ALLEGHENY COUNTY COUNCIL

RESTAURANT GRADING PUBLIC HEARING

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BEFORE:

Tom Baker	-	District 1
Ed Kress	-	District 3
Michael J. Finnerty	-	District 4
Sue Means	-	District 5
John F. Palmiere	-	District 6
Robert J. Macey	-	District 9
Barbara Daly Danko	-	District 11

Allegheny County Courthouse
Fourth Floor, Gold Room
436 Grant Street
Pittsburgh, Pennsylvania 15219

Wednesday, December 10, 2014 - 4:00 p.m.

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IN ATTENDANCE:

William McKain - County Manager
Joseph Catanese - Director of Constituent Services
Jared Barker - Director of Legislative Services
Walter Szymanski - Budget Director
Andrew F. Szefi - County Solicitor

CHAIR PALMIERE: Welcome, everyone. They said we couldn't get anybody in here in December. Well, I got news for them. It's really nice to see everyone, and I wish you all a happy holiday season. And I'd like to start this, please, if you don't mind, with the Pledge of Allegiance; after me, if you'd stand, please.

(Pledge of Allegiance.)

CHAIR PALMIERE: Thank you. I just want to start this off --- this hearing by --- I got a couple of remarks here, and we're going to bring Mr. Szefi up, our county solicitor. There have been many misconceptions about the Board of Health proposal, and the Board of Health wants to provide a clear understanding of the proposed system to the committee here and to tend to all the people here today. The rationale for grading is prevent foodborne illness in the county, provide the terms for food safety violations, provide consumers with transparent information for decision-making. And today, we have many restaurants that have major violations and are repeat offenders.

Few people utilize online inspection reports. Many other cities and states use the food grading system with good results, both in terms of less foodborne illness and better inspections. Now, that being said, I want to bring Mr. Szefi up, please. Andy, if you don't mind?

MR. SZEFI: Sure. Thank you, Chairman Palmiere and members of Council, for having me here tonight and accommodating my schedule I think I mentioned to Councilman Palmiere, to go host the --- our holiday party, starting in a few minutes. If I'm not there buying drinks for the good people in the law department, things go off the rails pretty quickly. I have a --- there was a legal opinion from Councilwoman Means, which I have here to pass out. I'd like to just make a few remarks generally about it before I'll take any questions anyone has. In summary, we've read the letter, we've received the letters, copies of them from State Representative Maher.

We received a request from Councilwoman Means for a legal opinion regarding the legality of the proposed grading system. We searched all the applicable statutes, all the applicable regulations, read up on case law, history regarding challenges to grading systems. And our conclusion is that the proposed system would, indeed, be legal. The sort of charging --- the argument being made is that it would be --- exceed state law, or that it is

somehow pre-exempted by state law. But I want to address the first one first. In State Representative Maher's letter, he says that the county is precluded from implementing a system, that the system implemented mustn't --- must not meet --- or must meet and not exceed state law is the language cited from the Act, which is a very accurate presentation of what the Act says. There was a clarification asked by the state legislature in 2010 to eliminate confusion among the standards. And what that does, it does maintain the power in county governments, county health departments in other counties, to retain the responsibility for food/service/restaurant statutes.

That reason, really, is why the preemption argument isn't applicable. It's not a preemption issue. Preemption --- the state may, if it wants to, assume the field of regulation in an area. Really, in Pennsylvania, we've only done that in three --- three areas; it's banking, coal and alcohol sales. And that's when a state says you can't touch this. This is exclusively ours, and we exclusively regulate how this is done. Actually, what's happening here and what happens in food inspection and restaurant inspection in Pennsylvania, is almost quite the opposite. It specifically delegates to counties the ability to inspect and license restaurants.

So preemption, I think, may be the word was just used --- I don't know. Sometimes that word gets thrown around, but it's not as a legal doctrine, and it's not what's at stake here. The real question that it comes down to, does this system exceed state law? And I think --- and this point has been made before, but it's an important one. There's nothing about the substantive regulations that is inconsistent with what the state requires. Allegheny County, it's true, if the state says your refrigerators must be at 45 degrees, Allegheny County cannot --- their Health Department cannot say the state is a little reactionary here. We think 50 degrees is fine. They can't do that, and they haven't done that.

The standards themselves are perfectly consistent with state law. And what Representative Maher conclusively states in his letter is that the rules and regulations must meet and not exceed state law. At this point, state law makes no provision for any local government to enact an inspection rating. That's true. There is no provision there that says you can do this. There's no provision in there that says you can't do this.

There's no provision in there that says it must be pass/fail. There's no provision in there that says anything about what a good rating system must look like, or your grading system or your pass/fail system. None of that is in there. That's left up, essentially, to the discretion of the body that's doing the inspections. What you can't do, though, is change those standards regarding temperature and safety. You can't touch those. It's also important to note, I think --- and there's been some confusion about this --- at least, I sensed some confusion about this in Representative Maher's letter as well --- Allegheny County doesn't have a pass/fail system.

We have a green/yellow/red system. We have a three-tiered system currently. You see these stickers on restaurants all over, and they're green, but many people ascribe no importance to the color of that sticker. Before, a year or two ago, I started hearing that issue. I never even noticed one. They're green for a reason. Green means they passed inspection. If they look like --- you've seen these stickers on restaurants all over the place. Now, if they follow a certain threshold, they need a consumer alert. They get a yellow. And if they fall below and they fail, they get --- it says red. They look a little more orange to me, but they get an order to close posted on them.

There's nothing in the state law or the state regulations that permits this system. It has been in place since 2001. To my knowledge, there's been no legal challenge to it. There have been no records written about it. It has been the system that's been in place. Now, I say all this because I think it's important to note that to the extent that the legality of the system is being questioned, that exact same argument --- the exact same argument --- would be --- could be made against the current system. It has never been made, to my knowledge, by --- and I think, logically, the conclusion I draw from that, if that argument could be made against both the current green/yellow/red system, and it could be made against the letter grade system, but it's only being made against one. The legal argument is somewhat of a red herring. It's somewhat of a wash. I would submit that the real opposition to the system is the system is as it should be made, as it is made and should be had, whether it's a good idea, a bad idea, and that's what Council is here to do.

But with regard to the legal question to it, I don't consider it to be an issue. I think a challenge to the system would fail. I think it is perfectly legal. In the press release, Councilwoman Means, one thing I want to address, I don't see any prospect of a costly legal battle to the county. Any challenges the county releases are defended by the Law Department. They don't pay any outside counsel to defend anything. There is no fee provision challenging, you know, a local ordinance that --- this would achieve. Could there be a legal battle? There could be. We defend lawsuits every day. We don't get outside counsel for them; very rarely, in cases of a conflict. We addressed that a few times.

So I will --- I'll hand this out. Councilwoman Means, you can --- as the requester, I've got the original here for you, I think. And then Councilman Palmiere, I've got about 15 copies here. I figured you might want to give them to your other colleagues.

CHAIR PALMIERE: Okay. Jared will pass those out. Thank you.

MR. SZEFI: Thank you. So like I said, what I've done is summarize sort of what's in the legal opinion. It cites a number of legal authorities, a number of cases. Interestingly, one that --- one that comes up in the '50s, the City of Pittsburgh had a letter grading system. It went all the way up to the Supreme Court. Now, the law, the statute itself, changed in 2010, but based on our reading of that case, I think what you see is an analysis that a Court would do, well, precisely, mirror the analysis that was done by the Supreme Court back in the '50s, when they said this is a perfectly reasonable legitimate and legal exercise of a local government's authority.

To supplement just a little bit, one thing you need to keep in mind, as a home rule county --- I don't think this is dispositive of the issue, but it bolsters, sort of, the legality on the county side. As a home rule county, we are essentially empowered under the Home Rule and Optional Plans Law from 1968. We can do anything that the state law says unless the state law says we can't; whereas, under the old system of Dillon's Rule, counties were only empowered to do those things specifically enumerated in state statutes giving them those powers. Home rule is sort of the opposite --- the other side of that coin. You can do anything other than what state law

says you can't do. There was nothing in the applicable statutes about this that says you can't have a letter grade system. There's just nothing out there that says that. I think the argument that it exceeds it would ultimately fail. That is our opinion on the grounds that none of the substantive standards are changed. So I'm happy to take any questions that you might have.

CHAIR PALMIERE: Before we do that this evening, would you please acknowledge Councilman Finnerty, also? Thank you. Okay. No questions over here (indicating)? Any questions for Mr. Szefi? Yes?

MS. MEANS: I'd like to thank you for this. I'm not an attorney, but I thank you for the written opinion, and I will have an attorney review it; so thank you very much.

MR. SZEFI: Certainly.

CHAIR PALMIERE: Thank you, Andy, ---

MR. SZEFI: Thank you.

CHAIR PALMIERE: --- very much. Now at this time I'd like ---.

MR. FINNERTY: Excuse me.

CHAIR PALMIERE: Oh, I'm sorry. Go ahead.

MR. FINNERTY: I'd like to just say that I concur with our county solicitor. If you take a little of what was said about green, yellow and red, that was instituted in 2001, and the state is a pastel system. It was never --- there was no litigation against that. Thank you.

CHAIR PALMIERE: Thank you, Mr. Finnerty. Okay. At the present time --- Dr. Hacker, would you like to make your presentation, please?

DR. HACKER: I have some folders to hand out.

CHAIR PALMIERE: Okay. Jared, would you hand those out?

(Mr. Barker complies.)

MS. MEANS: I think we're going to enter those into the record.

CHAIR PALMIERE: Okay. You want to read it into the record; is that what you want to do? Or do you want just her reading it?

MS. MEANS: No, enter it into the record.

CHAIR PALMIERE: Okay. We can do that. It is my understanding, Congressman Maher's letter into ---.

MS. MEANS: I have two letters from Representative John Maher regarding the legality of

restaurant ratings, and I wanted to have them entered into the record.

CHAIR PALMIERE: Okay. That's fine.

MS. MEANS: Thank you.

CHAIR PALMIERE: Okay. Dr. Hacker?

DS. HACKER: Hello, Council members. Thank you for coming today. I am going to actually turn this over to Donna Scharding, who is our director of our food program, who's going to be doing this presentation. The format of the presentation, I hope, is that --- what we'd like to do is --- if possible, is to go through the presentation and then actually have questions, as opposed to having questions during the presentation, if that's alright with everyone. And hopefully, this will give you a pretty good idea and clarify any concerns or misconceptions that may be out there, so that you can understand what we are proposing and what the Board of Health have actually already proposed. So Donna, you may begin.

MS. SCHARDING: Thank you. Good afternoon --- it think it's on. Good afternoon. I'm Donna Scharding. I'm the manager of the food safety program, and I want to thank you for allowing me to do this presentation today. You did receive folders, and in your folder is a copy of the presentation, if you wish to follow along; so why --- why a grading system? Well, the ultimate goal is to prevent foodborne illness. We have high incidence of high risk violations. If we can reduce the rate, we will therefore raise the food safety level in Allegheny County. Having a grade posted will allow the consumer to make an immediate and informed decision.

