

Public comments for: Grading of Mobile Food Vending Units (Amendments to the Chapter 6 of Title 24 of the RCNY)

#1

Stephanie Kourtis

Comment:

I do not believe that mobile food carts should receive a letter grade as restaurants. Although, yes, it is crucial to comply with regulations for maintaining food at the proper temperatures, other aspects of a random inspection may not provide an overall picture of the pushcart. For example, vendors deal with the weather elements. It may be very busy, and something may accidentally spill, or a customer may spill something either inside or outside the pushcart. It is imperative to properly clean and maintain a pushcart daily to the utmost sanitary conditions, however, as stated, the course of a morning or afternoon in a pushcart, with fast, demanding service, it is not always possible to make sure that something doesn't spill, or that the wind or weather may affect things as well. In closing, although there is no denying that the food must be kept at proper temperatures to ensure food safety, I believe that giving a food cart a formal Letter Grade, like those given to permanent dining establishments, is totally unfair. The conditions are not the same for a mobile vendor as they are for a stationary food establishment. Thank you.

#2

Harris Berloe

Comment:

This is a must. There is a reason they are called "Roach Coaches." Letter grades imply a need to maintain standards for inspection which protect ALL New Yorkers. We also need to see NY State DOT License plates for these food trailers. None of them have any state license plates for road way use, and taxes, which puts New Yorkers at risk for accidents and injuries.

#3

Boris Itin

Comment:

Dear public officials, please don't try to fix it if it ain't broken. City cart system works ok; it doesn't require any more regulations. It is difficult and expensive to operate a small business in NYC as it is. Please, don't introduce even more regulations. Regards, Boris Itin.

#4

Kelly Kopp

Comment:

I am 100% in favor of using the letter grade system for all mobile food carts. I think it is important to guarantee food is kept at safe temperatures to prevent any type of issue. I feel the letter grade is very important at all NYC restaurants, and I think food carts should fall into that same category. I would actually be more inclined to purchase food from a mobile food cart with an A letter grade. In my opinion it would only help the food cart business. Love the idea and hope it goes through.

#5

Barbara MOrris

Comment 1:

For years, this agency, has allowed leasing of food cart permits controlled by “operators” who have no legal connection to the permit. While I support the intent to further promote food safety standards, this proposal fortifies the current black market. This regulation sneaks in a major concession to the black market operators who have monopolized the mobile food cart industry for years. Unlike restaurants, the law specifically states, “one permit, one owner” that cannot be leased or sold. This ruling merely turns its blind eye to a black market it created through a shady permit issuance system, compounded by the leasing of permits and actually decreases the permit holder’s (“permittee”) responsibility by allowing the letter grade/GPS system to be placed squarely in the hands of “operators”, who have no direct legal connection to the permittee. Page 3 states that the unit’s “operator”, not the permittee or salaried employee, may decide how a grade should be handled upon initial inspection. Further, Footnote 1 allows the permit holder to make an “arrangement” with DOHMH for the “operator” to represent him/her relative to re-inspection. This directly contradicts all efforts to eradicate the leasing of permits and further legitimizes the black market. DOHMH cannot allow permittees to “arrange” for any involvement by an “operator” with no legal relationship to the sanitary conditions of his/her food operation which now under law involves letter grades and GPS systems. How is “operator” defined? What is the legal connection between an operator and permit holder? Is the operator a salaried employee? Unless the term, “operator” is clearly defined, no matter how many rules and regulations, operators who lease permits will find a way around it. These regulations must be very clear and unambiguous that the permit holders or designated salaried employee(s) with direct legal connection to the permittee are accountable to DOHMH for all inspections and not left to shadow “operators”; otherwise, the permit-leasing merry-go-round will continue- new permit- new illegal lease- same shady black-market operators with no legal connection to the permit holder will conduct business with DOHMH. For this law to work, the permittee/designated salaried employee(s) must be directly involved in the inspection/letter grading process. If the permittee isn’t directly involved, this law to further regulate the food cart industry and promote high food safety standards will be a major concession to the black market.

Barbara MOrris

Comment 2:

In order for the letter grading for vending carts to be successful for all concerned parties, namely, the general public, DOHMH and the permit holders, it has to be done correctly. The proposed regulations regarding the letter grades legitimizes DOHMH’s policy of allowing the illegal transfer of permits, which is the most critical of violations. I suggest that the permit owner or a salaried employee of the permit owner be present for the letter grade inspection. If neither is present, DOHMH should post a “Grade Pending” sign on the cart and give an exact date for re-inspection at which time the permit holder or salaried employee must be present. The “Grade Pending” sign should also include a notice to the general public to notify DOH through 311, if the cart is operating after the date of re-inspection which will be an automatic removal of the permit. The inspection should be at least two weeks from the initial visit to allow

the permit owner time to enter the operators name on the official operator list for the permitted cart which would verify employment. Conduct the re-inspection if the operator is authorized to use the cart; if not, immediately remove the permit from the cart and have the permit operator go through judicial channels. The success of food vending weighs heavily on establishing a clientele. Which means that you have to be in the same location every day. The overwhelming majority of food carts are in the same location every day of operation. For that reason a GPS system may be unnecessary.

#6

Samantha O'Keefe

Comment:

Requiring vending units to be equipped with a location sharing device is dangerous for vendors in this current political climate. Food service workers are being detained and deported while doing their jobs even here in NY, and collecting information like this- that could be used in immigration matters, potentially puts immigrant families in harms way. In addition, adding regulations like this make vendors jobs much more difficult for very little benefit. Do not require units to be equipped with location sharing devices.

