

**From:** [Laure Travers](#)  
**To:** [Resolution Comments](#)  
**Subject:** comment to modify doh regulation  
**Date:** Sunday, January 18, 2015 8:53:32 PM

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i am a bar owner and i think that should bartenders be allowed to use a cotton towel to dry their hands after washing glasses or washing their hands, instead of being asked to use disposable paper towels, a lot of trees would be saved.  
thank you in advance for your time and consideration  
laure travers

<http://www.clandestinonyc.com/>



January 20th, 2015

New York City Department of Health and Mental Hygiene  
resolutioncomments@health.nyc.gov

RE: Proposed resolution to amend Food Preparation and Food Establishments of New York City  
Health Code: **§81.46 Refillable, returnable containers**

Dear Members of the NYC Department of Health,

We are writing in STRONG opposition to the proposed regulation change to Section 81.46 (specifically 81.46 b) which effectively eliminates the use of any Reusable containers as it relates to food. In short, Reusable containers should be allowed for all types of food as long as the restaurant can show through protocol and inspection, that cross contamination and unhygienic behavior does not occur. Customers wash and sanitize their own Reusable container and should not be forced to give up their bowl to restaurant for cleaning if the restaurant is preventing cross contamination of Reusable containers.

All we are specifically asking is that an exception is added to 81.46b which states: If a restaurant can demonstrate through protocol and inspection that cross contamination and unhygienic behavior does not exist in process, said restaurant does not have to wash patron's reusable container. Regardless of this exception, if patrons request's that restaurant wash their reusable container, restaurant must comply and wash reusable container. This minor and small ask will literally save 75,000 tons of plastic per year.

Just Salad started in May of 2006 with one location in Midtown Manhattan. We now have 23 locations with 18 of them being in Manhattan, Queens and Brooklyn. We are a small business home grown in New York City. We employ nearly 650 people, a great majority from New York City. The work force is diverse, represents all five boroughs and the company is often recognized for its above average pay in retail as well creating a safe and respectful environment for its employees. All that exists today at Just Salad is in jeopardy if the NYC DOH effectively bans the Reusable Bowl. The Just Salad brand lives and breathes the Reusable and so do all of its customers.

Just Salad serves up to 14,000 customers per day in NYC. From inception the Reusable salad bowl was central to Just Salad's existence and success. The Reusable Bowl allows customers to save money (two free toppings) and plastic every time they reuse there bowl. Here are some other important facts about the Just Salad Reusable Bowl:

- Almost 20% of all guests reuse the Just Salad container.
- The container is sturdy, dishwasher safe, and BPA free
- **The container saves the City of New York 75,000 pounds of plastic per year. 75,000 pounds of plastic is equal to half the weight of One World Trade Center.**
- In 2015 alone the Reusable Bowl will be used 800,000 times across NYC! From Downtown Brooklyn to Queens to the Upper West Side this Reusable Bowl is used every single day.
- As it stands today all 18 Just Salad locations in NYC have an A, we are very proud of this fact and it shows our attention to detail and health concerns.

Even though the Just Salad Reusable Bowl has been used literally **MILLIONS** of times since 2006, Just Salad and the NYC DOH has yet to receive ONE complaint about the sanitary conditions of the bowl and Exhibit A & B show exactly why: We avoid cross contamination at all costs. The Reusable Bowl only ever touches a designated black plate and tongs, the black plate is used only for Reusable Bowl's, no other food or food containers. Additionally the tongs and the mezzaluna knives are sanitized and washed after every salad. See exhibit A & B for more detail.

A coffee mug where people's lips and saliva touch and is then reused in a manner where the inside of the cup is touching the nozzle of where coffee is disposed of at a restaurant is dangerous, not a salad bowl that touches a black plate which never touches food. The DOH recommendation that restaurants mandatorily wash and sanitize patron's Reusable containers will kill the program for Just Salad and others for two main reasons:

- Customers want to wash their own bowl. They don't want the restaurant taking the container away from them and out of sight.
- Customers don't want to wait an extra 5 minutes in Midtown, Wall Street, and Downtown Brooklyn... to have their bowl washed.

The city of New York and Department of Health is taking progressive steps to make New York safer and more ecologically sustainable. Isn't it counter intuitive to ban Styrofoam, plastic bags, push composting and affordable healthy eating and then effectively ban a Reusable Bowl that is used 800,000 times per year? The DOH is taking a step back without adding an exception to rule 81.46.

