

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
ACTING AS THE MULTNOMAH COUNTY BOARD OF HEALTH

**ORDER NO. 08-114**

Adopting a Policy Requiring the Nutrition Labeling of Food Items at Chain Restaurants and Directing the County Department of Health to Promulgate Rules and Regulations to Implement the Policy

**The Multnomah County Board of Health Finds:**

- a. The Multnomah County Board of County Commissioners constitutes and is the policymaking body of the Multnomah County Board of Health under ORS 431.410 and 431.415.
- b. The Nutrition Council of Oregon and the Oregon Coalition for Promoting Physical Activity published *A Healthy Active Oregon: Statewide Physical Activity and Nutrition Plan 2007-2012*. (Community Objectives and Strategies III.n):

“Restaurants shall expand and promote options for healthy foods, beverages and meals by providing caloric content and other key nutritional information.”

- c. The analysis of the potential for implementing this strategy in Multnomah County undertaken by the Chronic Disease Prevention Program of the Multnomah County Health Department documented that:
  - (1) Consumers have difficulty making informed choices about food purchases in restaurants because of an absence of relevant nutrient information, as evidenced by the following:
    - An FDA-commissioned report concluded that without access to nutritional information, consumers are not able to assess the caloric content of foods;
    - Multiple studies have shown that restaurant foods contain almost twice the number of calories estimated by consumers, including a study of well-trained nutrition professionals who consistently underestimated the calorie content of restaurant foods by 200 to 600 calories.
  - (2) Obesity is one of the greatest public health challenges facing the nation and the communities of Multnomah County, as evidenced by the following:
    - Nationally, obesity rates have doubled in children and tripled in teenagers over the past twenty years;
    - Fifty percent of overweight children and teenagers remain overweight as adults;
    - Two thirds of adults in Multnomah County are overweight or obese;
    - Obesity-related chronic diseases, including cardiovascular disease, diabetes, hypertension, cancer, and asthma, are the leading causes of death and disability in Oregon and Multnomah County;
    - In 2005, 25% of the years of potential lost in Multnomah County, a measure of premature mortality, were due to chronic diseases caused or escalated by poor eating habits;
    - The indirect and direct costs of adult obesity in America are \$117 billion each year.
  - (3) Americans eat an increasing number of meals outside the home, and such meals are linked to higher calorie intake, as evidenced by the following:

- In 1970, Americans spent just 26% of their food dollars on restaurant meals and other food prepared outside of the home. Today, Americans spend 47.8% of their food dollars on away-from-home foods;
  - About one-third of the calories in an average American's diet come from restaurant or other away from home foods;
  - Between 1972 and 1997, the per-capita number of fast food restaurants doubled, and the per-capita number of full-service restaurants rose by 35%;
  - On average, children and youth aged 11-18 visit fast food outlets twice a week, and children consume nearly twice as many calories from restaurant meals than from home-cooked meals;
  - Restaurant foods are generally higher in those nutrients for which over-consumption is a problem, such as fat and saturated fat, and lower in nutrients required for good health, such as calcium and fiber;
  - Portion sizes are often large at restaurants, and it is not uncommon for a restaurant entrée to provide half a day's calories, saturated and trans fat, or sodium.
- (4) The Federal Nutrition Labeling and Education Act requires food manufacturers to provide nutrition information on nearly all packaged foods but explicitly exempts restaurants from that requirement;
- (5) Competition within the food service industry is healthy and desirable, and the availability of nutrition information can serve as another factor to inform consumer choices, as evidenced by the following:
- Three quarters of American adults report using nutritional labels on packaged foods;
  - Studies have shown that people who use food labels are more likely to eat healthfully;
  - Almost half of consumers report that the information provided on food labels has caused them to change their food purchasing habits or decide between similar foods.
- (6) Nutrition labeling in fast food and chain restaurants is well-supported by the public, as evidenced by the following:
- Six national representative consumer polls found that between 61% and 87% of Americans support nutrition labeling in restaurants;
  - Sixty nine percent of Oregonians support requiring nutritional labeling in fast food and chain restaurants.
- (7) The United States Surgeon General, the Food and Drug Administration, the National Academies' Institute of Medicine, the American Heart Association, the American Diabetes Association, and the American Medical Association have recommended the provision of nutrition information at restaurants as a strategy to address rising obesity rates.
- (8) The current system of voluntary nutritional labeling at restaurants is inadequate. Approximately half of the largest chain restaurants fail to provide any nutritional information about their menu item to customers. Restaurants that do provide such information often do not do so at the point of sale, but rather on websites, tray-liners, on fast-food packages or in brochures that are available only by request.
- (9) Many individual, family, community, and societal factors influence dietary patterns and levels of physical activity. Addressing obesity will require a broad range of interventions, and nutrition labeling is one tool to empower Multnomah County residents to take greater control of their own health and make healthier choices about what they eat.

