

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON HEALTH

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September 23, 2013

Start: 10:17 a.m.

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HELD AT: Council Chambers
City Hall

B E F O R E: MARIA DEL CARMEN ARROYO
Chairperson

COUNCIL MEMBERS:

Peter A. Koo
James G. Van Bramer
Albert Vann
Deborah L. Rose
Peter F. Vallone, Jr.
Mathieu Eugene
Inez E. Dickens
Diana Reyna
Rosie Mendez

A P P E A R A N C E S (CONTINUED)

Shannon Manigo [phonetic]
Council Staff

Tim Matussaf [phonetic]
Council Staff

Jennifer Mandalgo [phonetic]
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James Versocki
New York State Restaurant Association

Fitz Reid
President
Local 768
Public Health Sanitarians

Kathleen Reilly
Vice President
United Restaurants and Tavern Owners
of New York

Matthew Greller
Representing
National Association of Theater Owners
of New York State

[gavel]

CHAIRPERSON ARROYO: Good morning; we apologize for the delay; we're waiting for some of our prime sponsors of the legislation we're gonna hear today. But as they come in we'll hear their comments if they wish to make them.

Good morning; my name is Maria Del Carmen Arroyo and I'm Chair of the Committee on Health here in the Council and today the Committee will hear a package of five bills dealing with restaurant inspections.

I wanna thank my fellow sponsors for these bills; Council Member Peter Koo, Council Member Vincent Gentile, Diana Reyna and Jimmy Van Bramer.

I also wanna extend my appreciation and thanks to the Speaker for her dedication in ensuring that we have a workable restaurant inspection process; been working on it for quite some time.

In 2010 the Department of Mental Health and Hygiene introduced a letter... grading system for restaurants which aimed to assist the public in making decisions about where to dine, improve restaurant compliance with health and sanitary

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2 regulations and reduce foodborne illnesses
3 attributable to restaurants.

4 However, we learned from the Council's
5 restaurant inspection survey and from our March 2012
6 oversight hearing on the issue; this well-intentioned
7 system has been marred with inconsistencies across
8 inspections, adversarial relationships between DOHMH
9 and restaurants and unduly burdensome increases in
10 fines for the restaurants in our city. We have an
11 obligation both to protect the public's health, but
12 also to ensure that businesses get a chance to
13 succeed in our city.

14 Today we will hear a package of
15 legislation that will achieve both of these goals, we
16 believe. Through our survey and our 2012 hearing we
17 were able to analyze problems with the restaurant
18 inspection program and after extensive follow up with
19 the restaurant industry and the Department of Health,
20 we developed what we believe are commonsense and fair
21 solutions.

22 Before we hear from some of my colleagues
23 I would like to give a brief overview of the
24 legislation.

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2 Under Council Member Gentile's
3 legislation, DOH would be required to develop an
4 inspection code of conduct pamphlet that inspectors
5 will distribute to all restaurant owners and
6 operators prior to beginning an initial inspection.

7 Council Member Koo's bill would create an
8 advisory board to ensure ongoing and systematic
9 review of the restaurant inspection program.

10 Council Member Reyna's legislation would
11 increase and improve the reporting of restaurant
12 inspection data and Council Member Van Bramer's bill
13 would give restaurant owners and operators the
14 opportunity to request a consultative and ungraded
15 inspection for the purposes of helping the restaurant
16 owners do better in their inspections.

17 Finally, the bill I am sponsoring calls
18 for the establishment of an ombuds office to receive
19 and address comments, complaints and compliments,
20 'cause I'm sure there are many that we don't hear.

21 I would also like to underscore that
22 these bills a part of a comprehensive package of
23 reform, which includes an agreement with the
24 Administration that was announced last month. Under
25 this agreement DOHMH will reduce fines across the

1 board and will introduce rules that will waive fines
2 for restaurants receiving an A on the initial
3 inspection as a result of adjudication and waive
4 fines and points for violations related to physical
5 layout if such violations were not cited during
6 previous inspections.
7

8 Altogether these changes are expected to
9 reduce total fines collected by more than \$10 million
10 per year. Again, I would like to thank the Speaker
11 whose commitment to work collaboratively to see
12 through needed improvements has made this legislation
13 and agreement possible. These reforms will provide
14 much needed relief for restaurant owners across the
15 City and will go a long way to ensuring our letter-
16 grading system is reasonable, fair and predictable.

17 Most importantly, these reforms will also
18 make the program more cooperative and educational.
19 With everyone working together I have no doubt that
20 DOHMH and restaurants will be able to serve the City
21 even better, feeding New Yorkers and protecting the
22 public health.

23 As I always do, I urge the Administration
24 and representatives from DOHMH who have joined us
25 here today to stay throughout the entire hearing. I

1
2 have no doubt that the public's comments will be
3 enlightening for everyone in this room and that they
4 will bring our attention to important aspects of the
5 proposed legislation.

6 I wanna thank particularly the Council
7 staff who have worked really long hours to bring us
8 to where we are today. And I'm gonna start with
9 Shannon Manigo [phonetic]; close enough?

10 SHANNON MANIGO: Yes.

11 CHAIRPERSON ARROYO: Correct me.

12 SHANNON MANIGO: Shannon Manigo.

13 CHAIRPERSON ARROYO: Manigo. Tim
14 Matussaf [phonetic]; is that close enough? They're
15 all in the background, you know... Jennifer... uh David
16 Sitzer [phonetic]; not here... Jennifer Mandalgo
17 [phonetic] and Dan Hafetz to my left, who at 11:30
18 one night called me about some amendments that were
19 being worked on and I could not believe I was getting
20 a call from a 212-788 number and it was Dan working
21 on these pieces of legislation. Crystal Gold-Pond,
22 who is the policy analyst for the Committee; these
23 guys are awesome and they're the reason why I mostly
24 sound so smart all the time.

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2 So without further ado I'd like to give
3 Council Member Koo, who is one of our prime sponsors,
4 and then he will be followed by Council Member Van
5 Bramer.

6 COUNCIL MEMBER KOO: Good morning
7 Chairwoman Arroyo and Commissioners and Deputies from
8 the Department of Health; I'm Council Member Peter
9 Koo; I represent Council District 40, which is
10 Flushing and Queens Boulevard area. In my area there
11 are lots of restaurants, restaurants from all over
12 the world, you know; many from China and Korea and in
13 our area I receive the most complaints from the
14 restaurant owners about, you know unnecessary
15 overburden of fines and regulations by the
16 inspectors.

17 A lot of Korean restaurants they have
18 kimchi, which is kept room temperature and most
19 Chinese restaurants, they have roast duck and
20 barbecues, barbecue pork spareribs, chicken and they
21 usually hang it in the window and they sell it really
22 fast, you know; it's not like they're gonna stay
23 there for a couple days you know, but they always
24 receive fines and citations from the sanitation... and
25 Department of Health and also some Japanese

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2 restaurants, they have sushi, which made from special
3 rice, like sweet rice and you cannot keep these in
4 the refrigerator or put in the oven; you have to... it
5 tastes best when you keep it in room temperature,
6 sushi.

7 So those restaurants always complain to
8 me about... I mean they have been eating this for
9 thousands of years without any sickness, no; why do
10 we have to worry about it now, you know. So I advise
11 them; we have an advisory panel to the Department of
12 Health and on this panel we should have a scientist,
13 like a microbiologist on the panel and he can conduct
14 research on all these... the products I mentioned the
15 cook keep at room temperature; see how much bacterial
16 growth after 4 hours. You know, that's the main
17 point, right, which Department of Health always
18 saying oh, you cannot keep things over 4 hours
19 because bacteria growth double geometrically or
20 exponentially, you know; somethin' like that. I mean
21 really fast, after 4 hours.

22 So we can do research showing that
23 there's no increase of bacterial growth; then it's
24 okay to sell the stuff during the day. You know,

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2 they don't sell it over the night anyway because it's
3 stale after the next day.

4 So this is one main thing, that if this
5 panel can help the industry it will be really
6 beneficial to the overall industry. I'm sure other
7 ethnic cuisines have similar problems; I've seen
8 Italian sausage hanging in window in the Italian
9 butcher stores; they're hanging out there all day or
10 hams or whatever, you know.

11 So this is something the Department
12 should do to investigate, have a scientific finding
13 of bacterial growth at room temperature after so many
14 hours to prove there is safety here; to prove there
15 is no safety here, one way or the other, so we can
16 tell the restaurant owners hey, if we hang this over
17 4 hours and 6 hours, the bacteria will be double; you
18 will cause diarrhea or whatever, you know. So this
19 is one thing.

20 The other thing the panel is is formed
21 and is to, communicate and make recommendations to
22 the Department of Health for safety codes and then we
23 also have to examine food safety issues about how
24 employees handle the food and also we should use this
25 panel to mediate and resolve problems. So much

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2 owners, they might have a big fine, you know which
3 they think they shouldn't... they shouldn't have to pay
4 for it. So there is some way they can find someone
5 to mediate between the business owners and the City
6 agencies, you know those are the main concerns.

7 So I think today is a good day to start;
8 the restaurant industry should be happy, at least
9 that we have a new beginning and hopefully these
10 bills will pass and you guys can regulate and help
11 the overall restaurant business, because we all know
12 restaurant business really important, especially now;
13 we have so many tourists coming here and even for the
14 local people we should help more often, because New
15 York is a very fast-pace pace; everybody wanna buy
16 some takeout and go home to eat, to relax, so
17 restaurant business is very important; at the same
18 time you wanna make sure these owners can make money;
19 I mean it's not easy to make money in New York City,
20 consider the high rent, the high tax, the high
21 regulation, either from your Department or Department
22 of Labor and then with DEP and other agencies, and
23 also the water bill is so high here; the garbage. So
24 every little thing add up so at the end, if they
25 don't make money; who's gonna open restaurants? I

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2 don't wanna cook at home everyday; you don't wanna
3 cook at home everyday, so we have to help them to
4 survive; this is really critical. Thank you very
5 much.

6 CHAIRPERSON ARROYO: Council Member Van
7 Bramer.

8 COUNCIL MEMBER VAN BRAMER: Thank you
9 very much Madame Chair and first, let me congratulate
10 you on your leadership on this very important package
11 of legislation; I am very proud to be the prime
12 sponsor of Intro 1146 A which creates with the
13 Department of Health, and I have to give a shout-out
14 to the Department of Health, 'cause all of you work
15 in my District and love Long Island City I'm sure as
16 much as I do; this is a very important piece of
17 legislation and a very, very important issue. Too
18 many restaurant owners, small business owners feel
19 like there's a game of gotcha and in some cases, a
20 serious case of the goal post being moved and it's
21 really, really important that the inspection process
22 be fair and equitable, and establishing a
23 consultative inspection program for restaurants is
24 one that, in speaking with many of our restaurant
25 owners, they believe is incredibly important in terms

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2 of leveling the playing field for them so that they
3 have the option of asking for an educational
4 inspection where a Department of Health inspector
5 will go through and let them know where there are
6 problems, if there are problems, and what those
7 remedies might be; that's incredibly important. And
8 perhaps most important, because someone who may be
9 opening a new restaurant may be less familiar with
10 some of the issues that may face them on the occasion
11 of an inspection; for new restaurants to be able to
12 request an educational and consultative inspection
13 before the graded inspection; I think that's really,
14 really critical; we want and need, need our small
15 businesses and our local restaurants to succeed; the
16 margin between making it and not making it, as
17 everybody knows, can be very, very small and we wanna
18 make sure that the money they're making goes back
19 into the community to hire staff, to make profits, to
20 build businesses and not unnecessarily or unduly to
21 the Department of Health. So I'm very proud of this
22 package, as a council and particularly, obviously
23 proud of our small piece of this and this very
24 meaningful piece of legislation that I think is gonna
25 make it easier for businesses to know what they need

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2 to do to succeed, which is really, really important
3 because it's in no one's interest for restaurants to
4 receive substantial fines and fees; it's in
5 everyone's interest to have small businesses that are
6 thriving that are also ensuring the health and well
7 being of their customers, which is certainly the
8 Department of Health's mandate, but also ours. So I
9 think this helps get the job done in a better way; in
10 a more fair way that will lead to a healthier city
11 and a more prosperous city, so I think the Chair and
12 I think everyone at DOHMH and look forward to passing
13 all these bills. Thank you very much, Madame.

14 CHAIRPERSON ARROYO: Thank you Council
15 Member. Before I call on Council Member Reyna I
16 wanna acknowledge my colleagues who have joined us,
17 Council Member Vann, Council Member Rose, Council
18 Member Vallone, I think he's behind us, Council
19 Member Eugene; Council Member Dickens. Council
20 Member Reyna.

21 COUNCIL MEMBER REYNA: Thank you so much
22 Chair Arroyo; I just wanted to apologize for my
23 tardiness.

24 I wanted to just say a few words as far
25 as the bill that is being introduced today, 1141,

1 sponsored by me and signed onto by Greenfield, Koo,
2 Mendez, Rose and Vallone, thank you so much to my
3 colleagues.
4

5 As Chair of the Small Business Committee
6 I hear all too often of the burden that the City
7 places on our small business owners; it comes to no
8 surprise to many in this room that restaurant owners
9 are the ones that express the greatest
10 dissatisfaction with the City.

11 Faced with a hyper-competitive market,
12 restaurants are often the canary in the coal mine
13 when a regulatory environment becomes over-
14 burdensome.

15 Last month I took a walking tour through
16 one of the commercial avenues in my District, in
17 Bushwick. Of the many issues brought to my
18 attention, four different restaurants, each block
19 after block, one was repeated over and over again;
20 inconsistent and even arbitrary city inspections.

21 It is clear that significant financial
22 penalties, inadequate education and outreach,
23 inconsistent inspections and a systematic lack of
24 transparency plagued the restaurant industry and
25 hampered the growth of an untold number of small

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2 businesses throughout the City. Every small business
3 owner just expressed; tell me what I need to do and I
4 will do it; I'm not trying to run a business that is
5 not of quality.

6 Intro 1141 will increase the information
7 available to the public on food service inspections,
8 thereby providing greater transparency in how the
9 City is regulating restaurants. If we're truly
10 trying to reach compliance, let's do it together.
11 Through this piece of legislation we will be able to
12 provide restaurant owners and advocates a detailed
13 record of when, where, what and how City inspectors
14 are regulating restaurants and we will be able to
15 track any progress we make in terms of lessening the
16 burden that small businesses are facing.

17 I hope that today's hearing will be the
18 tipping point in the City's collaboration with the
19 restaurant community in making for a more efficient
20 and healthier New York City. Thank you, Chair.

21 CHAIRPERSON ARROYO: Thank you, Council
22 Member. And we have at the dais all by himself...
23 you're a brave soul... Dan Kass, Deputy Commissioner,
24 Division of Environmental Health with the New York
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2 City Department of Health. Welcome Deputy
3 Commissioner; always a pleasure to see you.

4 DAN KASS: Thank you for having me. As
5 you mentioned, I'm Dan Kass; I'm the Deputy
6 Commissioner for Environmental Health at the
7 Department of Health and Mental Hygiene and on behalf
8 of Commissioner Farley I'd like to thank, in
9 particular, Chairwoman Arroyo and all of the members
10 of the Health Committee and the Small Business
11 Committee for inviting us to testify today about this
12 package of bills about the restaurant letter-grading
13 program.

14 As you've mentioned in your own comments,
15 it's been a year-and-a-half since the Department last
16 testified about the state of food safety in New York
17 City's restaurants and I would like to begin by
18 providing a status report on letter-grading and its
19 impact on restaurant hygiene.

20 The Health Department began requiring the
21 posting of letter grades based on sanitary inspection
22 results in July of 2010 with these goals.

23 First, to reduce unsafe food handling
24 practices and improve restaurant hygiene; next, to
25 leverage consumer purchasing power to motivate

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2 restaurants to maintain high food safety standards;
3 to publicly reward high-performing restaurants and to
4 reduce over time the burden of food-borne illness.

5 Following a 2-year planning process that
6 included consultation with food safety experts and
7 industry representatives and extensive public comment
8 on Health Code changes and commissioner rules, the
9 Department designed a program that established
10 multiple incentives that encourage restaurants to
11 have the best food safety practices.

12 I would like to briefly describe the
13 essential features of the inspection and grading
14 program, beginning by talking about the inspections.

15 So first, unannounced inspections are
16 conducted by public health sanitarians. The cycle of
17 inspections begins with an initial inspection; a
18 restaurant can earn an A grade at that time or if it
19 does not, it will be re-inspected several weeks
20 later.

21 Re-inspection determines the grade that
22 is assigned to the restaurant and the restaurant may
23 post that grade or a sign indicating that its grade
24 is pending. The restaurant may choose to contest one
25 or more violations; a hearing at the Office of

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2 Administrative Tribunal and Hearings, or OATH,
3 determines the final scoring grade and any penalties
4 assigned. Restaurants with the greatest safety and
5 health deficiencies are inspected more frequently
6 than those that are in an A grade on an initial
7 inspection.

