

Grades On-The-Go



***An Inside Look into the Dirtiest Pushcarts
& Food Trucks in New York City***



May 2017

INTRODUCTION

Every day hundreds of thousands of New Yorkers and visitors to the city of New York choose to get a meal from the thousands of pushcart and food truck vendors. The myriad of options offered on a Manhattan street corner are endless: coffee and donuts for breakfast, gyros and funnel cake for lunch, and chicken over rice for dinner. This on the go food has become a staple in the City of New York, served by more than 10,000 people, most of whom are hard-working immigrants and veterans. They wake up at the crack of dawn and hustle every day for an honest day's pay.

As with restaurants, the New York City Department of Health and Mental Hygiene (DOHMH) is responsible for ensuring that these carts are operated and maintained in a sanitary condition. DOHMH conducts regular inspections of the thousands of vendors who set up on the streets every day to ensure the safety of customers. However, unlike with restaurants, the public has no means to be aware of the results of these inspections. While the vast majority of vendors operate their carts in a safe manner, there are those who fail to follow the rules and guidelines in ways that compromise food safety.

New York State Senator Jose Peralta has for over half a decade advocated for DOHMH to provide visible letter grades for pushcart vendors, as the city does for restaurants. He is joined in this advocacy by the Independent Democratic Conference (IDC), whose leader, Senator Jeff Klein, was instrumental in the creation of the restaurant grading system currently utilized by DOHMH. Senators Peralta and Klein and their IDC colleagues believe strongly that providing transparency for customers not only empowers them to know that their choices are safe, but also rewards those vendors that follow the rules and operate their business right by pointing out the bad actors in the business.

IDC analysts examined several years' worth of pushcart inspection data from DOHMH to find the most important patterns and to see what rules are being followed and which rules are not. Given the nature of the pushcart and food truck business, we focused on the most recent data, that from 2016 and from the first months of 2017. We found instances of pests and vermin found on certain carts, and evidence of food handling issues that would have earned those carts a grade of "C" had they been restaurants. At the same time, most inspections did not find any signs of violations that would endanger food quality or customer health. A pushcart grading system would allow consumers to separate those vendors that follow the rules from those that don't.

Senator Peralta and the IDC urge the State Legislature to pass senate bill 592, which will set up a grading system for pushcarts in New York City, and give residents and visitors the ability to wisely choose where they buy their next meal.

BACKGROUND

Mobile food vendors have operated in the City of New York since the 19th century. Gone are the days when men from the back of horse-pulled carts would sell oysters to passers-by for six cents¹,

¹ Koyen, Jeff, "Inside the underground economy propping up New York City's food carts", *Crain's New York Business*, (6/12/16), available at: <http://www.crainsnewyork.com/article/20160612/HOSPITALITY TOURISM/160619986/hot-dog-vendors-and->

but the debate about pushcart vendors and their place in the city continues. Several mayoral administrations have had contentious relations with mobile food vendors. Mayor Fiorello La Guardia tried to push vendors into specific market areas, but his attempts failed. Mayor Ed Koch had more success in limiting pushcart vendors by creating a cap on the number of available permits. The number of permits issued for food truck and pushcart vendors has been at the statutory imposed cap since 1981. Currently, the cap is at 2,800 food-vending licensees, 1,000 seasonal permits for veterans and disabled persons, and 1,000 green cart permits. The cost of purchasing a permit from the City is just \$200 for a two-year period, renewable indefinitely.



Unfortunately, the strict cap on vendors has led to a waiting list lasting years. With many recent immigrants seeing pushcart vending as their opportunity to create a stable business, the strict cap led to a black market, and in this black market a vendor could pay as much as \$25,000 for a two-year lease for the permit.²

DOHMH Food Safety Inspections

DOHMH is empowered by Article 81 of the Public Health Code to inspect all food vendors in New York City, regardless of whether the vendor is stationary or mobile. DOHMH currently inspects pushcarts and food trucks in accordance with DOHMH policy; there are no requirements mandating inspections or frequency under city or state law. Health inspectors from DOHMH conduct an annual field inspection of the vendor during the course of the vendor's business to

[coffee-carts-turn-to-a-black-market-operating-in-the-open-to-buy-permits-and-licenses-and-even-contest-tickets-with-the-city](#)

² Tejal Rao, A Day in the Life of a Food Vendor, NY TIMES, Apr. 18, 2017.

evaluate the sanitary conditions of the food being sold and its preparation. If any violations are spotted by the inspectors in the field, the inspector will issue a citation on their hand-held device and issue the ticket to the vendor on the spot. The vendor can contest the fines at an administrative hearing of the Environmental Control Board, which is also appealable in an Article 78 proceeding. In addition, owners of pushcarts and food trucks must have the equipment of the cart or truck inspected every two years.

