



City of New York

OFFICE OF THE COMPTROLLER

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COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the Department of
Health and Mental Hygiene's
Oversight of Mobile Food Vending
Units

ME20-054A

June 13, 2022

<http://comptroller.nyc.gov>



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OFFICE OF THE COMPTROLLER
BRAD LANDER

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To the Residents of the City of New York:

My office has audited the New York City Department of Health and Mental Hygiene's (DOHMH's) oversight over mobile food vending units. We conduct audits such as this to increase accountability and to ensure that laws and policies that are designed to promote the health and safety of New Yorkers are followed.

The audit found that DOHMH did not consistently conduct inspections as required or within timeframes mandated by the Rules of the City of New York and/or agency guidelines. The audit also found that DOHMH had not established timeframes for the completion of re-inspections that are required after violations have been found during initial inspections. Agency protocols concerning follow-up inspections by supervisors were not consistently followed, and the audit found that controls over the issuance and tracking of permits, permit decals and grade cards could be improved.

The audit makes 11 recommendations intended to improve DOHMH's oversight of mobile food vending units. These included recommendations that DOHMH establish a target timeframe within which required re-inspections must be conducted; ensure that all required initial full-sanitary inspections and re-inspections are performed in a timely manner; prepare written policies and procedures establishing follow-up inspection protocols; and ensure that only authorized individuals are able to update permit decal and grade card inventory records, that an appropriate segregation of duties concerning such records is maintained, and that associated supervisory controls are established.

The results of the audit and the recommendations have been discussed with DOHMH officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the Department of Health and Mental Hygiene's Oversight of Mobile Food Vending Units

ME20-054A

EXECUTIVE SUMMARY

This audit was conducted to determine whether the Department of Health and Mental Hygiene (DOHMH) is effectively monitoring mobile food vendors' compliance with applicable sanitary laws and regulations. DOHMH's mission is to preserve and promote the health of New York City (City) residents. The agency is responsible for, among other things, enforcing laws and regulations designed to protect and promote public health and safety, including those related to the permitting and inspection of mobile food vending units.

The auditors conducted research into the applicable health and safety rules, regulations, and DOHMH guidance and policy, to identify the criteria for assessing oversight and compliance. The auditors also conducted interviews with DOHMH officials, reviewed data and records, and conducted observations in the field to determine whether inspections were conducted as required under Title 24, Chapter 6, of the Rules of the City of New York (Rules). The audit considered the frequency and timeliness of inspections, the substance of inspections, and the controls surrounding the issuance and tracking of permits.

Audit Findings and Conclusions

The audit found that DOHMH did not consistently conduct inspections as required or within the timeframes established in the Rules and by DOHMH guidelines. For one type of inspection where the Rules did not set timeframes – re-inspections required due to violations found in earlier inspections – DOHMH did not establish any. Agency protocols concerning follow-up inspections were not always followed, and the auditors also found that controls over the issuance and tracking of permits, permit decals and grade cards could be improved.

Audit Recommendations

The audit makes 11 recommendations that will improve DOHMH's monitoring of mobile food vending units. These include recommendations that, among other things, DOHMH should:

- Establish a target timeframe within which required re-inspections must be conducted.

- Ensure that all required initial full-sanitary inspections and full-sanitary re-inspections are performed in a timely manner.
- Schedule full-sanitary inspections with permit holders when inspectors are unable to locate units in the field.
- Prepare written policies and procedures establishing follow-up inspection protocols and disseminate them to staff so that all parties are aware of what is required, including the target percentage of inspections to be monitored.
- Ensure that only authorized individuals are able to update permit decal and grade card inventory records, that an appropriate segregation of duties is maintained, and that associated supervisory controls are established.
- Prepare inspection checklists for the field inspectors to ensure that pre-permit and operational inspections are conducted and recorded consistently.

Agency Response

In its written response, DOHMH agreed with four of the 11 recommendations, disagreed with five, and agreed to implement some changes in response to two recommendations.

AUDIT REPORT

Background

DOHMH has an annual budget of \$1.6 billion and more than 6,000 employees. The agency's mission is to preserve and promote the health of City residents. DOHMH endeavors to achieve this mission through ongoing assessments of the health status of the community, establishing and implementing policies and programs to promote public health, and by providing health care services. This includes the licensing of mobile food vendors and the permitting and inspecting of mobile food vending units to ensure compliance with the New York City Health Code and the New York State Sanitary Code.

To obtain a permit to operate a mobile food vending unit (unit), a vendor license must first be obtained by the unit's owner (or lessee) and by each employee who will work at the unit. To obtain a license, the applicant must take the Food Protection Course for Mobile Vendors and pass a food safety exam. With the enactment of Local Law 2021/018, §16 & §35, mobile food vendors must also pass a food safety exam to renew their license. During the audit scope period, full-term vendor licenses needed to be renewed every two years, while seasonal vendor licenses were valid for seven months. DOHMH can issue an unlimited number of vendor licenses.

A permit is issued by DOHMH to a unit owner (or lessee) who has a vendor license and whose unit passes a pre-permit inspection.¹ During the pre-permit inspection, DOHMH determines whether a mobile food vending unit has been constructed and equipped in accordance with guidelines set forth in Title 24, Chapter 6, §6-04, §6-05, and §6-11, of the Rules. If a unit passes the pre-permit inspection, DOHMH issues a permit, and a permit decal is affixed to the permit holder's unit. Permit holders must go through the same process to renew their permits. Full-term permits are valid for two years; seasonal permits are valid for seven months (from April 1 through October 31).

The number of permits that DOHMH can issue to mobile food vending units to sell food in public areas is limited by law to 4,100 full-term permits (including 1,000 green carts²) and 1,000 seasonal permits. DOHMH can issue an unlimited number of "restricted" permits, which, like full-term permits, are valid for two years. Units with restricted permits (restricted units) can only operate on private property or in City parks.

DOHMH operates a Mobile Food Vending Inspection Program under which the agency conducts ongoing inspections of units with permits. According to DOHMH's *Operations Manual – Procedure, Mobile Food Vending*, three primary types of inspections can be carried out during an inspection cycle:³ an "initial" full-sanitary inspection; a "re-inspection," which is conducted if an

¹ A pre-permit inspection is also required when a permit holder seeks to replace a mobile food vending unit with another unit; when a mobile food vending unit has sustained a material alteration; when a permit decal has been inappropriately removed from a unit and needs to be replaced; and when a permit holder seeks to amend a permit classification.

² Green carts are mobile food vending units that provide fresh fruits and vegetables in neighborhoods that otherwise have limited access to fresh produce. A green cart can only sell raw produce that has not been cut, sliced or processed, such as whole carrots, bananas, apples and berries.

³ The first inspection cycle starts on the permit approval date and continues on through the initial full-sanitary inspection and any required re-inspection. The second inspection cycle begins upon the completion of the first cycle's initial full-sanitary inspection and any required re-inspection, and continues on through the completion of the second cycle's initial full-sanitary inspection and any required re-inspection. A cycle can last up to one year. There can be more than two cycles during a two-year permit period if the violations found during a re-inspection necessitate that the next initial full-sanitary inspection be conducted in less than one year.

initial full-sanitary inspection identifies 14 or more violation points; and a full-sanitary inspection that is conducted if complaints are received and/or inspectors observe problems in the field.

