



August 19, 2013

Subject: Non-Smoking in Food Service Establishments Guidance Update

Where are restaurant guests or employees permitted to smoke?

- Smoking may be allowed in outdoor areas such as patios or rooftops during periods where food, beverages, or both are not prepared, served or provided to patrons.
- Service includes, but is not limited to delivering or retrieving food, beverages, glassware and/or tableware.
- Patrons may take food, beverages or both onto patios and rooftop dining areas during periods when there is no food or beverage preparation or service by employees.
- Ashtrays and other smoking paraphernalia must be removed during non- smoking periods.
- **Signage indicating when smoking is not allowed must be accurate.**
- Food establishments are not required to allow smoking in these outdoor areas, but may do so at their own discretion.

Examples:

A food establishment closes for food and drink service in the patio area after a certain hour. In this instance, patrons may take their own food or drink onto the patio and smoking may be allowed once service has ceased.

A fast food establishment has a patio area where patrons may take their own food and drink to dine outside. Smoking may be allowed if there is no preparation or service of food or drink to patrons in this area by

Changes

- This change allows patrons to take their *own food or drink* and smoke on a rooftop or patio during periods when there is no employee preparation or service of food or drink in that area.
- Signage indicating when smoking is not allowed must be accurate.
- Smoking is still prohibited indoors and on open air patios or rooftops during periods where food is prepared, served or provided to consumers, the level of employee protection remains the same.

DEFINITIONS

“Employee” means the PERMIT HOLDER, PERSON IN CHARGE, FOOD EMPLOYEE, PERSON having supervisory or management duties, PERSON on the payroll, family member, volunteer, PERSON performing work under contractual agreement, or other PERSON working in a FOOD ESTABLISHMENT.

“Smoking paraphernalia” means any equipment, apparatus, or furnishing that is used in or necessary for the activity of smoking. This includes, but is not limited to, ashtrays, rolling papers, pipes, hookah pipes, cigarettes, and cigars.

“Outdoor area” is an open area that is part of or adjacent to a fixed food service establishment, such as a restaurant or bar.

“Smoking area” must be the entire outdoor area. If a smoking area is established the restaurant must use the entire outdoor space. May not split outdoor smoking area to smoking and non-smoking