condition.

(a6) Notwithstanding any provision of this Part or any rules adopted pursuant to G.S. 130A-335(e), a permitted food stand may elect to provide tables and not more than eight seats for customers to use while eating or drinking on the premises. Addition of seats under this subsection shall not require further evaluation of the adequacy of the approved sanitary sewage system.

(b) No establishment shall commence or continue operation without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the establishment and shall not be transferable. If the establishment is leased, the permit or transitional permit shall be issued to the lessee and shall not be transferable. If the location of an establishment changes, a new permit shall be obtained for the establishment. A permit shall be issued only when the establishment satisfies all of the requirements of the rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the establishment to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

(b1) A permit shall expire one year after an establishment closes unless the permit is the subject of a contested case pursuant to Article 3 of Chapter 150B of the General Statutes.

(c) If ownership of an establishment is transferred or the establishment is leased, the new owner or lessee shall apply for a new permit. The new owner or lessee may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership or lease of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health. Upon issuance of a new permit or a transitional permit for the same establishment, any previously issued permit for an establishment in that location becomes void. This subsection does not prohibit issuing more than one owner or lessee a permit for the same location if (i) more than one establishment is operated in the same physical location and (ii) each establishment satisfies all of the rules and requirements of subsection (g) of this section. For purposes of this subsection, "transitional permit" shall mean a permit issued upon the transfer of ownership or lease of an existing food establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health.

(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile food units. A permitted restaurant or commissary shall serve as a base of operations for a pushcart. A mobile food unit shall meet all of the sanitation requirements of a permitted commissary or shall have a permitted restaurant or commissary that serves as its base of operation. Pushcarts or mobile food units that are based from a permitted commissary or restaurant that is located on the premises of a facility which contains at least 3,000 permanent seats shall be allowed to prepare and serve food on the premises. Raw meat, poultry, and fish shall be prepared in a permitted commissary or restaurant in a pre-portioned or ready-to-cook form. Pushcarts or mobile food units

that handle raw ingredients shall be equipped with a handwashing sink. All open food and utensils shall be provided with overhead protection or otherwise equipped with individual covers, such as domes, chafing lids, or cookers with hinged lids. Food equipment and supplies shall be located in enclosed areas and protected from environmental contamination when not in operation.

(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.

(c3) Notwithstanding any provision of this Part, a food establishment may reuse an oyster shell to serve shucked oysters that are cooked, regardless if the shucked oysters are reused in the same shells from which they originated, provided the establishment does all of the following:

- (1) Posts on the premises a conspicuous sign, clearly legible, and easily readable by the public, advising that the establishment reuses oyster shells to serve cooked oysters.
- (2) Protects each reused oyster shell from contamination by, at a minimum, doing all of the following on the same day the oyster is removed from the shell:
  - a. Boils the shell for a minimum of ten minutes.
  - b. Thoroughly dries the shell.
  - c. Stores the shell in a covered container that is refrigerated until it is reused.
- (3) Reuses the shell within 48 hours after the oyster is removed from the shell.

(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging and Adult Services of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, temporary food establishments, limited food services establishments, and public school cafeterias, a fee of one hundred twenty dollars (\$120.00) for each permit issued. This fee shall be reassessed annually for permits that do not expire. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than fifty dollars (\$50.00) of each fee collected under this subsection may be used to support State health programs and activities.

(d1) The Department shall charge a twenty-five dollar (\$25.00) late payment fee to any establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, temporary food establishments, limited food services establishments, and public school cafeterias, that fails to pay the fee required by subsection (d) of this section within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars (\$150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection.

The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d2) A local health department shall charge each temporary food establishment and each limited food services establishment a fee of seventy-five dollars (\$75.00) for each permit issued. A local health department shall use all fees collected under this subsection for local food, lodging, and institution sanitation programs and activities.

(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of two hundred fifty dollars (\$250.00) for plan review of plans for prototype franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part.