The frequency of DOHMH's full-sanitary operational inspections of these units is defined in Title 24, Chapter 6, §6-02 and §6-18, of the Rules. For both full-term and restricted permits, DOHMH is required to conduct at least two initial full-sanitary inspections during the two-years a permit is issued for. The length of time between each inspection should not exceed one year. DOHMH advised the auditors that it endeavors to conduct at least one initial full-sanitary inspection of each seasonal unit during the seven-month season (April 1 to October 31).

Since December 9, 2018, DOHMH has been attaching grade cards to the units after performing full-sanitary inspections. A unit receives an "A" grade if it receives fewer than 14 violation points. Units that receive an "A" grade are not re-inspected until the next full-sanitary inspection is conducted up to one year later. A unit that receives 14 or more violation points is subject to re-inspection. According to Title 24, Chapter 6, §6-18(a)(2), of the Rules, a mobile food vending unit that receives between 14 and 27 violation points during the initial inspection or re-inspection is expected to undergo the next initial full-sanitary inspection 150 to 210 calendar days later; §6-18(a)(3) states that a mobile food vending unit that receives 28 or more violation points during the initial inspection or re-inspection should undergo the next initial full-sanitary inspection between 90-150 calendar days later.

Objective

This audit was conducted to determine whether DOHMH is effectively monitoring mobile food vendor compliance with applicable sanitary laws and regulations.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the City Charter.

The primary scope period of this audit was from July 1, 2018 through March 16, 2020. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures followed and the tests conducted during this audit.

Discussion of Audit Results with DOHMH

The matters covered in this report were discussed with DOHMH officials during and at the conclusion of this audit. A preliminary draft report was sent to DOHMH on November 24, 2021 and discussed with DOHMH officials at an exit conference held on December 13, 2021. On April 22, 2022, we submitted a draft report to DOHMH with a request for written comments. We received a written response from DOHMH on May 10, 2022. In its response, DOHMH agreed with four of the 11 recommendations (#2, #6, #8, and #10), disagreed with five (#1, #3, #4, #9, and

#11), and agreed to implement some changes in response to two recommendations (#5 and #7). These are discussed in the body of the report.

In its response to the draft, DOHMH also disagreed with some of the audit's findings or related facts cited in the report. After a careful review of the records, the auditors have concluded that changes to the findings are not warranted. Footnotes have been added where relevant to provide additional information.

The full text of DOHMH's response is also included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DOHMH did not consistently monitor mobile food vendors' compliance with applicable sanitary laws and regulations. Some required inspections were not conducted at all and others were not conducted within mandated timeframes. DOHMH did not establish time targets for conducting re-inspections when violations were found or ensure that its senior inspectors conducted follow-up inspections in accordance with agency protocols. The agency's controls over its permits, permit decals, and grade cards should also be strengthened.

The following sections of this report discuss these issues in further detail.

DOHMH Did Not Conduct Some Inspections Consistently or Timely

Full-term and Restricted Units

The required frequency of full-sanitary inspections is set by Title 24, Chapter 6, §6-02, §6-11, and §6-18, of the Rules. According to those Rules, DOHMH is required to conduct a pre-permit inspection plus at least two full-sanitary inspections during a full-term or restricted unit's two-year permit period. The length of time between each inspection should not exceed one year. A second initial full-sanitary inspection is required to be conducted in less than one year if a unit is cited for 14 or more violation points during a full-sanitary re-inspection.

According to the permit and inspection dataset provided by DOHMH, there were 3,396 full-term and restricted units with an active permit during Fiscal Year 2019 that received an initial full-sanitary inspection or were due to receive one during the period beginning July 2017⁴ and ending March 16, 2020 (the date upon which DOHMH halted inspections due to COVID-19).⁵ The auditors' review of DOHMH's permit and inspection dataset indicates that DOHMH did not conduct (or attempt to conduct) initial full-sanitary inspections during that period for 352 (or 10.4%) of the 3,396 units.⁶ By March 16, 2020, 176 units were overdue for inspection by 251 or more days.

For the 3,044 (3,396 – 352) units in which initial full-sanitary inspections were attempted, the attempts were successful during the first inspection cycle for 2,920 of them (and unsuccessful for 124 of them). Of the 2,920 units inspected during the first inspection cycle, the data shows that 380 (or 13%) were not performed in a timely manner. For 190 of these, DOHMH conducted inspections at least 138 days past the one-year anniversary of the permit approval date. In addition, of the 124 unsuccessful inspection attempts noted above, the inspection attempts for 80

⁴ Specifically on July 11, 2017, the oldest permit approval date in the dataset.

⁵ The 3,396 full-term and restricted units include 2,455 units for which the one-year anniversary of their most recent permit approval date had been reached by March 16, 2020, and 941 units that had not reached their one-year anniversary date but had nonetheless been inspected. The 3,396 units do not include the 422 units that had not reached their one-year anniversary date and had not received a full-sanitary inspection by March 16, 2020.

⁶ In its response, DOHMH disagreed with the number of units that did not undergo an initial full-sanitary inspection during the scope period, arguing that 321 (or 9.5%) fit this category, rather than 352 (or 10.4%) as stated in the report. After reviewing the documentation, the auditors stand by the initial number and note the following: (1) the agency stated that 23 units were closed and should not be counted, however, the units closed more than one year after the permit approval date and should therefore have received an initial inspection prior to closure; (2) in 3 instances, the inspections referenced by DOHMH were not initial full-sanitary inspections; and (3) the remaining 5 units were duplicates on the list of explanations provided by DOHMH.

of them also occurred past the one-year anniversary of the permit approval date. For 42 of the 80 units, DOHMH attempted inspections at least 147 days beyond the due date.

Of the 2,920 units that received initial full-sanitary inspections during the first inspection cycle, 1,363 of them were due to receive another initial full-sanitary inspection – as part of their second inspection cycle – by March 16, 2020.⁷ The data shows that DOHMH did not attempt to inspect 245 (or 18%) of these 1,363 units. By March 16, 2020, 124 of the 245 units were overdue for inspection by 145 or more days.

According to the permit and inspection dataset provided by DOHMH, 1,118 (1,363 – 245) of the units that received an initial full-sanitary inspection during the first inspection cycle were also due for and received such an inspection during the second inspection cycle. However, the data shows that 514 (46%) of the 1,118 units were inspected outside of the required timeframe. For 261 of the 514 units, DOHMH conducted the inspections at least 62 days past the date that the inspections were due.

Seasonal Units

There is no written standard for the required frequency of full-sanitary inspections of seasonal mobile food vending units, but DOHMH informed the auditors that it endeavors to conduct at least one full-sanitary inspection of each seasonal unit during the seven-month season (April 1 to October 31). According to the permit and inspection dataset provided by DOHMH, 709 seasonal mobile food vending units were permitted at some point during Fiscal Year 2019 and were due to receive an initial full-sanitary inspection by the end of the seven-month seasons on October 31, 2018 or October 31, 2019. DOHMH's data indicates that the agency did not conduct (or attempt to conduct) any initial full-sanitary inspections for 157 (or 22.1%) of the seasonal units as of those dates. For an additional 215 (or 30.2%) of the seasonal units, while DOHMH at least attempted to conduct inspections, the attempts were unsuccessful. Of further concern is the fact that of the 215 unsuccessful attempts to conduct these inspections, 175 (or 81.4%) of them were made during the last nine calendar days of October 2019, just as the seven-month season was ending.

