

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HEALTH

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January 29, 2009
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HELD AT: Council Chambers
City Hall

B E F O R E:
JOEL RIVERA
Chairperson

COUNCIL MEMBERS:
Helen D. Foster
Helen Sears
Kendall Stewart
Maria del Carmen Arroyo
Rosie Mendez
Jessica S. Lappin

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

Elliott Marcus
Associate Commissioner, Bureau of Food Safety and
Community Sanitation
Department of Health and Mental Hygiene

Robert Edman
Assistant Commissioner, Bureau of Food Safety and
Community Sanitation
Department of Health and Mental Hygiene

Julie Menin

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Dr. Justin Skripak
Pediatric Allergist
Jaffe Food Allergy Institute at Mount Sinai; New York
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Robert Pacenza
Executive Director
Food Allergy Initiative

Robert Bookman
New York State Restaurant Association

Jennifer Gardner

Susan Leavitt

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2 CHAIRPERSON RIVERA: Good morning my
3 name is Joel Rivera, I am the Chair of the Health
4 Committee. We are here today to discuss the food
5 allergy issues in New York City restaurants and
6 Intro 818 sponsored by Council Member Lappin.

7 Intro 818 is a Local Law that would
8 require food service establishments to put up
9 posters with information for workers on food
10 allergies. Throughout the United States, it is
11 estimated that approximately 12 million people
12 suffer from food allergies, that is about one in
13 every 25 Americans. An allergy occurs when a
14 person's immune system has an abnormal reaction to
15 a particular type of food the body processes,
16 produces an allergic antibody which fights off the
17 food. There are eight foods that account for
18 nearly 90% of all the food allergy reactions,
19 these foods are milk, eggs, fish, crustacean
20 shellfish, tree nuts, peanuts, wheat, and
21 soybeans. The high prevalence of allergic
22 reactions to these foods occurs because they are
23 common ingredients in prepared and processed
24 foods.

25 Food allergy reactions can be very

1
2 serious. Probably the most severe reactions is
3 anaphylaxis--

4 FEMALE VOICE: Anaphylaxis.

5 CHAIRPERSON RIVERA: Anaphylaxis,
6 thank you. However, it can involve the closure of
7 a person's throat, constricted airways, trouble
8 breathing, and a sudden drop in blood pressure.

9 Every year, food allergies result in over 30,000
10 hospital visits, 2,000 hospitalizations, and 150
11 deaths. Food allergies are a serious public
12 health concern for which there is no cure.

13 Individuals who suffer from food allergies are
14 particularly vulnerable when visiting restaurants.
15 They no longer have direct control over the food
16 they eat and are relying on the staff paying
17 specific attention to their needs. Severe
18 allergic reactions may be triggered by the mere
19 cross-contact between one food and allergen.

20 More than 130 million people are
21 served each day in restaurants across our country.
22 In New York City, there are more than 25,000 food
23 service establishments. To avoid severe reactions
24 from food allergies, communication is imperative
25 between the customer and the restaurant staff.

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2 Additionally, education can go a long way toward
3 preventing an incident before it occurs.

4 Council Member Lappin's legislation
5 would require food allergy posters to be displayed
6 in food service establishments to ensure that
7 staff is aware of this critical safety issue.

8 I would like to thank the staff of
9 the committee for their hard work and when Council
10 Member Lappin comes in from her other committee
11 that she sits on, I will recognize her and give
12 her a chance to give her opening statement as
13 well.

14 And let me just introduce the
15 members who are here with me. We have Council
16 Member Rosie Mendez, we have Council Member
17 Kendall Stewart, and Council Member Sears is here
18 talking to Chris Manning [phonetic].

19 Okay. So at this point in time
20 we're going to call first Elliott Marcus, the
21 Associate Commissioner, Bureau of Food Safety
22 Community Sanitation for the Department of Health.

23 MR. ELLIOTT MARCUS: Good morning,
24 Chairperson Rivera and members of the Health
25 Committee. My name is Elliott Marcus and I am an

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2 Associate Commissioner of the Bureau of Food
3 Safety and Community Sanitation at the Department
4 of Health and Mental Hygiene. With me today is
5 Robert Edman, Assistant Commissioner of the Bureau
6 of Food Safety and Community Sanitation. On
7 behalf of the department, thank you for the
8 opportunity to testify on Introduction 818.

9 The core mission of the Bureau of
10 Food Safety is to protect the public health by
11 permitting and overseeing the food safety
12 practices of nearly 27,000 New York City food
13 service establishments. Bureau inspectors
14 reinforce the importance of food safety by
15 monitoring a food service establishment's
16 compliance with the Health Code Article 81 and
17 conducting risk-based inspections that examine
18 practices that may cause food borne illness if
19 performed incorrectly. They determine if
20 potentially hazardous foods are adequately cooked
21 using approved processes, making sure that hot
22 foods are kept hot and cold foods are kept cold,
23 and food is protected from contamination.
24 Inspectors also spend a considerable amount of
25 time educating food service establishment

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operators about food safety.

The Bureau also promotes food safety through the department's Health Academy, which certifies 18,000 people annually in food safety. Participants are required to spend five half days at the Academy learning about safe food preparation, health hazards, food borne illness, pest control, facility maintenance, and the New York City Health Code requirements. To assure an acceptable level of knowledge, all course participants must pass an Academy test to receive certification. To further promote the health and safety of food service establishments, the department requires restaurants to have at least one person certified in food protection on duty at all times of operation.

Food safety focuses largely on basic practices for sanitary food preparation and handling, rather than the needs of individual patrons. By contrast, food allergies are different for each individual and are therefore not something that can be easily regulated or monitored as a matter of general public health. However, the department understands that for the

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2 estimated 12 million Americans who suffer from
3 food allergies and who can have an allergic
4 reaction ranging from minor itching to, in extreme
5 cases, fatality, this is an important concern.
6 The issue is compounded by the increasing number
7 of Americans that eat outside the home and
8 therefore have less control over the food that
9 they eat. Unfortunately, with a high volume of
10 diners consuming food prepared for the general
11 public, an unsuspecting diner with food allergies
12 could be exposed to a food that provokes an
13 allergic reaction. It was with this in mind in
14 2008 that the department added food allergy
15 awareness as part of the food protection
16 certification training provided at our Academy.

17 Introduction 818 requires food
18 service establishments to display a poster
19 advising restaurant workers and servers how to
20 meet the needs of patrons with food allergies.
21 Avoiding the allergen is the only way to prevent
22 an allergic reaction and requires the cooperation
23 of patrons and food service establishment
24 personnel. Awareness among food safety workers is
25 a major step toward safe dining for individuals

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2 with food allergies. A poster of the type
3 required by Intro 818 has the potential to reduce
4 the number of allergic reactions resulting from
5 prepared food by raising awareness and providing
6 suggestions on how food service establishment
7 workers can accommodate concerned diners.

8 While most food safety regulations
9 are contained in the Health Code, the
10 Administrative Code already includes provisions
11 requiring food safety establishments to post
12 information regarding choking prevention and
13 alcohol consumption by pregnant women, therefore,
14 the department has no objections to Introduction
15 818.

16 Thank you again for the opportunity
17 to testify. I'm happy to answer any questions you
18 might have.

19 CHAIRPERSON RIVERA: Thank you very
20 much.

21 Before we go on to the question
22 phase, I want to give my colleague, Council Member
23 Jessica Lappin, who has been a real advocate for
24 the public on this issue, the opportunity to say a
25 few words and give her statements.

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2 COUNCIL MEMBER LAPPIN: Thank you
3 very much, Mr. Chairman. I want to thank you for
4 holding this hearing today and for putting this
5 important topic on the agenda, not just for the
6 committee, but for the Council. And I wanted to
7 thank you for your testimony and for not objecting
8 to the bill--I read that as support the bill,
9 semantics--

10 MR. MARCUS: Yes.

11 COUNCIL MEMBER LAPPIN: --but I
12 think that's very positive and I'm very grateful.

13 And I just wanted to make a very
14 brief statement and talk about why I introduced
15 this legislation in the first place, and that's
16 because there are nearly 300,000 New Yorkers who
17 suffer from food allergies and food deaths are
18 totally preventable if workers and people are
19 educated on the topic. And, as you noted in your
20 testimony, if somebody with a food allergy eats
21 out and comes into contact with the allergen, at
22 best, maybe they have an itchy reaction; at worst,
23 it could be fatal and this really is a matter of
24 life and death to many New Yorkers.

25 And this didn't start out as a

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2 personal issue for me, but it has become one. My
3 husband does have shellfish allergies, but we just
4 discovered a couple weeks ago that my son, who's
5 almost 2, is allergic to peanuts. So that's not
6 why or how I introduced this bill, but certainly
7 it's becoming something that I am going to become
8 much more aware of as a mother and something that
9 I'm going to be concerned with as we eat out as a
10 family. Obviously, my husband knows what to
11 avoid, but the issue here is even if you tell the
12 server that you are allergic to shellfish or nuts
13 or whatever it may be, that the person in the
14 kitchen, while they may have been trained at the
15 Academy, doesn't keep everything separate and
16 contaminates in a way that could really cause
17 harm.

18 So the goal with this bill, since
19 there is no cure for food allergies, is to do what
20 we can as a city to prevent people from having
21 reactions and I think it's a simple step that
22 would be a positive step to have a poster in the
23 kitchen to remind these workers who may have
24 already been educated on this, but to make sure
25 that they don't forget that what they're doing and

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2 how they're handling the food really is a matter
3 of life or death.

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5 So thank you, Mr. Chairman, I have
6 a couple of questions, but I'm sure you may have
7 some as well, so--is it okay? Thank you very
8 much.

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10 And I wanted to ask you about,
11 since you mentioned the education as part of the
12 certification process, 'cause this is another
13 piece of legislation I know we've been working on
14 that we're not specifically discussing today, but
15 when you administer the test, is there a question
16 about this issue on the test?

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18 MR. MARCUS: I don't believe there's
19 a question on the test right now.

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21 COUNCIL MEMBER LAPPIN: Okay. Be
22 nice to continue to work on that too just to, as
23 people are training to make sure that they are
24 being tested on the knowledge. We all know from
25 our school days, right, that that's an important
part.

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27 I guess my only other question for
28 you because you are supportive of the bill, which
29 I'm very appreciative of, is do you have

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2 suggestions in terms of the language of the poster
3 and how we should and where we should communicate
4 the information?

5 MR. MARCUS: The where is difficult
6 in some instances because some restaurant kitchens
7 are quite tight and we already require several
8 different posters, so wall space--they're in
9 competition for wall space with choking posters,
10 alcohol and pregnancy posters, smoking policy
11 poster or smoking policy statement, and, of
12 course, permits and certificates. But most places
13 should be able to find a few square inches where
14 they could hang a poster. The poster itself I
15 thought was very well designed and alerted wait
16 staff and food workers to the eight most common
17 allergies and gives some really concrete
18 suggestions on what to do if a patron explains
19 that they have a food allergy.

20 COUNCIL MEMBER LAPPIN: And what
21 would be in the restaurants now, just out of
22 curiosity, let's say somebody did have a reaction.
23 Is there anybody who's required to be trained or
24 is there any equipment there, any...?

25 MR. MARCUS: No, restaurant workers

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2 are not required to have EpiPens or cannot
3 administer medication. There are resuscitation
4 devices in restaurants, and, of course, there's
5 the Heimlich poster in case someone chokes but--

6 COUNCIL MEMBER LAPPIN: You mean
7 like a defibrillator when you say resuscitate?

8 MR. MARCUS: Yeah.

9 COUNCIL MEMBER LAPPIN: And I guess
10 my last question, to go back--

11 MR. MARCUS: [Interposing] Oh, I'm
12 sorry, not the defibrillator, just the CPR mask.

13 COUNCIL MEMBER LAPPIN: When you do
14 your training in the Academy, what are you
15 teaching? What is part of the curriculum for the
16 workers?

17 MR. MARCUS: On allergens? I think
18 what happens, the Academy is actually a different
19 section of the department, but what they train on
20 are the most common allergens and the types of
21 reactions that people can have. And how food can
22 become easily cross-contaminated with these
23 different things.

24 COUNCIL MEMBER LAPPIN: So you do
25 teach that specifically.

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MR. MARCUS: [Off mic]

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COUNCIL MEMBER LAPPIN: Great.

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Thank you, Mr. Chairman.

