

Food Safety Inspections and Storefront Grade Posting: The case of NYC and LA

By Steven Tarca and Kevin Murphy

Introduction

Food safety has been and continues to be an important topic in the restaurant industry. Food safety is often used as a cumulative term that includes health and hygiene, food handling, and food-borne illnesses. These topics have been widely discussed in literature, and best practices have been identified and developed in order to reduce risk (Dundes and Swann, 2008; Lee, Almanza, Nelson, and Ghiselli, 2009; Mitchell, Fraser, and Bearon, 2007; Reske, Jenkins, Fernandez, VanAmber, and Hedberg, 2007). Food safety practices are important in order to protect both customer and business. Each year the U.S. reports an estimated 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths due to microbial hazards in food, causing billions of dollars in medical costs and lost wages (Mitchell et al., 2007). These food-borne illnesses often spur from “common problematic violations” including “improper food-holding temperature and inadequate hygiene practices, sanitation, and hygiene facilities” (Dundes and Swann, 2008, p. 154). Consequently, food safety should be a priority for both business and the public. A foodborne outbreak can cost a restaurant up to \$100,000 in medical charges, lost wages, and lawyer fees. Furthermore, violations can result in a 30% reduction in sales (Grover and Dausch, 2000). While it is important for restaurants to engage in food safety procedures, evaluation methods vary between locations. As leaders in the industry, managers are often challenged to discover not only best practices for his or her location, but also how the location will be assessed. How, and why, are there so many different methods and what can be learned from them?

Sanitation Inspections

Due to public health risk and the significant economic impact restaurants provide, government has become involved in food safety regulation. Sanitation inspections are the most widely used forms of regulation, and are normally performed by a local Department of Health. Sanitation inspections allow the government to exchange and provide information between different food service establishments and to regulate aspects of the food service industry (Lee et al., 2009). In most states, sanitation inspections are dependent on local governance and have evolved over the years “to ensure compliance with

established hygienic standards” (Simon, et al, 2005:32). As a result, variation exists not only between different governmental jurisdictions, but also includes disparate violations, grading systems and symbols and colors used to designate a grade (Lee et al., 2009).

However, code books do exist on city, state, and national levels. In New York City, the Department of Health and Mental Hygiene (DOHMH) released the guide “What to expect when you’re expected: A guide to food service operators” (NYC Health, 2010). This guide outlines the inspection process in NYC and can be a useful tool for any restaurant manager within the city. Also inside its pages is a holistic outline of violations, varying by type. Similar inspection guides exist in other locations, but as they are dependent on the governing body, will vary in their approach (County of Los Angeles, 2011). National standards are outlined on the United States Department of Agriculture: Food Safety and Inspection Services website, but inspection outlines and concerns are more mass-production based rather than restaurant based, although there is compliance issues that need to be met. These include labeling and sanitation performance standards (USDA: Food safety and inspection services, 2013). As a result, the federal sanitation laws may interact with those at a state and local level. Still, local level sanitation enforcement tends to be most common and is often complex. As the local governance will enact different laws, this allows for meaningful study in order to compare and contrast different methods in order to capture best practices.

Because different health and safety inspection procedures exist, many unique perspectives have been used to evaluate these diverse practices. Wiant (1999) states that the grading mechanisms are interpreted threefold: first, the scores are reflective of the time when the inspection was made, second, these scores become interpreted by the public, and third, these scores carry forward in the correction and management of food safety programs. A successful program requires an honest reflection of how the operation is performing, a sharing with the public to both inform and evaluate, and calling the management of the site into action to improve or remedy any violations found during the inspection. As there are different stakeholders that are affected by the grading of a restaurant, each unique party may view the process as well as the resulting grade differently. Consequently, it has been difficult to compare these practices against each other due to the disparate grading systems as well as the wide range of opinions surrounding each unique process.

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Success in Los Angeles

One of the largest success stories in food safety grading posting was the reporting system implemented in January 1998 in Los Angeles County. In a benchmark study, Simon et al. (2005) looked at the effects of implementing the Los Angeles County health and safety inspection and grading procedure. The new system was somewhat simple: the program would require a public posting of the grade at a maximum of five feet from the point of entry. According to the authors, this was a central overhaul of the inspection process. In doing so, the inspection score, based on a scale of 100, would be translated into letter grades: 90-100 would be classified as an A, 80-90 as a B, 70-80 as a C, and anything falling below a 70 would require the actual number. Regardless of the score, the inspection grade would be required to be posted outside of the establishment. Furthermore, an Internet database was developed for easy public access to the detailed infraction list for each establishment (Simon et al., 2005).