DOHMH officials indicated that they are in the process of adding location devices to mobile units to help the field inspectors locate units they plan to inspect. In the meantime, DOHMH should consider scheduling inspections when efforts to locate units due for inspection are unsuccessful. While unannounced inspections are preferable, conducting a scheduled inspection when efforts to locate units have been unsuccessful would help to ensure that all units receive the required inspections.

DOHMH Has Not Established a Time Standard for Re-Inspections

Although DOHMH requires re-inspection if an initial full-sanitary inspection results in 14 or more violation points, the agency has not established a maximum time-period during which this re-inspection must occur⁸ or set priorities based on the nature and number of violations found.

For purposes of reviewing re-inspection timeframes, the auditors adopted a 90-day target for re-inspections and assessed the degree to which DOHMH performed re-inspections within this

⁷ To determine whether a unit was due a second initial inspection by March 16, 2020, the auditors tested whether DOHMH had conducted the second initial inspection within the required timeframe based on the re-inspection score (if a re-inspection was required) and on the initial inspection score (if no re-inspection was required).

⁸ According to Title 24, Chapter 6, §6-17, of the Rules, re-inspections should not be conducted less than seven days following the initial inspection.

timeframe.⁹ DOHMH's permit and inspection data shows that 513 full-term and restricted mobile food vending units were cited for 14 or more violation points during their initial full-sanitary inspections. A further review of that data reveals that 137 (26.7%) of those units were either not re-inspected at all by March 16, 2020 or were not re-inspected by the 90-day target. See Table I below for a frequency distribution detailing the lengths of time before re-inspections were conducted.

Table I
Frequency Distribution of Lengths of
Time to Conduct Required
Re-inspections

Lengths of Time for DOHMH to Conduct Required Re-Inspections	# of Full-Term & Restricted Mobile Food Vending Units That Were Re-Inspected within Indicated Timeframes	% of Full-Term & Restricted Mobile Food Vending Units That Were Re-Inspected within Indicated Timeframes	Cumulative % of Full-Term & Restricted Mobile Food Vending Units That Were Re-Inspected within Indicated Timeframes
Within 90 days	376	73.3%	73.3%
91-100 days	9	1.8%	75.1%
101-150 days	26	5.1%	80.2%
151-200 days	19	3.7%	83.9%
201-300 days	16	3.1%	87.0%
301-550 days	14	2.7%	89.7%
Still Outstanding as of March 16, 2020	53	10.3%	100.0%
TOTAL	513	100%	100%

Of the 137 units, 53 had not been re-inspected within 90 days and had still not been re-inspected by the time DOHMH stopped conducting inspections on March 16, 2020. Eighty-four were re-inspected, but after the 90-day target period. At least half of the 53 units that had not been re-inspected as of March 16, 2020, had not received a re-inspection for 172 or more days beyond the 90-day target.

Regarding seasonal units, DOHMH's data revealed that 40 of them were cited 14 or more violation points during initial full-sanitary inspections. Of the 40, four were closed by DOHMH and 10 had not reached the 90-day mark by the time the season ended in October. Of the remaining 26 seasonal units, six of them were not re-inspected. As of October 31, 2019, these six re-inspections had been outstanding an average of 57 days beyond the 90-day target. Of the 20 re-inspections that had been conducted, 18 were conducted within 90 days of the initial inspections.

Not conducting required initial full-sanitary inspections in a timely manner increases the risk that unsanitary conditions will continue undetected and that, as a result, the public will be served unsanitary food by mobile food vending units. In addition, not establishing a maximum time

⁹ The 90-day period is consistent with DOHMH's standard that, following a re-inspection, the initial full-sanitary inspection in the next inspection cycle can be performed as early as 90 days after that re-inspection.

standard for re-inspections and not ensuring that this standard is consistently met increases the risk that the unsanitary conditions already cited during initial inspections will continue to exist for extended periods of time.

Recommendations

1. DOHMH should establish and enforce a target timeframe within which required re-inspections must be conducted.

DOHMH Response: “The Department disagrees with this recommendation. The MFV inspection program mirrors the restaurant grading program as required by the Local Law and sets the timeline for re-inspection as no earlier than 7 days after the initial inspection.”

Auditor Comment: The auditors stand by the recommendation, even if it means adding the same requirement to the restaurant grading program. The absence of any deadline for completing re-inspections increases the risk that unsanitary conditions identified by DOHMH inspectors are not addressed for indefinite periods of time.

2. DOHMH should ensure that all required initial full-sanitary inspections are performed in compliance with the Rules (for full-term and restricted units) and in accordance with DOHMH’s own internal target for seasonal units.

DOHMH Response: DOHMH agreed with this recommendation.

3. DOHMH should confirm its stated goal of conducting at least one full-sanitary inspection of each seasonal unit, per season, in writing.

DOHMH Response: “The Department disagrees with this recommendation as unnecessary. Section 6-17 of RCNY Chapter 6 clearly codifies the inspection frequency for mobile food vending units as part of the Letter Grading Program. The location sharing program is intended to facilitate this objective.”

Auditor Comment: Section 6-17 of RCNY Chapter 6 and DOHMH written procedures require that an initial full-sanitary inspection be performed within *one year* of the permit approval date, but seasonal units only operate from April through October, a period of 7 months. The auditors continue to recommend that a written policy be prepared clarifying that each seasonal unit receive one initial full-sanitary inspection during the 7-month period of operation.

4. DOHMH should schedule full-sanitary inspections with permit holders when inspectors are unable to locate units in the field.

DOHMH Response: “The Department disagrees with this recommendation. Unannounced inspections are a best practice, and the Department implemented the location sharing program to be able to find vending units for these inspections.”

Auditor Comment: The auditors agree in principle that unannounced inspections are preferable, however, during the audit period inspectors were often unable to

locate units to perform inspections. If that is no longer the case due to full implementation of the location sharing program, this is a good solution.

Oversight of Field Inspectors Should Be Strengthened

According to DOHMH officials, senior inspectors are required to conduct follow-up inspections of five percent of each field inspector's monthly inspections. This is done to ensure supervisory oversight over field inspectors. Senior inspectors prepare formal evaluations (using the Supervisory Field Review form) of field inspectors based on the results of follow-up inspections conducted. The results of the follow-up inspections are summarized in a monthly Supervisory Field Review Summary Report.

Supervising inspectors indicated that they monitor senior inspectors' performance of follow-up inspections by reviewing and signing two forms uploaded into DOHMH's Mobile Food Vending Inspection System (MoVIS).¹⁰ These two forms consist of the Food Establishment Inspection Report (known as the 198E-MV form), which is completed for each accompanied or unaccompanied follow-up inspection, and the Inspection Report - Notice of Violation (known as the 148E-MV form), which is only completed for unaccompanied follow-up inspections. The auditors reviewed a sample of five senior inspectors to assess whether the five percent target was met.

