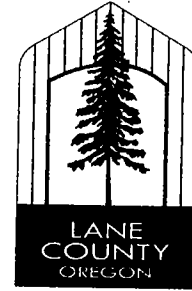


BoH of Health
W.5

SUPPLEMENTAL AGENDA COVER MEMO

AGENDA DATE: May 6, 2009
TO: Board of Health
DEPARTMENT: Health & Human Services
PRESENTED BY: Rob Rockstroh



AGENDA TITLE: ORDER/ _____ THIRD READING AND SETTING THE FOURTH READING/ORDER IN THE MATTER OF CONSIDERATION AND ADOPTION OF A POLICY AND RULES REQUIRING THE NUTRITION LABELING OF FOOD ITEMS AT CHAIN RESTAURANTS (LC 9.711 – 9.730)

I. MOTION

To Adopt the policy order and rules requiring the nutrition labeling of food items at chain restaurants effective on the date the Board of Health adopts the order and rules, and designating that the rules be codified in Lane Code (LC 9.711 - LC 9.730).

II. AGENDA ITEM SUMMARY

The Board of Health is being asked to establish policy and rules requiring the nutrition labeling of food items at chain restaurants. This is the third reading (May 6, 2009) with two previous readings (April 1 and 15, 2009), and a fourth reading scheduled for May 20, 2009.

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 (BCC) serves as the ex officio board of health (BOH) as provided for under ORS 431.410 and LM 9.900.

BOH Policy Orders create a new set of regulations, within Lane Code, particular to matters pertaining to the public's health. ORS 431.415 states that: (1) The district or county board of health is the policymaking body of the county or district in implementing the duties of local departments of health under ORS 431.416.

The BOH would have the authority to also impose fines for noncompliance with approved health policy orders. The ORS 431.415(3) permits the adoption of fees for public health services: "reasonably calculated not to exceed the cost of the services performed."

Board Action: Via BO 09-3-31-5 approved on April 15, 2009x, the Board established BOH procedures ordinances under LM 9.9000- 9.901004. 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 and LM 9.900.

BACKGROUND: In 2008, the Chronic Disease Prevention Program of Lane County Public Health developed a Community Health Assessment to identify strengths, needs, gaps and opportunities related to the health of Lane County's residents. The health assessment included county demographics, community assets, health disparities, environmental conditions, community champions, media, and policy; and identified physical, political, social, and economic environments that influence attitudes, behaviors, and health in Lane County. Health assessment data indicated that 38% of Lane County K-8th graders (2005/2006) were overweight or obese. Also, health data indicated that six of ten Lane County adults were overweight or obese. In addition, adults and children in Lane County and across the nation have been consuming an increasing number of meals outside of the home, meals that are linked to higher caloric intake. Menu labeling is one tool in addressing obesity; and research has shown that menu labeling helps consumers make better choices.

On December 10, 2008, Lane County Public Health shared information about community health, obesity, and menu labeling with the Board of County Commissioners at a Board work session. Community partners, represented by the Lane Coalition for Healthy Active Youth (LCHAY), shared the community perspective on childhood and adult obesity, health, and potential actions to decrease obesity and increase health. At the close of the work session, the Board directed County Counsel to evaluate the feasibility of the Board of Commissioners, as the Board of Health, adopting policies to protect the health of the public. In addition, the Board directed Public Health to seek input from the Oregon Restaurant Association (ORA), the Department of Children and Families (DCF), and the Department of Youth Services (DYS).

Public Health met with the ORA prior to the December 10, 2008 Board work session. However, efforts to continue the conversation with the ORA have stalled. Although Public Health invited additional ORA input, ORA representatives requested not to meet since it was their expectation that the ORA sponsored state legislation would preempt local jurisdictions from enacting menu labeling (February 20, 2009).

DCF invited Public Health and LCHAY to provide information for the Commission on Children and Families (CCF), a Board of County Commissioners advisory committee. Following the presentation, CCF endorsed Public Health's efforts to promote the adoption of a local menu labeling policy. DYS also indicated their support. Mayors of the cities of Eugene and Springfield, the Public Health Advisory Committee, the Early Childhood Planning Team, Oregon Research Institute, Health Policy Northwest, and many other organizations and individuals also endorsed these efforts.

The BOH has held one two public hearings and two previous readings of this policy in the matter of amending Chapter 9 of the Lane Code to require nutrition labeling of food items at chain restaurants (LC 9.711700 – LC 9.73002) (04/01/2009, 04/15//2009). This is the third reading (May 6, 2009) and fourth reading is to be scheduled in two weeks (May 20, 2009).

At the April 15, 2009 reading/hearing, the BOH instructed Lane County Public Health to try again to communicate with restaurant owners and industry representatives. A meeting between public health, restaurant owners, industry representatives, and health advocates is scheduled to be held May 1, 2009. A report of the discussion at that meeting will be provided for the BOH on May 6, 2009.

Lane County Public Health has reviewed recommended the Lane Code amendment requiring nutrition labeling of food items in chain restaurants (LC 9.71100 – LC 9.73002) to assure consistency with Multnomah County rules. Needed revisions were made in legislative style and the attached Lane Code amendment is now fully aligned with Multnomah County.

B. Policy Issues

The Board of Health is statutorily responsible for making policies and adopting rules to implement the Lane county Department of Health and Human Services' (Public Health Division) duties under the public health authority. Lane County, as the local public health authority, is required to submit and obtain approval from the state Department of Human Services (DHS) for county-wide public health plan and work plans in order to receive funding through DHS for public health activities. Lane County's approved plan and work plans and funding includes a DHS program element related to chronic disease prevention and management that includes addressing lack of physical activity, poor nutrition and promoting health eating habits, healthy retain environments, and menu labeling in chain restaurants.

Two nutrition labeling bills were introduced into the Oregon legislature. One of the bills passed out of committee, the other did not. The bill that moved to the floor of the House, HB 2726-15 has been amended to preempt all local jurisdictions from adopting menu labeling policies; "Section 6. A local government may not adopt a requirement for the determination or disclosure of nutritional information by a chain restaurant." There is no assurance that a state menu labeling law will pass.

Multnomah County BOH adopted menu labeling policy and rules (2/12/09), Lane County BOH developed menu labeling policy and rules for potential adoption, Benton County BOH is in the process of developing menu labeling policy and rules. Lane and Benton County policy and rules are based on adopted Multnomah County policy and rules. Should no preemptive state law pass, and should Lane and Benton Counties adopt their policy and rules, approximately 1/3 of all Oregonians would reside in the three counties where strong, consistent menu labeling are in place.

C. Board Goals

Adoption of countywide menu labeling rules for chain restaurants will assist County Government in providing outstanding customer/constituent service, by providing basic nutrition information so that consumers can make more informed decisions about the food that they, their children and dependents eat.

As the Board of Health, Lane County Commissioners have the capacity and responsibility to protect the health of the public and to promote behaviors that improve health and prevent illness. Based on their commitment to the youth of Lane County, and on research demonstrating that low-income youth face more barriers to healthy weight (including the consumption of more high calorie fast food)¹, