



**Testimony**

of

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before the

**New York City Council Committee on Health**

On the

**Food Service Establishment Inspection Program**

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**City Hall – City Council Chambers**  
**New York City**

Good morning. I am Daniel Kass, Deputy Commissioner for Environmental Health at the Department of Health and Mental Hygiene. On behalf of Health Commissioner Dr. Thomas Farley, I want to thank Chairwoman Arroyo and members of the Health Committee for inviting the Department to testify today on these bills regarding the Department's restaurant letter grading program.

It has been a year and a half since the Department last testified about the state of food safety in New York City's restaurants, and I want to begin by providing a status report on letter grading and its impact on restaurant hygiene. The Health Department began requiring the posting of letter grades based on sanitary inspection results in July 2010 with these goals: reduce unsafe food handling practices and improve restaurant hygiene; leverage consumer purchasing power to motivate restaurants to maintain high food safety standards; publicly reward high-performing restaurants; and to reduce, over time, the burden of foodborne illnesses.

Following a two-year planning process that included consultation with food safety experts and industry representatives, and extensive public comment on Health Code changes and Commissioner Rules, the Department designed a program that established multiple incentives that encourage restaurants to have the best food safety practices. I would like to briefly describe the essential features of the inspection and grading program. Unannounced inspections are conducted by public health sanitarians. A cycle of inspections begins with an initial inspection. A restaurant can earn an A grade at that time, or if it does not, it is re-inspected several weeks later. Re-inspection determines the grade that is assigned to the restaurant, and the restaurant may post that grade, or a sign indicating that its grade is pending. A restaurant may choose to contest one or more violations. A hearing at the Office of Administrative Tribunals and Hearings, or OATH, determines the final score and grade, and any penalties assigned. Restaurants with the greatest safety and health deficiencies are inspected more frequently than those that earn an A grade on an initial inspection.

Until these innovations, the principal external motivator for restaurant compliance with the rules of the Health Code was the threat of fines. Since the grading program, the incentives to maintain safe food handling and restaurant hygiene now include: being able to post an A grade card at an entrance, and have an A grade retrieved by mobile and web search tools; communicating regulatory confidence in sanitary practices; experiencing longer periods of time between inspections, having demonstrated the need for less Department oversight; and paying no financial penalties when an A grade is earned at the time of an inspection.

Together, these incentives are working to improve the sanitary conditions in the City's restaurants. Several indicators point to these improvements. Nearly half of all restaurants earn A grades at the time of their initial inspection, up from just 27 percent after the first six months of grading. For restaurants that do not earn an A on the initial inspection, more now improve to an A upon re-inspection than did at the start of the program. In July 2011, just under 40 percent of restaurants scoring in the B range on their initial inspection improved to an A upon re-inspection; now half of those restaurants improve to an A. And, where fewer than 30 percent of restaurants went from a C-range score on the initial inspection to an A on re-inspection twelve months into the program, now almost 40 percent do. Overall, 86 percent of restaurants across New York City ultimately post A grades.

As restaurants improve, they are assigned to a less frequent inspection schedule, because they have demonstrated that they require less Department oversight. In the first year of the program,

only 40 percent of restaurants were on a yearly inspection cycle and 31 percent were on the most frequent, three-to-five month cycle. But by 30 months, 53 percent of restaurants were on the annual inspection cycle, and only 21 percent required inspections every three to five months.

Improvements are driven by better practices in some of the most important food safety areas. In the year before grading began, the Department found that 14 percent of restaurants had inadequate hand-washing facilities. Now, just 4 percent of restaurants are cited for this deficiency, a 71 percent improvement. Prior to grading, 18 percent of restaurants were not keeping food at a hot enough temperature; now 14 percent are cited for this improper practice, a 22 percent reduction. Before grading, 32 percent of restaurants had mice at the time of inspection. That rate has improved by 38 percent, with one-in-five now having mice.

All of these improvements have occurred in part because grading has driven restaurants to increase the safety training of their workforce. Since the announcement that the Department would start grading restaurants, our Health Academy has trained thousands more food workers annually than before the program. In Fiscal Year 2009, a little over 20,000 restaurant supervisors completed the Department's Food Protection Course; in this past fiscal year, we trained 29,000. Our data demonstrates that restaurants that maintain trained personnel on-site are far less likely to have other violations cited, and studies have demonstrated that a trained workforce is associated with less risk of foodborne illness. As we announced last year, as food safety practices have improved, the Department has also seen a decline in the rates of salmonella cases in New York City since the grading program began. The decrease in infections in New York City is greater than in the rest of the State or in surrounding states.