The five senior inspectors in our sample¹¹ supervised a total of 21 field inspectors during four sampled months. Four of the five senior inspectors in the sample did not meet the five percent target for 10 (or 20.8%) of the 48 inspector months¹² reviewed. The percentage of follow-up inspections conducted by the senior inspectors ranged from 2 to 4 percent of the inspections performed by the field inspectors. A more consistent supervisory monitoring of field inspectors' work could help to improve the quality of field inspections.

Recommendation

5. DOHMH should prepare written policies and procedures establishing the follow-up inspection protocols and disseminate them to staff so that all parties know what is required, including the target percentage of inspections to be monitored.

DOHMH Response: "The Department disagrees with this recommendation. Supervisors are trained to conduct these inspections and the requirement is part of their tasks and standards. The Department will remind supervisors of the percentage of inspections that they should review."

¹⁰ MoVIS is a DOHMH repository of information on mobile food vending unit inspections and permits, and on the inventory of permit decals and grade cards. In addition, through the use of handheld devices connected to MoVIS, inspectors are able to record the results of their mobile food vending unit inspections.

¹¹ There were a total of seven senior inspectors. However, two of the seven senior inspectors were promoted to their positions during the audit scope period. Auditors performed their analyses on the five senior inspectors who were in this position throughout the scope period.

¹² By "field inspector month," the auditors are referring to one month in which one field inspector performed field inspections. There were 48 field inspector months to review because, according to the Summary Reports and MoVIS data, 9 (of the 21) field inspectors only performed inspections during 1 of the 4 sampled months (for a total of 9 field inspector months), 2 only performed inspections during 2 of the 4 sampled months (4 field inspector months), 5 only performed inspections during 3 of the 4 sampled months (15 field inspector months), and 5 performed inspections during each of the 4 sampled months (20 field inspector months).

Auditor Comment: We appreciate DOHMH’s agreement to remind supervisors of their obligations but continue to recommend that the inspection targets be included in written policies and procedures.

Other Weaknesses

Permit Dataset Irregularities

During the audit, DOHMH indicated that new permits are approved on the same day that a mobile food vending unit passes a pre-permit inspection. At the exit conference, DOHMH officials indicated that it is normal for there to be a short operational delay (often just one day) between the pre-permit inspection and the approval of a new permit as recorded in MoVIS. A review of the permit dataset originally provided by DOHMH, combined with the pre-permit inspection dataset provided after the exit conference, found that 188 (or 4.0%) of 4,659 permits that were active at some point during Fiscal Year 2019 were recorded in MoVIS as having been approved an average of 33 days after the pre-permit inspection dates. This is important because the date of the pre-permit inspection is the permit approval date. Discrepancies between the actual and recorded permit approval date potentially impact the ability of DOHMH to schedule inspections within required timeframes.

A review of the data also indicates that 294 permits listed in the permit dataset had been issued for periods exceeding two years and one month,¹³ with 13 of these permits having been issued for periods of from 2 years and 8 months to 4 years.¹⁴ According to Title IV, Article 89, §89.09, of the City Health Code, mobile food vending permits “shall be valid for two years.”

DOHMH attributed these permit dataset irregularities in part to technical issues with an external system (ACCELA) with which MoVIS interacts.

Weak Controls over Permit Decal and Grade Card Inventory Records

The auditors reviewed DOHMH’s permit decal and grade card datasets that listed the population of permit decals and grade cards and the status of these items. An inventory record for a particular permit decal or grade card shows the initial date it was added to MoVIS and any date(s) on which the status of the item changed (e.g., from the item being in stock to it being assigned to a field inspector). Weaknesses identified in the data are detailed below.

Unauthorized Individuals Updated Permit Decal and Grade Card Inventory Records

DOHMH stated that seven individuals were authorized to create and update permit decal and grade card inventory records. An additional 11 individuals were authorized to update the permit decal inventory records, creating a total of 18 individuals authorized to update permit decal inventory records. The permit decal and grade card datasets show that in addition to these 18

¹³ Although permits should be for no longer than two years, some permits are for two years and part of one additional month depending on the date of the pre-permit inspection. DOHMH typically issues a permit that starts on the day of the pre-permit inspection and includes the remainder of the month in which the pre-permit inspection was conducted, plus a full two-year period starting on the first day of the following month. For their analysis, the auditors only question those permits that exceeded two years and one month in length.

¹⁴ Of the remaining 281 permits, 271 were for periods that exceeded the 2-year threshold by between 1 and 2 months, and 10 were for periods that exceeded the threshold by between 2 and 3 months.

individuals, 4 unauthorized individuals updated 242 permit decal inventory records during the period from January 1, 2019 through December 31, 2019, and 1 unauthorized individual updated 4 grade card inventory records during the period from December 9, 2018 through December 31, 2019.¹⁵

Most Records Were Created by Senior Management

A single individual, an executive director in the Bureau of Food Safety and Community Sanitation (BFSCS), created 15,588 (97.4%) of the 16,005 permit decal inventory records for Calendar Year 2019 and 6,773 (50.6%) of the 13,391 grade card inventory records for the period from December 9, 2018 through December 31, 2019, in the DOHMH permit decal and grade card datasets provided to the auditors. This is an administrative task that would arguably be better performed by clerical staff, rather than highly paid senior management. DOHMH provided no evidence that the records created were reviewed for accuracy.

Records Created and Updated by the Same Persons

A review of DOHMH's grade card datasets identified many instances in which the same official who created a grade card inventory record also updated the record pertaining to that grade card. For 1,643 (12.3%) of the 13,391 grade card inventory records, the same officials who created the inventory records also later updated them. This arrangement raises a concern about the adequacy of segregation of duties, which in turn raises concerns regarding internal controls. As stated in New York City Comptroller's Directive #1, *Principles of Internal Control*, §5.7, *Segregation of Duties*, "Key duties and responsibilities need to be divided or segregated among different staff members to reduce the risk of error or fraud. This should include separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets. No one individual should control all key aspects of a transaction or event."

Permit Decal and Grade Card Dataset Irregularities

DOHMH's permit decal and grade card datasets contain data irregularities that are indicative of weak oversight and internal controls. These are detailed below. DOHMH acknowledged the discrepancies and attributed them to user input errors and/or errors made when data was extracted from MoVIS for the permit decal and grade card datasets.

Gap within the Permit Decal Serial Numbers

A total of 3,454 unique permit decal serial numbers in DOHMH's permit decal dataset were inventoried during the period from January 1, 2019 through December 31, 2019. Of these, 2,620 permit decal serial numbers were recorded as having been "Issued" (i.e., as having been the serial numbers on decals that had been affixed to mobile food vending units that passed pre-permit inspections). The remaining permit decal serial numbers were recorded as being "In Stock," "Assigned to Custodian," "Assigned to Inspection," "Damaged," "Missing," "Removed on Closure," "Unacceptable," and "Void."