(e1) Plans for a franchised or chain food establishment that have been reviewed and approved by the Department shall not require further review and approval under this section by any local health department. The local health department may suggest revisions to a reviewed and approved plan to the Department. The local health department shall not impose any of the suggestion revisions on the owner or operator without written approval from the Department.

(f) Any local health department may charge a fee not to exceed two hundred fifty dollars (\$250.00) for plan review by that local health department of plans for food establishments subject to this section that are not subject to subsection (e) of this section. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities. No food establishment that pays a fee under subsection (e) of this section is liable for a fee under this subsection.

(g) All hotels, motels, tourist homes, and other establishments that provide lodging for pay shall comply with the requirements of G.S. 143-138(b2)(2). Upon notification of a violation of G.S. 143-138(b2)(2) by the code official responsible for enforcing the NC State Building Code (Fire Prevention) in accordance with G.S. 143-138(b2)(4), the local health department is authorized to suspend a permit issued pursuant to this section in accordance with G.S. 130A-23. (1941, c. 309, s. 1; 1955, c. 1030, s. 1; 1957, c. 1214, s. 1; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 438, s. 2; 1989, c. 551, ss. 1, 4; 1989 (Reg. Sess., 1990), c. 1064, s. 1; 1991, c. 226, s. 1; c. 656, ss. 1, 2; c. 733, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 7; 1993, c. 262, s. 2; c. 346, s. 1; c. 513, s. 13; 1995, c. 123, s. 13(a)-(d); c. 507, s. 26.8(b), (g); 1997-367, s. 1; 1997-443, s. 11A.118(a); 1997-479, s. 1; 2002-126, ss. 29A.15(a), 29A.16; 2003-340, ss. 1.5, 3; 2005-276, s. 6.37(s); 2009-451, s. 13.2(a)-(c); 2009-484, s. 2(b); 2011-145, s. 31.11A(a); 2011-391, s. 61A; 2011-394, s. 15(b); 2012-142, s. 10.15; 2012-187, s. 16.2; 2013-360, s. 12E.1(b)-(d), (f); 2013-413, ss. 11(b), 19(b), (c); 2014-120, s. 22(a), (b), (d); 2015-104, ss. 1, 2; 2015-246, s. 10; 2015-286, s. 3.8; 2017-18, s. 1; 2019-49, s. 8; 2019-141, s. 1; 2019-182, s. 15(b).)

### **§ 130A-249. Inspections; report and grade card.**

The Secretary may enter any establishment that is subject to the provisions of G.S. 130A-248 for the purpose of making inspections. The Secretary shall inspect each food service establishment at a frequency established by the Commission. In establishing a schedule for inspections, the Commission shall consider the risks to the population served by the establishment and the type of food or drink served by the establishment. The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection. The Secretary shall leave a copy of the inspection form and a card or cards showing the grade of the establishment with the responsible person. The Secretary shall post the grade card in a conspicuous place as determined by the Secretary where it may be readily observed by the public upon entering the establishment or upon picking up food prepared inside but received and paid for outside the establishment through delivery windows or other delivery devices. If a single establishment has one or more outside delivery service stations and an internal delivery system, that establishment shall have a grade card posted where it may be readily visible upon entering the establishment and

one posted where it may be readily visible in each delivery window or delivery device upon picking up the food outside the establishment. The grade card or cards shall not be removed by anyone, except by or upon the instruction of the Secretary. (1941, c. 309, s. 2; 1955, c. 1030, s. 2; 1973, c. 476, s. 128; 1983, c. 891, s. 2; 1987, c. 145; c. 189; 1989, c. 551, s. 2; 1993, c. 262, s. 3; 2005-386, s. 4.1.)