- d. The Chronic Disease Prevention Program coordinated a multi-phase community engagement process with representatives from the food service, public health, academic, non-profit, and business communities to assess the feasibility of fast food and chain restaurant menu item labeling and develop a policy for recommendation to the Board.
- e. It is the intent of the Multnomah County Board of Health to provide consumers with basic nutrition information and other product information about prepared Foods sold at Chain Restaurants in Multnomah County so that consumers can make informed Food choices.

**The Multnomah County Board of Health Orders:**

- 1. The Board adopts the attached Chain Restaurant Nutrition Labeling Policy as recommended by the Chronic Disease Prevention Program. [ with Amendments (attached)].
- 2. The Board directs the County Department of Health to promulgate rules and regulations to carry out and enforce this policy.
- 3. The Health Department may adopt a schedule of fees to recover expenses of the Department in performing its responsibilities in carrying out this Order.

ADOPTED this 31st day of July 2008.

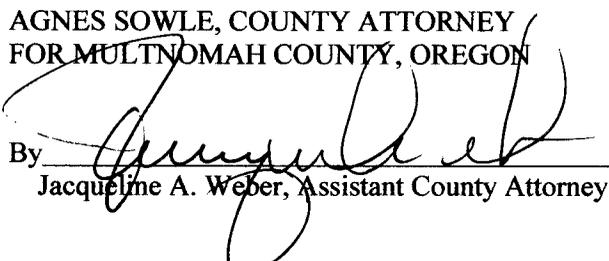


BOARD OF COUNTY COMMISSIONERS  
ACTING AS THE MULTNOMAH COUNTY  
BOARD OF HEALTH

  
Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By   
Jacqueline A. Weber, Assistant County Attorney

SUBMITTED BY:

Lillian Shirley, Director of the Department of Health

## ***Chain Restaurant Nutrition Labeling Policy***

**Purpose.** The purpose of this policy is to provide Multnomah County residents with basic nutrition information and other product information about prepared Foods sold at Chain Restaurants. Readily available product disclosures are essential to allow consumers to make informed purchasing decisions about the Food that they, and their children and dependents, eat. Further, product disclosures help foster free market competition based on the true nutritional quality of a Chain Restaurant's products.

**Definitions.** The following words and phrases, whenever used in this policy, shall have the meanings defined in this policy unless the context clearly requires otherwise:

- a) "Chain Restaurant" means a Restaurant within Multnomah County that is part of an affiliation of Restaurants and for which the affiliated Restaurants:
  - (1) Have at least fifteen or more restaurants within the United States;
  - (2) Sell Formula Menu Items that comprise at least eighty percent or more of Menu Items served in at least fifteen restaurants; and
  - (3) Operate under the same apparent brand or substantially the same name, regardless of whether the restaurants are subject to the same ownership or type of ownership.
- b) "Food" means any substance in whatever form used or intended for use in whole or in any part for human consumption such as, for example, meals, snacks, desserts, and beverages of all kinds.
- c) "Food Product" means a discrete item of Food offered for sale or consumption, such as, for example, a hamburger, or offered in conjunction with another discrete item of Food, such as, for example a hamburger sold as part of a meal including french-fries and a soda, but does not include ingredients except ingredients sold separately, such as, for example, a slice of cheese added to a hamburger for an additional charge.
- d) "Food Tag" means any informational label placed in proximity to a Food Product it identifies or characterizes, such as, for example, a label placed next to a cherry pie showing a picture of a cherry and listing the price per slice or a label placed next to a container of pasta in a salad bar with the text, "Pesto Pasta Salad", but does not include a Menu or a Menu Board.
- e) "Menu" means any listing of Food Products offered for sale, including for example a pictorial display, and includes listings intended for consumption on or off the premises, such as a takeout, but does not include a Menu Board.
- f) "Menu Board" means any listing of Food Products offered for sale, including, for example, a pictorial display, that is posted and intended for joint viewing by multiple consumers such as, for example, back-lit marquee signs above a point of sale at fast food outlets or chalk boards listing Food Products for sale; and also

means any listing of Food Products for sale that is posted and intended for viewing by a consumer purchasing Food to go, such as, for example, a drive-through signboard.