#7

Megan Quinn

Comment:

While I am not opposed to letter grades, I am very concerned about the proposal to place GPS tracking devices on all of the trucks and carts in the city. This seems like a gross invasion of privacy, and I am concerned about how the city plans to store and use the data from these tracking devices. NYC calls itself a 'sanctuary city' - would the GPS tracking devices not be antithetical to that notion? What regulatory measures will be put in place to ensure that the data is not misused? How can vendors be sure that their location data is not being stored, misused, or sold? Further, according to the proposed rule, the GPS devices would be owned and installed by the DOH. If the device malfunctions, the vendor would need to bring their truck or cart to the DOH in order to have it fixed. This will take away from potential earnings, as we all know that a vendor does not make money if they are not working! GPS tracking devices place a burden on mobile food vendors that owners of brick and mortar establishments do not share. Mobile food vendors are hardworking people, and their businesses provide a valuable contribution to our city. They're part of our culture and our appeal. Let's implement letter grades, but let's do it in a way that is respectful of mobile food vendors' privacy, and makes sense for their businesses.

#8

Mark F.

Comment:

While I feel that the grading system is a great way to improve food safety standards for mobile vendors, I am opposed to installing location tracking devices on these units for inspections. A lot of these vendors are immigrants trying to make a living and with the current climate in our nation it seems like a location tracking device can be used against them in some capacity. The grading system proposal seems fair but may need to be modified to account for different working conditions that mobile vendors have to deal with. The location tracking device proposal seems like it would become a huge issue and create much more controversy creating civil unrest and deterring others from contributing to this sector of the industry.

From: Michele Birnbaum
To: [Resolution Comments](#)
Subject: re letter grades for food street vendors
Date: Friday, July 06, 2018 2:26:05 PM

Council Members:

Thank you for adding my comments to the record with reference to the letter grading system as it applies to street cooking carts and food truck vendors who cook and sell food.

We heartily support this important and significant revision supporting the notion that anyone who sells food to the public be carefully inspected and supervised so as to insure the public's health and safety.

In addition to the important benefits in this bill, each food vendor cart or truck should be equipped with a tracking device that would allow monitors to verify that that entity had returned to his/her commissary for inspection within every 24 hour period.

At the moment, it rests with the commissary owner, who is not a government representative, to check attendance and notify authorities if the vendor is non-compliant. With current technology, a more effective and efficient system could and should be implemented.

Hopefully, in the future, siting will be addressed, and these same tracking devices could be used to verify locations and issue tickets electronically, as warranted.

At the moment, there are no legal street spots for food trucks, and they are commonly parked in No Standing, No Parking, metered spots, and Ambulance and Access-A-Ride reserved areas. This issue must be addressed.

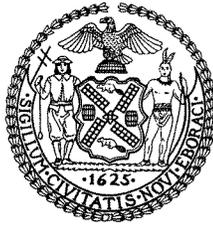
I urge you to support this current legislation.

Sincerely,

Michele Birnbaum
New Yorkers For Street Vending Reform

Nicholas Viest
Chair

Latha Thompson
District Manager



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The City of New York
Manhattan Community Board 8

November 27, 2013

Honorable Michael Bloomberg
Mayor of City of New York
City Hall
New York, NY 10007
Fax: 212-788-2989

RE: Food vendor safety standards and inspections

Dear Mayor Bloomberg:

At the November 20, 2013 Full Board meeting of Manhattan Community Board 8, the following resolution regarding food vendor safety standards and inspections.

WHEREAS the quality and safety of food being sold on the streets is of primary importance to all, and

WHEREAS the food sold on the street, whether cooked or uncooked, is governed by a set of safety rules, but is currently not subject to the same safety and sanitation standards as those required of their bricks and mortar counterparts, and

WHEREAS food vendors have an inadequate inspection schedule, not up to the same schedule as their bricks and mortar counterparts,

THEREFORE BE IT RESOLVED that Community Board 8 asks that the same food safety standards and inspection schedules apply to food vendors as they do to their bricks and mortar counterparts.

This recommendation was approved by a vote of 46 in favor, 0 opposed, and 0 abstentions.

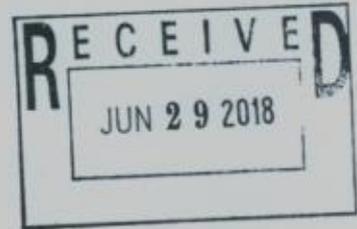
Please advise this office of any action taken regarding this matter.

Sincerely,

Nicholas Viest
Chair

Michele Birnbaum
Chair, Vendor Task Force Committee

Cc: Hon. Scott M. Stringer, Manhattan Borough President
Hon. Jose Serrano, New York State Senator
Hon. Liz Krueger, New York State Senator
Hon. Micah Kellner, New York State Assembly Member
Hon. Dan Quart, New York State Assembly Member
Hon. Jessica Lappin, New York City Council Member
Hon. Daniel Garodnick, New York City Council Member
John J. Doherty, Commissioner, Department of Sanitation
Jonathan Mintz, Commissioner, Department of Consumer Affairs
Thomas Farley, Commissioner, Department of Health and Mental Hygiene
Margaret Forgione, Manhattan Borough Commissioner, Department of Transportation
19th Precinct, NYPD



Richard Rivera
14704 116th Avenue
Jamaica, NY 11436

Department of Health
& Mental Hygiene
Bureau of Food Safety &
Community Sanitation
125 Worth Street, CN59A
New York, NY 10013

June 14, 2018

To Whom It May Concern:

I am writing this comment due to the recent proposal for letter grades on mobile food vending carts. I believe it is a wonderful idea only if other supporting ideas are implemented to make it a success. Allow me to explain:

There are good vendors out there that respect the law. And some vendors only survive out there by committing rouge behavior. Counterfeit licenses and permits are still a problem in the industry. I am sure they will find a way to counterfeit the grade. Permits at times are intentionally covered. Expect the grades to be covered as well. Good vendors set up where they establish themselves. Others bounce around on a regular basis. Some even go out their way to set up illegally.

What can be done:

1. Carts of the future should be equipped with a GPS locator on the cart
2. A dedicated enforcement unit should be created to support Inspectors and take the load off of the NYPD.
3. An Enforcement unit should be established and broken down into three shifts.
4. This enforcement unit should work seven days.
5. Carts should not be smaller than a 5x10 box cart if not they should be food truck.
6. Assigned locations base on availability once a data base is created for tracking purposes.
7. **DOT parking enforcement unit should include permit on their tickets to ice cream trucks and food trucks. Same as current policy by DOH inspectors. **Note I will touch on this point more towards the end.**
8. Create designated food truck streets scattered throughout the city. Just like Taxi Stands for taxi drivers. It will create a controlled situation for these entities.

