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*Report of the Office of Inspector General:*

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*Chicago Department of Public Health Food Establishment Inspection A udit*

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*H66-IG- TIP LINE (866-448-4754) [www.chicagoinspectorgeneral.org](http://www.chicagoinspectorgeneral.org) <<http://www.chicagoinspectorgeneral.org>>*

*Joseph M. Ferguson Inspector General*

## **OFFICE OF INSPECTOR GENERAL**

*City of Chicago*

740 N. Sedgwick Street, Suite 200 Chicago, Illinois 60654 Telephone: (773) 478-7799 Fax: (773) 478-3949

November 28, 2016

To the Mayor, Members of the City Council, City Clerk, City Treasurer, and residents of the City of Chicago:

The City of Chicago Office of Inspector General (OIG) has completed an audit of the frequency of food establishment inspections conducted by the Chicago Department of Public Health (CDPH). Specifically, the objectives of this audit were to determine whether CDPH's Food Protection Division conducted routine inspections of food establishments as often as required by the Department's rules and regulations incorporating State law, conducted inspections triggered by complaints and reinspections of known violations in a timely manner, and accurately reported the results of inspections and reinspections through the City's Data Portal.

OIG concluded that, during the time period covered by the audit, CDPH did not conduct routine inspections of food establishments as often as required. CDPH has been out of compliance for a number of years; in fact, the Department could not state when, if ever, it last met the regulatory standards in this area. OIG determined that CDPH is seriously understaffed for conducting all the routine inspections required by law. However, we found that when CDPH identified a violation or received a complaint, it conducted reinspections and complaint-based inspections in a timely manner. OIG also found that the relationship between CDPH and its database vendor did not follow policies put forth by the Department of Procurement Services and the Department of Innovation and Technology regarding data maintenance and licensing. Finally, we confirmed that the food establishment inspection data posted to the City's Data Portal is complete and accurate.

OIG recommends that CDPH collaborate with the Illinois Department of Public Health to develop a food inspection schedule that is both practically effective and financially feasible. If this approach proves unavailing, we recommend that CDPH work with the Office of Budget and Management, as well as the state officials charged with awarding grant funds dedicated for this purpose, to secure sufficient funding to achieve compliance with the existing inspection-frequency rules. In its response to the audit, CDPH agrees with this recommendation and has committed to pursue the matter with IDPH. As CDPH works towards improving its completion rate for required food inspections, OIG encourages the Department to report publicly on its progress toward redressing the present operational shortcomings in this important public health and safety program.

We thank CDPH management and staff for their cooperation throughout this audit.

Respectfully,

Joseph M. Ferguson Inspector General City of  
Chicago

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OIG File #15-0107

CDPH Food Establishment Inspection Frequency Audit

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## Acronyms

CDPH	Chicago Department of Public Health
DOIT	Department of Innovation and Technology
DPS	Department of Procurement Services
FDA	U.S. Food & Drug Administration
IDPH	Illinois Department of Public Health
LHPG	Illinois Local Health Protection Grant
MCC	Municipal Code of Chicago
OBM	Office of Budget and Management
OIG	Office of Inspector General
RFE	Retail Food Establishment

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## I. Executive Summary

The Office of Inspector General (OIG) audited the food establishment inspections program of the Chicago Department of Public Health (CDPH) Food Protection Division. CDPH "promotes food safety and sanitation through the inspection of food establishments,"<sup>1</sup> including restaurants, grocery stores, bakeries, delis, daycares, hospital kitchens, and school cafeterias.

The objectives of the audit were to determine whether,

- CDPFI conducts routine inspections of food establishments as frequently as required by the Department's rules and regulations;
- CDPH conducts timely reinspections and complaint-based inspections as required by the Department's rules and regulations; and
- food inspection records on the City's Data Portal are complete and accurate.

OIG found that CDPH did not conduct routine inspections of food establishments as frequently as required. High-risk establishments must be inspected twice annually; medium-risk establishments must be inspected once a year; and low-risk establishments must be inspected once every two years. We found that CDPH inspected only 3,566, or 43.9%, of high-risk establishments at least twice in 2015; only 2,478, or 80.1%, of medium-risk establishments at least once in 2015; and only 1,078, or 24.8%, of low-risk establishments at least once in 2014 or 2015.

Although the Department did not conduct routine inspections as frequently as required by law, OIG found that CDPH did conduct timely reinspections of violations identified during initial inspections. CDPH also conducted timely inspections in response to public complaints about food establishments received through the City's 31 1 system.

OIG further found that CDPH's relationship with its database vendor did not follow policies put forth by the Department of Procurement Services (DPS) and the Department of Innovation and Technology (DOIT) regarding data maintenance and licensing. CDPH did not procure the software through DPS and not have a contract with the vendor, which is required because the vendor provides data storage and maintenance in addition to a software license.

Finally, we determined that the food establishment inspection data posted to the City's Data Portal is complete and accurate.

OIG concludes that CDPH does not have the staff resources necessary to conduct routine inspections as frequently as required under the standards prescribed by state law. We estimate that CDPH needs at least 56 additional sanitarians to conduct the legally required number of food inspections. CDPH's inability to meet the state standards not only undermines public trust in the City's capacity to fulfill this fundamental local governmental function; it also places at risk

' City of Chicago, Office of Budget and Management, "2016 Budget Overview." 100, accessed September 28, 2016. <<http://www.cityofchicago.org/content/dam/city/dcpis/obm/supp%20info/2016Budget/2016BudgetOverviewCoC.pdf>>

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millions of dollars in annual state grant funding. For at least the past few years, CDPH has maintained its eligibility for these funds by securing from the Illinois Department of Public Health (IDPH) approval of a series of "corrective action plans," which allow less than full compliance with the generally applicable standards. There is no guarantee, however, that IDPH will continue to accommodate the City in this manner.

We therefore recommend that CDPH collaborate with IDPH to design and implement a permanent food inspection schedule that is feasible from resources that can be made available to CDPH, effective in promoting food safety, and sufficient to preserve CDPH's certification as a local public health department. This collaboration might include consulting with government agencies, academic institutions, and health-focused non-governmental organizations to develop a science-based understanding of what food inspection regimen would optimally protect public health without placing an undue burden on the public fisc. Once the new schedule is established, CDPH should work with the Office of Budget and Management (OBM) to acquire sufficient staff for implementation. If necessary, the City should consider funding additional sanitarians from the fee, fine, and license revenue generated by food inspection operations that is currently directed to the Corporate Fund for use as determined by OBM, rather than earmarked to enable CDPH to fulfill this crucial element of its mission. In the event the City is unable to implement the strategy outlined above, we recommend that CDPH seek from OBM and/or IDPH the resources necessary to bring its food inspection program into compliance with the existing State requirements.

