



SUE MEANS DISTRICT 5

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December 9, 2014 – FOR IMMEDIATE RELEASE
Contact Councilwoman Sue Means at [412-350-6545](tel:412-350-6545)

Means Urges County to Resolve Conflict with State Law before Proceeding with Restaurant Grading Proposal

With County Council's public hearing on a proposed new restaurant grading system scheduled for Wednesday, December 10, County Councilwoman Sue Means today urged her colleagues to resolve the question of the proposal's permissibility under state law before they proceed with the legislation.

"We are acting as if we are an independent entity rather than in one of the 67 counties of the Commonwealth of Pennsylvania," Means stated. "We have in our hands two letters from the chairman of the Pennsylvania House Agriculture Committee, stating firmly that Allegheny County's proposed restaurant grading system is contrary to state law governing food safety inspections. And yet we are moving forward as if that issue doesn't even exist."

Means referred to letters sent by State Rep. John Maher to Allegheny County officials. In those letters, Maher explained that county inspection provisions must "meet but not exceed" the standards established in state law, because of a concern for maintaining statewide uniformity. Maher indicated that Fitzgerald's proposal to give grades of A, B, or C to restaurants would not comply with state law.

Maher has offered to work with Allegheny County in developing legislation that would make the county's proposed grading system permissible. As of last report, county leaders had not responded to his offer.

Means stated, "I can't focus on debating the pros and cons of an idea that appears to be blatantly illegal under current state law. To ignore that fact is foolish and arrogant, and it only sets us up for costly legal battles.

"As a result," Means concluded, "I urge Health and Human Services Committee Chairman John Palmiere and our colleagues on County Council to make resolving the legality of the proposed measure a major part of Wednesday's hearing, and not to pretend that this issue will go away if we ignore it."

JOHN A. MAHER
MEMBER



113 RYAN BUILDING
HARRISBURG, PA 17120-2040

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

(717) 783-1522
JMAHER@PAHOUSEGOP.COM

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

JOHN A. MAHER
MEMBER



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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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November 6, 2014

Dr. Karen Hacker
Director
Allegheny County Health Department
955 Rivermont Drive
Pittsburgh, PA 15207

Re: Restaurant Inspections

Dear Dr. Hacker:

I am fortunate to be an Allegheny County resident who serves as Chairman of the Agriculture Committee of the Pennsylvania House of Representatives. Agriculture is our state's #1 industry. The scope of responsibilities of the Agriculture Committee includes where people consume foods 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. In September, I sent a letter on this subject to a member of County Council with a copy to the County Executive.

This morning's newspaper attributed to you a document labeled, "Industry Comments on the ACHD Food Facility Grading Program." That document includes the following statements that convey that you may be unfamiliar with the actual state law:

"Comment 7: The proposed grading system is illegal

Response: The Grading System is legal because it is simply an administrative tool used to more transparently convey the results of the inspection to the public. It does not in any way alter the food safety regulations that are required to be enforced uniformly across the state. It merely assigns a grade to an existing inspection."

Twenty years ago, the desire for statewide consistency in all matters related to restaurant inspections led to the enactment of a state law (Chapter 57, the Food Protection chapter of Title 3). The law clearly and specifically preempts local rules and regulations regarding any aspect of inspections.

Chapter 57 does permit local governments to continue to issue licenses and conduct the actual inspections. However, local discretion over the rules and regulations for restaurant inspection was altogether eliminated in 1994. Consider 3 PACS, Section 5703(e)(2):

"Inspections

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]."

Allegheny County's is a licensor on behalf of the state. Allegheny County's inspection rules and regulations must "meet and not exceed" state law. At this point, state law makes no provision for any local government to enact inspection grading such has been recommended by the Allegheny County Board of Health. The proposed County ordinance would clearly violate the "meet and not exceed" inspection requirement in several ways, not just with the inspection grading but also including the rules about re-inspections and related fees.

As I offered in September, 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. (I have had no expression of any such interest from Allegheny County since my September offer.)

Without considering the merits of the proposal, I do recall seeing letter grade inspection stickers posted at entrances to Pittsburgh restaurants during the 1980's. Such local inspection rules and regulations were preempted across Pennsylvania by Chapter 57 two decades ago. Anyone whose education ever included taking tests that were "pass/fail" or graded knows the two are very different.

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

Sincerely,



John A. Maher

cc: Hon. Rich Fitzgerald
Hon. John Palmiere
Hon. Sue Means ✓