



THE CITY OF NEW YORK

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

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Testimony
of
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before the
New York City Council Committee on Health
Regarding

Intro. 569

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City Hall
Council Chambers
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Good afternoon Chairperson Rivera and members of the Health Committee. My name is Jessica Leighton and I am Deputy Commissioner for Environmental Health at the New York City Department of Health and Mental Hygiene (DOHMH). Joining me today are Elliott Marcus, Associate Commissioner for Food Safety and Community Sanitation, and Robert Edman, Assistant Commissioner for Food Safety and Community Sanitation. Thank you for the opportunity to testify regarding Intro. 569, a bill that would require DOHMH to consider an applicant's character and fitness prior to issuing or renewing a food service establishment (FSE) permit in New York City.

The intent of this bill is to provide a new enforcement mechanism to ensure that restaurant owners comply with labor and employment laws. Violations of the labor law seriously affect the lives of many New Yorkers, including poor immigrant workers, and we share the Council's concern in this regard. Today we will give you an overview of the Health Department's role in regulating and providing support to food service establishments and then discuss Intro 569.

With more than 23,000 permitted restaurants, New York City is often considered the dining capital of the world. Throughout the five boroughs there is a wide variety of cuisines and styles—from corner bistros to pizza shops; five star restaurants to kosher delis. As part of the Department's mission to protect and promote public health, DOHMH is responsible for ensuring that all FSEs, including restaurants, are properly permitted and operating safely. Our primary concern is the prevention of food-borne illnesses, and we maintain high regulatory standards so that every New Yorker can have a dining experience that is safe and enjoyable

Overseeing FSEs requires a combination of enforcement and education. The Health Department's Bureau of Food Safety and Community Sanitation is responsible for establishing policy and enforcing the City's Administrative and Health Codes, as well as certain provisions of the New York State Sanitary Code. The Bureau relies on a staff of highly trained Public Health Sanitarians to conduct unannounced inspections and educate business owners on proper food safety practices. The Bureau inspected 99.7% of all permitted FSEs at least once in fiscal year 2007.

New FSEs must pass an initial pre-permit inspection prior to being allowed to open for business. Cyclical inspections are random and unannounced. Repeat offenders may be referred to the Accelerated Inspection Program for more carefully controlled monitoring and may ultimately have their permit revoked. All restaurant inspection results are posted on the Department's website, providing the transparency necessary to help consumers make informed decisions about where to dine.

The scoring system used during these inspections focuses on "risk factors" for food-borne illness that have been identified in studies conducted by the Centers for Disease Control and Prevention. These risk factors have been determined to be the leading causes of food-borne illnesses or disease. A food service manager's knowledge of food safety principles is key to reducing illnesses and diseases caused by food. These risk factors are:

- Improper personal hygiene practices
- Improper handwashing and bare hand contact with ready to eat foods

- Improper cooking and holding temperatures
- Cross contamination of food and food equipment
- Food from unapproved sources.

Other conditions indicative of poor sanitation, such as rodent infestation, also are assessed during restaurant inspections.

All food service establishments are required to have a person on site at all times who holds a Food Protection Certificate. The Department's Health Academy offers the Food Protection Certificate course online for free and in-person for a fee. This comprehensive course covers a wide variety of topics ranging from basic food safety and proper food storage to worker health and safety.

DOHMH is also concerned about worker health and safety, and has developed materials and training for FSE operators on maintaining a safe work environment. According to the National Bureau of Labor Statistics, the rate of injuries among food service employees is slightly lower than the average for all private industry workers. However, because of the large numbers of people employed in this work sector, the total number of reported injuries among food service workers is relatively large, third only to the number among hospital and construction workers. In an effort to minimize workplace accidents, the Department developed brochures providing simple tips to reduce burns, cuts, and falls in the workplace, and publishes a quarterly newsletter ("Food Matters") that is distributed to all FSEs in New York City. These are useful tools for reinforcing critical health and safety messages to FSE operators. These materials are also distributed by Public Health Sanitarians during their routine inspections.

Intro 569 requires DOHMH to identify restaurant owners that have had complaints or findings of illegal labor practices and consider such information in determining whether they should receive a restaurant permit. While we support the need to identify and address labor law violations, we oppose this legislation and have the following concerns about the implementation of such a law by the Health Department.

