

Clerk's Note: Amended by Resolution 16-1451 on July 20, 2010.

Resolution No.:	<u>16-1194</u>
Introduced:	<u>July 31, 2007</u>
Adopted:	<u>November 17, 2009</u>

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH**

By: Councilmembers Leventhal and Trachtenberg

SUBJECT: Board of Health Regulation Requiring Certain Eating and Drinking Establishments to Post Certain Nutrition Information on Menu Boards and Menus

Background

1. County Code §2-65, as amended effective August 10, 2000, provides that the County Council is, and may act as, the County Board of Health, and in that capacity may adopt any regulation which a local Board of Health is authorized to adopt under state law.
2. Maryland Code Health-General Article §3-202(d) authorizes the County Board of Health to adopt rules and regulations regarding any nuisance or cause of disease in the County.
3. On September 18, 2007, the County Council held a public hearing on this regulation. As required by law, each municipality in the County and the public were properly notified of this hearing.
4. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that requiring nutrition labeling is necessary to protect the health of patrons of eating and drinking establishments in the County.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, approves the following regulation:

Nutrition labeling in eating and drinking establishments**(a) Legislative Findings.**

- (1) Research reveals the strong link between diet and health and that diet-related diseases begin early in life.
- (2) Increased caloric intake is a key factor contributing to the increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980. Data from the Maryland Behavioral Risk Factor Surveillance System indicated that 50.8 percent of Montgomery County residents were overweight or obese in 2005. According to the National Institutes of Health, obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders, and cancer. According to the Maryland Vital Statistics 2003 Annual Report, heart disease, cancer, stroke, and diabetes accounted for nearly 60 percent of all deaths in Maryland in 2003. The Report cites heart disease, cancer, stroke, and diabetes as the first, second, third, and fifth leading causes of deaths in Maryland in 2003. The United States Department of Health and Human Services cited that in 2000 the economic cost of obesity was \$117 billion in the United States.
- (3) The National Institutes of Health identified saturated fat as the biggest dietary cause of high low-density lipoprotein cholesterol. High LDL cholesterol levels lead to the build up of cholesterol in arteries; the higher the level of LDL in a person's blood, the greater the risk of heart disease. In the United States, heart disease is the leading cause of death and a leading cause of disability among working adults. The American Heart Association estimated that the economic cost of heart disease and stroke in the United States in 2007 will be \$431.8 billion in health care expenditures and lost productivity. The Maryland Behavioral Risk Factor Surveillance System indicated that nearly 34 percent of Maryland adults were

diagnosed with high cholesterol in 2003. Overweight or obese adults were more likely to have high cholesterol than normal weight adults. The Maryland Vital Statistics 2003 Report cited heart disease as the leading cause of death in Maryland during 2003, which accounted for over 27 percent of all deaths.

- (4) The National Institutes of Health identified that excess dietary sodium will contribute to high blood pressure in people who are sensitive to sodium. High blood pressure can lead to congestive heart failure, kidney failure, and stroke. Nearly 1 in 3 American adults have high blood pressure. The Maryland Behavioral Risk Factor Surveillance System indicated that approximately 25 percent of Maryland adults were diagnosed with high blood pressure in 2003. As with high cholesterol, obese adults were more likely to have high blood pressure than normal weight adults.
- (5) Over the past 2 decades, there has been a significant increase in the number of meals prepared and eaten outside of the home. A study in the USDA Agriculture Information Bulletin reported that Americans consume approximately one-third of their calories on food purchased in eating and drinking establishments, and the National Restaurant Association estimated that Americans spend nearly 48 percent of total food dollars on food purchased from eating and drinking establishments. Studies in the USDA Agriculture Information Bulletin, the International Journal of Obesity, the American Journal of Public Health, and the American Journal of Epidemiology link eating out with obesity and higher caloric intake. Studies in the USDA Agriculture Information Bulletin and the American Journal of Epidemiology report that food from eating and drinking establishments is generally higher in calories and saturated fat and lower in nutrients, such as calcium and fiber, than home-prepared foods.
- (6) The federal Nutrition Labeling and Education Act, in effect since 1994, requires nutrition labeling on packaged foods sold in retail stores. Using food labels is associated with healthier diets. The United States

Department of Health and Human Services cited that three-quarters of American adults report using food labels on packaged foods, and a report from the Food and Drug Administration cited that 48 percent of people report that the nutrition information on food labels has caused them to change the food product they purchased. Nutrition information is required for food served in an eating and drinking establishment only if a nutrient content or health claim is made about the food. It is difficult for consumers to limit caloric intake at eating and drinking establishments because of the limited availability of nutrition information and the practice of serving food in larger-than-standard serving sizes. Studies in the Journal of Marketing and the American Journal of Clinical Nutrition show that people eat greater quantities of food when served more. A study in the Journal for Consumer Affairs indicated that people make healthier choices in eating and drinking establishments when provided with nutrition information at the point of purchase.

