Presumptive penalties for certain violations. The purpose of this section is to establish a standard by which the city council determines the amount of fines, the length of license suspensions and the propriety of revocations, and shall apply to all license types, except that in the case of a violation involving a liquor license § 409.26 shall apply where a specific violation is listed. In the case of an adverse action filed for a violation of chapter 331A, the licensee shall be given a fine for each individual violation of § 331A. The total fine amount for violations of § 331A may exceed the maximum fine outlined below due to multiple violations in one (1) appearance. All penalty recommendations for chapter 331A violations shall be based on the food penalty guideline referred to in chapter 331A. These penalties are presumed to be appropriate for every case; however the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons making it more appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Violations of conditions placed on the license	$500.00 fine	$1,000.00 fine	$2,000.00 fine and 10-day suspension	Revocation
(2) Violation of provisions of the legislative code relating to the licensed activity	$500.00 fine	$1,000.00 fine	$2,000.00 fine and 10-day suspension	Revocation
(3) Violation of provisions of the legislative code relating to the licensed activity, other than violations of the food code	$500.00 fine	$1,000.00 fine	$2,000.00 fine and 10-day suspension	Revocation
(4) Failure to permit entrance or inspection by DSI inspector or police	5-day suspension	10-day suspension	15-day suspension	Revocation
(5) Commission of a crime other than a felony on the premises by a licensee or employee	$700.00	$1,500.00	5-day suspension	Revocation
(6) Commission of a felony on the premises by a licensee or employee	$2,000.00	Revocation	n/a	n/a
(7) Death or great bodily harm in establishment related to violation of law	30-day suspension	60-day suspension	Revocation	n/a

or license conditions				
(8) Failure to pay license fees	Revocation			
(9) Critical violations under 331A	$250.00	$500.00	$1,000.00, 5-day suspension	Revocation
(10) Non-critical violation under 331A	$150.00	$250.00	$500.00	$1,000.00

(i) *Fines payable without hearing.*

A. Notwithstanding the provisions of section 310.05(c), a licensee who would be making a first or second appearance before the council may elect to pay the fine to the Department of Safety and Inspections without a council hearing, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.

B. For adverse action initiated under Chapter 331A of this Code, a fine may be paid without a hearing regardless of how many prior appearances that licensee has made before the Council. The above council hearing requirement applies to violations under Chapter 331A unless the fine recommended by the Department of Safety and Inspections is equal to or less than the fine amount outlined in the above matrix. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations. A non-critical violation under chapter 331A shall not be considered an "appearance" for purposes of determining presumptive penalties for non-331A violations. A council hearing is required if the Department of Safety and Inspections recommends a fine that is an upward departure for the amount outlined above.

(ii) *Multiple violations.* At a licensee's first appearance before the city council, the council shall consider and act upon all the violations that have been alleged and/or incorporated in the notices sent to the licensee under the administrative procedures act up to and including the formal notice of hearing. The council in that case shall consider the presumptive penalty for each such violation under the "1st Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.

(iii) *Violations occurring after the date of the notice of hearing.* Violations occurring after the date of the notice of hearing that are brought to the attention of the city attorney prior to the hearing date before an administrative law judge (or before the council in an uncontested facts hearing) may be added to the notice(s) by stipulation if the licensee admits to the facts, and shall in that case be treated as though part of the "1st Appearance." In all other cases, violations occurring after the date of the formal notice of hearing shall be the subject of a separate proceeding and dealt with as a "2nd Appearance" before the council. The same procedures shall apply to a second, third or fourth appearance before the council.

(iv) *Subsequent appearances.* Upon a second, third or fourth appearance before the council by a particular licensee, the council shall impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, non-critical violations of Chapter 331A shall not be counted as an "appearance" before the Council in relation to any violation other than another violation of Chapter 331A.

(v) *Computation of time.*

(1) If a licensee appears before the council for any violation in paragraph (m) where that violation has occurred within twelve (12) calendar months after the first appearance of the same licensee for a violation listed in paragraph (m) above or section 409.26, the current appearance shall be treated as a second appearance for the purpose of determining the presumptive penalty.

(2) If a licensee has appeared before the council on two (2) previous occasions for violations listed in paragraph (m) or section 409.26, and if said licensee again appears before the council for a violation listed in paragraph (m), and if the current violation occurs within eighteen (18) calendar months of the violation that gave rise to the first appearance before the council, then the current appearance shall be treated as a third appearance for the

purpose of determining presumptive penalty.

(3) If a licensee has appeared before the council on three (3) previous occasions, each for violations listed in paragraph (m) or section 409.26, and if said licensee again appears before the council for a violation contained in paragraph (m), and if the current violation occurred within twenty-four (24) calendar months of the violation that gave rise to the first appearance, then the current appearance shall be treated as a fourth appearance for the purpose of determining the presumptive penalty.

(4) Any appearance not covered by subsections (1), (2) or (3) above shall be treated as a first appearance. In case of multiple violations in any appearance, the date to be used to measure whether twelve (12), eighteen (18), or twenty-four (24) months have elapsed shall be the date of the violation last in time at the first appearance, and the date of the violation first in time at any subsequent appearance.

(5) Notwithstanding subsections (iv)(1), (2), (3) or (4) above, a second appearance before the council regarding a death or great bodily harm in a licensed establishment that is related to a violation of the law or license conditions shall be counted as a second appearance, regardless of how much time has passed since the first appearance if the first appearance was also regarding a death or great bodily harm in a licensed establishment. A third appearance for the same shall be counted as a third appearance regardless of how much time has passed since the first or second appearance.

(Code 1956, § 510.05; Ord. No. 17551, § 2, 4-19-88; Ord. No. 17559, §§ 1, 2, 5-17-88; Ord. No. 17659, § 1, 6-13-89; Ord. No. 17911, § 1, 3-10-92; C.F. No. 94-46, § 7, 2-2-94; C.F. No. 94-898, §§ 2, 3, 7-13-94; C.F. No. 94-1340, § 2, 10-19-94; C.F. No. 95-473, § 4, 5-31-95; C.F. No. 05-180, § 1, 4-6-05; C.F. No. 06-954, § 1, 11-8-06; C.F. No. 06-1072, § 1, 12-27-06; C.F. No. 07-149, § 73, 3-28-07; C.F. No. 07-1053, § 1, 11-28-07; C.F. No. 08-1208, § 1, 12-17-08)