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CHAIRPERSON RIVERA: Thank you very much, Council Member Lappin.

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Now I just had a couple of questions myself. When the inspectors go out to the restaurants, what indicators are they looking for to make sure that the environment is free from cross-contamination and is a safe environment for people who have food allergies?

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MR. MARCUS: None. They're not

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really looking at--there's nothing in the Code now that requires us to look at that, so we haven't really been looking. And this bill, in fact, only asks that the poster go up.

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CHAIRPERSON RIVERA: Okay. Now if a

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2 patron of a restaurant does fall sick to a food
3 allergy and is hospitalized, does the Health
4 Department send an inspector to do follow-up at
5 the restaurant to see if there is any preventable
6 cause for it? Any preventable action that could
7 have been taken?

8 MR. MARCUS: I suppose it depends on
9 how it's been reported. If it was reported as a
10 food borne illness, we would probably send someone
11 out if there were other people that reported it as
12 a food borne illness. Otherwise, it would get
13 referred to my office for just a general
14 inspection, but there's nothing specifically done
15 with regard to food borne--to allergens. It's
16 more focused on other food borne illnesses.

17 CHAIRPERSON RIVERA: Okay. Now in
18 reference to the person that you stated that every
19 restaurant has to have at least one certified
20 person at the location at all times.

21 MR. MARCUS: That's correct.

22 CHAIRPERSON RIVERA: Okay. Now that
23 certified person, what are they in particular
24 looking for? What are they doing? Are they there
25 to educate or inform the staff working or handling

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food? What is their role in what--

MR. MARCUS: [Interposing]

Ostensibly, it's to supervise all the food workers in the restaurant on safe food practices, safe food handling practices.

CHAIRPERSON RIVERA: And has there been any idea or any conversation about the need to ensure that everyone who handles food needs to attend these classes or courses or is it not a feasible...?

MR. MARCUS: We've thought about it at different times, but it's a huge number of people in New York that would have to be trained. And there are lot of concurrent issues that go along with identifying who all the food workers are that we haven't quite tackled yet.

CHAIRPERSON RIVERA: I guess there's such an overturn in food workers, it'll be very difficult [crosstalk]--

MR. MARCUS: [Interposing] I think the estimate's close to 200,000 food workers, it's a lot of people to put through a course.

CHAIRPERSON RIVERA: And how many instructors does the Academy have?

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MR. MARCUS: I believe six.

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CHAIRPERSON RIVERA: Six, okay. So,
and how often do you have--

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MR. MARCUS: And some consultants
that do it part time.

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CHAIRPERSON RIVERA: And how often
do you have these courses for certification?

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MR. MARCUS: They run constantly.
Every week there's a food protection course.

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CHAIRPERSON RIVERA: And is there
continuing education that an individual must take
to ensure that they're kept up-to-date with any
changes in the Code or any changes in reference to
the food industry? [Crosstalk]

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MR. MARCUS: At this time, there is
no requirement to repeat the class, however, when
we encounter a restaurant that is unwilling or
incapable of complying with the Health Code, we
examine how well the operator of that restaurant
is familiar--how familiar that operator is with
the Health Code and if we assess a need to retake
that course, we will order the person to take the
course as a matter of a stipulation for reopening.

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CHAIRPERSON RIVERA: Okay. Now one

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2 of my last questions will be, since you only have
3 six instructors for over 18,000 people getting
4 certified per year and 200,000 restaurant workers
5 who handle food, is there a possibility of having
6 an online program where people who handle food can
7 sign in, register, log in, get the--

8 MR. MARCUS: Yep.

9 CHAIRPERSON RIVERA: --information,
10 take an exam, and, therefore, it would not be such
11 a huge burden on the Department of Health with the
12 Academy, but, at the same time, meet the goal of
13 ensuring that anyone who handles food would be
14 informed, educated, and capable of getting that
15 information and possibly getting certified.

16 MR. MARCUS: It exists already, it's
17 been online for about two years I believe and it's
18 still free of charge.

19 CHAIRPERSON RIVERA: And how long is
20 that online program? How long is the online
21 program? Is it a couple of hours, is it one day,
22 is it two weeks, how...?

23 MR. MARCUS: Well it's a self-paced
24 course, but it covers all the material that's
25 covered during the 15 hours of the course.

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CHAIRPERSON RIVERA: So the course--

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MR. MARCUS: Sixteen hours of the

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course.

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CHAIRPERSON RIVERA: --the course in

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general is about 15 hours.

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MR. MARCUS: About, yeah.

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CHAIRPERSON RIVERA: About 15 hours.

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And the online course is similar to the live

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course.

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MR. MARCUS: Exactly.

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CHAIRPERSON RIVERA: So is there any

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opinion or statement to mandate that anyone who

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handles food at least should take the online

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course and get certified via online?

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MR. MARCUS: That course would be

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probably a bit involved for most food workers, but

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there are other courses that we're looking at that

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could be targeted to all food workers, so it's

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something that we're considering.

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CHAIRPERSON RIVERA: Okay. I think

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that would definitely go a long way since

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obviously some restaurants are very large,

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obviously, and they have a tremendous amount of

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staff, the kitchen is larger than most and for one

1 individual to have constant supervision and
2 monitor the actions of each individual becomes
3 cumbersome sometimes, so it may be an avenue that
4 we can deal with by potentially mandating that
5 every restaurant worker who handles food in the
6 cooking process should take this online course.
7 Since it's only a 15 hour course, it doesn't seem
8 to be such a burdensome situation for a worker
9 who's going to work. If it was a two week course,
10 obviously, it'll be difficult, but that's
11 something we should potentially explore.

12 MR. MARCUS: Having multiple food
13 protection certificate holders at the restaurant
14 is something that we also consider during
15 stipulations. So if it's a large restaurant and
16 it's clear to us that the word is just not getting
17 out to all the food workers about safe food
18 practices, that's something else that we'll
19 stipulate as part of an agreement with the
20 restaurant.

21 CHAIRPERSON RIVERA: Okay. Thank
22 you. At this point in time, I want to give
23 Council Member Kendall Stewart, followed by
24 Council Member Helen Sears the opportunity to ask
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a few questions. Thank you.

COUNCIL MEMBER STEWART: Thank you.

And good morning.

Commissioner, I have a few simple questions. The posters that we spoke about, what likely to be the poster and what are you going to have on it? Is it something like the one we have for choking? What are you going to have on that poster?

MR. MARCUS: Well we met with the Food Allergy and Anaphylaxis Network a while ago and they provided us with a sample poster that we thought was quite adequate. So we'll take a look at that and see if we can have something very similar reproduced.

COUNCIL MEMBER STEWART: So you will be preparing that poster you're saying?

MR. MARCUS: Yes.

COUNCIL MEMBER STEWART: All right.

There are a number of things that cause the allergy, that cause the reaction and we know most of these things, are there going to be a sign posted as to list these things in the restaurant so that people can know?

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2 MR. MARCUS: The poster itself
3 pictures eight of the most common food allergens.

4 COUNCIL MEMBER STEWART: The poster
5 will have--the poster that you're preparing will
6 have those eight, you're saying?

7 MALE VOICE: [Off mic] final.

8 MR. MARCUS: It's not final, but the
9 example that we've looked at had those and I think
10 we would do something very similar. It's
11 actually--

12 COUNCIL MEMBER STEWART: I just want
13 to be clear, because I know some of these things
14 that are listed here is the eight, the big eight,
15 but there are also other ingredients that some
16 cultures use that causes allergy, and it's not
17 every--most restaurants may not use them, but some
18 restaurants, based on their culture, they use that
19 and folks develop a reaction to that ingredient.
20 I'm trying to figure out if you're going to have a
21 list of possible allergic reaction that you may
22 have from those things. In other words, you may
23 have--I can give an example, I went into a
24 Guyanese restaurant and I had something that they
25 added to the food, I'm not too sure of the name,

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2 but I had a reaction. And I couldn't tell what it
3 is, so I tried it the second time about two weeks
4 later and the same reaction, but I don't know what
5 it is and I believe it's something that is added--
6 I don't know if it's something like the MSG or any
7 one of those things that they added to the food--
8 but what I would like to know is that the possible
9 things that can cause you a reaction, if you're
10 going to have a list of that posted someplace -
11 that they may use and if the restaurant is
12 required to list the major ingredients that they
13 use when they cook.

14 MR. MARCUS: I think we'll have to
15 consult more with the experts on food allergies
16 and think some more about whether or not we could
17 put a more extensive list together.

18 COUNCIL MEMBER STEWART: All right.
19 On another area, the renewal of certificates, is
20 that every three years? How often do you renew
21 that?

22 MR. MARCUS: I'm sorry?

23 COUNCIL MEMBER STEWART: The food
24 protection certificate that one goes and takes the
25 course for, how often do you renew that?

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2 MR. MARCUS: There's no renewal
3 required of that.

4 COUNCIL MEMBER STEWART: Don't you
5 think there should be a renewal, because if you
6 take the course 10 years ago and you have your
7 certificate, that means that you think the person
8 will still be prepared to be able to deal with the
9 issue today?

10 MR. MARCUS: A lot depends on our
11 inspections, so if our inspection reveals that
12 someone is not really clear on food safety
13 techniques in that particular restaurant, we might
14 require that someone else, or that person, retake
15 the course and it happens quite frequently. But
16 with 27,000 restaurants and tens of thousands of
17 food protection certificate holders, it's a fairly
18 daunting task to have a renewal process put in
19 place right now.

20 COUNCIL MEMBER STEWART: The fact
21 is, in most of the professional areas, if you have
22 a license you have to take some sort of follow-up
23 courses to have it renewed, sometime, somewhere,
24 and don't you think that should be an issue here?
25 Because if you were a nurse, you have to have

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2 continued education courses because things change.
3 You have to know and you have to continue to do
4 things so that it can be renewed.

5 And I think this is one of the
6 areas that you should think about even if it's a
7 two hour class that they should go to every three
8 years to keep their license intact, because these
9 folks, they move from restaurant to restaurant,
10 there's issues that cause them to change, so they
11 should have their license renewed every three
12 years, and just a two hour class should be able to
13 suffice to help them be update. So that is
14 something I think you should look at.

15 MR. MARCUS: Okay.

16 COUNCIL MEMBER STEWART: The other
17 thing that I want to know, you mentioned about the
18 bleach solution that the restaurant have to have
19 in the restaurant to be used, there are several
20 types of bleach solutions that we have in it, do
21 you have a standardized one that--a list of those
22 that the one that you prefer that these
23 restaurants should be using? There's some that
24 may have bleaches solution that may have
25 ingredients or so that are not four areas that

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2 should be used in a restaurant, and we don't know
3 if these folks are using that because some of
4 these solutions have carcinogenic ingredients. So
5 I'm trying to figure out if they can have any kind
6 of bleach solution, but you're not stating exactly
7 what type, and I want to know if you would please
8 list the type of solution that they should be
9 used, the one that we call health friendly and not
10 the ones that have carcinogenic ingredients.

11 [Pause]

12 MR. ROBERT EDMAN: I'm not quite
13 clear on what the question is, but what we require
14 is basically a 10% pure bleach solution is a, you
15 know--

16 COUNCIL MEMBER STEWART:

17 [Interposing] Well what I'm saying, basically
18 there's several types of bleach solutions and the
19 bleach solutions, just like we have different
20 types of things that we use for dealing with
21 insects and things like that, we have different
22 type of solution and some we cannot use and some
23 we can use.

24 MR. MARCUS: Right.

25 COUNCIL MEMBER STEWART: In this

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2 case, the same thing with bleaches, we have
3 certain types of bleaches that you would have that
4 a child could play with and is not so that bad,
5 but there's some that are so bad that has
6 ingredients that are carcinogenic, that they're
7 made with--that have ingredients that are bad.

8 So I'm saying if we had a list of
9 the type of solution that you think that we should
10 be using and maybe that will be good.

11 MR. EDMAN: Okay. There isn't
12 currently such a list in existence, but I'm sure
13 that's something we could consider.

14 COUNCIL MEMBER STEWART: There's a
15 current--

16 MR. EDMAN: [Interposing] Currently,
17 there's not a list produced by the department that
18 lists the various bleaches and various types of
19 bleaches, if that's what you're asking. There
20 isn't currently such a list.

21 MR. MARCUS: What the code requires
22 is a 10% bleach solution and also requires that
23 restaurant operators have a testing kit available,
24 so that when we show up at a restaurant we may ask
25 them to produce the testing kit and test--

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COUNCIL MEMBER STEWART:

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[Interposing] A testing kit for the bleach.

