

ORDINANCE NO. 15187

FILE OF CITY COUNCIL

BILL NO. 7 - 2015

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February 18, 2015

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AN ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLENTOWN, PENNSYLVANIA, REPEALING SUBCHAPTER A THROUGH SUBCHAPTER G, INCLUSIVE, OF ORDINANCE NO 14189, NOW ARTICLE 1123 OF THE CODIFIED ORDINANCES OF THE CITY OF ALLENTOWN WITH RESPECT TO FOOD SERVICE SANITATION IN THEIR ENTIRETY TO CONFORM TO THE STATE RETAIL FOOD FACILITY SAFETY ACT OF NOV. 23, 2010, P.L. 1039, NO. 106, AMENDING SUBCHAPTER H WITH RESPECT TO ADMINISTRATION BY SUBSTITUTING STATUTORY REFERENCES IN SECTION 1123.1102(a), BY DELETING SECTIONS 1123.1102(c) THROUGH 1123.1104 AND SECTION 1123.1121 THROUGH SECTION 1123.1142, BY RENAMING SECTION 1123.1143, BY DELETING SECTION 1123.1143 (a) THROUGH 1123.1143(c), BY ADDING A NEW SECTION 1123.1143(a) AND RE-LETTERING THE REMAINING SECTIONS OF SECTION 1123.1143, BY DELETING SECTION 1123.1144 AND BY ADDING VIOLATION TICKETS TO SECTION 1123.1147 FOR VIOLATIONS THEREOF AND REPEALING ALL OTHER ORDINANCES INCONSISTENT HEREWITH.

WHEREAS, the City adopted Ordinance No. 14189 on June 4, 2004, now Article 1123 (Food Service Sanitation) of the Codified Ordinances under which the City regulates the management, personnel, operations and equipment of food service facilities pursuant to the Pennsylvania Food Law, Act 70 of 1994; and

WHEREAS, the General Assembly enacted a new food safety statute, that became effective on January 22, 2011, entitled the Retail Food Facility Safety Act of Nov. 23, 2010, P.L. 1039, No. 106, 3 Pa.C.S.A § 5701 et.seq. ("Act 106 of 2010") which governs licensing, inspection and regulation of public eating and drinking places and retail food establishments and repealed the Pennsylvania Food Law, Act 70 of 1994; and

WHEREAS, with the passage of Act 106 of 2010, the regulatory Subchapters of Ordinance No. 14189, namely, Subchapters A through Subchapter G, inclusive, were abrogated and, as a licensing agency, the City must enforce the state statute, Act 106 of 2010, and the regulations promulgated thereunder as amended from time to time; and

WHEREAS, the City desires to defer to the state Department of Agriculture to issue variance, modifications and waivers from the requirements of the food service regulations; and

WHEREAS, the City desires to impose violation tickets, in addition to other available remedies, for the violation of the provisions of this Ordinance; and

WHEREAS, the City Council of the City of Allentown deems it appropriate and in the best interests of the public health, safety and welfare of the community to amend Ordinance No. 14189, now Article 1123 of the Codified Ordinances as set forth in the TITLE hereto and as more fully set forth below:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLENTOWN AS FOLLOWS:

Section 1. Subchapters A through G, inclusive, of Article 1123 of the Codified Ordinances of the City of Allentown are hereby repealed in their entirety.

Section 2. The reference to the Public Eating and Drinking Places Law 369, the Food Act 70 is deleted and a reference to the Retail Food Facility Safety Act of Nov. 23, 2010, P.L. 1039, No. 106, 3 Pa.C.S. Section 5701 et. seq.) "Act 106 of 2010") is hereby added to Subchapter H (Administrative Procedures and Remedies), Section 1123.1102(a).

Section 3. Sections 1123.1102( c) through Section 1123.1104, inclusive, and Section 1123.1121 through Section 1123.1142 of Subchapter H (Administrative Procedures and Remedies) are hereby deleted.