Reusable containers are essential to the future of the food service business, government agencies and food service providers need to work together to make sure common sense and hygienic practices are followed. Forcing patrons to give up there Reusable Bowl so it can be washed by the restaurant is redundant, especially at a restaurant where cross contamination does not exist. If the point of the NYC DOH is not to effectively ban Reusable containers but to make them safer then you need to take a real look at what Just Salad is doing. Please look closely at Exhibit A&B.

Regards,

Nick Kenner

Exhibit A

Video of Reusable Bowl Protocol

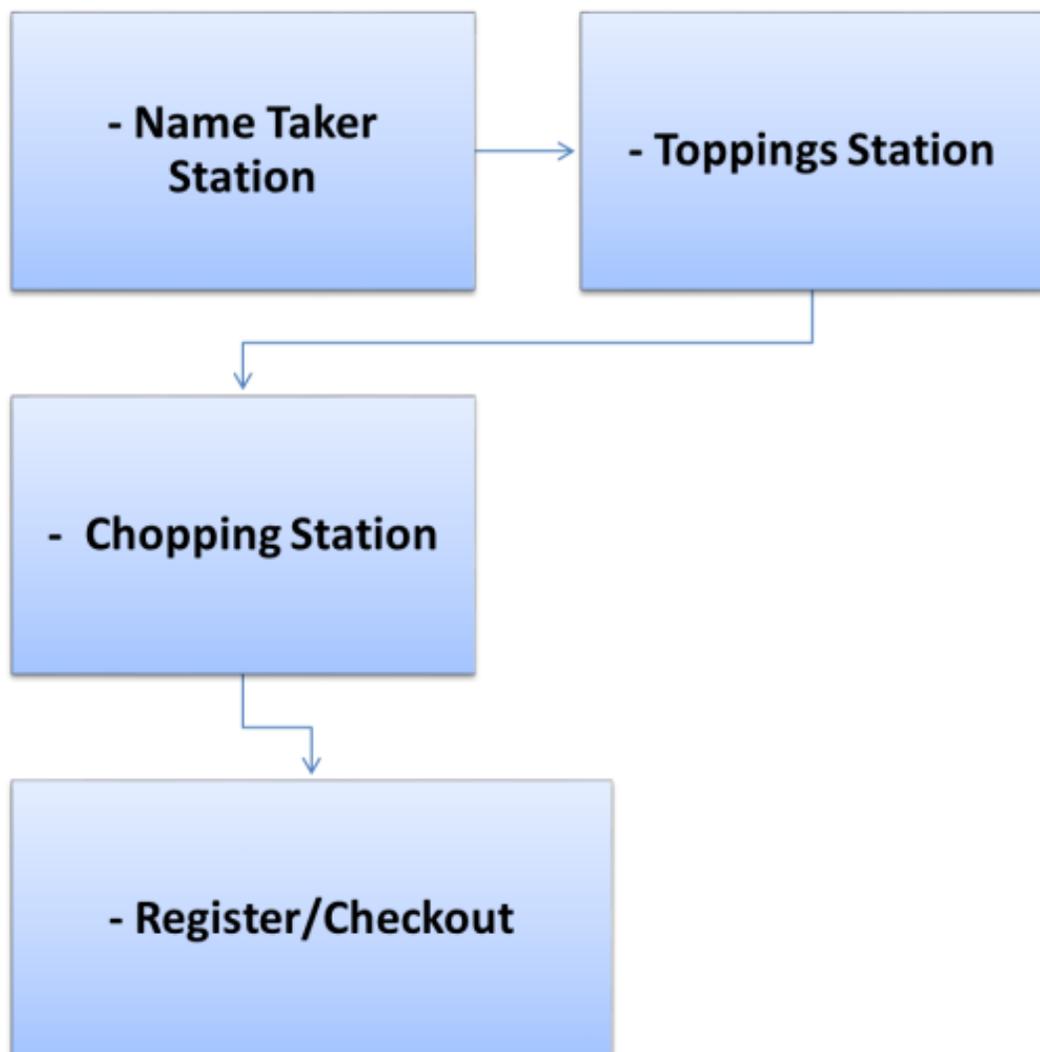
<https://www.dropbox.com/s/bzel6c00lpe1gw/Just%20Salad%20Bowls%20Video%20Final.mp4?dl=0>