Advantages to the above eight suggestions:

1. GPS will bring the food vending business above the radar.
2. The enforcement unit will create a more effectiveness for the quality of life.
3. The enforcement unit will create jobs. As the MTA Select buses did with their enforcement unit.
4. Full time enforcement unit will minimize the rouge behavior that exist. And majority of this behavior takes place at night and weekends.
5. Assigned locations should help end wars between vendors.
6. Carts no smaller than 5x10 will create better quality food for the customer. Primarily because of better food protection.
9. **Keep in mind smaller carts are the carts of choice that rouge vendors use for sneaking into illegal areas and spots. **Note I will touch on this point more towards the end.**
7. Assigned locations & GPS will keep vendors operating on a location that they receive a grade A, B or C.
8. Assigned locations will eliminate saturation and fights between vendors. No more situations like what happened at the Metropolitan Museum

Extra Notes:

Number 7 under what can be done. Ice Cream trucks constantly setup illegally on midtown streets. Any day on 5th Avenue during their season it is safe for me to say that where there is a No Standing you will find an Ice Cream truck in the heart of 5th Avenue. These drivers team up on the BID's and primarily the 5th Avenue BID area. The security constantly attempts to move them. But the drivers usually refuse to comply until a Police Officer or BID supervisor arrives. And the driver finally drives off a next driver pulls up. This is the behavior that happens between 11:00 am – 7:00 pm this is due to the BID ends their day. Also, the NY DOT Traffic Agents issue tickets constantly to these trucks. The drivers take their unphased. But if NYC was to research every VIN number of every single Ice Cream truck in the city. I am sure an investigation would spark from this when the city would find how many unpaid tickets exist. The only thing that would spook the drivers to drive away quickly without warning is when they get a phone call that the NYPD Peddler Squad or a DOH Inspector is nearby.

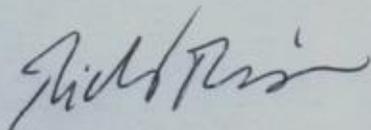
Number 8 under advantages If city officials were to come between 1:00 pm – 7:00 pm Monday through Saturday you will find food vendors operating small hot dog carts and open shishkebob carts operating illegally on 5th Avenue. These carts are carts that could be transported with one person from location to location with the power of golf cart motor. The Vendor treat the 5th Avenue BID security the same way that the Ice Cream truck vendors treat the BID. And the Food Vendors do the same thing if they move they a next one moves in. And the Vendor moves across the street or one block away until they are moved again. This nefarious behavior takes place during NYC Parades as well creating a dangerous quality of life. As for the big picture from the health issue,

Also note on the same number 8 these carts have inadequate storage space for a daily operation. Vendors usually have to store extra cases of water on the ground or above the carts exposed to the sun and extreme heat. It is safe to say that if a plastic bottle of water in a hot car becomes poisonous, just imagine what happens to the case of water on top of the cart or sitting on the ground. These carts are exposed to the elements of car pollution and construction pollution. These carts usually set up in a way that the customer is placing an order by talking over the food. And reaching over the food to pay. Lastly these carts usually have food on display above the cooking area or pretzels stacked to draw attention. If an inspector comes they are told this food is for display. However, when Inspectors sit and observe before approaching they will see the truth.

One final point I like to make. Many cities have implemented a Letter Grade system. From the West Coast to the East Coast including major cities in the Midwest. With that said New York City is the original city that established Vending as we know it. Other cities started vending and avoided our mistakes. This letter grade system is good but don't leave the door wide open to let the rouge vendors outsmart you. The good vendors would love it.

Thank you, for this time and if I am needed to elaborate one on one as to my knowledge I am available please call me at 646-785-9344. I hope this information was helpful. But by no means did I submit this to discourage the letter grading system. It works in other cities. And it could work here. But it works in other cities because they have a concrete system in place.

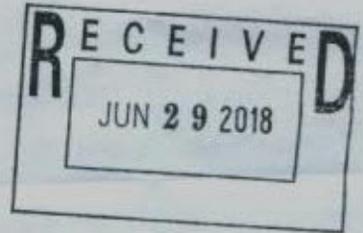
Thank you,

A handwritten signature in black ink, appearing to read "Richard Rivera". The signature is fluid and cursive, with a prominent initial "R".

Richard Rivera

-To,

New York city health department.
Gotham center.
42-09 28th street.
Long Island city.
NY - 11101-4132.



I am glad that I got a letter, but I have not that much idea. I wonder every push cart every month should be verified that every one work at they got there own permit. I know the most of person permit give the rent. but they do another job (work). people that works gets tracked.

Thanks for letter.

Ashim Sharma

06-21-18



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Gale A. Brewer, Borough President

**Testimony of Manhattan Borough President Gale A. Brewer
New York City Department of Health and Mental Hygiene
Proposed Rules on Letter Grades for Mobile Food Vendors
July 9, 2018**

My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to the Commissioner and DOHMH staff for the opportunity to weigh in on the proposed rules for Local Law 108 of 2017.

As stated in my 2015 report, *Small Business Big Impact*, I believe that street vendors are storefronters without a brick-and-mortar location. This style of retail should be a very low-cost, low risk way to enter the marketplace, as the vendor doesn't need a commercial lease and may be able to get his/her business up and running with little or no credit. In reality, however, street vendors' overhead is often higher than anticipated. They may be operating from a table or cart, but their equipment and inventory may need to be transported and must be safely stored when not in use, which can be costly. The persistence of street vendors in the face of adversity confirms their entrepreneurial spirit.

All food service establishments, from brick and mortar to mobile vendors, must be held to the same high standards of food safety as established by DOHMH and enforced by its professional inspectors who are charged with protecting public health. As we all know, the restaurant letter grade program is very popular with consumers and it is understandable why many New Yorkers and visitors alike were supportive of Council Member Koslowitz's initiative to expand it to mobile food vendors.