A review of the permit decal dataset found a gap of 249 missing permit decal serial numbers. Although DOHMH explained that these decals were used for training purposes, this was not

¹⁵ In its response, DOHMH argued that the 4 individuals were "IT staff who were authorized to update/correct data-entry errors through a strict and well-documented protocol." The auditors only counted individuals as authorized if they appeared in the list of authorized users provided by DOHMH on August 26, 2020.

documented in the permit decal dataset the agency provided, which raises inventory control concerns.¹⁶

Discrepancies between the “Permit Decal Dataset” and the “Permit Dataset”

There were a total of 2,197 unique permit record identification numbers listed on the permit dataset for which permit decals should have been issued during the scope period of the permit decal dataset. Of these, 56 (2.5%) were not identified as having been “Issued” in the permit decal dataset.¹⁷ Of the 56, 32 were reflected in the permit decal dataset as being “In Stock”; 21 were reflected as “Assigned to Custodian”; 1 was reflected as being “Assigned to Inspection”; and 2 did not appear in the decal dataset at all.

There were 2,405 permit decal serial numbers that were identified as being “Issued” in the permit decal dataset. These serial numbers were associated with permit record identification numbers that should have been reflected in the permit dataset.¹⁸ A limited review found that at least 78 (3.2%) of the 2,405 did not appear in the permit dataset at all.¹⁹

Discrepancies between the “Grade Card Dataset” and the “Permit Dataset”

There were 1,506 grade card sequence numbers that were identified as being “Assigned to FSE [food service establishment]” in the grade card dataset. These sequence numbers were associated with permit record identification numbers that should have appeared in the permit dataset.²⁰ A limited review found that at least 35 (2.3%) of the 1,506 grade card sequence numbers did not appear in the permit dataset at all.²¹ Of these, 13 of the associated permit record identification numbers shown on the grade card dataset also did not appear on the permit dataset.

Permit decals and grade cards are valuable commodities because they enable mobile food vending units to operate legally in the City. DOHMH is encouraged to tighten its internal controls to ensure only permitted and inspected units are operating.

¹⁶ In its response, DOHMH stated that the decals “were physically in the program’s inventory, logged in MoVIS as purchased and received but the program was not able to move them into the MoVIS inventory to be used.” Although, according to DOHMH, these appear in MoVIS, they do not appear in the inventory list and, therefore, their current statuses were not identified in the system.

¹⁷ In its response, DOHMH stated that “the reason decal records did not have an ‘issued’ state was that they were issued in 2020, post the 12/31/2019 cut-off for pulling the permit decal dataset.” In an email dated November 3, 2021, DOHMH acknowledged that the issuance status for 55 of the 56 decals had been “mistakenly left off of the data provided to the auditors,” and that one unit had been incorrectly included on the permit dataset even though the unit had not passed the pre-permit inspection.

¹⁸ One additional permit decal serial number was not associated with any permit record identification number on the permit decal dataset.

¹⁹ In its response, DOHMH stated that the 78 permit decal serial numbers did not appear in the permit dataset because “the permits were issued in ACCELA after 6/30/2019, the cut-off date requested by the auditors” and that “the different time frames for each dataset was the root cause for the discrepancies among the datasets.” The auditors requested that the permit dataset include information up to March 16, 2020 on all permits that were active in Fiscal Year 2019, and that the permit decal dataset include information on the permit decals that were in the decal inventory list during Calendar Year 2019. Information for the 78 permit decals noted in this finding should have also been recorded in the permit dataset, since it included permit information up to March 16, 2020.

²⁰ Three additional grade card sequence numbers were not associated with any permit record identification numbers on the grade card dataset.

²¹ In its response, DOHMH stated that this was mainly “...due to the differing time frames requested and for which the data was pulled.” For the grade card dataset, the auditors requested grade card information up to December 31, 2019. For the permit dataset, DOHMH provided permit and inspection information up to March 16, 2020. Grade cards recorded in the grade card dataset as having been issued to the 35 units on or before December 31, 2019, should have also been recorded in the permit dataset.

Recommendations

6. DOHMH should ensure that the mobile food vending permit approval dates in MoVIS are accurate.

DOHMH Response: DOHMH agreed with this recommendation.

7. DOHMH should ensure that only authorized individuals are able to update permit decal and grade card inventory records, that an appropriate segregation of duties is implemented, and that associated supervisory controls are established.

DOHMH Response: “The Department disagrees with this response. As discussed with the auditors, all personnel who had access to the system were authorized to make the updates and there is a structured control process and audit trail. Nonetheless, we will review and revise written procedures to further specify authorized individuals, segregation of duties and supervisory controls.”

Auditor Comment: The auditors accept the commitment to review and revise written procedures to further specify authorized individuals, segregation of duties and supervisory controls.

8. DOHMH should ensure that its data on permits is consistent with its data on permit decals and grade cards and that there are no permit decal serial number gaps in the permit decal inventory.

DOHMH Response: “While the Department disagrees with the auditors’ finding regarding discrepancies in the dataset DOHMH provided, the Department agrees that the data on permits, permit decal and grade cards should be consistent. The Department will review system data reports to ensure that any errors are corrected.”

Auditor Comment: The auditors appreciate DOHMH’s willingness to review system data reports to ensure that any errors are corrected.

Other Issues

Field Inspectors Do Not Use Inspection Checklists When Conducting Pre-Permit or Operational Inspections

During field observations, the auditors noted that the substance of inspections varied by inspector. For example, one field inspector always checked whether the propane tanks were properly secured, while the propane tanks were not checked by two other field inspectors. One field inspector always checked for the presence of a thermometer (used to measure food temperatures). Two other field inspectors did not consistently check for a thermometer. The auditors observed that field inspectors do not use inspection checklists when conducting pre-permit or operational inspections of mobile food vending units.

DOHMH indicated that inspectors know what to look for during their inspections and do not need to be prompted as to what to check. However, since inspectors are expected to check up to 25 items during pre-permit inspections and up to 32 items during operational inspections, providing inspection checklists to the inspectors would help ensure that each unit is checked for compliance with all applicable standards. Several of the field inspectors the auditors spoke with agreed that inspection checklists would be helpful.

DOHMH Has Not Required Mobile Food Vendors Seeking a License Renewal to Pass an Exam on Safe Food Handling

The City Council passed legislation (Local Law 2021/018, §16 & §35) that now requires mobile food vendors seeking a license renewal to pass an exam on the safe handling of food. Vendors had previously only needed to pass such an exam when they first applied for a license. The legislation was enacted on February 28, 2021 and was scheduled to go into effect in 180 days (i.e., on August 27, 2021), but DOHMH has not begun to enforce this requirement. The legislation was designed to ensure that vendors are aware of the best practices for promoting food safety.

Permit Holders' Mailing Addresses

DOHMH officials stated that they expect mobile food vending permit holders to actively manage their units, but 25 of the 4,658 permit holders have addresses that are outside of New York and neighboring states (New Jersey, Pennsylvania, and Connecticut). These were identified based on the permit holders' mailing addresses in the DOHMH dataset, which showed: 7 in South Carolina; 6 in Florida; 3 in Texas; 2 in Rhode Island; 1 in Georgia; 1 in North Carolina; 1 in Arizona; 1 in North Dakota; 1 in Delaware; 1 in Virginia; and 1 in Oregon. The auditors question the ability of long-distance permit holders to "actively manage" units located in the City.

Recommendations

9. DOHMH should prepare inspection checklists for the field inspectors to ensure that pre-permit and operational inspections are conducted and recorded consistently.

DOHMH Response: "The Department disagrees with this recommendation because it is not needed. Inspectors already use handheld computers to conduct inspections and those include an electronic 'checklist'."