Exhibit B

Job Aide (Next Page)



### **Reusable Bowl Procedures**



**At Name Taking Station:**

- Customer is greeted by Name Taker and creates Dupe
- Dupe will be marked that customer will receive (2) Free Toppings along with BYO Salad or Chef Designed Salad
- Customer proceeds to Topping Station

**At Toppings Station:**

- Customer hands Topper their Dupe
- Customer is to hold onto their Reusable Bowl until ready for transfer at the Chopping Station
- Customer will wait to hear name being called to Chopping Station
- Customer will proceed to one of the Chopping Stations



**At the Chopping Station:**

- Team Members will follow all of the Chopping Station Procedures
- When salad is ready for transfer to the Reusable Bowl the following steps need to be followed:



**STEP 1:** Take Black Plate and place on cutting board  
**STEP 2:** Using a pair of tongs, retrieve Reusable Bowl from Customer



**STEP 3:** Place Reusable Bowl on Black Plate



**STEP 4:** Portion Salad into the Reusable Bowl



**STEP 5:** Using a pair of tongs, retrieve Reusable Lid from the Customer



**STEP 6:** Place lid on bowl and seal tightly



**STEP 7:** Hand sealed Reusable Bowl to Customer with Dupe

**STEP 8:** Customer proceeds to Register/Checkout



**STEP 9:** Once finished, Chopper will immediately wash  
**Tongs and Mezzaluna**



**STEP 10:** Chopper to change gloves once finished

### **At Registers/Checkout**

- Team Members will follow all of the Cashier Procedures as per Training Manual



-----Original Message-----

From: Martin Muchanic [<mailto:mmuchanic@food-san.com>]

Sent: Wednesday, January 28, 2015 12:13 PM

To: Michelle Robinson

Subject: Health Code Amendments

I can't make the public hearing tomorrow. Some welcome changes to the code are proposed.

One problem noticed on page 30. (B) chemical sanitizing. Only anti-microbial "PESTICIDES" registered with the US EPA.....

Hope all is well with you.

Sent from my iPhone

# Proposed Changes to Article 81 of the New York City Health Code:

## THE RESTAURANT INDUSTRY PERSPECTIVE

*On January 29, 2015, the Department of Health and Mental Hygiene (DOHMH) held a hearing on proposed changes to Article 81 of the New York City Health Code.*

*The New York State Restaurant Association submitted this document as written testimony at the hearing to share concerns from the restaurant industry's perspective on the proposed changes.*



NEW YORK  
STATE  
RESTAURANT  
ASSOCIATION

January 29, 2015

Good morning and thank you to all at the Department of Health and Mental Hygiene here today who work tirelessly to protect the safety and health of the restaurant industry in New York City. My name is James Versocki and I am counsel to the New York City chapter of the **New York State Restaurant Association, a trade group that represents approximately 5,000 food service establishments in New York City and over 10,000 statewide.** Christopher Hickey, the Regional Director for the Association, and I are here today on behalf of the hospitality industry to submit feedback on the proposed changes to the New York City Food Code. The Association is the largest hospitality trade association in the State of New York and it has advocated on behalf of its members for over 75 years. Our members, known as Food Service Establishments (FSEs), represent one of the largest constituencies regulated by the City, including those subject to the mandates of Chapter 23 of Title 24 of the Rules of the City of New York (Article 81 or the NYC Food Code).

## **NEW YORK CITY IS ONE OF THE PILLARS OF THE CULINARY WORLD.**

Our restaurants employ hundreds of thousands of New Yorkers and are a backbone of the tourism trade here in New York City. To ensure the continued viability of the restaurant and hospitality industry, we must have sensible and reasonable regulations that protect consumers and the restaurants that serve them. It has been the Association's pleasure over the last few years to work with and assist the DOHMH in supporting both food safety and restaurants.

**The Association strongly supports the DOHMH's efforts to protect consumers via the adoption, implementation, and reasonable enforcement of best practices for food safety.**

The stated goal of these changes is to increase food safety by incorporating recent changes in the 2013 FDA Food Code to the New York City Food Code. While NYC is not obligated to adopt all aspects of the 2013 FDA Food Code, the FDA's guidelines are often utilized to adopt best practices for restaurant food safety. Yet, the full adoption of the FDA Food Code has never been mandated by the DOHMH.