8 Until these innovations, the principal
9 external motivator for restaurant compliance with the
10 rules of the Health Code was the threat of fines.
11 Since the grading program, the incentives to maintain
12 safe food handling and restaurant hygiene now include
13 being able to post an A grade at an entrance and have
14 an A grade retrieved by mobile and web search tools,
15 thereby communicating regulatory confidence in
16 sanitary practices. They also include experience in
17 longer periods of times between inspections, having
18 demonstrated the need for less Department oversight
19 and paying no financial penalties when an A grade is
20 earned at the time of an inspection.

21 Together these incentives are working to
22 improve sanitary conditions in the City's
23 restaurants; several indicators point to these
24 improvements. Nearly half of all the restaurants
25 earned A grades at the time of their initial

1 inspections, up from just 27 percent after the first
2 6 months of grading. For restaurants that do not
3 earn an A on the initial inspection, more now
4 improved to an A upon re-inspection than did at the
5 start of the program.
6

7 In July 2011 just under 40 percent of
8 restaurants scoring in the B range on their initial
9 inspection improved to an A upon re-inspection. Now
10 half of those restaurants improved to an A. And
11 where fewer than 30 percent of restaurants went from
12 a C range score on the initial inspection to an A on
13 re-inspection 12 months into the program, now almost
14 40 percent do. Overall, 86 percent of restaurants in
15 New York City ultimately post A grades.

16 As restaurants improved they are assigned
17 to a less frequent inspection scheduled because they
18 have demonstrated that they required less Department
19 oversight. In the first year of the program only 40
20 percent of restaurants were on a yearly inspection
21 cycle and 31 percent were on the most frequent, a 3-
22 to 5-month inspection cycle. But by 30 months after
23 the initiation of grading, 53 percent of restaurants
24 were on the annual inspection cycle and only 21
25 percent required inspections every 3 to 5 months.

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2 Improvements are driven by better
3 practices in some of the most important food safety
4 areas. In the year before grading began the
5 Department found that 14 percent of restaurants had
6 inadequate hand washing facilities; now just 4
7 percent of the restaurants are cited for this
8 deficiency, a 71 percent improvement.

9 Prior to grading 18 percent of
10 restaurants were not keeping food at a hot enough
11 temperature; now 14 percent are cited for this
12 practice, a 22 percent reduction.

13 Before grading 32 percent of restaurants
14 had mice at the time of an inspection; that rate has
15 improved by 38 percent, with 1 in 5 now having mice.

16 All of these improvements have occurred
17 in part because grading has driven restaurants to
18 increase the safety training of their workforce.
19 Since the announcement that the Department would
20 start grading restaurants, our Health Academy has
21 trained thousands more food workers annually than
22 before the program. In Fiscal Year 2009 a little
23 over... that's the year before grading, a little over
24 20,000 restaurant supervisors completed the
25 Department's Food Protection Course; in this fast

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2 fiscal year we trained 29,000. Our data demonstrates
3 that restaurants that maintain trained personnel on-
4 site are far less likely to have other violations
5 cited and studies have demonstrated that a trained
6 workforce is associated with less risk of foodborne
7 illness.

8 As we announced last year, as food safety
9 practices have improved, the Department has also seen
10 a decline in the rates of salmonella cases in New
11 York City since the grading program began; this
12 decrease of infections in New York City is greater
13 than in the rest of the State or in surrounding
14 areas.

15 We know that the vast majority of New
16 Yorkers support restaurant grading and use the grades
17 to make dining decisions. A poll by Baruch College
18 in early 2012 found that 91 percent of New Yorkers
19 approve of the program, 88 percent use grades in
20 dining decisions and 76 percent feel more confident
21 eating in an A grade restaurant.

22 Polls by Quinnipiac and most recently by
23 the New York Times revealed similar levels of
24 support. After a thorough review of this program, in
25 April 2013 the Harvard University Ash Center for

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2 Democratic Governance and Innovation selected the
3 grading program as one of three recipients in the
4 nation for its Bright Ideas in Government award.

5 Now finally let me say a few words about
6 fines. Since we began grading restaurants our
7 inspection program has moved from a relatively
8 uniform annual frequency of inspections to a risk-
9 based approach. This means that the least compliant
10 restaurants are now inspected two or three inspection
11 cycles per year and the potential for violations and
12 fines for them increased and as we expected, we saw
13 an increase in the total penalties levied. The
14 increase in penalties was a result of greater
15 oversight of restaurants that posed the greatest risk
16 of foodborne illness to the public.

17 Because restaurant sanitary performance
18 has improved so dramatically and because we now
19 collect no fines in restaurants getting A's on their
20 inspection, collected fines began to decline in
21 September 2012 and have fallen 27 percent since then.

22 As we look back over the period of time
23 before and since the grading program, the number of
24 restaurants that paid no fines has increased nearly
25 threefold; in Fiscal 2010, the year before grading,

1 just 14 percent of restaurants paid no fine in their
2 prior year. In the past 12 months 35 percent paid
3 zero. Over the same period of time the overall
4 health of the restaurant industry improved
5 significantly better than other retail activity in
6 New York City, with taxable sales rising 9 percent.
7 According to the Department of Finance, taxable sales
8 rose by an average of \$69,000 per restaurant.
9

10 The Health Department has collaborated
11 with the Council over the course of this year on this
12 package of legislation to supplement aspects of the
13 restaurant inspection program and we appreciate the
14 ongoing dialog and many of the bills reflect ideas
15 that we mutually agreed and do agree on. They will
16 offer additional opportunities to engage with a
17 variety of stakeholders, increased transparency and
18 offer up opportunities to further educate the food
19 industry on food safety. Our mutual goal is to
20 ensure the safety of the public, to reduce the burden
21 of foodborne illness, promote the greatest possible
22 understanding in the industry of how to practice food
23 safety, comply with regulations, avoid fines and earn
24 A grades.
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2 The bill that describes the data the
3 Department will make available via DataShare, the
4 City's open data portal, will help clarify inspection
5 types and findings to users. We look forward to
6 seeing new and improved web and mobile device
7 applications, as well as analyses that use these
8 data.

9 The bill that enumerates an inspection
10 code of conduct will help the Department communicate
11 its approach on inspections to restaurant operators
12 and food service workers. There has been an increase
13 by restaurant in risk... I'm sorry; there's been an
14 interest by restaurants in risk-free consultation on
15 how they can improve their practices and we have
16 already begun the process of preparing to offer
17 consultative inspections for newly permitted
18 restaurants and for restaurants between inspection
19 cycles that availed themselves of the opportunity.

20 The Department does have concerns about
21 several provisions in Intro 1119; the ombuds office
22 bill. Specifically, we do not think that the purpose
23 of this office should involve the withdrawal of
24 violations prior to adjudication, nor should the
25 office take on supervisory and employee performance

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2 review functions. We propose that the ombud's annual
3 report be unified with that of the Advisory Committee
4 described in Intro 1134 to describe the work of the
5 Department in evaluating concerns, complaints and
6 modifications as it's made to its inspectional
7 approach rules and regulations.

8 In addition, Intro 1134, the Advisory
9 Committee bill, offers an opportunity to codify and
10 enhance with additional members and clarified agenda
11 our existing committee on food safety. But as an
12 Advisory Committee it should have the flexibility to
13 describe its own agenda. The Department should issue
14 an annual report on the activities and the work of
15 the Committee, but as a group of individuals selected
16 to represent the perspectives and interests of
17 restaurant owners, trade associations, food safety
18 experts and nutritionists, there is no need for the
19 Committee to hold a public hearing and indeed it is
20 burdensome amidst many public hearings we already
21 hold when proposing rules and Health Code changes.

22 As we've discussed with the Council staff
23 leading up to this hearing, the Department will be
24 issuing a proposed regulation shortly which is aimed
25 at reducing restaurant fines by an overall 15 percent

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2 beyond the reductions occurring from the improved
3 sanitary conditions. We will achieve that with a
4 rule setting a fixed penalty amount for every
5 violation, where now those amounts are set at the
6 discretion of a judge who reviews inspection results.
7 Under this proposal nearly 60 percent of all
8 violations will be penalized at the minimal level
9 allowed by the Health Code. Not only will a penalty
10 rule enable fine reduction but it will also enhance
11 transparency and predictability for the industry.

12 I wanna thank the Speaker, Chairwoman
13 Arroyo, the Committee and especially the Committee
14 staff for working so diligently with us and for the
15 opportunity to testify and I'd be happy to take your
16 questions. Thank you very much.

17 CHAIRPERSON ARROYO: Thank you
18 Commission, thank you for your testimony and thank
19 you for your feedback on the legislation. Pete...
20 well, the legislations that we're considering today.
21 I'm gonna... I have a couple of questions regarding
22 your testimony and then we'll turn it over for
23 members who may have questions.

24 The... the reduction in the fine you
25 attribute to what?

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2 DAN KASS: Well fines peaked in mid 2012
3 because the frequency with which we inspected the
4 poorest performing restaurants increased
5 dramatically, so those at greatest risk for fines
6 were inspected more frequently, subjecting them to
7 more penalties; that was a design of the program, not
8 on the fine side, but to basically increase oversight
9 of those and get us closer as a city to what's
10 recommended nationally in terms of the frequency with
11 which we inspect restaurants, recommended by the FDA.

12 The reduction was based on... principally
13 on improved performance, so as I laid out in my
14 testimony, there are a variety of signals and signs
15 and statistics that restaurants have dramatically
16 improved actually their performance than at the
17 beginning of the grading program; a variety of
18 specific violations are significantly less likely to
19 occur, more restaurants are earning their A grade at
20 the time of their very first inspection and cycle,
21 which then puts them at a... makes them inspected less
22 frequently. And even those restaurants that score
23 very high, 40 points and above, even when they retain
24 those higher scores, those higher scores are coming
25 down; they may not be enough to bump them into a B

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2 grade on their final inspection or they may not be
3 enough to bump them into an A, but the scores, even
4 within the B category in the C category are
5 improving. So overall the fine reduction is because
6 there are less violations, there are less notices of
7 violations issued, there are fewer hearings of the
8 Tribunal and they reflect improvements in sanitary
9 conditions.

10 We did make one other change and that was
11 I believe in February of 2011, when we eliminated any
12 chance of a financial penalty for a restaurant that
13 earned an A grade at the time of their initial
14 inspection. So there was a small amount of money... a
15 smaller number of fines that were associated with
16 modest penalties, even with an A grade; those were
17 also limited, but the vast majority of the va...

18 [crosstalk]

19 CHAIRPERSON ARROYO: So regardless of the
20 violations they pay no penalty? To get an A you can
21 have up to how many violations?

22 DAN KASS: You can have 13 points and
23 still... [crosstalk]

24 CHAIRPERSON ARROYO: 13.
25

1
2 DAN KASS: retain an A at the time of
3 your inspection.

4 CHAIRPERSON ARROYO: And that...

5 DAN KASS: And that... that's usually one
6 or two public health or critical violations or one or
7 two general violations.

8 CHAIRPERSON ARROYO: Where in the past
9 they would've paid a penalty and... [interpose]

10 DAN KASS: At the beginning of grading
11 they would've... that's right, and even throughout the
12 history of the scoring... [interpose]

13 CHAIRPERSON ARROYO: So...

14 DAN KASS: they would've, yes.

15 CHAIRPERSON ARROYO: do... so nearly half
16 are now getting an A on the initial inspection; do
17 you attribute that back to the training, increase in
18 training of the restaurant staff? What's the...
19 [interpose]

20 DAN KASS: Well uh...

21 CHAIRPERSON ARROYO: or are they just now
22 defensive about DOH coming in?

23 DAN KASS: I think there are a variety of
24 factors and I... you know, first in the big... in the big
25 picture sense we know that far more food workers are

1
2 trained in food safety in the workforce overall in
3 the industry than had been... [interpose]

4 CHAIRPERSON ARROYO: And by that you mean
5 restaurant employees?

6 DAN KASS: I mean restaurant employees,
7 that's right. So that's... that's one factor and
8 training is critical for ensuring that people even
9 know what the rules are. You know we... you know
10 despite I think some of your concerns, that will be
11 addressed in part by these bills about our ability to
12 educate the industry, we have made many, many more
13 materials available than we have in the past;
14 mailings, grades, a description of the grading
15 program; every restaurant receives a mock inspection
16 form that exactly parallels our own; we also know
17 from hearing from the industry, because we do meet
18 with them regularly, that many have hired consultants
19 or they do drills with their employees in the
20 mornings about what they need to be doing for food
21 safety. So for those restaurants I think practice
22 has changed.

23 I also think that the potential for a
24 grade other than an A being posted at the point of
25 entrance is a significant motivating factor. They

1
2 wanna communicate that they're safe for public; they
3 know the public pays attention to grades and many
4 more restaurants are working hard. So I would say
5 that in that sense that's what's principally driving
6 what... what... the statistic you raise, which is that
7 many more are earning A grades on their initial
8 inspections and not subjecting themselves to more
9 frequent inspections than once a year.

10 CHAIRPERSON ARROYO: And... and how long is
11 it taking one that does not get an A on the initial
12 inspection, a B or C and how long does it take them
13 to move to an A and how many inspections in-between?

14 DAN KASS: Well those are really... the
15 answer for any individual restaurant is really that
16 it's within their control. We know that... so if a
17 restaurant does not earn an A grade on initial
18 inspection and scores higher than 13 points, they'll
19 get a re-inspection, so their first opportunity to
20 earn an A grade comes two to four weeks later and
21 many do... [interpose]

22 CHAIRPERSON ARROYO: But... no, my question
23 is; how long does it take them to go from a B or a C
24 to an A; how many inspections in-between; what's the
25 average? [interpose]

1
2 DAN KASS: Well... well many, many, many
3 get there by the next inspection cycle, so...

4 [interpose]

5 CHAIRPERSON ARROYO: I'm sorry; say that
6 a... I'm... can you pull the mic closer to... [crosstalk]

7 DAN KASS: So... so many, many restaurants
8 get to an A on their next inspection cycle...

9 [interpose]

10 CHAIRPERSON ARROYO: On the second
11 inspection?

12 DAN KASS: On their... on their subsequent
13 one, that's right. So some improve from a C grade,
14 which are relative... ver... C grades are rare in New
15 York City, there are very few of them... will improve
16 to a B and some B's improve to an A, not all do
17 improve, some unfortunately continue to practice food
18 safety in a way that earns them lower scores than... or
19 higher scores and lower grades.

20 One of the features of this program was
21 to make an inspection frequency cycle that both
22 enabled the Department to increase oversight in a way
23 that sort of evaluated our sense of the risk of the
24 restaurant, but also allowed restaurants to rapidly
25 get another opportunity to improve their grade.

1
2 So if a restaurant earns in the C range
3 or earns a C grade on one inspection cycle, we're
4 gonna be there much more quickly than we're gonna be
5 back to an A grade restaurant and for a B grade
6 restaurant we're gonna be there within 4 to 7... 5 to 7
7 months. So that was the way the program was set up.

8 CHAIRPERSON ARROYO: Now in your
9 testimony you... on Page 3, maybe the 4th paragraph
10 down, 76 percent of New Yorkers feel more confident
11 eating in an A grade restaurant. There was an
12 incident in the Bronx when there was a hepatitis A
13 outbreak; what was that restaurant's grade prior to
14 that incident?

15 DAN KASS: That restaurant had a B at the
16 time of that outbreak.

17 CHAIRPERSON ARROYO: Uh-huh.

18 DAN KASS: Now I might say a word about
19 that outbreak. This was... hepatitis is a difficult
20 issue; hepatitis... someone may be shedding the virus
21 for hepatitis before they're even symptomatic and a
22 restaurant owner may have no way of knowing...

23 [interpose]

24 CHAIRPERSON ARROYO: Explain that;
25 shedding the virus, meaning?

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DAN KASS: Well before someone...

2

[crosstalk]

3

CHAIRPERSON ARROYO: Recovering?

4

DAN KASS: Before someone exhibits the first symptoms of hepatitis to be able to get treatment or to even exclude themselves from the workplace they may be sick already and it's a fecal oral disease, meaning that it's passed because of poor hygiene, so a person can be infectious even before they know they're sick and that means they can be infectious even before an owner knows that they're sick, so it's difficult at least to exclude someone from the workplace. What's critical in that instance is having very careful hand washing practices and always using a barrier before touching ready-to-eat food and that prevents transmission. But this restaurant happened to have a B grade.

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CHAIRPERSON ARROYO: Okay. Thank you.

19

We're gonna go to questions, Council Member Koo.

20

COUNCIL MEMBER KOO: Commissioner, you have cited in your testimony, you said the Department has seen a decline in the way of salmonella cases in New York City since the grading program began; the decrease in infections in New York City is greater

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2 than the rest of the state or in the surrounding
3 states. Can you cite the source and statistics for
4 this information?

