

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 and Scavo:

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

ten or more food service establishment locations nationally, doing business under the same trade name, offering predominantly the same types of meals, foods or menus, regardless of the type of ownership of the individual food service establishment locations.

B. "Department" shall mean the Albany County Department of Health.

Section 3. Calorie labeling.

A. Calorie information for menu items. Chain food service establishments shall post on menu boards and menus the calorie content values (in kcal) for each menu item next to the listing of each menu item. Posted calorie content shall be calculated in accordance with 21 C.F.R. § 101.9(c)(1)(i) or its successor regulation.

(1) Menu boards and menus. The term "calories" or "cal" shall appear as a heading above a column listing the calorie content value of each menu item, or adjacent to the calorie content value for each menu item, in the same or larger typeface as the calorie content values for individual menu items.

(a) Menu boards. On menu boards, calorie content values shall be posted in a size and typeface at least as large as the name of the menu item or price, whichever is larger.

(b) Menus. On printed menus, calorie content values shall be legible and shall be printed in a size and typeface at least as large as the name or price of the menu item.

B. For menu items that come in different flavors and varieties but that are listed as a single menu item, such as, but not limited to, soft drinks, ice cream, pizza, and doughnuts, the median value for calories for all flavors or varieties shall be listed on menus and menu boards if the calorie values for all flavors or varieties are within 20% of the median. If the calorie values are not within 20% of the median, then the range for all the flavors or varieties of that menu item shall be listed from the lowest to the highest value. If a menu item that comes in different varieties is on display with a name placard or similar signage, the calories per serving as-offered-for-sale shall be listed on the placard along with the name. 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.

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 section. A calorie label shall be deemed out of compliance with this section, if it bears, for calories for which labeling is required under this section, 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 4. 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 5. 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 6. 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 7. 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