Mobile food vendors must begin and end their days in registered commissaries. These are the locations in which the carts are supposed to be stored safely, sanitized before going out, and where carts are replenished with pre-prepared or packaged food items, or whatever ingredients the vendor is allowed to stock in their cart, depending on the class of mobile food vending license they obtain. According to DOHMH regulations, there are five classes of mobile food vendor licenses available. These classes are determined by the type of food items these carts are allowed to process and vend.

Class A vendors are those allowed to handle a wide variety of foods that are hazardous while raw and require special heating or refrigerating to remain safe, and process them on site – this covers those carts able to cook raw meats and vegetables on the street itself. Class B vendors are allowed to handle a more limited set of foods that must be kept at certain mandated temperatures and to process these food stuffs on site. Examples of class B vendors would be those able to make smoothies, salads and sandwiches on site (except those that would require the cooking on raw meats). Class C vendors can only offer pre-packaged foods, though these foods may require specific temperatures to remain safe – an ice cream vendor would be an example of this class of vendor.

Class D vendors are allowed to vend items that have been prepared ahead of time in the commissary, or warm beverages like tea or coffee. Your classic breakfast cart selling pastries, donuts, bagels with cream cheese, and coffee would be an example of a class D license. Also included in class D are what many would consider the classic hot dog carts, allowed to vend boiled frankfurters or sausages, knishes, or warm pretzels. Carts selling chestnuts and other nuts would also fall under class D. The final, class E, is reserved for the green carts. Green carts are allowed to vend intact fruits and vegetables on the street that don't require some form of temperature control to be safe.

A license for mobile vendor can also come with geographic limitations. A vendor may be allowed to set up anywhere in New York City, or may be limited to a single borough. Green carts can also be limited by borough, and also have limits on the parts of a borough they can operate in. Within their allowed zone of operation, there are few movement or location restrictions for vendors to set up shop to sell their food. Vendors who wish to sell on city property, generally speaking in one of the city's parks, must contract with the relevant agency. Vendors also have restrictions on how close to various other street features like parking spots and bus stops they can set up, or how close to buildings they can be. The first vendor to get to a legal spot gets to claim the territory for the day.

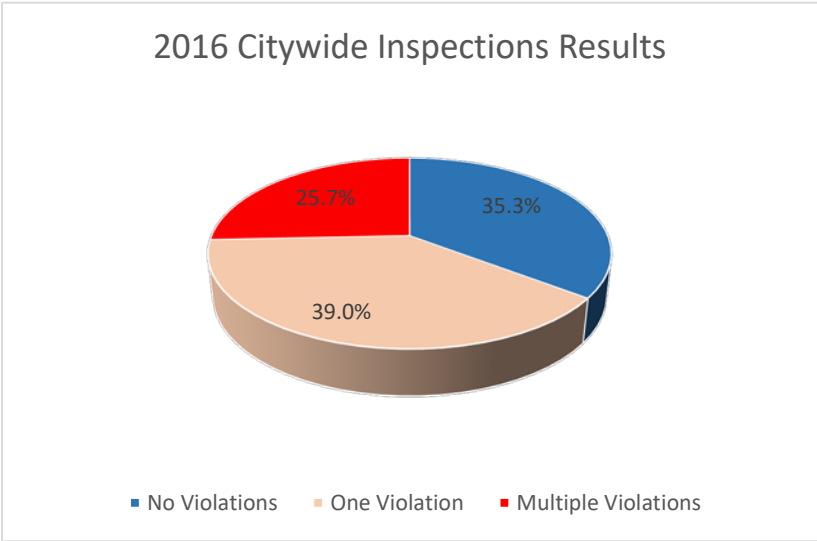
Unlike restaurants, which are sedentary, pushcarts and trucks are by their very nature mobile establishments and due to the lack of a movement restriction, can change their location for daily business. Thus, health inspectors on occasion may have difficulty finding a vendor to conduct an in field inspection, or to conduct a subsequent inspection after sanitary code violations are found on an initial inspection.

