



## SUE MEANS DISTRICT 5

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MEMBER OF  
APPOINTMENT  
REVIEW, BUDGET  
AND FINANCE,  
HEALTH AND HUMAN  
SERVICES AND  
PARKS, COMMITTEES

*For Immediate Release*

### **Council Member Means Questions Legality of Proposed Restaurant Grading System**

October 1, 2014 – County Council Member Sue Means today expressed concern that the administration of County Executive Rich Fitzgerald continues to advance a proposal for a new restaurant grading system, despite evidence that state law currently prevents Allegheny County from adopting such a system.

Means shared a letter from State Representative John Maher (R-Upper St. Clair), who chairs the House Agriculture Committee, indicating that the Pennsylvania Department of Agriculture maintains jurisdiction over commercial food establishment inspections and that counties conducting their own inspections must “meet and not exceed” state regulations. (A copy of Rep. Maher’s September 29 letter to Councilwoman Means and County Executive Fitzgerald is attached.)

Means charged that representatives of the local chapter of the Pennsylvania Restaurant and Lodging Association have explained this issue of state preemption previously, but that the county has proceeded with its plan anyhow.

“Despite the likelihood of legal action by the restaurant industry, the Fitzgerald administration has continued to push for this grading proposal,” Means stated.

“I am very concerned that County Executive Fitzgerald has pursued this change when information was so readily available to me and others indicating that such a system is not permissible under state law. To pass this proposal would expose the County to costly lawsuits and cause distress to our local food establishments. In the spirit of fiscal integrity, I would like to know how much money and tax-funded labor has been spent in moving this proposal along when it is clearly preempted by the Commonwealth.”

For more information, contact Council Member Means at 412-350-6545.

**JOHN A. MAHER**  
MEMBER



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HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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September 29, 2014

Honorable Sue Means  
Member of Council  
Allegheny County, PA

Re: Restaurant Inspections

Dear Councilmember Means:

I am fortunate to be an Allegheny County resident serving as Chairman of the Agriculture Committee of the Pennsylvania House of Representatives. Agriculture is our state's #1 industry. The responsibilities of the agriculture committee includes where food connects with people in restaurants and other venues.

I understand that the Allegheny County Board of Health has recommended introduction of a "Food Safety Grading Policy and Procedure," that County Council has been asked to consider.

Back in 1945, the City of Pittsburgh adopted an "ABC Ordinance" that enacted restaurant inspections which yielded letter grades of A, B or C. Pittsburgh was not the first and would not be the last to do so. Cities, counties, and municipalities of all sorts adopted hundreds of different restaurant inspection standards across the state.

Twenty years ago, cries for consistency in restaurant inspection standards across all of Pennsylvania led to the creation of Chapter 57, the Food Protection chapter of Title 3. While setting uniform inspection standards for all of Pennsylvania, Chapter 57 continued to permit local governments to issue licenses and conduct the actual inspections, if they wished. However, local discretion over the standards for the inspection was altogether eliminated in 1994. Consider 3 PACS, Section 5703(e)(2):

"Rules and regulations adopted by a licensor who is not the [Pennsylvania] department [of Agriculture] shall meet and not exceed the requirements of this subchapter and the rules and regulations of the department [of Agriculture]."

Simply put, Allegheny County's restaurant licensing and inspection standards must "meet and not exceed" state law. At this point, state law makes no provision for any local government to enact a restaurant grading inspection system like the one recommended by the Allegheny County Board of Health.

Should Allegheny County Council be interested in pursuing such an inspection grading system, I would be very happy to discuss the changes necessary to state law to authorize Allegheny County Council to enact one.

Without considering the merits of the proposal, I do recall seeing and wondering about the letter grade stickers posted at entrances to Pittsburgh restaurants during the 1980's. By the 1950's, hundreds of governments across the nation had adopted "ABC" grading but most such systems have been repealed in the years since. The national trend in recent decades has clearly been an embrace of the "pass/fail" system that Pennsylvania state law currently requires.

If I can be of any further assistance, I trust that you will contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Maher". The signature is fluid and cursive, with the first name "John" being the most prominent.

John A. Maher

cc: Hon. Rich Fitzgerald