

ORDINANCE NO. NS-300.793

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ADDING CHAPTER XXII OF DIVISION A18 OF THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO MENU LABELING AT CHAIN RESTAURANTS

Summary

This ordinance adds Chapter XXII to Division A18 of the Santa Clara County Ordinance Code and requires chain restaurants to provide basic nutrient and calorie information to consumers. This ordinance shall be effective on September 1, 2008.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:

Section 1. Division A18 of the Ordinance Code of the County of Santa Clara is amended by adding a new Chapter XXII to provide as follows:

CHAPTER XXII. MENU LABELING AT CHAIN RESTAURANTS

Sec. A18-351. Declaration of Intent.

In order to combat the serious public health crisis resulting from obesity, and the attendant financial costs and other impacts, it is necessary that consumers in the County have access to basic nutrient and calorie information. The purpose of this Chapter is to require Chain Restaurants to provide consumers in the County with basic information such as nutrient and calorie information for Menu Items so that consumers may make an informed decision in furtherance of their individual health and welfare goals. The ability to immediately and easily view the number of calories contained in a menu item with easy to read nutritional information allows patrons to make decisions and may encourage customers to make healthy choices.

Sec. A18-352. Definitions

The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) “Chain Restaurant” means a Restaurant within the unincorporated area of the County that shares the same name, offers substantially the same Menu Items in servings that are standardized for portion size and content, and either (1) operates under common ownership or control with at least 14 or more Restaurants in California, or (2) operates as a franchised outlet of a parent company with at least 14 or more franchised outlets in California.
- (b) “Food” means any substance in whatever form used or intended for use or for sale in whole or in any part for human consumption and includes, but is not limited to, food, meals, snacks, desserts, and beverages of all kinds.
- (c) “Food Tag” means any written, printed, or displayed price or descriptor of Food offered for sale at a Restaurant that is not a Menu or a Menu Board, such as, for example, a label placed next to a cherry pie listing the price per slice.
- (d) “Menu” means any list of Food offered for sale at a Restaurant, but does not include a Menu Board or Food Tag.
- (e) “Menu Board” means any list of Food offered for sale at a Restaurant that is posted and intended for joint viewing by multiple customers including, but not limited to, back-lit marquee signs above the point of sale at fast-food outlets and chalk boards listing offered Food items; and also means any list of Food offered for sale at a Restaurant that is posted and intended for viewing by customers purchasing Food to go, such as, for example, a drive-through menu. A Menu Board is not a Menu or Food Tag.
- (f) “Menu Item” means an item described on a Menu, a Menu Board, or a Food Tag that is prepared and offered for sale in a Restaurant. A Menu Item does not include prepackaged food as provided by Health and Safety Code 113700 et seq. or 109875 et seq. A Menu Item also means that portion of a combination item appearing on a Menu, a Menu Board, or a Food Tag that is prepared, non-prepackaged Food

when the item appearing on the Menu, the Menu Board, or the Food Tag is a bundle of items, such as, for example, a “kids meal” that includes: (1) prepared, non-prepackaged Foods, such as a hamburger; (2) prepackaged Foods, such as milk; and (3) a toy.

- (g) “Restaurant” means a facility at which any prepared, non-prepackaged Foods are offered for sale and consumption on or off the premises.

Sec. A18-353. Menu Labeling Required at Chain Restaurants

- (a) **Required Nutritional Information.** Each Chain Restaurant shall make nutritional information available to consumers for all Menu Items. This information shall include, but not be limited to, all of the following, per Menu Item, as that Menu Item is typically prepared and offered for sale:

- (i) Total number of calories;
- (ii) Total number of grams of saturated fat;
- (iii) Total number of grams of trans fat;
- (iv) Total number of grams of carbohydrate;
- (v) Total number of milligrams of sodium.

- (b) **Information on Menus.**

- (i) Each Chain Restaurant that uses a Menu shall provide the nutritional information required by subsection (a) next to or beneath each item on the Menu in a size and typeface that is at least as prominent as that used for either the name or price of the Menu Item.
- (ii) Each Chain Restaurant that uses a Menu shall include on the Menu 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.”

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- (c) **Information on Menu Boards and Food Tags.**
- (i) Each Chain Restaurant that uses a Menu Board or Food Tag shall provide the nutritional information required by subsection (a)(i) (Total number of calories) next to each item on the Menu Board or Food Tag in a size and typeface that is at least as prominent as that used for either the name or price of the Menu Item.
 - (ii) **Additional Printed Information.** Each Chain Restaurant that uses a Menu Board or Food Tag shall make the nutrition information required by subsection (a)(i)-(a)(v) available to consumers per Menu Item, on printed menus, pamphlets, brochures, posters or similar documents that are plainly visible to consumers at the point of ordering. The printed information shall also include 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."
- (d) **Range of nutritional information for different flavors and varieties.** If a Chain Restaurant offers a Menu Item in more than one flavor or variety (such as beverages, ice cream, pizza, or doughnuts) and lists the item as a single menu item, the range of values for the nutritional information for all flavors and varieties of that item (e.g., the minimum to maximum numbers of calories) shall be listed for each size offered for sale.
- (e) **Disclaimers.** Menus, Menu Boards, and Food Tags may include a disclaimer that indicates that there may be minimal variations in nutritional content across servings, based on slight variations in overall size and quantities of ingredients, or special ordering.
- (f) **Verifiable and Reliable Information Required.**
- (i) The nutritional information required by this section shall be based on a verifiable analysis of the Menu Item, which may include the use of nutrient databases, laboratory testing, or other reliable methods of analysis.
 - (ii) A Restaurant is in violation of this section if the provided nutritional information required by this section either:

- (1) Is not present or is not in the form required by this section;
- (2) Is different than what the Restaurant knows or believes to be the true and accurate information; or
- (3) Deviates by more than 20 percent from what actual analysis or other reliable evidence shows to be the average content of a representative sample of the Menu Item.

