

**PRIVILEGED AS DELIBERATIVE PROCESS
FOR INTERNAL DISCUSSION & REVIEW ONLY
BY AUTHORITY**

1
2 ORDINANCE NO.
3 SERIES OF 2010
4

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:

A BILL

5
6 **For an ordinance relating to Chapter 23 (Food and Food Handlers), of the**
7 **Denver Revised Municipal Code, as amended.**

8 **WHEREAS, the department seeks to enhance its enforcement powers regarding**
9 **food establishments subject to Chapter 23 (Food and Food Handlers); and**

10 **WHEREAS, council finds that enhancing the department's enforcement powers**
11 **regarding those food establishments would promote the general welfare and would be**
12 **protective of public health; and**

13 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY**
14 **OF DENVER:**

15 **Section 1.** Section 23-1 (Exclusions) of Chapter 23 (Food and Food Handlers) shall be
16 amended by deleting the language stricken, to read and be read as follows:

17 **"Sec. 23-1. Exclusions.**

18 The following types of establishments shall be excluded from regulation and licensing under this
19 chapter 23:

- 20 (1) Private homes;
- 21 (2) Personal care boarding homes, as defined in chapter 26 of this Code, that are
22 licensed for less than twenty (20) beds;
- 23 ~~(3) Child care establishments as defined in chapter 11 of this Code;~~
- 24 (4) Motor vehicles used only for the transport of food;
- 25 (5) Establishments preparing and serving only hot coffee, hot tea, instant hot
26 beverages, popcorn with no added ingredients other than salt and butter, and nonpotentially
27 hazardous doughnuts or pastries obtained from sources complying with all laws related to food
28 and food labeling;
- 29 (6) Establishments that handle only nonpotentially hazardous prepackaged food and
30 operations serving only commercially prepared, prepackaged foods requiring no preparation
31 other than the heating of food within its original container or package;

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1 (7) Farmers markets and sellers that offer only uncut fresh fruit and vegetables for
2 sale;

3 (8) Automated food merchandising enterprises that supply only prepackaged
4 nonpotentially hazardous food or drink in bottles, cans, or cartons only, and operations that
5 dispense only chewing gum or salted nuts in their natural protective covering; and

6 (9) The donation, preparation, sale, or service of food by a nonprofit or charitable
7 organization in conjunction with an event or celebration if such donation, preparation, sale, or
8 service of food does not exceed the duration of the event or celebration or a maximum of fifty-
9 two (52) days within a calendar year; the event or celebration takes place in the City and County
10 of Denver, and the nonprofit or charitable organization resides or is principally located within the
11 City and County of Denver.

12 **Section 2.** Section 23-3 (Right of entry) of Chapter 23 (Food and Food Handlers) shall be
13 amended by adding the language underlined, to read and be read as follows:

14 **Sec. 23-3. - Right of entry.**

15 As a condition to the granting of a license, the manager shall have the right of entry into
16 the premises of any licensee during the hours the licensee is conducting business or when
17 activity is in evidence. The manager shall be permitted to examine documents or true copies of
18 documents, excluding prices, that pertain directly to food and supplies purchased, received or
19 used, information pertinent to their HACCP plan, or to persons employed in food and beverage
20 operations when such examination is expected to produce information necessary to protect the
21 public health, enforce this chapter 23, or investigate suspected incidents of food-borne illness.
22 Upon and in accordance with the manager's request, licensee shall provide copies of the above-
23 referenced documents to the manager. The inspection of any food by the manager may result in
24 approval, or an order of condemnation, or an order to retain and hold the same pending further
25 investigation and examination. It shall be unlawful to hinder, prevent, or refuse to permit any
26 lawful inspection.

27 **Section 3.** Section 23-4. - (Enforcement and compliance procedures) of Chapter 23
28 (Food and Food Handlers) shall be amended by adding the language underlined, to read and be
29 read as follows:

30 **Section 23-4. - (Enforcement and compliance procedures)**

31 Sec. 23-4. - Enforcement and compliance procedures.

32 (1)

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1 The manager may order the licensee, agent of the licensee, or the person in charge of
2 any food establishment to effect such cleaning, repair operations, changes in procedures or such
3 other actions as are necessary to bring the establishment into conformity with the requirements
4 of this chapter 23 and promulgated rules and regulations.