DATA TRENDS FOR PUSHCARTS & FOOD TRUCK INSPECTIONS 2016

Senator Peralta's office and IDC staff poured through the last three years of health inspection data, with particular emphasis on health inspection data for 2016. In total, analysts reviewed 7,071 inspections on the year in which 7,861 violations were issued, with many locations receiving multiple violations issued by DOHMH.

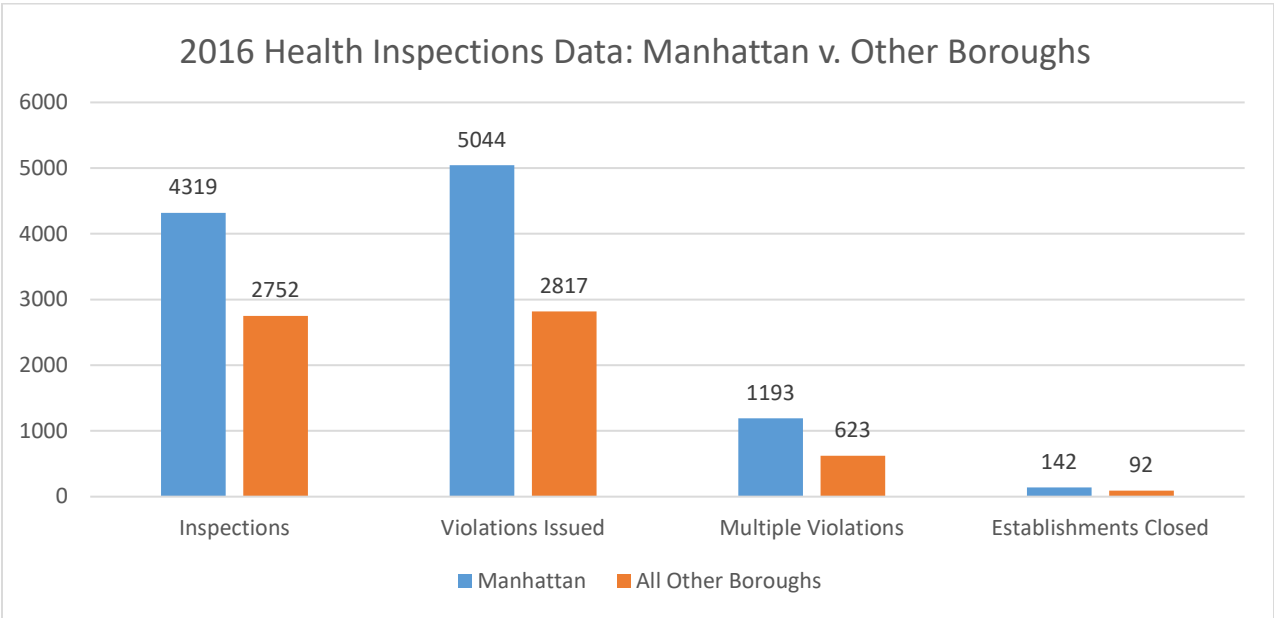
<u>Violations Category</u>	<u>Total Number</u>
Total Inspections	7071
Violations Issued	7861
No Violations Issued	2497
Multiple Violations	1816
Establishments Temporarily Closed	234
Re-closures	10

Analysts found that 35% of the inspections in 2016 led to no violations being issued to the vendor. Another 39% of inspections led to a single violation being issued against the vendor. A quarter of the inspections led to more than one violation being issued. There were 234 establishments temporarily closed until the health hazard was removed, and ten establishments were closed on two different occasions during the year.

