

LOCAL LAW NO. “B” FOR 2009

A LOCAL LAW OF ALBANY COUNTY, NY IN RELATION TO REQUIRING CHAIN FOOD SERVICE ESTABLISHMENTS TO DISPLAY CALORIE CONTENT VALUES FOR MENU ITEMS

Introduced: 4/13/09

By Messrs. Nichols, Higgins, Scavo, Ethier, Timmins, Clenahan, Horstmyer, Aylward, Beston, Bullock, Ms. Chapman, Messrs. Clay, Commisso, Ms. Connolly, Messrs. Cotrofeld, Dawson, Domalewicz, Gordon, Houghtaling, Infante, Joyce, Ms. Maffia-Tobler, Messrs. Mayo, McCoy, Ms. McKnight, Messrs. Morse, Rahm, Reilly, Ward and Ms. Willingham:

Section 1. Legislative Findings.

According to the United States Centers for Disease Control, since the mid-seventies, the prevalence of overweight and obesity has increased sharply for both adults and children. Data from two National Health and Nutrition Examination Surveys show that among adults aged 20–74 years, the prevalence of obesity increased from 15.0% (in the 1976–1980 survey) to 32.9% (in the 2003–2004 survey). The two surveys also show increases in overweight among children and teens. For children aged 2–5 years, the prevalence of overweight increased from 5.0% to 13.9%; for those aged 6–11 years, prevalence increased from 6.5% to 18.8%; and for those aged 12–19 years, prevalence increased from 5.0% to 17.4%. These increasing rates raise concern because of their implications for Americans’ health. Being overweight or obese increases the risk of many diseases and health conditions, including the following: hypertension, dyslipidemia (for example, high total cholesterol or high levels of triglycerides), type 2 diabetes, coronary heart disease, stroke, gallbladder disease, osteoarthritis, sleep apnea and respiratory problems, and some cancers (endometrial, breast, and colon). A prime cause of overweight and obesity is eating too many calories and not getting enough physical activity.

A key recommendation of a recent Food and Drug Administration-sponsored expert group report on obesity and eating away from the home was that, “Away-from-home food establishments should provide consumers with calorie information in a standard format that is easily accessible and easy to use. Participants believe that information should be provided in a manner that is easy for consumers to see and use as part of their purchasing and eating decisions. Information should be provided for any standard menu item offered on a regular and ongoing basis that is prepared from a standardized recipe, whether the item is an entire meal or a meal component.”

This local law will require chain food service establishments in Albany County to list the calorie content values of menu items on menus and menu boards. Such information, clearly displayed at the point of decision, would allow consumers

in Albany County to exercise personal responsibility and make informed choices for a growing part of their diets.

Section 2. Definitions

The meaning of terms used in this local law shall be as follows:

A. “Chain food service establishment” means a food service establishment or food service establishments operating in Albany County that is or are part of a group of fifteen or more food service establishment locations nationally, doing business under the same trade name, offering predominantly the same types of meals, foods or menus in servings that are standardized for portion size and content, regardless of the type of ownership of the individual food service establishment locations.

B. “Department” shall mean the Albany County Department of Health.

C. “Menu” shall mean a printed list or pictorial display of a food item or items, and their price(s), that are available for sale from a covered food service establishment and shall include menus distributed or provided outside of the establishment.

D. “Menu Board” shall mean any list or pictorial display of a food item or items and their price(s) posted in and visible within a covered food service establishment or outside of a covered food service establishment for the purpose of ordering from a drive-through window.

E. “Menu Item” shall mean any individual food item, or combination of food items, listed or displayed on a menu board or menu that is/are sold by a covered food service establishment.

F. “Food Item Tag” shall mean a label or tag that identifies any food item displayed for sale at a covered food service establishment.

Section 3. Scope and applicability.

This local law shall apply to menu items that are served in portions the size and content of which are standardized at a covered food service establishment. This local law shall not apply to menu items that are listed on a menu or menu board for less than 30 days in a calendar year.