Section 4. Section 1123.1143 of Subchapter H (Administrative Procedures and Remedies) is hereby renamed from "Issuance" to "Licenses."

Section 5. Sections 1123.1143(a) through 1123.1143( c) of Subchapter H (Administrative Procedures and Remedies) are hereby deleted.

Section 6. Section 1123.1143 of Subchapter H (Administrative Procedures and Remedies) is amended to add the following new Paragraph (a) and re-lettering the remaining Paragraphs to (b) through (g)

(a) In order to be eligible for licensure, a food facility applicant must be determined to be in compliance with the requirements of this Article, the applicable state statutes and regulations and all other applicable City ordinances and regulations, including, but not limited to, Building, Zoning and Fire Prevention Codes, Business Privilege Tax, Earned Income Tax, Occupational Privilege Tax and Solid Waste and Recycling regulations.

Section 7. Section 1123.1144 of Subchapter H (Administrative Procedures and Remedies) is hereby deleted.

Section 8. Section 1123.1147 of Subchapter H (Administrative Procedures and Remedies) is hereby amended to add new Section 1123.1147(d) (Violation Tickets) as a remedy for violations of this Article as follows:

(d) Violation Tickets

(1) Definition of Term: Violation Ticket

A violation ticket is a form issued by the Director of Health or his designee to a person who violates a provision of this Article. The violation ticket is an offer by the City of Allentown extended to a person to settle a violation by paying the fine in lieu of a citation being issued against the violator.

## (2) Enforcement

(i) In addition to any other enforcement actions (e.g., suspensions, summary citations) imposed by the Bureau of Health in accordance with this Article for violations Any violation of the provisions of this Article may also be cause for a violation ticket and/or a notice of violation to be issued to the violator.

(ii) A notice of violation or violation ticket shall be served upon a violator by handing it to the violator, by handing it to the person in charge of the food service facility, by leaving or affixing the notice or violation ticket to the property where the violation exists, by handing it at any office or usual place of business of the violator, to his/her agent or to the person for the time being in charge thereof, or by mailing the notice to the violator's address of record.

(iii) Each day a violation continues or is permitted to continue may constitute a separate offense for which a separate violation ticket may be imposed.

(iv) The Director of Health or his designee is authorized and empowered to cause a violation to be corrected.

(v) If the City has affected the correction of the violation, the cost thereof may be charged to the owner of the facility or offending party. The cost shall be determined by the Director of Health or designee in order that the City shall be compensated for both direct and indirect costs and expenses incurred.

Section 9. Section 1123.1147 of Subchapter H (Administrative Procedures and Remedies) is hereby amended to add new Section 1123.1147(e) (Violation Ticket Fines and Penalties) as follows:

### (e) Violation Ticket Fines and Penalties

#### (1) Definition of Terms: Good Retail Practices and Risk Factor Violations

The Commonwealth of Pennsylvania has adopted the Model Food Code which is the most current edition of the Food Code published by the US Department of Health and Human Services, Food and Drug Administration (FDA). 7 Pa. Code 46.4. The City uses the Model Food Code. The terms "Good Retail Practices" and "Risk Factor Violations", as used in this Section, shall have the meanings ascribed to them in the FDA Food Code, 2013, Annex 7, Part 3, Inspection Form 3-A (Food Establishment Inspection Report), as amended.

#### (2) Violation Ticket Fines

(i) Tickets issued for violations designated as "Good Retail Practices" on the official Inspection Form utilized by the Bureau of Health shall be:

For the year 2015: Twenty- five (\$25.00) Dollars;

For the year 2016: Thirty-five (\$35.00) Dollars;

For the year 2017 and each subsequent year thereafter: Forty-five (\$45.00)

Dollars.

(ii) Tickets issued for violations designated as 'Risk Factor Violations' on the official inspection form utilized by the Bureau of Health shall be:

For the year 2015: Fifty (\$50.00) Dollars;

For the year 2016: Seventy-five (\$75.00) Dollars;  
For the year 2017 and each subsequent year thereafter: One hundred (\$100.00) Dollars.