Finally, we recommend that CDPH continue to work with DPS and DOIT to bring its vendor relationship into compliance with City policies.

In response to our audit findings and recommendations, CDPH stated that it will work with IDPH to develop a permanent inspection schedule that is "feasible to execute and sufficiently rigorous to promote food safety." If a new schedule is agreed upon, CDPH will collaborate with OBM to implement and resource the inspection schedule. If a new schedule is not agreed upon, CDPH will collaborate with OBM to "develop an implementation plan, including resources, to bring [CDPH] into compliance" with existing rules. CDPH also committed to analyzing costs and proposing updated fees, fines, and license rates related to food inspections, as appropriate. Finally, regarding OIG's conclusion that CDPH's relationship with the database vendor did not follow City policies, since OIG first surfaced the issue during the audit, CDPH has taken corrective action and will review all of its software to ensure compliance with City policies. CDPH will work with DPS and DOIT to address any issues identified by that review.

The specific recommendations related to each finding, and CDPH's response, are described in the "Audit Findings and Recommendations" section of this report.

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## II. Background

The mission of CDPH is "to make Chicago a safer and healthier place by working with community partners to promote health, prevent disease, reduce environmental hazards and ensure access to health care for all Chicagoans." In support of this mission, the CDPH Food Protection Division "promotes food safety and sanitation through the inspection of food establishments and by providing education on food safety to businesses and the public."<sup>3</sup> CDPH is responsible for inspecting establishments that make or sell food, including restaurants, grocery stores, bakeries, delis, daycares, hospital kitchens, and school cafeterias.

CDPH's authority to conduct food inspections<sup>4</sup> is established in Municipal Code of Chicago (MCC) § 7-42-010(a), which states, "The department of health shall have authority to inspect food establishments at such intervals as set forth in rules and regulations adopted by the board of health to determine such food establishments' compliance with the requirements of this code and the rules and regulations of the board of health." The Chicago Board of Health is a nine-member body appointed by the Mayor, with City Council approval, that promulgates rules and regulations related to public health matters.<sup>5</sup>

### **A. CDPH'S Use of State Grant Funds for Food Inspection**

CDPH receives funding from IDPH through the Local Health Protection Grant (LHPG). Grantees may, at their discretion, dedicate LHPG funds to four areas-food protection, infectious diseases, potable water, and private sewage.<sup>6</sup> The State's food inspection requirements for LHPG grantees, which we discuss in more detail below, are based on the recommendations published by the U.S. Food and Drug Administration-the "Food Code" (hereafter "FDA Food Code")-that encourage jurisdictions "to develop risk categories tailored to their specific program needs and resources and to reassess the risk categories on an annual basis."<sup>7</sup>

In 2015, the City received \$2.5 million in LHPG funds and allocated \$969,211 to the Food Protection Division. LHPG funded 8 of the Division's 38 sanitarian positions. Sanitarians

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<sup>2</sup> City of Chicago, Department of Public Health, "Public Health, Mission," accessed September 28, 2016, <[http://www.cityofchicago.org/cii/en/depts/cdph/auto>generated/cdph\\_mission.html](http://www.cityofchicago.org/cii/en/depts/cdph/auto>generated/cdph_mission.html).

<sup>1</sup> City of Chicago, Office of Budget and Management, "2016 Budget Overview," 100, accessed September 28, 2016, <<http://www.cityofchicago.org/content/dam/city/depts/obm/supp>info/2016Budget/2016BudgetOverviewCoC.pdf>.

<sup>4</sup> As a certified local health department operating under the auspices of a home-rule municipality in Cook County, CDPH is technically exempt from the State statutory provision that requires each Cook County home-rule unit to regulate food establishments in a manner at least as strict as that prescribed by State law and regulations. See 65 ILCS 5/1-20-16(a). Despite this exemption, the Department's rules hew closely to those promulgated by the Illinois Department of Public Health (IDPH), as we describe below. Were the City to exercise its home-rule authority by implementing a regulatory regime less stringent than the State's, IDPH might decertify CDPH, thereby making the statutory exemption inapplicable and triggering the requirement that the Department's rules meet or exceed State standards.

<sup>5</sup> City of Chicago, Board of Health, "What We Do," accessed September 28, 2016, <http://www.cityofchicago.org/city/en/depts/cdph/provdrs/hoh.html>.

<sup>6</sup> See 77 Ill. Adm. Code 615.210, accessed September 2, 2016, <http://www.ilga.gov/commission/icar/ac/mincode/077/077006150B021> <<http://www.ilga.gov/commission/icar/ac/mincode/077/077006150B021>> OPR.html.

<sup>7</sup> U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, "Food Code 2013," 590, accessed September 28, 2016,

<http://www.fda.gov/downloads/food/foodregulation/retailfoodprotection/foodcode/>

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conduct food establishment inspections. Other grants funded 3 sanitarian positions, but, as shown in the table below, the City's Corporate Fund funded the majority of the positions (27 out of 38).

Number of Sanitarian Positions by Funding Source		Funding Source		Year	2012	2013	2014	2015
Corporate Fund		28	29	28	27			
Local Health Protection		9	9	10				
Other Grants		5	5	3	3			
<b>Total</b>		<b>42</b>	<b>43</b>	<b>41</b>	<b>38</b>			

Source: City of Chicago Annual Appropriation Ordinances and Grant Detail Ordinances\*

IDPH reviews the performance of LHPG grantees to ensure that their food inspection programs meet the grant eligibility standards. Typically, IDPH audits local programs about once every three years. However, because Chicago has consistently failed to meet the standards, IDPH reviews Chicago's Food Protection Division annually. According to IDPH staff, Chicago is the only jurisdiction in Illinois that has failed to comply with the State's inspection frequency regulations for consecutive years. CDPH could not determine the number of years it had been out of compliance. When a grantee fails to comply with the requirements, the administrative Local Health Protection Grant Code provides that the local health department must "develop and follow a written plan of correction acceptable to [IDPH] to achieve substantial compliance."<sup>9</sup> Accordingly, each year CDPH fails to meet the State inspection frequency standards, in order to retain its eligibility for LHPG funds, the Department is required to submit a corrective action plan to IDPH describing what progress it expects to make in the coming year toward compliance. During its annual review, IDPH evaluates whether CDPH has met the goals set forth in its annual plan. In the event IDPH were to reject CDPH's proposed corrective action plan, or the Department were to fail to comply with an approved plan, IDPH could decline to award grant funds to CDPH.

