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January 18, 1995

The Honorable Margaret A. Hamburg, M.D.  
Commissioner  
New York City Department of Health  
125 Worth Street  
New York, New York 10013

Re: Follow-up Review of Audit Report on  
Mobile Food Vendors (A-6-93),  
Follow-up Report No. A-6-95

Dear Dr. Hamburg:

Pursuant to the State Comptroller's authority as set forth in the State Constitution, the State Finance Law and the General Municipal Law, we have reviewed the extent of actions taken by the New York City Health Department to implement the recommendations contained in our prior audit report on Mobile Food Vendors, Report No. A-6-93, issued October 21, 1993.

In our prior report, we made a total of 17 recommendations to assist Health in addressing the issues raised. Of the 17 recommendations, eight have been implemented, one has been partially implemented, and the City Council is considering legislation which when enacted will provide alternative actions for two of the recommendations. The six remaining recommendations have not been implemented.

### **Background**

The New York City Department of Health has the authority to inspect and supervise all establishments in the City in which food is prepared, sold or served. Vendors who prepare and serve food from vehicles and carts, on streets and sidewalks, are called mobile food vendors. The City's Administrative Code authorized Health to issue a specific number of permits to individuals or corporations owning a mobile food unit, and to issue licenses to food vendors operating the units. Health conducts inspections and issues summonses to owners and vendors who violate requirements of the City's Health or Administrative Codes.

Provisions of both the Health and Administrative Codes aim to protect the public against food-borne disease, and to minimize the sidewalk and street clutter caused by proliferation of these vendors, particularly during the warm months of the year.

The Health Department's Division of Permits issues permits to operate a mobile food unit and licenses to work as a food worker. The permit is renewable every two years for the life of the holder. An Administrative Code amendment effective in July 1983 limited the number of two-year permits to 3,000 in order to minimize congestion on the City's sidewalks. In addition, a maximum of 1,000 seasonal permits for additional mobile food units and an unlimited number of seasonal vendor licenses are valid from April to October and renewable yearly. The permit does not assign a specific location to a unit.

### **Summary Conclusions**

The City has made a considerable effort to address our previously reported concerns. Proposed legislation to limit the number of permits that an individual may own will, when enacted, loosen the monopolistic grip on the industry resulting from the ownership of multiple permits by a single person or entity. Also, the controls mandated by the legislation should curtail illegal leasing.

We remain concerned with Health's reluctance to perform microbiological testing (see Recommendation 2). This would help ensure that there are no health risks associated with consumption of food products sold by mobile food vendors. In addition, three of the recommendations not yet implemented (Nos. 3, 11, and 13) concern areas where we continue to see opportunities for Health to improve operations through enhancing automated capabilities and controls. Health should reconsider all of the recommendations not as yet implemented.

### **Follow-up Observations, by Recommendation**

The Department of Health should:

- 1. Develop a checklist for inspections of mobile food carts and vendors similar to the Food Establishment Inspection Report used in the inspection of restaurants and commissaries.**

**Status** - Implemented

**Agency Action** - The Health Department revised forms 199E (Food Establishment Pre-Permit Inspection Report) and 198E (Food Establishment Inspection Report) to include a checklist. These forms are currently being used by the Bureau of Inspections to facilitate inspection of mobile food vendors.

**2. Reconsider doing microbiological testing of food from a sample of vendors.**

**Status** - Not Implemented

**Action** - The Health Department still disagrees with this recommendation. It takes the position, with the backing of the New York State Department of Health, that it would not be cost-effective or scientifically supportable to undertake a microbiological testing program for mobile food vendors.

However, in recent months the U.S. Department of Agriculture (USDA) has performed microbiological test sampling of ground beef at retail stores for the presence of the pathogen E. Coli, responsible for past fatalities. Products sold by City mobile food vendors contain meat products. Perhaps Health, with the assistance of the USDA, could perform similar testing of mobile food carts on a trial basis. We reaffirm our recommendation.

**3. Develop a procedure to ensure that sanitarians [Health Department inspectors] are aware of any outstanding Violations before doing inspections. DOH may want to consider the purchase of hand-held computers to facilitate the transmission of this information.**

**Status** - Not Implemented

**Agency Action** - While the Health Department disagreed with this recommendation, it is continuing to address the issue with the New York City Office of Management and Budget. Assigning hand-held computers to inspectors in the field is one option being considered as part of a citywide project for all types of inspections. Health does not know when this might be implemented. We continue to recommend this option which is widely used in the private sector, e.g., the package delivery business, as an efficient and portable tool.

