

ORDINANCE NO. NS-300-820

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ADDING CHAPTER XXII OF DIVISION A18 TO THE COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO TOYS AND OTHER INCENTIVES WITH RESTAURANT FOOD

Summary

This ordinance adds Chapter XXII to Division A18 of the Santa Clara County Ordinance Code and sets nutritional standards for restaurant food that comes with toys or other incentive items.

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

Division A18 of the Ordinance Code of the County of Santa Clara is amended by adding a new Chapter XXII to be numbered and titled and to read as follows:

CHAPTER XXII.
TOYS AND OTHER INCENTIVES WITH RESTAURANT FOOD

SECTION A18-350. Findings and Intent.

The Board of Supervisors of the County of Santa Clara does hereby find the following:

- (a) Childhood obesity and overweight are widespread in the County of Santa Clara. Nearly one in four 7th, 9th, and 11th graders in the County was either obese (10.4%) or overweight (14.3%) in 2007-2008, while one in three toddlers ages 2-5 years old in the Santa Clara County Child Health and Disability Prevention Program (CHDP) was either obese (17.2%) or overweight (16.2%) in 2007.
- (b) Obesity, overweight, and unhealthy eating habits pose a serious risk to the health and welfare of children and adolescents. Children and adolescents who are obese or overweight have an increased risk of being obese or overweight as adults, increasing their chances of experiencing chronic health conditions later in life. During childhood and adolescence, obese and overweight individuals are already more likely than their peers to exhibit risk factors for heart disease (including elevated cholesterol levels, triglyceride levels, and blood pressure); risk factors for cancer; and impaired glucose tolerance, a precursor for development of Type 2 diabetes. In recent years, Type 2 diabetes in children and adolescents has risen dramatically in conjunction with increases in obesity and overweight. The Institute of Medicine has stated that the prevalence of obesity

among children is so great that it may reduce the life expectancy of the current generation of children and diminish the overall quality of their lives.

- (c) Childhood obesity and overweight have serious economic costs. Nationally, the annual costs of providing inpatient treatment to children diagnosed with obesity increased from \$125.9 million in 2001 to \$237.6 million in 2005. In addition to inpatient treatment, an estimated \$14.1 billion is spent nationally in prescription drug, emergency room, and outpatient visit expenses each year as a result of childhood obesity and overweight. As children and adolescents in the County become adults, their high rates of obesity and overweight are likely to contribute to the already high economic costs of healthcare (\$420 million in 2006) and loss of productivity (\$496 million in 2006) associated with adult obesity in the County.
- (d) The food that children and adolescents consume at restaurants has a significant impact on their risk of developing obesity, overweight, or other related health risks. Families increasingly dine in restaurants on a regular basis, with 133 million Americans purchasing food at restaurants every day. The food and beverages that restaurants typically serve to children and adolescents often fail to meet accepted nutritional recommendations. Research shows that consumption of fast food, sugar-sweetened beverages, and other restaurant offerings by children and adolescents is frequently associated with overeating, poor nutrition, and weight gain.
- (e) Restaurants encourage children and adolescents to choose specific menu items by linking them with free toys and other incentive items. The Federal Trade Commission (FTC) estimated that ten restaurant chains surveyed spent \$360 million in 2006 to acquire toys distributed with children's meals, and that toys accounted for the fast food industry's second highest category of child-directed promotional expenditures, after television advertising. The FTC reported that in 2006 fast food restaurants sold more than 1.2 billion meals with toys to children under 12, accounting for 20% of all child traffic.
- (f) Research analyzing children's meals at major restaurant chains found that many exceed the recommended caloric limits for children and that 10 of the 12 high-calorie meals in the study came with toys.
- (g) Toys, games, trading cards, admission tickets, and other items given out by restaurants tend to be particularly appealing to children and adolescents. Digital incentives like computer games and online media similarly appeal to youth.
- (h) Targeting children and adolescents for particular purchases has an effect on what they eat. Research shows that parents frequently make purchases based on requests made by children, particularly for items that are geared toward children. Additionally, children and adolescents ages 4-17 years have increasing discretionary income that is frequently spent on restaurant food. The Institute of Medicine concluded that advertising affects not only the food and beverage preferences of children ages 2-12 years, but also the requests they make and what they eat.

- (i) The FTC recommends that companies adopt nutrition-based standards for food and beverages targeted at children. However, as of March 2010, 35 of 45 major national restaurant chains surveyed had no policies or extremely vague policies on this issue, and the remaining 10 restaurant chains were found to have key weaknesses in their policies or the nutritional criteria used.

