

**Sec. 324.11. - Presumptive penalties.**

- (a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, length of license suspensions and the propriety of revocations. 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 which make it appropriate to do so. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.
- (b) *Presumptive penalties for violations.* Adverse penalties for violations or convictions shall be presumed as follows:

| Type of Violation              | Appearance    |               |                   |            |
|--------------------------------|---------------|---------------|-------------------|------------|
|                                | 1st           | 2nd           | 3rd               | 4th        |
| (1) Sale of tobacco to a minor | \$200.00 fine | \$400.00 fine | 30-day suspension | Revocation |

- (c) *Fines payable without hearing.* Notwithstanding the provisions of section 310.05(l), 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.
- (d) *Computation of time.*
  - (1) If a licensee violates this chapter and the violation occurs within twelve (12) calendar months after the first appearance of the same licensee for a violation under this chapter, 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 of this chapter, and if said licensee again appears before the council for a violation of this chapter, 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 of this chapter, and if said licensee again appears before the council for a violation of this chapter, 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.

*(Ord. No. 17733, § 3, 5-8-90; C.F. No. 94-341, § 11, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 02-898, § 1, 11-6-02; C.F. No. 07-149, § 82, 3-28-07)*