

Board of Health

◆G Rena Bryant, Secretary to the Board of Health

Please see below the statement of the Food Industry Alliance of NYS, Inc. in support of the proposed repeal of Article 111 and Article 117 of the New York City Health Code which was the subject of a public hearing this morning. Unfortunately, I was unable to attend the hearing in person and am submitting our written comments for your consideration.

Thank you,

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**Statement in Support
of the Proposed Repeal of Article 111 and Article 117
of the New York City Health Code**

The New York City Department of Health and Mental Hygiene (DOHMH) has requested that the Board of Health repeal Article 111 (Milk and Milk Products) and Article 117 (Dairy Food Products) of the New York City Health Code. The Food Industry Alliance of New York State, Inc. (FIA) strongly supports this proposal.

FIA is the not for profit trade association representing the interests of New York's 21,000 food stores. In New York City our members include A&P, AIM Stores, Bravo Supermarkets, C-Town, D'Agostino Supermarkets, Fairway Markets, Food City Markets, Food Emporium, Foodtown, Gristede's, Key Food Stores, King Kullen, Met Food, Pathmark, Pioneer Supermarkets, Shoprite Supermarkets, Stop & Shop, Trader Joe's and Waldbaum's as well as their wholesale suppliers including Bozzuto's, C & S Wholesale Grocers, Krasdale Foods, Supervalu, Wakefern, and White Rose.

The extremely thorough and well reasoned Statement of Basis and Purpose for the proposed repeal documents the important role the City historically played in regulating milk. It also notes that comprehensive regulation of all aspects of the production and distribution of milk and milk products today falls within the jurisdiction of the New York State Department of Agriculture and Markets pursuant to state law. Given the robust regulatory activity of state Ag & Markets and the dramatic improvements in milk safety and wholesomeness with technological advances in milk production and handling, there is no longer any need for milk control to be included in the NYC Health Code.

With specific reference to the nine day dating of fresh milk products currently required by §111.33 of the Code (and enforced by DOHMH), FIA appreciates and concurs with the detailed analysis of the historical and public health issues associated with the expiration date. Repeal will provide uniformity with best practices in all other parts of the state where there are no specific expiration date requirements. State Ag & Markets permits "open" dating under which processors are allowed to determine a sell by date for each product based on their own internal testing. Only New York City has retained local authority over the dating of milk.

The nine day code is not supported by modern milk processing technology and leads New York City consumers to believe that milk has a shorter shelf life than it actually does. It adds another layer of regulation where none is required, can be confusing and misleading for consumers as many milk cartons are double dated, and may lead to disposal of perfectly wholesome product. The shorter code and the uniqueness of the dating requirement to the City pose handling challenges for retailers including maintaining smaller inventories of fresh milk to avoid displaying milk that is closer to the pull date and thus avoided by customers and which, if unsold by the NYC date, must be taken off sale prematurely. To deal with the situation, retailers require extra or more frequent deliveries, driving up costs. Open dating serves our customers well in all other market areas and we are confident that with today's technology and greatly improved handling practices it is appropriate in New York City as well.

FIA believes that repeal of Articles 111 and 117 of the Health Code is appropriate and timely and we are pleased to support the proposal currently before the Board of Health.

Respectfully submitted,
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