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## B. CDPH's Food Inspection Program

### 1. Food Establishment Risk Categories and Required Inspection Frequency

CDPH's "Rules and Regulations Pertaining to Sanitation Practices in Food Establishments," also referred to as the "Food Code," includes standards for food preparation and storage by food establishments, as well as definitions of "critical," "serious," and "minor" violations.<sup>11</sup> As described in the table below, the Department classifies food establishments under three risk

\* City of Chicago, Office of Budget and Management, "Budget Books." accessed September 28, 2016, <<http://www.cityofchicago.org/city/cn/depts/obm/supp%20info/annual-budget- recommendations- documents.html>>

77 III. A dm. Code 615.220(e), accessed September 28, 2016, <<http://www.ilga.gov/commission/icar/admincode/077/0770061>50B02200R.html>.

See 77 111. Adm. Code 615.220(e)(4) ("A local health department's failure to follow an approved or prescribed plan of correction may be grounds for suspension or revocation of a grant agreement. The Department will consider the local health department's degree of noncompliance with this Part, the duration of the noncompliance, the local health department's efforts to address the noncompliance, and the extent to which the noncompliance jeopardizes the public's health and safety.").

"City of Chicago, Department of Public Health, "Rules and Regulations Pertaining to Sanitation Practices in Food Establishments: The Food Code", accessed September 28, 2016, <<http://www.cityofchicago.org/coiiteni/cl;im/city/depts/dol/nilesiindret;s/FoodCodeCover5516>> pdf.

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categories-High Risk (Risk 1), Medium Risk (Risk 2), and Low Risk (Risk 3)-and sets inspection frequency requirements based on those classifications.<sup>12</sup> CDPH's risk classifications are derived from Section 750.010 of Title 77 of the Illinois Administrative Code,<sup>13</sup> and its inspection frequencies are modeled after those in Section 615.310.<sup>14</sup>

### CDPH Food Establishment Risk Classifications and Inspection Frequency

High Risk - Shall receive two inspections per year. with the second occurring at least one day after the first. High Risk establishments have one or more of the following characteristics:

- i. Potentially hazardous foods are cooled as part of the food handling operations
  - ii. Potentially hazardous foods are prepared hot and held hot or cold for more than 12 hours before serving
  - iii. Potentially hazardous foods which have been cooked must be reheated
  - iv. Potentially hazardous foods are prepared off-site for which time and temperature requirements for transport and serving of such foods are relevant
  - v. Complex preparation of foods, or extensive handling of raw ingredients with hand contact for ready-to-eat food occurs as part of the food handling operations
  - vi. Vacuum packaging or other forms of reduced oxygen packaging are performed at the retail level
  - vii. Majority of the consumers are immune compromised
- \*Excludes restaurants, hospital kitchens, day care centers, and schools preparing food on site.

Medium Risk - Shall be inspected once per year. Medium Risk establishments have one or more of the:

<sup>12</sup> City of Chicago, Department of Public Health, "Rules and Regulations, Frequency of Inspection of Food Establishments Based on Assessed Risk and Low-Risk Food Establishment Self-Certification Pilot Program," accessed September 2, 2016, <[http://www.cityofchicago.org/content/dam/city/depts/cdp/food\\_cnv/uencal/REGSSelfCertPilotdraftpos](http://www.cityofchicago.org/content/dam/city/depts/cdp/food_cnv/uencal/REGSSelfCertPilotdraftpos)>. Although this document is unsigned and the pilot program has ended, CDPH confirmed that it reflects the risk categories and inspection frequencies currently in use.

<sup>13</sup> See 77 III. Adm. Code 750.010, accessed September 28, 2016, <<http://www.ilga.gov/commission/icar/admincode/077/077007500A00IOOR.html>>

<sup>14</sup> See 77 111. Adm. Code 615.310, accessed September 28, 2016, <<http://www.ilga.gov/commission/icar/admincode/077/077006150C031OPR.html>>. Because the City requires a certified food manager to be on the premises at all times that potentially hazardous foods is being prepared or

served" and that "all food handlers... not possessing a food manager's certification must have documentation of approved food handlers training," MCC fj 7-38-012, the standard set out in this State rule permits CDPH to inspect high-risk establishments only twice, rather than three times, annually. Sec 77 Ill. Adm. Code 615.310(b)(4)(A) ("Category I facilities shall receive three inspections per year, or two inspections per year if one of the following conditions is met: i) A certified food service manager is present at all times that the facility is in operation; or ii) Employees involved in food operations receive a Hazard Analysis Critical Control Point (HACCP) training exercise or in-service training in another food service sanitation area, or attend an educational conference on food safety or sanitation.").

" CDPH uses predictive analytics to identify high-risk establishments, i.e., those with the highest probability of committing health code violations and prioritize their inspections. The Department runs the analysis at the beginning of the year, and then again after sanitarians have performed the first inspection of all high-risk establishments. The Department of Innovation and Technology (DOIT) worked with third-party consultants to develop the model, which takes into account a series of variables (including past performance) to predict which food establishments have the highest risk of future violations.

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*following characteristics. I*

- " i. - Hot or cold foods are held at required temperatures, for no more than 12 hours and are only served the same day
- ii. foods that require complex preparation (whether canned, frozen, or fresh prepared) are obtained from approved food processing plants, high-risk food service establishments or retail food stores .. ."
- iii. •?i Foods are prepared from raw ingredients using; only-minimal assembly
- liExamples'dnchidegmceiyfstoresTibaker^es, delisr andt schools serving, food-prepared off-site^ •<^,.,.

, Low Risk - Shall be inspected once ;everyrfwo ky.ears:-Lo.w Risk establishments have one or more of the

following> characteristics. •. f ' v .''' ■

- i. Only beverages (alcoholic and non-alcoholic) are served-;.... ~ « £
- ii. Only limited preparation of non-potentially hazardous foods and beverages
- iii. Only pre-packaged footls are served and any potentially hazardous foods are  
- . commercially pre-packaged in an approved processing plant y. i-- , ..- \_ ■[.

*Examples include gas stations serving coffee, convenience stores selling pre-packaged food and bars.*

Source: Summarized from CDPH, "Rules and Regulations: Frequency of Inspection of Food Establishments Based on Assessed Risk and Low-Risk Food Establishment Self-Certification Pilot." Examples provided by OIG.

In addition to risk-based inspections, CDPH conducts inspections in response to complaints from members of the public. The Department has an unofficial goal of performing complaint-based inspections within 21 days of receiving the complaint, or within five days if the details of the complaint indicate a significant risk of foodborne illness.

There is no scientific consensus regarding the relationship between the frequency of food establishment inspections and the prevalence of foodborne illness. OIG contacted an expert in this field of research who confirmed the lack of empirical evidence regarding optimal inspection frequency, and opined that, under the circumstances, a risk-based approach, i.e., greater inspection frequency for higher-risk food establishments, as recommended by the FDA Food Code, is appropriate. FDA management informed us that its suggested inspection frequency-at least once every six months-dates from a

precursor to the FDA Food Code published in 1962, and that, like other guidance in the Code, this suggestion emerged from the consensus of industry experts, academics, and regulators, rather than from a conclusive finding based on peer-reviewed scientific research. As noted above, FDA encourages jurisdictions to define risk categories and related inspection schedules to meet their specific needs and resources while focusing on the highest risk food establishments. OIG reviewed the risk categories and inspection frequency requirements in other large cities and found a variety of practices, as shown in the table below.

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	Number of Risk Categories:	Minimum Frequency of Inspections	
		Highest Risk	Lowest Risk
<b>FDA Recommendations</b> <sup>16</sup>	at least 3	at least once every 6 months	less than once every 6 months depending on risk
<b>Chicago</b> <sup>17</sup>	3	twice annually, with the second inspection at least 90 days after the first	once every 2 years
<b>New York City</b> <sup>1</sup>	3	within 5 months of previous inspection	once annually
<b>Los Angeles County</b>	3	3 times annually	once annually
<b>Houston</b> <sup>19</sup>	3	once every 72 days	once every 2 years
<b>Marion County, IN (Indianapolis)</b>	4	once every 4 months	once every 12 months

Source: OIG research and communications with the jurisdictions.

## 2. Licenses, Inspections, and Reinspection Fees

The City requires business owners to obtain a Retail Food Establishment (RFE) license before engaging in any business involving the preparation, service, and/or public sale of perishable food.<sup>20</sup> To obtain an RFE license, the business owner pays a license application fee ranging from \$660 to \$1,100, depending on the square footage of the establishment. After paying the license application fee, but prior to receiving the license, the "premises must pass a public health inspection that focuses on food handling practices, product temperature, personal hygiene, facility maintenance, and pest control."<sup>21</sup> There is no separate fee for this initial inspection, or for the inspection required when an RFE license is renewed; the costs of inspections and

U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, "Food Code, 2013," 210 and 590, accessed September 28, 2016, <http://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/UCM374510.pdf> <<http://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/UCM374510.pdf>>.

<sup>17</sup> City of Chicago, Department of Public Health, "Rules and Regulations, Frequency of Inspection of Food

Establishments Based on Assessed Risk and Low-Risk Food Establishment Self-Certification Pilot Program," 2-3, accessed September 28, 2016, <http://www.cityofchicago.org/content/dam/city/depts/cdph/foodenv/general/REGSSelfCeitPilotdraftposting321.pdf> <<http://www.cityofchicago.org/content/dam/city/depts/cdph/foodenv/general/REGSSelfCeitPilotdraftposting321.pdf>>

The Illinois Municipal Code (as amended by P.A. 99-0458, effective August 24, 2015) allows CDPH to develop a self-inspection program for low-risk food establishments. See 65 ILCS 5/11-20-16(b-5). A City ordinance that went into effect on June-22, 2016, authorizes CDPH to create a self-certification program consistent with state law. See MCC § 7-42-015. The Department is drafting rules implementing such a program, but they are not yet in effect.

<sup>18</sup> New York City issues letter grades ("A," "B," or "C") to food establishments based on the results of their previous inspections. The grading system and related inspection frequency is illustrated at NYC Health, "Inspection Cycle Overview," accessed September 28, 2016, <<http://www1.nyc.gov/assets/doh/downloads/pdf/rii/inspection-cycle-overview.pdf>>. As illustrated in the Overview, an "A" establishment may have a longer or shorter inspection interval depending on whether the grade was assigned during an initial inspection or a re-inspection.

<sup>19</sup> Houston uses three risk categories and five performance scores to determine inspection frequency. This table shows the inspection frequency for the highest risk, poorest score establishments and the lowest risk, best score establishments.

<sup>20</sup> For more information about opening a restaurant in the City, see the City's Restaurant Quick Guide to Licenses, Permits, & Inspections, accessed September 28, 2016, <http://www.cityofchicago.org/conciti/dam/city/clepts/riiavor/Restaurant/SectionAGettingStarled.pdf> <<http://www.cityofchicago.org/conciti/dam/city/clepts/riiavor/Restaurant/SectionAGettingStarled.pdf>>

<sup>21</sup> See "Retail Food Service," accessed September 28, 2016, <<https://www.cityofchicago.org/city/cn/prouis/inspectionspermitting/retailfood.html>>.

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reinspections are considered part of the license fees.<sup>22</sup> Likewise, there is no fee associated with the risk-based and complaint-based inspections described in the previous section. If a business fails an inspection, however, the City imposes a \$50 reinspection fee, pursuant to MCC § 7-42-070. CDPH estimates that it costs \$103.84 to conduct a reinspection-more than double the \$50 reinspection fee.

### 3. Violations of Food Safety Requirements

CDPH sanitarians complete a Food Establishment Inspection Report for each inspection conducted, categorizing the final result as one the following:

- Passed - no critical or serious violation discovered
- Passed with Conditions - critical violations discovered but corrected during the inspection
- Failed - critical or serious violations discovered and not corrected during the inspection
- No Entry - facility closed and therefore not inspected
- Out of Business - facility no longer operating and therefore not inspected
- Canceled - inspection canceled and subject to rescheduling

The City's Food Code classifies violations as critical, serious, or minor,"" and MCC § 7-42-090 sets the fines for each type of violation, as described in the table below. In 2015, CDPH issued \$2.8 million in food-safety citations.