Authors Simon et al. (2005:33) point out that such a policy has potential for effectiveness, as there is a “notion that one can decrease the incidence of food-related illnesses through provision of increased restaurant hygiene quality information to consumers,” as it is an “economic argument.” Burdened with hygienic information of restaurant success or failure, customers should gravitate towards restaurants perceived as cleaner and healthier. This provides an economic incentive for restaurants to keep up with sanitation codes, which would assist in sustained or even increased sales as well as a reduction in food-borne illnesses. Therefore, high health inspection grades have been positively correlated with sales increases (Jennings, 2008). In fact, a statistician found through observing Los Angeles sales tax reports that restaurants with an A letter grade would cause revenue increases of up to 6%, B grades would cause a revenue increase of 1-2%, and C grades would cause a revenue decrease at an average of 1% (Jennings, 2008).

Simon et al. (2005) concluded that the program was a success. During the first year, food-borne illness hospitalizations were reduced by 18.6%. The following years revealed a 4.8% and a 5.4% decline, respectively. The study “concluded that the county’s grading system had contributed to a sustained 13-percent reduction in hospitalizations for foodborne illnesses” (Jennings, 2008:93). The years leading up to the program change were observed as the study control period and did not have any significant fluctuation in hospitalizations year-to-year. Furthermore, managers were shown to take the process seriously. When the program was launched in 1998, only 40% of restaurants were awarded with an A. As of 2007, that number had more than doubled into the 80% range, and restaurants scoring below a 70% level dropped to 0.2% (Zagat, 2010; Jennings, 2008).

Pushback in the Big Apple

New York City hoped to repeat the success observed in Los An-

geles. When a similar program was launched in 2010 in NYC, many restaurateurs disapproved. The New York Times covered much of the discourse that occurred during the change. Staten Island Chamber of Commerce spokesman Geoff Kravitz said that a restaurant without an A would literally be treated as that of “Hester Prynne at a public hearing,” referring to the protagonist from Hawthorne’s *The Scarlet Letter* (Collins, 2010). Others said that the grade was arbitrary, as it only reflected a snapshot in time. Consequently, many opponents disapproved of the mandatory, storefront grade posting because it has been difficult to compare grading practices against each other due to the disparate grading systems, as well as, the wide range of opinions surrounding each unique process.

The Department of Health and Mental Hygiene (DMHH) in NYC responded quickly to these concerns, leaning largely on the successful history of Los Angeles for support. The DMHH reported that if the grade was lower than an A, the site could wait a month for a second review by a different inspector. This would allow time for positive changes at the facility and permit a letter change. These restaurants would show a grade pending sign instead of their initial letter grade. Additionally, proponents of the program pointed to a 2007 Los Angeles study which revealed 91% of the civilian population supporting such a program as well as another study that cited 88% of diners who said that the letter grade played a factor in their dining decision (Collins, 2010; Collins, 2012). According to the DMHH, a successful grade would benefit everyone.

While the stakeholders and policy makers argued, new holes in the system were revealed. The NYC letter grade system in itself was argued to be somewhat flawed, as it attempted to fit the Los Angeles system into the current system in NYC. Numerically, the systems were different. Rather than on a points-gained system from Los Angeles, NYC worked on a points-lost system. Up to 13 points lost provided a restaurant with a blue-colored letter A, 14-27 points lost earned the restaurant a green-colored letter B, and more than 28 points lost earned the restaurant an orange-colored letter C (McCabe, 2011; Ho, 2012). The range of events that can earn a letter grade was wide.

The New York City Department of Health and Mental Hygiene split violations between three categories from worst to least: public health, critical, and general. Public health violations were rated to pose an immediate public health threat. Inspectors usually closed down these restaurants immediately. Critical violations were seen as generally “unappetizing” but did not pose an immediate health threat like rodents or cockroach infestations. Finally, general violations included minor infractions such as issues concerning bathroom facilities, thawing techniques, or improper trash receptacles (McCabe, 2011).