(iii) Any person who receives a violation ticket for any violation of this Article, may within ten (10) days, admit the violation, waive a hearing and pay the fine in full, as indicated on the violation ticket.

(3) Violation Ticket Late Payment Penalties

- (a) If the person in receipt of a violation ticket issued for a Good Retail Practice does not pay the fine or file an appeal within ten (10) days of receipt of the violation ticket, the person will be subject to a late payment penalty of ten dollars (\$10.00) for days eleven (11) through twenty (20).
- (b) If the person in receipt of a violation ticket issued for a Risk Factor Violation does not pay the fine or file an appeal within ten (10) days of receipt of the violation ticket, the person will be subject to a late payment penalty of twenty-five dollars (\$25) for days eleven (11) through twenty (20).
- (c) Failure of the person to make payment within twenty (20) days shall make the person subject to a Summary Offense under Subparagraph (a) of Section 1123.1147 of this Article.

(i) Violation Process Ticket Appeals

- (a) A person in receipt of a violation ticket may appeal to the Bureau of Health by filing a request within ten (10) days of receipt of the violation ticket.
- (b) A Hearing Officer, designated by the Director of the Bureau of Health, may uphold the Appeal, deny the Appeal or may modify the violation ticket and/or any associated costs, fines or penalty amounts.

Section 10. Repealer.

All Ordinances or parts of Ordinances inconsistent herewith be and the same are hereby repealed.

Section 11. Severability.

If any section, clause, provision or portion of this Ordinance shall be held to be invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance, which provisions shall remain in full force and effect.

Section 12. Effective Date.

That this Ordinance will take effect ten (10) days after final passage.

	Yea	Nay
Joe Davis	X	
Jeanette Eichenwald	X	
Jeff Glazier	X	
Daryl Hendricks	X	
Cynthia Y. Mota	X	
Julio A. Guridy, VP	X	
Ray O'Connell, Pres.	X	
TOTAL	7	0

I hereby certify that the foregoing Ordinance was passed by City Council on March 4, 2015 and signed by the Mayor on March 9, 2015.



CITY CLERK

- **What Department or bureau is Bill originating from? Where did the initiative for the bill originate?**

Health Bureau

- **Summary and Facts of the Bill**

Act 106 of 2010, P.L. 1039, 3 Pa. C.S. Section 5701 et. seq., known as the Retail Food Safety Act, requires all local food regulatory agencies to enforce the state regulations. Final Regulations promulgated under the act were published in April, 2014 in the Pa Bulletin. Now that the regulations are final it is appropriate to delete those portions of the City ordinance that conflict with them.

- **Purpose – Please include the following in your explanation:**
  - **What does the Bill do – what are the specific goals/tasks the bill seek to accomplish**
  - **What are the Benefits of doing this/Down-side of doing this**
  - **How does this Bill related to the City's Vision/Mission/Priorities**

The proposed amendments bring conformance with current state law and remove any source of confusion on the part of the regulated facilities within this jurisdiction as to what set of regulations are applicable.

- **Financial Impact – Please include the following in your explanation:**
  - **Cost (Initial and ongoing)**
  - **Benefits (initial and ongoing)**

No cost impact; benefits include: 1) statewide uniformity which eases the ability of foodservice operators who operate in various jurisdictions to remain in compliance and; 2) the ability to issue violation tickets as a new enforcement tool will be benefit the city in terms of food safety and revenue.

- **Funding Sources – Please include the following in your explanation:**
  - **If transferring funds, please make sure bill gives specific accounts; if appropriating funds from a grant list the agency awarding the grant.**

Not applicable

- **Priority status/Deadlines, if any**

Passage will bring City into compliance with State law.

- **Why should Council unanimously support this bill?**

Passage will enable the City to conform to state law and no longer necessitate amending the foodservice ordinance each time the FDA Model Code (on which the state regulations are based) is updated.