

CITY OF BALTIMORE

STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

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Baltimore, Maryland 21202

September 11, 2012

The Honorable President and Members
of the Baltimore City Council
Attn: Karen Randle, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Re: City Council Bill 12-0121 – Food Service Facilities – Public Notice of Inspection Grades

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 12-0121 for form and legal sufficiency. The bill would require the Health Department to develop a grading system for food service facilities (as defined earlier in Title 6 of the Health Article) that represents “a facility’s degree of compliance with the federal, state and local laws that require these facilities to operate in a sanitary manner.” In addition, the bill would require the Health Department to grade each facility and would require the facilities to post those grades on its premises. The bill establishes procedures that allow facilities that receive a grade less than “A” to remediate any problems, challenge the grade and refrain from posting the grade if a substitute sign is posted stating that the results of the grading are under review. The bill would also require the Health Department to maintain a database of the grades of food service facilities and to post that database on-line. It also requires that a notice of a suspension of food service facility license for more than 24 hours contain the reasons for that suspension. Additionally, the Health Department must maintain a database of the facilities whose licenses are suspended or revoked or close for health code violations and to post that database on-line.

The City has the general police and welfare powers to legislate in this area and to preserve the health of all people in the City. *See* City Charter, Art. II, §§ 11, 27, 47. This allows the City “to prescribe, within the limits of the federal and state constitutions, reasonable regulations necessary to preserve the public order, health, safety, or morals.” *Tighe v. Osborne*, 149 Md. 349, 356 (1925). Although the State licenses food establishments, it has expressly stated that local jurisdictions may also license or regulate such facilities in a manner consistent with state law, so long as the local regulations are at least as strict. *See* Md. Code, Health Gen., § 21-304(b), (c).

With respect to the publication of databases on-line, the Health Department can agree to place that information on the web, but this bill’s mandatory disclosure requirement is preempted by the Maryland Public Information Act, codified in sections 10-611, *et seq.* of the State Government Article of the Maryland Code (hereinafter “MPIA”). The MPIA defines document to include any information “in any form, including,” “a computerized record” and lists of

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government information. See MPIA §10-611(h). The Attorney General has made clear that the MPIA occupies the entire field of law concerning any state or local government's release of documents to the public. See, e.g., 86 Md. Op. Ag. 94, 107 (2001)(municipalities cannot create laws that determine what information is available to the public because, "a contrary interpretation 'would allow...local entities at their election to undermine the [PIA]. ... [H]ad the General Assembly intended to give this effect to a ... local ordinance, [local ordinances] would have been included in the list in SG §10-615...'"(citing Office of the Attorney General, Public Information Act Manual 15 (8 ed. 2000); 71 Opinions of the Attorney General 297, 299-300 (1986)). Thus, the City is expressly prohibited from making a law concerning publishing government information because there is a clear "legislative purpose to preempt [this] entire field of law." *Talbot County v. Skipper*, 329 Md. 481, 488 (1993); see also *Allied Vending v. Bowie*, 332 Md. 279, 297 (1993).

Therefore, the bill should be amended to insert the word "may" before the word "post" in line 12 on page 4 of the bill. This will require the Health Commissioner to maintain a searchable database of food service facilities with the listed criteria, but will not mandate that such a database be published. Similarly, Section 6-712 of the bill should be amended to reflect that the Commissioner must keep a list of food services facilities that have had suspended or revoked licenses but will not mandate that such a database be published. This can be done by changing the word "must" to "may" in line 25 on page 5 and in line 4 on page 6 of the bill.

The Health Commissioner can choose to place such information on-line. It would certainly behoove the Commissioner to do so because it would obviate the need for the Health Department to answer multiple MPIA requests for this information. However, as stated *infra*, the City may not make a law requiring that such data be published.

Provided the bill is amended as stated herein, the Law Department can approve it for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Assistant Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
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