

W.7.a.

AGENDA COVER MEMO

AGENDA DATE: December 10, 2008
TO: Board of County Commissioners
DEPARTMENT: Health & Human Services
PRESENTED BY: Rob Rockstroh



AGENDA TITLE: PRESENTATION BY LANE COUNTY PUBLIC HEALTH AND THE LANE COALITION FOR HEALTHY ACTIVE YOUTH ON CHILDHOOD OBESITY, CHAIN RESTAURANT MENU LABELING AND CHRONIC DISEASE PREVENTION EFFORTS IN LANE COUNTY

I. MOTION

None requested, discussion only.

II. AGENDA ITEM SUMMARY

Health & Human Services seeks to increase Board awareness of prevention efforts related to making the "healthy choice the easy choice" in Lane County and to respond to Board Members' requests for information related to Multnomah County's adoption of a "policy order" directing their Public Health Department's Chronic Disease Prevention Program to enforce the posting of caloric information on menus of "chain" restaurants having fifteen or more locations nationwide. LCHAY supports an action similar to Multnomah's Policy Order (see attached).

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

Lane County maintains local public health authority under ORS 431.414 and the Board of County Commissioners serves as the ex officio board of health as provided for under ORS 431.410.

On October 24, 2008 Commissioners Sorenson and Stewart expressed interest in having a discussion of the Multnomah County policy related to menu labeling be presented by Public Health.

Lane County Public Health has worked, in tandem with LCHAY to prepare an informational presentation for the Board and has previously briefed the Public Health Advisory Committee (August, 2008 & November 2008) on menu labeling.

The Public Health Advisory Committee (HAC) is a non-mandated body (LM 3.538) charged with making recommendations to the "Health Administrator", the "Board of Health

and Board of Commissioners on matters of public health, planning, policy development, control measures, funding, public education and advocacy”.

The Multnomah County Board of Commissioners, acting as the local Board of Health, issued a “Chain Restaurant Nutrition Labeling Policy Order” in July, 2008. This policy order will take effect in 2009.

On 1 October, 2008, California passed a law (SB 1420) championed by the California Center for Public Health Advocacy and the American Cancer Society that requires “each food facility in the state that is part of a chain to provide nutritional information on menus or menu boards.”

New York City requires calorie labeling on menus and has similarly banned the use of trans fatty acids. King County’s Board of Health passed a law similar to New York’s that took effect on August 1, 2008.

B. Policy Issues

It has been established that U.S. citizens underestimate the calories in the food they eat, that the portion sizes in the U.S. have increased, that more than 30% of the total calories consumed by U.S. citizens are eaten outside of the home*. Similarly, weight/percentage of body fat and the percentage of meals not prepared in the home are related and there is a growing body of research linking obesity and/or excess body fat with adverse health affects (according to the Centers for Disease Control: Type 2 diabetes, coronary heart disease, stroke, hypertension, liver and gallbladder disease, sleep apnea and respiratory problems, osteoarthritis, abnormal menses and even some forms of cancer [endometrial, breast and colon]).

Caloric labeling is relatively new, so the research to support its efficacy is still emerging. One study published in the American Journal of Public Health (2008-98:1457-1459), entitled “Purchasing behavior and calorie information at fast-food chains in New York City, 2007” reported that customers ordering from menus containing caloric information order 53 less calories per person. In another recent study, the L.A. County Health Department estimated that menu labeling in chain restaurants would reduce the annual percentage of weight gain by about 39%. With a rough application of these same calculations to Lane County, we can conservatively estimate that over 100,000 pounds of weight gain would be averted in one year.

This type of labeling is supported, most notably, by the U.S. Department of Health and Human Services, the American Cancer Society, the American Heart Association and the Diabetes Education and Research Center.

The potential for variation of caloric counting methodologies has not yet been addressed, though laboratories with experience in this field exist and are available for use by chain restaurants.

The Federal Drug Administration mandated nutritional labeling of packaged foods in 1990. This action was met with initial resistance and packaged food manufacturers railed

against the additional cost involved. Today, half of U.S. adults report that they regularly consult that nutritional information.

The Oregon Legislature will also take up menu labeling during the 2009 Session. It is likely that more than one proposal will be introduced by the Legislature, including one sponsored by the Oregon Restaurant Association and one by the Oregon Nutrition Policy Alliance. Recent polling shows that 70% of voting age Oregonians support menu labeling. (Nationwide polling conducted in 2003, 2005, 2007 and 2008 found support levels to be 67%, 83%, 74% and 78%, respectively.)