Auditor Comment: The auditors were previously informed by DOHMH that the handheld devices do not include electronic inspection checklists. The auditors will follow-up with DOHMH and ask to view screenshots of the electronic checklists currently in use and revisit the recommendation at that time.

10. DOHMH should enforce the new requirement that mobile food vendors seeking a license renewal pass an exam on the safe handling of food.

DOHMH Response: DOHMH agreed with this recommendation.

11. DOHMH should more closely monitor mobile food vending units owned by permit holders with distant mailing addresses to ensure that the units are being managed and operated properly.

DOHMH Response: "The Department disagrees with this recommendation, which is based on the auditors' finding that permit holders maintain addresses outside of New York City. There is no bar to permittees maintaining a non-New York City address, or residing outside of New York City, just as owners of other businesses may live outside of New York City. The auditors do not present any evidence that permittees with 'distant mailing addresses' demonstrate worse compliance than other permittees. The Department's regulations, policies and

practices promote compliance with food safety requirements and other mobile food vending laws for all operators of food carts and trucks.”

Auditor Comment: This recommendation seeks to address permit holders located outside of New York and neighboring states, such as those based in South Carolina, Florida, and Texas. The recommendation is, moreover, consistent with Local Law 2021/018, which establishes a requirement of close supervision by requiring all new vending units (except green carts) to have licensed supervisors present during all hours of operation starting in July of 2022.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the City Charter.

The primary scope period of this audit was from July 1, 2018 through March 16, 2020.

To obtain an understanding of the responsibilities and regulations governing DOHMH's Mobile Food Vending Inspection Program, the following documents were reviewed and used as audit criteria:

- Title 24, Chapter 6 (Mobile Food Vending), of the Rules of the City of New York;
- Title IV, Article 81 (Food Preparation and Food Establishments) and Article 89 (Mobile Food Vending) of the New York City Health Code;
- Title I, Article 5 (General Permit Provisions) of the New York City Health Code;
- Part 14 - SubPart 14-4 (Mobile Food Service Establishments and Pushcarts) of the New York State Sanitary Code;
- Title 17, Chapter 3, Subchapter 2 (Food Vendors) of the New York City Administrative Code;
- DOHMH's *Rules and Regulations for Mobile Food Vending*;
- DOHMH's *Food Protection Manual for Mobile Vendors*;
- DOHMH's *What Mobile Food Vendors Should Know*;
- DOHMH's *Pre-Operational, Operational, Complaint and Inter-Agency Mobile Food Vending Unit Inspections Protocol*; and
- DOHMH Bureau of Food Safety and Community Sanitation's *Operations Manual – Procedure, Mobile Food Vending*.

Various documents obtained from the DOHMH website, including *Letter Grading for Mobile Food Vending Units: What Vendors Need to Know*; *Food Protection: Mobile Vendors*; and *Mobile Food Vendors*, were also reviewed.

Comptroller's Directive #1, *Principles of Internal Control, §5.7, Segregation of Duties*, was considered to assess the creating and updating of permit decal and grade card inventory records.

To gain a general understanding of DOHMH's monitoring of mobile food vending units, the following individuals were interviewed: Deputy Commissioner for the Division of Environmental Health; Permits and Licensing Director for the Division's Bureau of Administration; Assistant Commissioner for the Bureau of Food Safety and Community Sanitation; and, within BFSCS, an

executive director, three directors, two assistant directors/supervising inspectors, three senior inspectors and six field inspectors.

To gain insight into the Mobile Food Vending Inspection System and its various features and functions as they relate to the handling of the permit and inspection process of mobile food vending units, a demonstration of the system's internal web application was provided. The *Mobile Food Vending Inspection System – MoVIS User Guide* was also reviewed.

Over the course of two days (January 13, 2020 and January 21, 2020), auditors accompanied four field inspectors conducting routine (operational) inspections of mobile food vending units in Manhattan to gain a better understanding of how inspections are conducted. Checklists and photographs were used to document observations.

A total of 28 mobile food vending units were observed with field inspectors checking permit decal information that was posted on the units in their MoVIS hand-held devices. This was done to determine whether any of the units needed an initial full-sanitary inspection or re-inspection. The field inspectors performed initial full-sanitary inspections or re-inspections of five units that needed such inspections and performed limited inspections of seven other units because they noted certain obvious violations at the units. In total, the inspectors conducted some type of inspection for 12 of the units.

In addition, on January 14, 2020, four pre-permit inspections of mobile food vending units, conducted by two field inspectors at DOHMH's inspectional facility located in Maspeth, Queens, were observed. Checklists and photographs were used to document observations.

Based on observations of 12 operational inspections and 4 pre-permit inspections (a total of 16 inspections), the following were performed: (1) a review of whether the field inspectors we observed were consistent in how they conducted their inspections; (2) a comparison of our inspection observations to the information recorded on the corresponding inspection reports and on any of the summonses issued as a result of these inspections (to determine whether the field inspectors accurately noted what they checked and found during their observations and whether the field inspectors appropriately issued violations); and (3) a comparison of our inspection observations to the information in the permit and vendor datasets provided to us by DOHMH (to determine whether the information in the datasets matched what we found during our observations).

Over the course of the audit, three permit datasets – each containing the population of all permit holders with active permits at some point during Fiscal Year 2019 (July 1, 2018 through June 30, 2019) – were received. The auditors relied primarily on the third permit dataset, which provided more comprehensive permit and inspection information through March 16, 2020. The dataset contained a total of 4,659 unique permit record identification numbers associated with 3,348 full-term permits, 471 restricted permits, and 840 seasonal permits active during Fiscal Year 2019.

Various data reliability tests were conducted of the third permit dataset, to check for questionable entries (including duplicates, blank fields, and clearly anomalous information). In addition, as part of data accuracy testing, the auditors selected 45 permit record identification numbers (30 were randomly selected and 15 were judgmentally selected) and compared the information associated with these numbers (such as permit approval dates, inspection dates, and permit decal numbers) as it was presented in the permit dataset and in MoVIS. As part of testing for data completeness,

52 inspections²² that were noted in MoVIS were selected to determine whether the inspections were also found in the permit dataset. Based upon the data reliability testing, DOHMH's third permit dataset was determined sufficiently reliable for audit testing purposes.

Based on the third permit dataset, the auditors determined whether:

- Each of the 4,659 mobile food vending units with full-term, restricted, or seasonal permits received a pre-permit inspection;
- Each of the 3,819 units with full-term or restricted permits and the 840 units with seasonal permits received an initial full-sanitary inspection as required and, if so, in a timely manner. (There was one full-term permit for which the approval and expiration dates were unavailable. Thus, our analysis was based on 3,818 full-term and restricted permits.)

To determine timeliness, the number of days between the permit approval date and the initial full-sanitary inspection date (first inspection cycle) was calculated. Additionally, if the mobile food vending unit required a re-inspection, the number of days between the re-inspection date and the next initial full-sanitary inspection date (second inspection cycle) was calculated. Otherwise, the number of days between the initial full-sanitary inspection date (first inspection cycle) and the next initial full-sanitary inspection date (second inspection cycle) was also calculated. The results were compared to DOHMH's standards outlined in Title 24, Chapter 6, §6-02 and §6-18, of the Rules of the City of New York; and

- Each of the 3,818 units with full-term and restricted permits and the 840 units with seasonal permits that received 14 or more violation points during initial full-sanitary inspections were identified to determine if each received a re-inspection no sooner than 7 calendar days after the initial full-sanitary inspection, as required by Title 24, Chapter 6, §6-17, of the Rules of the City of New York, or after a 90-day target adopted by the auditors, which was consistent with DOHMH's standard that the initial full-sanitary inspection of the next inspection cycle could be performed as early as 90 days after the date of a re-inspection.

