

1 BY AUTHORITY

2 ORDINANCE NO.
3 SERIES OF 2010

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:
4 HEALTH, SAFETY, EDUCATION, & SERVICES
5

6 **A BILL**

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

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

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

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

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

18 **“Sec. 23-1. Exclusions.**

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

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

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)

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. Operations shall not be resumed, and notwithstanding
31 any other provision of this chapter, notices of closure orders shall not be removed until
32 authorized by the manager.

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

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

4 (a)

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

8 (b)

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

11 (c)

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

22 (d)

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

1 (e)

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

9 (f)

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

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

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

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

20 (1)

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

25 (2)

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

29 (3)

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

1 (43)

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

14 (4)

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

26 (5)

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

1 COMMITTEE APPROVAL DATE: October 12, 2010.

2 MAYOR-COUNCIL DATE: October 19, 2010.

3 PASSED BY THE COUNCIL _____ 2010

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____ 2010

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2010;

10 _____ 2010

11 PREPARED BY: Katherine L. Wilmoth - ASSISTANT CITY ATTORNEY – October 20, 2010

12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
13 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
15 §3.2.6 of the Charter.

16 City Attorney, City and County of Denver

17 BY: _____, _____ City Attorney

18 DATE: _____, 2010