5 DAN KASS: Yes.

6 COUNCIL MEMBER KOO: Hepatitis also,
7 where are we getting the information from?

8 DAN KASS: Yeah. So first just a word
9 about how to evaluate the changes in foodborne
10 illness.

11 So there are a variety of different kinds
12 of foodborne illness, salmonella is one useful one to
13 look at because it's probably the most likely to be
14 actually related to food, many of the illnesses that
15 are related to food can also be transmitted in other
16 ways. There are a couple ways to look at salmonella;
17 more... many more people are hospitalized or go to
18 emergency rooms where they discover salmonella than
19 are directly reported to the Department; there's a
20 very long period of time between when we get that
21 data from New York State and when it occurs, so we
22 haven't been able to evaluate that fully.

23 What we can evaluate is salmonella cases
24 that are directly reported to the Department either
25 by a health care provider or by a lab. So our data

1
2 is reports to our department and we calculate that
3 number every year, first preliminary; then final for
4 the year and we compare... and for the purpose of
5 comparison to other jurisdictions we reached out to
6 neighboring jurisdictions to find their numbers over
7 the same period of time; most of us publish these
8 numbers on an annual basis.

9 So that's the source; we calculate a rate
10 based on the number of cases and we divide by the
11 population and so we compared our rates and the rate
12 of decline or change between New York City and the
13 other areas.

14 COUNCIL MEMBER KOO: So can you give a
15 summary of that finding to our Committee staff.

16 DAN KASS: I'm happy to, yes.

17 COUNCIL MEMBER KOO: And my second
18 question is; you... you said some areas, some
19 restaurants, they get inspected more often than the
20 others if they have received grades B or C's, right?
21 So how many maximum visits can a restaurant get; do
22 you have a maximum; I mean, I heard some restaurants,
23 they get inspected five or six times during the year;
24 if they're over... [interpose]

1
2 DAN KASS: Well... well the average... so
3 first, the average number of inspections per
4 restaurant a year is less than three; I think we've
5 conducted 70,000; is that the num... we... we conducted
6 just over 70,000 restaurant inspections for a
7 universe of 24,000 restaurants.

8 Now, what's the maximum? That would
9 depend on a variety of factors. A restaurant that
10 consistently earns high scores on their initial
11 inspection can sustain a three-cycle a year
12 inspection, which would be six inspections. Even
13 restaurants that earn better, when we get a complaint
14 about a restaurant, either a foodborne illness or
15 sanitary conditions, we'll often inspect; that's our
16 responsibility in responding to the public and so
17 they could be inspected at that point as well.

18 COUNCIL MEMBER KOO: So okay, you tell me
19 whether the Department has targeted some areas of our
20 population for more inspections because they don't
21 speak the language, do you send the inspector there
22 to get more fines, because the owners cannon
23 communicate with the inspectors? I suspect sometimes
24 they do.

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2 DAN KASS: I'm sorry, if you're asking
3 me... [interpose]

4 COUNCIL MEMBER KOO: Can you... can you...
5 can you give me... give the Committee statistics like
6 how to compare with Flushing area and Midtown area
7 the inspection rate during the year, during last year
8 supposed oh, we have 2,000 inspectors... inspections in
9 Flushing, but meanwhile you only do 1,000 in the
10 City; that's not fair to our community.

11 DAN KASS: That wouldn't be fair if it
12 were accurate, but it's not. The... thi... [interpose]

13 COUNCIL MEMBER KOO: So I... I want some
14 statistics that you prove that you do otherwise...
15 [interpose]

16 DAN KASS: I... I will, but let me... let me
17 be very...

18 COUNCIL MEMBER KOO: because a lot of
19 people, they have suspicion, because we don't
20 understand the culture, we don't speak the language,
21 they do more inspections in our areas and when...
22 [interpose]

23 DAN KASS: Okay, well...

24 COUNCIL MEMBER KOO: they come in they...
25 they... you know the... they... they do... like they behave

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2 like they're a law enforcement agency, and they are
3 not... [interpose]

4 DAN KASS: Okay, well...

5 COUNCIL MEMBER KOO: Novel (sp?) policy.

6 DAN KASS: Well if you... I want a chance
7 to answer very directly and the answer is to the
8 question about whether we target neighborhoods,
9 absolutely not. Do we target based on any factor
10 other than food safety performance? Absolutely not.
11 We have a very clear protocol, it's very transparent
12 and published and everyone knows about it, about how
13 we make a decision about whether to inspect and on
14 what schedule; it's all based on food safety
15 performance.

16 In addition, we already published these
17 data available to the public by neighborhood about
18 performance, so I'm happy to share any statistic
19 regarding neighborhood statistics, but if you go to
20 our public health tracking portal at
21 NYC.gov/health/tracking you will find reports there
22 that look at grades, for example, by neighborhood.
23 Now, not every neighborhood is equivalent with
24 respect to its earning of A grades; some
25 neighborhoods don't do as well and so there are

1
2 neighborhood differences in fact, but they're based
3 on sanitary performance. So I hope that answers your
4 question; if you want additional data I'm happy to
5 provide it.

6 COUNCIL MEMBER KOO: So do you have
7 statistics from different areas; how would you... how
8 much fine you collect from each area, uh suppose
9 Flushing as opposed to Flatbush or... do you... like on...
10 on traffic tickets, they do have statistics that tell
11 us locations receive the most fines, no?

12 DAN KASS: We... we... we, to my knowledge,
13 have never analyzed our data that way; it can be
14 analyzed and in fact the bill that... [interpose]

15 COUNCIL MEMBER KOO: I think that you
16 can... it should be done by computer models, you know
17 how much fines received from which area, which
18 restaurant or use zip code, you know... [interpose]

19 DAN KASS: Well one of the... one of the
20 features of the bill that we're discussing today and
21 that we all agree on, on providing data to open... open
22 data; it would add fine data and so that would be
23 easily analyzable and interpretable, but... so... so
24 there's nothing that we couldn't provide to be able
25 to do that.

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2 COUNCIL MEMBER KOO: Yeah, the reason I
3 asked all those questions is because I want to
4 present to our community that the Department is not
5 targeting our community for extra inspections or
6 extra fines, because now they have a suspicion their
7 argh... because we don't understand the inspector when
8 they come in; they just give us more fines you know.

9 DAN KASS: No quite the contrary, in
10 fact, we've said and we've said repeatedly and will
11 continue to say that we will do any kind of
12 presentation that any group wants us to do on food
13 safety in any neighborhood. I think in July our
14 staff went out I think with your staff to do a
15 training for a group of restaurants who had questions
16 about kimchi, for example and so we sent sanitarians
17 out to do that training; we'll be happy to do that at
18 a neighborhood level anywhere.

19 COUNCIL MEMBER KOO: I have one more...
20 last question is; on the safety, food safety course
21 you're offering, do you have to go to school or they
22 can do it on the internet, right?

23 DAN KASS: They can do either...
24 [interpose]

25 COUNCIL MEMBER KOO: Uh-huh.

1
2 DAN KASS: either... either one of those
3 things. You can attend a class, which is taught in
4 five languages, I believe in classrooms and there are
5 additional languages that are available online for
6 this course. If you take it online it's free, anyone
7 can sign up in the City to learn this; if you want to
8 earn a Certificate of Completion you have to come in
9 to pass an examination... [interpose]

10 COUNCIL MEMBER KOO: So...

11 DAN KASS: which is offered in...
12 [interpose]

13 COUNCIL MEMBER KOO: So can... can you...

14 DAN KASS: 19 lang... how many languages?
15 Over 20 languages.

16 COUNCIL MEMBER KOO: Can you make this
17 available on a DVD so that people can purchase it,
18 say \$5; \$10 each; they can watch it at home and...
19 because a lot of immigrants, they are not computer
20 literate; they don't know how to use computers...

21 [interpose]

22 DAN KASS: Like... we can... [interpose]

23 COUNCIL MEMBER KOO: you know, I mean
24 they are good chefs, but they never touch a computer.

1
2 DAN KASS: Let... let me think a bit about
3 this. One of the things that we are working on is,
4 you know that we typically run a course for the
5 restaurant industry that's for supervisors of food
6 safety, these are generally managers or people with
7 line shift... shift responsibilities; we are working
8 right now on offering a course for food workers,
9 something that doesn't take as many hours, that
10 basically provides them the basics of how to handle
11 food safely, how to talk about it, how to ask
12 questions; what are the principal means by which
13 food... you know, illnesses get transmitted; that's
14 gonna be available online for free and let me go back
15 and discuss whether we can make that available on a
16 DVD.

17 COUNCIL MEMBER KOO: Okay, thank you very
18 much.

19 DAN KASS: You're welcome.

20 CHAIRPERSON ARROYO: Thank you Council
21 Member. Council Member Vallone followed by Council
22 Member Van Bramer

23 COUNCIL MEMBER VALLONE: Thank you Madame
24 Chair. Thank you for your testimony. And you... on
25 Page 3 you say that the increase in penalties was a

1
2 result of greater oversight of restaurants that posed
3 the greatest risk of foodborne illness because of
4 this grading system, that you were able to focus on
5 some of the worst performing restaurants. However,
6 10 years ago, a decade ago, the max... the fines that
7 were levied on our restaurants were about \$12 million
8 dollars and a year before the grading system was
9 introduced they were increased by \$20 million and
10 then after the grading system was introduced they
11 went up another \$20 million to \$52 million about a
12 year ago. So they went up before the grading system
13 was introduced and they went up after the grading
14 system was introduced. So I don't think you can
15 attribute this increase to a better grading system; I
16 think the increase can be attributed to a mindset
17 that our restaurants are ATMs. Now based on the
18 facts I just gave you, do you still think that the
19 increase in fines was due to your grading system?

20 DAN KASS: I know that the increase in
21 fines, relative to the baseline in the year prior to
22 grading, is based on a greater inspection frequency
23 of restaurants than they'd had before. So we not
24 only require the posting of grades outside the
25 windows; we made clear at the beginning that we were

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2 going to increase the frequency with which we got to
3 restaurants; you may know that in 2008 we barely made
4 it to 90... or 90 something percent of restaurants
5 inspected over the course of that year; that was...
6 that's inadequate; we needed to do a better job; we
7 needed to get to every restaurant and we needed
8 frankly to get to restaurants more frequently that
9 needed more oversight.

10 Grading was associated with that, grading
11 didn't just require a posting of a grade; it
12 increased substantially the number of times we went
13 to restaurants that demonstrated the most significant
14 food safety violations. So the increase in fines was
15 associated with the increased frequency.

16 We don't treat restaurants like an ATM,
17 we treat restaurants as entities that want to do the
18 best by their customers, but sometimes, especially
19 for a smaller group of restaurants, fail to basically
20 manage in a way that protects food safety in a way
21 that we really want them to. So we got to them more
22 frequently and I would also suggest that the decline
23 that we've seen was also a result of those
24 improvements.

1
2 So we didn't game the system at all; at
3 the very beginning we said we'd be very happy if
4 restaurants had no fines, if they all earned A's on
5 initial; that didn't happen; we don't expect that to
6 happen, you know quickly; it's very difficult to
7 change practice in established restaurants and there
8 needs to be time for these things.

9 But we did say that we wouldn't change
10 the game... we wouldn't change the rules along the way
11 and we didn't, so restaurants continue to earn two
12 inspection cycles a year if they score between 14 and
13 27 points, they continue to earn three inspection
14 cycles if they earn more than that and what we're
15 seeing is, they're being inspected less frequently,
16 notices of violations are way down, points are way
17 down and fines are way down.

18 COUNCIL MEMBER VALLONE: 'Kay. Well, I
19 think we can agree that the increase was due to
20 greater frequency as opposed to a focus based on
21 these grades on the worst restaurants, because you
22 went up the same amount before the grades as you went
23 up after the grades and no one's saying restaurants
24 should not be inspected every year, I think we can
25 agree on those two things; they went up because

1
2 frequency, not because of the grades and everybody
3 should be inspected once every year.

4 But we disagree as to the decline, the
5 decline happened in the last year because of
6 righteous outrage by the restaurants which finally
7 could not be contained that which was finally
8 conveyed by us to you in these rooms, in these
9 hearings as opposed to just through the restaurants
10 themselves, who are doing a very good job of outreach
11 to us and let us... and informed us what was going on,
12 not that they had to actually do it in these rooms;
13 every time one of us goes out to eat we hear a story.
14 I can almost not go out to eat in my district without
15 an owner sitting down next to me to complain.

16 I went to breakfast just the other
17 morning in Queens and a new diner just opened up and
18 there's a cash register; next to the cash register's
19 a coffee machine, one of those self-serve coffee
20 machines; they turned the coffee machine to face the
21 cashier because they wanted to be responsible for the
22 coffee for some reason; they don't know, they just
23 opened up a diner; they got a \$500 fine because now
24 that they turned the coffee machine it's a food
25 preparation counter, not just a cashier and they have

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2 to put a sink in because they turned the coffee
3 machine. Just tell 'me to turn the darn machine,
4 don't hit 'em with a \$500 fine and that's not... that's
5 not a problem with your system, that's a problem with
6 a mindset, a mindset that says we're not goin' out
7 there to help these people, to help this new diner
8 that opened up, we're going out to get some money for
9 the City, \$500 for having a coffee machine turned the
10 wrong direction. I mean, it just... I hear an example
11 like that a week, every time I... if I went out more
12 often I'd hear more examples; I almost can't go out
13 to restaurants in my district 'cause I don't want the
14 owner to sit down next to me and complain about the
15 food system. You say you don't change the rules; the
16 rules may not change, but the inspector changes every
17 time and every time an inspector goes out they want
18 something different, they're told to do something
19 different; it's an entire mindset that has to be
20 changed.

21 I know that there are a lot of other
22 council members waiting; there was no great food
23 crisis in our restaurants 10 years ago; our
24 restaurants 10 years ago were fine. Could they be
25 improved? Of course, everybody can be improved, but

1
2 to increase fines from \$12 million to \$52 million is
3 outrageous; it's not called for; there was no crisis
4 in our restaurant system, but to used them as a cash
5 machine, we caught onto it, we stopped it; we are
6 thankful it's down \$10 million, it needs to go down
7 more; there's gotta be a balance between protecting
8 our citizens and protecting our restaurants. Thank
9 you.

10 CHAIRPERSON ARROYO: Thank you Council
11 Member. And I'm sorry; Council Member Van Bramer, I
12 skipped over Council Member Rose; I'm sorry, Debbie.

13 COUNCIL MEMBER VAN BRAMER: We never skip
14 over Council Member Rose.

15 CHAIRPERSON ARROYO: [laugh] Go ahead.

16 COUNCIL MEMBER ROSE: Thank you. I love
17 that the outer boroughs are being recognized. Thanks
18 Maria, thank you.

19 I wanna... first I wanna really start by
20 thanking the sponsors of this package of bills; they
21 are so needed and it is a great step to increasing
22 the transparency in food safety regulation and my
23 concern is what I've heard from all of my small
24 businesses was that the disparity and the lack of
25

1 consistency in terms of how different inspectors
2 enforce the Health Codes.

3
4 And I'd like to know if there's been any
5 analysis or studies done to determine if this is in
6 fact true and what steps are being taken beyond just
7 regular training to standardize the way inspections
8 are conducted. I mean, it varies and it... to dovetail
9 on Council Member Vallone, where one day an inspector
10 will come in and that coffee machine might not have
11 been an issue and another inspector will come in and
12 it comes a \$500 fine. So the lack of consistency,
13 the fact that... if in fact the coffee machine is
14 corrected they feel compelled to find something else
15 wrong.

16 DAN KASS: So let me take each of those...
17 take that question and break it down into its parts.

18 So first, I should note that the vast
19 majority of violations that we issue as a department
20 and find on inspection are related to food handling
21 practices, they relate to temperature control, they
22 relate to bare hand contact, they relate to the way
23 surfaces are maintained, how food is stored and the
24 big distinction between restaurants that earn fewer
25 inspection cycles and A's versus those that don't

1
2 have to do with those and we publish a poster that
3 we've sent to every restaurant to hang in their
4 kitchen about the 10 most common violations and
5 that's what they principally relate to.

6 Now in terms of this particular example,
7 I don't know specifically what happened at the
8 restaurant in your district, Council Member Vallone,
9 but one of the bills here and that we are excited
10 about offering is a consultative operational
11 inspection before their first graded inspection. So
12 in that case that restaurant would've been alerted to
13 that if they had availed themselves of that option,
14 so we're looking forward to being able of doing that.

15 And with respect to consistency, we are
16 beginning to look at these kinds of issues; it's
17 difficult, while not every... there are... there are a
18 variety of sources of differences that happen at any
19 given inspection.

20 The most important one is that things
21 change at a restaurant day to day; while I stipulate
22 that the placement of a coffee machine may change
23 less frequently than others, the food that they're
24 handling, the time of the day, the degree to... the
25 staff that are present there at the time, the degree

1
2 of oversight, the ambient temperature, the working of
3 equipment, all of those things might vary from day to
4 day and it is true that an inspection over the course
5 of different days, even by the same inspector, will
6 find different things, but many of those relate to
7 different food prep practices, different menus,
8 different times of day, different... you know those
9 other factors.