Based on the third permit dataset, the auditors determined whether there were full-term and restricted permits with permit periods beyond the maximum of two years and whether there were seasonal permits with permit periods beyond the required seven months.

Additionally, the following supervisory field review documentation received from five senior inspectors for four randomly selected months was reviewed: (1) 198E-MV forms; (2) 148E-MV forms; (3) Supervisory Field Review forms; and (4) Supervisory Field Review Summary Reports. The documentation and corresponding information in MoVIS was reviewed to determine whether the senior inspectors had performed the required five percent follow-up inspections of each of their field inspector's monthly inspections. The auditors found that the Supervisory Field Review Summary Reports were reliable sources of information about the numbers of follow-up inspections that the senior inspectors had performed and that MoVIS, DOHMH's system of record for field inspections, was a reliable source of information on the numbers of field inspections performed.

²² Of the 52 inspections, 36 were randomly selected from 4 randomly selected months (i.e., the auditors randomly selected 9 inspections from each of the 4 randomly selected months) and 16 were the operational and pre-permit inspections the auditors observed.

On August 5, 2020, DOHMH provided: (1) a permit decal dataset containing the population of permit decals inventoried and updated during the period of January 1, 2019 through December 31, 2019 and the status of whether these permit decals were issued to mobile food vending units; and (2) a grade card dataset containing the population of grade cards inventoried and updated during the period of December 9, 2018 through December 31, 2019 and the status of whether these grade cards were issued to mobile food vending units. A total of 3,454 unique permit decal serial numbers were identified in the permit decal dataset, including 2,620 that were recorded as being “Issued” (i.e., decals affixed to units that passed their pre-permit inspections). A total of 6,500 unique grade card sequence numbers in the grade card dataset were identified, including 1,649 that were recorded as being “Assigned to FSE [food service establishment]” (i.e., grade cards affixed to units that passed their full-sanitary inspections).

As part of our data reliability testing of both the permit decal and grade card datasets, a review determined whether: (1) any of the 2,620 “Issued” permit decal serial numbers in the permit decal dataset and any of the 1,649 “Assigned to FSE” grade card sequence numbers in the grade card dataset were duplicated; and (2) there were any gaps within the 3,454 permit decal serial numbers on the permit decal dataset and any gaps within the 6,500 grade card sequence numbers on the grade card dataset. If so, the number of missing permit decal serial numbers and grade card sequence numbers within each of the gaps were determined.

In addition, as part of our data reliability testing of both the permit decal and grade card datasets, a review determined whether: (1) permit decals (and associated permit record identification numbers) affixed to mobile food vending units according to the third permit dataset appeared as being “Issued” on the permit decal dataset; (2) permit decals (and associated permit record identification numbers) “Issued” according to the permit decal dataset appeared on the permit dataset; (3) grade cards (and associated permit record identification numbers) affixed to permit decals on the units according to the permit dataset appeared as being “Assigned to FSE” on the grade card dataset; and (4) grade cards (and associated permit record identification numbers) “Assigned to FSE” according to the grade card dataset appeared on the permit dataset.

Based upon further review of the permit decal and grade card datasets, a total of 16,005 inventory records of permit decals, and a total of 13,391 inventory records of grade cards (an inventory record for a particular permit decal and grade card consists of the initial date of when they were added to MoVIS and the date their status changed in MoVIS) were identified. Testing included a determination whether those individuals who created and updated permit decal and grade card inventory records were authorized to do so. A determination whether there was adequate segregation of duties between the individuals creating the permit decal and grade card inventory records and the individuals updating these records was also made.

In addition, by reviewing the MoVIS mailing addresses for each of the permit holders indicated on the third permit dataset, the auditors determined whether the permit holders’ addresses were in the State of New York or a nearby state (for purposes of this test, nearby states included New Jersey, Connecticut, and Pennsylvania). Concerns about whether permit holders with mailing addresses outside of New York and nearby states can and do meet DOHMH’s expectations to actively manage their mobile food vending units were discussed with DOHMH officials.

Although the results of the tests involving samples were not projectable to their respective populations, these results, together with the results of other audit procedures and tests, provided a reasonable basis for determining whether DOHMH is effectively monitoring mobile food vendor compliance with applicable sanitary laws and regulations.



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Ashwin Vasana, MD, PhD
Commissioner

May 10, 2022

Maura Hayes-Chaffe
Deputy Comptroller for Audit
Office of the New York City Comptroller
1 Centre Street, Room 1100
New York, NY 10007-2341

Re: Audit Report on the Department of
Health and Mental Hygiene's Oversight
of Mobile Food Vending Units (ME20-
054A)

Dear Deputy Comptroller Hayes-Chaffe:

The NYC Department of Health and Mental Hygiene (DOHMH) reviewed the draft report on DOHMH's Oversight of Mobile Food Vending Units issued on 4/22/22. The stated objective of the audit was to determine whether DOHMH is effectively monitoring mobile food vendor compliance with applicable sanitary laws and regulations.

The attached response details DOHMH's position with regard to the auditors' findings and recommendations. We appreciate the efforts and professionalism of your staff during the audit. If you have any question, please contact Sara Packman, Assistant Commissioner for Audit Services at (646) 872-2760.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ashwin Vasana".

Ashwin Vasana, MD, PhD

cc:

Emiko Otsubo, Chief Operating Office/Executive Deputy Commissioner, DOHMH
Corrine Schiff, Deputy Commissioner, Division of Environmental Health, DOHMH
Robert Edman, Assistant Commissioner, Bureau of Food Safety and Community Sanitation
Sara Packman, Assistant Commissioner, Audit Services, DOHMH

**DOHMH'S RESPONSE TO THE AUDITORS' DRAFT AUDIT REPORT ON
DOHMH'S OVERSIGHT OF MOBILE FOOD VENDING UNITS
ME20-054**

The Department of Health and Mental Hygiene (DOHMH or the Department) reviewed the draft audit report on its Oversight of Mobile Food Vending (MFV) Units. The stated objective of the audit was to determine whether DOHMH is effectively monitoring mobile food vendors' compliance with applicable sanitary laws and regulations. We thank the auditors for the opportunity to respond to the draft audit report.

While we thank the auditors for reviewing the additional data DOHMH submitted following the exit meeting, and for revising the preliminary findings and recommendations accordingly, the draft report includes data errors that led the auditors to some inaccurate conclusions presented below.

Page 5 of draft report: *"DOHMH Did Not Conduct Some Inspections Consistently or Timely"*

The auditors state that "DOHMH did not conduct (or attempt to conduct) initial full-sanitary inspections during that period [beginning July 2017] for 352 (or 10.4%) of the 3,396 units." Following the exit meeting, DOHMH provided the auditors data and supporting records that show that the auditors' assertion is true only for 321 of the units (9.5%) and not for 352 of the units.

