

**TITLE THREE
FOOD SERVICE AND SANITATION**

1123 Food Service and Sanitation

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Article 1123 Food Service Sanitation
Ordinance No. 14189 Passed on June 4, 2004
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Subchapter H. ADMINISTRATIVE PROCEDURES AND REMEDIES

AUTHORIZATION

1123.1101. Enforcement and Administration.

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The Bureau of Health is hereby authorized and directed to administer and enforce this article. The Director of Health is also hereby authorized and directed to establish, promulgate, administer and enforce reasonable regulations hereunder.

ACCESS, APPROVALS AND VARIANCES

1123.1102. Access to food facilities.

(a) *Access and inspections.* An inspection of a food service establishment shall be performed at least once per year. After the Bureau of Health representative presents identification, the person in charge shall allow the Bureau of Health to determine if the food facility is in compliance with this article by allowing access to the facility, allowing inspection and providing information and records specified in this article and to which the Bureau of Health entitled under this article 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”), The Local Health Administrative Act-315 and any other relevant statutory or food regulatory authority during the food facility’s hours of operation and other reasonable times if the facility is not open during normal business hours.

(b) *Additional inspections.* Bureau of Health representatives shall conduct as many inspections of the food facility as necessary in order to determine if the food facility is in compliance with this article. A regulatory service fee may be charged by the Bureau of Health for these additional inspections.

1123.1105. Suspension of license and issuance of conditional license.

(a) *Suspension of license.* The Bureau of Health may, without warning, notice, or hearing, suspend any license or conditional license to operate a food service establishment if the holder of the license does not comply with the requirements of this article, or if the operation of the establishment does not comply with the requirements of this article, or if the operation of the food service establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by section 1123.1105(d) of this article. When a license is suspended, food service operations shall immediately cease. Whenever a license is suspended, the holder of the license shall be afforded an opportunity for hearing within twenty (20) days of receipt of a request for hearing.

(b) *Request for hearing.* Whenever a license is suspended, the holder of the license or the person in charge shall be notified in writing that the license is, upon service of the notice, immediately suspended and that an opportunity for hearing will be provided if a written request for hearing is filed with the Bureau of Health by the holder of the license within ten (10) days. If no written request for hearing is filed within ten (10) days, the suspension is sustained. The Bureau of Health may end the suspension at any time if reasons for suspension no longer exist. (12478 §1 10/6/81; 13285 §1 11/3/94)

(c) *Conditional license.* The Bureau of Health may, in its discretion, issue a conditional license where the operation of the facility constitutes a possible hazard to public health, or where an applicant requires additional time to comply with any other applicable City ordinances or regulations. A conditional license shall be issued for a period not to exceed sixty (60) calendar days. (13285 §1 11/3/94)

(1) The Bureau of Health may issue a license at any time during the pendency of the conditional license if the reasons for the conditional issuance no longer exist; namely, when the operator has brought the facility and its operation into compliance with all applicable City ordinances and regulations. (13285 §1 11/3/94)

(2) Upon the expiration of the conditional license, the food service operation shall immediately cease operation until all issues of non-compliance with any applicable City ordinance or regulation have been satisfied and the facility receives regulatory approval to resume operation. At that time, the Bureau of Health shall issue a license for the balance of the year for which the license was originally sought.

(d) *Service of notice.* A notice provided for in this article is properly served when it is delivered to the holder of the license or conditional license, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the license or conditional license or is conspicuously posted at the food service establishment. A copy of the notice shall be filed in the records of the Bureau of Health.

1123.1106. License revocation; hearings.

(a) *License revocation.* The Bureau of Health may, after providing opportunity for hearing, revoke a license or a conditional license for serious or repeated violations of any of the requirements of this article or for interference with the Bureau of Health in the performance of duty.

(b) *Notice of revocation.* Prior to revocation, the Bureau of Health shall notify, in writing, the holder of the license or a conditional license, or the person in charge, of the specific reason(s) for which the license or conditional license is to be revoked and that the license or conditional license shall be revoked at the end of the ten (10) days following service of such notice unless a written request for hearing is filed with the Bureau of Health by the holder of the license or conditional license within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the license or conditional license becomes final.