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MR. EDMAN: The concentration.

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COUNCIL MEMBER STEWART: The

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concentration of--

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MR. MARCUS: For the concentration

7

of the bleach and water.

8

COUNCIL MEMBER STEWART: Well, I'm

9

not too sure that most of these restaurants will

10

be checking to see if it's 10% or not. All I'm

11

saying is that they may have a container with

12

bleach--

13

MR. MARCUS: Well--

14

COUNCIL MEMBER STEWART: --and when

15

they need to do something, they pour some bleach,

16

and just like that--

17

MR. MARCUS: If they don't, and if

18

they do it incorrectly, it's a violation and it'll

19

cost them quite a few dollars. So it's something

20

that we check for regularly.

21

COUNCIL MEMBER STEWART: All right,

22

thank you.

23

Let me ask this last question,

24

multiple certifications. You said that once you

25

1
2 have a certification in a restaurant, you're
3 talking about, if it's a large restaurant, you may
4 have several certificates. Now those smaller
5 restaurants, yes, they may have a certificate, but
6 the person who holds the certificate, 90% of the
7 time they may not be there, what happens?

8 MR. EDMAN: The regulation requires
9 that the holder of the certificate be present at
10 all times--

11 COUNCIL MEMBER STEWART: At all
12 times.

13 MR. EDMAN:--[crosstalk] operation.
14 If they're not, it's a violation.

15 COUNCIL MEMBER STEWART: All right.
16 So what you're saying that the restaurant should
17 not be operated or should not be open without the
18 certificate holder being there, that's what you're
19 saying.

20 MR. EDMAN: Correct.

21 COUNCIL MEMBER STEWART: All right,
22 thank you.

23 CHAIRPERSON RIVERA: Thank you very
24 much. Next, we'll go to Council Member Helen
25 Sears.

1
2 COUNCIL MEMBER SEARS: Thank you,
3 Mr. Chair. I just have a couple of questions.
4 One is that who's exempt from certification in
5 restaurants for food certification and handling
6 it? The reason I ask that is because there are
7 many workers in restaurants and many of them take
8 the food to the table, many of them are serving
9 this food. So I've been to the Health Academy,
10 and I did that 'cause I ran centers and I ran
11 hospitals and I wanted to know everything that had
12 to go on in the kitchen, so to say. And that's
13 where I learned about the human--the fly. So when
14 I see flies in restaurants, that's a big taboo.

15 So who actually is allowed to
16 handle the food? The plates are not covered, they
17 are out in the open and those that take the--by
18 the way, it's not an accusatorial thing, I just
19 want to know are the waiters exempt from food
20 handling? Is it only in the kitchen with food
21 preparation? That I don't know.

22 MR. MARCUS: There are no exemptions
23 per se, the only thing that the Health Code
24 requires is that there be someone on duty during
25 all times of operation that has passed this food

1
2 protection course and who will supervise those
3 food workers. So the assumption is that the
4 person is actually supervising and the operator is
5 explaining to wait staff, as well as whether food
6 handlers, what food practices need to be observed.

7 COUNCIL MEMBER SEARS: What is the
8 fee for the food Academy, the Health Academy, do
9 you know?

10 [Crosstalk]

11 MR. EDMAN: It's \$105.

12 COUNCIL MEMBER SEARS: Okay.

13 MR. EDMAN: Currently.

14 COUNCIL MEMBER SEARS: So I would
15 think an owner would not have more than himself
16 probably, or the chef doing that. The reason I
17 ask that is because the restaurants are one of the
18 areas where it's transitory in the kitchen and I
19 would think that a lot of what happens will happen
20 due to the transitory process--the afternoon or
21 the evening you could have different people in the
22 kitchen. I would think that presents a problem,
23 but I also think that you can't be responsible for
24 every allergy that people have and it's wrong to
25 think that you have to manage people's health

1

2 care, but what would be helpful, I think, more
3 than anything else, if there was a poster
4 strategically located--men's rooms, women's rooms,
5 everywhere--that if they have an allergy to please
6 let the proprietor know. [Pause] That is--I
7 don't know if you do that, I don't know, I know I
8 came in late.

9

MR. MARCUS: No, but we are
10 considering this bill that you've put forward that
11 requires a poster for the food workers and, as I
12 read it, requires that it's posted in an area that
13 food workers will see it.

14

COUNCIL MEMBER SEARS: Couldn't we
15 have the clients that are in that restaurant,
16 shouldn't they be responsible for advising that
17 they have an allergy? I mean I would think it
18 works both ways. I don't know, I must say I'm not
19 familiar--I'm familiar with the issue, but I'm not
20 familiar with the bill, so Mr. Chairman, I mean,
21 I'm not being derogatory about this, but I think
22 there comes a time when we hold hands too much.
23 It seems that if I'm a customer in a restaurant
24 and I have an allergy, I should be comfortable
25 enough not to feel I'm intimidating anybody, but

1

2 it's my right to tell the proprietor that I have
3 an allergy and if there's anything in there and I
4 can't eat in that restaurant, I'll go elsewhere.
5 So--

6

7

MR. MARCUS: It's certainly
something we can consider.

8

9

10

11

12

COUNCIL MEMBER SEARS: Is that
something that has to be in the bill, which means
I'm looking at amending the bill, or is it
something that doesn't need to be in the
legislation?

13

14

COUNCIL MEMBER LAPPIN: If I may--

15

COUNCIL MEMBER SEARS: Yes.

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COUNCIL MEMBER LAPPIN: --Mr.
Chairman, because I was working, since I drafted
the bill, that doesn't tend to be the problem, and
we're going to hear from witnesses today who are
food allergy sufferers and also from the food
allergy initiative and organization, because if
you have a food allergy, you tell the food
preparer, sometimes I know in some restaurants the
chef themselves will come out even after the food--
-if you tell the waiter, sometimes the chef
himself or herself will come out and talk to the

1 patron. That's the ideal world, somebody who is
2 very responsible, who really understands the
3 issue. I think the problem tends to be that you
4 come in, you say to the waiter, I'm allergic to X
5 and then you still get served a dish and I think
6 the whole goal going to both of the questions I
7 heard today of this bill is that not every person
8 who's worked in the kitchen has been to the
9 Academy and does have the training. So the whole
10 goal of this bill is to have the poster in the
11 kitchen so that every worker in the kitchen sees
12 and understands that there are these food
13 allergies that can kill people and that it is an
14 important issue for them to understand, so that
15 when a patron does say that they're allergic to
16 something, that they should take it seriously and
17 understand the issue. But I know we're going to
18 hear today from people who have allergies and they
19 can talk to their experiences when they go into
20 restaurants, but that's how we crafted the bill
21 the way we did.

23 COUNCIL MEMBER SEARS: Oh, I
24 appreciate that, I think I have a little
25 difference with that. And maybe it's something to

1
2 really talk about because I respect what you've
3 done and it's important to do that, but I do
4 think, knowing the restaurant industry and with
5 the constant flow of employees, just come in to my
6 district and you'll see them hanging out on every
7 corner, morning, noon, and night, 24 hours a day.
8 I will not believe that when that worker gets into
9 that restaurant, and I say this clinically, that
10 the first thing they're doing is educating them
11 when there is so much that they need to do to take
12 care of the restaurant.

13 So it seems to me there should be
14 some people because depending on a waiter or
15 somebody who is the busboy to say that you have an
16 allergy, I think is placing a lot in a very busy
17 environment. If that food server, the one, the
18 certificate, has to be on duty all the time, then
19 that's the one who should be told that the person
20 has an allergy, that's what I believe. It should
21 be given to the responsible person in that
22 restaurant. I don't think--and I say it non-
23 judgmentally--to give it to a busy waiter who
24 suddenly is wrapped up in an environment of a lot
25 of stuff or to give it to a busboy, I think is

1
2 outrageous, it should go directly to the one who
3 has that certificate. If they're there and they
4 have to be at all times, it means that more than
5 one has to have a certificate, depending on the
6 hours of the restaurant, is the only thing I'm
7 suggesting, because I think to give it to those
8 that are getting commands all over the place to do
9 what they have to do, to place that individual in
10 that very responsible role of communicating
11 something that is so important, needs to be
12 directed to the person who has the food
13 certificate, that's the only thing I'm saying.
14 Considering the fact that the restaurant business
15 is the help, the employees are so transitory,
16 Councilwoman, that the coming and the going is
17 just not enough time to educate in a very
18 important process and I just think the one that
19 should get that information is the one who holds
20 the food certificate. Thank you.

21 Oh, one other thing I had to do, I
22 think you answered my question. Yeah. Okay,
23 thank you very much.

24 Now do you think that's a
25 reasonable thing? I didn't ask you that. I mean,

1

2 you require food certificates, those who are
3 handling food, should they not know that there is
4 a customer in the restaurant who has an allergy?
5 Who would be a lot more familiar with that than
6 somebody who's bringing--the waiter is not the
7 nutritionist.

8

9 MR. MARCUS: Right, nor would be the
10 food protection certificate holder, but from a
11 food safety standpoint and a public health
12 standpoint, we're concerned that that food
13 protection certificate holder is making sure that
14 the chicken's cooked 165 degrees, that when it's
15 sitting in the refrigerator, it's not dripping on
16 the salad; that the hot food is being held at 140
17 degrees; that the cold food is being held at 41
18 degrees; that food handlers are not making bare
19 hand contact with food. There's probably 200 and
20 some odd regulations that they have to make sure
21 everybody follows, so they all have pretty big
22 jobs and we check on them periodically to make
23 sure they're following them.

24

25 COUNCIL MEMBER SEARS: So we're
right back where we were. I think that a little
work--okay, thank you. But I think that some

1
2 responsibility, Mr. Chair, needs to be placed on
3 the consumer--the client in the restaurant. They
4 should be made known that they have a
5 responsibility to tell the restaurateur that they
6 have an allergy. I think that the people should
7 made to be responsible.

8 CHAIRPERSON RIVERA: Thank you.

9 And we've been joined by Council
10 Member Helen Foster. I see no other questions--
11 Council Member Kendall Stewart has a follow-up.

12 COUNCIL MEMBER STEWART: I just want
13 to be clear that last statement made by my
14 colleague here, Helen Sears, you were saying
15 basically that the patron should notify someone in
16 the restaurant that they're allergic to--

17 COUNCIL MEMBER SEARS: [Interposing]
18 That they have an allergy--

19 COUNCIL MEMBER STEWART:
20 [Interposing] Right, but many times folks may not
21 know that they are allergic to something until
22 they first have it and they going into--

23 COUNCIL MEMBER SEARS: [Interposing]
24 How will the restaurant then know that they've got
25 that and what the allergy is to--I understand what

1
2 you're saying and that happens a lot, but I think
3 we have to be reasonable and rational about what
4 do we expect the customer to do, what do we expect
5 the owner of the restaurant to do. And I don't
6 own restaurants, so I'm not saying that, but I eat
7 in them and I would think if I had an allergy and
8 I want to eat out, that I would notify the
9 proprietor. So we'll end on that note--

10 COUNCIL MEMBER STEWART: Yeah--

11 COUNCIL MEMBER SEARS: --[crosstalk]
12 further discussion, Dr. [crosstalk]--

13 COUNCIL MEMBER STEWART: All right.
14 The other thing that I wanted to ask, what's in
15 the codes right now for restaurant that may have
16 let's say a cat, a cat in the basement because of
17 the fact that they want to keep away mice and rats
18 and things like that? What do you have in the
19 codes about that?

20 MR. MARCUS: It's prohibited.

21 COUNCIL MEMBER STEWART: It's
22 prohibited. So if there is a cat in the basement
23 of a restaurant, it's illegal.

24 MR. MARCUS: That's correct.

25 COUNCIL MEMBER STEWART: Oh, I just

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wanted to know that because I know the shedding from cats, which is a basically protein, it's an allergen to some folks who may get a reaction--

MR. MARCUS: Right.

COUNCIL MEMBER STEWART: --so I just wanted to know that, all right.

CHAIRPERSON RIVERA: I guess the-- well your question.

COUNCIL MEMBER SEARS: [Off mic]

CHAIRPERSON RIVERA: Wasn't, okay.
Council Member Helen Foster.

COUNCIL MEMBER FOSTER: Thank you.
First, let me apologize, I have two hearings at 10 and two at 1 and I thought this one was at 1, so I apologize for being late.

