

**Sec. 331A.11. - Administrative enforcement.**

Violation of the state food code or related regulations of the state or city shall be grounds for adverse action against licenses issued under this chapter. Any violation shall be categorized into one (1) of two (2) categories.

- (1) *Critical violations* have the definition found in the state food code. These violations pose an imminent public health risk and require correction immediately in some cases, or in less severe cases require correction by a date determined by the department of safety and inspections. These violations shall be penalized according to the penalty matrix found in chapter 310.05 of this Code. Any critical violation as defined above may require a reinspection. Failure to correct upon reinspection shall be considered an aggravating factor in determining the appropriate penalty. Critical violations are further categorized as follows:
  - a. Critical violation - Major: A critical violation that is egregious and should have been known by ownership and/or management to contribute to food contamination, illness or environmental degradation that places consumers at a high risk for food-borne illness. A violation of this nature shall result in re-inspection and may result in immediate adverse action.
  - b. Critical violation - Minor: A critical violation that should have been known by ownership and/or management to have an impact on business or food service practices that are vital to the support of food safety within an establishment and that are of a lesser risk to contribute to food contamination, illness or environmental degradation.

A violation of this nature may result in adverse action under the following conditions:

    - i. Continuous critical violation: A minor critical violation shall be treated as a major critical violation under chapter 310.05 if the violation is documented and uncorrected at two (2) consecutive inspections.
    - ii. Recurring critical violation: A minor critical violation shall be treated as a major critical violation if the same violation is documented at three (3) or more inspections over the course of four (4) years.
- (2) *Non-critical violations* are all violations of the state food code or related regulations of the state or the city other than those defined as critical violations under the state food code. Non-critical violations may result in adverse action under the following conditions:
  - a. Continuous non-critical violation: The same non-critical violation is documented and uncorrected at three (3) consecutive full inspections.
  - b. Recurring non-critical violation: The same non-critical violation is documented at four (4) inspections within five (5) years.
  - c. Numerous non-critical violations: Ten (10) or more non-critical violations of any kind documented at two (2) consecutive full inspections. The number of violations, rather than the type of non-critical violation is the important factor. The non-critical violations at the first and second inspection are not required to be identical violations.
- (3) *Department of safety and inspections fine recommendation.* The department of safety and inspections shall make a penalty recommendation for all adverse licensing action as outlined in this section. That recommendation shall be determined by the department of safety and inspections after consideration of the food code penalty guideline which is published on the website of the department of public safety and available upon request. The department of safety and inspections shall also consider mitigating and/or aggravating factors including but not limited to:
  - a. The potential for harm or imminent threat to public health;
  - b. The extent of deviation from statutory or regulatory requirements;
  - c. The degree of willfulness or negligence;
  - d. The history of noncompliance or compliance;
  - e. The demonstration of good faith efforts to correct a violation;
  - f. The type of operation including the methods and extent of food storage, preparation, and service.
- (4) Nothing in this chapter limits the authority of the state department of safety and inspections or the city to impose additional sanctions for the described violations.

(C.F. No. 07-1052, § 2, 11-28-07)