As a result, these different levels of concern became associated with different point values. The Department of Health and Mental Hygiene called for at least seven points to be associated with a public

health violation, five points for a critical violation, and two points for a general violation. Whereas one restaurant may have received an A with no violations, another restaurant would have received an A “where hot food items were not being held above the required temperature of 140 degrees, toxic chemicals were improperly labeled or stored in a way that contamination of the food might occur, and the restroom had no toilet paper or trash receptacle. “These violations would result in 12 points... and [still] qualify for an A” (McCabe, 2011). Unfortunately, neither the government agency nor restaurants mention this inefficiency in the system, as this nuance benefits the restaurant to let certain mistakes occur without being publicly scrutinized. Alison Rabiej, who has been a server for several dining establishments in Manhattan, said that her restaurants have been diligent, some utilizing morning checklists, team meetings, and or even mock inspections in preparation for the actual one. As the difference between an A and a B could simply be “a missing light in the fridge” or a “spot of water on the floor,” it is important that even the smallest details are considered by restaurant staff (Alison Rabiej, 2013, personal communication).

According to McCabe (2011), many restaurants are narrowly being awarded with an A. In the survey, over 1000 restaurants lost 12 points on their site inspection and still received an A, while fewer than 400 restaurants received no points and still received the same letter grade. Points were well distributed in the B letter grade range, which may indicate that many restaurants are trying to get their A without truly correcting their health and safety violations.

Furthermore, the grades in New York City have been ineffective in predicting future variation. According to Ho (2012), San Diego’s grading system accounts for roughly 25 percent of the variation in future scores. However, New York City’s prior scores predict less than a two percent of the variation of future scores. “New York City’s posted restaurant grades therefore fail the most basic criterion: they communicate little about future cleanliness” (Ho, 2012). Several articles have shown restaurants that went from an A grade down to a B (Grynbaum and Taylor, 2012; Weichselbaum Moore, 2012). Variation can also occur through the training, experience, and personality of the inspector. The violation book, also known as the blue book and noted as “not for the faint of heart” (McCabe, 2011), requires knowledge of a wide range of violations with a wide range point assessment based on the severity of the violation. “San Diego, for example, has a single violation for vermin. New York records separate violations for evidence of rats or live rats; evidence of mice or live mice; live roaches; and flies — each scored at 5, 6, 7, 8 or 28 points, depending on the evidence. Thirty ‘fresh mice droppings in one area’ result in 6 points, but 31 droppings result in 7 points” (Ho, 2012). Not only do these violations have to be discerned through the eyes of the inspector, hairs need to be split between each violation in order to provide an accurate assessment based on the NYC Department of Health and Mental Hygiene model. As a result, the training, education,

and disposition of the inspectors can be seen as having a considerable effect on the scoring of a restaurant inspection.

Additionally, the inspection process has been revealed to be interruptive at the time of the inspection. Kelley Green, a shift manager for Italian Restaurant and Bar in Brooklyn, said that during her inspection “people definitely left. We lost most of our lunch crowd that day in the bar area because I wasn’t able to attend to them... I had to completely stop service and cater to the inspector” (Kelley Green, 2013, personal communication). Charles Masson, owner of La Grenouille, a fine dining establishment located in midtown, estimated a \$30,000 revenue loss due to the restaurant inspection over the course of a single night (Eber, 2013). Around the time of the yearly inspection, much of the restaurant staff operates with hyper-awareness, prepared for the inspector to come at the “...most inconvenient time to stop by, be it the very beginning of service when things are still being set up or right during the dinner rush” (Alison Rabiej, 2013, personal communication).

While it has been reported that the inspection process is interruptive, it may also depend on the type of establishment. Kelley Green (2013, personal communication), who also worked as a bar manager for a major Broadway theatre, said that the inspector worked with her prior to opening the theatre bar so the process would not disrupt the hours of operation. This could be attributed to either or both the personality of the inspector or the nature of the business. It would be more difficult to not interrupt a dining establishment, which may serve for many hours without pause, versus a theatre bar, which serves for an hour and a half staggered over the course of an evening.

Still, inspection processes remain the same no matter what type of establishment is worked. However, food carts are exempt from this type of food service inspections. According to Cusato (2013, personal communication), owner of Food Freaks Grilled Cheese, his cart only gets inspected “once every two years and there are never any issues,” which suggests a much different story than the issues raised from the restaurant inspections. Consequently, the inspection process and level of interruption seems to be determined by both the nature of the establishment as well as the convenience of the operating hours.

At the heart of the debate is that food inspections have begun to work its way into the consumer process of choosing a restaurant. Angelica Pappas, communications manager of the California Restaurant Association, shared a survey with the authors that revealed 26% response rate of “health inspection reports do not matter to me” (2013, personal communication). The other 74% found consumers looking for grades in restaurant windows (39%), looking for scores on Yelp (19%), searching for reports on government websites (11%), and asking for reports in the restaurants themselves (5%). Because restaurant scores are becoming part of the consumer conscience, it remains important that restaurants respond to and monitor policymaker actions.