This is an issue, and just coming in on the end of it, that's important to me twofold, I have a husband who is severely allergic to shellfish, but I have a goddaughter who has the highest range or whatever you call it to nuts and we found out when she was in Bermuda on a family trip, at a nut, and literally almost died, and we go on trips like Disney, the chef comes out of the kitchen, so we have actually walked out of places

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2

when you can tell the waiter is not getting it.

3

And it is so severe that on some American airline

4

flights when they're in first class, they won't

5

serve the warm nuts because that's how severe her

6

allergy is.

7

So I appreciate that we're having

8

this discussion and I don't quite know what I

9

missed, but it's important to understand that

10

there are certain restaurants that I know we need

11

not even try with her because they're not going to

12

get it and to them no nuts means I don't sprinkle

13

nuts on it, not it wasn't fried in peanut oil,

14

she's tree nuts, seed nuts, nuts that I didn't

15

even know were nuts. And so we have to be like

16

it's on us and any time she has play dates, it's a

17

whole litany, she actually had to get a waiver for

18

her school zone because her elementary school, how

19

they dealt with children with nut allergies is

20

they put them all in a table in the cafeteria in

21

the corner away from kids that had peanut butter

22

and jelly sandwiches because they didn't feel it

23

was fair to kids not to have peanut butter and

24

jelly sandwiches.

25

So the severity of allergies, I

1
2 don't think people get unless they deal with it,
3 unless they see it. And so, while I think it's
4 important that we make restaurants more aware in
5 the posting, we as consumers or anyone with any
6 type of allergy has to go through the litany. So
7 when I say like is the bread, does it has sesames
8 in it, because everybody thinks when you say no
9 nuts, okay, no, it doesn't have a nut.

10 So these things I appreciate us
11 bringing this up and, as we know, more and more
12 kids are being diagnosed earlier and earlier with
13 nut allergy, you know, a good friend of ours,
14 family friend who was a dentist in Vegas died
15 because he ate a cookie that they told him it was
16 no nut in it, had a nut, he EpiPanned himself, but
17 never could get to the emergency room, so it's
18 very serious. So I very much appreciate that
19 we're having this discussion and I think the
20 important thing is figuring out the best way for
21 the restaurant and the consumer and everyone to
22 make whoever is dining, comfortable that they can
23 in fact eat at this location and won't risk being
24 sick. So thank you.

25 CHAIRPERSON RIVERA: Thank you.

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2 That concludes the questions from the members of
3 the Health Committee. Thank you for joining us.

4

5 We'll call the next panel at this
6 point in time. We have Julie Menin, we have
7 Robert Pacenza from the Food Allergy Initiative,
8 Dr. Justin Skripak from Mount Sinai School of
9 Medicine, and Dean Palin.

9

[Pause]

10

11 MS. JULIE MENIN: Thank you, Mr.
12 Chairman. I am Julie Menin, I am chairperson of
13 Community Board 1 in Lower Manhattan, but I am
14 coming here to you today, not in my official
15 capacity, but as a parent of three food allergic
16 children.

16

17 And I first want to thank you, Mr.
18 Chair for holding this important hearing, but I
19 especially want to thank Council Member Jessica
20 Lappin, who has really been a true hero in all of
21 this and, when we went to her with this issue, she
22 really stepped up to the bat and I want to thank
23 her for her tremendous leadership.

23

24 As Council Member Lappin correctly
25 pointed out, over 300,000 New Yorkers suffer from
severe food allergies. And I know the purpose of

1
2 the hearing is in, one part, to talk about the
3 bill about restaurants and what I would say to
4 that, I am a former restaurant owner and I will
5 tell you that what is being proposed today is very
6 important, but really a baby step in what the city
7 could and should be doing on food allergies. So
8 I'm pleased to see that the city is not objecting
9 to it, but I do hope that this committee and the
10 City Council will go much farther than what is
11 even being asked in this bill.

12 I really want to take the
13 opportunity to talk about something, and I hope
14 Council Member Foster, I hope will support this.
15 Right now in the city of New York, EpiPens are not
16 mandated on New York City ambulances and, for
17 those who are not as familiar with EpiPens as
18 maybe some of us who have family members with food
19 allergies are, EpiPens are the only medicine that
20 can save someone from a serious anaphylactic
21 reaction. And literally every second counts when
22 someone is going into anaphylactic shock.

23 I will tell you a personal story
24 that happened to me. I have three kids, as I
25 mentioned, who do suffer from serious food

1
2 allergies. My five-year-old son suffers from
3 peanut allergies, my three-year-old twins suffer
4 from shellfish allergies. My twins when one of
5 them was two, we were out of state in Colorado and
6 my son ate literally one bite of salmon, he had
7 previously tested negative to every single food
8 allergy, so we were under the false illusion that
9 we did not have to have EpiPens with us, but he
10 went into anaphylactic shock and almost died. And
11 what saved him was the EpiPen and thankfully we
12 were in a town that had EpiPens on the ambulances.

13 I really have to tell you that I
14 think it is absolutely outrageous and shocking
15 that New York City has not stepped up to the bat
16 and put EpiPens on the ambulances. This is done
17 in cities all across the country and I think it is
18 now on the city's conscience if a child or an
19 adult dies from anaphylactic reaction. Right now
20 with the New York City ambulances, only one-third
21 of them have advanced life support, meaning that
22 only one-third of them have the EpiPens. So, as a
23 parent with food allergic kids, I have a one-third
24 chance of getting an ambulance that has an EpiPen,
25 and I really think that this has to change.

1
2 And I know this is an oversight
3 hearing, which is why I brought up but EpiPen
4 issue, because I think that is one of the most
5 important things we can do to try to save lives
6 for the 300,000 New Yorkers who suffer from this.

7 I'd be happy to answer any
8 questions.

9 CHAIRPERSON RIVERA: Thank you.
10 We'll just let the other--

11 MS. MENIN: Sure.

12 CHAIRPERSON RIVERA: Just introduce
13 yourself for the record and proceed with your
14 testimony.

15 [Pause]

16 Mr. Dean Palin: Hi, my name is Dean
17 Palin and I'm pleased to participate in this
18 important hearing.

19 I'm here today for three reasons,
20 I'm an owner of restaurants here in Manhattan,
21 including Big Daddy's and City Crab, and they are
22 sensitive to the concerns of people with food
23 allergies.

24 I have a severe peanut allergy
25 since I was four years old. Most importantly, I'm

1
2 the father of two children with life-threatening
3 food allergies to peanuts also.

4 Over the years, I've experienced
5 many allergic reactions, both mild and severe.
6 The most serious occurred when I was 26, during a
7 business trip to Las Vegas.

8 FEMALE VOICE: [Off mic]Vegas.

9 MR. PALIN: Yeah, I too, and
10 unknowingly ordered a sugar cookie, which turned
11 out to be a peanut butter cookie and I went into
12 anaphylactic shock after taking a small bite. At
13 the hospital, the doctor actually asked my
14 business partner what religious preference should
15 I get to his bedside. Miraculously, I survived,
16 but I can't say that quickly I returned to a
17 normal life. It began panic attacks, I was so
18 afraid of eating, I lost 32 pounds. To this day,
19 I really don't talk about the experience, but I'll
20 never turn away an opportunity to make this place
21 safer place for my kids.

22 Thanks to the organizations like
23 the Food Allergy Initiative, it is safer. Schools
24 and camps have food allergy management programs,
25 which were unheard of when I was growing up. We

1

2 have federal food labeling laws, people are more
3 aware of food allergies than ever before, but
4 until researchers find a cure, our kids will never
5 be completely safe.

6

7 Every food allergic parent lives
8 with the dread of a phone call that says that the
9 healthy, happy child that you saw at breakfast is
10 on the way to the hospital and won't be coming
11 home tonight or ever again.

12

13 No matter how confident we are when
14 we ask the questions to the waiter or the
15 managers, sometimes the people accuse us of being
16 neurotic or even hysterical. But we really are no
17 different than any other parents in the room, we
18 want our kids to become safe and well-adjusted,
19 confident adults. We wish we didn't have to walk
20 the tightrope between protecting them and giving
21 them the freedom they need to deserve.

22

23 This committee can help us get off
24 that tightrope. When administered quickly,
25 epinephrine is a miracle drug and I urge you to do
everything possible to ensure that no ambulance
will ever arrive without it. I also urge you to
support the training programs and tools for the

1
2 food service staff. New York is the restaurant
3 capital of the world and we should be a leader in
4 providing a safe example for people also to have
5 an easier dining experience, especially for food
6 allergic visitors.

7 And on behalf of the food allergic
8 families throughout the city, I'm grateful for
9 your consideration. And I'm available for any
10 questions you may have regarding the restaurant
11 industry.

12 [Pause]

13 DR. JUSTIN SKRIPAK: Good morning,
14 my name is Dr. Justin Skripak, I'm a pediatric
15 allergist at Mount Sinai Hospital in New York.
16 The majority of my clinical practice involves
17 evaluating and managing children with food
18 allergies. Today, I'm representing my patients,
19 the Jaffe Food Allergy Institute at Mount Sinai,
20 the New York Allergy and Asthma Society, and the
21 Food Allergy Initiative.

22 Just some of the brief stuff that
23 your background research already summarized very
24 nicely. Food allergy has become increasingly
25 prevalent over the past decades. In October 2008,

1
2 the Centers for Disease Control reported that the
3 number of young people who had a food allergy
4 increased 18% between 1997 and 2007. So in 2007,
5 approximately 3 million U.S. children and
6 teenagers under 18 were reported to have a food
7 allergy, compared to just over 2.3 million in
8 1997. Studies also indicate that, although
9 virtually any food can be an allergen, it's a
10 rather small number of foods that account for the
11 majority of food allergies and those are those
12 main eight that were mentioned earlier: peanuts,
13 tree nuts, milk, egg, shellfish, fish, wheats, and
14 soy.

15 The increasing prevalence of food
16 allergy is particularly concerning given that food
17 allergy reactions can be severe and life-
18 threatening. This increasing prevalence also
19 means that there's a growing number of food
20 allergic individuals who must obtain safe meals in
21 restaurants and other food establishments. One of
22 the major risks for food-induced reactions is
23 hidden ingredients in prepared foods. So even
24 trace amounts of an allergen can cause these
25 severe reactions.

1
2 There's no cure for food allergy
3 yet; no medication can prevent severe reactions.
4 The current treatment for food allergy is strict
5 avoidance of the food, along with always having
6 epinephrine injections available in case of
7 emergencies. Having the emergency treatment
8 available is essential because accidental
9 exposures to the foods are not uncommon.

10 Studies do show that the quality of
11 life of food allergic individuals is significantly
12 impaired. Difficulties with obtaining meals
13 outside of the home is typically identified as one
14 of the major sources of stress and reduced quality
15 of life for persons and families of persons with
16 food allergy. Food allergic consumers must be
17 vigilant in stores, such as bakeries and ice cream
18 parlors, as well as restaurants. These
19 individuals can have allergic reactions to small
20 amounts of foods hidden in prepared dishes, or
21 from cross-contact--for example, when a food
22 preparer use shared utensils, shared pans,
23 blenders, or fryers. Therefore--and I think this
24 is an important point that can [off mic] an
25 allergic patron must alert the restaurant of any

1
2 allergies, but it is otherwise almost completely
3 dependent on the knowledge and conscientious of
4 the restaurant personnel to provide a safe meal
5 after they make that allergy known. Food servers
6 and preparers must have adequate communication
7 with the patron and with each other and an
8 understanding of food allergies and safe meal
9 preparation to ensure consumer safety.

10 Just to highlight one recent survey
11 that was done here in New York of 100 New York
12 area restaurant personnel, including managers,
13 wait staff, and chefs, it basically showed a
14 generally poor understanding of the topic and the
15 following are the key findings from that study:
16 the majority surveyed thought that food allergy
17 was much less common than it actually is; only 42%
18 had received some type of food allergy training;
19 58% knew of a plan in place to handle an
20 emergency; and probably the key though, is that a
21 large proportion, 72%, said that they were very
22 comfortable or somewhat comfortable in providing a
23 safe meal.