5 (2)

6 The order shall be in writing and delivered personally, by First-Class Mail, or by registered
7 mail to the licensee, agent of the licensee, or the person in charge and shall state a reasonable
8 period within which compliance shall be made.

9 (3)

10 While cleaning and repair operations pursuant to an order under the terms of this section
11 are being undertaken, the area or areas of the food establishment affected by the order shall not
12 be used for the preparation, storage, or service of food and drink.

13 (4)

14 Samples of any food or drink, water, chemicals, preservatives, spices and all other
15 ingredients used in connection with the preparation, storage, or service of any food or drink may
16 be taken by the manager without cost whenever necessary for the efficient conduct of inspection
17 or investigatory procedures.

18 (5)

19 The manager shall condemn any food or drink which is unfit for human consumption and
20 shall verify the destruction or disposal of such food or drink.

21 (6)

22 The manager may order any food or drink to be retained and held apart from all other food
23 and drink in the food establishment and not used for any purpose until the food or drink has
24 either been approved or ordered condemned.

25 (7)

26 Whenever the manager finds any food establishment that does not conform to the
27 requirements of this chapter 23, or with promulgated rules and regulations, and if the
28 nonconformity presents an imminent health hazard to the public health, such as, but not limited
29 to, complete lack of refrigeration or sewage backup into the food establishment, the manager
30 shall order the food establishment closed unless the nonconformity that presented the imminent
31 health hazard to the public health is immediately corrected during the inspection. The
32 department shall post the closure order in a prominent public place on the premises of a retail

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1 food establishment. Operations shall not be resumed and, notwithstanding any other provision of
2 this chapter, closure orders shall not be removed until authorized by the manager.

3 **Section 4.** Section 23-10 (Civil or administrative penalties) of Chapter 23 (Food and Food
4 Handlers) shall be amended by adding the language underlined, to read and be read as follows:

5 **Sec. 23-10. - Civil or administrative penalties.**

6 (a)

7 Any person who violates any provision of this chapter, including the promulgated rules
8 and regulations, shall also be subject to a civil penalty of not more than two thousand dollars
9 (\$2,000.00).

10 (b)

11 Any person who violates any order issued by the manager shall also be subject to a civil
12 penalty of not more than two thousand dollars (\$2,000.00).

13 (c)

14 The manager shall determine the amount of penalties. In determining the propriety and
15 amount of penalties, the manager may consider the potential harm to public health and safety
16 that may result from the violation, the history of previous violations, the number of continuing rule
17 or code violations cited in the order, the person's current status of compliance with this chapter
18 and rules promulgated hereunder, whether the violation occurred because of negligent or
19 intentional conduct, the effect of the penalty on the person or entity's ability to continue in
20 business, and the demonstrated good faith of the person or entity charged in attempting to
21 achieve rapid compliance after notification of a violation and other facts and circumstances
22 relevant to the violation. The notice of civil or administrative penalty may be personally served
23 upon or sent by first-class mail to the licensee, agent of the licensee, or the person in charge.

24 (d)

25 Any person who disputes a violation for which a civil penalty has been assessed by or on
26 behalf of the city pursuant to the authority of the manager, may petition the board for a hearing in
27 accordance with Article I of Chapter 24, D.R.M.C. and rules and regulations adopted and
28 promulgated thereunder. If the hearing is conducted by a hearing officer, the hearing officer's
29 recommended decision constitutes the decision of the board unless a petition to review the
30 hearing officer's recommended decision is filed with the board within ten (10) calendar days of
31 service of the decision. The board's review will be on the administrative record established at the
32 underlying hearing. Compliance with the provisions of this subsection shall be a jurisdictional

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1 prerequisite to any action brought under the provisions of this section, and failure to comply shall
2 forever bar any such action.

3 (e)

4 A civil penalty assessed shall be payable directly to the manager of finance. If not timely
5 paid, a late fee of up to twenty-five dollars (\$25.00) may be assessed and interest at the rate of
6 ten (10) percent per annum. ~~In the event~~ If a person fails to pay a civil penalty and charges
7 assessed, the manager ~~shall collect penalties by action initiated in the district court for collection~~
8 ~~of such penalty~~ may refer the matter for collection by any and all means available to the city. A
9 stay of any order of the manager pending judicial review shall not relieve any person from any
10 liability under subsection (a) or (b).