**4. Develop pre-printed instruction cards in several languages for sanitarians to use in communicating with vendors who do not speak English.**

**Status** - Not Implemented

**Agency Action** - Health disagreed with this recommendation, and contends that the suggested usefulness of instruction cards is unclear. Health argues that permit applications are in English and that applicants seem to fill them out correctly. However, our recommendation related to illegal food vendors whom inspectors may encounter.

**5. Conduct more sweeps with Police and Sanitation to enforce compliance.**

**Status** - Implemented

**Agency Action** - Health is conducting more sweeps. Police Department officials told us that the "Coordinated Enforcement Action" with the Health Department has been successful

compared to past actions. Our prior report indicated that eight sweeps were conducted in 1992, and that ten were conducted between January and May 1993. Our follow-up determined, based on data we compiled from daily work sheets furnished to us by Health, that between May 1993 and August 1994, there were 258 sweeps (193 with Police) that resulted in summonses being issued.

**6. Reinspect within 60 days any commissary operating without a permit, and within 15 days if the problem is a "critical" item as defined on the Food Establishment Inspection Report.**

**Status** - Partially Implemented

**Agency Action** - While we found that Health does immediately address "critical" items that present an immediate health hazard, there were instances of delays in reinspecting commissaries. We reviewed data for one critical and eight non-critical reinspections of commissaries in the Borough of Manhattan for the period April 1, 1994 to November 17, 1994. The critical inspection and four non-critical inspections were performed within the recommended time frames. However, the remaining four sites were not reinspected; the reinspections were between one and five months overdue at the time of our follow-up.

**7. Ensure that permit decals are affixed to an appropriate spot on all carts.**

**Status** - Implemented

**Agency Action** - Health has issued notices to Mobile Food Vending Permit Holders on how and where decals should be affixed. Further, Health has alerted its inspection unit regarding enforcement action to be taken against Permit Holders who fail to comply.

**8. Determine the appropriate number of two-year permits that is in the City's best interest to issue. If warranted, propose legislation to increase the number of permits. Also, assess whether choice locations are controlled by the same vendor and, if so, consider the feasibility of putting these locations up for bid with a range of additional fees based on the profit potential of each location.**

**Status** - Alternative Action Pending

**Agency Action** - The City Administration took an alternative approach to resolve the issue that generated this recommendation. The intent of our recommendation was to alleviate the monopolistic effect that past limitations on the number of permits had on the industry. We found that ownership of multiple permits restricted individual ownership. A Mayoral task force was formed to study this issue and in November 1994 the Commissioners of the Departments of Business Services and Consumer Affairs issued a report entitled "Food Vending Initiative, Report on the Food Vending Street Restriction and Permitting Process." The key recommendations were to limit to two the number of permits that an individual or organization could hold, and to establish a panel to determine on which streets vendors may operate.

On December 21, 1994, the Mayor's Office introduced bills to address both issues. On January 6, 1995, the City Council's Committee on Consumer Affairs held a hearing on the proposed legislation, and voted, after a hearing, to send the bills to the full Council with an amendment to limit ownership to one permit rather than two.

If enacted, the proposed legislation would satisfy the intent of our recommendation, i.e., broadening the availability of permits to a greater number of individuals. We continue to recommend that the City perform a study to determine the optimum number of permits.

9. **Develop and utilize a strategy for promptly identifying and penalizing permit holders who illegally lease mobile food vending permits. Periodic public bidding for locations and the imposition of a range of additional fees based on the profit potential of locations, could be one method of discouraging illegal leasing because the uncertainty of the bidding results would minimize the lease value of the permit.**

**Status** - Alternative Action Pending

**Agency Action** - The City Administration took an alternative approach on this recommendation. The Administration's report (discussed in Recommendation 8 above) cites the unlawful conditions we reported, i.e., holders of multiple permits illegally leasing for as much as \$9,000 permits which cost them \$200 for a two-year period. The proposed legislation limiting ownership to one permit per entity, will decrease the likelihood that permit holders will illegally lease them. The proposed bill establishes additional information requirements for permit applicants intended to assist the Department in maintaining the permit limitation and preventing transfers of carts with licenses, permits or plates attached thereto.