10 In terms of the training of inspectors,
11 you know in the last year we've published to our
12 website inspection guidelines that are becoming a
13 feature for all of our critical and important
14 violations that very clearly specify how the
15 inspection is done, what the purpose of it is, for
16 each type of violation, what the purpose of it is;
17 examples that could be cited and examples that should
18 not be cited; we train our inspectors on those, we
19 routinely do reviews of what we're finding in the
20 field and we use it as an opportunity for additional
21 in services for inspectors that after they've already
22 been deployed to the field to work independently
23 after an extensive training program. So we're
24 increasingly transparent about exactly what we say to
25 our inspectors for these most common violations and

1
2 we'll be publishing additional inspection guidelines
3 that are violation-specific going forward.

4 COUNCIL MEMBER ROSE: How frequently do
5 you do this training; is there updates, are they
6 trained just once and that's the last time that they
7 receive any sort of training?

8 DAN KASS: No. So training... I think that
9 we've testified before that a new inspector coming
10 onboard has a 3- to 4-month intensive training in the
11 classroom. They then shadow and co-conduct
12 inspections for a period of time, until a seasoned
13 supervisor feels that they're ready to do so and then
14 they go out and they do inspections and we will also
15 do follow-up inspections; then we... for them and for
16 others that are onboard we review their, you know
17 their findings.

18 So there is corrective actions that are
19 taken at an individual level when we see something...
20 you know, when something's being cited properly;
21 there are also group trainings that occur, so our
22 food safety staff gather every single week and every
23 other week I think we do a fairly extensive nearly
24 day-long workshop with them. Now we don't always go
25 over specific food safety violations, but we often

1
2 do; sometimes we... whenever we modify the Health Code
3 or propose a modification to the Health Code or
4 Commissioner's Rules, they're trained explicitly in
5 what that is, what the purpose of it is and in how to
6 go about inspecting it.

7 CHAIRPERSON ARROYO: Council Member, if I
8 can interject here one second. We're gonna hear from
9 the union that represents the sanitarians and they've
10 expressed some concerns; if the restaurant owner
11 believes an inspector has not lived up to the
12 inspector code of conduct and complaints of DOHMH how
13 will the Department handle that process and have you
14 involved the union in discussions about strategies
15 for how to improve the training process?

16 DAN KASS: So I'm not...

17 CHAIRPERSON ARROYO: Two parts.

18 DAN KASS: Yeah, let me take the first
19 part; I think... I think what you're asking is... is how
20 do we work with an employee when we do get a
21 complaint.

22 CHAIRPERSON ARROYO: A complaint.

23 DAN KASS: So I don't know what they'll
24 testify to as a specific concern about that, but I
25 presume it's in part because the creation of the

1
2 ombuds office will provide a central means by which
3 these are received by the Department and acted on.

4 In reality we already do this; we... you...
5 the Council passed a law I think two years ago called
6 the Business Customer Bill of Rights, so even over
7 the past year at every inspection we hand out a
8 Business Customer Bill of Rights that directs an
9 owner or a restaurant operator to relay any concerns
10 to a central source; I think the Mayor's Office
11 manages it and then transmits those to us. In
12 addition, every... for as long as I know, every
13 inspection report lists a telephone number where
14 restaurant operators can call with any concerns.

15 So we're already managed these
16 historically and the way we manage it basically is we
17 evaluate the concern; if it's about attitude we meet
18 our staff... our supervisors meet with the staff; if
19 it's about a specific inspection finding we will take
20 a look at it; we have a tribunal that evaluates those
21 things... [interpose]

22 CHAIRPERSON ARROYO: Well let... let's
23 focus... let's focus it to personnel actions, alright.

24 DAN KASS: Uhm-hm.
25

1
2 CHAIRPERSON ARROYO: and then the second
3 part of the question is; is the union involved in
4 helping tailor how those training sessions can be
5 better serving our employees?

6 DAN KASS: I'm sorry, do...

7 CHAIRPERSON ARROYO: The union that
8 represents the staff... [interpose]

9 DAN KASS: Hang... hang on one second.
10 The... while we're open to any and all suggestions
11 about how we go about, you know, training our
12 employees from any source, we don't specifically
13 involve their union in the training itself.

14 CHAIRPERSON ARROYO: That's unfortunate;
15 we can always learn something from discussions. Okay
16 Council Member, I'm sorry.

17 COUNCIL MEMBER ROSE: Could you tell us
18 if in fact... since you have that process in place
19 where an owner could express their concern about how
20 the inspection was handled and they can file a
21 complaint; is that complaint considered at the same
22 time that those fines are adjudicated or are they two
23 separate situations?

24 DAN KASS: The adjudication of penalties
25 is now entirely separate from the Department, so it's

1
2 not considered. Now that said, if a restaurant owner
3 has a complaint to lodge, I'm sure they'd bring that
4 before the OATH Tribunal Hearing Officer to, you
5 know, introduce it into whatever the case they're
6 trying to make. But no, we separate those functions.

7 COUNCIL MEMBER ROSE: So the violation
8 wouldn't be... that... that... the conduct of the inspector
9 or the fact that they feel that there were
10 disparities would not be considered at the time of
11 the OATH meeting?

12 DAN KASS: The... the findings of an
13 inspection are considered findings and we...
14 [interpose]

15 COUNCIL MEMBER ROSE: Exactly.

16 DAN KASS: and we don't... you know, those
17 basically are transmitted automatically in a Notice
18 of Violation to the Office of Administrative Tribunal
19 and Hearings and while we will on occasion defend
20 those findings at a hearing, either through an
21 inspector being present or whenever an inspector is
22 asked to be present they will be; we don't intervene
23 specifically because of a complaint.

24 But I should say that we... you know we... as
25 I said, we conducted just over 70,000 inspections

1
2 last year through the Mayor's Office complaint system
3 from the Business Customer Bill of Rights, which is
4 very similar to what we will now agree and codify in
5 and inspection code of conduct we receive very, very
6 few complaints and... and... [interpose]

7 COUNCIL MEMBER ROSE: My last question
8 is; if through the ombudsman's office an inspector
9 receives numerous complaints will there at any time,
10 will it be considered, in terms of looking at this
11 particular inspector, the quality of the inspections,
12 the objectivity of this inspector?

13 DAN KASS: Yes, of course it would.

14 COUNCIL MEMBER ROSE: And could it result
15 to the removal of an inspector from, you know, a
16 particular... grading a particular establishment?

17 DAN KASS: We... we for the most part don't
18 need to be concerned about that because we already
19 have a system in place where an inspector that
20 inspects a particular establishment will not return
21 to that establishment for a subsequent inspection,
22 but it will influence how we deploy that person and
23 on occasion we will bring them back from the field
24 and do additional education before they're allowed
25 back; we will pair them with a supervisor for

1
2 inspections going forward to make sure that things
3 are going okay.

4 COUNCIL MEMBER ROSE: I'm sorry, Madame
5 Chair, just one more. I had also been told by a
6 number of my businesses that if the business owner
7 has a passionate discussion with an inspector about
8 the violation, is that... is that a cause for
9 additional violation?

10 DAN KASS: No, we don't... we don't issue a
11 violation for passion. On occasion we issue a
12 violation for obstruction, but that's not because of
13 an emotional response, that's because on some
14 occasions our inspectors have been chased, a knife
15 has been brandished against them, they've been barred
16 from entering or they've been locked inside; that's
17 when we issue a violation.

18 CHAIRPERSON ARROYO: And the violation is
19 for what?

20 DAN KASS: It's referred to as an
21 obstruction violation; that means preventing the
22 Department from carrying out its activity.

23 CHAIRPERSON ARROYO: How many points does
24 that get you?

25 DAN KASS: It's not scored.

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CHAIRPERSON ARROYO: It's not scored?

DAN KASS: No.

COUNCIL MEMBER ROSE: Okay. Council Member Van Bramer.

COUNCIL MEMBER VAN BRAMER: Thank you very much Madame Chair. And you know, I think even the most generous interpretation of what's happened over the last few years of fines, that this whole process became excessive and unnecessarily punitive and Council Member Vallone and I disagree on most things, but this is one thing where we couldn't agree more and I'd like to think that the example that he just brought up and so many of the others that have been brought to my attention by my restaurant owners in my district could be addressed with our consultative and inspection process, particularly as in that case where there was a new diner; he described it as a new diner and so the new restaurant owner can inspect, you guys can come in and you can say oh no, actually the coffee machine has to go this way and you know, you know we're gonna come back whenever we come back and it's gotta be that right way because if you don't, then it's a \$500 fine; whatever it is.

1
2 So how will you let everybody know... how
3 will you let everybody know about this consultative
4 inspection program, because the new restaurant owners
5 may not know that it exists, may not know how to ask
6 for it and even existing restaurant owners may not
7 know that they can ask for this, so it will only be
8 successful and useful in not driving small business
9 owners crazy if they can avail themselves of the
10 program.

11 DAN KASS: So thank you. But before I
12 respond to that question I made an error; when we
13 issue an interference or an obstruction order it is
14 scored, so I apologize for that. Uhm the..
15 [interpose]

16 CHAIRPERSON ARROYO: What are the points?

17 DAN KASS: It's a 28-point violation if
18 it's sustained.

19 CHAIRPERSON ARROYO: So you fail right
20 there?

21 DAN KASS: Yes, as well you should if
22 that's... if that's what happens. Now those aren't
23 that frequent, but it's a... yes.

24 Now to your question Councilman, so we
25 also are excited about offering this consultative

1
2 program and the way we'll reach out to restaurants
3 will be different depending on whether they're start-
4 up or whether they're existing.

5 For start-up restaurants the City has now
6 launched a new licensing and permitting application,
7 it's called ACELA; Consumer Affairs is under contract
8 or MOU with us to basically process applications
9 online, initial applications online or at a window;
10 they will be informed in the application materials
11 and at the window about the opportunity and they can
12 opt in at the time of their application for that. So
13 it'll be part of the overall outreach effort to
14 restaurants as they begin startup or turnkey
15 operations and it'll be available at the time of the
16 application itself, both online; that's gonna take us
17 some time to manage because that involves IT systems,
18 changes, but that's the principal means by which new
19 restaurants and of course the restaurant associations
20 and... will learn about this as well... [interpose]

21 COUNCIL MEMBER VAN BRAMER: It's gonna
22 ask you to work with the industry, obviously.

23 DAN KASS: We... we... [crosstalk]

24 COUNCIL MEMBER VAN BRAMER: Actually I've
25 never opened a restaurant myself, but I'm guessing

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2 that when you're filling out all that paperwork
3 you've got a million things on your mind; you could
4 potentially miss something like that.

5 DAN KASS: That... that's true. Now the
6 City also has a program called The New Business
7 Acceleration Team specifically for new restaurants
8 and so some proportion of those actually are assisted
9 in fairly significant ways to accelerate the City's
10 permitting process.

11 For existing restaurants we will notify
12 them through typical ways that we notify them of rule
13 changes or Health Code changes or modifications or...
14 and so there are variety of ways.

15 First we have a newsletter that will...
16 gets mailed to every restaurant called Food Matters;
17 it'll be described in there. There will be a direct
18 mailing to all existing restaurants about the program
19 and explaining what it is.

20 We will be issuing rules in order to
21 clarify how to apply, what the fee is; what the
22 procedure is and once those are done, everyone will
23 get a notification about that.

24 COUNCIL MEMBER VAN BRAMER: So that
25 perfectly dovetails into where I was going next;

1
2 let's talk about the fees. Obviously one of the
3 reasons why I felt this particular piece was so
4 important is because some restaurants had gone to
5 consultants who charge exorbitant fees and that was
6 defeating the very purpose of keeping more money in
7 the pockets of small business owners.

8 So what would the cost, even if you just
9 have ballpark figures for existing restaurants and
10 the hopefully very low cost for small businesses,
11 small restaurants who are just beginning?

12 DAN KASS: So that's the plan; we'll be
13 publishing those fees and proposed rules; we're in
14 discussions with the Office of Management and Budget;
15 if I had to ballpark it... well first, let me just say
16 that the cost of that inspection will in fact be
17 subsidized by the City, so the cost will... to the
18 owner will be lower than the cost to the City. But
19 we expect the fee for existing restaurants to be
20 somewhere in the neighborhood of \$400 and for new
21 restaurants somewhere in the vicinity of \$100.

22 COUNCIL MEMBER VAN BRAMER: And \$100
23 sounds better than the \$400, that's for sure. But...
24 and when will you make that final determination?
25

1
2 DAN KASS: Well it'll be in rule-making,
3 so we hope to publish rules shortly describing this
4 and then there'll be a 30-day comment period and then
5 we'll finalize it.

6 COUNCIL MEMBER VAN BRAMER: Okay. And
7 there'll be a public comment period for restaurant
8 owners?

9 DAN KASS: Of course.

10 COUNCIL MEMBER VAN BRAMER: Yeah, which
11 is very uh, uh... [interpose]

12 CHAIRPERSON ARROYO: Council Member... so
13 that sounds like not a whole lot of money, but what
14 are restaurants paying for a consultant to do the
15 same thing; do you know?

16 DAN KASS: Well, I don't... I don't know
17 and I think there's a wide variety of fees. Some
18 restaurants, large operations, ones that are part of
19 chains, they have... they have personnel available to
20 them, either through their chains or through their
21 parent corporations who do food safety full-time.
22 And so some of them are all... some of them have this
23 capacity in-house. Others are paying consultants;
24 I've seen fees out there ranging from, you know what
25 we're contemplating charging to much higher. The

1
2 reality is some restaurants need different levels of
3 intervention and consultants provide a variety of
4 different kinds of services. We'll provide the
5 service of basically showing what we inspect for and
6 educating them about how to make improvements where
7 they're needed. Some consultants do much more than
8 that; they set up brand new systems for them, they do
9 management consulting, they do ongoing training, they
10 do observational work over a period of time to see
11 where it trips up. So I don't know that they're
12 entirely comparable.

13 COUNCIL MEMBER VAN BRAMER: Well I mean I
14 agree with Chair Arroyo, \$400 sounds like a lot and
15 if... if the point of this was to reduce costs and not
16 force restaurant owners to go to consultants, then we
17 would wanna make sure that this fee is substantial
18 lower than many consultant fees, no?

19 DAN KASS: Well I think the main point of
20 comparison should be what's... what's... what's the
21 benefit to a restaurant and the benefit will be
22 education in a non-punitive way that allows them,
23 going forward, to pass inspections and pass them
24 well; meaning that the benefit will be in future
25 savings on fines; ideally less oversight, meaning

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2 less frequent inspection frequencies, so I think
3 there's a... I think the savings could be fairly
4 substantial to restaurants and we hope that those who
5 avail themselves of this are the ones that need that
6 help the most.

7 COUNCIL MEMBER VAN BRAMER: The ultimate
8 goal is to put more money into the pockets of these
9 restaurant owners and I... I uh... [interpose]

10 DAN KASS: Well I... I think... I think that...
11 that is a... that is an important goal, but the purpose
12 of the inspection is to actually improve food
13 handling practices at restaurants... [interpose]

14 COUNCIL MEMBER VAN BRAMER: And no one's
15 taking away the inspections.

16 DAN KASS: at restaurants that have had
17 historic problems, right, so that's... that's the idea;
18 this is... these... we... we think this will largely be
19 taken up by restaurants that over repeated cycles or
20 just can't get themselves out of a B cycle or a two
21 to three times a year cycle and that is what we
22 really hope will happen.

23 COUNCIL MEMBER VAN BRAMER: So it's not
24 just for restaurants that have serious violations

1 and... and who have substantial problems, right...

2 [interpose]

3 DAN KASS: No...

4 COUNCIL MEMBER VAN BRAMER: for all
5 restaurants... [interpose]

6 DAN KASS: it's... potentially...

7 COUNCIL MEMBER VAN BRAMER: and... and
8 every restaurant that I have ever been in where I
9 have spoken with the owners... and these are good
10 restaurants... and many of them have A's, but they have
11 had to like lift boulders, right, to get A's and we
12 all know what they have to do to get the A, right; we
13 don't have to like go over everything we've done and
14 all these hearings like that brought us to this
15 point, so everyone wants safe, clean restaurants;
16 restaurant owners want that, you want that; we want
17 that. But we want a process that doesn't take their
18 money away from them in the process of getting to
19 that point and so it is about money, because if they
20 don't have the money they can't stay in business,
21 they can't drive the economy, they can't hire people,
22 yeah, yeah. So... so it is about money; I mean we all
23 at the end of the day want and need safe... so... so the
24 cost of the inspection is very important because too
25

1
2 many of these restaurants have gone to these
3 consultants anyway because they figure, well if I'm
4 gonna get screwed at the beginning I'm gonna get
5 screwed at the end; at some point I'm gettin' screwed
6 here, right, so I'm gonna figure out what I need to
7 do with this inspection.