CDPH expressed the understanding that a portion of food establishment business license fees is intended to offset the cost of routine food inspections, but the Department was unsure whether the full cost of the inspection was included in the license fee.

"" MCC § 7-42-030(a) directs the Board of Health to "promulgate rules and regulations classifying violations of this chapter. Chapter 7-38, Chapter 7-40 and the rules and regulations promulgated thereunder or by the Illinois Department of Public Health, or any other provision of this Municipal Code relating to health and sanitation in any food establishment as critical, serious or minor."

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#### Violation Types and Fines

\* ; >::

; Critical;- A critical violation creates an imminent health hazard. Critical violations that are not corrected during the inspection result in the issuance of a citation and closure of the food establishment. An establishment closed for one or more critical violations, must correct the violations; and apply for reinspection. MCC § 7-42-660 requires CDPH to conduct the reinspection within 48 hours of receiving

the application. The City, imposes a \$500 fine per critical violation. Characteristics of a critical violation include,

Inadequate facilities to; maintain proper temperature

v- , ■ •\*>

- Sources of cross contamination not controlled i.e. cutting boards, food handlers, utensils etc. > Personnel with-- infections or festering; open sores, wounds etc. "

>... Hands not washed and clean, poor hygienic practices; Bare hand contact with ready to eat food not

' minimized " ■ " . '■

Evidence of rodent or insect infestation; birds, turtles; [or- other animals on premises . U ...

Serious - A serious violation will likely create an imminent health hazard if not corrected within the time frame specified by CDPH. When a sanitarian identifies one or more serious violations, the establishment receives a "Correct By" date set five business days forward and schedules a reinspection. If a serious violation has not been corrected upon reinspection; the violation is upgraded to "critical" and can result in closure, as described, above. The City, imposes a fine of \$250 per, serious violation. Characteristics of a serious violation include,

- Food not protected during storage, preparation, display, service and transportation • ■ ■ , . V;

- Potentially hazardous foods improperly thawed
- >' Inside containers or receptacles, not covered, inadequate: numD'ei-^not\*insect/rodent proof, not clean
- >• Potentially^hazardous foods^ improperly .thawed Potentially,;hazardous foods improperly thawed
- unwrapped and potentially hazardous food fe-served; . i
- NoiCertified Food Manager on siteiduringttimesiwhen\*pote'ntially#hazafdots foods are prepared\*and served - '
- >?j"Dislw washing facilities; no^propxcly^designed^'cdnstmcid, 'maintained, installed, located: ^and , operated. , ..

Minor ~\*A minor; violation is less likely; thansa; critical or serious violation to contribute to food contamination; illness, or environmentakdegradation^Sanitariahs.provide notice to food establishments of minor^violations, but do^not issue citations;"Minor:::ivibrations"must: be corrected by the next regular inspection. Each minor violation- that\*is\*not^correcte.d -by, the«next&inspection is upgraded.stoia serious violation and subject to a \$250 fine. Characteristics of a minor violation include,

- > Food not in original container,;not properlyilabeled; no customenadvisory posted as required
- .:.\* Clean\*multi-use.Niitensif and single service articles improperly stored; re-use of singleiservice articles
- Food.and non-food contact surfacestimproperlydesigned, constructed and maintained:.. v^^\*TM^.-
- >,! Refrigeration,thennometers not provided or conspicuous ;" ', ,;'
- Unauthorized persons in food preparation area

Source: Summarized from MCC § 7-42-090 and CDPH "Rules and Regulations Pertaining to Sanitation Practices in Food Establishments: 'The Food Code'"

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### C. Public Reporting of Food Inspection Results

CDPH conducted 20,900 food establishment inspections in 2015 and posted records of the inspections on the City Data Portal."<sup>4</sup> Each record includes the ID number, date, and type of food inspection (e.g., license, canvass,<sup>25</sup> complaint, reinspection); the name, address, and type of food establishment; the risk level (high, medium, or low); the inspection result (e.g., pass, fail, pass with conditions); and a description of any violations discovered. The Data Portal also includes an interactive map showing where inspections occurred, allowing users to click on restaurants to see their inspection results.<sup>26</sup> The Data Portal contains only information related to completed inspections; it does not track the rate at which CDPH completes required food inspections.

City of Chicago Data Portal, "Food Inspections," accessed September 28, 2016. <<https://data.cityofchicago.org/l-health-Human-Services/Food-Inspections/4iin-s7e5>>.

⇒ Canvass inspections are those inspections to be conducted on a regular frequency as defined in section B above.

City of Chicago, Data Portal, "Food Inspections - Map," accessed September 28, 2016, <<https://data.cityofchicago.org/Health-l-human-Services/Food-Inspections-Map/cnfp-tsxc>>.

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### **III. Objectives, Scope, and Methodology**

#### **A. Objectives**

The objectives of the audit were to determine whether,

- CDPH conducts routine inspections of food establishments as frequently as required by the Department's rules and regulations;
- CDPH conducts timely reinspections and complaint-based inspections as required by the Department's rules and regulations; and
- food inspection records on the City's Data Portal are complete and accurate.

#### **B. Scope**

This audit focused on routine health inspections of permanent food establishments conducted in 2015 by CDPH, as described by MCC § 7-42-010 and the relevant rules and regulations, including any reinspection or enforcement action related to those inspections.

This audit did not assess the quality of individual inspections or the work of individual sanitarians. This audit also did not review inspections for temporary food establishments, such as farmer's markets, carnival vendors, and seasonal food stands, because such inspections follow different processes.

### **C. Methodology**

To determine whether CDPH maintains a complete inventory of food establishments requiring inspection, OIG interviewed CDPH staff to understand the Department's process for obtaining data on business licenses. We then reviewed documentation and datasets related to this process to ensure that CDPH's data was sufficiently reliable for further analysis. We determined that CDPH's process reliably captures food establishment business licenses requiring inspection, and that CDPH license and inspection data could be used to answer our objectives.<sup>27</sup>

To determine whether CDPH conducted routine inspections of food establishments as often as required in 2015, OIG obtained a dataset detailing inspections directly from the Department's

<sup>27</sup> In March 2015, CBS 2 reported that some hospital kitchens had not been inspected for years because "the city thought state government was inspecting the [patient] kitchens while the state thought the city was conducting the inspections." OIG discussed this issue with CDPH and confirmed that CDPH had resolved the miscommunication and had added hospital kitchens to its inventory query.