So let's take a look at foodborne illness rates. Knowing that foodborne illnesses occur each year in the U.S., that's one in six people becoming ill from food-related illness. These illnesses result in thousands of hospitalizations and thousands of deaths. Reducing foodborne illness by ten percent would keep 5,000,000 Americans from getting sick each year. And it's an interesting statistic that preventing one single case of E. coli, or 0157 infection, would save an estimated $7,000,000 in the U.S.

Now, where does foodborne illness originate? What's the source? Seventy-eight (78) percent of reported foodborne illness occurs as a result of food consumed outside of the home. Restaurants of all types --- that's

sit down, take out --- are the highest at 60 percent. Here we have the enteric infections for Allegheny County, the most commonly diagnosed illnesses that are required to be reported. Now, salmonella and campylobacter are the most prominent. Campylobacter is rising, just as the CDC stats indicate. In 2013, we had 129 infections, which was over 118 in 2012. Now, remember, those that are reported only represent five percent of actual illnesses.

Do grading systems lead to reductions in foodborne disease? We have statistics from the most tried and true systems. Nearly 20 percent reduction in hospitalizations for Los Angeles County in the year following implementation of the grading system was reported. It's also important to note that reductions in L.A. were not noted in the rest of California.

New York City reported salmonella decreased 14 percent the year after the grading began. That's the --- that was the lowest in 20 years. These existing systems have also reported an increase in revenue. Los Angeles County showed a 5.7 percent increase in revenue with an A grade, over those with lower grades. Revenue also increased by .7 percent for those with a B grade. New York City had similar results. Restaurant sales increased 9.3 percent in the period of June 2010 to February 2011.

So talking about the Allegheny County grading system, again, it's important to note that the proposed system does not change the inspection. There are no new regulatory requirements; however, it will change the way conditions are reported and allow for easier access by the consumer.

This system is in line with others already in effect across the United States. There are some other grading jurisdictions noted; many states, counties, cities across the U.S., as well as other countries. This system is a phase-in application. The first phase will include all permitted food facilities in Allegheny County, with the exception of these noted here on the slide; supermarkets, schools, nursing homes, personal care boarding homes. These facilities will be rolled out in the second phase.

Now, the basic process is to conduct a routine comprehensive inspection. That's an inspection that assesses all areas of the food facility. The grade would be posted. If a follow-up inspection is required, it

would be conducted within 14 days and the resultant grade posted.

Now, the follow up only assesses those conditions that were identified on the comprehensive routine inspection.

AUDIENCE MEMBER: Both years, or just the first year? The second year doesn't call for that.

MS. SCHARDING: Please note ---.

CHAIR PALMIERE: We'll have time to ask questions.

AUDIENCE MEMBER: Okay. It doesn't call for --- I don't want to be lied to. We're here trying to fight for our lives, and it's --- I don't want you saying different thing.

CHAIR PALMIERE: Sir, please.

AUDIENCE MEMBER: All right.

CHAIR PALMIERE: Okay.

MS. SCHARDING: The grading system is suspended during any other types of inspections, such as complaint investigations, foodborne illness investigations. Should an inspection result in closure or a consumer alert placard, it would also be suspended. If, after that second inspection, the owner would like to be re-assessed for grade, he or she can request for an inspection to be conducted. Now, this would be a comprehensive inspection, and the resultant grade would be posted.

Okay. And this might address the question. Before this process begins, that is, the very first time a routine inspection is conducted after the grading is started, there would be no grade posted on that comprehensive inspection unless the assessment results in an A.

If a follow-up inspection needs to be conducted, that is, if it's anything other than an A, or we have high-risk conditions identified, a follow up would be scheduled and conducted within 14 days, and the resultant grade would be posted. So there's an opportunity for everyone to get used to the process and understand what's being assessed.

Okay. This is where it gets a little bit confusing. Points are assigned based upon risk. High risk conditions weigh more than low. Points are assigned to categories, that is to say that, again, the points are assessed by category, not by individual violation.

So if more than one violation is assigned to any category, the points deducted will be the highest for the category, not the sum of the points. And we'll take a look at some of these inspections. If you have a copy of the policy that's going to be voted on, there's a matrix at the end of it. I know you can't read this, it's very difficult, but we have categories noted along the left side. You'll see some font in red and the black. Those are different categories. Alongside of that, you have the assessment risk; high, moderate and low. So if we took the first category, which up here (indicating) is food source/condition, any number of those bullet points could be identified. Any number of violations could be identified in that category, but the maximum points that would be assessed would be five.

Okay. So again, less emphasis is placed on low-risk categories, and we also have a section --- and I'll go to the next side here. In general sanitation, we have sub-categories. These are categories that are --- that assess things like floors, conditions of floors, cleanliness of the ceiling, garbage storage. These are all low-risk conditions. Up to two categories can be determined to be in violation without a single point being debited.

So for example, someone could have the lids open on the dumpster, garbage on the ground, floors not properly constructed, floors dirty, grout missing, coved base missing, and no points would be debited.

The final score is determined on the total number of points subtracted from 100.

Okay. A working group was formed in the beginning that included many members of the industry, and I've listed them here and on the next slide. Decisions were made as a result of these meetings, particularly in regard to the nitty-gritty that you find in the matrix. We worked very tediously through that matrix to make sure it was in line with the federal code.

The Department does recognize the many hours that were volunteered in developing this. Comprehensiveness is very much appreciated. These are the additional members that were on that working group.

Okay. Results from meeting with the group. Changes were made to the original system as a result of discussions. No points are debited in the general sanitation categories, as I mentioned, until three

separate categories of violations are identified. An extra point is awarded to those facilities that go above and beyond the basic food safety requirements. This is the DIAMOND program that's been in existence since 2001.

The grade is changed on the follow-up re-inspection. Initially, it was not. This demonstrates that the violations were corrected. No score is identified on the grade placard that is posted, and the facilities that are covered in the first phase of the system --- well, that was expanded to include convenience stores, caterers, food processors, local vendors, hospitals.

Once we had our system in place, we were able to proceed with a pilot test. The pilot allowed for us to test the proposed system. Staff conducted inspections per routine, using the updated computer system. They could print a report with a grade or without a grade. During that pilot, we solicited feedback from the facility, put the risk assessment matrix to test and compiled statistics on the grade outcomes. The first pilot was six weeks and concluded on August 15th. We did run a second pilot in October and had pretty much the same results. The results were a successful demonstration of grading. The grading system worked. There were sufficient resources. The grades reflected facility performance, and we'll take a look at some inspections.

And we were also able to collect feedback from the industry. Starting with the feedback --- and again, a feedback form was filled out for each and every inspection --- comments heard in the field were as follows. On the first pilot --- this is the second pilot. The first pilot had 18 percent positive, 5 percent negative, and the majority and remainder of the responses were neither positive or negative. So the second pilot, we wanted to have more granular results. The feedback collected from 401 owners and managers of facilities during the inspections completed in October resulted in 31 percent positive, 7 percent negative, 10 percent both positive and negative --- they might have liked some factors about it and some not so much --- and 40 percent provided no opinion.

We did have 12 percent where we were not able to interview the manager, possibly due to language barriers, time, et cetera.

Now, what you've all been waiting for, the first pilot, we had 973 inspections conducted. That was over that six-week period. Of the total, 764 were comprehensive inspections, 75 percent were As, 17 percent were Bs, 6 percent were Cs and 2 percent had scores lower than 70. 209 inspections were follow-up inspections conducted as a result of high-risk conditions or the grade being lower than a B. And we had 91 percent as an A, 7 percent as B, 1 percent as C, 1 percent --- also, 1 percent lower than 70.

The second pilot was very similar, 629 total inspections. 502 of them were comprehensive inspections, with 77 percent resulting in an A grade. Fifteen (15) percent resulted in B, 7 percent, C and less than 1 percent were less than 70. 127 follow-up inspections: 91 percent resulted in improvement to an A, 8 percent, B, .9 percent, C and less than 70, there were zero.

Okay. I said that I was going to talk about some examples. In your folders there are some sample reports, so that you can get a little bit of an idea of what an A looks like, a B or a C. I hope they're in order. From the top, there's an A facility. The cover page gives you a summary of the assessment. The subsequent pages actually give you the details of the violations, and they're assigned per category. So if you look at this first facility, we have a high-risk violation in the Cold Holding Temperatures category. We have a low-risk violation in Cleaning and Sanitization and low-risk violations in Handwashing Facilities, Pest Management, Contamination Prevention and Toilet Rooms.

So that would result in a maximum of ten points being debited. Now, if you note in the General Sanitation category, we have walls and ceilings; there was a low-risk violation, and ventilation also had a low-risk violation. But that resulted in zero being debited, because there were only two categories identified. This facility did have a follow-up inspection due to the high-risk violation, and it is attached. It's the third page of this inspection, and you can see that we still had some problems, so this resulted in further inspections. The next sample is a B grade facility.

We have two high-risk violations, one medium-risk violation and three low-risk violations, resulting in a score of 84. The categories were Cooling Foods, Cold Holding Temperatures, Facilities to Maintain

Temperatures, Cleaning and Sanitizing, Handwashing Facilities and Design and Fabrication of Equipment. There was also a low-risk item for Lighting. If you want to look at any of the details, they are on the subsequent pages.

Okay. Also, in your packet you have samples of C facilities and a facility that's not graded due to being lower than a 70 in score. The C has 10 violations identified, 3 of which are high risk, 1 is medium and 7 are low. We also have three --- actually, four violations identified in General Sanitation category, resulting in a 72. The example that is not graded had 14 violations, 5 of which were high risk, 2 were medium, 7 were low. It had two low-risk items in the General Sanitation category, so no points were debited for General Sanitation.

Okay. I know that's a lot to absorb. Okay. But continuing on, I wanted to tell you that prior to the pilot, we did have a public hearing, and we accepted comments on the website. And this is the result of the hearing and the public comment period. It was 30 days. The breakdown is noted here. At the hearing, we heard testimony from 13 individuals, mostly representing restaurant industry and individuals that were linked to the industry. All 13 were against the grading system. There were 54 web comments that were received, 17 in favor, 37 against.

Those that came in, in favor, were from the general public, and I have some samples here of the comments that were made. In this particular case, it's important to remember that this individual is reminding us that we're here to protect the public health and to make decisions with the public interest in mind. I heard a restaurant owner complain that it's not fair to grade a restaurant on a single point in time. He needs to realize that if this --- that is the point in time that my family is there, that is the point in time that matters. The restaurant must earn the A every day, if they feel they deserve to have customers every day. And that was Margy Mitnick.

Many comments at the hearing, as I said, were from the industry --- the food industry, and most of them were that the grading system would not improve food safety. And the department went on record disagreeing with these comments and is looking for a way to effectively reduce significant violations in Allegheny

County. In 2013, we had 56 percent comprehensive inspections with one or more significant violations. That's a pretty high rate. The grading system should prove to be widespread incentive for compliance. So in summary, the impacts to both industry and the citizens of Allegheny County are as follows. These facilities accept their role and responsibility to conduct active managerial control for food safety every day.