While many food vendors are hardworking and provide a source of fresh and inventive food at agreeable prices, when I represented the upper West Side in the City Council, I also received a significant number of constituent complaints around parking, health and environmental issues by mobile food vendors who were proliferating. With five agencies tasked with enforcing their respective segment of the rules and regulations, there was a lack of data and enforcement was inconsistent. In 2011, I advocated that the City utilize GPS tracking for mobile food vendors, reasoning that these devices would be useful in recording data about vendor identity, location, aggregation, and pattern of travel. This data would have been helpful in standardizing enforcement to benefit residents, vendors, local businesses, and consumers.

Similarly, today DOHMH is proposing required GPS tracking on all mobile food vendors to improve vendor locations so that inspections can be conducted and consumers can have confidence that the posted letter grade is reflective of the vendor's current high food safety practices. Section §6-21 of the proposed rules say:

(b) A location sharing device shall be provided and installed by, and remain the property of, the Department. After the Department installs the device, the mobile food vending unit shall operate with the device at all times. The device shall only be used to locate a mobile food vending unit at a specific moment in time, and shall not continuously track the location of the unit on which it is affixed.

And

(e) The Department shall only use and disclose data obtained from a location sharing device to locate a unit for the purposes of enforcing the provisions of this Chapter, the Health Code, the Administrative Code or as otherwise required by law.

This specific proposal raises the following questions:

- How will this data be kept and for how long?
- Who will have access to using the location sharing device or the data it records? If an agency besides DOHMH deems that utilization of the GPS is crucial to their enforcement requirements, what is to prevent them from doing so however and often it wants?

Despite my previous support for GPS tracking, there is today the risk that federal agencies might use this data to locate and detain vendors, their co-workers and family members. For that reason, a GPS system as originally conceived of does not make sense. I suggest asking the tech community to work with the City to see if a more innovative way to support transparency without obvious data that can be captured is possible.

Letter grades give legitimacy to food vendors. Everyone seems to look favorably on this proposal. However, currently food vendors are only inspected once a year, unless there is a complaint. In fact, if an inspector is working in an area – like midtown Manhattan – where there are lots of vendors, he/she can only inspect those that have not been inspected for a year.

A suggestion is to inspect more often – maybe quarterly – and couple that with lower or grouped fines to encourage more transparency and compliance. Then the letter grade will have more meaning.

Vendors are mobile, and their access to water, refrigeration, cooking facilities and location changes frequently, which is obviously not the case with brick and mortar restaurants. So the approach to inspections and letter grades has to be carefully considered and have a different approach. Some additional questions include:

- How many of these reported complaints include information whereby the agency can confidently identify the vendor?
- Is an annual inspection cycle sufficient for consumer confidence in the health standards of the cart or truck as reflected in the posted letter grade?

- Would the overall high health standard be increased by rules that allow for more frequent inspections - even on a quarterly basis, perhaps coupled with lower or grouped fines to encourage more transparency and compliance?

As Manhattan in particular becomes more expensive (unfortunately), the food vendors are a significant asset to workers, residents and visitors alike. The Halal Guys are both a cart and a storefront, and other vendors are doing the same, which is how hard working immigrant entrepreneurs get started. At the same time, the City agencies and their inspectors have to figure out how to balance food safety, complaints from the public, an appropriate fine system, and inspections that are transparent and fair. Thank you for your consideration of these complicated issues.



**Testimony of Matthew Shapiro, Legal Director
Street Vendor Project, Urban Justice Center**

My name is Matthew Shapiro and I am the Legal Director of the Street Vendor Project at the Urban Justice Center. SVP is a membership organization of over 2,000 street vendors that organizes and provides legal and small business services to vendors in New York City. Approximately half of our members are food vendors who sell delicious and diverse food on the streets and sidewalks of NYC. The vast majority of SVP members, and food vendors Citywide, are immigrants from around the world.

The Street Vendor Project supports clear and fair rules that will grade mobile food vending units for their compliance with food safety regulations that they are already subject to. Letter grades will be an immediate visual representation of a food vendor's recent health inspection and will further legitimize vendors as small business owners on the same level as restaurants and other food service establishments.

However, we have real concerns about the "location sharing devices" that the Department plans to affix to every mobile food unit. The current federal government's stance on immigration has instilled a real fear within immigrant communities in New York City. Reports of ICE agents walking the streets and visiting courthouses to detain and deport immigrants has brought up new concerns over privacy, especially where members of vulnerable communities work.

These devices are not only unnecessary for the grading system but they also raise significant Constitutional and other legal concerns that could subject the letter grading system to legal challenge. "Location sharing devices," have been found to implicate 4th Amendment privacy issues and will be judged under a Constitutional framework. Also, the "location sharing devices" are simply not required for the letter grading program. First, the letter grade cards are merely another visual representation of the work the Department has been doing over many years to inspect food vending units. Vendors are already inspected under a system that includes at least yearly initial inspections, follow-up compliance inspections, and complaint-based inspections. The results of these inspections are already publicly available by request. Adding a letter grade as a visual representation of the Department's existing practices does not require that every vendor have their location tracked, implicating significant privacy concerns.

The Department indicated that, if every single vendor cannot be found so they can receive the inspections necessary for a letter grade, then the entire grading program will fail. This cannot be true unless the Department also believes that the current system in place for inspecting food vending units is also a failure, since vendors are already subject to an inspection scheme that is supposed to assure public confidence that food sold from vendors is safe. Moreover, the vast majority of food vendors sell from the same spot every day. It can take months or years to build up a customer base to sustain a vending business, and vendors do not want to jeopardize this by moving locations.

Next, while the department indicated that only 80% of food vending units are currently inspected, there should be alternatives to requiring “location sharing devices” that would not have the same privacy issues. For the small number of vendors that do move locations, the Department, for example, could reach out to the permit holder, or other vendors who are known to be working on the unit, to make arrangements for the unit to be available at a particular vending location over some period of time so the inspection cycle could be completed.