See: CBS 2. "2 Investigators: City, State Assumed The Other Was Inspecting Hospital Kitchens," March 9, 2015, accessed September 28, 2016, <<http://chicago.cbslocal.com/2015/03/09/2-investigators-city-state-assumed-the-other-was-inspecting-hospital-kitchens/>>.

In May 2015, the Chicago Tribune reported that CDPH "failed to visit hundreds of day cares that prepare and serve food to young children" in 2014. OIG discussed this issue with CDPH and confirmed that the Department had made changes to its inventory to ensure that all daycares received an inspection in 2015 and to avoid this issue in the future.

See: Chicago Tribune, "Chicago food safety inspectors overlook hundreds of day cares," May 15, 2015, accessed September 28, 2016, <http://www.chicagotribune.com/news/walchdot/ct-davcare-food-inspections-met-20150516-> <<http://www.chicagotribune.com/news/walchdot/ct-davcare-food-inspections-met-20150516->>sierv.html.

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database. We also obtained a dataset detailing all active business licenses in CDPH's database as of January 4, 2016. We used these two datasets to determine how many times CDPH inspected each active food establishment in 2015.<sup>28</sup> We then calculated the percentage of establishments in each risk category that received the number of required inspections, and analyzed the data to determine how long individual establishments had gone without receiving inspections.

To determine whether CDPH had sufficient staff to meet its inspection workload, OIG used CDPH's business license inventory data to estimate how many total inspections the Department would need to complete annually to meet the inspection frequency requirements. This gave us CDPH's estimated annual inspection workload. Using this workload estimate, we calculated the staffing need based on FDA guidance.

To determine whether CDPH followed up on serious violations in a timely manner, OIG reviewed a random sample of 118 inspections where the outcome was "Fail." We reviewed each inspection that included a serious violation to determine if CDPH had reinspected the establishment and, if so, how many days had elapsed between the initial inspection and the reinspection.

To determine whether CDPH reinspected establishments with critical violations within 48 hours of a request for reinspection, OIG reviewed records for 125 establishments that were ordered closed for critical violations between January 1, 2015 and December 10, 2015.<sup>29</sup> We reviewed the date of the violation, the date that the owner of each establishment requested reinspection, and the date of CDPH's reinspection. We then calculated the days elapsed from the request for reinspection to the completed reinspection.

To determine whether CDPH followed up on 311 complaints related to food establishments in a timely manner, OIG reviewed a random sample of 119 complaints, out of a total of 3,168 received in 2015.<sup>30</sup> For each complaint, we determined if CDPH classified the complaint as requiring an inspection. For those that did require an inspection, we identified the corresponding inspections for each complaint and then calculated the days elapsed from the receipt of the complaint to the date of inspection. We then compared the elapsed days to CDPH's goal of addressing complaints within 21 days.<sup>31</sup>

Finally, to determine whether inspection records posted to the City's Data Portal were complete and accurate, we compared the information posted to the Data Portal to the full dataset of inspections conducted in 2015 that we obtained directly from CDPH's database.

<sup>28</sup> For the purposes of this analysis, we did not consider any inspections related to establishments that are no longer in CDPH's inventory. This left a total of 19,113 inspections related to active licenses as of January 4, 2016. <sup>29</sup> Ten establishments in the sample did not request a reinspection during OIG's testing period; CDPH could not locate the request for reinspection form for one establishment; and CDPH issued a cease and desist order on one establishment for the lack of a license (therefore it was not subject to reinspection within 48 hours). Our analysis focused on the remaining 113 establishments.

<sup>30</sup> Of this sample, 30 complaints were not assigned to sanitarians because the Department determined either that the complaint did not contain enough information to support an inspection or that the potential violation was minor enough to warrant a warning letter in lieu of inspection. Our analysis focused on the remaining 89 complaints. <sup>31</sup> CDPH stated that it prioritizes those complaints (hat indicate for a significant risk of food borne illnesses and completes such complaints within five days.

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#### **D. Standards**

We conducted this audit in accordance with generally accepted Government Auditing Standards issued by the Comptroller General of the United States. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### **E. Authority and Role**

The authority to perform this audit is established in the City of Chicago Municipal Code § 2-56-030 which states that OIG has the power and duty to review the programs of City government in order to identify any inefficiencies, waste, and potential for misconduct, and to promote economy, efficiency, effectiveness, and integrity in the administration of City programs and operations.

The role of OIG is to review City operations and make recommendations for improvement.

City management is responsible for establishing and maintaining processes to ensure that City programs operate economically, efficiently, effectively, and with integrity.

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#### **IV. Findings and Recommendations**

**Finding 1: CDPH performed the required number of routine food inspections of only 43.9% of High-Risk, 80.1% of Medium-Risk, and 24.8% of Low-Risk establishments.**

OIG found that CDPH did not meet the inspection frequency requirements under its rules and regulations, which incorporate the standards required under state law. CDPH's failure to complete the required inspections may have allowed establishments to expose the public to an increased risk of foodborne illness. In addition, although CDPH met the terms of its corrective action plan for 2015,<sup>32</sup> the Department fell significantly short of the inspection frequency required under the Illinois Administrative Code. The State has allowed Chicago to propose and meet annual corrective action plans requiring significantly fewer inspections. However, in the future, IDPH could reject any corrective action plan proposed by CDPH, and revoke the City's LHPG funds, which totaled \$2.5 million in 2015.<sup>33</sup> The following table shows the total number of Chicago establishments by risk category and the number for which CDPH completed the required inspections.

<u>Medium</u>	<u>Once Annually</u>	<u>3,092</u>	<u>2,478</u>	<u>80.1%</u>
<u>Low</u>	<u>Orfce Every Two Years</u>	<u>: 4,354</u>	<u>" 1,078 24.8^1fg</u>	

Source: OIG analysis of CDPH food inspection and business license data.