The grading system provides that incentive. Jurisdictions with grading systems have demonstrated increased revenue over neighboring jurisdictions without grading. Grades provide immediate, easily understood information. Studies have shown that scores improved by five percent over previous years. Significant violations decreased. And the most important result, of course, is incident of food-related illness decreasing. Thank you. I'd be happy to entertain any questions.

CHAIR PALMIERE: Excuse me one minute. I just want to make note that Councilman Baker has also arrived. Okay. Mike, do you have any questions? We'll start with you.

MR. FINNERTY: Well, always, I have a few thoughts on this. Like I said, I concur with our county solicitor in regard to legality. I just can't see how we can get a letter from, I believe, a state representative who's a CPA with a legal opinion against our law department. I also would say that I personally don't see any reason to change the way it is now, green, yellow and red. That's fine. It's working. I don't know why all of a sudden it's become a big issue. I don't think the people that run the restaurants --- I don't think that's going to make them do a better job. They're already doing a good job, since the majority of them have green; the vast majority, by the way.

I just think it puts something up that's causing a lot of angst for no particular reason. I mean, instead of going A, B, C and flunk, why not go green, blue, yellow and red? I mean, this is --- I look at this and say, why is this really happening? And I believe your --- some of what you say is true. But I haven't seen anything that shows that we have such a great occurrence of food-related illnesses in Allegheny County. Now, maybe they do in the United States of America, but I think the people that run the restaurants do a good job. And I just can't concur

with this, changing the system. And that's how I feel. Thank you.

CHAIR PALMIERE: Thank you. But I just want to take a minute here and introduce --- I should have done this at the beginning. Okay. We have Mr. Finnerty on my right, Mr. Baker, Sue Means --- Councilwoman Means, Councilwoman Danko, myself, Councilman Palmiere, and Councilman Macey. Okay? All right. Now, Mr. Baker.

MR. BAKER: Thank you for your presentation. My only question --- not my only question, but my question for now relates to page four. And the two different counties that were looked at here looked like Los Angeles County and New York City, which I think are using the tourist spots. For my money, I always spend the weekend in Pittsburgh, for sure. But looking at the host, the revenue increased --- and I get that --- by five percent and 0.7 percent in Los Angeles and in New York City ---. My question is, are those the only two counties or cities that we looked at? I would be curious to see, if we compared ourselves to other counties of similar size, similar structure and background, Pittsburgh and Allegheny County --- do you know if these were the only two we looked at in deciding?

MS. SCHARDING: In developing the system, we looked at several that were similar in size. First, we had to find out who's doing grading.

MR. BAKER: Right.

MS. SCHARDING: And many people are scoring or grading. And the ones that I've listed on that --- that one slide actually post the grade.

MR. BAKER: Right.

MS. SCHARDING: So we wanted to be sure that we recognize those as well. So we looked at several, and we took the best from all of them to make it our own.

MR. BAKER: Were there any of these --- I'm guessing, A-grade facilities were not declined anywhere or the ones were --- these were declined a lot?

MS. SCHARDING: These were the ones that we were able to find studies on.

MR. BAKER: All right. Thank you.

CHAIR PALMIERE: Sue?

MS. MEANS: Thank you, Chairman. Thank you all for coming out. I just want to see citizens participate in the political process. First of all, I want to address

a --- I want to know, are we allowed to ask only so many questions, then we'll come back again, or ---?

CHAIR PALMIERE: If it gets too long, Sue, I'll tell you.

MS. MEANS: You'll tell me; okay. Thanks. I appreciate that. First, I want to address a comment by my colleague, Mr. Finnerty. And I wanted to say that Representative John Maher is the Chairman of the Agricultural Committee for Pennsylvania, so he --- and the Agricultural Committee has oversight of all restaurant grading in the state. So to say that Representative Maher is simply a CPA that's a state rep is totally inaccurate, and the House is well staffed with legal representation. So of course, the legal representation has thoroughly analyzed the grading system. So I just wanted to say that to start with.

Also, I guess, my question is for the County Health Department --- is where did this idea come from? I mean, all of a sudden we need restaurant grading. Where did it come from? Who's the driving force? I don't see emergency room doctors demanding to have a grading system. I don't see articles about people that are sick. So I want to start from the beginning and know who is the driving force to bring restaurant grading to Allegheny County?

MS. SCHARDING: This was a task that was given to us by Mr. Fitzgerald. Is there anything more that --- I'm not sure --- and the Board of Health.

DR. HARRISON: This is a process that started about three or four years ago, based on discussions between the Board of Health and Dr. Dixon. So this has been a process. It's been ongoing for quite some time. It was based on the issue of --- there's lots of data presented that shows the grading system has improved the food safety climate. So they had a very strong rationale.

CHAIR PALMIERE: Excuse me.

DR. HARRISON: I'm sorry. I'm ---.

CHAIR PALMIERE: Please identify yourself.

DR. HARRISON: Yes. I'm Dr. Lee Harrison, Professor at the University of Pittsburgh and Chairman of the Board of Health.

CHAIR PALMIERE: Thank you.

MS. MEANS: I would like to --- I don't know how we enter a 110-page document into the record, but I'd like to reference it. It's a study by the Yale Law Journal

from 2012, and it debunks the L.A. research specifically in this document. So you know, somehow I'll get the link from the --- to enter into the record. Is this system that we're implementing --- because you keep telling us the greatness of L.A. --- but are we going to put in the exact same system that Los Angeles has? Is it the same verbatim grading system?

MS. SCHARDING: There were concessions made from the working group, so it is not. The L.A. system will post a grade on the very first inspection. They do not change the grade on the follow-up inspection. That's one of the main things that are --- that's different.

MS. MEANS: That's what I'm asking, if the grading system --- it's not exactly the same. So you're confirming that it isn't?

MS. SCHARDING: Uh-huh (yes).

MS. MEANS: Thank you. I don't know how we can compare apples to oranges and say that a grading system in another part of the United States therefore is equal to what we're bringing here and will bring about the same result, although those results have been debunked, again, in this journal.

I also feel that grades are very subjective. I want to make that comment. Different inspectors are going to come up with a different grade. And there was this great wonderful thing where the SATs brought in --- there was going to be a writing exam on the SATs. And different people graded the exam, and I'm saying, different people came up with a different grade. And so lo and behold, the SATs from now are disregarding the exam. So it is very --- grades are very subjective. So I don't see, first of all, that there's this great cry from the public and in your public meeting, you said there wasn't --- I don't --- was the public there? Even into your Allegheny meetings across the state --- there are Live Well Allegheny meetings across the county, excuse me --- did anyone come forward and demand --- complain that they're sick and they needed restaurant grading? Do you remember anyone?

DR. HACKER: No, I don't remember anyone, but there was definitely many people who talked about infectious diseases.

CHAIR PALMIERE: Sue, one more and then we'll close; okay?

MS. MEANS: Sure. Well, I would like to make a comment. And this is my comment for now, and then I'll

probably think of other questions later --- which is, right now the relationship between the Health Department and the food --- and the food industry is an educational system where you educate them on how to make food be safer. And this grading system would turn it to be an adversarial system.

DR. HACKER: I truly would like to correct that, though. The relationship is not a ---.

(Applause.)

DR. HACKER: But we are an enforcement body. Our relationship with the restaurant industry is to keep the public safe, and part of that is to educate them on how to do that. But our responsibility is to enforce those codes. It is not to be best friends with the restaurant industry. I certainly hope that you understand that, and I think it's just really important for folks to understand that the role of the health department is an enforcement role.

MS. MEANS: Yes. And I'm very grateful that it is enforcement, but I do believe that a grading system of A, B and C would be punitive. That's all for now. Thank you.

CHAIR PALMIERE: Thank you. Ms. Danko.

MS. DANKO: My colleagues have asked some of the things that I was concerned about, and I actually --- first, I want to say I agree with Mr. Szefi on some of --- you know, and I'm happy he brought his legal opinion forward, but there are two separate issues. Whether it's legal or not is separate from whether we should do this. You know, you can say it's legal. We can do it, we can't do it, and say it's not legal. Then we get two other --- we can't do it, but ---. So going from there, you know, I go back to my --- when I was in grad school. I took a course, Public Policy Towards Risk, and it talked about perceived risks, actual risks, you know, and things that really should be addressed versus things that people get up in arms about that aren't necessarily a real issue. And in my mind, this falls into that category of things that --- it's not really a high-renting (phonetic) issue. What my colleagues here are asked, you know, by your own data here, in your public hearing, in the 30 days we've had 17 people speak out in favor of restaurant grading in Allegheny County out of a million three. We get more than 17 people here on a regular basis on any topic.

My other --- and one of my colleagues also brought this up. We just went through with health department regional meetings in every council district, plus an extra one for people who speak Spanish, you know, and those were good meetings. There was a lot of data presented. And to the best of my knowledge, no one brought up restaurant grading. I asked people who were at many of these meetings. There was also a survey that was done. And the issues that were important to the people in Allegheny County; number one, air pollution; number two, access to mental health providers; number three, access to healthcare providers; number four, poverty; five, abuse of alcohol and drugs, et cetera, et cetera, et cetera. Number 17, food safety. That could mean anything. And so my point clearly is that we have limited resources in government. Why are we choosing to do this? So that's all I have to say right now.

(Applause.)

CHAIR PALMIERE: Thank you. Mr. Macey.

MR. MACEY: Thank you, Mr. Chairman, and thank you all for coming here this evening. I'm either very, very lucky or the system works. The current system works. On the 66 years that I've been on this earth, and if you take a look at me, I like food. I've been to a lot of places. Some of these places, we'll just say they're unique. And like I said, I've been very, very lucky. I've seen the green stickers. Now I see them all the time. But I don't think that we need to change the system. I think the system works fine. I believe in the system as it is. And I would like to know if you could give me three, or even even two things that are so significant with the ABC system and the system we have now. Something significant that's a game changer.

MS. SCHARDING: With regard to what?

MR. MACEY: Inspections.

MS. SCHARDING: Inspections.

MR. MACEY: Just the grading system, what is green and yellow, and/or ABC ---.

MS. SCHARDING: Because of limited resources, we can't rely on the inspector to be there to tell the operator what needs to be done every day. We come around. Some of the facilities wait for us to give them their list of work to do. We need to have people actively controlling and managing the food safety in their own facility every single day, and we're there to conduct the

surveillance and do our spot checks and to ensure that they are doing it every day. We need something, some incentive for that.

DR. HACKER: May I just add that I think that the system we have now continues to give us a large number, a large percentage of restaurants that have high critical violations. And that then causes our Department to have to go back often, multiple times, to make sure that those restaurants correct those violations. Clearly, by the fact that the number of people who are here and who are wanting this not to pass, I think you can understand that the grading would be a much different incentive than what we currently have.