* Burton, S., Creyer, EH, Kees, J., Huggins, K. Attacking the obesity epidemic: the potential health benefits of providing nutrition information in restaurants. *American Journal of Public Health*. 2006; 96:1669-1675; Guthrie JF, Lin BH, Frazao E. Role of food prepared away from home in the American diet, 1977-78 versus 1994-96; changes and consequences. *Journal of Nutrition Education and Behavior*. 2002; 34:140-150; Lichtenstein AH, Appel LJ, Brands M, Carnethon M, Daniels S, Franch HA, Franklin B, Kris-Etherton P, Harris WS, Howard B, Karanja N, Lefevre M, Rudel L, Sacks F, Van Horn L, Winston M, Wylie-Rosett J. Diet and lifestyle recommendations revision 2006, *Circulation*. 2006; 114: 82-96. Paul Simon, Christopher J. Jarosz, Tony Kuo, and Jonathan E. Fielding. Menu Labeling as a Potential Strategy for Combating the Obesity Epidemic A Health Impact Assessment. County of Los Angeles, May 2008.

C. Board Goals

May contribute to the provision of outstanding customer/constituent service.

D. Financial and/or Resource Considerations

The financial impact of required labeling on local restaurants has not yet been studied. The Board would first need to determine the eateries to be affected. For example, the Multnomah rules apply to chains with at least fifteen locations, nationwide.

Restaurants routinely print new menus, but the timing of any policy implementation would affect the additional cost involved. Consideration must also be given to the size of the font and any need to quote the source of the caloric determination. Industry sources have estimated the cost of integrating caloric information as ranging from \$50 to \$100, per establishment, depending on the size of the restaurant, complexity of the labeling law, etc. . .

The financial impact on chain restaurants needs to be counterbalanced against the benefit to the public and the enormous economic costs associated with the rising obesity rate. Increased health care spending related to obesity has accounted for 25% of the increased health care spending in the U.S. over the past two decades. (Thorpe KE, Florence CS, Howard DH, Joski P. The impact of obesity on rising medical spending. *Health Affairs* 2004; W480-W486 (published online 20 October 2004; 10.1377/hlthaff.W.480).

E. Analysis

There is no guarantee that the State Legislature will take action during the 2009 Session. Obesity and its related impact on health have led the Centers for Disease Control to dedicate to the "Healthy People 2010" objectives to weight reduction among adults and children in the U.S.

Although there is no doubt that obesity is a serious issue, a strong link between menu labeling and consumer choice of healthier menu items has not yet been established.

The Public Health Division has prevention staff working on nutritional and other healthy lifestyle choices, but has no extra staffing capacity to pursue a Countywide Ordinance to mandate menu labeling. However, when Multnomah County passed their policy order this Fall they received national attention and subsequent grant funding to support program implementation.

The Board needs to weigh the relative benefits of the existing nutritional and activity programs versus the potential rewards of pursuing local action on mandatory caloric menu labeling.

F. Alternatives / Options

If the Board so directs, Health & Human Services will return with either a work session on the development of a policy directive, ordinance or with a Resolution related to caloric menu labeling in Lane County. Health & Human Services will involve the Public Health Advisory Committee and the Lane Coalition for Healthy Active Youth in any policy development it undertakes.

IV. TIMING/IMPLEMENTATION

The Board could request a work session at any time after the New Year.

V. RECOMMENDATION

None, discussion only.

VI. FOLLOW-UP

Will be based on the direction given above under Item IV.

VII. ATTACHMENTS

Multnomah County Chain Restaurant Nutrition Labeling Policy DRAFT Administrative Rules



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CHAIN RESTAURANT NUTRITION LABELING POLICY **DRAFT** ADMINISTRATIVE RULES

- 1.0 Purpose and policy
- 1.1 Definitions
- 1.2 Food nutrition labeling requirements
- 1.3 Enforcement

1.0 Purpose and policy.

- A. These rules are adopted pursuant to the authority granted the Multnomah County Health Department by the Multnomah County Board of Health in Order 08-114.
- B. The purpose of this policy is to provide Multnomah County residents with basic nutrition information about prepared foods sold at chain restaurants licensed by Multnomah County Health Department. Readily available product disclosures are necessary to allow customers to make informed purchasing decisions about the food that they and their children and dependents eat. Further, product disclosures help foster free market competition based on the true nutritional quality of chain restaurants' products.