CDPH conducted 20,900 food inspections in 2015, but, given the number of establishments in each risk category, it should have conducted 30,026.<sup>34</sup> FDA recommends one sanitarian for every 280 to 320 annual inspections. Therefore, CDPH would need at least 94 food inspectors to conduct all required inspections.<sup>33</sup> At the time of this audit, the Department's budget allowed for only 38 full-time sanitarians-56 less than recommended by FDA.

■<sup>32</sup>: The corrective action plan committed CDPH to 1) inspecting all high-risk establishments at least once per year and 20% of high-risk establishments twice per year; 2) inspecting 50% of medium-risk establishments once per year; and 3) inspecting 10% of low-risk establishments once per year. The Background section of this report explains the corrective action plan required by IDPH.

-<sup>31</sup> The City received \$2.5 million in LHPG funds from IDPH in 2015, and allocated \$969.21 I of those funds to food protection.

<sup>31</sup> This number is based on 2015 data and includes 21,515 routine inspections based on each establishment's risk level, 5,164 reinspections (calculated based on the 2015 ratio of inspections to reinspections), and 3,347 complaint inspections.

Because OIG bases this estimate on the high range of the FDA's recommendation-320 inspections per sanitarian-it constitutes a conservative prescription for the number of sanitarians needed. If each sanitarian conducted fewer inspections, more sanitarians would be required. It is also important to note that the Food Protection Division has other responsibilities not included in this analysis, such as inspections of temporary food establishments and swimming pools. Including those responsibilities could further increase the number of sanitarians needed to complete all required inspections.

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It should be noted that the food inspection revenue generated by violation fines,"" reinspection fees/<sup>7</sup> and a portion of the business license fees<sup>3\*</sup> flows to the City's Corporate Fund, and is not earmarked for CDPH or the Food Protection Division. Furthermore, the current fine and reinspection/license fee amounts bear little or no relationship to the actual cost of conducting food inspections. For example, CDPH estimates that it costs SI03.84 to conduct a reinspection- more than double the \$50 reinspection fee. .

## Recommendation:

The City, through CDPH, should collaborate with IDPH to abandon the current ad-hoc approach to the annual decision whether the City qualifies for LHPG funds, and replace it with a permanent food inspection schedule that is both feasible in light of resources that can be made available to CDPH and sufficiently rigorous to promote food safety in an effective manner.<sup>39</sup> To the extent this requires amending State administrative rules, CDPH should work with IDPH to effect the necessary changes. As part of the collaborative process to develop the new schedule, CDPH and IDPH may wish to consult with State and federal agencies, academic institutions, and health-focused non-governmental organizations to develop a science-based understanding of what food inspection regimen would optimally protect public health while making efficient use of taxpayer dollars. In addition, CDPH should seek assurances from IDPH that compliance with the new schedule will fulfill the food-safety element of maintaining CDPH's status as a certified local health department. Reaching these related understandings with IDPH will allow CDPH both to comply with the letter of the law, thereby fostering public trust and confidence in this important public health and safety program, and to replace the current tenuous approach to establishing LHPG eligibility with one where access to crucial State funding is reasonably secure, not an annual source of uncertainty.

Once the City settles its responsibilities under State law and grant-eligibility criteria, CDPH should work with OBM to acquire sufficient staff to implement the new food inspection schedule. To the extent necessary, the City should consider funding additional positions through the fee, fine, and license revenue generated by food inspection operations that currently is not directed back into the program, but rather is directed to the Corporate Fund for use as determined by OBM. CDPH should also consider working with OBM to right-size fee, fine, and licensing rates to bring them into closer alignment with program costs.

In the event the City is unable to implement the strategy outlined above, CDPH should seek the resources necessary to bring its food inspection program into compliance with the existing State requirements, either from OBM or from IDPH in the form of additional LHPG funds, or from a

''' In 2015, CDPH issued citations for Food Code violations totaling nearly \$2.8 million.

''' CDPH conducted 3,809 reinspections in 2015 and charged \$50 for each reinspection. Based on these figures, the Department charged \$190,450 in reinspection fees.

CDPH expressed the understanding that a portion of food establishment business license fees is intended to offset the cost of routine food inspections, but the Department was unsure whether the full cost of the inspection was included in the license fee.

As we note above, because the City is a home-rule municipality located in Cook County, it has the power to implement its own food inspection standards. However, doing so unilaterally would likely result in IDPH decertifying CDPH as a local health department, which would trigger the preemption of the City's home-rule authority in this area.

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combination of both sources. The status quo of consistently falling short in this area is untenable, both because chronic failure to meet legal standards undermines public trust in government and because it places the City in constant jeopardy of losing LHPG funds, thereby exacerbating the already vexing problem of finding the funds to achieve compliance.

v.

#### **Management Response:**

*"While the Department has made progress in increasing both the frequency and number of inspections - in part by making a series of reforms to increase productivity of our inspection workforce - we recognize there is progress yet to be made.*

*"In 2015, CDPH worked with IDPH to develop new approaches to meet grant requirements, including a self-inspection program for low risk food establishments. In the coming year, CDPH will re-engage IDPH to establish a permanent food inspection schedule that is both feasible to execute and sufficiently rigorous to promote food safety. CDPH will convene a meeting with IDPH within two months to discuss making these changes. If IDPH is amenable to such adjustments, we will work with them to develop and implement an alternative approach while seeking assurance from them that compliance with this alternative will fulfill the food-safety element of maintaining our status as a certified local health department. This would provide certainty around crucial State funding from year to year.*

*"CDPH's reforms to increase the productivity of our inspection workforce and innovative approaches including predictive modeling and a self-inspection program for low risk establishments have been cost-effective ways to increase inspections and have enabled the Department to maintain level State funding even during the budget impasse. CDPH will build on this progress going forward, in line with the recommendations in the OIG's report.*

*"Should a new inspection schedule be agreed to by IDPH, CDPH will work with OBM to develop an implementation*

*plan, including resources, for the new schedule. Should a new inspection schedule not be agreed to by IDPH, CDPH will work with OBM to develop an implementation plan, including resources, to bring ourselves into compliance with existing LHPG rules.*

*"As part of this process, CDPH will evaluate fees and fines related to food inspection operations. In order to do so, the Department will:*

