

DEH Public Health Inspection (PHI) Civil Penalties Ordinance Revision

Summary:

The Department of Environmental Health is requesting modifications to Chapter 23 of the Food Handling Ordinance (see attached draft ordinance), the most notable of which will better define what situations the department will post notices of enforcement.

In lieu of the posting requirement, the department will use its existing authority to issue civil penalties in an effort to gain compliance with food safety regulations.

Background on PHI's Food Inspection Program:

The Department of Environmental Health's Public Health Inspection Division regulates approximately 5,000 food service establishments in the City & County of Denver. Inspection frequencies are based on risk factors such as the amount and type of food served, as well as the types of food handling procedures that are used. Full service restaurants are typically higher risk than coffee shops that serve only a limited number of items and as a result receive more inspections.

Low risk facilities are inspected a minimum of once a year, medium risk facilities a minimum of twice a year, and high risk facilities a minimum of three times a year.

Violations are categorized as **critical** and **non-critical based on whether a risk of food-borne illness exists**.

- **Critical Violations** examples include poor hygienic practices, contamination of food and equipment, and failing to have a properly calibrated thermometer to monitor food product temperatures. When critical violations are found, most are corrected immediately making it unlikely that the facility will be subject to a re-inspection. In most cases, unless there is a complaint filed, the facility will not be inspected again until the next regularly scheduled inspection. If the same violation is found on multiple inspections in an 18 month period, it will likely result in a civil penalty (fine) and a posting (see details below).
- **Non-Critical violations** examples include lack of cleaning, and improper food storage. If left uncorrected, these violations can become more serious and lead to a critical violation. While these violations are noted by inspectors, they will not result in a civil penalty.

Current process for citing civil penalties (fines) in food service establishments:

If a food service facility is found to have three of the same type of critical violations in one 18-month period, the operator is subject to a civil penalty of \$300. If assessed a civil penalty; the establishment is posted with a Notice of Enforcement action for up to 30 days.

While the posted notice identifies the violation type, date and whether it was corrected, the notice is posted only when an establishment has accumulated three violations over an 18-month period. Under the current system, approximately 7 percent (350) of the city's (5,000) food service establishments have been subject to Notice of Enforcement Postings as a result of routine civil penalties.

Chapter 23 of the Food Handling Ordinance allows the department to assess a civil penalty of up to \$2,000 for any violation of the food code. While the authority exists, the department has, and plans to continue assessing a civil penalty of \$2,000 only for closures or imminent public health risks.

Proposed process for citing civil penalties in food service establishments:

As a result of working extensively with the Colorado Restaurant Association (CRA), and conducting research on other food inspection programs, the department is proposing to modify the current ordinance to better protect the public from the risk of foodborne illness. This includes issuing fines for food service establishments found with repeat critical violation observed during a 12 month period. As noted above, the department already has the authority to assess civil penalties of up to \$2,000.

Below is a draft of the proposed fine schedule, that was voted on and approved May 3 by the Colorado Restaurant Association (CRA).

	1st inspection	2nd inspection	3rd and subsequent inspections within a 12-month period	Closures, imminent public health risks, refusal to allow inspection or to comply with orders
Fines for Critical Violations	No fine	\$250 for repeat critical violations	\$500 for 3 rd occurrence	\$2,000
Maximum amount per inspection	N.A.	\$500	\$1,000	\$2,000
Notice of Enforcement Action (Posting)	No	No	No	Yes

If the same type of critical violation(s) is found three times in a 12-month period, the department could impose a \$500 fine per repeat critical violation. However, this amount would be capped to a maximum of \$1,000.

A Notice of Enforcement Action would be posted only when a retail food facility’s operations are so egregious that closure is warranted for public safety, or when a facility refuses inspections or refuses to comply with lawful orders, or when a facility’s operations present an imminent public health risk. In such situations, a \$2,000 fine would be assessed.

Ordinance Change: Section 23-1 (Exclusions) of Chapter 23 (Food and Food Handlers) shall be amended (see attached draft ordinance).

Approximate timeline:

- May 3, 2010 Presented proposed changes to the Colorado Restaurant Association (CRA) Members, who voted in support of changes and proposed fine schedule.
- Sept. 20 Submit ordinance request to revise language in Chapter 23
- Sept. 28 Present ordinance changes to Health, Safety, Education, and Services Committee. CRA will be in attendance to provide support.
- Oct. 14 Request a public hearing before the Board of Environmental Health to modify regulations such that they are consistent with ordinance changes.
- Nov. 11 Conduct public hearing and adopt regulation revisions.
- Nov/Dec. Conduct outreach and education to food industry.
- Jan. 1, 2011 Implement new civil penalty process.**