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**Gale A. Brewer, Borough President**

**Testimony of Manhattan Borough President Gale A. Brewer  
New York City Department of Health and Mental Hygiene  
Proposed Rules on Letter Grades for Mobile Food Vendors  
July 9, 2018**

My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to the Commissioner and DOHMH staff for the opportunity to weigh in on the proposed rules for Local Law 108 of 2017.

As stated in my 2015 report, *Small Business Big Impact*, I believe that street vendors are storefronters without a brick-and-mortar location. This style of retail should be a very low-cost, low risk way to enter the marketplace, as the vendor doesn't need a commercial lease and may be able to get his/her business up and running with little or no credit. In reality, however, street vendors' overhead is often higher than anticipated. They may be operating from a table or cart, but their equipment and inventory may need to be transported and must be safely stored when not in use, which can be costly. The persistence of street vendors in the face of adversity confirms their entrepreneurial spirit.

All food service establishments, from brick and mortar to mobile vendors, must be held to the same high standards of food safety as established by DOHMH and enforced by its professional inspectors who are charged with protecting public health. As we all know, the restaurant letter grade program is very popular with consumers and it is understandable why many New Yorkers and visitors alike were supportive of Council Member Koslowitz's initiative to expand it to mobile food vendors.

While many food vendors are hardworking and provide a source of fresh and inventive food at agreeable prices, when I represented the upper West Side in the City Council, I also received a significant number of constituent complaints around parking, health and environmental issues by mobile food vendors who were proliferating. With five agencies tasked with enforcing their respective segment of the rules and regulations, there was a lack of data and enforcement was inconsistent. In 2011, I advocated that the City utilize GPS tracking for mobile food vendors, reasoning that these devices would be useful in recording data about vendor identity, location, aggregation, and pattern of travel. This data would have been helpful in standardizing enforcement to benefit residents, vendors, local businesses, and consumers.

Similarly, today DOHMH is proposing required GPS tracking on all mobile food vendors to improve vendor locations so that inspections can be conducted and consumers can have confidence that the posted letter grade is reflective of the vendor's current high food safety practices. Section §6-21 of the proposed rules say:

***(b) A location sharing device shall be provided and installed by, and remain the property of, the Department. After the Department installs the device, the mobile food vending unit shall operate with the device at all times. The device shall only be used to locate a mobile food vending unit at a specific moment in time, and shall not continuously track the location of the unit on which it is affixed.***

And

***(e) The Department shall only use and disclose data obtained from a location sharing device to locate a unit for the purposes of enforcing the provisions of this Chapter, the Health Code, the Administrative Code or as otherwise required by law.***

This specific proposal raises the following questions:

- How will this data be kept and for how long?
- Who will have access to using the location sharing device or the data it records? If an agency besides DOHMH deems that utilization of the GPS is crucial to their enforcement requirements, what is to prevent them from doing so however and often it wants?

Despite my previous support for GPS tracking, there is today the risk that federal agencies might use this data to locate and detain vendors, their co-workers and family members. For that reason, a GPS system as originally conceived of does not make sense. I suggest asking the tech community to work with the City to see if a more innovative way to support transparency without obvious data that can be captured is possible.

Letter grades give legitimacy to food vendors. Everyone seems to look favorably on this proposal. However, currently food vendors are only inspected once a year, unless there is a complaint. In fact, if an inspector is working in an area – like midtown Manhattan – where there are lots of vendors, he/she can only inspect those that have not been inspected for a year.

A suggestion is to inspect more often – maybe quarterly – and couple that with lower or grouped fines to encourage more transparency and compliance. Then the letter grade will have more meaning.

Vendors are mobile, and their access to water, refrigeration, cooking facilities and location changes frequently, which is obviously not the case with brick and mortar restaurants. So the approach to inspections and letter grades has to be carefully considered and have a different approach. Some additional questions include:

- How many of these reported complaints include information whereby the agency can confidently identify the vendor?
- Is an annual inspection cycle sufficient for consumer confidence in the health standards of the cart or truck as reflected in the posted letter grade?

- Would the overall high health standard be increased by rules that allow for more frequent inspections - even on a quarterly basis, perhaps coupled with lower or grouped fines to encourage more transparency and compliance?

As Manhattan in particular becomes more expensive (unfortunately), the food vendors are a significant asset to workers, residents and visitors alike. The Halal Guys are both a cart and a storefront, and other vendors are doing the same, which is how hard working immigrant entrepreneurs get started. At the same time, the City agencies and their inspectors have to figure out how to balance food safety, complaints from the public, an appropriate fine system, and inspections that are transparent and fair. Thank you for your consideration of these complicated issues.