## **PROPOSED CHANGES TO ARTICLE 81 OF THE NYC HEALTH CODE**

***HACCP plan obligation, electronic cigarettes, and foot-pedal requirements.***

The Association has reviewed the proposed changes to Article 81 with its staff, FSEs, including preeminent restaurateurs and chefs, and health experts and is pleased to say that many of the DOHMH's proposed changes to Article 81 are welcome as they provide additional clarity to FSEs and generally represent known best practices for food safety. These positive changes in the proposed rules include:

- The removal of a HACCP plan obligation when food is controlled using time and temperature requirements;
- Clarification for FSEs that electronic cigarettes are prohibited from FSEs; and,
- Removal of the foot pedal requirement from waste receptacles.

***Mandated fish freezing practices.***

Since our time is limited today, the Association would like to address the proposed change that received the most objection and concern — the proposed adoption of mandated fish freezing practices located in section 81.09(b). While the majority of fish within the food supply chain, including fish provided for sushi and other raw presentation, is flash frozen via methods to destroy parasites that may cause Anisakiasis or tapeworm infections, some FSEs choose to serve fresh (unfrozen) fish in numerous settings such as sushi, ceviche, and crudo. These include what we would consider specialty restaurants where chefs utilize unique and specially sourced products to further their menu offerings for their customers' palates. These restaurants help establish NYC as one of the culinary capitals of the world and also preserve the cultural identity of the numerous minority and ethnic restaurants within the city who support the diverse culture of unique and fresh food that exists in the city.

Unfortunately, **the proposed rule seeks to address a non-existent issue.** The Association is unaware of any recent confirmed or suspected cases of Anisakiasis or tapeworm infections from uncooked and unfrozen fish that would warrant the adoption of this proposed rule. In fact, the DOHMH does not even track confirmed or suspected cases of Anisakiasis or tapeworm infections from uncooked and unfrozen fish. Hence, the proposed rule seems to be addressing a non-existent problem within the City at this time.

There are also **technical deficiencies in the proposed rule**, including the fact that the proposed rule would require FSEs to freeze fish via methods that are not commercially viable for FSEs to install and it fails to set forth sufficient guidance for operators. And, the rule seeks to have FSEs become third-party enforcers of the rule against distributors and fish mongers. We address each of these concerns in turn below.

First, **the rule would mandate FSEs to buy expensive and space consuming flash freezers** that cost tens of thousands of dollars to install and maintain. Combined with other financial pressures, and the lack of any known cases of Anisakiasis or tapeworm infections from uncooked and unfrozen fish, this factor alone warrants non-adoption of this rule.

Secondly, **the proposed rule does not clearly delineate the acceptable means and methods to destroy parasites via freezing or the purchasing of frozen fish.** While the proposed rule gives guidelines, they are not likely to be met with existing FSE equipment. Without clarity, operators may think that throwing fish in a standard freezer

somehow makes fish sushi-grade when in fact the FDA Code provides a much more comprehensive set of guidelines for operators to properly freeze fish.

As noted above, the Association also believes that, as written, **the proposed rule would make many operators think that their existing freezers can be as effective as commercial flash freezing techniques** when in fact the freezing procedures set forth in the rule require specific equipment to ensure proper freezing. Hence, the freezing rule, if mandated, would best be handled by processors and distributors and not NYC FSEs. (Compare 81.09(b)(3)(B)(requiring a “written standard operating procedure” without providing guidance as to what is a satisfactory procedure)).

Finally, **this proposed rule change would place an unnecessary burden on FSEs** via the maintenance of yet another set of records. The proposed rule requires FSEs to obtain proof that their fish was frozen by the purveyor/distributor to mandated temperatures without identifying the level of detail that must be in such a record; the Association believes such subjectivity should be avoided wherever possible. The Association believes this burden is not properly placed on FSEs as they have no control over the freezing process of distributors. Moreover, placing the burden on FSEs to obtain this documentation is akin to making FSEs enforcers of this rule against their suppliers. At its worse, this provision seeks to regulate an industry over which DOHMH does not have oversight via an overreaching (albeit well meaning) rule and it accomplishes that by placing yet another record keeping burden on FSEs.