(c) *Revocation hearings.* The hearings resulting from public health violations provided for in this article shall be conducted by the Board of Health at a time and place designated by it. Any oral testimony given at a hearing shall be reported verbatim, and the presiding officer shall make provision for sufficient copies of the transcript. The Board of Health shall make a final finding based upon the complete hearing record and shall sustain, modify and rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the license by the Bureau of Health.

(d) *Licensing subsequent revocation.* Whenever a revocation of a license has become final, the holder of the revoked license may make written application for a new license in accordance with the provisions of this article.

1123.1143. Licenses

(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.

(b) *Temporary food licenses.* Temporary food facilities shall comply with this article, except as otherwise provided in this article. The Bureau of Health may impose additional requirements in order to protect against health hazards related to the conduct of these facilities, may prohibit the preparation and sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements of this article.

(c) *Licenses shall be issued as follows:*

- (1) Operational licenses for a period of one (1) year;
- (2) Temporary licenses for a period up to and including fourteen (14) days; and
- (3) Conditional licenses which may be issued for a period not exceed sixty (60) days.

(d) The annual license fee shall be established in accordance with the requirements of the Administrative Information Manual (AIM).

(e) An annual operational fee shall be charged to defray the cost of inspections, consultations, and servicing of food service establishments. (12622 §4 9/19/84)

(f) The Bureau of Health may provide incentive offsets to such fees in order to promote preventive health practices.

(g) Where the Bureau of Health, in its discretion, issues a conditional license, a fee established in accordance with the requirements of the Administrative Information Manual (AIM) shall be charged to defray the costs of inspections, consultations and any other administrative services provided. The issuance of a conditional license is dependent upon payment of the conditional license fee and compliance with all of the health, safety, sanitation and other applicable provisions detailed in this article. Additional conditional licenses may be issued as determined by the Bureau of Health.

1123.1145. Procedure when infection is suspected.

When the Bureau of Health has reasonable cause to suspect possible disease transmission by an employee of a food service establishment, it may secure a morbidity history of the suspected employee or make any other investigation as indicated and shall take appropriate action. The Bureau of Health may require any or all of the following measures:

- (a) The immediate exclusion of the employee from employment in food service establishments;
- (b) The immediate closing of the food service establishment concerned until, in the opinion of the Bureau of Health; no further danger of disease outbreak exists;
- (c) Restriction of the employee's services to some area of the food facility where there would be no danger of transmitting disease;
- (d) Adequate medical and laboratory examination of the employee and of other employees and of his and their body discharges.

1123.1146. Severability.

If any section, subsection, paragraph, clause, or provision of this article shall be declared by a court of competent jurisdiction unconstitutional or to be invalid, the remaining provisions of the article shall not be invalidated.

1123.1147. Penalty provisions and injunctions.

(a) *Summary offenses.* Any person who violates any of the provisions of this article or interferes with the health director or any other agent of the Bureau of Health in the discharge of his/her duties, shall, for the first offense, upon conviction thereof in a summary proceeding, be sentenced to pay the costs of the prosecution and a fine not less than thirty dollars (\$30.00) not more than one thousand (\$1,000.00), and, in default thereof, to undergo imprisonment of not more than ninety (90) days.

(b) *Separate offenses.* For the purpose of this section, violations on separate days shall be considered separate offenses.

(c) *Injunctions.* The Bureau of Health may seek to enjoin violations of this article or may proceed in any court of law or equity to obtain any additional and cumulative remedies to abate any violation under this article. Nothing in this article shall in any way alter rights or actions or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil.

(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 fine 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 Environmental Field Services Manager or

designee in order that the City shall be compensated for both direct and indirect costs and expenses incurred.

(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 dollars (\$25.00);
For the year 2016: Thirty-five dollars (\$35.00);
For the year 2017 and each subsequent year thereafter: Forty-five dollars (\$45.00).

- (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 dollars (\$50.00);
For the year 2016: Seventy-five dollars (\$75.00);
For the year 2017 and each subsequent year thereafter: One hundred dollars (\$100.00).

- (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 request a hearing within ten (10) days, 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 does not pay the fine or request a hearing within ten (10) days, 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 this Article.

(4) 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.