MR. MACEY: I haven't seen a game changer yet. Thank you, Doctor. And I certainly appreciate all the work. I mean, you know, your team has been very educated obviously, and we gave the --- University of Pittsburgh yourself and others, as well as the food industry. And these guys and women have been doing this for a long time, and that's their bread and butter. I am sure they wouldn't want to have any black marks against them. So I'm sure they're doing the best they can with what they got. And I think they're doing a find job. Thank you.

(Applause).

CHAIR PALMIERE: Let's go around one more time before --- we have the three speakers from the association on tap here. So Mike, we'll go around one more time.

MR. FINNERTY: All right. I'd just like to know if this inspection is going to be different, this ABC inspection is going to be different than the inspection for the green, yellow read? Is there a difference in these inspections?

MS. SCHARDING: The regulations have not changed, no. The inspection remains the same. It's how we're reporting the results that's different.

MR. FINNERTY: So the only difference is you slipped in one more category? Instead of green, yellow, red, you have green and then something between yellow. That's the way I see it. I mean, I have a very difficult time rationalizing this and saying this is going to really improve what is already functioning very well. That's really all I have to say about it. Thank you.

(Applause).

CHAIR PALMIERE: Sue?

MS. MEANS: Yes. I wish Mr. Szefi was still here, I forgot to ask him a question, which was why is the system that is carefully --- was there legal research done before beginning the system of grading? Was there any documentation that the health department had legal research done concerning the preemptive Pennsylvania state law?

MS. SCHARDING: We didn’t believe there was an issue, so ---.

DR. HACKER: It's certainly my understanding --- and I mean I wasn't here at that time, but there was a legal opinion that was rendered. I don't know that it was written, but there was discussion.

MS. MEANS: And for the record, I did request any written material and a request for a legal statement. I haven't received any or got any until today. That's why I don't believe that it was done because no one has been able to produce that for me.

DR. HACKER: But I do want to say, Council, that generally, if there's not perceived to be an issue, if legal counsel tells us that there is no issue, that they don't believe there could be issues, there would not be necessarily a written document that would be created.

MR. PIPOSZAR: I can tell you that we had discussions in the Board of Health early on about this issue and that we came up with no legal issues.

MS. MEANS: And I'm glad you brought up the Board of Health because I was under the impression that you did have a public hearing, and that only one member of the Board of Health came to the public hearing. Is that true, to hear comments from ---?

MR. PIPOSZAR: I don't recall.

MS. MEANS: You don't recall? I am glad to see in your publication that you said grades influences how many people attend the restaurants and the grades that are associated with --- because I think that shows a definite, to put a grade on for a snack shop that would hurt industry. I really don't see what's wrong with the system that you have in place. You haven't been able to demonstrate to me that there is a problem. I think you're doing a good job or we would be hearing from the citizens. They would demand that we have a change. I guess you can tell I'm adamantly opposed to the grading system and I thank you for coming.

(Applause).

CHAIR PALMIERE: Ms. Danko?

MS. DANKO: I want to talk about the inspections. I've heard various things about inspectors and I'm wondering what kind of training, how many you have, what kind of turnover, what their load is in terms of having to do restaurant inspections, what kind of oversight they get, if you could address that a little bit?

MS. SCHARDING: We have sufficient number of inspectors to conduct the inspections that are necessary.

MS. DANKO: Well, what is sufficient? How many?

MS. SCHARDING: We have 20 inspectors. We've increased that this year because we wanted to make sure that we were able to accommodate the numbers of inspections we felt would occur as a result of this. We anticipated from file studies, I believe, that it was a 20 percent increase of inspections. That might be a little bit high.

MS. DANKO: What kind of training? What kind of ---?

MS. SCHARDING: All of our inspectors have biology --- or I'm sorry, science degrees. They're hired with a science degree. They're trained for six solid weeks to enter the field and the training doesn't stop at that point. We oversee their function every day. We have supervisors that oversee that every day. We have training sessions that are held throughout the year --- at least, I would say, the proposal for this coming year is to have at least two dedicated days for training. We have topical training at our monthly meetings, and we have a quality assurance scheduled for the year as well. We want to make sure that our inspectors are conducting inspections according to the policy.

MS. DANKO: Turnover?

MS. SCHARDING: Turnover has been very great up until the last couple of years. I don't have the statistics on that, but we've had a full complement for the last, I believe, year and a half. And then we did hire these additional inspectors this year. So that was in addition to what we were allotted. It is an entry level position. It doesn’t pay well.

MS. DANKO: How much does it pay?

MS. SCHARDING: I believe $30,000, so ---.

MS. DANKO: Could you get me a data sheet, you know, something that says we have three people with five years, we have, you know, a person with seven years?

MS. SCHARDING: Sure.

MS. DANKO: And how long --- the people that have been supervising it, how much do they make or at what level they are at?

MS. SCHARDING: Sure.

MS. DANKO: I appreciate that. Thank you.

CHAIR PALMIERE: For the record, Mr. Kress has just entered. Mr. Kress, you're up.

MR. KRESS: I guess really going back to Councilwoman Means' question, I mean, the preemption issue, I mean, it appears that could be a preemption issue. Nowhere else in Pennsylvania --- you're nodding your head no, there's no preemption issue here. There's nowhere else in Pennsylvania where they do the rating system; correct? This is going to be something initially here in Allegheny County, nowhere else in Pennsylvania does this?

DR. HACKER: I'm sorry. Mr. Szefi did give a fairly extensive discussion about concerns about those issues. I don't know if you got that ---.

MR. KRESS: Okay. So you feel that you're satisfied there's no preemptive issues?

DR. HACKER: Yes.

MR. KRESS: And the other question would be, if it's such a great idea, why isn't nobody else doing it in Pennsylvania?

DR. HACKER: I certainly can't answer that.

MR. KRESS: I was wondering because ---.

DR. HACKER: I mean, obviously, there's a lot of other states, both states and cities, that have decided to do it. We are certainly not the first one to consider this.

MR. KRESS: Thank you. But see, that's another stupid question I have and a problem that I have is that I have no problem with you going after businesses that aren't good operators and actually do pose a public health hazard for people. But my problem is when you make a distinction between A and then B and C. I mean, really, where is the difference between A and B. That's the question I have. You may be putting a scarlet letter on a business that really doesn't deserve it ever, and really a small distinction. And that's the concern I have over

this whole restaurant grading policy is that you're kind of like saying, okay, this is a good business, but yet the market is saying, hey, wait a minute, you know, they're making money, they're a popular restaurant, and all of a sudden you're trying to come on and slap them with a D or a C. And that's the concern I have, is that one thing consumers are going there --- because to me, first of all, the restaurant business is a very tough business, okay, not a lot of businesses survive. So obviously the businesses that are there are doing something right. But my concern is when you start, I guess like playing the numbers, and you're not really looking at detrimental, I guess, business practices, but more of a small distinction. That's the concern I have. And if you could maybe address that issue?

(Applause).

DR. HACKER: I think maybe if you take a quick look in your package there's an A, B and C and there's various significant indifferences, particularly for the Cs. They have multiple high-risk violations. We talked a lot earlier about the fact that --- the smaller violations, that there have been concerns about them.

MS. SCHARDING: The low risk items that are in the general ---.

DR. HACKER: The low risk ones that you can actually get many in each of two categories and get no points whatever. You have to actually get three separate categories before you would get one point on that. And that was definitely something that was a concession that we made to the industry. So I don't know, Donna, if you want to sort of walk through this again in terms of the critical violations.

MS. SCHARDING: One of the examples in there shows that a facility can actually have two high-risk violations and still get an A, and that certainly shouldn't be acceptable to have any high-risk violations.

MR. KRESS: What is a high risk --- that's what I want to know. Because I'm hearing all this stuff about like tomatoes have to be at like 38 degrees, and I can eat a tomato off my windowsill and not get sick by it. I mean, I'm just saying, what do they consider to be a, you know, critical violation. And that's the question I have.

MS. SCHARDING: All of the violations are based on science. We use the federal code, the Food Code, to develop our levels of risk. It's very consistent with the

code that's being used across the country. The violations are of a nature that could lead directly to foodborne illness. Those are the ones that are most important. Those are your high-risk items such as food temperatures, handling food, contaminating food, not washing hands, working while ill, those types of things. Those are considered high risk. The moderate risk allows for a certain level of managerial ---.

MR. KRESS: And working while you're ill. Like how do you make a determination? Do you go around and take peoples' temperature? I'm not trying to be, you know, smart here. I'm just kind of more like if somebody's ill, how would you make that determination, if somebody's sick when you go in there?

MS. SCHARDING: Well, observation and discussion.

MR. KRESS: So you go in and say is somebody here sick and they raise their hand? I'm just kind of ---.

MS. SCHARDING: No. We actually watch for a while, just watch the workers, find out how they manage their facility, talk about sick leave, that kind of thing. There are diseases that are required to be reported to the Health Department so if a physician assesses that a person has a disease that is required to be reported, it is reported to the Health Department and that person would be excluded from working in a food facility so ---.

MR. KRESS: I think you said in the package you passed out --- there's a list of critical violations then in the packet you passed out?

MS. SCHARDING: It's actually the ordinance that you're reviewing that has the list. And points are assessed according to categories, not according to violations. You can have any number of violations within a category. You're only going to debit a maximum number of points according to this level.

MR. KRESS: Okay. The fact of the thing about the tomatoes, though --- like, you know, how did you make a determination as far as to like certain produce? Because to me, certain produce you could eat right off the table and you're not going to get sick by it. Is that something that you're concerned about, like the temperatures of like lettuce and tomatoes and different things like that? I’m just kind of curious.

MS. SCHARDING: No. There have been several outbreaks associated with produce. The Federal Government is working with the farmers and tightening up the procedures and safety mechanisms to make sure they're in place so we have a safe source. But if the product is contaminated, once it's handled by the local food facility, it's cut, they're introducing any contaminants into the tomato in this case. And if it's allowed to sit at room temperature, that allows for bacteria, if it is contaminated with bacteria, to grow and make you sick. There have been illnesses associated with all kinds of produce, but the ones that are identified in the Code are the ones that have caused the most illness. It's tomatoes and melons, lettuce, leafy greens, things like that. Once they're cut, then they have to be temperature controlled.

MR. KRESS: But I'm saying once they're cut they have to be temperature controlled?

MS. SCHARDING: Uh-huh (yes).

MR. KRESS: If they're not cut, then they don't have to be?

MS. SCHARDING: They can sit out on the counter.

MR. KRESS: Okay. That's what --- I was curious because I've been hearing different things from restaurant owners, you know, saying, like, hey, they came in, and the tomatoes they chose were citable, but you're saying that's not the case?

MS. SCHARDING: No. Once they're cut.

MR. KRESS: Once they're cut, then they have to be refrigerated?

MS. SCHARDING: Uh-huh (yes).

MR. KRESS: I have no further questions at this time.

MR. PALMIERE: At this time we have three representatives from the food industry, the first gentleman being Mr. John Longstreet, President and CEO of Pennsylvania Restaurant and Lodging Association. You're up, sir.