24 So despite this self-perception of
25 having sufficient knowledge and ability to handle

1
2 food allergic customers, there was a relatively
3 high frequency of incorrect assumptions about
4 specific questions. About a quarter incorrectly
5 thought that consuming a small amount of the
6 allergen is safe; about a third incorrectly
7 thought that fryer heat can destroy an allergen;
8 about half thought that keeping a buffet safe--can
9 be kept safe by keeping it clean; and about a
10 quarter incorrectly responded that removing an
11 allergen from a finished meal, like taking peanuts
12 off the top of a salad, would make that dish then
13 safe.

14 So the alarming aspect of this
15 study, again, is that there's knowledge deficits
16 despite high confidence in an ability to take care
17 of food allergic customers.

18 So just to summarize, food allergy
19 is increasingly common, accidental consumption of
20 small amounts of a food allergen can be life-
21 threatening. Individuals with food allergy would
22 like to be able to, and deserve to be able to, eat
23 out safely, and the major reason that eating out
24 is stressful and problematic is that for persons
25 with food allergies is a lack of understanding of

1
2 food allergy and food allergens by restaurant
3 personnel.

4 I think the goal of making
5 restaurants safe for food allergic individuals is
6 achievable. In the homes of allergic individuals,
7 the foods that they're allergic to are often eaten
8 safely by other members of the family. So with a
9 bit of time and effort invested for education, the
10 same can be accomplished in the restaurant
11 setting. Informational posters and I think also
12 training sessions would be two ways of
13 accomplishing this goal. I urge you to implement
14 these measures to improve safety and quality of
15 life for food allergic individuals.

16 Lastly, regarding this separate
17 issue, but equally important in the food allergy
18 world, I'd like to add my support for a
19 requirement to equip all levels of ambulances with
20 epinephrine. Injected epinephrine is truly the
21 only effective medicine available to stop an
22 allergic reaction once it begins. It should be
23 available on all emergency vehicles for all
24 emergency responders to administer immediately
25 when appropriate. Thank you.

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[Pause]

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3

MR. ROBERT PACENZA: Good morning,

4

is it still morning? Good morning, Chairman

5

Rivera and Council Members, thank you for being

6

here. My name is Robert Pacenza, I'm the

7

Executive Director of the Food Allergy Initiative,

8

FAI. We're a national nonprofit organization

9

located here in Manhattan and dedicated to finding

10

a cure for life-threatening food allergies. Since

11

FAI was founded ten years ago, we've raised more

12

than \$45 million for research, clinical programs,

13

education, and public policy initiatives.

14

The people whose stories you're

15

hearing today represent over 12 million Americans

16

who suffer from food allergies, including, as

17

you've heard, around 300,000 New York City

18

residents, and until research find a cure, these

19

children and adults need your help to keep them

20

safe.

21

We recognize that these are

22

challenging times for the city, I want to

23

emphasize that the initiatives that all of us have

24

been discussing are cost efficient, easy to

25

implement, and can be very effective.

1
2 Every year, thousands of New York
3 City residents experience potentially fatal
4 allergic reactions. I do want to touch again, as
5 Julie Menin just did, on the epinephrine and
6 ambulance issue. In 2007 alone, more than 4,900
7 EMS calls were advanced life support level
8 responses to reports of anaphylaxis. For those
9 New Yorkers, epinephrine was a lifeline. But for
10 an unknown number of others, there was no
11 effective treatment until they got to the
12 emergency room. Their ambulances were not
13 equipped with this life-saving medication.

14 Each day, people with food
15 allergies are put at risk because only advanced
16 life support ambulances are required to carry
17 epinephrine. Basic life support ambulances may do
18 so voluntarily, but most of them do not.

19 This would be understandable if
20 administering epinephrine perhaps required
21 extensive training, it doesn't. Thousands of
22 children, teenagers, not to mention their
23 families, friend, teachers, camp counselors, bus
24 drivers, they've learned how to use epinephrine
25 auto-injectors. There's no reason why capable and

1
2 dedicated basic life support EMTs should not learn
3 to do the same. It would also be understandable
4 if auto-injectors were costly, but they're not.
5 That is why we encourage New York State Regional
6 Emergency Services Medical Council to mandate that
7 all New York City basic life support level
8 ambulances carry epinephrine auto-injectors.

9 When you live with a food allergy,
10 you learn to accept a certain level of daily risk,
11 but there's no reason why a 911 call should be a
12 game of chance.

13 We also can reduce risk by making
14 sure that every food service employee has easy
15 access to basic information about food allergies.
16 FAI and the Department of Health are ready to
17 begin work on an educational poster, which will be
18 inexpensive to produce and can be translated into
19 multiple languages. The poster will be a simple
20 and effective educational tool, especially if its
21 distribution is mandated by law, which the bill
22 would do.

23 Food allergies are on the rise in
24 developed countries around the world. They affect
25 our residents and our visitors. New York has

1
2 worked hard to earn its reputation as one of the
3 safest cities in the world. Food allergy
4 awareness will enhance that reputation. It will
5 be an invaluable investment in the future of our
6 city.

7 On behalf of the Food Allergy
8 Initiative, the several thousand families who
9 support us and want to see all of this happen, I
10 urge you to help us implement these programs as
11 soon as possible. Thank you.

12 CHAIRPERSON RIVERA: Thank you very
13 much. First, I'm going to turn it over to Council
14 Member Lappin to ask her line of questions. Thank
15 you.

16 COUNCIL MEMBER LAPPIN: Thank you
17 very much, Mr. Chair.

18 And I want to start by thanking the
19 four of you because you have done a great deal in
20 terms of advocacy and education. Certainly, when
21 you came to me, I knew very little about this
22 issue, and I have found myself now, suddenly
23 looking at labels on food, and which I know you
24 helped make happen. And I, of course, immediately
25 when I got the diagnosis went to your website and

1
2 gained information from that. So your education,
3 outreach, and advocacy has been very helpful to me
4 and I wanted to thank you for all of your work and
5 for coming here today.

6 And I wanted to sort of say two
7 things. One, I agree with Ms. Menin that this is
8 a good baby step in the right direction, and I
9 know that it's not a panacea by any means, but I
10 do think it is important, and I do hope that my
11 colleagues would support this bill, because I
12 think we have to tackle this issue from many
13 different fronts and the EpiPens in ambulances is
14 very important. And I know that Council Member
15 Liu has a bill on this issue and we've been
16 working with REMSCO to try and get the state
17 because there is a state, city interaction here to
18 be cooperative and I think that's a very important
19 piece of the puzzle. And I learned from meeting
20 with you what I should say to a 911 operator if I
21 wanted an ambulance that had the EpiPen to come,
22 which, Council Member Foster, you should probably
23 know to, what the magic words are.

24 MR. PACENZA: Yeah, not breathing is
25 the key word to say.

1
2 COUNCIL MEMBER LAPPIN: That's how
3 you get one--

4 MR. PACENZA: Yes, that's right.

5 COUNCIL MEMBER LAPPIN: --of the 30%
6 of the ambulances that have the EpiPens.

7 So, that said, I think we need to
8 continue to press on that front, but I do think
9 that this bill would help in terms of educating
10 the food workers and I hope that we would continue
11 to work as a committee and as a Council on some of
12 the other items as part of this agenda, but I
13 would urge my colleagues, especially after hearing
14 what I think is very compelling testimony from the
15 four of you, that this is important.

16 CHAIRPERSON RIVERA: Thank you.

17 Council Member Foster, and we've been joined by
18 Council Member Maria del Carmen Arroyo.

19 COUNCIL MEMBER FOSTER: Thank you,
20 and thank you all. I just have a few quick
21 questions and in addition to the EpiPens on the
22 ambulances and, Jessica, I will work with you and
23 John and whomever, because honestly if it hadn't
24 affected me so closely, I wouldn't know, I would
25 probably be as uneducated as everyone else,

1

2 thinking just don't have a nut, where it's not
3 that simple.

4 But what else do you think we could
5 and should be doing, not only in the restaurant
6 business, but in general, that we're not? Because
7 one thing that comes to mind is we can do an
8 initiative from the Speaker's office, the Council,
9 just educating people, you know, like people my
10 parents' age really think that it means like just
11 throwing peanuts away, not understanding that it's
12 much more severe than that, so even just an
13 educational campaign.

14 A friend of mine, her daughter was
15 starting kindergarten in Brooklyn and the
16 principal did not want her to the in-service her
17 kindergarten teacher on using an EpiPen because
18 she felt that wasn't the teacher's responsibility,
19 and did not get that this kid could die if it
20 happened. So what can we do that we're not or--

21 MS. MENIN: It's a great question,
22 so let me take a stab at answering that.

23 COUNCIL MEMBER FOSTER: Sure.

24 MS. MENIN: There are a couple
25 different things. First of all, on the restaurant

1
2 front, as the city testified earlier, there is a
3 food handlers certificate. When you own a
4 restaurant, the Department of Health comes in and
5 does an inspection and you can fail the inspection
6 if you do not have a food handlers certificate, if
7 you do not have someone in the kitchen, who is up-
8 to-date on food handling. We should mandate that
9 cross-contamination is just like food handling.
10 That, in other words, the restaurant will be
11 penalized and there will be a fine paid if they
12 don't have someone up-to-date. What the city
13 testified today is much more voluntary and feel-
14 good, we need to go a step further and mandate
15 that. So that is step one.

16 Step two is we should follow suit
17 in terms of what Nassau County did on restaurants,
18 they talk about food borne illnesses and they list
19 when a dish has, for example, shellfish or raw
20 meat or raw eggs, it lists at the bottom of the
21 menu with an asterisk., we should do that for the
22 major food allergens on restaurants. We should
23 mandate that restaurants list if they use peanut
24 oil at the bottom of the menu.

25 We're not trying to make this

1

2 completely onerous on restaurants, I mean, you
3 heard Dean Palin's testimony, he is a restaurant
4 owner, I'm a former restaurant owner, we're
5 certainly not trying to do something onerous for
6 restaurants, but we want to make sure that people
7 are safe when they do visit restaurants, so that's
8 certainly something that could be done.

9

I think your comment about the City
10 Council doing some type of, whether it's a PSA or
11 educational campaign, would certainly go a long
12 ways towards that as well.

13

COUNCIL MEMBER FOSTER: Thank you.

14

Anyone else or we're all...

15

MR. PACENZA: No, I think what Julie
16 said is a good point, it's not as if every minute,
17 every restaurant, every day can possibly list
18 every ingredient, but a basic warning to--and it
19 could also perhaps go along with what Councilwoman
20 Sears suggests, is simply to have a statement that
21 says, the foods at this restaurant may contain or
22 do contain food allergens, please instruct your
23 server or ask questions, you know, an encouraging--
24 -it doesn't have to be changed every menu, 'cause
25 that would be onerous to ask restaurants to do

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2 that. But perhaps an educational sentence or two
3 like in Long Island where they warn about raw
4 foods, we could just warn generally about
5 allergens and the importance of communication.

6 MS. MENIN: Exactly, I mean, I just
7 think in New York City, we want to be ahead of the
8 curve. We've been ahead of the curve on the
9 smoking ban; we've been ahead of the curve on the
10 trans fat ban; we may be ahead of the curve on
11 this salt issue. Where are we in trying on food
12 allergies? I think it's a complete embarrassment
13 in terms of where this city is and when cities all
14 across the country are so far ahead of us and what
15 I would hate to happen, but I fear is absolutely
16 going to happen, is a child is going to have an
17 anaphylactic reaction, they will be with a
18 caregiver or a parent who doesn't know to say my
19 child is not breathing, they will get in a New
20 York City ambulance, and they will die and it will
21 be a shame on the city, because now the city has
22 been warned twice.

23 We had this EpiPen bill before the
24 City Council, right before 9/11, 9/11 hit and,
25 with absolute understanding, the bill got put to

1
2 the side, but now we are seven years later and
3 again, we are basically giving the clarion cry on
4 this issue. If the city fails to act on the
5 EpiPen issue, I really think it will be
6 unconscionable.

7 [Pause]

8 MR. PACENZA: Anything any of you
9 can do to help REMSCO address this issue would be
10 greatly appreciated. That's where we need to be
11 with the epinephrine issue.

12 COUNCIL MEMBER LAPPIN: And so maybe
13 we should think about doing something together in
14 terms of a more organized lobbying effort with
15 REMSCO.

