

July 24, 2008

John Soladay
Acting Director
Environmental Health Department
PO Box 1293
Albuquerque, NM 87103

Dear Mr. Soladay:

Thank you for including the New Mexico Restaurant Association in your consideration of amendments to the city food sanitation ordinance. As I stated in our meeting, the industry and the public are well served by promoting public health and food safety. We emphasize food safety training in our education department with monthly certification courses, ongoing workforce training, articles in our magazine and through our participation in National Food Safety Education Month.

I understand the urgency in passing this ordinance especially in light of city budget constraints. However, I think it is important that we do not pass a fifteen-page amendment to the existing ordinance without some deliberation and consideration. Our development director and food certification expert is not available to look over the proposed amendment until August. I would like to give her a chance to review the proposed changes before this proposal goes to City Council.

The following are my preliminary thoughts on some of the proposed amendments. I would like to ask that we meet again prior to the ordinance going to City Council so we can make necessary changes and offer industry support of your proposal.

We are supportive of adoption of the 2005 Model Food Code (MFC) and the companion CFP inspection form. Your proposed ordinance adopts the food code by reference and we are supportive of that portion of the amendments. However, adopting the companion CFP inspection form is imperative for consistency with the ordinance and ease of use for the inspectors as well as industry. There are some inherent problems and complexities in the "Los Angeles" sample inspection form that was given to me as the form to be used by the department. It is extremely confusing and many deductions are duplicated making downgrades twice as easy. For these reasons, we would advocate the adoption of the companion CFP form, *not* the Los Angeles form.

The proposed fee schedule seems reasonable with a few changes. Additional food permits at the same location should not be charged \$300 per additional station but a more reasonable \$100 since the inspector is already on site and the primary establishment has already been assessed a fee.

The re-inspection procedures are not clearly stated and rely on the US Postal Service for communication with the department. We would ask that you work with us to develop a simple understandable procedure that would have to be communicated to the food service establishment prior to the inspector leaving the premises.

While we support food safety for the benefit of the industry and the public, we do take exception with the department's insistence that a letter grade be issued upon completion of the inspection. A health department inspection sheet, while a matter of public record, is really a working document that is provided by the health department to the restaurant owner and is not designed to serve as a guidepost to the general consumer as to the quality or purity of the food served in restaurants. The fact that a restaurant is open for business indicates that no health hazard exists at that establishment. If a food service establishment poses a risk to human health, it should be closed on the spot.

A health inspection report will record items that, in many cases, are fixed during the inspection. Structural issues entirely unrelated to food safety may result in a low score. Since changes are made immediately in some cases, the report will not reflect the current conditions in the restaurant. Posting a letter grade would give an inaccurate portrayal of the restaurant's current condition, turning away customers when no violation exists.

The inspection process provides no opportunity for the restaurant operator to protest marks on the inspection report or to show compliance with recommendations made on the report. The inspection is intended to be a consultative process, not an adversarial one. By mandating a graded posting a restaurant operator may become defensive during an inspection. If poor marks are made on a report with which an operator disagrees, the operator may resort to litigation to avoid the prospect of being unjustly labeled as unsafe.

The fact that one restaurant scores higher on an inspection than another is merely a tool that the health department and the restaurant can use in order to encourage all restaurants to achieve the highest possible standards in maintaining a sanitary level of operation. To insist on posting the inspection reports would be like requiring a doctor or lawyer to post their college transcripts rather than their licenses, which indicate they are competent to practice.

I have copies of model legislation from Texas for food handler certification and would like to discuss these in a subsequent meeting. As I stated in our meeting, we are all served by an ordinance that uses the most current science in protecting the public from food borne illness. Please contact me to set up a subsequent meeting.

At Your Service,

Carol Wight
CEO

Cc: Mary Lou Leonard, Associate Director
Darwin Pattengale, Environmental Health Manager
Mike Maxwell, NMRA President
Pat Hafner, NMRA Chairman