(g) **Food Items Excluded.** This section does not apply to:

- (i) Items placed on the table or at a counter for general use without charge, such as, for example, condiments;
- (ii) Alcoholic beverages; and
- (iii) Items that are on the Menu, Menu Board, or Food Tag for less than a total of thirty days in a calendar year.

Sec. A18-354. Penalties for Violation of the Ordinance.

- (a) In addition to all other available remedies, all violations of this Chapter are subject to an administrative penalty in the following amounts:
 - (i) \$350.00 for the first administrative citation;
 - (ii) \$700.00 for the second administrative citation; and
 - (iii) \$1,000.00 for the third and/or each subsequent administrative citation.
- (b) Unless otherwise specified in this Chapter, each day, or portion of a day that a violation continues shall constitute a separate violation.

Sec. A18-355. Enforcement Officer Defined.

For purposes of this Chapter, “enforcement officer” shall mean any County employee, agent of the County, or law enforcement officer with the authority to enforce any provision of this code.

Sec. A18-356. Administrative Citation.

Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.

Sec. A18-357. Payment of the Penalty.

- (a) The penalty shall be paid to the County within 30 days from the date of issuance of the administrative citation, unless the person charged in the administrative citation requests a hearing as set forth in Section A18-358.
- (b) Payment of a penalty under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

Sec. A18-358. Hearing Request.

- (a) Any recipient of an administrative citation may contest the violation by completing a request for hearing form and sending the form to the Public Health Department within 30 days from the date of service of the administrative citation.
- (b) A request for hearing form may be obtained from the department specified on the administrative citation.
- (c) The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 days before the date of the hearing.
- (d) If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be provided to the person requesting the hearing at least 5 days before the date of the hearing.

Sec. A18-359. Hearing Officer.

The County Executive shall designate the hearing officer for the administrative citation hearing.

Sec. A18-360. Hearing Procedure.

- (a) A hearing before the hearing officer shall be set for a date that is not less than 15 days and not more than 60 days from the date that the request for hearing is filed in accordance with the provisions of this Chapter.
- (b) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- (c) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a failure to exhaust administrative remedies.
- (d) The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.
- (e) The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation before issuing a written decision.

Sec. A18-361. Hearing Officer's Decision.

- (a) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.
- (b) If the hearing officer determines that the administrative citation should be upheld, then the responsible person shall pay the penalty amount within 30 days from the date of the decision.
- (c) The recipient of the administrative citation shall receive a copy of the hearing officer's written decision by mail.
- (d) The employment, performance evaluation, compensation, and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation penalties upheld by the hearing officer.

Sec. A18-362. Enforcement cost recovery.

The owner of a chain restaurant where a violation is determined to exist pursuant to this Chapter is responsible for reimbursing the County for all costs of enforcement, including administrative costs, inspection costs, staff costs, and attorneys' fees. This reimbursement requirement applies whether the enforcement is through an administrative, civil, or criminal process.

Sec. A18-363. Late Payment Charges.

- (a) Unless otherwise provided in this code, any person who fails to timely pay, in full, any penalty imposed pursuant to the provisions of this Chapter, on or before the date that penalty is due, shall also be liable for the payment of a late payment charge of ten percent of the amount of the delinquent penalty.
- (b) Any person who fails to timely pay, in full, any penalty imposed pursuant to the provisions of this Chapter, on or before thirty days after its due date shall also pay a second penalty of ten percent of the delinquent amount

Sec. A18-364. Recovery of Administrative Citation Penalties and Costs.

- (a) The County may collect any past due administrative citation penalty or late payment charge by use of all available legal means, including filing a civil lawsuit.
- (b) Any person who fails to pay any obligation shall be liable in any action brought by the County for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs, staff costs, and attorneys' fees.
- (c) Collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the delinquent obligation.
- (d) Collection costs imposed under this provision shall be added to and become a part of the underlying obligation.

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Sec. A18-365. Penalty Deposits.

Penalties collected pursuant to this Chapter will be deposited into an account within the Public Health Department for obesity prevention and education.

Sec. A18-366. Preservation of remedies.

Nothing in this chapter is intended to limit or void any rights, remedies or authority of the County or any County official, employee, department, agency, investigator, consultant, contractor or agent of the County provided by any other law, ordinance, or regulation.

Section 2. This ordinance shall be effective on September 1, 2008.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this _____ day of _____, 2008, by the following vote:

AYES: Supervisors

NOES: Supervisors

ABSENT: Supervisors

Pete McHugh, Chair
Board of Supervisors

ATTEST:

Phyllis A. Perez,
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



Jennifer Sprinkles,
Deputy County Counsel