We know that the vast majority of New Yorkers support restaurant grading and use the grades to make dining decisions. A poll by Baruch College in early 2012 found that 91 percent of New Yorkers approve of the program, 88 percent use grades in dining decisions and 76 percent feel more confident eating in an A-grade restaurant. Polls by Quinnipiac and most recently by the New York Times revealed similar levels of support. After a thorough review of this program, in April 2013 the Harvard University Ash Center for Democratic Governance and Innovation selected the grading program as one of 13 recipients in the nation for its Bright Idea in Government award.

Finally, let me say a few words about fines. Since we began grading restaurants, our inspection program has moved from a relatively uniform annual frequency of inspections to a risk-based approach. This means that the least compliant restaurants are now inspected two or three inspection cycles per year, and the potential for violations and fines has increased. As we expected, we saw an increase in the total penalties levied. The increase in penalties was a result of greater oversight of restaurants that posed the greatest risk of foodborne illness to the public. Because restaurant sanitary performance has improved so dramatically, and because we now collect no fines in restaurants getting A's on their inspection, collected fines began to decline in September 2012, and have fallen 27 percent since then. As we look back over the period of time before and since the grading program, the number of restaurants that paid no fines has increased nearly three-fold. In fiscal year 2010, the year prior to grading, just 14 percent of restaurants paid no fine in the prior year. In the past 12 months, 35 percent paid zero. Over this same period of time, the overall health of the restaurant industry improved significantly better than other retail activity in New York City, with taxable sales rising 9 percent. According to the Department of Finance, taxable sales rose by an average of \$69,000 per restaurant.

The Health Department has collaborated with the Council, over the course of this year, on this package of legislation to supplement aspects of the restaurant inspection program. We appreciate the ongoing dialogue, and many of the bills reflect ideas that we mutually agree on. They will offer additional opportunities to engage with a variety of stakeholders, increase transparency, and offer opportunities to further educate the food industry on food safety. Our mutual goal is to ensure the safety of the public, reduce the burden of foodborne illnesses, and promote the greatest possible understanding in the industry of how to practice food safety, comply with regulations, avoid fines and earn A grades.

The bill that describes the data the Department will make available via Data Share, the City's open data portal, will help clarify inspection types and findings to users. We look forward to seeing new and improved web and mobile device applications, as well as analyses of these data. The bill that enumerates an Inspection Code of Conduct will help the Department communicate its approach on inspections to restaurant operators and food service workers. There has been an interest by restaurants in risk-free consultation on how they can improve their practices, and we have already begun the process of preparing to offer consultative inspections for newly permitted restaurants, and for restaurants between inspection cycles that avail themselves of the opportunity.

The Department does have concerns about several provisions in Intro 1119, the ombuds office bill. Specifically, we do not think that the purpose of this office should involve the withdrawal of violations prior to adjudication, nor should the office take on supervisory and employee performance review functions. We propose that the ombuds annual report be unified with that of the Advisory Committee described in Intro 1134 to describe the work of the Department in evaluating concerns, complaints, and modifications it has made to its inspectional approach, rules and regulations.

In addition, Intro 1134, the advisory committee bill, offers an opportunity to codify and enhance with additional members and clarified agenda, its existing committee on food safety. But as an advisory committee, it should have the flexibility to describe its own agenda. The Department should issue an annual report on the activities and work of the committee -- but as a group of individuals selected to represent the perspectives and interests of restaurant owners, trade associations, food safety experts, and nutritionists -- there is no need for the committee to hold a public hearing, and indeed it is burdensome amidst the many public hearings we already hold when proposing rules and health code changes.

As we have discussed with Council staff leading up to this hearing, the Department will be issuing a proposed regulation shortly, which is aimed at reducing restaurant fines by an overall 15 percent, beyond the reductions occurring from the improved sanitary conditions. We will achieve that with a rule setting a fixed penalty amount for every violation, where now those amounts are set at the discretion of the judge who reviews the inspection results. Under this proposal, nearly 60 percent of all violations will be penalized at the minimum level allowed by the Health Code. Not only will a penalty rule enable fine reduction, but it will also enhance transparency and predictability for the industry.

I want to thank the Speaker, Chairwoman Arroyo and the Committee for working with the Department and for the opportunity to testify. I would be happy to take any questions.