- g) “Menu Item” means (1) a Food Product listed on a Menu, Menu Board, or Food Tag, and means (2) a combination of Food Products offered together on a Menu, Menu Board, or Food Tag, such as, for example, a “kids meal” combining a hamburger, french-fries, and a carton of milk.
- h) “Menu Item Variant” means each standardized alternative of a singly listed Menu Item, such as, for example, each different size of the Menu Item (e.g., small, medium, large, etc.), each different flavor of the Menu Item “soda” (e.g. Coke, Sprite, etc), each pizza topping combination (e.g. pepperoni, extra cheese, mushroom, etc), each different type of bagel (e.g. poppy seed, raisin, etc), each ice-cream flavor (e.g. chocolate, vanilla, etc.), or each variation of a “kids meal” (e.g. a hamburger with french fries, a hamburger with apple slices, etc).
- i) “Formula Menu Item” means a Menu Item that is essentially the same between affiliated restaurants and prepared using a consistent standardized recipe.
- j) “Restaurant” means (1) a facility at which any prepared, unprepackaged Food Product is offered for sale for consumption on or off the premises, such as, for example: traditional sit-down restaurants, cafes, coffee stands, cookie stands; delis; bakeries; ice-cream shops; and fast-food outlets; and means (2) any area within a grocery, convenience, or variety store that is a separately owned food facility at which any prepared, un-prepackaged Food Product is offered for sale and consumption on or off the premises, but does not include other areas of a grocery, convenience, or variety store.
- k) “Self-Service Item” means any prepared, un-prepackaged Food that consumers are permitted to procure without assistance of a Restaurant agent or employee, such as, for example, Food displayed at a salad bar or buffet line, but does not include condiments placed on a dining table or on a counter for general use without charge.

**Minimum Product Information.**

- a) Required Product Information. Each Chain Restaurant shall accurately ascertain, at a minimum, the following product information for each Menu Item Variant, as the item is usually prepared and offered for sale:
  - (1) Total calories;
  - (2) Total grams of saturated fat;
  - (3) Total grams of trans fat;
  - (4) Total grams of carbohydrates;
  - (5) Total milligrams of sodium.

- b) Verifiable and Accurate Information Required.
  - (1) The product information required by this policy shall be based on verifiable and accurate analysis of the Menu Item Variant, which may include the use of nutrient databases, laboratory testing, or other methods of analysis allowed by the Federal Food and Drug Administration for the labeling of packaged foods.
  - (2) A Restaurant is in violation of this policy if the provided product information required by this policy:
    - i. Is not present or is not in the form required by this Policy;
    - ii. Is different from what the Restaurant knows or believes to be the true and accurate information; or
    - iii. Deviates by more than twenty percent (20%) from what actual analysis or other reliable evidence shows to be the average content of a representative sample of the Menu Item Variant.

### **General Requirements and Prohibitions.**

- a) Whenever a Restaurant, pursuant to this policy, is required to disclose information to the public, the Restaurant shall round numerical values as follows:
  - (1) For values above 50, the disclosed value shall be rounded to the nearest value evenly divisible by 10 (e.g., 322 is rounded to 320, 435 is rounded to 440, etc);
  - (2) For values equal to or less than 50, the disclosed value shall be rounded to the nearest value evenly divisible by 5 (e.g., 43 is rounded to 45, 21 is rounded to 20, etc.). [these rounding rules are based on those used by the FDA for packaged food]
- b) Each discrete display of a Self-Service Item shall be accompanied by a Food Tag, or the Self-Service Item shall be listed on a Menu Board that is readily visible from the self-service location.
- c) Upon the request by a consumer visiting a Chain Restaurant, the Restaurant shall promptly provide the consumer with a physical, written list of the values for the: total calories; total grams of saturated fat; total grams of trans fat; total grams of carbohydrates; and total milligrams of sodium for all Menu Item Variants. The list, such as a supplemental menu or menu insert, shall be available at each point of sale.

### **Product Disclosure Requirements for Menus.**

- a) Product disclosure on Menus.
  - (1) Each Chain Restaurant that uses a Menu shall disclose the total calories next to each Menu Item in a size and typeface that is clear and conspicuous, and no less prominent than the price.
  - (2) Each Chain Restaurant that uses a Menu shall include on the Menu in a prominent location and in a clear and conspicuous manner, the following statement: "Recommended limits for a 2,000 calorie daily diet are 20 grams of

saturated fat and 2,300 milligrams of sodium. Additional nutrition information available upon request.”

- b) Product disclosure on Menu Boards.
  - (1) Each Chain Restaurant that uses a Menu Board shall display the total calories next to each Menu Item on the Menu Board in a size and typeface that is clear and conspicuous, and no less prominent than the price.
  - (2) Each Chain Restaurant that uses a Menu Board shall include on the Menu in a prominent location and in a clear and conspicuous manner, the following statement: “Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium. Additional nutrition information available upon request.”
- c) Product disclosure on Food Tags. Each Chain Restaurant that uses a Food Tag shall display the total calories for each Menu Item represented on the Food Tag in a size and typeface that is clear and conspicuous, and no less prominent than the price.
- d) Disclaimers Permitted. Nothing in this policy prohibits the Restaurant from publishing truthful disclaimers, including on the Menus, Menu Boards, and Food Tags, notifying consumers that there may be small variations in nutritional content across servings, due to differences in preparation, service sizes, ingredients, or custom orders.
- e) Additional nutrition labeling permitted. Nothing in this policy precludes Restaurants from voluntarily providing additional nutrition labeling of Food.