The intent of this chapter is to improve the health of children and adolescents in the County by setting healthy nutritional standards for children's meals accompanied by toys or other incentive items. These standards will support families seeking healthy eating choices for their children by permitting restaurants to offer toys and other incentive items only in conjunction with foods meeting specified nutritional criteria. This chapter imposes no requirement for the labeling of food or beverages.

SECTION A18-351. Definitions.

For the purposes of this chapter, the following definitions shall apply:

- (a) "Restaurant" is as defined in Section B11-53(x) of Division B11 of the County Ordinance Code.
- (b) "Incentive Item" means (1) any toy, game, trading card, admission ticket or other consumer product, whether physical or digital, but not including "Single Use Articles" as defined in California Health & Safety Code Section 113914 as of January 1, 2009, or (2) any coupon, voucher, ticket, token, code, or password redeemable for or granting digital or other access to an item listed in (b)(1).
- (c) "Single Food Item" means any food offered for sale by a Restaurant, not including beverages.
- (d) "Meal" means any combination of Single Food Items and/or beverages offered together for a single price.

SECTION A18-352. Incentive Items with Restaurant Food.

- (a) *Single Food Items and Meals.* A Restaurant may not provide an Incentive Item linked to the purchase of a Single Food Item or Meal if it includes any of the following:
 - (1) *Excessive Calories.* More than two hundred (200) calories for a Single Food Item, or more than four-hundred eighty-five (485) calories for a Meal;
 - (2) *Excessive Sodium.* More than four-hundred and eighty milligrams (480 mg) of sodium for a Single Food Item, or more than six hundred milligrams (600 mg) of sodium for a Meal;

- (3) *Excessive Fat.* More than thirty-five percent (35%) of total calories from fat, except for fat contained in nuts, seeds, peanut butter or other nut butters, or an individually served or packaged egg, or individually served or packaged low-fat or reduced fat cheese;
 - (4) *Excessive Saturated Fat.* More than ten percent (10%) of total calories from saturated fats, except for saturated fat contained in nuts, seeds, peanut butter or other nut butters, an individually served or packaged egg, or individually served or packaged low-fat or reduced fat cheese;
 - (5) *Trans Fat.* More than 0.5 grams of trans fat;
 - (6) *Excessive Sugars.* More than 10 percent (10%) of calories from added caloric sweeteners;
- or
- (7) *A Beverage that fails to meet the criteria below.*
- (b) *Beverages.* A Restaurant may not provide an Incentive Item linked to the purchase of a beverage if it includes any of the following:
- (1) *Excessive Calories.* More than one hundred twenty (120) calories;
 - (2) *Excessive Fat.* More than thirty-five percent (35%) of total calories from fat;
 - (3) *Excessive Sugars.* More than ten percent (10%) of calories from added caloric sweeteners;
 - (4) *Added Non-Nutritive Sweeteners;*
- or
- (5) *Caffeine.*

SECTION A18-353. Enforcement.

- (a) *Civil Enforcement.* The County is hereby authorized to bring a legal action or claim:
- (1) To enjoin any violation of this chapter;
 - (2) To collect any past due fine, charge, or penalty provided for under this section, or under Division A37 of the Santa Clara County Ordinance Code, resulting from a violation of this chapter; or

- (3) To recover attorneys' fees and/or costs incurred in bringing any legal action pursuant to this section.

(b) Administrative Enforcement.

- (1) Each violation of this chapter shall be subject to an administrative fine of \$250 for the first violation and \$500 for the second violation.

The County reserves the right to impose fines for additional violations, not to exceed \$1000.

- (2) Each violation of this chapter shall be subject to regulatory fees, not included in the administrative fine, not to exceed the amount reasonably necessary to recover the cost incurred by the County in the enforcement of the provisions of this chapter.

- (3) The imposition, enforcement, collection, and administrative review of administrative fines and regulatory fees provided for in this chapter shall be governed by Division A37 of the Santa Clara County Ordinance Code.

- (c) Fines, charges, or penalties collected as a result of a violation of this chapter, and which are not used to cover the costs of enforcement, shall be deposited into a separate account within the Public Health Department for obesity prevention and education.

SECTION A18-354. Statutory Construction & Severability.

This chapter shall be construed so as not to conflict with federal or state laws, rules or regulations. Nothing in this chapter authorizes any County agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal or state law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph, or section so that the remainder of this chapter remains in effect.