16 COUNCIL MEMBER FOSTER: Absolutely.
17 Dr. Shrep?

18 DR. SKRIPAK: Skripak.

19 COUNCIL MEMBER FOSTER: Oh, I'm
20 sorry Dr. Justin, how about that?

21 DR. SKRIPAK: There you go, that's
22 what my patients call me.

23 COUNCIL MEMBER FOSTER: Over the
24 years, has there been an increase in allergies or
25 is it we're just aware now that they are allergies

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and aren't kids being finicky or whatever it is.
And, if it's an increase, do we have any idea what
that is due to?

DR. SKRIPAK: I mean, there's
definitely an increase statistically, there's no
way to parse out in a systematic way, what
percentage of that is missed diagnoses 10 years
ago that are found now. It may be some small
percentage, but I think clearly there is a real
increase in prevalence of food allergy. There is
a lot of people all over the country trying to
identify--there's not going to be one factor
that's going to be the golden factor that causes
food allergy, but it's a multi-genetic, multi-
environmental issue, and there's been no
consistent findings to really put a point on one
exposure or one factor that pre-disposes to food
allergy.

I just want to make a point about--

COUNCIL MEMBER FOSTER: Sure.

DR. SKRIPAK: --the last point that
we were on. I think that this food allergy
certification issue is new to me, so this is the
first time I'm really getting up on this a little

1
2 bit and I think it--I mean, it just seems
3 ridiculously essential that food allergy has to
4 become a fundamental part of that certification
5 and not just that there's a couple of bullet
6 points thrown into the 15-hour education process,
7 but that there's several questions at the end of
8 the exam that actually verify that someone read
9 and understands the information that they were
10 given. Having this central hub of a person at a
11 restaurant is obviously the way to go, you're not
12 going to have--and I don't want to have 30 allergy
13 doctors at the restaurants because I'm young and I
14 need a lot of time to be doing this myself, so I
15 don't need to be replaced. But there should be
16 someone who knows a lot, but basically this poster
17 is the beginning of having the rest of the
18 personnel saying they need to be aware that this
19 is a significant issue and when they're told
20 there's a peanut allergy or a wheat allergy, that,
21 at a minimum, they need to recognize that it's an
22 issue and go to the person who is the source of
23 information at the restaurant who can help them to
24 sort out what needs to be done.

25 And then the other kind of broad

1
2 issue would be, I mean, you said is generally,
3 there are other issues, I mean school is just a
4 completely black hole. I mean, you know, parents
5 are leaving their food allergic kids at these
6 schools for many hours per day under the
7 supervision of other adults and they obviously
8 need to be better educated about what the food
9 allergy issues are. There's no reason why an art
10 project in the classroom needs to involve peanuts
11 or peanut butter or foods in general. I mean,
12 things like that are just stuff that's easily
13 fixed.

14 COUNCIL MEMBER FOSTER: Thank you.
15 Mr. Palin, you were going to...

16 [Pause]

17 MR. PALIN: [Off mic] Stewart and
18 Sears [pause] regards to the food handling
19 certificate. What I try to implement is the
20 person on duty, who is scheduled to be the captain
21 in the kitchen, those people are pretty much
22 required and do have food handling certificates
23 and they are aware of my passion towards this and
24 immediate concern towards--for other people and
25 myself, to be aware and to be available to answer

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2 anybody's questions. If they are concerned about
3 whatever they are eating or should they order
4 something, they should be made aware that this
5 does--if they ask the question, like I said,
6 they're confident enough and feel comfortable with
7 the person that they're getting the proper answer
8 and the right answer throughout the line of chain
9 of command or the hierarchy in the kitchen as from
10 when the food is prepared to it's brought to the
11 table. And those people know the ingredients and
12 how it's arrived or the possibilities of cross-
13 contamination and what they're supposed to be
14 doing.

15 I mean, I commend the Health
16 Department when they said they didn't not only
17 require us to--everything is wiped down with
18 bleached, however, you get a fine, if your cutting
19 boards are pitted, okay? And that's because if
20 they get pitted, food gets into them and that's a
21 source of cross-contamination. So I commend them
22 on the different steps that they do try and govern
23 the kitchens in New York City. But of course
24 there's always a little more and...

25 COUNCIL MEMBER FOSTER: Great, thank

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2 you.

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CHAIRPERSON RIVERA: Thank you.

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Next, we have Council Member Kendall Stewart.

5

COUNCIL MEMBER STEWART: I would

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like to ask you folks, do you think we should have

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on that poster listed the big eight? Say that

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basically, if you're allergic to any one of these

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items, please let us know. Right at the entrance

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of the restaurant as you go in.

11

MR. PACENZA: Well the poster under

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consideration is really for the kitchen area for

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workers. Actually the poster that the Department

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of Health, he started to bring it out, that was a

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poster designed to be out front for a kind of a

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customer service, kind of education for wait staff

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and for patrons, so you can go about it different

18

ways. I think the original decision to start with

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something in the kitchen is that because there's

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only that one person trained on service on-site

21

that it would help remind others of the need to be

22

diligent and to take food allergens seriously.

23

The eight major allergens, it's the

24

Food and Drug Administration through a 2004 law in

25

Congress that established these eight allergens as

1
2 the ones that need to be taken most seriously,
3 they represent over 90% of all allergic reactions.
4 So those eight I assume, I know the drafts that
5 we've been working on--suggested drafts to give
6 DOH on the poster does include those eight,
7 certainly, there's obviously many foods. You can,
8 I think, Dr. Skripak, he can--there's a person out
9 there who can react to any food there is
10 basically. There's people allergic to things as
11 simple as corn and other vegetables, which is not
12 that common, but the starting point would
13 certainly be the eight because it's an FDA, you
14 know, those are FDA recognized major allergens and
15 that's what food labels require now those eight
16 allergens to be said in plain English and to be
17 brought out to people's attention, that's a
18 federal law. So it seems to make sense to stick
19 with those eight, but be clear that people know
20 that you can react to any allergens.

21 COUNCIL MEMBER STEWART: Yeah, I
22 understand all of that, I'm just trying to figure
23 out, most food after it's cooked it don't look
24 like what you talk about. You use eggs in certain
25 foods and you don't see the normal look of eggs in

1
2 that food and so someone coming in and looking at
3 the menu, they may not know that egg is in that
4 menu. So what I'm saying basically, if I am
5 allergic to eggs and there's a menu, I would want
6 to have something beforehand stating that, listen,
7 these are possible things, if you're allergic to
8 any one of these things, let us know. Because the
9 menu there does not really tell you that there's
10 eggs in it or it's made from with nuts, grind
11 nuts, or something like that. That's what I'm
12 asking, if at the beginning whether that patron
13 should be able to say, well, listen, they have
14 something to say, well, if you're allergic to
15 these things, please let us know, because it's a
16 possibility that it might be in one of the menus.

17 [Pause]

18 MR. PALIN: That's a good point, and
19 just the logistics to get that going is, I guess,
20 a challenge to how to enact that process. It is a
21 very relative point, but, for example, I have a
22 gluten-free poster so if someone comes in and they
23 say they have celiac disease, my chefs or the sous
24 chef or the manager, they quickly, if they order
25 something, we go down the line and there's a list

1

2 of everything that contains gluten or a
3 possibility of wheat in the ingredients, and we
4 steer the customer away from it and we make them
5 something special that doesn't include those
6 ingredients.

7

8 So a lot of times it's kind of a
9 communication on both parts and it's very
10 important and it's an education of the people
11 handling the food to know these--not to
12 misunderstand, that they can easily ask a question
13 also to a poster or refer to a poster or different
14 educational services that are available to them,
15 to be confident that, okay, I'm cooking this and
16 this is a gluten-free meal, this is a peanut-free
17 meal, this doesn't contain eggs. And I'm
18 confident enough to tell Mr. Stewart that there's
19 no eggs in this dish, so...

19

COUNCIL MEMBER STEWART: Thank you.

20

CHAIRPERSON RIVERA: Thank you. Any
21 other questions from members of the committee?

22

COUNCIL MEMBER LAPPIN: I--

23

CHAIRPERSON RIVERA: Yes.

24

COUNCIL MEMBER LAPPIN: I have one,
25 and you have a Big Daddy's in my district, which

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2 I'm very happy about, and I have a feeling we'll
3 be frequenting. I mean, is there a sort of good
4 housekeeping food allergy initiative seal of
5 approval that restaurants like this carry so that--
6 -I mean, I assume within the network, parents know
7 that some restaurants are better to go than
8 others, but I was just wondering. Do you--

9 MR. PACENZA: If you could pass some
10 laws against people maybe suing us if we did have
11 a reaction, we might do that, but no, it's really
12 word-of-mouth that works best. We certainly will
13 tell people of restaurants that we've heard good
14 things about, but I'm sure, as even Dean would
15 agree, it's a different wait person who's waiting
16 at your table, a different person in the kitchen,
17 and on any given night there could be a different
18 approach to cooking the meal. So, no, we don't
19 endorse or give out our logo on the windows of
20 restaurants, but certainly in a more informal way
21 [crosstalk]--

22 COUNCIL MEMBER LAPPIN: I'm sure the
23 net, as Julie is shaking her head, I'm sure within
24 the network, people know, right? Parents know.

25 MR. PACENZA: I would say if you go

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to Big Daddy's and Dean is eating something at the bar, order that, that's what I would say.

MS. MENIN: But I also think it's like a network of mothers, you know, like I was just telling you the resorts we've been to that get it and it was literally because we did the research because we had no choice, and then as we found, you know, like I'm telling you, and then as you find other people with the allergy because you're so aware of it all the time that it's almost like your own network that you're creating. Until you guys can put your little seal on things.

COUNCIL MEMBER LAPPIN: Thank you very much, thank you all very much.

CHAIRPERSON RIVERA: Thank you.

We're going to call the next panel, Robert Bookman, from the New York State Restaurant Association.

[Pause]

- -

FEMALE VOICE: ...written testimony?

MR. ROBERT BOOKMAN: No, I don't.

[Pause]

CHAIRPERSON RIVERA: Thank you, just

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introduce yourself and you may proceed.

MR. BOOKMAN: Yes, still make it good morning, my name is Robert Bookman, I am here the new New York City legislative counsel to the New York State Restaurant Association representing the approximately 2,000 New York City restaurant members of our statewide association.

The New York State Restaurant Association fully supports and stands ready to work with both the Council and FAI. We had one of our members in the panel before us, Dean Palin, who him and his partners run excellent restaurants in the city of New York.

We fully support the concept that much more needs to be done to deal with what is now being recognized as a growing area of concern and in many ways, as you've sort of touched on in the conversation here, a new area that in many ways goes outside the scope of what the Health Department normally deals with both in their training and in their regulations and their inspections.

Generally which it deals with food safety in general, keeping food safe, there is a

1
2 certain degree of cross-contamination issues that
3 are part of the rules and regulations like Dean
4 Palin mentioned about cutting boards. So while
5 there is some inherent rules now that luckily deal
6 with these issues, they're certainly not intended
7 to, it just happens to do so.

8 But we're kind of dealing in a new
9 area now where 100% of the existing rules are
10 dealing with food safety issues that could impact
11 100% of the potential patrons with a new area
12 where a small percentage of patrons might be
13 impacted, but the impact in fact might be much
14 more severe than the 99.9% of the other
15 regulations that we deal with. So it's an area
16 that we have to grow with together and work with
17 together. And we certainly believe that more
18 education and training of food handlers are a key
19 elements here and we really think that that is the
20 cart that needs to go first and not--oh, the horse
21 needs to go before the cart--and I think it's
22 clear from just sitting here today that we all
23 could probably agree that that's not adequate.

24 Having said that, New York City is
25 far, far ahead of most municipalities and

1
2 certainly the rest of the state in food handler
3 training and, unfortunately, as a matter of fact,
4 the governor just vetoed a statewide bill
5 requiring pretty much what we have here in New
6 York City, which is a food handler certificate in
7 every restaurant in the state of New York. We, as
8 an association, supported it, we were kind of
9 surprised that it was vetoed.

10 Even with that, however, even with
11 that we're light-years ahead, this is clearly an
12 area that they're just starting to address. They
13 have just started to add something to the
14 curriculum, as you heard, they were a little bit
15 vague on what, there's no testing on the material
16 that they added in the curriculum. It's going to
17 take a long time based on the current model for
18 there to be a good education out there in the
19 restaurant industry.

20 I think we as an association need
21 to be better educated and need to do more. I'd be
22 happy to reach out to FAI and work with them. We
23 do have quarterly newsletters that go out to
24 thousands of restaurant owners and we'd be happy
25 to work with them on putting some of their

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educational material on our newsletters that go out.