1.1 Definitions. The definitions in this section apply throughout these rules unless the context clearly requires otherwise:

- A. "Restaurant" means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants.
- B. "Chain Restaurant" means a Restaurant that is licensed by Multnomah County as a full service restaurant, and that is part of an affiliation of Restaurants and for which the affiliated Restaurants:
 - (1) Have at least fifteen or more restaurants within the United States;
 - (2) Sell Standard Menu Items that comprise at least eighty percent of Menu Items served in at least fifteen restaurants; and
 - (3) Operate under the same apparent brand or substantially the same name, regardless of whether the restaurants are subject to the same ownership or type of ownership.
- C. "Food Product" means a discrete item of Food such as a hamburger or a soda that is offered for sale separately or as a part of a combination meal. A "Food Product" includes each different size or flavor offered. A Food Product does not include ingredients except ingredients that are sold separately, such as a slice of cheese added to a hamburger for an additional charge.
- D. "Food Tag" means any informational label placed in proximity to an individual Food Product it identifies or characterizes for example:
 - (1) A label placed next to a cherry pie showing a picture of a cherry and listing the price per slice, or

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- (2) A label placed next to a container of pasta in a salad bar with the text, "Pesto Pasta Salad".
- Food Tag is not synonymous with a Menu or a Menu Board.
- E. "Menu" means a printed or pictorial list of Food Products offered for sale. A Menu is intended to assist customers in ordering Food Products whether the ordering is done on the restaurant premises or off premises (for example, a phone-in menu). A menu does not include printed or pictorial materials intended for the purpose of marketing.
- F. "Menu Board" means any posted list or pictorial display of Food Products offered for sale. A Menu Board may be posted inside or outside a restaurant, and is typically designed to be visible to multiple customers, and/or visible at a moderate distance. A Menu Board is intended assist customers in ordering Food Products, and may take various forms, including but limited to, a back-lit marquee sign above an ordering counter, a chalk board or other hand-written board, or a drive-through area signboard. A Menu Board does not include posted text or pictorial materials intended for the purpose of marketing.
- G. "Menu Item" means
- (1) a single Food Product listed on a Menu, Menu Board, or Food Tag, or
 - (2) a combination of Food Products offered together on a Menu, Menu Board, or Food Tag, for example, a "kids meal" combining a hamburger, french-fries, and a carton of milk.
- H. "Standard Menu Item" means a Menu Item that is essentially the same between affiliated restaurants and prepared using a consistent standardized recipe.
- I. "Self-Service Item" means any Food Product or Menu Item that customers in a restaurant are permitted to obtain without assistance of a Restaurant employee or agent, for example, foods offered at a salad bar or buffet line. Condiments placed on a dining table or on a counter for general use without charge are not considered "Self Service Items".
- J. A "Supplemental Menu" is an alternative printed or pictorial list of Menu Items offered for sale and provides the full set of nutrition information required by subsection 1.2(A) for each Menu Item. A "Supplemental Menu" must be similar in appearance to the Menu, and must list food categories and Menu Items in the same order as these appear on the Menu. All nutritional information required by subsection 1.2 (A) shall be displayed next to each Menu Item on the Supplemental Menu. The nutrition labeling shall be easily readable, in a typeface similar to the Menu, and in a font no less than nine point. A supplemental menu is not required to contain photos or menu item descriptions that may appear on the menu.
- K. A "Menu Insert" is an additional printed or pictorial list of Menu Items offered for sale that is intended to be used along with a Menu in order to provide the full set of nutrition information required by subsection 1.2(A) for each Menu Item. A "Menu Insert" must be similar in appearance to the Menu it accompanies, and must list food categories and Menu Items in the same order as these appear on the Menu. All nutritional information required by subsection 1.2 (A) shall be displayed next to each Menu Item on the Menu Insert. The nutrition labeling shall be easily readable, in a typeface similar to the Menu, and in a font no less than

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- nine point. A Menu Insert is not required to contain photos or menu item descriptions that may appear on the menu.
- L. "Reasonable basis or reasonable bases" means any reliable and verifiable method for determining calorie and nutrient contents of Food Products offered for sale by the Chain Restaurant. These may include the use of calorie and nutrient databases, cookbooks, laboratory analyses, and other reliable and verifiable methods of analysis.

