

## Sec. 409.26. - Intoxicating liquor; nonintoxicating malt liquor; presumptive penalties.

(a)

*Purpose.* The purpose of this section is to establish a standard by which the city council determines the length of license suspensions and the propriety of revocations, and shall apply to all on-sale and off-sale licensed premises for both intoxicating liquor under this chapter and nonintoxicating liquor under Chapter 410. 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.

(b)

*Presumptive penalties for violations.* Adverse penalties for convictions or violations shall be presumed as follows (unless specified, numbers below indicate consecutive days' suspension):

	Type of Violation	Appearance			
		1st	2nd	3rd	4th
(1)	Commission of a felony related to the licensed activity.	Revocation	NA	NA	NA
(2)	Sale of alcohol beverages while license is under suspension.	Revocation	NA	NA	NA
(3)	Sale of alcoholic beverages to underage person.	Fine	Fine	Up to 18	Revocation
(4)	Sale of alcoholic beverage to intoxicated person.	Fine	Fine	Up to 18	Revocation
(5)	After hours sale of alcoholic beverages.	Fine	6	18	Revocation
(6)	After hours display or consumption of alcoholic beverage.	Fine	4	12	Revocation
(7)	Refusal to allow city inspectors or police admission to inspect premises.	5	15	Revocation	NA
(8)	Illegal gambling on premises.	Fine	6	18	Revocation
(9)	Failure to take reasonable steps to stop person from leaving premises with alcoholic beverage.	Fine	4	12	Revocation
(10)	Failure to make application for license renewal prior to license expiration date.	Fine	6	18	Revocation
(11)	Sale of intoxicating liquor where only license is for nonintoxicating liquor.	Fine	6	18	Revocation

(12)	Failure to comply with statutory, and ordinance requirements for liability insurance.	10	Revocation	NA	NA
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For those violations which occur in on-sale intoxicating liquor establishments listed above in numbers (3), (4), (5), (6), (8), (9), (10) and (11), which would be a first appearance not involving multiple violations, a fine shall be imposed according to the following schedule. For those violations which occur in on-sale intoxicating liquor establishments listed above in numbers (3) and (4), which would be a second appearance not involving multiple violations, the fine amounts set forth below shall be doubled.

Seating capacity 0—149 \$ 500.00

Seating capacity 150 and over 1,000.00

For those violations which occur in off-sale intoxicating liquor establishments listed above in numbers (3), (4), (5), (6), (8), (9), (10) and (11), which would be a first appearance not involving multiple violations, a fine shall be imposed according to the following schedule, based on the square footage of the retail area of the establishment. For those violations which occur in off-sale intoxicating liquor establishments listed above in numbers (3) and (4), which would be a second appearance not involving multiple violations, the fine amounts set forth below shall be doubled.

5,000 square feet or less \$ 500.00

5,001 square feet or more 1,000.00

A licensee who would be making a first appearance before the council may elect to pay the fine to the department of safety and inspections without an appearance before the council, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive penalty. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and shall be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.

(c)

*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 "1<sup>st</sup> Appearance" column in paragraph (b) above. The occurrence of multiple violations shall be grounds for departure from such penalties in the council's discretion.

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 "1<sup>st</sup> 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 "2<sup>nd</sup> Appearance" before the council.

The same procedures shall apply to a second, third or fourth appearance before the council.

(d)

*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.

(e)

*Computation of time:*

(1)

If a licensee appears before the council for any violation in paragraph (b) where that violation has occurred within twelve (12) calendar months after the first appearance of the same licensee for a violation listed in paragraph (b) above, 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, both for violations listed in paragraph (b) above, and if said licensee again appears before the council for a violation listed in said paragraph (b), and if the current violation occurred 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 violation listed in paragraph (b) above, and if said licensee again appears before the council for a violation listed in paragraph (b) above, and if the current violation occurred within thirty (30) 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 thirty (30) 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.

(f)

*Other penalties.* Nothing in this section shall restrict or limit the authority of the council to suspend up to sixty (60) days, revoke the license, or impose a civil fine not to exceed two thousand dollars (\$2,000.00), to impose conditions or take any other adverse action in accordance with law, provided, that the license holder has been afforded an opportunity for a hearing in the manner provided for in section 310.05 of this Code.

(g)

*Effect of responsible business practices in determining penalty.* In determining the appropriate penalty, the council may, in its discretion, consider evidence submitted to it in the case of uncontested adverse actions or submitted to a hearing examiner in a contested hearing upon which findings of fact have been made that a licensee has followed or is likely to follow in the future responsible business practices in regard to sales to intoxicated persons and sales to minors.

(1)

For the purposes of service to intoxicated persons, evidence of responsible business practices may include, but is not limited to, those policies, procedures and actions that are implemented at time of service and that:

a.

Encourage persons not to become intoxicated if they consume alcoholic beverages on the defendant's premises;

b.

Promote availability of nonalcoholic beverages and food;

c.

Promote safe transportation alternatives other than driving while intoxicated;

d.

Prohibit employees and agents of defendant from consuming alcoholic beverages while acting in their capacity as employees or agents;

e.

Establish promotions and marketing efforts that publicize responsible business practices to the defendant's customers and community;

f.

Implement comprehensive training procedures;

g.

Maintain an adequate, trained number of employees and agents for the type and size of defendant's business;

h.

Establish a standardized method for hiring qualified employees;

i.

Reprimand employees who violate employer policies and procedures; and

j.

Show that the licensee has enrolled in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.

(2)

For the purposes of service to minors, evidence of responsible business practices may include, but is not limited to, those listed in subsection (1) and the following:

a.

Management policies that are implemented at the time of service and that ensure the examination of proof of identification (as established by state law) for all persons seeking service of alcoholic beverages who may reasonably be suspected to be minors;

b.

Comprehensive training of employees who are responsible for such examination regarding the detection of false or altered identification; and

c.

Enrollment by the licensee in recognized courses providing training to self and one (1) or more employees of the licensed establishment in regard to standards for responsible liquor service.

(Ord. No. 17556, § 1, 4-28-86; Ord. No. 17657, § 14, 6-8-89; Ord. No. 17675, § 1, 8-22-89; Ord. No. 17694, § 2, 11-7-89; Ord. No. 17756, § 1, 8-7-90; Ord. No. 17924, §§ 2, 3, 5-7-92; C.F. No. 92-1929, § 1, 2-9-93; C.F. No. 97-1445, § 1, 12-30-97; C.F. No. 98-866, § 1, 11-4-98; C.F. No. 07-149, § 161, 3-28-07)