There are also concerns over the lack of rules governing who will have access to the information obtained by the “location sharing devices” and how that information will be stored or deleted. Similar concerns were raised when the City began its Municipal ID program and state politicians sued to prevent the City from destroying applicant data. The Department’s current proposal is more concerning since unlike the Municipal ID program, the “location sharing devices” requirement is mandatory for vendors, and there is nothing in the proposed rules that addresses vendors’ privacy concerns. If the federal government was looking for an individual who happened to be a food vendor, and then subpoenaed location data from the Department, the dire consequences would erode any trust that exists between immigrant communities and the City of New York.

Additionally, the proposed rules for the “location sharing devices” go beyond the legislative mandate set out by the City Council. While the Department claims “location sharing devices” are necessary for the inspection cycle, the proposed rules state that data from the devices can be used to enforce any provision of the Administrative Code or Department rules. Such a broad mandate would allow vendors to be located and subject to enforcement of any City law, whether or not it was related to a Department inspection. Legal precedent has established that when an agency’s proposed rules raise controversial issues of social policy, such as true privacy concerns, the rules go beyond administrative rule-making to engage in legislating that is reserved for the City Council, which is the entity that has the power to enact such a requirement.

Finally, the grading system for food vendors must mirror the system for restaurants. However, violation code 10G contains a penalty with condition IV resulting in an automatic 28 points. This differs from the point value for restaurants which allows for 2, 3, 4, or 5 points based on escalating conditions. The point values for mobile food vendors should be adjusted to the same point values for restaurants. Moreover, the policy that waives fines for sanitary violations for restaurants earning less than fourteen points must also be applied to vendors in order for the letter grading program to be consistent with the restaurant program.

New York City prides itself on being a “sanctuary city” and safe haven for immigrants. Requiring vendors to have “location sharing devices” could provide another means for federal immigration authorities to obtain access to individuals for potential detention and deportation. From the recent story of Pablo Villavicencio, who was a food service worker detained while delivering pizza in Brooklyn, we know that ICE won’t hesitate to detain individuals at their place of work. If the Department really feels that the current inspection procedures are not enough, they should look to alternatives to ensure compliance with food safety regulations but without compromising vendors’ privacy.

Thank you for the opportunity to testify here today and we look forward to the implementation of a successful letter grading system for mobile food vendors.

DRAFT

New York City
Department of Health and Mental Hygiene

Public Hearing
Rules governing the grading of mobile food vending carts

Monday, July 9, 2018



34th Street
Partnership



Testimony: Dan Biederman - President
Bryant Park Corporation / 34th Street Partnership
1065 Avenue of the Americas, Suite 2400, New York, NY 10018
Tel: 212-768-4242

1. DOH should use modern technology to track mobile food carts. If a DOH inspector can't locate a mobile food cart, because it moves around, the cart may not receive a sanitary inspection grade; this seems absurd. How could the agency operate this program if there are carts without an inspection grade? There should be penalties for altering the cart's location sharing device.
2. A vendor can skirt inspection simply by moving his/her cart to a different location at his/her whim. Again, there should be penalties for manipulating the cart's location sharing device.
3. DOH should consider requiring carts in congested areas to operate at a fixed location to ensure proper and reliable inspections and to avoid cat-and-mouse scenarios. The cart

must be available for inspection if the permittee received notice that the city tried to inspect and couldn't locate the cart.

4. For letter grades to be more meaningful to the public, carts should display QR codes so customers can obtain point-of-purchase and current inspection information via their smartphones.
5. Other regulatory requirements should be included in inspections, such as size of carts, correct placement on sidewalk, lighting, and pollutant emissions from generators and grills, as they are all relevant to the well-being of the public.
6. Please guarantee that food cart commissaries undergo routine inspections.
7. What steps will DOH take to ensure food carts have ample clean water supplies?
8. In the long term, we would like to see the city adopt the well-regulated market-based system utilized by the Parks Department for mobile food carts. We strongly feel this is the best way to ensure public safety and it would produce revenue for the city, as many other purely commercial uses of streets do.
9. At what point would DOH shutter persistent violators, particularly for unpaid fines?

Richard Rivera

Department of Health
& Mental Hygiene
Bureau of Food Safety &
Community Sanitation
125 Worth Street, CN59A
New York, NY 10013

RichardRivera_NY@YAHOO.com
6467859344

June 14, 2018

To Whom It May Concern:

I am writing this comment due to the recent proposal for letter grades on mobile food vending carts. I believe it is a wonderful idea only if other supporting ideas are implemented to make it a success. Allow me to explain:

There are good vendors out there that respect the law. And some vendors only survive out there by committing rouge behavior. Counterfeit licenses and permits are still a problem in the industry. I am sure they will find a way to counterfeit the grade. Permits at times are intentionally covered. Expect the grades to be covered as well. Good vendors set up where they establish themselves. Others bounce around on a regular basis. Some even go out their way to set up illegally.

What can be done:

1. Carts of the future should be equipped with a GPS locator on the cart
2. A dedicated enforcement unit should be created to support Inspectors and take the load off of the NYPD.
3. An Enforcement unit should be established and broken down into three shifts.
4. This enforcement unit should work seven days.
5. Carts should not be smaller than a 5x10 box cart if not they should be food truck.
6. Assigned locations base on availability once a data base is created for tracking purposes.
7. DOT parking enforcement unit should include permit on their tickets to ice cream trucks and food trucks. Same as current policy by DOH inspectors. ****Note I will touch on this point more towards the end.**
8. Create designated food truck streets scattered throughout the city. Just like Taxi Stands for taxi drivers. It will create a controlled situation for these entities.

