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Comments

of

Andrew Rigie

Director of Operations, Greater New York City Chapters

New York State Restaurant Association

before the

New York City Department of Health and Mental Hygiene

regarding

Notice of Intention to Amend Article 7 of The New York City Health Code
(Telephone and Electronic Hearings, Mail Adjudications, Appearances)

January 21, 2011

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New York, NY

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Good Morning. My name is Andrew Rigie and I am the Director of Operations at the New York State Restaurant Association, a trade group that represents nearly 5000 food service establishments in New York City. I am appearing this morning to testify in support of the New York City Department of Health and Mental Hygiene's (DOH) proposed amendments to Article 7 of the New York City Health Code. The NYSRA strongly supports the amendments that would allow the DOH to conduct telephone or electronic adjudications and to facilitate settlements prior to hearings.

The proposed Telephonic Administrative Hearings are a step in the direction: they relieve unnecessary burdens on our members, including the elimination of travel and wait times that business operators must currently endure when attending Tribunal hearings at 66 John Street in downtown Manhattan, and less time at the Tribunal allows operators to spend more time attending to their business operations, including ensuring compliance with DOH regulations.

We urge the Department to consider expanding the scope of the proposed amendment to allow for cross-examinations of witnesses to occur at telephone hearings. The New York State Restaurant Association believes that the ability to telephonically conduct hearings will be beneficial to food service operators. But, under the proposed amendments, operators are required to waive their rights to cross-examine Department witnesses. The NYSRA disagrees with this proposed amendment. Though operators will retain the right during the telephonic hearing to adjourn the proceeding to a later, in-person hearing at the Tribunal when they deem it necessary, such a process is unnecessary and causes additional - not less - hearing time for the DOH and operators. It would streamline the process if DOH could expand the scope of this proposed amendment to allow for cross-examinations during telephonic/electronic hearings. We would welcome an indication from DOH that it would consider allowing cross-examinations to occur at electronic hearings via telephone or by other electronic means such as Skype. The New York State Restaurant Association would support DOH's efforts in urging the Administration to provide upgrades to DOH's current technological capacity to allow for such adjudication process as it will ultimately save time - and money - for the Bloomberg Administration and operators.

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Comments of Andrew Rigie Continued Page 2

The proposed legislation provides for adjudication of violations by mail provided that the request is received by the Tribunal or bears a postmark indicating that it was mailed before the scheduled hearing date. *See Proposed Section 7.09 (a)(3)*. Here an operator would admit to the violation and pay the prescribed fine. It is unclear how the Tribunal would handle adjudications by mail when the postmark is a day before the Tribunal hearing and is therefore received after the date a default is entered at the Tribunal's set hearing date. We suggest additional language be included to confirm that any default entered at a hearing be vacated upon the receipt of a properly delivered and dated request for adjudication by mail without further action by the operator. We support DOH's proposed language in Proposed Section 7.09(d) that would allow operators 60 days to vacate a default decision versus the current 30-day deadline. Due to the operational nature and complexities of the food service industry, we respectfully request the DOH to consider further extending the deadline to open a default for up to 120 days. This would give operators time to receive, review and properly handle defaults.

Proposed Section 7.11(i) provides that "where a violation is sustained, the hearing examiner shall impose a penalty." As written, a hearing examiner has wide discretion to impose penalties, which could lead to inconsistent penalties that vary based on hearing examiners. We ask that a specific reference be made in this section of the Proposed Section 7.11(i) to the BFSCS Recommended Penalties to clarify that a hearing examiner's penalty should be consistent with the guidelines and applicable section of the Health Code.

In conclusion, the New York State Restaurant Association supports these proposed amendments and applauds the DOH for its efforts to streamline the adjudication process and to reduce unnecessary burdens on business operators.

Respectfully Submitted,

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