8 So I think the point is to streamline,
9 make it easier and make it affordable so that we're
10 not forcing them to do things that they shouldn't
11 have to do that are taking away from their central
12 focus, which of course is to run a restaurant and
13 make money, right, I mean that is what they're trying
14 to do here and make a living for their families and
15 contribute to our local economy.

16 So all of that, just to say, I think that
17 the cost does matter and I think bringing it below
18 the cost of what they might be paying for a private
19 enterprise is important and is in everyone's interest
20 and I look forward to working more on this to make
21 sure that we can get to a price that makes sense and
22 you know, have the industry chime in on this;
23 obviously they're here in the audience, and you know,
24 I won't go any further on it; I won't beat the point,
25 but you know, it is... it is a city-wide issue and it

1
2 is so rare that I have experienced on the Council
3 that when a bunch of council members get together and
4 we start to talk about this, every single person,
5 whether you represent a wealthy district or a less
6 wealthy district; whether you're in Manhattan or in
7 outer boroughs, like myself, every single person has
8 the same exact story and then when you sit and you
9 talk with your restaurant owners, they are so, so
10 upset and I'm grateful, A, that you didn't say
11 anything bad about my legislation in your testimony,
12 but... and I'm grateful that we're here to this point
13 because of the leadership of Chair Arroyo and so many
14 others, but we're here because restaurant owners
15 spoke up, right, and they were outraged by what was
16 happening and they drove this, right, and that's the
17 way democracy works, right, sort of a grassroots
18 struggle and I just want this piece, 1146 A to be as
19 meaningful as possible and as helpful as possible, to
20 make sure that these folks can succeed, 'cause as you
21 know, and I'm sure you agree, they pour their heart
22 and soul, their lives into this and it's really hard
23 to make it. So with that I just wanna say thank you
24 to everyone and we'll continue to make sure that 1146
25 A is as meaningful as possible.

1
2 DAN KASS: Thank you and we'll work with
3 you. Thanks.

4 CHAIRPERSON ARROYO: Thank you Council
5 Member. We've been joined by Council Member Mendez.
6 Commission, before I go to Council Member Reyna, I
7 wanna go back to the discussion of obstruction, the
8 penalty of the violation. Is that clearly defined
9 for inspectors... is it... do we have degrees, levels; is
10 this subjective; is it the individual inspector that
11 decides this individual not being passionate; they're
12 being obstruct... an obstructionist and the implication
13 of the consequence is severe.

14 DAN KASS: Yeah. So before an
15 obstruction violation can be written to a restaurant
16 they must call in to a supervisor first.

17 CHAIRPERSON ARROYO: Okay.

18 DAN KASS: Sometimes they're not issued
19 because someone is, you know maybe emotional or maybe
20 passionate, but that doesn't constitute obstruction.

21 CHAIRPERSON ARROYO: Yeah.

22 DAN KASS: On occasion they call in and
23 they need to vacate because they're endangered. So
24 there is a check on the issuance of that violation
25 and I don't think that... I don't think we have a

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2 problem with subjectivity on this one. I hear about
3 virtually all of them, so at a very senior level we
4 become aware of these things.

5 CHAIRPERSON ARROYO: And the subject of
6 obstruction; is that part of the training that food
7 workers get and owners when they get a license, what...
8 how does that subject get addressed by those who are
9 in control at the restaurant?

10 DAN KASS: So I'm told that yes it is
11 part of our health academy; there's a presentation on
12 it about how to work with inspectors at the time of
13 an inspection; it's certainly part of our training
14 with employees; we also... we're the first to do a
15 customer service training in accordance with, you
16 know, legislation of the City Council and work with
17 the Mayor's Office and in fact our training program
18 has become the model for other agencies around some
19 of these issues and we discuss it there too; we
20 discuss how to diffuse a tense situation, how to
21 avoid them, but we also do discuss how to call us
22 when something's wrong.

23 CHAIRPERSON ARROYO: Okay. And I would
24 imagine we include that in the consultative
25 inspection process; are you thinking about that?

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2 DAN KASS: Well I haven't thought about
3 it; let us think about it. I mean the consultative
4 inspection will be definition be a cooperative one..
5 [interpose]

6 CHAIRPERSON ARROYO: Right.

7 DAN KASS: it'll be pre-scheduled, we'll
8 insist that an owner or very responsible person be
9 there, so I don't anticipate that we're gonna have
10 problems at that inspection; we certainly will talk
11 about what's appropriate.

12 CHAIRPERSON ARROYO: Thank you. Council
13 Member Reyna.

14 COUNCIL MEMBER REYNA: Thank you Chair
15 Arroyo, I just wanted to take an opportunity to thank
16 you for not mentioning Intro 1141 in opposition; I'm
17 assuming that you're in support of; I didn't hear you
18 refer to it as far as this particular law..
19 introduction of law, 1141; it's the inspection law..
20 [interpose]

21 DAN KASS: I'm sorry; I didn't describe
22 it by number, because we didn't have an intro number...

23 COUNCIL MEMBER REYNA: Okay.

24 DAN KASS: but I did mention that we
25 support it.

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2 COUNCIL MEMBER REYNA: Okay, fantastic.
3 And I want to appreciate the support of making sure
4 that the transparency level allows us to assist in
5 the communication level that you just described that
6 happens within your own training in the academy and
7 making sure that we are able to understand where
8 we're making strides as far as the inspections are
9 concerned and letter-grading system. Although we
10 disagree, it is very important that we see to it that
11 the transparency of the information is available.

12 DAN KASS: We agree; I mean there is data
13 currently updated routinely on the open data system
14 for the City that includes many of the variables that
15 this dataset described in your bill would include,
16 but your bill, appropriately, improves that data
17 dramatically by allowing any user to characterize the
18 type of inspection where it falls into a cycle,
19 adding financial penalties, that sort of thing, so we
20 appreciate your thought and we appreciate working
21 with your staff over the last year in helping to
22 clarify the intention of that, so thanks.

23 COUNCIL MEMBER REYNA: I appreciate that
24 Commissioner and I wanted to just take a moment to
25 ask you, because part of the confusion I have is to

1
2 better understand what is... where do we differentiate
3 non-food safety violations from food safety
4 violations and so I can't... there isn't a clear
5 distinction in your information as to how many cases
6 are non-food safety violations versus what would be
7 the percentage, so in your testimony you referred to
8 what was fewer than 30 percent of restaurants went
9 from a C score on the initial inspection to an A and
10 I can appreciate that improvement, but I'm just... in
11 the overall discussion of inspection, I still don't
12 understand what is the percentage of restaurants
13 earning a B, C or a pending grade or F where there's
14 a distinction between non-safety and safety
15 violations.

16 DAN KASS: So I can tell you the
17 percentage on each of the grades; there is no F, but
18 they... but 86 percent are posting an A...

19 COUNCIL MEMBER REYNA: Uhm-hm.

20 DAN KASS: and if we include the grade
21 pendings, we're talking about the final resolution of
22 the A, of the grade rather, 11 percent a B and 4
23 percent a C. So that's the overall grade
24 distribution across the City.

25

1
2 I guess the point I was trying to make
3 was that the principal factors that differentiate
4 those in terms of the violation picture that they
5 have relate very specifically to really a handful of
6 principal violations that have direct association
7 with food handling practice or food safety and that
8 in research nationally and based on the model food
9 code by the Food and Drug Administration are shown to
10 be related mechanistically to the likelihood of
11 foodborne illness...

12 COUNCIL MEMBER REYNA: Uhm-hm.

13 DAN KASS: or food safety problems.

14 COUNCIL MEMBER REYNA: Uhm-hm.

15 DAN KASS: Does that answer your
16 question?

17 COUNCIL MEMBER REYNA: I think you're
18 trying to and I feel like it doesn't. I'll give you
19 an example. So in my tour of my district one of the
20 restaurants had expressed; they received a violation
21 that put them above the 15 point and they received an
22 A and this made them a B; the violation was; the
23 bathroom did not have at that moment paper towels. I
24 would consider that that would be a non-food safety
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2 violation because it's something that can be
3 corrected immediately?

4 DAN KASS: So I... again I don't know the
5 specific case...

6 COUNCIL MEMBER REYNA: Uhm-hm.

7 DAN KASS: but if it as you described, I
8 would argue that they did not receive an A and in
9 fact, the absence of paper towels in the bathroom...
10 well it may... if there is a chance that it happened at
11 that instant that we happened to be there...

12 COUNCIL MEMBER REYNA: Uhm-hm.

13 DAN KASS: our best indication is that it
14 wasn't there for a period of time...

15 COUNCIL MEMBER REYNA: Uhm-hm.

16 DAN KASS: prior to the inspection. And
17 that poses a very dramatic risk, actually, because
18 absent paper towels or some place to dry hands in a
19 bathroom for a food worker, that means they're gonna
20 be wiping them on the exact same clothing that is
21 contaminated and pose a risk of transmission.

22 So while it sounds small and I appreciate
23 you know the kind of... the anecdote and the fact that
24 it seems so minor to sort of tilt someone from you
25 know an A range to a B range, in fact it matters

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2 quite dramatically and hand washing, basic sanitation
3 are so fundamental...

4 COUNCIL MEMBER REYNA: Uhm-hm.

5 DAN KASS: to food safety. You know, as
6 I said earlier, the hepatitis outbreak that
7 unfortunately happened and we're responding to in the
8 Bronx occurred in all likelihood because of a hand
9 washing problem.

10 Again, there may be food workers out
11 there that are sick at any given time, but the fact
12 that they practice proper hygiene, the fact that they
13 wash hands thoroughly, that they dry them...

14 COUNCIL MEMBER REYNA: Uhm-hm.

15 DAN KASS: is what makes the difference
16 and so if a restaurant isn't properly attending to
17 its restroom, I would argue that it's quite
18 significant.

19 COUNCIL MEMBER REYNA: Uhm-hm.

20 DAN KASS: that we... you know I was passed
21 a note to say that we look at violations in bathrooms
22 to look at, you know the availability of water, soap
23 and a drying device.

24

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2 COUNCIL MEMBER REYNA: Right. And that
3 would be considered a food safety violation or a non-
4 food safety violation?

5 DAN KASS: We would consider that a
6 public health violation, which is part of the overall
7 set of violations that... or conditions that we
8 evaluate.

9 COUNCIL MEMBER REYNA: And is there a
10 direct link between what would be salmonella cases,
11 as referred to before in your discussion with Council
12 Member Koo, to specific restaurants that have had a
13 link to those types of cases?

14 DAN KASS: I'm sorry; can you try that
15 one more time; I'm not...

16 COUNCIL MEMBER REYNA: So salmonella
17 cases, as reported by the Department of Health...

18 DAN KASS: Oh, I see, okay.

19 COUNCIL MEMBER REYNA: and the collection
20 of data...

21 DAN KASS: Yeah, we don't... we receive
22 salmonella reports from laboratories and from
23 physicians... [interpose]

24 COUNCIL MEMBER REYNA: Uhm-hm.
25

1
2 DAN KASS: we don't receive any interview
3 information or anything like that about where they
4 may have dined or what occurred. Now we do follow up
5 with people and on occasion we will try to ascertain,
6 but because by the time we got it we don't
7 necessarily know where they could've been exposed; on
8 a case by case basis we can't know this. We do
9 investigate reports of foodborne illness outbreaks,
10 so when we receive alerts or calls or of multiple
11 people sick over a narrow window of time from a
12 particular restaurant, we will go and investigate and
13 we do evaluate the infectivity of staff and we
14 evaluate conditions of the restaurant. That's how
15 for example we found out about the hepatitis A
16 outbreak.

17 COUNCIL MEMBER REYNA: And how often does
18 that occur in relationship to a restaurant?

19 DAN KASS: To a single restaurant?

20 COUNCIL MEMBER REYNA: Uhm-hm.

21 DAN KASS: It may occur never. We
22 investigate a relatively few number of foodborne
23 outbreaks a year; the number of foodborne illnesses
24 that are attributable to dining out is probably very
25

1
2 large, but we can't link them to individual
3 restaurants.

4 COUNCIL MEMBER REYNA: And I ask only
5 because, you know, when we refer to compliance,
6 right, we want to reduce what would be the exposure
7 of any type of foodborne illness and public health
8 issues and you know there's an opportunity to be able
9 to make sure that we're not targeting small
10 businesses in the restaurant industry just for the
11 sake of the revenue-generating aspect of this. And
12 over the course of the last few years there has been
13 an increase in projected revenues that are expected
14 to be collected from the small business community and
15 therefore one raises an eyebrow and questions whether
16 or not we're reaching compliance or are we just
17 targeting this industry for revenues. And so I
18 wanted to understand whether or not, when we speak of
19 salmonella; is it referred to a specific restaurant
20 and can we track that and is that where the most
21 concern is and that is why we project these types of
22 revenues, but you just referred to the fact that
23 never can salmonella just be connected to one
24 restaurant.

1
2 DAN KASS: One of the backdrops for why
3 we felt in 2010 the need to increase supervision of
4 restaurants that have demonstrated less than ideal
5 sanitary practices on inspection was the fact that
6 there is a significant burden of foodborne illness in
7 New York City. Our hope is that that declines over
8 time; not all of it is attributable to dining out...

9 COUNCIL MEMBER REYNA: Uhm-hm.

10 DAN KASS: the national estimate suggests
11 that, you know as much as half of it may be, so we're
12 hopeful that we'll see an overall decline; will we be
13 able to attribute it specifically to an individual
14 set of restaurants? No. Well that's the way we do..
15 typically we do lots of health surveillance that way;
16 we look at a population level, but we know the
17 overall sort of picture of this. New Yorkers eat out
18 a lot; they eat more often than other people. We
19 know that there's... we have an estimate for the number
20 of illnesses caused each year that require
21 hospitalization or emergency room visits for
22 illnesses that are likely caused by food; some of
23 them are infectious, some of them are not.

24 We'll look over time to see how that
25 changes, but what we are looking at really to

1
2 evaluate the improvements in compliance is what's
3 happening sort of at the restaurant; what's happening
4 to specific violations; are there fewer mice in New
5 York City than there used to be? Yes. Is there
6 better hand washing in restaurants, as far as we can
7 tell on inspection? Yes. Are foods being held
8 better to temperature and being properly labeled for
9 when they need to be discarded or brought back into
10 cooling? Yes. Are more workers trained in
11 restaurants and present at the time of an inspection?
12 Yes. And for many of these, that's how we really
13 want to evaluate whether food safety is being
14 practiced in an improved way. And the fines is
15 simply a reflection of the frequency with which we
16 find the answers to be no on those questions and that
17 fact that it's gone down quite dramatically is a sign
18 that the industry overall is responding to the
19 incentives and some of them financial, but not all of
20 them, to by managing better, by practicing better, by
21 training better and ultimately by receiving fewer
22 violations that are subject to penalties.

23 I do wanna say, I don't think the Council
24 should sell restaurants short; the decline in revenue
25 is really because of their changes; it's because

1
2 they've cleaned up and we couldn't be happier that
3 that's happening.

4 COUNCIL MEMBER REYNA: Well you know, I
5 appreciate your passion behind... you know, your
6 comments as far as how much better the industry has
7 gotten, but there's certainly a cost being paid that
8 is exorbitant and they're screaming, you know because
9 it's leading towards a decline of what would be their
10 prospects of holding onto their business and I'm not
11 saying that the compliance is not as important or
12 more so, but we have to reach compliance where it's
13 not always punitive and I wanted to ask; how many of
14 these fines are dismissed at adjudication, if any?

15 DAN KASS: Well fines are only levied at
16 adjudication, so we don't... under the current system
17 we don't determine the penalty; an administrative law
18 judge does at the Office of Administrative Tribunal
19 and Hearings, so fines are basically levied based on
20 what they find. We... we... [interpose]

21 COUNCIL MEMBER REYNA: It's my
22 understanding...

23 DAN KASS: do know that are... that they do
24 dismiss... they do dismiss violations and so scores may
25 improve on hearings, but I just wanna remind everyone

1
2 that we also will be publishing rules shortly that
3 modify the system. We will be fixing penalties and
4 they'll be subject to rule-making so that they're no
5 longer discretionary; if a violation is upheld
6 there'll be a penalty and it's predictable and we'll
7 know what it is. We're going to be reducing
8 substantially the fines that we had previously
9 recommended but couldn't mandate. For the vast
10 majority of penalties out there, over 60 percent of
11 the violations will be fined at the minimum amount.
12 We expect that this system will be both more
13 predictable, more transparent, more equitable and
14 ultimately will reduce penalties by 15 percent or
15 more, from today.

16 COUNCIL MEMBER REYNA: Do you look at
17 what has been dismissed from the adjudication
18 process?

19 DAN KASS: We do.

20 COUNCIL MEMBER REYNA: Do you have that
21 information for the Committee and myself who's not on
22 the Committee to be able to review?