**Variable Items and Combo Meals.** For any Menu Item having more than a single Menu Item Variant (e.g. more than one flavor or more than one size), and for each type of information required (e.g. calories, saturated fat, etc):

- a) If both the highest and lowest value of all the Menu Item Variants are within 10% of the median value, the median value alone may be used whenever this policy requires disclosure of the type of information;
- b) If both the highest and lowest value of all the Menu Items are within 20% of the median value, the range of values may be used whenever this policy requires disclosure of the type of information; and
- c) If neither subsection (a) or (b) applies, each Menu Item Variant must be listed as a separate Menu Item and accompanied by the appropriate ascertained value whenever this policy requires disclosure of the type of information.

**Exclusions and Exemptions.**

- a) Food Items Excluded. This policy does not apply to:

- (1) Condiments placed on the dining table or on counter for general use without charge;
  - (2) Food that is offered for sale for less than sixty (60) days in a calendar year;
  - (3) Alcoholic beverages not listed as Menu Items.
- b) Restaurant Exemptions. The following types of Restaurants are exempted from the requirements of this policy:
- (1) Public and private school cafeterias
  - (2) Licensed health care facilities

Amendment 2 - passed unanimously

Delete “licensed health care facilities” from the restaurant exemptions.

Add a severability clause listed in Amendment 1. [“If any provision of this regulation or its application to any person or circumstance is held invalid, the remainder of the regulation of the application to other persons or circumstances is not effected.”]<sup>1</sup>

Policy

Licensed health care facilities should be the first organizations to promote nutrition labeling and educating their clients about diet and caloric intake.

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<sup>1</sup> The severability clause was read into the record by Commissioner Naito.

#### Amendment 4

Change the exclusion of food that is offered for sale under (a) (2) from sixty (60) to ninety (90) days. ~~and add “in a calendar year.”<sup>1</sup>~~

#### Policy

We should encourage the use of seasonal and fresh produce and products. The costs of changing menus and information can be costly, so the County should provide for an approach that recognizes establishments may want to provide seasonal menu items in the fall, winter, summer and spring. King County adopted a 90 day requirement.

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<sup>1</sup> This language was deleted by motion of Commissioner Naito and approved unanimously.

## Amendment 5

Change the Minimum Product Information required under (b)(1) to delete “The product information required by this policy shall be based on verifiable and accurate analysis of the Menu Item Variant, which may include the use of nutrient databases, laboratory testing, or other methods of analysis allowed by the Federal Food and Drug Administration for the labeling of packaged foods.”

Adopt the reasonable basis standard of King County as follows

“The restaurant shall be required to provide information and documentation of the reasonable basis or bases of calorie and nutrient analysis. Reasonable basis or reasonable bases means any reliable and verifiable calorie and nutrient analysis of a menu item, which may include the use of calorie and nutrient databases, cookbooks, laboratory analyses and other reliable and verifiable methods of analysis.”

## Policy

Proponents of the ordinance have asserted that it is easy, using computer programs, to determine the calorie and nutrient content of menu items. I don't believe this to be accurate. My office has consulted nutritionists and one of my office staff is a chef and tested the program using his recipes. Accurate information of calorie content and nutrition is in fact complicated to ascertain. We should allow restaurants to use information they have a reasonable basis believe is true.

Amendment #7

Amend the definition of “Menu” and “Menu Board” to exempt advertising.

Add language as follows

“Menu” does not include printed or pictorial materials posted in establishments for the purpose of marketing.

“Menu Board” does not include printed or pictorial materials posted in establishments for the purpose of marketing.

Policy

This language is contained in King County. The definition of “menu” and “menu board” in our proposed policy would arguably cover all marketing, including ads, such as promotional posters on the premises, or television and other ads off the [premises].

## Amendment 9

Approval process for proposed substantially equivalent methods of nutrition labeling.

Add language as follows:

“A restaurant may propose a method of nutrition labeling not otherwise provided for in this ordinance with approval from the Health Department of any proposed substantially equivalent method for nutrition labeling.

~~The proposal shall be submitted in writing and demonstrate how the proposed method is expected to allow for consumers at the point of ordering with information that is routinely and readily available.<sup>1</sup>~~

The Health Department shall establish standards for [written] approval, a process and procedure written approval before implementation.

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<sup>1</sup> This paragraph was deleted by motion of Commissioner Naito and approved unanimously.