Advantages to the above eight suggestions:

1. GPS will bring the food vending business above the radar.
2. The enforcement unit will create a more effectiveness for the quality of life.
3. The enforcement unit will create jobs. As the MTA Select buses did with their enforcement unit.
4. Full time enforcement unit will minimize the rouge behavior that exist. And majority of this behavior takes place at night and weekends.
5. Assigned locations should help end wars between vendors.
6. Carts no smaller than 5x10 will create better quality food for the customer. Primarily because of better food protection.
9. **Keep in mind smaller carts are the carts of choice that rouge vendors use for sneaking into illegal areas and spots. **Note I will touch on this point more towards the end.**
7. Assigned locations & GPS will keep vendors operating on a location that they receive a grade A, B or C.
8. Assigned locations will eliminate saturation and fights between vendors. No more situations like what happened at the Metropolitan Museum

Extra Notes:

Number 7 under what can be done. Ice Cream trucks constantly setup illegally on midtown streets. Any day on 5th Avenue during their season it is safe for me to say that where there is a No Standing you will find an Ice Cream truck in the heart of 5th Avenue. These drivers team up on the BID's and primarily the 5th Avenue BID area. The security constantly attempts to move them. But the drivers usually refuse to comply until a Police Officer or BID supervisor arrives. And the driver finally drives off a next driver pulls up. This is the behavior that happens between 11:00 am – 7:00 pm this is due to the BID ends their day. Also, the NY DOT Traffic Agents issue tickets constantly to these trucks. The drivers take their unphased. But If NYC was to research every VIN number of every single Ice Cream truck in the city. I am sure an investigation would spark from this when the city would find how many unpaid tickets exist. The only thing that would spook the drivers to drive away quickly without warning is when they get a phone call that the NYPD Peddler Squad or a DOH Inspector is nearby.

Number 8 under advantages If city officials were to come between 1:00 pm – 7:00 pm Monday through Saturday you will find food vendors operating small hot dog carts and open shishkebob carts operating illegally on 5th Avenue. These carts are carts that could be transported with one person from location to location with the power of golf cart motor. The Vendor treat the 5th Avenue BID security the same way that the Ice Cream truck vendors treat the BID. And the Food Vendors do the same thing if they move they a next one moves in. And the Vendor moves across the street or one block away until they are moved again. This nefarious behavior takes place during NYC Parades as well creating a dangerous quality of life. As for the big picture from the health issue,

Also note on the same number 8 these carts have inadequate storage space for a daily operation. Vendors usually have to store extra cases of water on the ground or above the carts

exposed to the sun and extreme heat. It is safe to say that if a plastic bottle of water in a hot car becomes poisonous, just imagine what happens to the case of water on top of the cart or sitting on the ground. These carts are exposed to the elements of car pollution and construction pollution. These carts usually set up in a way that the customer is placing an order by talking over the food. And reaching over the food to pay. Lastly these carts usually have food on display above the cooking area or pretzels stacked to draw attention. If an inspector comes they are told this food is for display. However, when Inspectors sit and observe before approaching they will see the truth.

One final point I like to make. Many cities have implemented a Letter Grade system. From the West Coast to the East Coast including major cities in the Midwest. With that said New York City is the original city that established Vending as we know it. Other cities started vending and avoided our mistakes. This letter grade system is good but don't leave the door wide open to let the rouge vendors outsmart you. The good vendors would love it.

Thank you, for this to elaborate on my knowledge. I hope this information was helpful. But by no means did I submit this to discourage the letter grading system. It works in other cities. And it could work here. But it works in other cities because they have a concrete system in place.

Thank you,

Richard Rivera

PREPARED COMMENTS TO THE NYC DEPARTMENT OF HEALTH AND MENTAL HYGIENE
(DOHMH) HEARING HELD ON JULY 9, 2018 REGARDING PROPOSED RULES RELATIVE TO
IMPLEMENTING A GPS AND LETTER-GRADING SYSTEM FOR ALL MOBILE FOOD VENDING UNITS
SUBMITTED BY DAN ROSSI

In order for the letter grading for vending carts to be successful for all concerned parties, namely, the general public, DOHMH and the permit holders, it has to be done correctly. The proposed regulations regarding the letter grades legitimizes DOHMH's policy of allowing the illegal transfer of permits, which is the most critical of violations. I suggest that the permit owner or a salaried employee of the permit owner be present for the letter grade inspection. If neither is present, DOHMH should post a "Grade Pending" sign on the cart and give an exact date for re-inspection at which time the permit holder or salaried employee must be present. The "Grade Pending" sign should also include a notice to the general public to notify DOH through 311, if the cart is operating after the date of re-inspection which will be an automatic removal of the permit. The inspection should be at least two weeks from the initial visit to allow the permit owner time to enter the operators name on the official operator list for the permitted cart which would verify employment. Conduct the re-inspection **if** the operator is authorized to use the cart; if not, immediately remove the permit from the cart and have the permit operator go through judicial channels. The success of food vending weighs heavily on establishing a clientele. Which means that you have to be in the same location every day. The overwhelming majority of food carts are in the same location every day of operation. For that reason a GPS system may be unnecessary.

PREPARED COMMENTS TO THE NYC DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DOHMH)
HEARING HELD ON JULY 9, 2018 REGARDING PROPOSED RULES RELATIVE TO IMPLEMENTING A
GPS AND LETTER-GRADING SYSTEM FOR ALL MOBILE FOOD VENDING UNITS
SUBMITTED BY BARBARA MORRIS

It is well known and documented that for years New York City, in particular, this agency, has allowed the illegitimate leasing of food cart permits that are mostly controlled by “operators” who have no legal connection to the permit holder. While I fully support the intent of the City of New York to further promote high food safety standards, this proposed rule as written does not address the source of the problem and, in fact, fortifies the current black market.

This regulation sneaks in a major concession to the black market operators who have monopolized the mobile food cart industry for years. Unlike restaurants, the law specifically states, “one permit, one owner” that cannot be leased or sold. This new ruling merely continues to turn its blind eye to a black market it created through a shady permit issuance system, compounded by the leasing of permits and actually **decreases** the responsibility of a permit holder (“permittee”) by allowing the letter grade and GPS system to be placed squarely in the hands of “operators”, the majority of whom do not have any direct legal connection to the permit holder.