MR. LONGSTREET: Mr. Chairman and Councilmembers, thank you for allowing me to address you tonight. I'm the President and CEO of Pennsylvania Restaurant and Lodging Association and a 30-year veteran of the food service industry in both hotels with restaurants and restaurants, not obviously, your typical association by any stretch of the imagination. I've been

working in and around food my entire life. I became a dishwasher at the age of 15 years old.

I also am a former elected official and Mayor of the City of Plano, Texas. I lived in Texas so I have a great deal of respect for anyone who runs for public office. I know it's a thankless job. Again, so thank you for that and thank you all for being here tonight. In answer to Councilmember Means' question, I was at the hearing. I drove in from Harrisburg for it. And there was one member of the Board of Health there. So I'm really glad that we have such a great turnout at County Council, and I think you for that.

We're all about safety, food safety. There's not a single person in this room or in our industry that doesn't stand shoulder to shoulder with Ms. Scharding, Doctor Hacker and all of you. Not only do we care about our patrons, but we care about our livelihood. The quickest way to see a restaurant go down is by having a foodborne outbreak. So there's no question we're all about that.

What we don't agree with is that this method would improve food safety. The fact is a significant amount of effort and say, common sense, will tell you that it will deteriorate the potential for food safety in Allegheny County. That's what I'd like to talk about tonight. You're going to get to hear the human side of it from a lot of restaurateurs here in our Allegheny Chapter of the local PRLA who do business in Pittsburgh and around here. But I want to talk to you about safety. PRLA distributes and teaches ServSafe, which is a food safety handling procedure for managers that is a system that has actually proven to decrease foodborne illness. One of the very few things that ties that decrease in foodborne illness was actually training. We absolutely believe in training and I'll talk more about that in a moment.

On the other hand, restaurant grading as proposed by Allegheny County has no evidence, in spite of the selective statistics that you've seen tonight, to show that it actually improves food safety. In a study of 167,000 restaurants by the Center for Disease Control, there was no difference in foodborne outbreaks between those that had grading systems and those that did not. In the Yale study that Councilmember Means referenced --- and I do have copies of that here tonight and I'll be happy to distribute them --- they looked at 700,000 food

inspections. This is Dr. Daniel Ho, who is a Stanford Law School professor and had the study, which is about a hundred pages, published in The Yale Law Journal. In that, he said a lot, of course, and he did directly deal with Los Angeles, as was mentioned earlier. But most of the restaurants that he looked up were in New York and San Diego. And a very quick summary of the hundred pages that were from Dr. Ho was that a good score does not meaningfully predict cleanliness. Perhaps worse, the system perversely shifts inspection resources away from higher health hazards to resolve grade disputes. We've already heard a little bit about that tonight.

In the case of New York City, which you'll hear a little bit more about from Chris Hickey who came down from New York and the New York State Restaurant Association to talk about their actual experience with it, one of the most well-known examples of the restaurant grading system is New York, like that that is being proposed in Allegheny County, and certainly it's been referenced many times already tonight. In 2012 --- you heard about 2011, the first year of the program where there was a decrease in salmonella outbreaks. However, in 2012, year two in the program, according to the International Business Times, the City reported a rise of four percent in cases of salmonella poisoning. So what they determined is that there was no direct correlation or no way to tell whether the increase was caused by the introduction of a grading system or whether the decrease the year before was caused by that.

Of course, that fact wasn't widely reported. In fact, in the case of New York City, they had committed to do every six-month updates on the new grading system for their citizens. They did three updates in the first 18 months and then they discontinued the updates coincidentally when there was the increase in salmonella outbreaks in New York City. When they were asked why they stopped writing the reports, the Health Department told the International Business Times that the city officials continue to evaluate the letter grading initiative and are looking at the impact of the improved inspectional program on restaurants and on hospitalizations and emergency visits for foodborne illnesses. That sounds to me like they have some concerns.

Further, implementation like this has costs. In New York City when the system was implemented, the New

York Times reported the budget had to be increased by $3.2 million to administer the program, a program roughly similar to the one that's being proposed in Allegheny County. New York City reports that 20,000 establishments --- and according to the Allegheny County website, we have 9,000 in Allegheny County. That would make the implementation of a program very similar to how New York implemented it would cost an additional $1.4 million. My question is, assuming that more money is available, should it not be focused on programs that can actually increase food safety instead of just hiring more inspectors? We heard that the --- the last time we looked there were 17 inspectors. We heard now there are 20 inspectors. If there were 17 inspectors, we would have half as many inspectors to inspect our establishments than the FDA originally proposed. The FDA says there should be one for 250 operations. If we have 20 now, we have one for 450 operations inspections here. That's one of the reasons why even though there should be inspection every six months, the standard has become more like one year in Allegheny County. Our members and I'm sure all restaurateurs would welcome the opportunity to have twice as many inspections because they do feel it's an opportunity to improve and keep their patrons safe. But unfortunately, the resources that we have don't allow for that, and the fact that this program is going to deteriorate resources even more will probably lead to a less frequent number of inspections.

Money could also be spent on increased training. We heard a little bit about the training tonight. I'm not sure exactly what it entails, but it would be interesting to see that, and even more so on a national certification program that are offered by organizations like the Board of Certified Safety Professionals and NEHA, the National Environmental Health Association. That helps to ensure that we have consistency from one inspector to another. And that's the best thing that we can do to improve safety. We're going to hear a little bit more about it later, in New York, about inconsistency from one inspector to another, how the exact same restaurant could go from an A score to a C score in six months.

Lastly, Allegheny County, despite its limited resources, does have a good record in the area of food safety. I talked to one of my colleagues who is involved in the NEHA, National Environmental Health Association,

and he said Allegheny County? They've been recognized nationally at least twice with their inspection system. So his question, why are they trying to look at a system like this now? Attempting to take on a complicated unproven system like the one proposed would divert financial and human resources from the current successful program and could actually reduce food safety. There may not be empirical evidence on that, but I think we're all smart enough to see the common sense in that.

Also, imagine that a foodborne illness does take place and that food establishment had on its front door a large letter A, a very public certification of safety, if you will, from the county. What responsibility does the county take as it promotes a food establishment as safe? What responsibility do the elected officials who put the program in place bear?

I was an elected official. I know that we have immunity for these sort of things. But that's not what it's about. It's about how you would feel in a situation like that, where we certify a restaurant as an A, the public trusted us with that, went in and got sick? What we condone in restaurants that are unsafe is that they be closed. Restaurants that are open should be safe. Restaurants that are unsafe should be closed.

Again, as an industry, we're all about food safety. We would promote a program that actually improves it, but there is no evidence that the restaurant grading, as proposed, does. We recommend that Allegheny County focus on proven methods such as increased numbers of and better training of inspectors and perhaps a bump in salaries and a nationally accredited certification program for inspectors, rather than embarking on a letter grading program which is more about optics than safety, and most likely will provide a diversion of the resources necessary for the real mission of protecting the public. Thank you for, again, taking the time to be here tonight.

CHAIR PALMIERE: Thank you very much.

MR. LONGSTREET: I have copies of this if you'd like that as well.

CHAIR PALMIERE: Leave those here and we'll get them distributed.

MR. LONGSTREET: I have a letter from a local restaurateur who couldn't make it tonight that asked that we place it into the record, too. Thank you.

CHAIR PALMIERE: Thank you very much. Next, we have Mr. Christopher Hickey from New York City Regional Director and also a member of the New York State Restaurant Association. Mr. Hickey?

MR. HICKEY: Yes. I want to thank you so much for allowing me to come down here today to speak to you. I just want to make clear that I'm not necessarily here to, you know, criticize the Allegheny County Health Department's program on the proposed rating. I'm just here to share the experiences of the New York City food industry with the grading system. I also have something here that I would be able to pass out to all of you and you can take a look at it, and something that I will reference here as well.

So restaurant grading in New York City started about four years ago. And it saw similar opposition from the food industry, you know, to the Board of Health Department and City Council as it has here. Something really important to note is that relatively the exception of a couple different things regarding how the New York City Health Department focuses on critical versus noncritical food violations, the actual grading system itself. A is you're actually awarded points for violations aside from docked points, so the system is structured a little bit differently. And the grading rubric and criteria is also slightly different. It's more necessarily geared towards if you were to have a bunch of food violations, you wouldn't necessarily not receive an A. That's pretty much the thought process. But there were a series of significant issues that basically were opposed to the food industry as a result.

And first of all, one of the largest issues was the ambiguity about the meaning and categories of violations that caused confusion with food service operators and restaurants. I have an attached food inspection report from a restaurant in New York City that's also one of our member restaurants with our organization and a stalwart of culinary cuisine in the city. When they were initially inspected, they received a C inspection. And of course, when you see this report, you can look at the violations listed in this report. Now, let me be clear. This restaurant initially received a C inspection --- for anyone familiar with Per Se or Chef Thomas Keller --- for those of you that are not, Per Se is a restaurant located in Columbus Circle, New York City, a

brand new sweeping clean facility owned by a renowned chef, Thomas Keller. This restaurant has been awarded three Michelin stars. Now, for those of you that don't know what Michelin stars are, it's pretty much the epitome of a culinary award; the Oscars, if you will, of restaurants. Only 113 restaurants in the world received three Michelin stars as of this year. It is not something that is taken lightly. It is something that's based on not just the ability for a restaurant to provide a stellar product, but also stellar service, cleanliness and overall image. I firsthand have been in back of the kitchen at Per Se, and it's probably cleaner than most of our homes, most of our home kitchens. And you know, for living in New York City for a considerable amount of time, I'd be in the kitchen and I'd be more than comfortable to eat off the floor if something were dropped on it. It's that clean.

There's also a series of self-policing that's involved within the restaurant as well. Everyone from the dishwashers to the executive chef is constantly holding their employees accountable for health and safety standards. Trying to touch on John's point and to put my operator hat on for a brief moment, you know, I've been in the restaurant business for a little over ten years. I'm rather young and I still have the rest of my life ahead of me, but you know, for someone to come towards the restaurant industry and tell us that, you know, we clearly aren't doing our jobs as restaurant operators in terms of holding our employees and also our products to a standard by which --- you know, allows for us to trust in the public, honestly I find it slightly insulting. You know, we're all about our product and our product is our revenue. Without good product, we don't have a business. If we were getting people sick and we didn't care about getting other people sick, you know, I wouldn’t be here. I'd be doing something else. And you know, it's really important that, you know, looking at this report, that I would submit to you with all the ambiguities that, you know, clearly there's a disconnect between the Health Department and the food industry in terms of the understanding by which how restaurants operate. And that's been one of the largest overarching themes that New York City has experienced from membership to the New York City Health Department.

