



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

Web: nyc.gov/html/law/home.html

For Immediate Release

**FEDERAL COURT DISMISSES
NEW YORK STATE RESTAURANT ASSOCIATION CHALLENGE
TO CITY HEALTH DEPARTMENT'S INSPECTION PROCEDURES**

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, Jan. 22, 2004 - A challenge to the City Health Department's newly enhanced procedures for inspecting restaurants was dismissed on Jan. 14 by Federal Magistrate Robert Levy. The challenge was brought by the New York State Restaurant Association and 44 individual restaurants which complained that the methods of the New York City Department of Health and Mental Hygiene for providing public information on its website concerning restaurants with health violations and its new inspection procedures violated their Constitutional rights.

They complained that the Health Department's system for providing such public information and its new guidelines for citing and classifying violations were illegal and unfair. They also claimed that the combination of these procedures, and recently increased penalties, were solely intended to provide the City with enhanced revenue. The Court rejected all of the plaintiffs' claims and found that the City had a legitimate public health purpose in adopting the challenged procedures.

"[I]t is beyond question that the rules have a strong public health component," the Court wrote. "It is certainly not 'conscience-shocking' or a 'gross abuse of government authority' to increase penalties and administrative fines for health code violations, thereby elevating the deterrent value of those penalties and fines."

Corporation Counsel Michael A. Cardozo of the New York City Law Department said, "We are gratified that the Court sustained the Health Department's ongoing effort to improve its ability to protect the public health and enhance the safety of the City's restaurants."

Health and Mental Hygiene Commissioner Thomas R. Frieden added: "We are pleased the Court agreed with our efforts to protect the public's health and safety. Our improved inspections process was designed to hold restaurant owners and operators to the highest food safety standards and to safeguard the dining public. We believe New Yorkers and visitors should not only have the safest possible dining experience, but that the public should also be able to find out about individual restaurant inspections. We are delighted the Court shares our belief in full disclosure."

New York City Law Department Administrative Law Division Chief Gabriel Taussig and Senior Counsel Deborah Rand represented the Department of Health and Mental Hygiene. The Health Department's General Counsel, Wilfredo Lopez, also worked on the case.

As noted on its web site, the Health Department conducts inspections of all food service establishments in the City. These establishments include restaurants, retail bakeries and "take outs." These inspections are unannounced and are conducted by "public health sanitarians" who are trained public health professionals with college degrees and backgrounds in the sciences. During inspections, these

sanitarians spend most of their time evaluating food workers' practices, including the manner in which they receive and store foods, how they process foods, and the temperatures at which they cook, hold and reheat foods. The public can review restaurant inspections by going to the Health Department's web site homepage at www.nyc.gov/health or via direct link to the inspections page at <http://ibihost1.com/nycdoh/web/html/rii.pl>. The public can also receive a copy of the full inspection report by mail by calling the NYC Citizen Service Center at 311. In addition violations listed on the Health Department's web site, these written reports contain other general violations, including those related to smoking. The Department will send the most recent inspection report for up to five restaurants at no charge.

Reporters with additional questions regarding Health Department issues or the Department's inspection process and web listings can contact Sandra Mullin, Associate Commissioner and Director of the Office of Communications, New York City Department of Health and Mental Hygiene, (212) 788-4748 (Direct), smullin@health.nyc.gov.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 90,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

###