Page 6 of draft report: *"DOHMH Has Not Established a Time Standard for Re-Inspections"*

DOHMH would like to highlight that, even though there is not a 90-day re-inspection requirement for the program, the program met the auditors' 90-day benchmark for re-inspections more than 70% of the time.

Page 9 of draft report: *"Unauthorized Individuals Updated Permit Decal and Grade Card Inventory Records"*

The auditors conclude that: *"The permit decal and grade card datasets show that in addition to these 18 [authorized] individuals, 4 unauthorized individuals updated 242 permit decal inventory records during the period from January 1, 2019, through December 31, 2019, and 1 unauthorized individual updated 4 grade card inventory records during the period from December 9, 2018, through December 31, 2019."*

The Department disagrees that "unauthorized" individuals updated the permit decal inventory and grade card inventory records. The four individuals were IT staff who were

authorized to update/correct data-entry errors through a strict and well-documented protocol.

Page 10 of draft report: *“Gap within the Permit Decal Serial Numbers”*

The auditors reviewed permit decal serial numbers and found a gap of 249 missing permit decal serial numbers. The auditors state that *“Although DOHMH explained that these decals were used for training purposes, this was not documented in the permit decal dataset the agency provided, which raises inventory control concerns.”*

In documents sent to the auditors, DOHMH explained that the 249 decals with serial numbers FV00752 to FV01000 were physically in the program’s inventory, logged in MoVIS as purchased and received but the program was not able to move them into the MoVIS inventory to be used. These decals continue to be physically locked and are not used for training as previously noted to the auditors in error.

Page 11 of draft report: *“Discrepancies between Permit Decal Dataset and Permit Dataset”*

The auditors state that 56 (2.5%) of the permit record identification numbers did not have an “issued” state on the permit decal dataset and should have been reflected as “issued”. The auditors also assert that 78 (3.2%) of the permit decal serial numbers that were identified as “issued” on the permit decal dataset were not found in the permit dataset at all.

Since the auditors did not provide DOHMH with the 56 records they note as exceptions, DOHMH had to use a similar dataset of 53 decal records that did not have an “issued” state in the permit decal data set given to the auditors. In its explanation to the auditors¹, DOHMH demonstrated that the reason decal records did not have an “issued” state was that they were issued in 2020, post the 12/31/2019 cut-off for pulling the permit decal dataset.

DOHMH also notes that the 78 permit decal serial numbers were not in the permit data list at all because the permits were issued in ACCELA after 6/30/2019, the cutoff date requested by the auditors. DOHMH strongly believes in the integrity of the permit data and is confident that the different time frames for each dataset was the root cause for the discrepancies among the datasets.

Page 11 of draft report: *“Discrepancies between the Grade Card Dataset and the Permit Dataset”*

¹ Auditor’s request for explanation email date 10/1/2021.

The auditors state that at least 35 (2.3%) of the 1,506 grade card sequence numbers did not appear in the permit dataset at all.” DOHMH verified that most of the 35-grade card sequence number did not appear in the permit dataset is due to the differing time frames requested and for which the data was pulled.

Auditors’ Recommendations

The Department agrees with four recommendations and disagrees with the remaining seven. Most important, the auditors did not consider that during the audit period, the Department was implementing the food cart and truck letter grading and location sharing programs that will facilitate locating and inspecting mobile food vending units².

DOHMH’s response to the auditors’ 11 recommendations is as follows:

1. *“DOHMH should establish and enforce a target timeframe within which required re-inspections must be conducted.”*

Department Response: The Department disagrees with this recommendation. The MFV inspection program mirrors the restaurant grading program as required by the Local Law and sets the timeline for re-inspection as no earlier than 7 days after the initial inspection.

2. *“DOHMH should ensure that all required initial full-sanitary inspections are performed in compliance with the Rules (for full-term and restricted units) and in accordance with DOHMH’s own internal target for seasonal units.”*

Department Response: The Department agrees with this recommendation and will continue to enforce compliance with the Rules of City of NY (RCNY).

3. *“DOHMH should confirm its stated goal of conducting at least one full-sanitary inspection of each seasonal unit, per season, in writing.”*

Department Response: The Department disagrees with this recommendation as unnecessary. Section 6-17 of RCNY Chapter 6 clearly codifies the inspection frequency for mobile food vending units as part of the Letter Grading Program. The location sharing program is intended to facilitate this objective.

4. *“DOHMH should schedule full-sanitary inspections with permit holders when inspectors are unable to locate units in the field.”*

² Implementation of these 2 programs was interrupted by DOHMH’s response to COVID-19 emergency.

Department Response: The Department disagrees with this recommendation. Unannounced inspections are a best practice, and the Department implemented the location sharing program to be able to find vending units for these inspections.

5. *“DOHMH should prepare written policies and procedures establishing the follow-up inspection protocols and disseminate them to staff so that all parties know what is required, including the target percentage of inspections to be monitored.”*

Department Response: The Department disagrees with this recommendation. Supervisors are trained to conduct these inspections and the requirement is part of their tasks and standards. The Department will remind supervisors of the percentage of inspections that they should review.

6. *“DOHMH should ensure that the mobile food vending permit approval dates in MoVIS are accurate”.*

Department Response: The Department agrees with this response and will develop reporting mechanisms to enable verification of data accuracy.

7. *“DOHMH should ensure that only authorized individuals are able to update permit decal and grade card inventory records, that an appropriate segregation of duties is implemented, and that associated supervisory controls are established.”*

Department Response: The Department disagrees with this response. As discussed with the auditors, all personnel who had access to the system were authorized to make the updates and there is a structured control process and audit trail. Nonetheless, we will review and revise written procedures to further specify authorized individuals, segregation of duties and supervisory controls

8. *“DOHMH should ensure that its data on permits is consistent with its data on permit decals and grade cards and that there are no permit decal serial number gaps in the permit decal inventory.”*

Department Response: While the Department disagrees with the auditors' finding regarding discrepancies in the dataset DOHMH provided, the Department agrees that the data on permits, permit decal and grade cards should be consistent. The Department will review system data reports to ensure that any errors are corrected.

9. *“DOHMH should prepare inspection checklists for the field inspectors to ensure that pre-permit and operational inspections are conducted and recorded consistently.”*

Department Response: The Department disagrees with this recommendation because it is not needed. Inspectors already use handheld computers to conduct inspections and those include an electronic “checklist.”

10. *“DOHMH should enforce the new requirement that mobile food vendors seeking a license renewal pass an exam on the safe handling of food.”*

Department Response: The Department agrees with this recommendation and is already in the process of implementing this new Local Law requirement.

11. *“DOHMH should more closely monitor mobile food vending units owned by permit holders with distant mailing addresses to ensure that the units are being managed and operated properly.”*

Department Response: The Department disagrees with this recommendation, which is based on the auditors’ finding that permit holders maintain addresses outside of New York City. There is no bar to permittees maintaining a non-New York City address, or residing outside of New York City, just as owners of other businesses may live outside of New York City. The auditors do not present any evidence that permittees with “distant mailing addresses” demonstrate worse compliance than other permittees. The Department’s regulations, policies and practices promote compliance with food safety requirements and other mobile food vending laws for all operators of food carts and trucks.