### **§ 130A-250. Exemptions.**

The following shall be exempt from this Part:

- (1) Establishments that provide lodging described in G.S. 130A-248(a1) with four or fewer lodging units.
- (2) Condominiums.
- (3) Establishments that prepare or serve food or provide lodging to regular boarders or permanent houseguests only. However, the rules governing food sanitation adopted under G.S. 130A-248 apply to establishments that are not regulated under G.S. 130A-235 and that prepare or serve food for pay to 13 or more regular boarders or permanent houseguests who are disabled or who are 55 years of age or older. Establishments to which the rules governing food sanitation are made applicable by this subdivision that are in operation as of 1 July 2000 may continue to use equipment and construction in use on that date if no imminent hazard exists. Replacement equipment for these establishments shall comply with the rules governing food sanitation adopted under G.S. 130A-248.
- (4) Private homes that occasionally offer lodging accommodations, which may include the providing of food, for two weeks or less to persons attending special events, provided these homes are not bed and breakfast homes or bed and breakfast inns.
- (4a) Private bars.
- (5) Private clubs.
- (6) Curb markets operated by the State Agricultural Extension Service.
- (7) Establishments (i) that are incorporated as nonprofit corporations in accordance with Chapter 55A of the General Statutes or (ii) that are exempt from federal income tax under the Internal Revenue Code, as defined in G.S. 105-228.90, or (iii) that are political committees as defined in G.S. 163-278.6(74) and that prepare or serve food or drink for pay no more frequently than once a month for a period not to exceed two consecutive days, including establishments permitted pursuant to this Part when preparing or serving food or drink at a location other than the permitted locations. A nutrition program for the elderly that is administered by the Division of Aging of the Department of Health and Human Services and that prepares and serves food or drink on the premises where the program is located in connection with a fundraising event is exempt from this Part if food and drink are prepared and served no more frequently than one day each month.
- (8) Establishments that put together, portion, set out, or hand out only beverages that do not include those made from raw apples or potentially hazardous beverages made from raw fruits or vegetables, using single service containers that are not reused on the premises.
- (9) Establishments where meat food products or poultry products are prepared and sold and which are under inspection by the North Carolina Department of Agriculture and Consumer Services or the United States Department of Agriculture.
- (10) Markets that sell uncooked cured country ham or uncooked cured salted pork and that engage in minimal preparation such as slicing, weighing, or wrapping the ham or pork, when this minimal preparation is the only activity that would otherwise subject these markets to regulation under this Part.
- (11) Establishments that only set out or hand out beverages that are regulated by the North Carolina Department of Agriculture and Consumer Services in accordance with Article 12 of Chapter 106 of the General Statutes.
- (12) Establishments that only set out or hand out food that is regulated by the North Carolina Department of Agriculture and Consumer Services in accordance with Article 12 of Chapter 106 of the General Statutes.
- (13) Traditional country stores that sell uncooked sandwiches or similar food items and that engage in minimal preparation such as slicing bananas, spreading peanut butter, mixing and spreading pimiento cheese, and assembling these items into sandwiches, when this minimal preparation is the only

activity that would otherwise subject these establishments to regulation under this Part. For the purposes of this subsection, traditional country stores means for-profit establishments that sell an assortment of goods, including prepackaged foods and beverages, and have been in continuous operation for at least 75 years.

- (14) Bona fide cooking schools, defined for the purpose of this subdivision as cooking schools that (i) primarily provide courses or instruction on food preparation techniques that participants can replicate in their homes, (ii) prepare or serve food for cooking school participants during instructional time only, and (iii) do not otherwise prepare or serve food to the public.
- (15) Temporary family health care structures under G.S. 153A-341.3 or G.S. 160A-383.5.
- (17) A brewery as defined in G.S. 130A-247(10). (1955, c. 1030, s. 4; 1957, c. 1214, s. 3; 1983, c. 884, ss. 1, 2; c. 891, s. 2; 1985 (Reg. Sess., 1986), c. 926; 1989, c. 551, s. 3; 1991, c. 733, s. 3; 1993, c. 262, s. 4; c. 513, s. 14; 1995, c. 123, s. 14; 1997-261, s. 86; 1999-13, s. 1; 1999-247, s. 5; 2000-82, s. 1; 2001-440, s. 4; 2010-180, s. 18; 2011-335, s. 1; 2014-94, s. 3; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1; 2019-49, s. 9; 2019-182, s. 15(c).)