But as far as the bill that's before you, which is another sign law. In general, we oppose more signs in restaurants. I think it was an understatement when Elliott Marcus said there's a fierce competition for wall space with the all the required signs between the state and the city that we have to have now. He touched on some of them, there are actually many more than that between the State liquor Authority, the Health Department, the Fire Department, Consumer Affairs, between all of the warning signs, notice signs, complaint signs, and actual licenses, you could probably fill a wall up with the required signs.

And we think it comes to a point where we would ask the Council for any new sign law, we take a look at maybe an existing sign law and repeal an old sign law, so that--it just gets out of hand. And what happens is, invariably, it winds up as another fine that you had four of the signs of the ten that you're required, but you didn't have the fifth and the sixth and, even when

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2 an agency comes in and you pass an inspection,
3 it's an easy fine just to not have a certain sign
4 up there and with the Health Department now, it's
5 a \$200 minimum on any one of their rules and
6 regulations. So we're having restaurants pass
7 inspections and still \$1,000 worth of fines
8 because there's four or five minor issues.

9 Got to have a little bit of
10 consideration in this year to be adding more
11 avenues where there could be fines when people--I
12 think we're going to have a record number of
13 restaurant closings in the city of New York in a
14 generation.

15 Kitchens are busy places. You
16 know, I worry that food workers are not going to
17 be reading these signs and where signs like this
18 generally work best is when they are a reminder
19 underscoring training that they've already
20 received. As we've learned since they haven't had
21 the training, I'm not sure what a sign as a waiter
22 or waitress is quickly running in and out of a
23 restaurant, I'm not sure how much of a sign is
24 going to--how good it's going to do.

25 It's clearly not going to do any

1
2 harm, so we're not opposing it. If it keeps the
3 issue in the minds of food workers, I think, it's
4 certainly not a bad thing. But I think we need to
5 keep it real and be honest with each other, I
6 don't think it's going to be all that effective
7 unless the training aspect is there first.

8 And I think that there was some
9 discussion here about the equivalent of CLE,
10 Continuing Legal Education, I know that as a
11 lawyer I must do, it doesn't cost the government
12 any because the CLE is left to the private sector
13 to come up with approved courses and then they
14 offer those courses, associations do it.
15 Something we may want to look at together and
16 having some sort of continuing food education
17 requirement for the industry, so we're not, like I
18 said, we're pro-education, it's not something
19 that's--I think it's a creative idea and I think
20 we can work on together.

21 And finally, it's difficult for us
22 to comment on this particular legislation because
23 it's talking about language of a sign which we've
24 never seen. Apparently there is some sort of
25 draft going around, but it has not been shared

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2 with the industry, we'd like an opportunity to
3 take a look at it. It sounds pretty benign, but
4 we would like to see it, we would like to see the
5 size of it to see if it would fit in many
6 kitchens. A lot of cool new restaurants, they
7 kind of an opening kitchen and there's really only
8 one wall and everything else is facing the public.
9 I'm not sure where that sign might go, I mean, we
10 need to work together on it.

11 And lastly just on a technical
12 aspect of the bill, the way I read it, it goes
13 into effect 90 days after it becomes a law. It
14 really needs to go into effect 90 days after the
15 sign is approved by the Health Department and
16 distributed, not 90 days after the law goes into
17 effect because it may take a lot longer for them
18 than that to have the sign readily available out
19 there and we certainly don't want to be fining
20 people for not having a sign that's not ready to
21 be had yet.

22 So, with those minor caveats, we're
23 happy to work with the Council and this important
24 group in working on education, getting the owners
25 and those captains in the restaurant well-educated

1
2 on this. Apparently their own survey indicates
3 that the industry is not well-versed on it and I
4 think food handlers and the lower-level people in
5 the kitchen, like any organization, it's from the
6 top down and if the top is well-educated and it's
7 concerned them, than everybody who works under
8 them, it will trickle down, but we have to start
9 with educating the top. Thank you.

10 CHAIRPERSON RIVERA: Thank you very
11 much.

12 Before I hand it over to my
13 colleagues, I just wanted to state that it's
14 definitely a great day when we can definitely work
15 together on concepts and ideas and how to make
16 sure that allergy sufferers won't be suffering
17 that much longer, and to ensure that what does
18 happen within a restaurant is going to be
19 something that's not overly burdensome on the
20 restaurateur, but at the same time meets the goals
21 that we are looking to implement over here.

22 So, I want to turn it over to my
23 colleague, Council Member Jessica Lappin. Thank
24 you.

25 COUNCIL MEMBER LAPPIN: Thank you.

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And I'm very happy to hear that you are so eager and willing to work both with FAI and with us to get this bill passed. I think your technical suggestion is a totally fair one, I don't think it will take long for a sign to be developed and approved by the Health Department, but certainly until there is a sign that is approved and available, I think that's very fair. So I would ask the Council to make that change in an A version of the bill.

And just to say reassuringly, we will make sure that you see the draft, we could do that today I'm sure. It's not onerous, it's not large, it's not going to be problematic in any way, shape, or form, as you saw having a current restaurateur and a former restaurateur being so involved, they're very sensitive to those issues and are coming at it from a practical standpoint, and it's not going to be something that will be difficult in terms of the obligation.

I did also want to make sure that my colleagues knew, 'cause you mentioned about food service workers, etc., reading these, I think the legislation covers that these would be

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provided in different languages and Council Member Stewart--first of all, I didn't thank you for signing on to the bill, thank you for signing on to the bill--but that there are in different communities, different needs, and different workers, as you know as well, Councilwoman Sears [off mic] your district that there would be the sign available in different languages so that the food service workers in that establishment obviously would be able to read it.

And for just from my own perspective, while there may be requirements within restaurants for different posters, they're not all required to be in the kitchen, you know, there certainly are supposed to be sign by the bar informing pregnant women of the dangers of drinking alcohol, signs potentially in the bathroom that people who work there are supposed to wash their hands, etc., etc., but from my perspective, and having worked with people who are knowledgeable about the business, this is not going to be onerous in any way, shape, or form, and I think will help.

And, the last point I wanted to

1
2 make because I'm in agreement about the training
3 and the education is, I have another bill that has
4 been sent to this Committee that does deal with
5 the food handler's certificate and the curriculum
6 and the testing, which I mentioned earlier. But I
7 wanted to reiterate because, I agree, that we
8 should tackle this issue from many different
9 levels, from EpiPens in the ambulances, to posters
10 in the kitchen and there isn't one solution, but I
11 do think, particularly 'cause we keep talking
12 about today, not everybody in the kitchen has that
13 certificate, it's important for them to see what
14 the rules and the dangers are and I believe very
15 strongly in that.

16 CHAIRPERSON RIVERA: Thank you,
17 Council Member Helen Sears.

18 COUNCIL MEMBER SEARS: [Pause] It's
19 really a comment more than it is a question, but
20 maybe it has a question at the same time. I
21 appreciate where the bill is going and I thank you
22 for that.

23 Just for the record, I have three
24 children, two are severely asthmatic; I have six
25 grandchildren and three of those six are severely-

1
2 -have allergies, so I'm very sensitive to that and
3 I'm happy to hear that things can be worked out
4 for the suggestions that have been brought forth.

5 My big concern and I understand
6 what the thrust of it all is, but there's so much
7 going in and out and it's not really the
8 protection of the owners of the restaurants. The
9 fact is there's so much changeover that--how does--
10 --and it's the question I'm raising--is there a
11 timeframe? If I hire Dr. Stewart and he doesn't
12 have that, I cannot hire him without that
13 certification or trickling it down to those that
14 are doing other things? I think that we need to
15 look at what exactly are we talking about--excuse
16 me--in the education of those who work in a
17 restaurant. I think that's probably the trigger
18 point for me and not because--I've been in
19 restaurants that I've walked out and, as far as
20 I'm concerned, I think they should be closed. The
21 fact is though, the reality for many restaurants
22 to stay in business, they are dealing with
23 somebody who doesn't show up, they're dealing with
24 waiters who do not show up, so I'm not sure what
25 such regulations go. And I'm raising it because

1
2 that's the reality and that not every restaurant
3 has employees 15 and 20 years, they just don't.
4 They would like to do that 'cause it's far less
5 costly for them, but the reality is, they don't.
6 So I don't know and maybe my colleague
7 Councilwoman Lappin might look and consider just
8 what are we talking about. If it means that
9 anyone coming in and hasn't had the pre-education
10 of just understanding food and handling it, and
11 I'm not talking about the chef, they're entirely
12 different, but there are cooks, there are chefs
13 and there cooks, many chefs have cooks in the
14 kitchen. So does it mean the minute the person is
15 hired that lower down on that ladder, they need
16 that? Or is there a time for a new employee to
17 receive the education you're talking about?

18 We all want our restaurants to be
19 in good shape and do it. I also believe that
20 people that have allergies and they eat out in a
21 restaurant need to communicate that to the
22 appropriate person, it may be posted, but there we
23 are.

24 I'm concerned about a little more
25 clarity on the education, and I would agree with

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Mr. Bookman that education is very important, but at the same time, what are the requirements when they're hiring outside of that professional level of the chef, which has extreme requirements, and those that are hired to take my dish to my table? What is happening to the person who is cleaning all the pots? Who's examining--you talk about peanuts, and I agree with you, I mean, I have the same situation, in fact, one was lost and I won't go into that.

But the fact is whatever utensil you take, if it's been in peanuts, if it's not in a dishwasher that has got all those requirements--so we have a myriad of stuff and I think, rather than picking at all and removing all these layers, since education is one of the areas that is so emphasized, and I agree with that. I think we need to look at, does the proprietor have leeway and if he's having somebody for three days and he doesn't know--actors go out, they take jobs as waiters in between that, you all know that, that's life in New York City. So does this owner have leeway? I don't know and I think maybe in the degree of education, it's just so broad that I'd

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have concerns about that.

But, I thank you for doing it, I think it's an important issue, I really do. I think we must also, if ever initiative is done, of how to reach parents and recognizing the importance it is on them to realize how important that allergy is and to educate their own children in what they can eat and what they can't eat.

So that was the comment I made and I raised the question to Mr. Bookman, but I'm not sure there's an answer at this time.

MR. BOOKMAN: Well no, I don't, but I think part of the answer here is that this bill, while not training everybody, like by having a sign, it kind of puts it in people's minds that don't have food handlers certificates that these are issues of concern.

But like I started with my testimony, we're entering into a kind of a hybrid area of regulation. The rules were very clear before about who had to worry about food borne illnesses. This is analogous to, but different, from a food borne illness. Waiters and waitresses weren't that concerned with food borne illnesses,

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2 they weren't preparing the food, they weren't
3 cutting it, they were keeping it refrigerated or
4 heated. Allergies involves everybody in the
5 restaurant and I think we need to go forward as
6 the doctor's testimony is very compelling and it's
7 a growing area and we all--public sector, private
8 sector, and advocacy groups--need to go forward
9 together and work this out.

10 COUNCIL MEMBER LAPPIN: Would you
11 want all--would the Restaurant Association then
12 support all 200,000 restaurant workers--

13 MR. BOOKMAN: Possible.

14 COUNCIL MEMBER LAPPIN: --being
15 required to have to take testing and
16 certification?

17 MR. BOOKMAN: It wouldn't be
18 possible.

19 COUNCIL MEMBER LAPPIN: Okay.
20 Thanks.

21 MR. BOOKMAN: It wouldn't be
22 possible. It would hold up employment
23 dramatically--

24 COUNCIL MEMBER LAPPIN: That's why
25 we're trying to find an alternative.

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2 MR. BOOKMAN: Yeah, exactly. If
3 people who couldn't afford to take the course and,
4 therefore, would be unemployed.

5 CHAIRPERSON RIVERA: Thank you. Do
6 any one of my colleagues have--Council Member
7 Kendall Stewart?

8 COUNCIL MEMBER STEWART: Mr.
9 Bookman, do you think this was ever any good, if
10 there was a sign posted at the entrance of the
11 restaurant, which states basically if you think
12 you have allergy to any of the following, and
13 we're talking about a big eight, please notify the
14 maitre d' or please notify someone in the
15 restaurant. You think that would serve any
16 purpose?