Page 3 of the proposed regulations, states that the unit’s “operator”, **not** the permittee or salaried employee, may decide how a grade should be handled upon initial inspection. Further, Footnote¹ allows the permit holder to make an “arrangement” with DOHMH for the “operator” to represent him/her relative to re-inspection. This directly contradicts every effort to eradicate the leasing of permits and further legitimizes the black market. DOHMH cannot allow permittees under any circumstances to “arrange” for any involvement by an “operator” who has no legal relationship to the permit holder relative to the sanitary conditions of his/her food operation which now under law involves letter grades and GPS systems.

How is “operator” defined? What is the legal connection between an operator and the permit holder? Is the operator a salaried employee? Unless the term, “operator” is clearly defined, no matter how many rules and regulations it requires, illegitimate operators who lease permits will find a way around it. These regulations must be very clear and unambiguous that the actual permit holders or designated salaried employee(s) with a direct legal connection to the permit holder are held accountable to DOHMH for all inspections and not left in the hands of shadow “operators”; otherwise, no matter how many permits are revoked, the permit-leasing merry-go-round will continue – new permit -- new illegal lease – same unscrupulous shady black-market operators with no legal connection to the permit holder will be able to conduct business with DOHMH. In order for this law to work, the permittee or designated salaried employee(s) must be directly involved in all aspects of the inspection and letter grading process and not left in the hands of “operators” as is written in this proposed regulation. If the permit holder isn’t directly involved in all aspects of running his/her own food cart operation, the entire purpose of this law to further regulate the food cart industry and promote high food safety standards will be a major concession to the black market.

July 9, 2018

Testimony of Robert Frommer
Senior Attorney and Director, National Street Vending Initiative
Institute for Justice

My name is Robert Frommer, and I am a senior attorney at the Institute for Justice, a nationwide nonprofit, public-interest law firm that litigates to secure peoples' constitutional rights. IJ founded its National Street Vending Initiative to protect the rights of vendors to earn an honest living free from arbitrary restrictions. As part of that Initiative, IJ has sued cities including Louisville, Kentucky (which repealed its anti-competitive vending rules in response to suit); San Antonio, Texas (same); and Baltimore, Maryland (which lost in court following trial).

In November 2012, IJ brought suit against Chicago, Illinois to challenge, in part, that city's mandate that all food trucks be equipped with and use GPS tracking devices. That case is now before the Illinois Supreme Court. With this in mind, the Institute writes today concerning Section 6-21 of the Department of Health and Mental Hygiene's Proposed Rule, which would require that the Department of Health physically install and operate location sharing devices on all food carts in New York City.

Simply put, Section 6-21 raises serious constitutional concerns. As the first sentence of the Section states, "[t]he Department shall install a location sharing device on each mobile food vending unit associated with a permit to vend food." But as the United States Supreme Court held in *United States v. Jones*, 565 U.S. 400 (2012), the unconsented placement of a GPS tracking device on a vehicle constitutes a search under the Fourth Amendment. *See also People v. Weaver*, 12 N.Y.3d 433 (2009) (holding that placement and monitoring of GPS device qualifies as a "search" under Article I, Section 12).

Because the mandatory location sharing contemplated by Section 6-21 would constitute a warrantless search, it is per se unreasonable under the Fourth Amendment. In order for the requirement not to be held unconstitutional, the Department would have to prove that it fits within one of "a few specifically established and well-delineated exceptions" to the warrant requirement. *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2452 (2015) (internal quotations and citations omitted); *United States v. Kiyuyung*, 171 F.3d 78, 83 (2d Cir. 1999) (holding that "the burden of showing that the search fell within one of the exceptions to the warrant requirement is on the government").

This is an onerous task. One exception to the warrant requirement concerns warrantless inspections of closely regulated businesses. *United States v. Biswell*, 406 U.S. 311, 314 (1972). But for those warrantless searches to be deemed reasonable, they must satisfy three criteria: First, the regulatory scheme must serve a substantial government interest. Second, warrantless inspections must be necessary to further that interest. And third, the law must be an adequate substitute for a warrant. *New York v. Burger*, 482 U.S. 691, 702 (1987).

Burger raises two causes for concern regarding Section 6-21's location sharing requirement. First, it appears that for the vast majority of carts, location tracking would be unnecessary. *Patel*, 135 S. Ct. at 2456 (rejecting need for warrantless searches in closely regulated industry context when government objective could be met using other means). Language contained in the "Statement of Basis and Purpose of Proposed Rule" states that the "location sharing devices" are meant to help the Department locate mobile food units for inspection. But, in that same section, the Department admits that, historically, it has been able to locate and inspect 80% of mobile food units through means other than GPS tracking.¹ This suggests that for four out of five food carts, location monitoring would serve no purpose other than to violate a vendor's constitutional rights.

Given this constitutional infirmity, a superior approach to mandating GPS tracking for every cart instead may be to require it only for those vendors whom the Department was unable to first locate using other, less-intrusive means. *See id.* Beyond being on firmer constitutional footing, this approach would also dramatically reduce program costs by mandating location sharing devices for only those carts which would keep the Department from achieving full compliance with its Mobile Food Vending Unit Grading Program.

Second, Section 6-21 would potentially violate the third *Burger* criterion due to the broad range of circumstances under which a food unit's location data would be accessed and disclosed. *New York v. Burger* requires that a warrantless inspection scheme both 1) advise the person being searched that the search has a properly defined scope, and 2) limit inspecting officers' discretion. 482 U.S. at 703. This is necessary because all searches must be "reasonably related in scope to the circumstances which justified the interference." *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968). Indeed, as the New York Court of Appeals has held, a GPS search that exceeds its constitutionally defined scope is subject to total exclusion. *See Cunningham v. New York State Dep't of Labor*, 21 N.Y.3d 515, 523 (2013).

The Proposed Rule authorizes the disclosure of location data for purposes that exceed the Department's claimed rationale. The Statement of Basis and Purpose of Proposed Rule indicates that GPS tracking is meant to facilitate health inspections. But the Rule's text suggests a much broader application: In addition to health inspections, Section 6-21 states that the Department shall share location information "for the purposes of enforcing the provisions of this Chapter, the Health Code, the Administrative Code or as otherwise required by law."