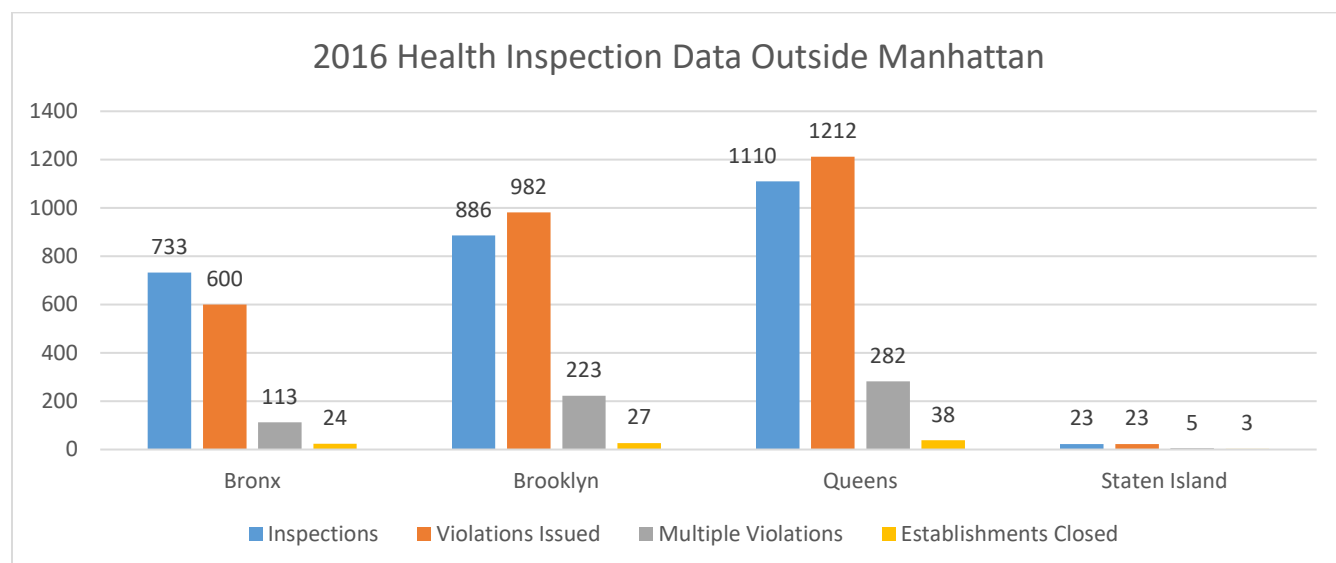


Borough Trends

As the location of the two major commercial centers (Downtown and Midtown) and the home of the most popular tourists attractions in the city, Manhattan is the center of push cart and food truck activity. There were more inspections in Manhattan in 2016 (4,319) than in all the other boroughs combined (2,752), as well as more violations issued (5,044 in Manhattan vs. 2,817 in all the other boroughs) and more inspections with multiple violations issued (1,193 in Manhattan vs. 623 in the rest of the city).



Outside of Manhattan, Queens is the borough with the most pushcart activity, followed by Brooklyn and then The Bronx. Staten Island had the least active food cart scene.



Manhattan not only had the most food cart inspections and violations, but the worst rate of violations per inspection in the city. The Bronx had the best rate of violations per inspections, with fewer violations issued than there were inspections.

Borough	Violations Per Inspections
Manhattan	1.17
Brooklyn	1.11
Queens	1.09
Staten Island	1.00
Bronx	0.82

Staff also examined the most common types of violations issued by inspectors in 2016. The three most common violations accounted for almost 40% of all the violations issued. The most common type of violation was for being in a bus stop or too close to a driveway, subway stop, or crosswalk. Inspectors issued 1,044 of these violations in 2016. The next most common kind of violation issued was for being too close to a display window or within 20 feet of a building entrance, with 1,013 of these violations being issued. The third most common violation issued was a failure by the cart operator to keep all their equipment in or under the cart to avoid sidewalk clutter, as is mandated by regulations. This violation was issued 1,005 times.

Staff also sought to find the most common violations that dealt directly with food safety. We found the top ten most common such violations accounted for 25% of all the violations issued.