23 DAN KASS: I will go back and see what we
24 can... see what we have, yes.

25

1
2 COUNCIL MEMBER REYNA: That would be very
3 interesting and to my knowledge I've yet to see an
4 adjudication process where fines are dismissed...

5 [interpose]

6 DAN KASS: Oh, that definitely occurs.

7 COUNCIL MEMBER REYNA: Okay. And it
8 would be helpful if we see that data. And my last
9 question, and I thank the Chair for the time; the
10 tongs in a restaurant; are they supposed to be in
11 water... [interpose]

12 DAN KASS: I'm sorry...

13 COUNCIL MEMBER REYNA: or are they not
14 supposed to be in water?

15 DAN KASS: I'm sorry; missed the first
16 part of your question.

17 COUNCIL MEMBER REYNA: Tongs...

18 DAN KASS: Tongs, are tongs...

19 COUNCIL MEMBER REYNA: Uhm-hm, salad
20 tongs or...

21 DAN KASS: I'm gonna turn to...

22 COUNCIL MEMBER REYNA: bacon tongs...

23 DAN KASS: Robert Edman to answer that
24 question. Aren't you gonna introduce yourself?

1
2 ROBERT EDMAN: Good afternoon, Robert
3 Edman; I'm the Assistant Commissioner for Bureau of
4 Food Safety & Community Sanitation. Could you repeat
5 the question, please?

6 COUNCIL MEMBER REYNA: Tongs... [interpose]

7 ROBERT EDMAN: Yeah.

8 COUNCIL MEMBER REYNA: in a restaurant;
9 should they be in water or out of water?

10 ROBERT EDMAN: You know that's a very
11 broad question, just tongs in general; it all depends
12 on what you might be doing with them. But food
13 service utensils should be either kept clean and
14 stored in a sanitary way or if they're in use you may
15 have them in the particular food that you're using
16 them to serve with the handle out so that you
17 wouldn't be touching the food with your hands or you
18 can keep it in what's called a dipper well, which is
19 a small container that's pronged and has running
20 water. Those are your choices.

21 COUNCIL MEMBER REYNA: So I uh...

22 [interpose]

23 CHAIRPERSON ARROYO: I'm sorry Council
24 Member. So it should not be in standing water?

25 ROBERT EDMAN: That's correct.

1
2 COUNCIL MEMBER REYNA: So I had a
3 restaurant and a store and you learn something every
4 day when you continue to visit these restaurants and
5 I should invite you with me to come and... so you could
6 hear for yourself; one inspector had a visit,
7 expressed tongs should be in water and when they
8 followed those instructions a following visit to the
9 same restaurant the inspector was adamant in
10 mentioning that the tongs should not be in water.
11 And I can see where the confusion lies, having heard
12 this explanation; you have choices, but the choices
13 are real life situations where a tong, whether it's
14 in food or not will lead you to the next step as to
15 whether or not it should be in water and it shouldn't
16 be still water; it should be in a container. In this
17 type of case, you know how does a restaurant, small
18 business owner manage what would be this type of rule
19 or is this an example of a rule that needs to be
20 modified so that there's an expectation that's more
21 concise, clearer and does not bring you to this very
22 subjective way to make sense out of the rule and
23 issue a fine at that moment to the small business
24 owner?

1
2 ROBERT EDMAN: Well you know, I have to
3 say that there are two players in this; there's the
4 inspector and there's a restaurateur and they each
5 have a responsibility. The inspector to be familiar
6 with his regulations and what he should be enforcing
7 and how it should be enforced and the restaurateur
8 also has a responsibility to be familiar with the
9 requirements of operating his business, which are
10 clearly stated in the regulations and as mentioned by
11 the Deputy Commissioner, almost everything that we do
12 is posted online, it's mailed to restaurateurs, it's
13 made available to them; it's taught to inspectors in
14 the training academy; it's taught to operators at
15 food protection course, so this information is out
16 there and neither side need to advocate their
17 responsibilities.

18 COUNCIL MEMBER REYNA: Again, there was
19 an inspection, two different inspectors; two
20 different instructions and so it doesn't matter where
21 the information lies; it seems to be a subjective
22 implication of whether or not a fine should be issued
23 or how to follow the regulation.

24

25

1
2 DAN KASS: Well I would... first I would
3 say we'd be happy to follow up with this specific
4 example... [interpose]

5 COUNCIL MEMBER REYNA: Uhm-hm.

6 DAN KASS: but treating it as an exemplar
7 rather than being a circumstance, it's clearly our
8 job to communicate adequately, clearly what the
9 requirements are; where there's a lapse in that we
10 wanna correct it.

11 COUNCIL MEMBER REYNA: Uhm-hm.

12 DAN KASS: and we do over 70,000
13 inspections a year and not all of them are gonna go
14 perfect. We have some stopgaps in place to manage it
15 and we wanna learn from every one of these things, so
16 in that instance, you know we would... you know, as we
17 become aware of them, it would become part of what we
18 say to our inspectors at the bi-weekly meetings; we
19 would clarify with them what may be mistaken
20 impressions... [interpose]

21 COUNCIL MEMBER REYNA: Uhm-hm.

22 DAN KASS: on the part of some of them;
23 we would remind them what the regulation is. Where
24 we think there's broad confusion, which happens on
25 occasion; certainly that was the case with the new

1
2 food temperature rules, we would issue specific
3 directives in writing and we would do a fact sheet to
4 the industry, which we did on that instance. So
5 thanks for bringing the example to us... [interpose]

6 COUNCIL MEMBER REYNA: Uhm-hm.

7 DAN KASS: and you know, we'll...

8 [interpose]

9 CHAIRPERSON ARROYO: and Council Member,
10 if I may, in the last hearing on one of the greatest
11 concern that we heard and what we hear out in the
12 community is that certain regulations are not clear
13 or they're unpractical and let's talk about sushi and
14 cheese and temperature; those were the examples that
15 were given by restaurant owners regarding the
16 regulation and how impractical in some cases it is
17 given the nature of the food establishment or the
18 type of food that's being served. Sushi chefs prefer
19 to use their bare hands and it's part of the art of
20 preparing that food; have we taken any steps in-
21 between this package of legislation and the
22 conversation we've had over the last year regarding
23 some modifications?

24 DAN KASS: So let me say that one of the
25 bills in this package will be an advisory committee

1
2 and these are the kinds of subjects that really
3 should be discussed in that committee, where we have
4 both practitioners and food safety experts who can
5 sort of talk about the relative risks and benefits of
6 a variety of approaches and so we would, you know
7 encourage this kind of thing to be discussed there.

8 We know that there's, you know there are
9 stories out there about cheese and the fact that we...
10 their inspectional program prohibits cheese from
11 being served at optimal temperature for taste and
12 we've clarified with the industry and just mentioned
13 the food... using time as a public health control for
14 temperature control, a fact sheet that's been mailed
15 to every single restaurant in the City; it clarifies
16 that in fact we do not issue violations for cheese
17 out of temperature; most hard cheeses don't have to
18 be stored in cooling at all; soft ones that have kind
19 of sufficient sugars in them and others to contribute
20 to bacterial growth do, but the regulations are more
21 than adequate to allow them to be served at optimal
22 temperatures, so that's a point of clarification.

23 With regard to sushi, again, I think a
24 committee can certainly take this up. But I will tell
25 you that all over the world sushi chefs use gloves

1
2 and in the case that we described earlier about the
3 risk of foodborne illness, bare hand contact is a
4 critical pathway for transmitting illness, even for
5 people who aren't yet sick. And so these are there
6 to basically have all sorts of opportunities to
7 prevent the transmission of things that otherwise
8 people might well have no awareness that they have
9 the chance of doing.

10 So we'll take it up, but I have yet to
11 see a sushi operation fail at delivering quality and
12 satisfactory product while still using gloves.

13 CHAIRPERSON ARROYO: So you have taken
14 steps to address the issue of the cheese and
15 temperature?

16 DAN KASS: Yep, for sure.

17 CHAIRPERSON ARROYO: Okay. Council
18 Member.

19 COUNCIL MEMBER REYNA: I just wanted to
20 thank the Department and you Chair for taking this
21 package of legislations and moving forward and we
22 look forward to the data on those specific statistics
23 regarding adjudications. Thank you.

24 DAN KASS: Thank you.
25

1
2 CHAIRPERSON ARROYO: Thank you. And I've
3 saved a couple of questions for last. I think the...
4 first let's go to my bill, Intro 1129 and in your
5 testimony you raise concerns about several provisions
6 of Intro 1119 and specifically that you did not think
7 the purpose of this office should involve the
8 withdrawal of violations prior to adjudication.

9 So I'm gonna remind you that at the last
10 hearing the agency testified that you have the power
11 to withdraw erroneous violations. At the hearing we
12 heard one such example involving a particular
13 restaurant, which I understand is one of the highest
14 regarded restaurants in the City; that if this
15 restaurant... other restaurants have similar complaints
16 they too should contact the Department of Health; all
17 this, the bill would do is codify what you testified
18 at the hearing last April 2012, I think it was,
19 March; it's almost a year-and-a-half later. So tell
20 me... [interpose]

21 DAN KASS: So...

22 CHAIRPERSON ARROYO: how that... how is the
23 bill different than what you expressed during the
24 hearing or the agency expressed during the hearing in
25 March of last year?

1
2 DAN KASS: We do in fact get complaints
3 or concerns and we in fact review our own inspection
4 findings and on occasion we find that they were
5 issued in error and in a way that so clearly, not a
6 matter of interpretation, but they were simply errors
7 and that does happen and we do withdraw violations
8 prior to them going to OATH, so a Notice of
9 Violations passed onto OATH for hearing we will
10 intervene and withdraw the Notice of Violation in its
11 entirety if it's dependant on that, with that one
12 problem, or the unique violation and we do do that.

13 What I think we're saying is that that
14 function is really part of the overall operation of
15 the agency... I mean, sorry, of the program and to sort
16 of specify a specific function in the ombuds office
17 where this occurs is concerning to us because were
18 the expectation to be that every time a restaurant
19 gets a violation they don't like that there's a
20 preliminary review prior to moving things to hearing;
21 that would concern us, it would interview with the
22 independent operation of OATH, it would raise an
23 expectation beyond what the role we think is
24 appropriate, so we're just concerned that we don't
25 want to create a second tier of review... [interpose]

1
2 CHAIRPERSON ARROYO: Okay. So... but
3 you're not... doesn't it set up the same level of
4 expectation for a restaurant owner, calling DOH and
5 asking for a review of what they believe is an
6 erroneous violation, so this office could not
7 function in the same capacity as what DOH would
8 function? There's... there doesn't seem to be a
9 conflict in my mind, so help me understand why I
10 should, as the prime sponsor of this bill agree with
11 you and recommend a modification.

12 DAN KASS: Give me a moment just to look
13 at the specific reference. So I think this is
14 somewhat nuance and I guess we'll be happy to talk
15 more... [crosstalk]

16 CHAIRPERSON ARROYO: I'm sorry; I didn't
17 understand that.

18 DAN KASS: It's somewhat nuance, meaning
19 I think I... you know, I think this is probably worth
20 some more thought on our part and in discussions...
21 [interpose]

22 CHAIRPERSON ARROYO: That's what I
23 thought.

24 DAN KASS: between now and the final
25 version of this bill; you know, to the extent we can

1
2 make clear that the violations under consideration
3 are based on fundamental errors as opposed to a
4 desire or interpretation, I think we can work this
5 out.

6 CHAIRPERSON ARROYO: I don't... believe me;
7 we don't wanna create anymore confusion in the
8 program, quite the contrary. Our goal here is to
9 clarify and make it more user friendly for everyone
10 concerned; I think we're gonna hear from the union
11 and their concern about the employees and how they
12 would be treated and the consequence to them as
13 employees if the, you know code of conduct is applied
14 in a way that could be more punitive than is intended
15 to be, that's not what we wanna set up here. So..
16 [interpose]

17 DAN KASS: Okay.

18 CHAIRPERSON ARROYO: I also want to point
19 out that in your testimony you also say nor should
20 the office take on supervisor and employee
21 performance review functions and that is not what
22 this bill seeks to accomplish, because supervision
23 and performance review are at the function of the
24 agency and the supervisors within, so I think the
25 language used for raising the concern about what we

1
2 would hope would be an opportunity to identify where
3 there might be a pattern of inconsistency; that the
4 Department can use that information to improve your
5 employee supervision; that is not what this bill
6 seeks to accomplish. So I think the language in your
7 testimony leads me to believe that you're not
8 understanding the purpose of the bill or whoever
9 reviewed this for you doesn't understand the purpose
10 of the bill. This is not intended to take the place
11 of direct supervision and the employee performance
12 process, review process that the agency has within
13 its structure.

14 DAN KASS: Well thank you for the
15 clarification then; that being the case, again we'll
16 continue the discussions and thanks for... [crosstalk]

17 CHAIRPERSON ARROYO: Okay. I appreciate
18 that; thank you. And I think one last question I... I...
19 the... December 31st is quickly approaching; have you
20 had thoughts and or will you be preparing some
21 recommendations on this program and some things
22 outside of this package of legislation that the next
23 administration should be looking towards to continue
24 to tweak and fine tune this process so that at the

25

1
2 end of the day restaurant owners don't cringe when
3 they see an inspector walk in the door?

4 DAN KASS: Well again, I wanna just end
5 by thanking the Council and its staff for working
6 with us over the last year on these; you know, many
7 of these reflect your or Council's collective
8 thinking about what might improve the relationships
9 among our inspection workforce and restaurants and
10 also the purpose and the goals of the program and
11 some of them reflect our own ideas and so we think
12 this is... that this package overall will go a long way
13 to making tweaks to the program that we think will
14 be, you know, met with both approval and change.

15 There are other things besides this
16 package of bills that we're working on, so as I
17 mentioned, we'll be writing rules associated with
18 creating fixed penalties that are specifically
19 designed both for transparency, predictability, but
20 also to reduce the overall total number of fines and
21 value of fines issued in the City; we will be issuing
22 rules for the purpose of the consultative program and
23 setting fees associated with that; we're making
24 modifications to our permitting and application
25 system to manage many of these changes; we'll be

1
2 making changes to the information technology systems
3 in order to manage much of what we've also talked
4 about. In addition, we will be eliminating penalties
5 for A's on initial inspections that are determined at
6 the tribunal and so that too requires additional
7 work. So I think we're gonna be busy for a little
8 bit of time.

9 CHAIRPERSON ARROYO: 'Kay. Well
10 Commissioner, thank you so much for your time; I know
11 we kept you here longer than you anticipated being
12 here probably, but this is a really important issue
13 to all of us and I wanna thank you and your staff for
14 the collaboration, because I know that Dan called me
15 at 11:30 one night and I'm sure that on your side of
16 City Hall that's saying effort was being put to what
17 I believe is a package of legislation that's gonna
18 help us right-side this process and hopefully in
19 another year we'll hear back from the restaurant
20 owners that what we did made sense and then we'll
21 talk about some other things that may need to be
22 addressed, so thank you and thank your staff for the
23 work that you have put into this process.

24 DAN KASS: Thank you very much.
25

1
2 CHAIRPERSON ARROYO: Okay, I hope nobody
3 fell asleep in the back; we have a panel coming up;
4 we have Robert Bookman, New York City Hospitality
5 Alliance, Andrew Rigie, New York City Hospitality
6 Alliance, Neal Corman, also from the Alliance and
7 James Versocki... Versocki; did I say that right and
8 you're gonna correct me on the record, right, the New
9 York State Restaurant Association. Thank you for
10 your patience and for your collaboration also in this
11 process; I think we... there are a lot of people that
12 we need to thank in getting us here today.

13 As a rule, as a Chair I don't like to put
14 a clock on panels that are testifying and I ask that
15 you summarize your statements and if you at all
16 possible don't have to read them; from the cuff
17 usually sounds a lot better anyway. So you may
18 begin; take whatever order you'd like; if you flipped
19 a coin, but identify yourself for the record; speak
20 directly into the mic; otherwise the sergeants get
21 annoyed 'cause they're recording it.

22 ANDREW RIGIE: Good afternoon, my name's
23 Andrew Rigie; I am the Executive Director of the New
24 York City Hospitality Alliance; I first wanted to
25 thank Speaker Quinn for her leadership on these

1
2 bills, Chair Arroyo, the Council, all the staff for
3 all their hard work and the Department for their
4 cooperation.

5 I've worked in the food service industry
6 in New York City my whole entire life and for the
7 past 10 years I've worked with associations that have
8 represented them and as many of the Council Members
9 said, when they go out and eat it's not a full meal;
10 it's not a complete meal without some discussion with
11 the manager, owner or the cook about Health
12 Department came in and did this or issued me a
13 violation for this or that and generally we're just
14 happy to be here to work cooperatively with the
15 Council; with the Department on sensible reforms that
16 will all ensure very high food safety standards,
17 ensure the quality of food, but really importantly,
18 reduce the regulatory burdens.