A. Posting calorie information for menu items. All menu boards and menus in any covered food service establishment shall bear the total number of calories derived from any source for each menu item they list. Such information shall be listed as “calories” or “cal” clearly and conspicuously, adjacent or in close proximity such as to be clearly associated with the menu item, using a font and format that is at least

as prominent in size and appearance, as that used to post either the name or price of the menu item.

B. Calculating calories. Calorie content values (in kcal) required by this local law shall be based upon a verifiable analysis of the menu item, which may include the use of nutrient databases, laboratory testing, or other reliable methods of analysis, and shall be rounded to the nearest ten (10) calories for calorie content values above 50 calories and to the nearest five (5) calories for calorie content values 50 calories and below.

C. Food item tags. When a food item is displayed for sale with a food item tag, such food item tag shall include the calorie content value for that food item in a font size and format at least as prominent as the font size of the name of the food item.

D. Drive-through windows. Calorie content values at drive-through windows shall be either the drive through menu board, or on an adjacent stanchion visible at or prior to the point of ordering, so long as the calorie content values are as clearly and conspicuously posted on the stanchion adjacent to their respective menu item names, as the price or menu item is on the drive through menu board.

E. This local law does not preclude any establishment, including covered food service establishments, from voluntarily providing additional nutritional information, nor from providing a disclaimer stating that there may be variations in calorie content values across service based on slight variations in serving size, quantity or ingredients, or special ordering.

Section 4. Calorie labeling.

A. For menu items offered in different flavors and varieties, including, but not limited to, beverages, ice cream, pizza, and doughnuts, the range of calorie content values showing the minimum to maximum numbers of calories for all flavors and varieties of that item shall be listed on menu boards and menus for each size offered for sale, provided however, that the range need not be displayed if calorie content information is included on the food item tag identifying each flavor or variety of the food item displayed for sale. If a menu item is not on display, nutrition information for each individual flavor or variety shall be provided by means of an in-store brochure, booklet, kiosk, or other device that is easily accessible to customers. Signage shall alert customers to the availability of such information.

B. Combinations. For combinations of different food items listed or pictured as a single menu item, the range of calorie content values showing the minimum to maximum numbers of calories for all combinations of that menu item shall be listed on menu boards and menus. If there is only one possible calorie total for the combinations, then that total shall be listed on menu boards and menus.

C. Chain food service establishment owners or operators shall provide to the Department, if requested, information documenting the accuracy of the calorie labeling required by this local law. A calorie label shall be deemed out of compliance with this local law, if it bears, for calories for which labeling is required under this local law, a total number value that is more than twenty percent lower or higher than nutrient analysis shows as the content of the menu item.

Section 5. Enforcement and penalties.

Any person who violates a provision of this local law shall be subject to the imposition of a civil penalty by the Department, which shall have sole jurisdiction to enforce the provisions of this local law. Every person that violates the provisions of this local law shall be liable for a civil penalty as prescribed by the Albany County Sanitary Code. The penalty provided for by this local law may be sued for and recovered by the Department of Health through the County Attorney in the name of the County of Albany in any court of competent jurisdiction. The penalties imposed herein are the sole penalties to be imposed for a violation of this local law. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him and has had an opportunity to be heard as provided for in the Albany County Sanitary Code.

Section 6. Reverse Preemption.

This local law shall be null and void on the day that federal or statewide 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 County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Section 7. Severability.

If any word, phrase, clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 8. Effective Date.

This local law shall take effect one hundred and eighty (180) days after its filing in the Office of the Secretary of State.

Referred to Health Committee. 4/13/09

Favorable Recommendation - Health Committee. 7/29/09

On roll call vote the following voted in favor: Messrs. Aylward, Beston, Bullock, Carman, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Ms. Connolly, Messrs. Cotrofeld, Dawson, Domalewicz, Ethier, Gordon, Higgins, Horstmyer, Houghtaling, Infante, Joyce, Ms. Maffia-Tobler, Messrs. Mayo, McCoy, Mendick, Morse, Nichols, Rahm, Reilly, Scavo, Ward, Ms. Willingham and Mr. Zeilman – 32.

Those opposed: - Mss. Benedict, Lockart and Mr. Tunny - 3.

Local Law was adopted. 8/10/09