This broad level of access does not further the Department's stated interest. After all, if the City wishes to use GPS data to conduct field inspections, only sanitarians would need access, not anyone tasked with enforcing any provision of the Administrative Code. The Institute would recommend that the Department revise subsection (e) so as to clarify that the location sharing data may be used only in furtherance of the Mobile Food Vending Unit Grading Program.

In conclusion, public health is obviously an important matter of concern. But so too is protecting the constitutional rights of New York City's residents and vendors. For the reasons identified above, the Institute for Justice recommends that the Department of Health revise the

¹ In addition, a review of the Proposed Rule does not reveal if the Department has considered or evaluated whether other, less intrusive means of locating carts could suffice.

Proposed Rule so as to reduce both the number of vending units subject to the requirement and the permissible reasons for government officials to access location data. Thank you, and the Institute stands ready to answer any questions the Department may have regarding this important subject.

Sincerely,

/s/ Robert Frommer

Senior Attorney, Institute for Justice
Director, National Street Vending Initiative

Statement in Support of the Letter Grading System for Mobile Food Carts.

My name is Dondi McKellar, USN Veteran. I am LGBTQ, member of the Bronx Community Board 2, Street Vendor Activist, Community Volunteer and Homeowner. A Veteran Entrepreneur, owner of Dondi Bubbles NYC, LLC. (A General Merchandise / Food Vending Business). Became a NYC Veteran Street Vendor in 2004. I stand in support of the Letter Grading Program for Mobile Food Vending.

Since 1894 Veterans returning home from the Civil War were allowed to street vend, hawk and sale goods throughout New York State. Found in New York General Business Law Article 4 Section 35. I believe that a Letter Grading Program for mobile food vending will be building upon strong roots with a foundation that honor the history of New York City Street vending.

With such a program in place may elevate the awareness of consumers with street food. In respect to public consumption similar to brick and mortar food businesses. In the early 2000's I worked as a barista in a Washington Heights coffee shop. While attaining my Qualifying Certificate in Food Protection, I saw first hand the importance in keeping clean and up to code for the public insured a gratifying experience for all.

Mobile Food Vending is heavily relying on foot traffic. Most people tend to eat with their eyes first. A Letter Grading Program will allow them to be smart about where they're eating too. A informed consumer just maybe a repeat consumer. All businesses welcome repeat consumers that's great for the business!

Would like to make few suggestions.

- 1). To implement a Tracking System with Letter Grading Program. Mobile food vending is just that 'MOBILE'. Highly graded mobile food carts may hopefully have chances to drive foot traffic to locations. Looking forward to seeing letter grades having a positive influence on locations of mobile carts.
- 2). Maybe implement some sort of Scales System to determine the higher the grade the higher the volume of foot traffic areas availability. Giving those who live and visit our wonderful city opportunities to sample from some of the best mobile food vendors have to offer.
- 3). A study on these two suggested concept approaches may prove to be informative as well.

I'll like to thank the New York City Health Department for holding this Event. Greatly appreciated the forward thinking in regards to Mobile Food Vending and excited for the outcome of such needed Program. Personally wish much success in evolutionary step with the New York City's Mobile Food Vending Community.

Good Morning,

PUBLIC HEARING 07/09/18

1. PROPOSAL MOBILE FOOD VENDING LETTER GRADING

We are IN FAVOR of THE LETTER GRADE PROGRAM. The letter Grade Program will make the businesses more conscious of the way they conduct business, the way they handle food, and the way they clean their mobile food vending units. It is one more step in the right direction towards achieving the goal of safe food handling for the public's safety.

We have learned from the proposal that the way that this PROGRAM will work out is only when the units are able to be located, for the purpose of the inspections to be conducted so that the letter grade displayed is CURRENT and TRUE. In order to accomplish this, the Department states that there would be a locator device placed inside all units.

Some questions arise:

Will the letter grade be a DOCUMENT or a STICKER? (We believe that it should be a DOCUMENT exactly like the one that restaurants receive.)

Does the vendor share his/her location indefinitely with the location share device?

Who controls the LOCATOR DEVICE?

Do you have to OPT in to utilize this device?

How will this DEVICE be positioned in the unit?

Who will pay for this device?

-
2. The Department has implemented a policy about five years ago which became law and it is Section 89.13K of Article 89 HEALTH CODE detailing that permittees and licensees are "jointly and severally responsible" for all summonses pertaining to a unit.

By issuing summonses to a permittee (when the permittee is not present) makes the vendor operating the unit a "BOSS". The vendor is free to act as he likes with no pressure from anyone. Yes he needs his job. But, if the permittee does not want him/her on the unit, the vendor will leave. The vendor can find work elsewhere because he possesses a vendor license with SALES TAX ID. This SALES TAX ID allows him to be sort of an independent, and he can jump from unit to unit as long as the permittee allows him to work at their unit. So you may have a vendor who is DIRTY going around working at different units and not being penalized in any way for it by The Department. IT IS CRUCIAL that THE TICKETS BE ISSUED BACK TO THE VENDOR, and if that vendor is not performing to the standards of the NYCDOHMH, then his/her badge be taken away for at least two weeks. This will help to assure that he will conduct himself accordingly in

THE FUTURE. Because, when a person is not working he is not collecting a salary, and when he is not collecting a salary, he cannot eat or have shelter..... pretty scary. This teaches a person something that will stay with him. Of course, this would be a legislation issue at this point, I understand. So, our office will be challenging this law in the future because of these concerns. You see, we did not attend the Public Hearing concerning the 89.13K. Previously, our office was receiving paperwork from your Department related to PUBLIC HEARINGS about things that concerned us. Then it stopped somehow. I did not read the CITY RECORD. Otherwise, we would have raised these issues on the Hearing Date.

We would like the opportunity to change minds and ideas about this Section and how it can work for all of us.

In the future, we ask that you please send us documentation pertaining to Public Hearings related to food vendors to the following address:

NEW YORK VENDORS GROUP, INC.

2817 STEINWAY STREET

GROUND FLOOR

ASTORIA NY 11103

TEL: 718-626-1349/718-777-3945

FAX: 718-626-4474

Email: vendorshelpcenter@yahoo.com