19 We're heard about the millions of dollars
20 in increase in fines every year, the inconsistencies
21 and this package of five bills really do take a step
22 to address most of, or say many of the concerns.

23 I think you also need to pay attention
24 and focus on this advisory board that is going to be
25 set up, because there are additional structural

1
2 issues with the letter-grade system as a whole, but
3 again, this is going to set the stage, hopefully, for
4 additional reforms that can focus on food safety,
5 focus on education; focus on training while reducing
6 the burdens. The industry's doing a lot; the
7 Hospital Alliance, we're offer the Food Protection
8 Certification in English and Spanish; we do different
9 consultations with our members so they can comply
10 with the law. No restaurateur ever wants to get
11 anyone sick; you get one of your customers sick
12 you're not gonna stay in business.

13 So again, it's in everyone's interest to
14 work together to achieve these high food safety
15 standards; I commend everyone on the Council for
16 listening to their constituents; to the neighborhood
17 restaurants and again, working with the Department on
18 these reforms, 'cause it's going to be a cooperative
19 effort.

20 And last thing that I will say is that I
21 will turn this over to the Hospitality Alliance's
22 legislative counsel, Robert Bookman, who don't think
23 needs much of an introduction here.

24 ROBERT BOOKMAN: But I will say for the
25 record anyway, Robert Bookman; I'm an attorney in the

1
2 City of New York and Counsel to the Hospital
3 Alliance; represent many small businesses over the 30
4 plus years in private practice.

5 All these bills are critically important
6 and they're important that they be passed by this
7 Council. You know, I'm afraid, when I can't fall
8 asleep at night that we don't get this done, in which
9 case we're gonna have to start all over again next
10 year. This Council owes it to itself and to the
11 thousands of small mom and pop restaurant owners that
12 you have heard from over the last year-and-a-half to
13 make these changes now.

14 I recall that March hearing when this
15 room was... this little room was standing room only,
16 literally, filled with mom and pop restaurant owners
17 urging... [interpose]

18 CHAIRPERSON ARROYO: I went home at 8:00
19 that night.

20 ROBERT BOOKMAN: And... and you and I have
21 had conversations about this that we could've done a
22 second day, if necessary. You know, we were telling
23 people go home, don't bother because they're never
24 gonna get to you today and there's no seats for you;
25 that's how many people wanted to come. So you

1 started as a result of that important work and it
2 needs to be finished. And when I say it needs to be
3 finished, these bills in and of itself is not the end
4 of the process; the... but it's an important step in
5 forming the process.
6

7 The ombuds office will be an avenue to
8 raise significant issues which will then be taken up
9 by the advisory board. The advisory board will be
10 making a report.

11 There are structural problems in the
12 Health Department inspection process that goes way
13 beyond letter grades and you know that through the
14 hearings and the consultations that we've had.

15 Deputy Commissioner, who's a real nice
16 guy, Mr. Kass, when he answers yes to all these
17 things about how, are we better, are we safer, are we
18 healthier, are we this; are we that; are fines going
19 up? Yes.

20 There's still the dichotomy that 10 years
21 ago, 2 years into the Bloomberg administration, not
22 ancient history, we were a world-renowned restaurant
23 industry; there was no data that people were getting
24 ill in New York City restaurants and fines were \$12
25 million a year. When they started the letter-grade

1
2 system, fines were up to \$32 million a year already;
3 then they blossomed to \$52 million. If they've gone
4 \$10 million in the last year, it's because of the
5 work we've done together; we've pressured them, we've
6 embarrassed them into it. We forced them to say
7 okay, if you get an A we're not gonna take money from
8 you on top of getting an A.

9 And the other half of this package that
10 they promised to adopt, the rule changes, will reduce
11 fines presumably by another \$10 million; that still
12 brings us to \$32 million from \$12 million when we
13 were a safe and vibrant, you know industry.

14 So there's a lot of work to be done about
15 the scoring system itself, the complicated 1,200
16 point process; what counts for a fine; what doesn't
17 count for a fine; you folks passed a bill a few
18 months ago signed by the Mayor; I believe any day now
19 the agencies, including the Health Department are
20 supposed to report back to you about which rules
21 under their jurisdiction they believe are
22 inappropriate for a warning on a first time; we look
23 forward to seeing that. The example that the
24 Councilwoman rai... I forget which Council Member
25 raised about the coffee machine being faced in the

1
2 wrong direction, seems to me a perfect one for a
3 warning. Let's see if they come back with that;
4 let's see if they're serious about what they come
5 back with. I'm afraid it may be just a couple of
6 sign violations, because at the end of the day I
7 think Council Members Van Bramer and Vallone were
8 correct; this is not about the inspectors, we think
9 the inspectors do a very good job under very
10 difficult circumstances; they have a complicated
11 scoring point system that they have to deal with that
12 by nature is going to be different from person to
13 person and that's... when they adopted this point
14 system, that's when the fines started to skyrocket,
15 because the system itself needs to be looked at.

16 But it's the culture they are forced to
17 work in and I think Council Members Vallone and Van
18 Bramer correctly pointed out that it's the culture,
19 it's the attitude; what are we here for; are we here
20 for compliance or are we here for the ATM, you know
21 aspect of it? And I fear under the last 10 years
22 it's been more for the ATM aspect of it. This
23 package of bills will help us move away from that,
24 but ultimately it will only work if there's a mayor

25

1
2 and a health commissioner that agrees that the goal
3 is compliance, not raising money.

4 And the question about how much the
5 inspection should be, you know one could argue that
6 those pre-opening inspections is the very function of
7 the Health Department and it should be part of their
8 role and it should be free. Having said that, we're
9 more than prepared, you know to pay a reasonable fee
10 for such an inspection, but there's a whole cottage
11 industry out there of ex-Health Department employees,
12 inspectors and otherwise, that while they're in the
13 Health Department say how clear and... you know and
14 compliant, easy the rules are; then when they leave
15 the Department they open businesses which say this is
16 very confusing, a very difficult, you know section of
17 law to comply with; you need our help. I wonder how
18 many people sitting here are gonna be in that
19 business, you know in a few months.

20 So it is not simple; it is not easy and
21 you know that bill is a good one; we've asked for it,
22 we're willing to pay a reasonable fee for it, but I
23 gotta tell you, until we know whether the culture had
24 changed, people are gonna do both; they're still
25 gonna hire a private consultant and the Health

1
2 Department person to see if they give 'em the same
3 advice.

4 So there's a lot of work to be done, the
5 Alliance has worked closely with your staff, we've
6 worked closely with the Council; we've also got those
7 late calls and e-mails on weekends, so we know you
8 folks have worked really hard on this.

9 And I think the data... I'm just going
10 through quick notes... the data-gathering, I mean that
11 bill will definitely be much better and will give us
12 the information that we need to answer some of these
13 questions. I know the Post did an article pursuant
14 to a foil (sp?) in which... and it seemed to indicate
15 that about 60 percent of the violations that the
16 Health Department were issuing were non-food safety
17 related violations. It's hard to say for sure, but I
18 read with interest that article, since they don't
19 categorize it as food safety or non-food safety; that
20 was the Post's conclusion from their foil, but this
21 data-gathering bill will give us all the same data
22 that we can work with to see, you know, are these
23 most gotcha violations or are these serious
24 violations and on the serious violations it's so
25 confusing that it's difficult for people to, you know

1
2 to figure out how to comply and I think that's where,
3 you know we all wanna get to.

4 Last comment I just wanna say is; I just
5 came back from a week in D.C. and where there are no
6 many New York City restaurateurs in the last decade,
7 not coincidentally, that opened outposts in D.C.,
8 members of our Alliance, clients of mine and I could
9 tell you from their... from what they tell me, it's the
10 same restaurant, it's the same menu, it's the same
11 ownership and yet there's a huge difference in fines
12 between Washington, D.C. and New York City and it's a
13 huge difference in approach from the local Health
14 Department there to the local Health Department here;
15 they just find it a more welcoming, cooperative
16 environment where the goal there is compliance, not
17 fines and I think that's where we need to be and I
18 thank you, 'cause I think this package of bills will
19 get us closer to that and you are correct; your bill
20 about investigating complaints the way it is written
21 is exactly what they said could be done informally
22 now; there's no problem with the wording you know of
23 that; it's very limited... it's very limited to
24 specific situations, mostly physical, you know
25 conditions in the space and there's something called

1 an adjournment, you know, lawyers are very, you know,
2 very familiar with the adjournment; if they get a
3 complaint pursuant to your bill that, I got a
4 violation because of the location of my sink and you
5 know that sink has been in the same place for three
6 years and it's never been a problem before or I
7 opened recently and I did one of their consultant
8 inspections and their inspector had no problem in the
9 consultant inspection that I paid for with the sink;
10 that's a hearing that can get adjourned, there's no
11 rush, let somebody in an appropriate role review it
12 to see if that person's right and withdraw the
13 violation if it's correct; there's no... there's no...
14 there's no reason that's a problem, you shouldn't
15 have to hire an expensive lawyer like myself to try
16 to get them to look into that, you know simply you
17 know when the Department has made a mistake and it's
18 a limited situation; I think you're right on target
19 and I think Dan Kass I think realized it after you
20 pointed it out to him, so good for you. Thank you.

22 NEAL CORMAN: I'm Neal Corman; I am the
23 Corporate... oh... Sorry, there we go, see, now they want
24 to complain, 'cause they can hear me. I am the
25 Corporate Executive... [interpose]

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2 ROBERT BOOKMAN: That's a \$500 fine...

3 NEAL CORMAN: Is... can I arbitrate this or
4 no? I am the Corporate Executive Chef for the
5 Alicart Restaurant Group and I have submitted the
6 testimony that I do appreciate the opportunity to
7 submit to the Council, but I will not, at your
8 request, bore you with going through and reading the
9 entire package.

10 As somebody in the industry though, I am
11 here to tell you that this is long overdue. Somebody
12 who has the day to day working knowledge of what,
13 more than one restaurant; actually three in
14 Manhattan, one in D.C., one in Jersey and just opened
15 up a very large restaurant over in Las Vegas; we can
16 see the differences between the governing bodies as
17 far as the Health Departments are concerned; what is
18 required from us here in New York and conversely,
19 just as he said, what is required from the other
20 areas; we have the exact same food, we have the exact
21 same menu and for the most part our facilities don't
22 change that much.

23 In reference to the food service
24 inspection code of conduct, it's something that we've
25 looked for for a long time, to just kind of know

1 exactly the intended flow of the inspection as the
2 inspector comes in; what can we expect and as we go
3 through that inspection, if there is an
4 interpretation of how to apply it; it is a discussion
5 with us that we're an active part of that and then on
6 the conclusion of that inspection, you know, that we
7 are part of an outreach and any compensatory measure
8 that we need to do. It's a perfect time at that
9 point for the inspector to tell us if there's any
10 changes in the code or modifications that would go in
11 effect for the next cycle; that would be a great time
12 for us to know that. Our education of the Health
13 Code, we don't want limited just to be the knowledge
14 of the violations that we receive; we wanna be
15 proactive, that's not how we wanna find out as far as
16 what changes and what doesn't change.

18 The establishment of an advisory board is
19 also something that we definitely embrace, something
20 that we know that we're gonna be represented, that
21 can look at more of a macro level of how the
22 inspections are going down throughout the City; how
23 they're being applied consistently or inconsistently
24 and if a trend is starting how that's going to be
25 dealt with.

1
2 The ombuds office is, again, another bill
3 that we embrace to... very, very much. I feel that our
4 industry needs accumulative voice, we need something
5 more than just... to act more just than... not just as an
6 arbitrator, but also a resource of current
7 information, of new initiatives, changes of the code,
8 specific trends in direction and I think this office
9 can act as both of that.

10 And that pretty much summarizes, you
11 know, what we feel. As the letter-grading system
12 matures and the Department of Health inspections go
13 on, you know we're gonna... precedences will be set,
14 consistencies and inconsistencies, we're gonna see
15 that, we're gonna see how that's gonna affect the
16 food service industry both positively and negatively
17 and we just feel that we just wanted some
18 knowledgeable entity monitoring that process and we
19 feel, like I had said before, the establishment of
20 the advisory board would do that. We feel that as a
21 minimum the members of our profession, you know, as
22 well as independent people in food safety and
23 nutrition and industry associations, together we'll
24 be a board that can actually, you know, not only just
25 advise, but look over the entire process and make

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2 determinations. You know, most importantly we just
3 wanna be... have recommendations and changes to the
4 system that'll be in the interest of the safety of,
5 not just our guests, but also in the interest of the
6 safety of our profession. And that's pretty much it;
7 I appreciate the opportunity to sit here and testify.

8 MALE SPEAKER: Well I... I've gotta say,
9 it's very hard to follow Neal; that was very well
10 said. I will be very brief, Madame Chairman; thank
11 you so much for allowing us to speak today; it was
12 over 18 months ago you noted that we packed the house
13 and it is really important that the efforts that have
14 gone forward from those hearings have continued as a
15 result of these five bills.

16 The New York State Restaurant
17 Association; we have about 5,000 members in New York
18 City, about 10,000 statewide and I can tell you,
19 everyone in the State watches what happens here, so
20 we get a lot of peaked interest that follows what
21 happens here.

22 So we didn't bring down a bunch of
23 restaurateurs today because most of our membership
24 who have commented to us on these bills are in
25 support, as is the New York State Restaurant

1
2 Association, so that being said, we support the
3 passage of all five of these bills and we do hope
4 that the timing of this can be accomplished before
5 the end of the year and the change of the
6 administration and this Council.

7 Specifically speaking, you know these
8 bills seek to focus on education and also openness of
9 the industry and government, and that's a good, good
10 role. So what we're looking forward here to having
11 is a change in the culture of how restaurateurs, in
12 reality or perceived, interact with the Department of
13 Health and Mental Hygiene.

14 I particularly wanted to focus while we
15 support all these bills, obviously ombuds office is
16 gonna be a very valuable role; it allows the actual
17 individual operators as well as the major
18 associations to have a voice to be able communicate
19 directly with DOH, but also looking at the
20 establishment of the advisory board, this could be
21 very similar to the food safety technical advisory
22 board that the DOH already runs on which the New York
23 State Restaurant Association sits along with
24 individual operators and it's a great opportunity for
25 feedback.

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2 In addition, I know everybody spent a lot
3 of time today on fine reductions; we know they're not
4 a part of these bills, but we do look forward to
5 receiving those promised reductions, which again stem
6 from the oversight hearings that you held; we look
7 forward to that rule-making from the Department of
8 Health soon and again, realistically, we just wanted
9 to thank you and all of the Committee for your hard
10 work on these bills. Thank you so much.

11 CHAIRPERSON ARROYO: Well again, thank
12 you all for your collaboration and your input in the
13 process; I'm sure that if you thought we could make
14 it better you would've shared that with us at this
15 panel, but you did so along the way, so I think the
16 legislation package here is really the best that we
17 could make it given the timing and the amount of time
18 that we've had to work on it; it's almost two years,
19 because prior to the hearing the City Council
20 conducted the survey online when we went out and
21 sought the input and that helped to shape how the
22 conversation was driven forward. So I know that you
23 all had a great hand in that and I wanna thank you on
24 behalf of the Speaker and my colleagues for your hard
25 work and for making sure that we're paying attention

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2 to the details, because that's also critical in the
3 quality of legislation that we move out, so thank you
4 all for your testimony.

5 Okay. And I have Fitz Reid, President
6 Local 768, Public Health Sanitarians; I think that's
7 DC 37, right? Welcome, sir; sorry to keep you
8 waiting. And you've done this before, right; you
9 know what to do? Okay. Turn it on. Turn it on.

10 FITZ REID: Are we there now? Yes, good
11 afternoon, sister Chairman. My name is Fitz Reid;
12 I'm President of Local 768, DC 37 which represent the
13 sanitarians.

14 The Local, this Local and the members
15 supports whatever effort that the Council and the
16 Committee wants to make to democratize the public and
17 to get participation of all the stakeholders. We
18 believe that public health is best served when we
19 have people voluntarily comply and your education;
20 that is a primary component and we understand the
21 role of the State in order to put... to enforce things
22 and to make sure that preventative measures are
23 there, but we believe that that's not... should not be
24 the priority. And we un... just two other things; we
25 understand the nature of people running a business

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2 and want to make profit and therefore if public had
3 clash with that; sometimes the public held goes down
4 most time we'll expect that to go down, but with
5 education and support we believe that the
6 restaurateurs, the people who conduct these
7 establishments will be better able to participate.

8 The other thing; we do not believe that
9 it should be a major revenue generating function.

10 And the last point; I would just like to
11 emphasize and I take whatever question you have; is
12 that most of the time when... I'm an inspector and when
13 I go there, right, most of the time the problem is
14 not the violation that people are saying, this was
15 not a violation of the codes, nor are we saying, nor
16 are the restaurateurs saying that the codes are not
17 violated; what they're saying, what's the effect of
18 this on my business.