(b) **Definitions.**

- (1) Any term used in this regulation has the same meaning as in Section 15-1 of the County Code if the term is defined in that Section.
- (2) “*Menu*” or “*menu board*” means the primary writing of an eating and drinking establishment from which an consumer makes an order selection.
- (3) “*Standardized menu item*” or “*menu item*” means a food or drink item as usually prepared and offered for sale. “*Standardized menu item*” does not include a food or drink item that:
 - (A) appears on the menu for less than 60 cumulative days per calendar year;
 - (B) is not listed on a menu or menu board, including an item that is placed on a table or counter for general use without charge; or
 - (C) is a test-market menu item that appears on the menu for less than 90 cumulative days per calendar year; or
 - (D) is a daily special.

(c) **Applicability.**

- (1) Except as provided by (c)(2), this regulation applies to an eating or drinking establishment that is part of a chain with at least 20 locations in the United States and that:
 - (A) does business under the same trade name, regardless of the ownership of individual locations; and
 - (B) offers substantially the same menu items.
- (2) This Section does not apply to a:
 - (A) grocery store;
 - (B) convenience store; or
 - (C) movie theater.


(d) **Labeling Required.**

- (1) An eating and drinking establishment must post the number of calories, calculated according to applicable federal law, for any standardized menu item on each menu or menu board adjacent to the name of that item.
- (2) An eating and drinking establishment must make the following nutrition information available in writing on request on its premises:
 - (a) calories;
 - (b) calories from fat;
 - (c) total fat;
 - (d) saturated fat;
 - (e) cholesterol;
 - (f) sodium;
 - (g) total carbohydrates;
 - (h) complex carbohydrates;
 - (i) sugars;
 - (j) fiber; and
 - (k) protein.

- (3) The required nutrition information must be clear and conspicuous and located adjacent to each menu item so as to be clearly associated with the menu item.
 - (4) **Self-Service Food.** For self-service food, an eating and drinking establishment must post a sign with the information required in (d)(1) per serving or per item adjacent to each food offered for sale. In this paragraph, “self-service food” includes:
 - (A) items in a salad bar, buffet line, cafeteria line, or a similar self-service facility;
 - (B) self-service beverages; and
 - (C) food that is on display and visible to customers.
 - (5) *Range of Calorie Content Required for Different Flavors and Varieties.* If an eating and drinking establishment offers a standardized menu item in more than one flavor or variety and lists the item as a single menu item, (such as beverages, ice cream, pizza, or doughnuts), the establishment must post the range of nutrition information for each size offered for sale. The range must include the minimum and maximum values for each flavor or variety of that item.
- (e) **Required statements.** An eating and drinking establishment must include the following statements on each menu and menu board:
- (1) a statement regarding suggested daily caloric intake as determined by the federal Department of Health and Human Services; and
 - (2) a statement regarding the availability of the written information required in paragraph (d)(2).
- (f) **Enforcement.**
- (1) Any violation of this regulation is a Class A civil violation. Each day a violation exists is a separate offense.
 - (2) The County Attorney or any affected party may file an action in a court with jurisdiction to enjoin repeated violations of this regulation.

- (3) The Department of Health and Human Services must investigate each complaint alleging a violation of this regulation and take appropriate action, including issuing a civil citation when compliance cannot be obtained otherwise.
- (4) When an eating and drinking establishment is inspected by the Department of Health and Human Services for compliance with Chapter 15, the Department must verify that required nutrition information is posted. The Director is not required to verify the accuracy of the information provided, but may request the establishment to document its accuracy. If the Director requests the establishment to document the accuracy of the nutrition information posted, the establishment must provide verification of the accuracy of the posted information in 30 days.
- (5) The Director of Health and Human Services may suspend a license issued under Chapter 15 for up to three days if the Director finds, under the procedures of Section 15-16, that the operator of an eating and drinking establishment has knowingly and repeatedly violated this regulation.
 - (i) **Applicability.** This regulation applies Countywide.
 - (j) **Severability.** If the application of this regulation or any part of it to any facts or circumstances is held invalid, the rest of the regulation and its application to all other facts and circumstances is intended to remain in effect.
 - (k) **Effective Date.** This regulation takes effect on July 1, 2010.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council