1.2 Food nutrition labeling requirements.

- A. Required Product Information. Each Chain Restaurant shall accurately ascertain, and make available to customers the following product information for each Menu Item, as the item is usually prepared and offered for sale:
- (1) Total calories;
 - (2) Total grams of saturated fat;
 - (3) Total grams of trans fat;
 - (4) Total grams of carbohydrates;
 - (5) Total milligrams of sodium.
- B. Food Item Exclusions and Exemptions. Requirement 1.2 A does not apply to:
- (1) Condiments placed on the dining table or on counter for general use without charge;
 - (2) Food Products or Menu Items that are offered for sale for less than ninety (90) days in a calendar year;
 - (3) Alcoholic beverages not listed as Menu Items.
- C. Nutrition Labeling on Menus. Each Chain Restaurant that uses a Menu shall list the total number of calories next to each Menu Item in a size and typeface that is easily readable, clear and conspicuous, and no less prominent than the price. If price is not listed on the Menu, the total number of calories must be shown in a size and typeface no less prominent than the name or description of the Menu Item. The Menu shall include, in an easily readable, 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. Additional nutrition information available upon request."
- D. Nutrition Labeling on Menu Boards. Each Chain Restaurant that uses a Menu Board shall list the total number of calories next to each Menu Item on the Menu Board in a size and typeface that is clear and conspicuous, and no less prominent than the price. If price is not listed on the Menu Board, the total number of calories must be shown in a size and typeface no less prominent than the name or description of the Menu Item. The Menu Board shall include, in an easily readable, 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. Additional nutrition information available upon request."
- E. Nutrition Labeling of Food Tags. Each Chain Restaurant that uses a Food Tag shall list the total number of calories for each Menu Item represented on the Food Tag in a size and typeface that is clear and conspicuous, and no less prominent than the price. If price is not listed on the Food Tag, the total number of calories

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must be shown in a size and typeface no less prominent than the name or description of the Menu Item.

- F. Nutrition Labeling of Self-Service Items. Each Self-Service Item shall be accompanied by a Food Tag, or the Self-Service Item shall be listed on a Menu Board that is readily visible from the self-service location.
- G. Nutrition Labeling of Variable Items and Combination Meals. For any Menu Item that comes in more than one flavor, variety, or size, the Chain Restaurant shall provide required nutrition information for Menu Items as follows:
 - (1) If both the highest and lowest value of the Menu Item that comes in more than one flavor, variety, or size are within 10% of the median value, the median value alone of the required nutrition information may be listed; .
 - (2) If both the highest and lowest value of the Menu Item that comes in more than one flavor, variety, or size are within 20% of the median value, the range of values of the required nutrition information may be listed; and
 - (3) If neither subsection (1) or (2) applies, each flavor, variety, or size of the Menu Item must be listed as a separate Menu Item and accompanied by the appropriate ascertained values of the required nutrition information.
- H. Listing of Additional Nutrition Information. Upon the request by a customer, the Chain Restaurant shall provide at the time of ordering a list of the values for nutrition information other than calories required by under subsection 1.2(A). Approved methods for providing this requested information to a customer include:
 - (1) A Supplemental Menu that is available at each point of ordering and is presented by the server, or
 - (2) A Menu Insert that is available at each point of ordering and is presented by the server along with the Menu, or
 - (3) An alternate method not otherwise provided for in this section only after the method has been submitted to and approved by the Health Department as being substantially equivalent to a supplemental menu or menu insert A Chain Restaurant shall seek approval of the proposed method of nutrition labeling by submitting a written proposal to the Health Department that describes how the proposed nutrition labeling approach will operate, including sample nutrition labeling materials and other documents that demonstrate the form in which nutrition information would be provided to customers.
- I. Rounding Rules. Whenever a Restaurant, pursuant to this policy, is required to disclose information to the public, the Restaurant shall round numerical values as follows:
 - (1) For values above 50, the disclosed value shall be rounded to the nearest value evenly divisible by 10 (e.g., 322 is rounded to 320, 435 is rounded to 440, etc);
 - (2) For values equal to or less than 50, the disclosed value shall be rounded to the nearest value evenly divisible by 5 (e.g., 43 is rounded to 45, 21 is rounded to 20, etc.).
- J. Verifiable and Accurate Information Required. If requested by the Health Department, Chain Restaurants shall provide information and documentation of the reasonable basis or bases of calorie and nutrient content of Food Products.

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- K. Disclaimers Permitted. Nothing in this policy prohibits the Restaurant from publishing truthful disclaimers, including on the Menus, Menu Boards, and Food Tags, notifying customers that there may be small variations in nutritional content across servings, due to differences in preparation, service sizes, ingredients, or custom orders.
- L. Additional Nutrition Labeling Permitted. Nothing in this policy precludes Restaurants from voluntarily providing additional nutrition labeling of Menu Items.
- M. Restaurant Exemptions. The following types of Restaurants are exempted from the requirements of this policy:
 - (1) A food facility that is not a full service "Chain Restaurant" licensed by Multnomah County Health Department. Examples include:
 - (2) Public and private school cafeterias
 - (3) Hospital cafeterias serving patients and staff only
 - (4) Government operated food facilities
 - (5) Private organization or association facilities
 - (6) Facilities whose revenue exceeds 51% from retail sales

1.3 Enforcement. The Director of the Multnomah County Health Department or his or her authorized representative is authorized to enforce the nutrition labeling requirements of this chapter.