The ten most common food safety related violations issued in 2016

Type of Violation	Violations Issued in 2016
POTENTIALLY HAZARDOUS FOODS HELD ABOVE 41°F	452
EFFECTIVE HAIR RESTRAINT	372
POTENTIALLY HAZARDOUS FOODS AT IMPROPER TEMPERATURES	327
EQUIPMENT NOT CLEAN; IMPROPERLY MAINTAINED	202
FAILURE TO PROVIDE/USE THERMOMETERS AS REQUIRED	183
FOOD PROTECTION (FOOD NOT PROTECTED)	148
HANDWASHING FACILITY: SOAP/HAND DRYING DEVICE	94
HANDWASHING FACILITIES NOT PROVIDED/OBSTRUCTED	77
FOOD: ADULTERATED/CONTAMINATED	72
FAILURE TO MAINTAIN PERSONAL HYGIENE	66

Failure to maintain food at safe temperatures and failure to maintain adequate sanitary equipment or standards were the most common such violations. Many of these can pose serious problems for food contamination.

METHODOLOGY

The IDC evaluated the inspections issued since 2016 in order to find the most egregious recent violations. Our analysts examined the violations report and graded violations using the same grading criteria utilized by DOHMH to grade restaurant violations. Violations are scored based on the type of problem and the severity of the specific situation. Each violation may receive as few as 2 points or as many as 10 points for the most serious violations. Health code violations are listed as “critical,” such as public health hazards, or “general.” Violations for issues that do not affect food handling and safety, such as how close a cart was to a bus stop, or whether the vendor was correctly licensed or vending in the right part of the city were not graded.

All points given for various violations during a single inspection by DOHMH were totaled, with a grade of “A” given if the score is 0 to 13, a “B” score if 14 to 27 points, and a “C” grade if 28 or more points off.³ Since the health inspection information is not made available to the public and letter grades are not posted on pushcarts and food trucks, the public has no knowledge as to whether the food they eat is sanitary and won’t make them sick.

³ NYC Department of Health & Mental Hygiene, WHAT TO EXPECT WHEN YOU’RE INSPECTED: A GUIDE FOR FOOD SERVICE OPERATORS (2016).

THE DIRTIEST PUSHCARTS & FOOD TRUCKS

Based on 2016 inspection results using the letter grade methodology, Senator Peralta's office and the IDC found that 8 inspections that would have been graded as a "C" in 2016. The table below shows the 6 carts that would have received a "C" grade. We discovered that two of these carts were repeat offenders. These carts are identifiable by their decal number given to them by DOHMH, which is posted on the outside of the cart.

Letter "C" Vendor Health Inspections

Pushcart/ Truck Decal ID	Location	Score	Letter Grade
AA05085	1293 Broadway, New York. NY	52	C
AA05085	101 West 35 th Street, New York. NY	47	C
AA07191	115 Central Park West, New York. NY	39	C
AA00076	101 West 35 th Street, New York, NY	34	C
AA00076	101 West 35 th street, New York, NY	32	C
AA08215	497 Clermont Ave, Brooklyn, NY	32	C
AA05261	10 Grand Army Plaza, Brooklyn, NY	30	C
AA00871	107-19 71 st Avenue, Queens, NY	33	C

The worst inspection score was a "52" by a Class A hot food vendor on 1293 Broadway in Manhattan, who received critical violations for a hand washing facility not provided on site, food not protected from contamination, inadequate personal cleanliness, cold and hot foods not held at proper temperatures, and a thermometer not used to evaluate food temperatures. This vendor with cart decal ID AA05085 was one of our repeat offenders. We examined his inspection history in 2016 and were shocked by what we saw. In May of 2016, the cart was inspected and received multiple violations for food handling issues which would have led to a grade of a "B". If this cart were a restaurant, the vendor would have had the right to ask for a "Grade Pending" sign before his re-inspection. Instead, customers had no way of knowing about his dangerous food handling practices. The cart was re-inspected in July of 2016, when he received the violation that would have resulted in 52 points. He was given a notice of violation and continued to serve with the public being none the wiser. He requested an inspection later that month for reasons unknown, and was shut down temporarily by DOHMH, not for food handling issues, but for vending outside of the cart's allowed area. He was back in business in September 2016 when he was subsequently inspected and again found to have violated multiple food handling rules that would have led to another "C" grade. Had this cart been graded, customers would have known about these unsanitary conditions.