- Work with the Department of Administrative Hearings, the Department of Finance, and the Department of Business Affairs and Consumer Protection to confirm the total amount of revenue currently generated by fines, re-inspection fees, and license fees for the issuance of food-related licenses:*
- Calculate an updated estimate for the cost of operating the Food Protection Program, including compliance with the LHPG requirements; and*
- Complete an analysis of the City's fine, fee, and licensing rates as well as Food Protection Program costs, as compared to other jurisdictions.*

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*Based on the above findings, CDPH will then work with OBM and the Department of Law to propose updated fees, fines, and licensing rates, as appropriate. "*

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**Finding 2: CDPH conducted reinspections and complaint-based inspections in a timely manner.**

OIG found that CDPH conducted most reinspections of known violations and inspections prompted by public complaints within the required timeframes or shortly thereafter. Specifically, we reviewed samples<sup>40</sup> of reinspection and complaint-based inspection records and found,

Critical Violations: CDPH conducted 110, or 97.4% of 113, critical violation reinspections within 48 hours of a request for reinspection from establishments that had been closed following critical violations, as required by MCC § 7-42-060.<sup>41</sup>

Serious Violations: CDPH conducted 93, or 93.9% of 99, serious violation reinspections within seven days of the "Correct By" date provided by the sanitarian at the time of the initial inspection.<sup>42</sup> On median, the Department reinspected serious violations within two business days of the "Correct By" date provided to the establishment at the time of the initial inspection<sup>43</sup>

Complaints: CDPH conducted inspections in response to 87, or 97.8% of 89, public complaints within 21 days<sup>44</sup> of receiving the complaint, as required by the Department's standard operating procedures.

CDPH's timely completion of reinspections and complaint-based inspections shows that CDPH addressed known public health concerns. In addition, CDPH's prompt response to requests for reinspection meant that businesses that had been

closed for critical violations discovered during inspections remained closed no longer than necessary once the violations had been resolved.

**Management Response:**

*"Thank you for acknowledging the CDPH's success in conducting re-inspections and complaint-based inspections in a timely manner. To strengthen our re-inspection program, CDPH Food Protection Program Standard Operating Procedure will be updated to include internal policy to conduct re-inspections of establishments with serious violations within seven days of the reinspection date noted on the inspection report. "*

OIG did not extrapolate the sample results to the total population of inspections because not all inspections in each sample were relevant to the analysis. See the Methodology section of this report for more detail regarding the samples.

<sup>41</sup> Records of the three establishments that CDPH did not inspect within the 4S-hour window show that the Department inspected one within three days, one within four days, and one within five days following the request. "" CDPH does not have an established target date for reinspecting establishments with serious violations. In the absence of an established target date, OIG used seven days.

<sup>42</sup> Records of the six establishments that CDPH did not reinspect within seven days show that the reinspections occurred 9, 12, 14, 16, 29, and 149 days after the "Correct By" date.

<sup>11</sup> OIG focused on CDPH's goal of conducting complaint-based inspections within 21 days of receipt. However, CDPH stated that it prioritizes complaints involving suspected food poisoning and strives to complete these complaint inspections within five days.

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**Finding 3: CDPH's relationship with its software vendor did not meet current City policies regarding data maintenance and licensing.**

OIG determined that CDPH did not have a contract with the vendor that provided the software supporting food inspection operations. Furthermore, CDPH did not procure the software through the Department of Procurement Services (DPS). While the policies of the Department of Innovation and Technology (DOIT) allow City departments to pay for renewal of a software license without a contract, this vendor also provided off-site storage and maintenance of food inspection data. According to DOIT, CDPH's vendor relationship did not follow City policies regarding standard data maintenance and licensing models. The inclusion of data storage and maintenance service requires contractual protections regarding the security of CDPH data, the use of the data, and the status of the data were the vendor to cease operations.

Current CDPH staff stated that the vendor relationship began years ago, prior to their involvement, and the Department had always treated its transactions with the vendor as a software license renewal.

**Recommendation:**

During the audit, CDPH stated that it had begun working with DPS and DOIT to review the vendor relationship. OIG recommends that CDPH continue to work with DPS and DOIT to bring the vendor relationship into compliance with City policies. In addition, CDPH should review other vendor relationships similar to that with the food inspection software vendor to ensure that all meet DPS and DOIT policies.

**Management Response:**

*"As rioted in OIG's report, when this issue was first brought to CDPH's attention, we immediately sought the advice and assistance of DPS and DOIT. Using one of DOIT's pre-approved vendors for software licenses, we were able to renew this license in a manner that complies with City policy.*

*"In addition, CDPH is in the process of reviewing other vendor relationships. CDPH will inventory all software used by Department programs and assess whether all such relationships are in compliance with City policies. If CDPH identifies similar issues with any other software, we will work with DPS and DOIT to identify and implement solutions. "*

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**Finding 4: CDPH posted complete and accurate food inspection data to the City's Data Portal.**

OIG compared CDPH's food inspection records to the data posted to the City of Chicago Data Portal for all 20,900 food inspections conducted in 2015. Based on this review, we concluded that CDPH provided the public with complete and accurate information regarding individual food establishment inspections.

**Management Response:**

*"Thank you for acknowledging the CDPH's success in posting complete and accurate food inspection data to the City's Data Portal for all 20,900 inspections conducted in 2015."*

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### **City of Chicago Office of Inspector General**

#### **Public Inquiries**

Rachel Lcven (773) 478-0534 rleven(a}  
chicaeoinspectorgeneral.org

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### **Mission**

The City of Chicago Office of Inspector General (OIG) is an independent, nonpartisan oversight agency whose mission is to promote economy, efficiency, effectiveness, and integrity in the administration of programs and operations of City government. OIG achieves this mission through,

administrative and criminal investigations; audits of City programs and operations; and reviews of City programs, operations, and policies.

From these activities, OIG issues reports of findings and disciplinary and other recommendations to assure that City officials, employees, and vendors are held accountable for the provision of efficient, cost-effective government operations and further to prevent, detect, identify, expose and eliminate waste, inefficiency, misconduct, fraud, corruption, and abuse of public authority and resources.

### **Authority**

The authority to produce reports and recommendations on ways to improve City operations is established in the City of Chicago Municipal Code § 2-56-030(c), which confers upon the Inspector General the following power and duty:

*To promote economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the city government by reviewing programs, identifying any inefficiencies, waste and potential for misconduct therein, and recommending to the mayor and the city council policies and methods for the elimination of inefficiencies and waste, and the prevention of misconduct.*