Second, the initial application of letter grades in New York City usually resulted in a fine first versus education first mentality. So when initially passed, the letter grade system was the catalyst for fines to increase by more than 100 percent, from $27.2 million per year in 2009 to a high of $52.4 million in 2012. And this was mostly due --- and I would say 70 percent of those fines were related to non-critical food violations. It showed when legislation was initially passed, the Health Department's inspectors noted violations that resulted in substantially higher fines and disproportionately impacted small businesses with penalties instead of educating them or allowing an opportunity to cure noncritical food violations. This is also due to lack of staffing and resources, which I will touch on a little bit later. Only now, after four years of enactment of letter grades in New York City --- and much of it has to do with the Health Department working closely with us as an association on properly educating businesses on conducting proper food safety, we're seeing a shift in mentality from fine first to education first. But it's taken four years and it's also taken the Health Department to actually reach out to us and say, all right, how can we make this better when initially they hadn't consulted us on a project to begin with.

So as I touched on before, there has not, was not and still is not an adequate infracture (phonetic) to fairly administer letter grade inspections for New York City restaurants. When the letter grades were initially enacted in New York City, the Department of Health had 63 inspectors for a little over 24,000 food service establishments in New York City. That number equates to one inspector for about ever 380 food service establishments. In the four years that we've had the program, the number of inspectors has increased three times to about 183 inspectors. That's also resulted in an increase in budget in the Health Department by at least $3.2 million per year. As I said before, Allegheny County currently maintains 20 inspectors to inspect over 9,000 food service establishment. Now, one point to really note from this is not only did the level of the workload caused by the food inspectors increase, the amount of appeals filed, the amount of complaints increased by over 500 percent. So not only were reinspections constantly increasing in number, also appeal hearings and grievances

were filed at an alarming rate, kind of overloading the Health Department, limiting their ability to perform timely inspections. You know, you would say that --- you know, they say they'd come back in two weeks and the Health Department would send an inspector maybe four months, five months, six months down the road. And it's through no fault of their own, but when you simply don't have the level of resources to handle an adequate inspection system involving letter grades, it causes a huge issue.

As I also said before, negative letter grades have a significant effect on the revenue of a business. Now, I noticed in the report earlier, the report about the Department of Health that saw the restaurants in New York City increase their revenue by a little over nine percent. Now, that applies to restaurants that received an A. We've seen in reports and surveys conducted that B restaurants in New York City saw a decrease in revenue by as much as an average of 20 percent. In some really bad cases, close to a 40 percent reduction in revenue. Now, obviously, you know, I would say comparing the food scene of New York City versus that of anywhere else in the world is pretty much comparing apples to oranges, you know. If I lived in, you know, where I'm from originally, outside of the Philadelphia area, you know, I probably ate once every --- ate out once every two weeks, where as a New Yorker I eat probably four to five times a week out at a restaurant. Eating is my job. It's the job of most people in New York City because we just simply don't have space or the time or the want to cook food at home. And I feel that it's created just too much of a problem with the food industry.

In New York City, we've also seen a rise in consultants who now charge fees to help restaurants stay clean or learn the inspection system. Today, the thing that we had originally challenged the Health Department initially when this was enacted was, you know, why should there be an entire new industry created simply to educate people, you know? The Health Department should be the individuals doing the educating. And we've been doing a good job as an association working very, very closely with the Health Department on providing a better feedback system so that essentially, after sitting down with the Health Commissioner last month, we're acting as the catalyst and buffer between restaurants and the Health

Department in terms of providing better feedback to our inspectors, educating the inspectors at the same time the inspectors are educating us. But as I said before, that's taken about four years to happen.

With all these concerns, there is something positive to take from this. You know, food safety is a huge concern. I got sick myself in a restaurateur. I actually believe that I got sick in a restaurant that I worked in in the Philadelphia area from eating something that a chef prepared for me. Now, the restaurant that I got sick in certainly wasn't a restaurant that practices poor sanitary conditions or doesn’t care about the descent or quality of product. And that also didn’t stop me from eating in a restaurant. I realize that things happen and, you know, we can't prevent every single problem every single time. Letter grades have not solved the problem. They've created this culture of fear.

And I'll also bring up another point which was brought up by the Allegheny Health Department --- is we're the regulatory industry. We're not supposed to be friends. And I completely agree with that, you know. You're not supposed to be friends, but at the same time you're not supposed to create a culture where as soon as an inspector runs --- walks into a facility, most restaurants in New York City participate in something called two-minute or whatever, essentially throwing things away that might even have the smallest semblance of violations.

I don't think that's a very good culture, you know. If we say that makes sense or we're getting better, then --- I don't think that's a very accurate statement. We suggest that any new system be transparent to both the food service establishments and the public so that true food safety violations are disclosed and not possible food risks, i.e., noncritical food violations. We suggest working with the industry to help develop a solid system that works best for both parties or, as all of you had said, you know, if a system is working, then why change it? Hopefully, these systems provide confidence in the public and they afford businesses the opportunity to adjust to the new system while providing the best possible service and food to their guests.

I'd like to thank you all for your time today and I appreciate you listening to my testimony. Thank you so much.

CHAIR PALMIERE: Thank you, Mr. Hickey.

(Applause).

CHAIR PALMIERE: We have one more representative from the food industry, Mr. Piposzar, Adjunct Assistant Professor, Environmental and Occupational Health, from the University of --- or at the University of Pittsburgh.

MR. PIPOSZAR: Good evening. My name is Dave Piposzar and I'm here as a retired environmental health administrator with the Allegheny County Health Department, having spent over 35 years in the practice of public health. Following my retirement with the Health Department, I was appointed the First Executive Director of the Center for Public Health Preparedness at the University of Pittsburgh Graduate School of Public Health. While at the graduate school, I taught public health courses as an adjunct assistant professor in the Department of Environmental and Occupational Health. In the past, I've served as a consultant to the Pennsylvania Department of Health on all matters of public health preparedness, and assisted both the Commonwealth and the Health Department here in securing much needed funding for improved epidemiological support, improved laboratory capability and the rebuilding of core public health functions. I hold a Bachelor's degree in zoology and a Master's degree in public health.

First, I want to emphasize that I'm here this evening as a volunteer, that I'm not receiving any compensation whatsoever for my participation. In fact, I've never had any contact with the Restaurant Association prior to about an hour ago. In that regard, I hold no allegiance to the Health Department at this point. I'm retired. I hold none to any restaurant association or any political interest group. I'm also not aligned with the University at this point. My appointment actually expired in June of this year, so anything that I say is not representative of the University of Pittsburgh even at this point. So clearly, I want to make that very clear. I'm here as a citizen, and I'm here because, first and foremost, I am concerned about sound public health policy, and on the focuses of preventing disease and promoting healthy behaviors and protecting the public from known health hazards. My underlying concern is that we may be straying from this case, from a primary public health mission to not applying good science and facts as they relate to the efficacy of a restaurant grading system.

In March of this year, some of you may know that I took issue with the proposed grading system in a letter to the editor of the Pittsburgh Post Gazette in which I raised the issue of meaningless measures, and the possibility of undue political influence in the delivery of the healthcare in our county. I followed this up with a literature review of restaurant grading throughout the United States and formalized my findings in a letter addressed to each member of County Council which you have in the packet. And that letter was dated March 13th, 2014, so it's been a while since I've had any communication with the Council, but I appreciate this opportunity again. In that letter, I offered a set of criteria by which to judge the merits of the grading system, and in short, I asked them to consider six different criteria.

The first one is will grading reduce the incidence of foodborne illness in the county? I think that should be our primary objective. My research found little, if any, evidence to support claims that a grading system will reduce foodborne illness, patient visits for medical care, hospitalizations or reported illnesses. Studies, including the one that the Health Department presented tonight proclaiming such benefits, did not take into account where the illness originated, quite possibly also originating just as possibly in homes, institutions, schools and establishments other than restaurants. So that hospitalization study that you saw is a bit suspect. It was also admitted that in that very same study that in addition to the grading, there was an increase in inspections, an increase in training of food handlers and several other factors that contributed to the observed reduction in the hospitalizations that they saw.

Furthermore, the reports of any foodborne illness are vastly underreported, and secondly, the physicians may not have actually and accurately diagnose the cause of such disease. I'm sure Sue Means has been waiting for that.

Major recent outbreaks in the United States are more frequently associated with contaminated food supplies entering the market long before a family or a restaurant prepares a meal. I think we see the evidence, and if we need to, I can support that with regards to information about, at least, the outbreaks from the CDC as identified. Public health, in my estimation, should be directing far

more attention toward the entire continuum of food safety from farm to table by ensuring the safety and quality of food that enters into Allegheny County even before it gets to the restaurants or to our families and their kitchens.

The second criteria that I had asked to evaluate was what impact would grading have on Health Department resources and the continued trust, credibility and reputation of the Health Department? One of the studies also that was in here that has been presented said an important unintended consequence of grading systems is that it shifts a great deal of needed health department resources away from other more serious needs in order to defend grades. The public might be better served if the Health Department utilized its limited resources in training and technical assistance, frontline disease surveillance, outbreak response and public education.

I don't think enforcement is necessarily where we need to be putting our efforts. We also shouldn't miss an opportunity to develop very close partnerships for food safety. That's what it's really all about, to promote excellence in the industry above and beyond what the Food Code says. That's a fact.

Furthermore, some studies have shown that grading places inspectors in a position of fudging the scoring, particularly around borderline facilities falling between an A and a B grade. We also heard about the New York study in New York. The number of A grades dramatically increased shortly after implementation of a grading system, but that also resulted in the implementation of some resulting unfounded claims about improved sanitation levels which really isn't there. The studies have shown that only changes were occurring in that area between the A and Bs. And even the Health Department's data showed that the bigger changes were in the A and B grades, not in the other --- the whole other groups in the C grades.

There's always the potential to fix the grade, what one of your authors in the studies has called fudging the nudge. That's the Yale study that you've received. As one author concluded, it clearly undermines the trust and credibility of the Health Department. It reminds me of my students who were always interested if I gave them a B minus or an A plus or an A minus, what's the difference between an A minus and a B plus? And they would argue vehemently that I want that A. And the same thing is

occurring. Grading is largely symbolic and not very substantive. That's what I find.

The third criteria, the third of my criteria, will grading accurately convey the intended message to our consumers? Grading systems used in other jurisdictions largely epitomize what I would call window dressing. We shouldn’t attach too much meaning to a single inspection because it's not a fair reflection of what goes on during the remaining 364 days of the year, nor does it take into account the past history of compliance over many years. It's simply a snapshot of conditions at one point in time. It says nothing about whether it's safe to eat in that facility. Consumers are ill served by a false sense of security attributed to an A grade. Ninety (90) percent of them have an A grade.

Would some alternative method of reporting restaurant hygiene accomplish the same result? The Health Department really has done a very commendable job of making inspection reports available both online for those citizens who have looked for them, and they've done a very fine job with their consumer alert process. The green, yellow, red seems to work just fine. If compliance is the goal of the food program, the Health Department has many, many other avenues to address recalcitrant operators, including fines, penalties, closure, and above all, adverse publicity.