The other repeat cart offender has a similar story. In January 2016, he was inspected and had multiple food handling violations which, had he received a grade, would have led to a "B." The

cart was re-inspected in April 2016 and would have passed that inspection with an “A.” Then in early August 2016, he was inspected again as part of his cycle inspection, and would have received a “C” grade, based on all the violations observed. Had he been a restaurant, he could have requested a “Grade Pending” sign waiting for re-inspection. The re-inspection would have received a “B” , based on his violations for food handling issues received once again. Then the cart was inspected again in November by his request and the inspection again found multiple violations for food handling issues that would have earned him his second “C” of 2016. Again, at no point would the lunch goers of New York City ever know about any of this.

Given how few “C” violations we found, the fact that we had repeat offenders showcases how a lack of a grading system allows food carts that aren’t being run well to continue to compete with vendors who follow the rules for sanitary conditions.

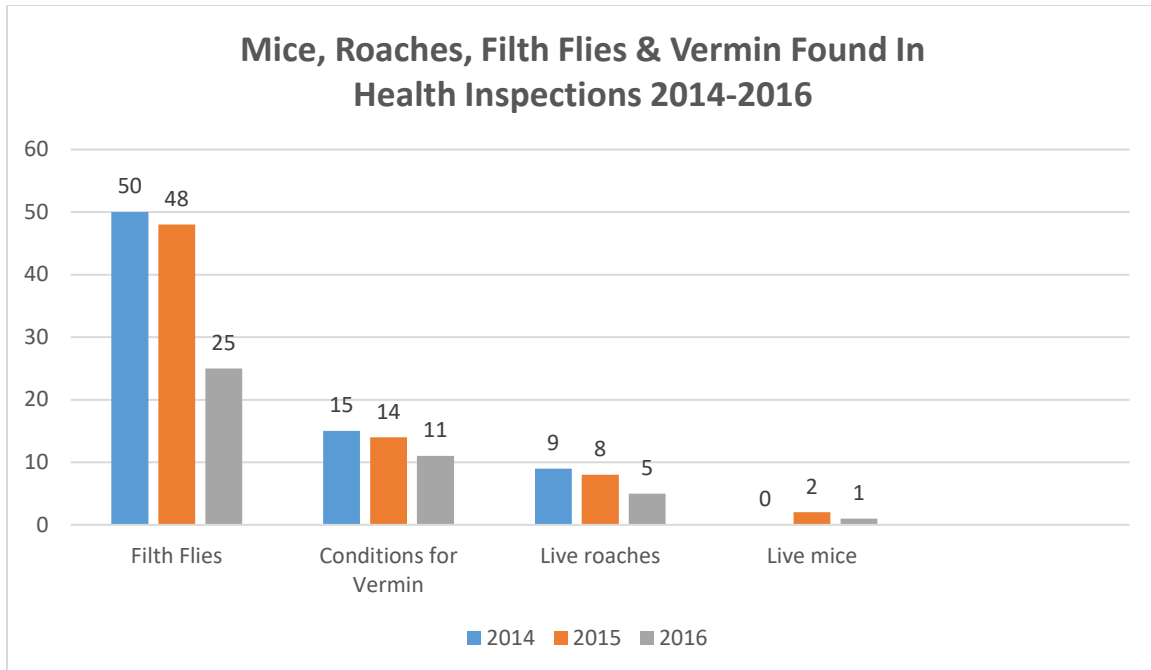
Roaches, Flies & Mice

Unlike restaurants, which vary greatly in size for cleaning areas, pushcarts and food trucks have small surface areas, generally fitting at most two vendors inside a pushcart and only a few vendors inside a food truck. That makes it all the more disturbing that health inspectors have found live roaches, filth flies, and evidence of mice in these mobile food service establishments, all of which are critical health code violations. Fortunately, the presence of these vermin found within food trucks and carts has decreased, based on a review of the health inspection data.

In 2016, five separate health inspections found live roaches present in the facility’s food or non-food areas. There were eight establishments in 2015 and nine establishments in 2014 that were also found to have live roaches in food areas or non-food areas. Live mice or evidence of live mice were found in one health inspection in 2016, causing the establishment on York Avenue in Manhattan to be closed for the second time by DOHMH, and in two health inspections in 2015.

