

LOCAL LAW NO. "H" FOR 2010

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK ESTABLISHING A LETTER GRADING SYSTEM FOR FOOD ESTABLISHMENTS TO PROTECT CONSUMER HEALTH

Introduced: 8/9/10

By Mr. Higgins:

BE IT ENACTED by the Albany County Legislature as follows:

Section 1. Legislative Intent.

The New York State Department of Health is charged with inspecting and supervising all public places in New York in which food is prepared, sold or served, including restaurants and cafeterias. Inspectors from the Albany County Health Department conduct unannounced inspections of food service establishments to evaluate the safety and sanitation of the premises, and monitor food handling practices to ensure adequate compliance with state and local laws.

A clear, concise system of letter grades would make it easier for consumers to make an informed dining decision and allow for more meaningful comparisons. Further, such grading system will encourage all restaurants to more vigilantly upgrade their cleanliness and sanitation standards, which are of the utmost importance to this Body.

This Legislature finds that the concept of grading food service establishments by letter is supported by prominent restaurant evaluators as a way to encourage restaurants to clean up their act.

The legislature further finds that in Los Angeles, a similar restaurant grading program was instituted over 10 years ago and those restaurants that received an "A" increased from 40% to over 80% in 2007. This indicates that restaurants take these grades seriously and will beef-up their sanitation and food handling practices to receive a higher rating.

This Legislature further finds that in New York, a recent survey reported that 83% of all respondents wanted the health inspection grades posted.

Section 2. Public food service establishment grading system.

1. The Albany County Commissioner of Health shall establish a system for grading inspection results for public food service establishments, as defined in the state sanitary code, including, but not limited to, restaurants, dining rooms, delis, bakeries or any other place where food is prepared, sold or served for consumption by the general public and inspected by the Albany County Department of Health.

Such system shall use and post letters A, B or C to identify and represent such grading and classification with all other lower grades being deemed to be failing grades. In establishing such system of grading, the commissioner shall take into account the provisions of this local law and the provisions of the sanitary code to establish a grading system that reflects the safety and sanitation of the premises and food handling practices to ensure compliance with state and local health laws.

2. Such public food service establishment shall conspicuously post near the entrance to such establishment the letter grade identifying and representing the result of such establishment's most recently graded inspection by the local health officer. Such posting shall be done in accordance with rules and regulations promulgated by the Albany County Department of Health. For any food service establishment receiving a grade lower than "A", the Albany County Department of Health shall advise the establishment of its grade and the findings upon which such grade is based. The local health officer shall conduct a subsequent inspection of such food service establishment no sooner than seven days, nor later than twenty-one days after the inspection at which the grade was given. In the interim, the previous letter grade shall remain posted. Upon the conclusion of the subsequent inspection, the local health officer shall deliver for posting a letter to the food service establishment which indicates the grade for such inspection. In addition to a letter grade, such establishment shall receive the findings upon which such grade is based. The food service establishment may appeal such subsequent assignment of a letter grade designation to the commissioner for review within thirty days of such assignment. While any such appeal is pending, a food service establishment shall post the letter grade that is being appealed.

3. The suggested interval between regularly scheduled inspections of food service establishments may be as follows:

- (a) for establishments with a grade of "A", at least once every year; and
- (b) for establishments with a grade of "B", at least once every nine months.

A food service establishment may request a reinspection from the Department of Health. Such requesting food service establishment shall pay the department a fee of up to two hundred dollars. Provided however that the provisions of this subdivision shall not negate the ability of any local health officer to inspect any food service establishment on the basis of a complaint from a member of the public.

The provisions of this section shall not apply to food service establishments which:

- (a) are premises licensed for on-premises consumption of alcoholic beverages pursuant to the alcoholic beverage control law when less than ten percent of the gross sales of such establishment is derived from the retail sale of food for on-premises consumption;
- (b) do not engage in the retail sale of food for on-premises or off-premises consumption from such establishment;

(c) are operated in or by a primary or secondary school, or a correctional facility;

(d) are sponsored by a charitable organization to operate a soup kitchen or other food distribution program for the elderly, low income individuals and families or the infirm; or

(e) are mobile food vending units, mobile food vending commissaries or temporary food service establishments.

Section 3. Reverse Preemption.

This law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The Albany County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this Local Law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. Effective Date.

This law shall take effect sixty (60) days after its filing in the Office of the Secretary of State.

Referred to Law and Health Committees. 8/9/10