Success in the Discourse

Even amidst all the criticism, the grading system has seen success in a short period of time, much like that of Los Angeles. After the first year, salmonella outbreaks, an indicator of food-borne illness, fell below 14 percent, the lowest in 20 years in New York City (Collins, 2012). In addition to a reduction in food-borne illness, restaurant sales have increased 9.2%, a value of \$800 million. This can be attributed to both A-letter grades, which increased from 65% to 72%, resulting in improved consumer confidence as well as a result of the recent economic recovery (Collins, 2012). As the program is now only in its third year, one can hope that the growing pains of implementing such a program can continue to improve both the health and economic wellbeing of The Big Apple.

Just as New York City looked to Los Angeles for best practices, new cities are now looking to these leaders in food safety. In Florida, a new system was adopted on January 1, 2013, which drew from the FDA Food Code. Significant to the Florida update was moving from a two-tiered system, in which inspections are classified as critical and non-critical, to a three tiered system of high priority, intermediate, and basic (Florida division, 2013). Similar to NYC's three-tiered public health, critical, and general violations, the new Florida approach allows violations to have a stronger classification based on severity.

However, discourse is still evident as ever before. In Florida, these changes have updated the sanitation procedures but the punitive enforcement still remains weak, according to Ed Nestor (2013, personal communication). According to Nestor, principal at Star Solutions, punitive enforcement is "only levied after repeated violations of the same item regardless of the number of other violation reported during the same inspection." Furthermore, only five events can cause a restaurant immediate closure: significant lack of refrigeration, backup of sewage, an emergency (fire, flood, etc.), serious pest infestation, or a lengthy interruption of electrical/water service. As Mr. Nestor (2013, personal communication) admits, powerful lobbyists for Florida's tourism industry are exerting pressure to keep the food safety inspection grade public postings system from being implemented statewide. To make matters more confusing, Florida does not engage in a point system like that in NYC and LA. Still, one must wonder what steps can be taken to create some consistency and uniformity of reporting methods, as the benefit to both the restaurant and patron have been observed under the letter grade public posting systems.

A personal communication with Angelica Pappas (2013), communications manager of the California Restaurant Association (CRA), reveals technological concerns that the organization has, including social media. According to Pappas, Yelp, a website that compiles restaurant reviewers from diners, is currently pilot testing a new addition to their application that integrates restaurant inspection reports, which they term into their application. As Yelp extracts these reports

from the governmental websites, concerns with both technological error and the time lapse between the point of inspection and the time of the report posting become important. In LA, reports have historically been generated through paper. However, July 1st, 2013 introduces a major change in the reporting process, as report generation will change to a paperless, electronic tablet system, which could create immediate uploading to the Internet database system through a data dump at the end of the day. This transit data would then be pulled by Yelp and siphoned onto each restaurant's review page. Because of the immediacy in which Yelp can grab these reports, CRA has requested that a 24 hour grace period be given between the point of the inspection and the report upload, allowing restaurant managers time to deal with the inspection results.

Adversely, some researchers believe that websites like Yelp could lead to the future of restaurant inspections. While it has been widely discussed that drawbacks of a single site inspection once a year, researchers are developing algorithms to use everyday customer reviews to track trends in health and sanitation (Badger, 2013). Some restaurants may clean specifically toward a health inspection and fall into old habits once the establishment receives a grade. By utilizing consumer reviews, inspectors may be able to identify at-risk establishments before even entering them.

In observing the trends of posting restaurant grades, many effects have been observed, many of which are both economic and health related. While the conversation is ongoing regarding the variation between locations and the different stakeholders, the process is certain to be refined, changed, and mimicked.

More questions to consider:

- Do you think it's better for food service regulations and laws to be determined at the city, state, or national level? What are the benefits and downside of setting regulations at each level? What impact does location (suburban or urban environments) have on food service laws?
- As technology transforms the dining experience, do you believe that the dining public should have access to immediate knowledge of restaurant sanitation scoring? If low scores are posted and the restaurant is not at fault, is this fair? Can you reconcile the needs of both the governing body and the restaurant?
- Please describe the ways a publically posted restaurant inspection grade impacts a restaurant and the consumer. What does a publically posted inspection grade actually accomplish?
- If you had the opportunity to develop your own grading system, what would it include? On what government level (city, state, national) would it be applied? What would you change about the Los Angeles and New York City programs outlined in the case study?

- What roles do you think restaurant lobbying organizations, like the California Restaurant Association, have in the discourse? Do you agree with their concerns on food safety inspection procedures? Would you consider them a biased stakeholder?

Further Reading

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