Filth flies found during health inspections were far more prevalent than mice and roaches. Flies were found in 25 inspections in 2016, and in 48 inspections in 2015. Filth flies were found in 50 inspections in 2014.

The final stomach turning inspection violation found was a facility not being vermin proof, or creating conditions conducive to attracting vermin. This violation was found in 11 inspections in 2016, in 14 inspections in 2015, and in 15 inspections in 2014.



IDC LEGISLATION TO PROTECT PUBLIC HEALTH & SAFETY

Overview

The IDC has a long history of advocating for improved sanitary conditions for the food we eat, and requiring inspection information to be made publicly available. These efforts started with Senator Klein's reports in 2000, titled, *Enough to Make You Sick*, detailing the sanitary conditions of New York City restaurants, with a 2008 report released that studied the 100 worst inspection reports of restaurants. That effort culminated with legislation in 2005 to bring letter grading to restaurants, and agreement by Mayor Bloomberg in the City of New York to carry out the bill's intent in 2009. Letter grading for restaurants has been lauded as a huge success, causing restaurants to improve their sanitary conditions or risk losing customers. Customers also can make an informed decision about where to eat by taking into account the sanitary conditions of a restaurant.

The IDC also conducted an investigation into the sanitary conditions of school cafeterias in December 2016, releasing a report on its findings titled, *School Lunch Flunks: An Investigation Into the Dirtiest New York City Public School Cafeterias*. The report found that inspectors gave out 442 mice related violations to 320 different school cafeterias during the 2015-2016 school year. The report and subsequent legislation resulted in agreement by the City of New York to post school cafeteria violations online at www.schoolfoodnyc.org at the start of the new school year, and for parents to receive a notice about the violations being made publicly available.

Letter Grading for Pushcarts & Food Trucks

To improve sanitary conditions of the mobile food service establishment and pushcart industry and to give customers more information about the food they eat, Senator Peralta has introduced legislation for letter grading of mobile food service establishments and pushcarts. Senator Peralta's bill, S.592, would require DOHMH to convert the existing health inspection violations into the letter grade equivalent. The letter "A" would represent the highest sanitary code compliance by the vendor. The letter grade must be conspicuously posted by the vendor on the cart or truck so that the public can view the letter grade.

Further, the legislation allows DOHMH to promulgate regulations enabling it to locate vendors during business hours, which may include submission of a travel route by vendors to the department. This will address the existing problem of health inspectors being unable to locate a vendor for a re-inspection or subsequent inspection because of the mobile nature of the industry's vendors. Requiring vendors to post letter grades would also enable inspectors and police officers to easily identify unlicensed vendors because unlicensed vendors would not receive a letter grade to post, since only licensed vendors are inspected by DOHMH. The legislation would take effect one year from the date the governor signs the bill into law.

The City of Los Angeles has implemented a letter grading system for health inspections of pushcarts and trucks since 2010. The local law in Los Angeles requires vendors to submit a travel route detailing their location for daily business, which is filed with the city's health department.

In addition, Senator Peralta has introduced legislation to establish a vendor policy commission in New York City to review and study the mobile food service establishment and pushcart industry. Under Senator Peralta's bill, S.331, the commission would be comprised of nine members, with appointments by the DOHMH, the Commissioner of Consumer Affairs, Mayor, City Council Speaker, and an immigrant advocacy organization. Issues reviewed by the commission would include the number of permits issued to industry vendors, zoning regulations and the location of vendors, creation of a mediation process between street vendors and adjacent businesses, and a review of the letter grading system. The commission would submit recommendations on improving the industry to the Mayor and City Council.

CONCLUSION

As the mobile food vending industry continues to thrive and potentially expand in New York City, legislators and regulators must ensure that the enhanced financial productivity does not come at the price of public safety. As discussed in this report, the vast majority of mobile food vendors follow the rules for public health and safety, as they serve loyal customers and tourists every day. However, transparency and disclosure of health inspections for pushcarts and food trucks will enable customers to make informed decisions on where they eat, weeding out bad actors who fail to follow sanitary code rules, and making the industry safer for customers. Senator Peralta and the IDC strongly urge the legislature to pass his letter-grading bill into law.