17 MR. BOOKMAN: I don't think a sign
18 at the door is the way to go in a hospitality
19 industry. To have, you know, it's almost a skull
20 and crossbones, beware, but there were some
21 discussion about increasingly restaurateurs
22 putting notices on menus, that might be a more
23 appropriate way to go, but I would have to go back
24 to the membership and see what they felt about
25 that. My guess is they are more inclined to menu

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disclosures like that then a sign at the door.

COUNCIL MEMBER STEWART: Oh, you're saying put it on the back of the menu?

[Crosstalk]

MR. BOOKMAN: Yeah, something, I mean, I understand there's something similar to-- analogous to that in Nassau County and other jurisdictions about certain raw foods, if you're having a raw egg in a food, there are some disclosures. The Executive Director from FIA testified about what might be a simple menu warning, that's something we could talk about.

COUNCIL MEMBER STEWART: All right, thank you.

CHAIRPERSON RIVERA: Thank you very much. Any other questions?

Seeing none, thank you very much.

MR. BOOKMAN: Thank you very much.

CHAIRPERSON RIVERA: We have one more panels Jennifer Gardner, Susan Leavitt, and Rochef [phonetic], I believe.

[Pause]

You can begin, just state your name for the record. If you have any testimony to hand

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out, just give it to the Sergeant-of-Arms.

[Pause]

MS. JENNIFER GARDNER: Hi, I'm
Jennifer Gardner [pause] Sorry, first time. My
name is Jennifer Gardner and I am pleased to have
the opportunity to speak about my experience as an
adult with multiple food allergies, which
allergies include a severe allergy to tree nuts.

I'm an attorney and the mother of
two young children who, thankfully, have not as
yet shown any signs of developing a food allergy,
also because they don't eat anything..

The most frightening aspect of
living with a food allergy is its
unpredictability. A past mild reaction to an
allergen is not necessarily an indicator of a mild
reaction in the future. Unfortunately, food
allergies can be progressive over time. One must
remember that the next reaction might be life-
threatening and that's exactly what happened to
me.

As a child, I broke out in a few
hives after eating walnuts and learned that I had
what I thought was a mild allergy to tree nuts.

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2 Naturally, I became adept at avoiding hive-
3 inducing foods throughout my young life. All was
4 fine until one day in the spring of 1987. I was a
5 20-year-old junior in college and after a quick
6 pasta lunch, I started walking to my class, which
7 was housed in a building on campus. On the short
8 walk to class, my throat started to feel scratchy,
9 my nose closed up, and my stomach cramped. When I
10 arrived at the building, I went straight to the
11 ladies room and was shocked by my reflection in
12 the mirror. My face had swollen beyond
13 recognition and I was already dizzy and having
14 great difficulty taking a full breath. No one was
15 in the bathroom with me and, because my throat was
16 closing, I was unable to call for help. Panicked
17 that I would soon be unconscious on the bathroom
18 floor, I somehow managed to crawl into the hall,
19 which alerted passing students to my dire
20 situation.

21 It took 15 minutes from the time I
22 put down my fork at lunch to the time the student
23 found me in the hallway and called 911. That's
24 how little time it can take to go from being a
25 healthy, active person to someone on the brink of

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2 death.

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The ambulance got me to the emergency room quickly, but, unfortunately, that was all they could do for me because there was no epinephrine onboard. Later I learned that, despite my best efforts to get accurate information, there was pesto sauce that had nuts in it in my lunch and clearly I'm very lucky to be here today.

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Twenty-two years later, the food service industry is far more aware of the needs of food allergic patrons. But even when restaurants make an effort to be allergy aware, the training is often incomplete or the communication is poor. In fact, last year I ate at a well-known Manhattan restaurant. Although two servers assured me that there were no nuts in my entrée or any appetizers on the table, by the end of dinner I had broken out in angry welts from head to toe and it took three weeks to recuperate.

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I want to emphasize that I do not expect anyone to take unreasonable steps to protect me. I'm a responsible adult who always carries her EpiPen. I generally eat at familiar

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restaurants and always make a point of alerting servers to my food allergies. But most of the mistakes I've encountered have been made by people who mean well, but who simply lack basic information.

Your support of a training tool that sets consistent standards for restaurants throughout the city, like the poster we're discussing today, would make a big difference.

Thank you very much for listening to my story and for your respect for the concerns of New Yorkers with life-threatening food allergies.

MS. SUSAN LEAVITT: I'm Susan Leavitt, I'm a parent of an allergic child. I'm also a producer and I produced about a dozen videos about food allergy to train restaurants, to train food services, training EMTs, schools, and caregivers, and grandparents.

I want to thank the members of the New York City Council for inviting us to comment on this piece of legislation. As I said, I'm the mother of an 18-year-old son with multiple life-threatening food allergies. I had never even

1
2 heard of food allergies 16 years ago until my son,
3 who was two, nearly died from only one sip of
4 milk. His throat closed up within minutes. He
5 carries an auto-injector of epinephrine with him
6 at all times.

7 Since that time, my son's outgrown
8 some of his severe food allergies, but is still
9 allergic to dairy, nuts, fish, and shellfish. Now
10 that list is made up of very short, very succinct
11 words, little things, but the word dairy, that
12 means no butter, no cheese, no milk, no ice cream,
13 and nothing that even contains the tiniest amount
14 of any of these allergens. Imagine yourselves not
15 eating any of these ingredients at every single
16 meal, at every single snack, every day of your
17 lives because it could be fatal. And think about
18 being a parent of a child who goes to birthday
19 parties and what do they serve? Pizza and ice
20 cream cakes. That's how we've lived our lives all
21 these years.

22 Whenever out-of-towners ask me
23 what's a good restaurant in New York City, I say
24 anywhere. Where is it? Anywhere. I was born and
25 raised in this city and know we have the best

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restaurants in the world, from diners to world-class chef-owned establishments. But my family and I can't eat at many of them because they aren't educated enough about food allergy. I'd like all of you to imagine never going out to a restaurant for a meal with family or friends or to celebrate special occasions, because you don't know if the food served will lead to a life-threatening reaction.

It isn't only about asking about the food itself, as someone here said, but whether it's a hidden ingredient in a recipe, whether it's been cooked or prepared on the same surface or with other things you're allergic to. For instance, French fries--if you're allergic to shellfish and they fried shrimp in the same oil in that fryer, you're likely going to have a reaction eating the French fries. Or if you're allergic to dairy and someone in the kitchen cuts a sandwich with cheese on it and then cuts your sandwich with the same knife, you can react. And did you also know that peanut butter is sometimes used as a secret thickening agent in chili? Many restaurant staffers aren't even aware of these issues and

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provide misinformation to patrons. It's a veritable minefield.

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One of your members mentioned about us being prepared, we carry a chef card all the time that lists my son's food allergies and we give them to the manager, to the chef, whomever. That helps us and we feel that we help the restaurants.

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With 12 million Americans who have food allergies and a significant number of them fatal or near-fatal taking place in restaurants, something has to be done. We need to have restaurants be aware of food allergies and we need them to take us seriously.

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We applaud the City Council for supporting a display of a food allergy poster, but we'd also like to see further steps taken to train restaurant and food service staff to understand these special needs. Video and written materials, as well as a poster already exist through the Food Allergy and Anaphylaxis Network, which is called FAAN. The FAAN poster has been submitted into the Council record and FAAN has an entire training program. I worked on the video for that, so I

1
2 know they do. Restaurants in New York City must
3 now show calorie content to help diners make
4 healthier choices when they eat. We think
5 restaurants need to understand and observe good
6 food allergy practices, not to make you healthier,
7 but to save your life. Thank you very much. It's
8 been an honor being before you.

9 CHAIRPERSON RIVERA: Thank you very
10 much. Are there any questions? Jessica.

11 COUNCIL MEMBER LAPPIN: Oh, you
12 ladies scare me. When I talked to Julia, when I
13 found out about my son, she scared the living
14 bejesus out of me. But that's what she needed to
15 do.

16 Thank you very much for coming here
17 and for sharing your stories, I know that they're
18 personal, and for all of your advocacy and I hope
19 that we will pass this bill and will do other
20 things as well to make our city safer.

21 CHAIRPERSON RIVERA: Thank you.
22 Council Member Helen Foster.

23 COUNCIL MEMBER FOSTER: Quickly, and
24 I don't know how old your children are, but did
25 your son go to public school or private school or

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2 how did you educate the school?

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MS. LEAVITT: My son, we did both.

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When he was really young, we were at a little

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preschool and I spoke with the head of it and she

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was a miracle to me 'cause my son had just been

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diagnosed and she knew of an EpiPen, she knew how

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to use it and, in fact, she did use it 'cause he

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had a reaction. They were making Play-Doh out of

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flour and, at that point, he had a wheat allergy,

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and she gave him the shot, she did everything

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right.

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Public schools then scared me

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because I looked at those cafeterias and they were

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insane, and at this time no one did know about

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food allergies, in addition, plus school nurses

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were bye-bye. I grew up going to public schools

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here in New York, they were all let go years ago

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for space, for money, their offices were turned

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into classrooms, so I didn't feel it was safe. So

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we went to a private school, which also didn't

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have a nurse, but I told them what was wrong with

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my son, they did not believe me until I showed

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them the video that I had produced. I had told

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them about everything and they're like yes, yes,

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2 we can handle it, and then watched and went, oh my
3 God, this is really serious. It made me not the
4 neurotic mother, you had experts, you had Hugh
5 Sampson, who is with Mount Sinai, was on this tape
6 it had steps to take and what to do and they took
7 it seriously then.

8 In fifth grade, we switched to
9 public school. They did not have a nurse, but
10 they had wonderful teachers who were willing to
11 learn about the EpiPen. I trained everyone, I
12 showed them videos that I had made, I worked with
13 them, I did anything I could to keep my son safe
14 and that worked perfectly. He went to Stuyvesant
15 High School, he went out to eat, you have to start
16 teaching them at a certain point to watch out for
17 themselves and now I must say he is at a
18 university where they are amazing. Talk about
19 food services, they're feeding 15,000 kids at this
20 university. They take such care of these kids who
21 have food allergies to check that every single bit
22 of food is safe, they will not allow them to eat
23 at the buffets because spoons--

24 COUNCIL MEMBER FOSTER: Right.

25 MS. LEAVITT: --can be moved. They

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prepare his meals for him in the back and they don't let him take anything from out of there and they make sure it's a clean pan, it's clean oil, it's this and that. If a college can do it for 15,000 kids in that milieu and doing it for those kids, you keep thinking that restaurants should be able to do it. And with schools, it's catch as catch can. Nurses have come back if you take out the 401? 403? What is it?

MALE VOICE: 504.

MS. LEAVITT: 504, thank you. Under the Americans with Disabilities Act, they have to provide--

COUNCIL MEMBER FOSTER: Right.

MS. LEAVITT: --services, but it's a crapshoot, as they say.

COUNCIL MEMBER FOSTER: Right, and your children haven't shown any signs yet, right--

MS. GARDNER: No, so far, but I have more friends with children who have allergies and my house is a safe house.

COUNCIL MEMBER FOSTER: Right.

MS. GARDNER: And the schools that we've gone to--both private school, nursery

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2 school, and on--have been very receptive--nut-free
3 classrooms, nut-free tables, really no peanut
4 butter in the whole school. They've been very
5 receptive and they take it very seriously.

6 COUNCIL MEMBER FOSTER: Great.

7 Thank you.

8 CHAIRPERSON RIVERA: Thank you very
9 much, ladies, and thank you for joining us here
10 today. Your testimony was extremely important and
11 we definitely appreciate your presence here.

12 Thank you.

13 MS. GARDNER: Thank you.

14 MS. LEAVITT: Thank you very much.

15 CHAIRPERSON RIVERA: Seeing no other
16 panelists, I'm going to call this meeting to
17 close.

18 And thank you, ladies and
19 gentlemen, for joining us here today. Thank you,
20 Council Member Lappin, for the introduction of
21 this bill and being a strong advocate for the
22 public and in reference to this issue. Thank you.
23 Meeting is adjourned.

24 COUNCIL MEMBER FOSTER: And if I
25 may, if I'm not already signed on, I need to be--

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would like to be, please.

CHAIRPERSON RIVERA: Perfect.

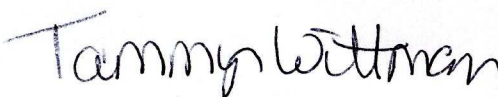
COUNCIL MEMBER FOSTER: Thank you.

CHAIRPERSON RIVERA: Thank you.

Meeting is adjourned.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Signature_____

Date February 10, 2009