We continue to believe that the City should study the benefit of some form of variable pricing, particularly for choice locations, to resolve some of the problems that prompted recommendations 8 and 9.

10. **Evaluate whether the current fee structure for permits and licenses covers the cost of administering the program.**

**Status** - Implemented

**Agency Action** - Health prepared a cost analysis and determined that the total cost of administering the program is \$80 per permit and license. We did not perform detailed testing to verify the accuracy of the cost analysis. This analysis, if accurate, appears to support the adequacy of the \$200 biannual permit fee and \$50 license fee.

**11. Use the weekly computer report to account for the number of permits and licenses processed and to reconcile the number issued to cash receipts.**

**Status** - Not Implemented

**Agency Action** - Health agreed with this recommendation, but stated that it was impractical to implement because of time lags between payment for the permit or license and its issuance. Health indicated, in its audit implementation plan submitted to the Office of Management and Budget, that it would institute alternative procedures. During our follow-up we saw no evidence of any alternative procedures.

In our view, Health could implement this recommendation if it addresses the deficiencies of the computer system used to process permits. For example, the system cannot track the status of permit applications for which all documents and payments have been submitted; the system includes voided permits in the daily activity counts because voided transactions are not segregated; the system does not account for the late payment of prior years' permits, or the payment of partial fees, or adjustments, which makes any reconciliation with cash receipts difficult. We reaffirm our recommendation.

**12. Ensure that all voided forms are properly accounted for by logging and retaining them.**

**Status** - Implemented

**Agency Action** - The Permit Division currently maintains a log which is used to account for all voided forms. The log is kept up to date.

**13. Enhance computer controls by:**

- a) **establishing a data input log;**
- b) **omitting user identification codes from the list of employees with systems access;**
- c) **changing computer passwords every ninety days;**
- d) **providing automatic log-off of terminals that have been inactive for 15 minutes;**
- e) **designating a single individual to assume responsibility for implementing system security controls.**

**Status** - Not Implemented

**Agency Action** - a) Health did not agree to implement this recommendation, claiming that staffing constraints as well as the duplicative nature of an input log make it difficult. We did not observe a log being used during our follow-up.

b) Health asserted that this recommendation was implemented but could not demonstrate the implementation.

c) The Permit Division is not changing computer passwords every 90 days.

- d) Although the Health Department assured us that this recommendation was implemented, our review of the system and discussions with staff indicated that it had not been implemented.
- e) Health agreed with this recommendation, but claimed that it could not be implemented due to funding constraints.

We continue to believe that the implementation of this recommendation is needed to improve computer-based systems controls. Therefore, we reaffirm our recommendation.

**14. Develop a manual for the application process to provide for a compilation of all procedures involved in the process in a single source document.**

**Status** - Not Implemented

**Agency Action** - Currently, the Permit Division uses a checklist instead of a procedures manual for issuing permits. The checklist is adequate for ensuring that all required documentation necessary for issuing a permit is received. The checklist is not an all-inclusive compilation of the procedures involved in the administrative process. An all-inclusive procedures manual would provide employees with instructions on how to do their jobs, prevent misinterpretations, and reduce the likelihood of errors and irregularities. Therefore, we reaffirm our recommendation.

**15. Ensure that all applicants provide the required documentation before they receive permits.**

**Status** - Implemented

**Agency Action** - Our review of the Permit Division's application files found that all required documentation was received prior to the issuance of a permit.

**16. Ensure that its mobile food vendor permits for operating in a City park have the same expiration date as the vendor permit issued by the Department of Parks and Recreation.**

**Status** - Implemented

**Agency Action** - Mobile food vendor permits for operating in a City park now have the same expiration date as the vendor permit issued by the Department of Parks and Recreation.

**17. Maintain its records properly.**

**Status** - Implemented

**Agency Action** - Currently, the Permit Division file drawers are labeled and there is no difficulty in locating files.

We are grateful for the assistance and cooperation of the staffs of the Department of Health and the Police Department for the courtesies and cooperation extended to our auditors during this follow-up review.

Sincerely,

Rosemary Scanlon  
Assistant Deputy Comptroller

cc: Alfred C. Cerullo III, Commissioner, New York City Department of Consumer Affairs  
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