First, Intro 569 would redirect the Department's resources away from our mandated obligation to protect public health and toward the enforcement of employment and labor laws. The legislation requires DOHMH to consider whether an FSE is operated and maintained in compliance with city, state and federal minimum wage law, hours of work law, overtime compensation law, and employee discrimination law. The Department's expertise is in health and safety, not in wage and other labor issues. The amount of Department resources that would need to be devoted to carrying out the tasks contemplated by this bill would impact negatively on our ability to provide oversight to ensure safe food in restaurants.

Second, we do not have adequate evidence that there is an association between labor law violations and Health Code violations related to food safety. Although a recent endeavor by the Urban Justice Center asserts that restaurant workers who report labor law violations are more likely to engage in activities that jeopardize food and worker safety, and that those restaurants with labor law violations were "likely to have been charged with critical health code violations", the methodology used to make this assessment is flawed for a number of reasons. It is based on

a biased set of self-selected respondents who are not likely to be representative of the industry overall and may represent facilities with a greater frequency of violations. In this regard, there is no way of knowing whether the restaurants represented in the studies are an accurate reflection of the industry as a whole. Most important is that to make the determination of the association between labor and Health Code violations, the interviewers looked at the subset of workers who provided the name of the restaurant at which they worked and attempted to compare this information with the information on the Department's website regarding Health Code violations. This type of assessment is extremely flawed because there is no comparison group. The study asserts that when they checked our website, they found that employers reported by study participants to have violated employment laws were also likely to have been charged with at least one of six Health Code violations. In fact, when we looked at data for all NYC restaurants, two thirds of restaurants in NYC have been found to have violated one of these Health Code violations. Additionally, nearly 90% of restaurants in NYC have had at least one violation on their initial inspection.

Third, the enormous administrative requirements of the proposed bill will likely not be offset by improvements in labor practices or public health. Each year more than 26,000 FSEs apply for permit renewals, and approximately 4,500 more apply for new permits. Intro 569 would require all applicants to certify on their application any finding by a court of law or administrative agency that any principal of the FSE has violated any city, state or federal employment or labor law during the preceding five years, as well as any additional information the Commissioner may require in order to make a determination of good character and fitness. The Department would then have to review all of these reports and post them on the DOHMH website. The legislation also establishes public hearing requirements that will place a heavy resource burden on the Department and slow down the issuance of permits.

Fourth, the proposed legislation could result in serious abuses. Intro 569 provides the public with an opportunity to submit written comments to the Commissioner including any information concerning the character and fitness of the applicant(s). The legislation places no restrictions on the type of information the public may submit, creating the potential for abuse and placing the Department in a position to investigate and substantiate these allegations. Any member of the public may request a public hearing to evaluate the character and fitness of a potential operator based on this circumstantial evidence. Further, the Commissioner would be required to hold a hearing if he receives a "disclosure or credible evidence" of any violation of employment or labor laws. Given the Department does not have the resources to independently verify the accuracy of this information, the legislation runs the risk of placing the power to pursue actions against a potential FSE operator in the hands of an individual or group who may put their own self-interest above all else.

Lastly, the legislation may have unintended consequences for the same food service workers the bill intends to protect. Restaurants serve as an important source of employment in NYC. While we do not support bad actors and agree that appropriate action needs to be taken by agencies that have the expertise to address unfair labor practices, this law may result in the temporary closure of large numbers of restaurants while the review process outlined in the legislation plays out. This could leave many food service workers without work.

In closing, violation of labor laws is serious and should be addressed by appropriate agencies with expertise and jurisdiction in labor issues. The research supporting Intro 569 as a strategy to address these violations falls dramatically short of objective evidence supporting the link between prevalence of labor law violations and public health risk. Moreover, the notion that greater adherence to labor and employment laws will lead to improved public health practice in food service establishments is also uncertain. We know that unsafe food comes from unsafe food handling practices, and this is where the Health Department should focus its attention. If Intro 569 is passed, DOHMH will be forced to redirect critical resources away from the protection of food safety and the education of FSE operators, and toward the enforcement of laws that are already regulated by a host of other government agencies. Because of these serious concerns, the Department must oppose this bill.

Thank you for the opportunity to testify. I'm happy to answer your questions.

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