11 (f)

12 The city may also petition the district court for the issuance of a preliminary or permanent
13 injunction, or both, as may be appropriate, restraining any person from continued violation of this
14 chapter, including the promulgated rules and regulations.

15 **Section 4.** Section 23-11 (Posting notice of enforcement actions) of Chapter 23 (Food
16 and Food Handlers) shall be amended by adding the language underlined, to read and be read
17 as follows:

18 **Sec. 23-11. - Posting notice of enforcement actions.**

19 In accordance with the department's policies, the department ~~shall~~ may post, in a
20 prominent public place on the premises of a retail food establishment, notice of any of the
21 following actions taken against that establishment:

22 (1)

23 Any permanent injunction agreed to by the establishment in a plea arrangement, at the
24 time the injunction is instituted; or any permanent injunction issued by a trial court, ~~at the time~~
25 ~~any appeal period expires if no appeal is filed, or upon the exhaustion of all appeals by the~~
26 ~~establishment;~~

27 (2)

28 Any fine agreed to by the establishment in a plea arrangement, at the time the fine is paid
29 by the establishment; or any fine levied by a trial court, ~~at the time any appeal period expires if~~
30 ~~no appeal is filed, or upon the exhaustion of all appeals by the establishment;~~

31 (3)

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1 ~~Any civil penalty agreed to by the establishment in a settlement with the department, at~~
2 ~~the time that the penalty is paid by the establishment; or any civil penalty assessed by the~~
3 ~~department, at the time any appeal period expires if no appeal is filed, or upon the exhaustion of~~
4 ~~all appeals by the establishment;~~

5 (43)

6 Any closure order agreed to by the establishment in a settlement with the department, at
7 the time of closure; or any closure order issued by the department at the time ~~any appeal period~~
8 ~~expires if no appeal is filed, of closure unless appealed, and if appealed, upon the exhaustion of~~
9 all administrative appeals by the establishment. All notices of an action taken due to issuance of
10 a closure order shall remain in place throughout the time period set forth in the promulgated
11 rules and regulations unless appealed. If such closure order is appealed and is found valid, the
12 notice of action taken due to issuance of a closure order shall be re-posted for the number of
13 days it otherwise would have remained posted but for filing of an appeal. This subsection shall
14 not include closure orders issued by the department for occurrences beyond the control of the
15 establishment; and

16 (4)

17 Any order agreed to by the establishment in a settlement with the department or issued by
18 the department as a result of operating an establishment under conditions that presented an
19 imminent health hazard to the public health but for which the nonconformity was immediately
20 corrected during the inspection, at the time any administrative appeal period expires if no appeal
21 is filed, or upon the exhaustion of all administrative appeals by the establishment. All notices of
22 an action taken due to issuance of an order because the establishment was operated under
23 conditions that posed an imminent public health risk shall remain in place throughout the time
24 period set forth in the promulgated rules and regulations unless appealed. If such order is
25 appealed and is found valid, the notice of the order shall be re-posted for the number of days it
26 otherwise would have remained posted but for filing of an appeal. This subsection shall not
27 include orders issued by the department for occurrences beyond the control of the
28 establishment; and

29 (5)

30 Any suspension of the retail food establishment licensee's license pursuant to chapter 32
31 of this Code, at the time any administrative appeal period expires if no appeal is filed, or upon
32 the exhaustion of all administrative appeals by the establishment.

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COMMITTEE APPROVAL DATE: _____, 2010.
MAYOR-COUNCIL DATE: _____, 2010.
PASSED BY THE COUNCIL _____
2010

_____- PRESIDENT
APPROVED: _____ - MAYOR _____ 2010
ATTEST: _____ - CLERK AND RECORDER,
EX-OFFICIO CLERK OF THE
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2010;
_____ 2010

PREPARED BY: Katherine L. Wilmoth - ASSISTANT CITY ATTORNEY - _____, 2010
Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
§3.2.6 of the Charter.

City Attorney, City and County of Denver
BY: _____, _____ City Attorney
DATE: _____, 2010