### ***Other changes requiring further discussion.***

Since our time today is limited, the Association is providing comments on addition sections of the proposed rules in our written comments, including:

- 81.05(d): DOHMH has always allowed pre-inspection openings. The Association is unaware of any data that would justify this significant change in operating procedures.
- 81.04(e): The labeling requirements for fresh unpasteurized juices must be clarified. Does this mean fresh juices prepared for service in mixed drinks must have a label? How would that process work? Or is this for juices prepared, bottled and sold to customers?
- 81.07(h): What handles are deemed adequate for the provisions set forth in 81.07(h)?
- 81.07(o): What methods are acceptable for dispensing single service articles? Must every single paper coffee cup now be wrapped in plastic? As we work hard to reduce waste in NYC, this level of packaging, especially in an absence of any known scientific data linking such single service items to disease outbreaks, seems unnecessary.

- 81.21(b): Are foot operated and covered waste receptacles not required anywhere in an FSE operation? For example, restrooms?
- 81.29(a)(3)(B): Section 81.29(a)(3)(B) set standards for the use of chemical sanitizers. The Association would ask that the DOH consider adding an additional subsection to allow for the use of food-grade chlorine (tested at 50ppm for available chlorine in final rinse water) or quaternary ammonium (tested at 200ppm in final rinse water) for manual sanitizing purposes even though such products are not anti-microbial pesticides registered with the US Environmental Protection Agency.

**A vital part of NYS Restaurant Association’s mission is to seek the development of a fair and equitable regulatory environment that encourages the success and growth of New York City’s world famous restaurant industry.** I thank you for the opportunity to provide these comments today on behalf of the over 5,000 members of the NYS Restaurant Association in New York City and the entire food service industry.

Respectfully submitted,

James W. Versocki, Esq.  
Counsel, NYC Chapter  
New York State Restaurant  
Association

Chris Hickey  
Regional Director, NYC Chapter  
New York State Restaurant  
Association

January 29<sup>th</sup>, 2015

**New York City Hospitality Alliance**

**Comments on the**

**NYC Department of Health and Mental Hygiene's  
Proposed Amendments to Article 81 of the New York City Health Code**

My name is Andrew Rigie and I am the Executive Director of the New York City Hospitality Alliance ("The Alliance"), a trade association representing restaurants throughout the five boroughs that are regulated by the NYC Department of Health and Mental Hygiene (DOH).

In 2013 representatives of The Alliance stood alongside the Bloomberg Administration, the Department of Health and the City Council at a press conference where we jointly announced agreed upon reforms to the restaurant Letter Grade inspection system and the regulatory culture at the DOH. That day restaurateurs were optimistic. In 2014 Mayor Bill De Blasio entered City Hall promising to reform the city's regulatory culture, asserting his support for small business and his opposition to the regulatory culture of excessive violations and fines that treat small business like the city's ATM.

Mayor De Blasio has followed through on some of his promises.

Several city agencies have reduced fines, eliminated burdens and red tape. Also, and importantly, these agencies frequently reach out to The Alliance to solicit industry feedback on potential reforms and new regulations under consideration before introducing their proposals and scheduling public hearings. This process creates a working relationship between the small business community's representatives and city government. It allows the restaurant industry to better understand the city's intent behind their proposals. This communication also allows the agencies to make reasonable modifications to their proposals that limit unnecessary burdens on and unintended consequences to the industry.

While the DOH invited us to testify at today's public hearing, which is required by law, we do not understand why the DOH did not reach out to us for valuable input before proposing these sweeping reforms to the city's Health Code. The failure to reach out for our input before this hearing is counterproductive and contrary to the collaborative approach embraced by other agencies.

Legislation was implemented nearly two years ago requiring the DOH to establish a Food Service Establishment Advisory Board to advise them regarding the effects of the inspection system on restaurants, food safety and public health. The purpose of this advisory board is to review and advise the DOH on exactly the type of matters that are included in today's proposed reforms. Yet this required advisory board has still not been created.

Thus, in considering these proposals the public and restaurant industry will not benefit from the expertise and feedback intended to be provided by the advisory board. It is also perceived by many as a way for the DOH to escape any scrutiny that the proposed amendments may receive from the Advisory Board.

One of the regulatory reforms adopted by the city requires that newly proposed regulations that create potential fines for violations must establish "cure periods" in which business owners can fix a violation before a fine is levied, or the issuing agency must state why a cure period should not be allowed. There are neither cure periods provided in today's proposal nor any proper explanations for their absence.