An unsatisfactory grade warrants immediate action, not a grade posting. Another grading system may just bombard consumers with way too much information. We already have AAA ratings, Michelin ratings, Forbes ratings, Zagat ratings, Yelp, you name it. There's other mechanisms out there that citizens are using as a social media, and it's a very, very powerful method if somebody is thought to have a problem. Why should Allegheny County adopt a system not used in the rest of Pennsylvania? How many consumers --- even you, how many of you know, or how many of you understand even what existing grades mean today? If I would ask you what is the USDA Grade A on meat, poultry or milk products, dairy products, mean to you? Does it say something about the safety or does it say something about the quality of the product? So I don't know if you want to add any more confusion by adding another grade into the industry.

The fifth criteria is would an action result in any harm? And I have to say we've gotten along pretty

well in the absence of a grading system, so the medical adage may be first do no harm. It's not clear from my research whether a grading system would have much effect on the consumer choices, and some studies have shown it doesn't seem to really much matter when it comes to restaurant hygiene.

The sixth and my final criteria that I asked the Councilmembers to think about was these --- undue political pressure to enact regulations compromising the actual or perceived integrity, independence and objectivity of the Board of Health and its directorship? Any possibility that this Health Department is being viewed as a rubber stamp on issues of such importance needs to be thought through very, very carefully. We all need to be cognizant of the fact that the Director of the Board of Health are appointees of the Chief Executive subject to Council's approval. I know that the restaurant grading system was opposed by a former director, Dr. Bruce Dixon, and that an earlier A, B, C rating that we had was dropped. When the makeup of the Board, the directorship and the administrative staff of the food program all change within a very short period of time, it does give us pause for concern as to what actually is happening here.

Let me be clear. I am totally supportive of posting hygiene scores and the inspection reports and some sort of pass/fail rating system rather than a letter grade. I would expect the inspectors to complete full and accurate inspections without even a remote thought of what this does to a restaurant's bottom line or what it's going to do when you get that. Make the report, put it out there and let the consumers judge based upon what they have discussed. My estimation on how they charge value-laden letter grading system fails to recognize both the diversity of the food industry --- you heard about Per Se, fantastic chef, culinary chef school. It's a whole lot different than a fast food operation and they're all being treated the same. A letter grading system also opens up the possibility of soliciting inspectors' favors for better grades. And that's particularly true if it's going from a B to an A. They don't like B pluses.

At the same time, this kind of grading system creates unnecessary anxiety. It has the potential for questioning inspection results just to raise it up that little bit more, and it provides some unwarranted consumer confidence in the safety of our eating and drinking

establishments. Overall, we'd better be really concerned to be as careful to be sure that the sins (phonetic) of this Health Board and that director are, in fact, being done in a very objective --- with science that fits behind it, and not because of undue political pressure or because of union pressure.

In your packet, I included my original letter back to Council dated May 15th with my criteria. I also included in that the list of references that I made in my literature review, many of which came up in this meeting, which I was quite surprised to see that we all are kind of looking at the same stuff. And if you have any further questions about those particular documents and articles, I would be happy to share my further thoughts. Thank you very much for your time.

CHAIR PALMIERE: Thank you, sir. Before we go to public comment --- we're going to go to public comment. They'll have three minutes each. I think we have 18 speakers. We're going to take a five-minute break.

SHORT BREAK TAKEN

CHAIR PALMIERE: Thank you very much. We're going to go on the record, please, and we're going to have our first speaker who is Mr. Kevin Joyce.

MR. JOYCE: Thank you. My name is Kevin Joyce. I'm the proud owner of The Carlton Restaurant. We've been serving downtown Pittsburgh for the last 30 years this month. This room has a way of sucking the life right out of you. We were here for two hours already. I'm going to make my comments very briefly, which is unusual for me, only to say that our industry, including every name you saw on that board, who participated in this process is universally opposed to this grading system. Universally, everyone who participated on the committee, everyone in our association, every operator I know knows it's a bad idea to make these 17 or 20 inspectors the food police engaged in a game of gotcha. We value the relationship of the Department of Health. We value food safety and this not a good idea. We're opposed for very, very good reasons. We appreciate the time you spent here today and we appreciate all the good questions you've asked, and we'd like this never to get out of committee. Thank you very much.

CHAIR PALMIERE: Thank you. Okay. Our next speaker, Timothy McGlothlin.

MR. MCGLOTHLIN: Thank you. My name is Tim McGlothlin, and I'm at 3604 Brighton Road, City of Pittsburgh. Allegheny County Health says we need a new system. We already have a system. It works perfectly fine. The City can be made better with the new system. Why? The inspections don't change at all. It's the exact same inspections it currently is. If it ain't broke, don't fix it. There's no reason to blow this money when it can go to other functions that we need to spend it on. So why spend the money on something that's working well already? Thank you.

CHAIR PALMIERE: Thank you. Audrey Glickman?

MS. GLICKMAN: Audrey Glickman, 3548 Beechwood Boulevard, Greenfield, and I'm nobody. Please don't ratify the changes to the policy of the County Health Department Rules and Regulations which, among other things, implement a restaurant grading system. In fact, please urge the Health Department not to implement the grading system at all. If the restaurateurs themselves are so set against it, despite the strong competition amongst them, then there must be some reason.

The risk assessment matrix is not open. It's not transparent. Even the method of assigning points to any violations and deducting them from the highest number of points, et cetera, et cetera, is not clear to the average person. Taking a snapshot of the restaurant, boiling all of that down to one letter grade, and posting it on the door thus becomes fairly meaningless. What we have now is better.

I presume that the changes marked in Exhibit A of the legislation, which outlines Proposed Revisions to Article III, is detailing revisions to the policy the Council makes before ratification. Some of these revisions seem not to be what the citizens would prefer, with or without the policy.

The legislation would be needed if conditions warranted it or there was an imminent danger to the public health. Then replace it with --- if conditions constitute a nuisance, what's a nuisance? It's never defined. I find imminent danger to the public health much more descriptive. Under purpose, it deletes where it says the goal of the grading program is public disclosure and transparency, and it inserts to assure greater accessibility of information. But we already have fairly decent accessibility of information. The grading program

only serves to dumb down the transparency we now have. Anyone can look up the online ratings now and see the details. Boiling it down to a letter grade is more likely to obfuscate, not communicate.

It isn't difficult to understand why the restaurateurs are annoyed with this prospect. No one likes to be graded, much less be scored only on a set of pop quizzes and have the grades posted on the front door. And in this case, it's really posting the QPA, not the grades earned in the various testing areas. And what does it mean to get a B? It stands as bad news until the next inspection, even if the problems are fixed the next day, unless the restaurant pays 150 bucks for an appeal inspection. Either way, if there are imminent health hazards, the restaurant gets closed. So again, what's a B?

The current posting online, along with swift action to close restaurants that pose imminent threats, should be sufficient. We always hope that the chefs are cooking as though it's their own family's dinner. My brother was a cook. This snapshot method of review which forces a restaurant to publicly announce the grade, does not necessarily show whether safe cooking is happening or not. Let's trust the restaurateurs to know their business, and keep inspections as they currently are. Orange County, California voted this down, too. Thank you.

CHAIR PALMIERE: Thank you. Jeff Cohen?

MR. COHEN: Jeff Cohen. I own Smallman Street Deli, a Weiss division. I am the current chairman of the Board of the Pennsylvania Restaurant and Lodging Association. My thought tonight was the questions that this Board asked the County Health Department is the questions that I would have said tonight. And I want to state to you, you did a really good job in asking the correct questions. The only thing I would say is you asked one question, Sue, about where did this come from? It's from the Post-Gazette from day one. They have an agenda, one writer, editorial board, articles after articles over the past five or six years talking about the same grading system. And just for your information, the last Board of Health voted this down eight to one with some current board members that are on that Board now voting against it last month, so that is information for you. And we appreciate your time. We think the process

that you're doing and this educational time is tremendous. Thank you very much.

CHAIR PALMIERE: Thank you. Sean Casey?

MR. CASEY: Good evening, Councilmen and Councilwomen. Thank you very much for the public service you do for us. You know, you're not exactly paid the greatest to sit through these meetings so I thank you for the public service. My name is Sean Casey. I'm the owner and founder of The Church Brew Works. I'm an Allegheny County resident. In a full public disclosure, the County Health does eat at my restaurant. You know, so if anybody allows it to make that their pride and joy at happy hour, it's nice, but I don't think it depletes any ---. Do we have any Steeler fans in the house here?

CHAIR PALMIERE: No.

MR. CASEY: What was Bill Cowher always famous for? There's a fine line between winning and losing when it came to the Steelers, and that also goes for this whole concept of scores. And I have a little iconic imagery here. In my pocket, I put in a little piece of mint and a piece of basil, and these are quite worn out and they're high risk violations. They used to be called critical violations which implies mega --- hospitals, but unfortunately, the Board of Health changed that. So I have these high risk items that came out of my hoodie. I don't have gloves. I don't have tongs. I'm not a certified food manager, and the source may be questionable. So I'm sitting here as a restaurateur or a restaurant starting at 100, and I thought of taking five points here, five points here, three points on the tongs. And when I put this in my mouth, I'm probably going to be in a point violation. So a little bit of mint there and thank you to the chef from Carlton's providing this. A little basil. And I've just gone from an A easily to a B, and I don't know how long it would take for the 10,000 inspections they do, 25 --- for 12,500 inspections, we can count on for what --- 20 inspectors, so 600 inspections a year that they'll have to do, three weeks vacation, holidays, whatnot, they're at 3.67 inspections a week or a day they're going to have to do --- a week. If you strip down the vacations, 1.7. Thank you for your hard effort and hopefully I won't get --- because of this fresh basil, high risk basil. Thanks very much. I appreciate your support, too.

CHAIR PALMIERE: Thank you. John Graf?

MR. GRAF: Mr. Chairman, thanks for having us here today. My name is John Graf, 6933 Church Avenue, Borough of Ben Avon, Priory Hospitality Group, and I'm also the vice chair of the Pennsylvania Restaurant and Lodging Association. So first, there were some comments made about members of the industry working with the Department of Health, with Ms. Scharding and Doctor Hacker working on this matrix. And that's true and we appreciate being part of that process and being invited into it. That said, ultimately, when we saw what the finished product was going to be and how it was going to be implemented, it's something that we cannot support. And we believe the system can't be implemented in a way that's fair to the industry. We believe it can't be implemented in a way that's going to communicate relevant information to the public. And we don't believe that it can be implemented in a way that's not going to harm small business. So I ask you to oppose this legislation and I thank you for your time.

CHAIR PALMIERE: Thank you, sir. Alex Nichols (sic)?

MR. NICHOLAS: Good evening. The name is actually Alex Nicholas just like the saint.

CHAIR PALMIERE: Okay. Well, I have Alex Nichols here. I'm sorry.