- A. The Health Department shall maintain a system for receiving reports of violations, providing educational materials and site visits, and issuing notices of violation.
- B. The Health Department shall: 1) develop procedures to identify Chain Restaurant Status, 2) provide education and assistance to restaurants to help them comply with nutrition labeling requirements, and 2) receive, respond to, and investigate reports of violations and take appropriate action to assure compliance.
- C. An Environmental Health Specialist who notes a possible violation of these rules during a regular inspection of a full service chain restaurant licensed and inspected by the Health Department shall note a possible violation of these rules and report the possible violation to Health Department staff delegated to supervise compliance with these rules.
- D. Complaint Response. The Health Department shall respond to a report of violation as follows:
 - (1) The Department shall determine status as a Chain Restaurant and if confirmed:
 - i. Provide the owner or operator with a notice of possible violation,
 - ii. Provide the owner or operator with educational materials and other assistance to come into compliance with these rules,
 - iii. Gather information to make the determination if the Restaurant is in compliance with these rules. This may include but is not limited to conducting site visits, requesting additional information from the Restaurant, carrying out additional independent analyses of nutritional content of Menu Items, and obtaining consultation from nutrition professionals.

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- (2) Finding of Violation: A violation is deemed to have occurred if the Health Department finds that:
 - i. Nutrition information required by this policy is not present or is not in the form required by Subsection 1.2; or
 - ii. The nutritional content of one or more Menu Items as posted on a Menu, Menu Board, Food Tag or other authorized method of display deviates by more than twenty percent (20%) from what actual analysis or other reliable evidence shows to be the actual nutritional content.
- (3) Remediation Plan: After a finding of a violation, the Health Department representative and the Restaurant will jointly agree on the contents of a plan contemplated to bring the restaurant into compliance with these rules by a clearly identified date. The Restaurant will submit a remediation plan that remedies the violation within 14 days of reaching agreement with the Health Department representative. A restaurant owner or operator may request in writing an extension of time in which to complete implementation of the remediation plan for good cause.
- (2) Follow-up Visit: A Health Department representative shall make a follow-up visit within 14 days of the remediation plan completion date to confirm implementation.
- (3) Failure to Complete the Remediation Plan on Schedule. If during the follow-up visit, the Health Department representative finds that the remediation plan has not been implemented, the representative shall document the finding and notify the Restaurant that a citation will be issued. The citation, including a civil fine, shall be personally delivered to the restaurant employer or agent or mailed to the business address by both first class mail certified mail, return receipt requested.
- M. Civil Fine Schedule:
 - (1) A fine of \$100 will be assessed for failure to submit a remediation plan that remedies the violation within 14 days of reaching agreement with the Health Department representative.
 - (2) A fine of \$500 will be assessed for failure to fully implement the remediation plan within 60 days of the implementation date specified in the plan.
 - (3) Additional fines of \$250 will be assessed for each 30 day period that the remediation plan has not been fully implemented.
- N. Phased-in Implementation: From January 15, 2009, through July 15, 2009, a Chain Restaurant shall not be deemed to be in violation of these rules if, on request by the Health Department, the Restaurant provides documentation that it has taken significant steps to obtain calorie and nutrient analysis of Menu Items and create nutrition labeling.
- O. Appeals Process: A Chain Restaurant cited with a violation may request and shall be provided an opportunity to challenge the citation, including an opportunity to refute any evidence against it.
 - (1) The owner or operator of a Restaurant receiving a notice of violation or citation as provided in these rules may request a hearing by writing the Health Department Director or representative within seven days of the date of notice.

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- (2) The Health Department Director or Health Officer shall schedule and oversee the hearing and issue a ruling within 20 days of its conclusion. The Director or Health Officer's ruling shall be final.
 - (3) If the Health Department Director or Health Officer finds the violation to exist, the ruling shall set a date for remedy of the violation to be accomplished by the Chain Restaurant.
 - (4) If the Health Department Director or Health Officer determines that the violation was issued in error, the ruling may order the Health Department representative to make reasonable restitution to vacate any fines and take other necessary and appropriate actions to remedy the situation.
- P. If any provision of these rules or its application to any person or circumstance is held invalid, the remainder of these rules of the application to other persons or circumstances is not affected.