While today's proposal to amend sections of the Health Code contains some positive and benign amendments for restaurateurs, others create concerns about an expansion of the "gotcha" mentality and micro managing of small businesses we hoped was behind us.

For example, if this proposal is passed, busy kitchen cooks will have to worry about the quality of their handwriting because fines can be imposed for certain logs not being "legible" in the opinion of the inspector. Other new violations include long required disclosures on handwritten menus, chalk boards and signs; burdensome labeling requirements for simply putting the same fresh squeezed juice you serve at a table into a cup with a lid to go; vague new language inserted throughout the Health Code using terms such as "potential", "routinely" "legibly"; would now require workers who do not prepare or serve food to wash their elbows before starting work and throughout the day if they wear a short sleeve shirt; and an attack on environmentally friendly reusable containers.

While The Alliance may submit additional comments on more technical aspects of this proposal, we hope that today can be a turning point in the regulatory culture. The Alliance has made great efforts to be respectful and work cooperatively with DOH. We hope you will meet us half way.

We believe that these rules should not proceed beyond today's public hearing and should be withdrawn.

The Food Service Establishment Advisory Board should be established and one of its first directives should be to conduct a review of this proposal and provide recommendations for sensible amendments before re-scheduling a public hearing.

Thank you for your consideration.

Respectfully submitted,

Andrew Rigie  
Executive Director  
[arigie@theNYCalliance.org](mailto:arigie@theNYCalliance.org)



**Comments Of  
Matthew Shapiro  
Staff Attorney, Street Vendor  
Project at the Urban Justice Center**

My name is Matthew Shapiro and I am a staff attorney at the Street Vendor Project (SVP), part of the Urban Justice Center. SVP is a membership organization of over 1,800 street vendors that advocates for the rights of vendors in New York City. Approximately half of our members are mobile food vendors who sell delicious and diverse food on the street and sidewalks of NYC. The majority of mobile food vendors are immigrants who have come to NYC in search of a better life for themselves and their families. Mobile food vending has, for centuries, provided new immigrants with a means of support along with the opportunity of small business ownership.

SVP welcomes revisions to the Health Code which result in clear and efficient regulation of mobile food vendors without causing unnecessary burdens to these small business workers and owners. In regards to the current proposal, we were concerned with the language of some of the proposed rules in that the language is too vague to determine if the regulations apply to mobile food vendors and if so, what appropriate action must be taken in order to comply with the regulations.

For example, the proposed language of §81.04(e) which has several requirements for food service establishments who are selling packaged juice, is unclear whether mobile food vendors, who make and sell fresh juice to order, are required to comply. After corresponding with Michelle Robinson from the DOHMH, we have learned that these requirements would not apply to mobile food units making fresh juice upon order from a customer. However, the finalized rules should make it clear which types are food service establishments are bound by these requirements as the present wording makes it unclear whether mobile food units are included.

Additionally, the proposed language for single service items in §81.07(o) is too broad in order to ensure compliance from mobile food vendors. Many mobile food vendors use and store single service items in their food carts and trucks including cups, utensils, and take-out food containers. For example, mobile food vendors who sell coffee store their disposable coffee cups in a stack on a shelf in their pushcart. It is not clear, from the language of the proposed regulation, whether this practice, or other similar practices related to the storage and dispensing of napkins and single service utensils, would now be prohibited.

We are also concerned with the language in the proposed §81.17(d)(1) which sets out requirements for cutting boards, stating that they must be replaced or resurfaced if "they can no longer be effectively cleaned and sanitized." It is unclear from the wording of the regulation

exactly when cutting boards need to be resurfaced or replaced. Several members of our organization have received summonses from DOHMH inspectors for having cutting boards with “cut marks” and many mobile food vendors are unsure when cutting boards need to be replaced. It is natural for cutting boards to obtain cut marks since they are used for cutting food, and knife blades come into contact with the surface constantly. The standard of, “if they can no longer be effectively cleaned and sanitized” does not provide any objective standards for mobile food vendors to comply with or health inspectors to enforce the regulation.

We hope that you will take these comments under advisement and only consider changes to the Health Code that would provide clear objective standards as to the required and prohibited practices for mobile food vendors and all food service establishments. Thank you for your consideration of these comments.

XiuFang Chen

Comment:

Improve the level of restaurant health, but also give consumers more confidence

Agency: [DOHMH](#)