19 I give you an example. When I used to do
20 inspection, say beef patty, costs maybe a \$1.00,
21 \$1.25, but the fine for it is over a \$1,000; you
22 imagine how many beef patties that restaurant person
23 has to sell to generate that sort of fine in profits,
24 not just the cost, in profit. So to them it's a
25 whole lot.

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2 And I'll just give you another example.
3 I go into a restaurant during lunch hour and I'm
4 sitting there; nobody comes in, so the people really
5 are having problems, so the real concern they have is
6 not really to say this was not a valid violation;
7 what they are saying is what the effect and the costs
8 on me and that's where the problem comes.

9 And the last thing, just to round out
10 this, the inspectors have to do what they are
11 given, and I'm not making excuses for them; sometime
12 when they go out they do not know whether this
13 establishment is operated by an Inspector General,
14 right; whether that facility is designated by the
15 Department as a control. So all inspectors have got
16 to cite everything; those are the instructions that
17 they are given, those are the supervisory logic
18 that's given, right, and they do not know whether the
19 facility is one of them that is a control facility or
20 what, so they have got to be on their cue.

21 So the bottom line is, we see these bills
22 as being directed at inspectors and that's not where
23 the problem is, the problem is really at the
24 management and I'm not trying to focus it away from
25 the inspection, I'm saying if you want change, change

1 cannot come about by... at the inspector's level, they
2 are like a tool, instrument to carry out certain
3 things, it's really the policy, right and the
4 interpretation of the policy and when an inspector
5 calls and the instructions that are given, you are to
6 cite this or cite that; we will cite this additional
7 way. So the point is that this an administrative
8 thing and the focus has got to be there or else we
9 are going to fail and we support whatever the
10 Committee is doing in terms of education.

12 And the last point, some of what you are
13 proposing, consultation; this was in effect 15 years
14 ago. Before an establishment was opened they had to
15 carry their plans, to carry to a review... into the
16 office and the office say, look, this is okay, that's
17 a problem; you need air brakes here, you need this,
18 you need that, you need a sink here, you need that,
19 before the establishment was opened and the previous
20 administration **02:23:47** because of the amount of
21 people or people had to go and get plans drawn and
22 things like this; they abolished that. But the point
23 I'm saying is that there was this consultation before
24 and what you are proposing is really to go back there
25 and the lowering of the fines; this will prevent a

1 whole lot of the problem. So we're here to answer
2 any questions that you may have.

3 CHAIRPERSON ARROYO: Well thank you, Mr.
4 Reid for your testimony. Control facility, that's
5 the first time throughout this whole process that
6 I've heard that term. Can you enlighten me what that
7 means for an inspector and how is it organized; is
8 the restaurant that's being used as a control
9 facility in on it? For lack of... [interpose]

10 FITZ REID: Yeah, the... **02:24:29** they
11 were... they are... any place that you have this sort of
12 inspection there is fraud and there is corruption and
13 therefore you have got a bill in place, controls that
14 you can detect so if somebody... right? And that's
15 **02:24:46** from. So the point is that the inspector
16 does not just go there and do whatever he or she
17 wants, right? He's monitored before he or she goes
18 in the facility, he is monitored during the facility,
19 there are cameras all over the place, there are all
20 of these things. So there are a certain amount of
21 standardization that takes place there; there is
22 **02:25:05**, but the bottom line though is that there's
23 a lot of turnover and this... I'm just saying that this
24 can contribute to some of the problem, because as you
25

1
2 uh... the pressure comes on the operator, the pressure
3 come on the inspectors too, right, and therefore a
4 point in time they'll leave because they just can't
5 take it.

6 CHAIRPERSON ARROYO: Now you're saying
7 there's a lot of turnover in DOH staff that...
8 [interpose]

9 FITZ REID: Yeah, there is a lot of
10 turnover. And one of the reason for it is the
11 pressures that are on the inspectors, and I'm not
12 makin' excuses for them here... [interpose]

13 CHAIRPERSON ARROYO: No, no, no, I do...

14 FITZ REID: you know, I just want you to
15 understand some of the ramifications, right? Because
16 as you are saying, revenue, right, from one side,
17 then you have got to enforce the codes, which is
18 understandable, right? But the pressures that are on
19 the inspector cause them to leave, right, just as
20 though the... [interpose]

21 CHAIRPERSON ARROYO: Do you have... do you
22 have numbers on the turnover rate of... [interpose]

23 FITZ REID: The turnover rate is no less
24 than 25 percent per annum and it could be much more
25 than that.

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2 CHAIRPERSON ARROYO: And what's the
3 length of employment for inspectors, given your
4 experience?

5 FITZ REID: About three years.

6 CHAIRPERSON ARROYO: And they leave?

7 FITZ REID: Yeah, they leave. Some
8 people leave after two weeks. Yeah, it's really bad.
9 But and I'm not trying to protect the inspectors, nor
10 am I trying to put the administration **02:26:25** here;
11 all I'm saying is that these are some of the
12 ramifications that you have got to look through.

13 CHAIRPERSON ARROYO: My smart counsel
14 here has given me a question. I mean, I think we can
15 all agree that the inspectors shouldn't be the target
16 here and that... actually, no one should be a target;
17 that this is a program that's intended to help us
18 keep our residents safe because some food is being
19 handled properly and that the restaurant owners are
20 doing their part and the inspectors are just ensuring
21 that they do that.

22 The culture at the top of DOHMH will take
23 on a more collaborative attitude with restaurants and
24 that's the sentiment that has been expressed and I
25 think that we agree with you and we just heard a

1 similar sentiment from the Hospitality Alliance, that
2 inspectors aren't the problem, okay. So let's just
3 be clear about that; I think the bills will go a long
4 way to helping inspectors focus; I think there was a
5 concern that was raised by staff, giving the union
6 concern that it would become a more punitive, less
7 collaborative effort and that is not what we are
8 seeking to accomplish here.

10 FITZ REID: I know, I know that's not... I...
11 I... I... I know the Committee's approach; I remember we
12 **02:28:00** with the immunization **02:28:02** and to
13 provide, you know service; I know that's the goal of
14 everybody here, so I'm... so we are supportive of the
15 effort to democratize and to get participation,
16 education, collaboration; we are totally onboard. We
17 understand there are going to be a number of
18 problems, but that can be ironed out if we have a
19 common goal.

20 CHAIRPERSON ARROYO: And that... that's
21 what we do; we keep talking about it and we hope to
22 improve it as we go along, so we value your input and
23 your collaboration in this process and I certainly
24 hope to have heard from DOH as they collaborate with
25 the union on enhancing training and including the

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2 employees' input in the process on how that training
3 could be improved, but given that we are talking
4 about collaboration, I don't see why that should not
5 be something that we continue to talk about, because
6 the folks... the boots on the ground, the ones doing
7 the work, are often the ones that can give us the
8 most insightful information to help us improve the
9 processes; whatever we're doing, because they're
10 doing it every day. So thank you for you're your...
11 [crosstalk]

12 FITZ REID: And there are many sides to a
13 story. Thank you, Madame... [crosstalk]

14 CHAIRPERSON ARROYO: Yes. Okay. And
15 now, our panel, but not our least, Kathleen Reilly,
16 The Coliseum Pub; are you here? Yes. And she is
17 representing United Restaurants and Tavern Owners,
18 and Matthew Burler... Greller, National Association of
19 Theater Owners of New York State, so welcome. And I
20 think you guys have done this before and if you
21 haven't just pull the mic up close; if the light is
22 on, the mic is on. Speak into the mic, because the
23 sergeant yells at us when we don't get picked up.

24 KATHLEEN REILLY: Good afternoon; my name
25 is Kathleen Reilly; I'm the Vice President of United

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2 Restaurant and Tavern Owners of New York, or as
3 unfortunately we are more likely called URTO, which
4 actually should be just URTO, but I'm also a member
5 on the FACTA Committee with the Health Department and
6 the Alliance and the Restaurant Association and I am
7 a second-generation restaurant owner.

8 My family has been in this industry for
9 over 50 years; my father came to this country and
10 opened his first restaurant in the 50's. We still
11 actually own several restaurants in New York City,
12 not only there though; we have restaurants in Long
13 Island, in New Jersey and down in Florida. My family
14 still has operations running since 1972 consistently.

15 I would like to start out saying that
16 myself, my family and our organization support this
17 legislation and think it's about time and it's a
18 wonderful initiative for the future for the
19 restaurant industry of New York.

20 Obviously I think it's a great move
21 towards more efficient and effective ways to improve
22 the standards of operation of our industry in the
23 City and the outer boroughs and for the safety of the
24 public and the ways that it is being overseen by the
25 New York City Department of Health, without all the

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2 heavy burdens and fines that have become the natural
3 day of our existence and imposed upon the industry.

4 I'd like to start off saying that the New
5 York City Department of Health has worked very hard
6 with the industry to try to correct many of the
7 problems and discrepancies recently with the new
8 letter-grading system that unfortunately had been
9 created in the big rush to improve, supposedly
10 improve our industry for the safety and transparency
11 of the public, but without the property guidelines
12 which you have now imple... or have put in with this
13 legislation to implement it appropriately and
14 properly and as a result has turned it out to be a
15 money generator, as you have said yourselves.

16 This legislation has many of the new
17 tools that are finally needed to improve our industry
18 and create a much needed formal partnership with the
19 Health Department, the New York City Council and
20 other agencies that are involved with overseeing us
21 and the industry.

22 The only one improvement that I would
23 like to discuss or maybe just a question about it,
24 maybe it's not needed to be an improvement, but maybe
25 a clarification of it, would be with the reference of

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2 1134, with the... to include another... would be good to
3 include another maybe independent way of appointing
4 and number of members to the food service established
5 advisory board to create a higher standard of
6 transparency and inclusion for actually our industry,
7 which we now feel... you know, we've lost that feeling
8 of the inclusion and transparency ourselves with
9 everybody in the area and what would be interesting
10 is... or maybe; how do you plan on picking them, if the
11 Mayor... how are they gonna to pick... the Mayor picking
12 his and the Council picking theirs; there's a lot of
13 different... our organization represents a lot of
14 smaller business; it's all mom and pop, that's all we
15 deal with and we deal with all nationalities and it's
16 basically not an American level... it is immigrants
17 that have come here and now are operating in the
18 City. So we were just wondering about how they would
19 be or anyone would be included in that advisory
20 board. And I'd like to just say thank you.

21 [interpose]

22 CHAIRPERSON ARROYO: It's a good question
23 and believe me, when I was being briefed on... by the
24 staff in preparation for this hearing I raised the
25 very same question and/or concern about, well, if the

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2 Mayor's gonna dominate, then what's the point of us
3 having an advisory board. But my experience has been
4 that individuals identified both by the Council and
5 the administration are individuals who do the right
6 thing and individuals are not named to board just for
7 the sake of them having a title or having an extra
8 business card to give out. They are individuals that
9 are professionals and take that assignment very, very
10 seriously and bring that level of commitment to the
11 work that's required for whatever board, whatever
12 commission we may be talking about and believe me,
13 there are many. But my experience is that
14 individuals identified and recommended for
15 appointment and ultimately appointed are individuals
16 that do really good work. So I would expect that
17 many in the industry need to be ready to be tapped to
18 say I do, you know, and step up and take up that
19 responsibility.

20 KATHLEEN REILLY: Thank you. I think... I
21 obviously agree with; I think no one would take on
22 this... I just think that because it's such a wide
23 industry it may take more than the limited number of
24 individuals, because it's such a broad area of...
25 [interpose]

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2 CHAIRPERSON ARROYO: I think part of the
3 legislation includes that individuals be brought on
4 to help with the technical components of what would
5 be necessary and would not necessarily be members of
6 the advisory committee, but would serve as a resource
7 for the committee, for the board. So... and like
8 everything else, we're gonna have to work it and
9 monitor it and make sure that the goal or the spirit
10 of what the legislation seeks to accomplish is being
11 accomplished over time, but we've gotta take a stab
12 at it and massage it as we go along. So I raised the
13 very same concern and... but, I also have the
14 experience of knowing the caliber of individuals that
15 are recommended to sit on boards and commissions
16 across the City and they're phenomenal professionals
17 who often don't get paid for the work they do, they
18 just do it for the love of their city and that's
19 phenomenal. So I think it'll be a good thing in the
20 long run, so... [interpose]

21 KATHLEEN REILLY: Well I'd like...

22 CHAIRPERSON ARROYO: we'll just have to
23 monitor it and make sure that it works.

24 KATHLEEN REILLY: Well I'd just like to
25 thank you, because that's... it's more our question of

1 just being involved anymore, everybody, so I would
2 like to thank you for today's opportunity and for all
3 the work you've been doing for the last 18 months.

4 CHAIRPERSON ARROYO: Yeah.

5 KATHLEEN REILLY: Thank you.

6 CHAIRPERSON ARROYO: Two years.

7 KATHLEEN REILLY: Two... well more, yeah,
8 but... [crosstalk]

9 CHAIRPERSON ARROYO: It's a little less.
10 Go ahead.

11 MATT GRELLER: Good afternoon Madame
12 Chair; I also wanna thank you and all your staff's
13 help on these issues over the years and my name again
14 is Matt Greller and I represent the National
15 Association of Theater Owners of New York State; we
16 have a better acronym maybe, but we're known as NATO,
17 but we're not the ones who are the military and
18 Europe; we're the ones who show movies about the
19 military.

20 In New York City we represent 52 movie
21 theaters and 1,800 employees throughout the five
22 boroughs and you may ask yourself, you know why are
23 movie theaters here today; it's because we're food
24 service establishments as well under the Health Code
25

1
2 and as a result of that we're subject to letter-
3 grading and inspections, just like the restaurants,
4 just like the tavern owners. And we have to comply
5 with posting requirements, menu labeling, allergen
6 posting and if it comes to it, the soda ban. And
7 while the public may read about how well certain
8 movies are performing at the box office, they don't
9 realize that these revenues are actually shared first
10 amongst the distributors and studios and then the
11 movie theaters themselves. So the percentage of the
12 movie theater revenue that comes from ticket sales at
13 the outset of the movie, at the big opening, is
14 actually very small for the movie theater and then
15 the longer the movie plays the more revenue goes to
16 the theater, and this is important because ticket
17 sales are relatively flat, there's increased
18 competition from video on demand; people have
19 wonderful home entertainment systems and as a result
20 of that there's more of a reliance on revenue from
21 concessions. And about 40 percent; could be even as
22 high as 60 percent in some theaters, of revenue from
23 concession goes to the theaters themselves as profit
24 and that helps keep ticket prices stable. And with
25 the average New Yorker only attending a movie about

1 four times a year and only purchasing concessions
2 about twice a year, movie theater profits remain
3 relatively small. And if there is reduced concession
4 revenue from the soda ban or further inspections, an
5 affordable night at the movies is gonna become more
6 difficult because theaters will be left with a bad
7 choice, either cut benefits, raise ticket prices or
8 cut jobs and we don't wanna do any of those.

9
10 So clearly reforms are needed; if there
11 are further inspections and fines are increasing, we
12 need to find a way to stop that so that people can
13 continue to go to the theaters.

14 And this package of bills that you've
15 worked so hard on, they're common sense reforms; we
16 heard a lot from the Department today; we think that
17 these are gonna both help small businesses and help
18 consumers.

19 So with fines out of control and very
20 often having zero to do with food safety or quality
21 of public health, we applaud the work that you are
22 doing here.

23 Businesses of any stripe want certainty,
24 clarity and the ability to give and get feedback and
25 less fines and less red tape, obviously and this

1 package of bills does just that. So we commend you,
2 we commend all the help from your staff and the other
3 members of the Committee and we hope to see these
4 bills pass and I'm happy to answer any questions you
5 may have.
6

7 CHAIRPERSON ARROYO: No, I... I thank you
8 for your input and taking the time to sit with us
9 here today and share your thoughts with us. As I've
10 always said, we work hard at trying to get the best
11 legislation out possible; we could not do what we do
12 without the input of individuals like yourselves and
13 others that came before you that help and form the
14 work that we're doing here, so I wanna thank you for
15 taking the time to come and share your thoughts and
16 we look forward to moving this package of legislation
17 out before the end of this legislative session; I
18 just don't know the exact time of what that would be.
19 But I celebrate the work that we've done over the
20 last few years and one of the things that I often am
21 frustrated about as a Council Member is that we have
22 public hearings and we have a public conversation
23 that sometimes does not yield a real substantial,
24 concrete reforms that we can implement in the City
25 and I'm really proud of the work that we've done in

1
2 the Council with the industry and the administration
3 around this package of legislation, because it's
4 taken a little bit of time, but I think that what we
5 have produced are things that everyone has come to a
6 consensus about. So I wanna thank you all for being
7 here and with that, this hearing is adjourned.

8 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date 10/04/2013