MR. NICHOLAS: That's all right. That's no problem. I do not want to echo the comments of my fellow restaurateurs, but I want to assure you that I do share all of their concerns. I do, however, wish to bring to light the fact that we are all here fighting against a decision that is being pushed by Mr. Fitzgerald and the Allegheny County Health Department. It is based on a 15-year-old, non-related Allegheny County, City of Pittsburgh, and even the State of Pennsylvania health information. That is correct. The information that was shared at the first Allegheny County Health Department public meeting was 15 years old and not once was Allegheny County mentioned as having any foodborne illness problems. California, New York and Chicago was the topic and was the main players in that discussion. As a businessman, I cannot digest the fact that educated ladies and gentlemen that we entrust and empower to lead and protect us could make such a moronic decision using outdated and non-related information.

I must ask you, please, to put a stop to this anti-American, Big Brother action before you. I sincerely believe that we, as hardworking Americans that are out there everyday fighting to provide for our families, should not live in fear that for any number of minute infractions could be in jeopardy. Please understand we are not necessarily opposed to Health Department inspections. In fact, we welcome them as long as we are treated fairly. Health inspectors change from inspection to inspection. We are not updated with the current and always changing criteria, yet we are punished for not applying them. Please, I'd ask an ad hoc committee consisting of long-term restaurateurs, Allegheny County Health Department employees and administrators get together and formulate a truly educated and fair process.

And the one last comment that I want to add, even though I was asked to be brief, and I'm still trying to be brief, is that I keep hearing this word transparent coming up. There is absolutely no transparency involved or that can be identified with posting a letter on a person's window. If a B is put up there, I would appreciate it if it was just above pass. I would appreciate and I think the restaurateurs would also appreciate that if there was a disclosure as to what the infractions were --- because if a B is put on a window, it could be for any minor infractions, an accumulation of those minor fractions.

So a person --- if we truly want to educate the consumer, truly educate them, put up why this place has a B. Don't just post a B. Don't just put a C. Don't just put an A. Put an explanation as to why the grade was posted at that. And I thank you and I thank the Health Department. I believe they do do a very good job. But it's hard when you're a volunteer to take some of the pressures that are put on you. But I don’t work with Mr. Fitzgerald, so I don't have to be concerned for my job. I thank you for listening to what I have to say tonight.

CHAIR PALMIERE: Thank you, Mr. Nicholas. Kevin McFadden?

MR. MCFADDEN: Yes, I'd like to keep this brief. I've been in the restaurant business since 1978. I currently have two restaurants in Monroeville both over the years. I think if it's not broke, don't fix it, what the other gentleman said it. The Health Department does a very good job and I don't see why we have to change

anything. If you do change something, I don't know why it's just this and thank you very much.

CHAIR PALMIERE: Thank you, sir. Pete Landis?

MR. LANDIS: I only had two copies of this printed out, but there's a New York Post article that's saying State Restaurant Health Inspection Grades a Sham. So I'll present that to whoever would like to see the two copies there. I'm going to be brief, too. One thing was number 17 on the issues listed that Councilwoman Danko presented was, you know, the food safety issues. Food safety doesn't necessarily just mean the grading system, am I correct on that? Okay. So if that was number 17 on the issues, and then --- but the Department of Health is pushing for this data be put on the window with its grade apparent to the public, I don't know why, if the public could already access the date online through their cell phones and everything, why it's necessary to put it on, especially in the sense --- the Federal Code was updated with new provisions in 2013. And one of these is that the requirement that all food facilities must post a sign in a location where customers can see. It states there inspection is available upon request. So the Pennsylvania Department of Agriculture is educating businesses about the new requirement now and is planning to implement the provision in the summer of 2015. So that's going to be already as an --- I'm correct, right, that I believe the list --- that is going to be mandatory for everyone in the entire state of Pennsylvania, to post that disclosure. So why do we need to change our system that has been working so far?

Also, one other thing. I called the Health Department a few months back to inquire about the DIAMOND standard. The last time I was inspected at my facility, I noticed a column that says the DIAMOND standard and it's always been --- it just indicates a little black diamond. It's always been on there. So I look at the bottom, and it said black diamond. So I called the Health Department. It took me three people through the Food Safety Division until they could answer what that actually represented. And it's supposed to be an award for excellence. So therefore, there already is four categories, there's the green, the yellow, the red. But you can achieve the diamond standard excellence award if they actually put that into use, which is already there for them to utilize,

which I don't know why that has not been utilized so far. Thank you. That is all.

CHAIR PALMIERE: Thank you very much. Mike Chen?

MR. CHEN: Council, my name is Mike Chen. I represent the Greater Pittsburgh Chinese Restaurant Association. And many of you don't even know we have this association, but 16 years ago we started as 32 members. Right now we have 183 (phonetic) members until yesterday. And we are the second largest Chinese Restaurant Association in the United States. And what I wanted to say is the old system worked. There's no need to change. That's most important in this industry. Ten years ago we worked with the Health Department. We volunteered our own teachers who speak our own language and also we ordered our own exam and the book. And we left everybody in the kitchen who don't even speak English come out to take a test so they can learn it.

And I asked the Health Department ten years ago when the Health Department held this test and this class, how many Chinese attended. And today, the Chinese Restaurant Association, we do four times a year, every time we have 30 people, families. We go through --- 120 people every year go to this class, take this exam. So what we want to do is --- education is the first key. Of course, not only the Chinese restaurants, even the Health Department. I'm sorry to say that because of the language barrier, because of culture barrier. So we need to --- Health Department maybe one day can hire somebody who can speak Chinese, get to know the culture. And answer me why --- we're not talking about New York, Philadelphia. They can hang their ducks, their roast pork on the window and we can't. Answer me that. Very simple.

CHAIR PALMIERE: Thank you, sir. Is George Lee here? Jason Yu? How about Chuck Mohan?

MR. MOHAN: My name is Chuck Mohan and I'm a second generation owner of a family business in Penn Hills, Allegheny County. This June we'll be celebrating our 51st year in business under the same ownership in the same location. I want to thank you for the opportunity to speak. We've been speaking about a lot of government involvement in private business over many, many years. Not the most recent, the Emergency Johnstown Flood Tax on liquor that still is identified on that bill. So we'll still battling that one. They say the first 100 years in

business is the toughest, so I think we only have a few more years to go for that. I know I only have 49 more years in this business to reach that 100-year milestone, so I'm anxiously awaiting for that to occur. I don't want to be redundant and repeat everything except to urge you to take the testimony that you heard today. Remember one thing, in this business we say no matter how long you have been in business, we're only as good as the last meal we serve. And everybody in this room understands that. And that's why I think that if it's not broke, we certainly don't need to fix it. So thank you very much for your time.

CHAIR PALMIERE: Thank you, sir. Jordan Romanus? Is Jordan here? Okay. How about Nick Koustis?

MR. KOUSTIS: Thanks for the opportunity. I'm an Allegheny County resident for 23 years. I'm with Restaurant Holdings. They own and operate Atrias, Juniper Grill and Ditka's Restaurants. So we have restaurants in Allegheny County and also around Allegheny County. I also have about 35 years in this business. My position previous to this, I covered 108 restaurants in 11 states, so I've dealt with a lot of health departments. I can competently say that Allegheny County Health Department holds to a very high standard. I can also tell you that the restaurants that we have that are outside Allegheny County currently were aware of the fact that Allegheny holds to a higher standard than the other restaurants, not that we lower our standards, but we know that we're inspected a lot tougher in Allegheny County than we are in Westmoreland, Butler and Washington Counties.

The only thing I'm going to say is we keep talking about this A, B, '89,'90, Joe Public, all they care about is public safety. And to put an A on a restaurant and next door a B on a restaurant, I'm Joe Public, I'm going to be influenced by that A and that B. And that's not right that one point can make that difference and can create a situation where someone is going to lose 20 percent to 40 percent of their business. Restaurants don't have a lot of wiggle room. It's a tough business. And there's not a lot of wiggle room. And a restaurant losing 20 percent of their business could put them under. And that doesn't just affect the restaurant. It affects the employees. And it's not just a tipping point, because when you lose business, you're cutting everybody. You have to cut back on all of your payroll,

so please, please, it's not broken, so let's not mess with it. Thank you.

CHAIR PALMIERE: Thank you. Gene Lucente?

MR. LUCENTE: I'm Gene Lucente. I'm an Allegheny County resident. I live in Observatory Hill. And I've been in and out of the industry as an employee for several years, and had to work with some of the inspectors from the County Health Department. And they've always been very positive with their approach coming into our establishments, and helping us, pretty much, be a better place. So I too am opposed to changing the system and leaving it the way it is and am hoping you consider that as well.

MR. PALMIERE: Thank you, sir. Marc Grant? Marc here? How about Mike Mitchum?

MR. MITCHUM: Mike Mitchum, 123 Maple Terrace, Mount Washington, City of Pittsburgh. I'm here representing Primanti Brothers Restaurants which operates 23 locations in Western Pennsylvania and now West Virginia and Erie, and soon to be State College, Pennsylvania. As an operator with Primanti Brothers for 14 years, I'm always humbled by the hundreds of thousands of fans that come into our restaurant. And I would say we've heard the word snapshot a lot today, but we're just talking about time.

I'm always amazed at what I call the Primanti Sandwich, the most photographed food item that I've ever experienced in any restaurant. It's photographed literally hundreds of times a day in all the restaurants. Let's talk about an actual picture snapshot. We operate in 24 locations in Pennsylvania and West Virginia, and the way the social media is today, kids these days, they say the darndest things. Taking a picture of a sandwich or taking a picture of letter grade on a window for one location, that would spread like wildfire throughout the other locations, the other 24 locations. People won't think of Primanti Brothers in Market Square or Primanti Brothers in Wheeling, West Virginia, but a C letter on Primanti Brothers, the letter C on the door. Thank you.

CHAIR PALMIERE: Thank you. I just want to ask you one thing. Why did you close up in Hilton (phonetic)? That saved our lives many a time down there. It's good home-cooking food. Just as an aside here, Mr. Chen, I want to tell you, my wife took up Mandarin Chinese study. When we went to San Francisco, we used to have to ride the

bus through Chinatown going to where we were going. And my wife would say good morning in and how are you doing in Chinese. She could get elected mayor in Chinatown. She's the only Caucasian that ever --- everybody just looked like, oh, my God. That was a real experience and I appreciate that. I want to thank all of you for being here tonight. I tried to have this hearing to be fair and square for everybody. And I hope we accomplished that. And thank you so very much for your remarks and your time. And have a good holiday season. The hearing is adjourned. Thank you.

OFF RECORD DISCUSSION

Councilmember Means requested the following two documents regarding restaurant inspections be added to the minutes.

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 number one 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 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 (20) 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 Three. 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 1980s. By the 1950s, 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, John A. Maher. CC'd to Honorable Rich Fitzgerald.

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 number one industry. The scope of responsibilities of the Agriculture Committee includes where people consume foods in restaurants and other venues.

I understand 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 seven, 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 (20) 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 Three, 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 is a licensor on behalf of the state. Allegheny County's inspections rules and resolutions 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 reinspections 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 1980s. 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'd to Honorable Rich Fitzgerald, Honorable John Palmiere and Honorable Sue Means.

MEETING ADJOURNED AT 6:25 P.M.

CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

Diana L. Bagnantoro

Court Reporter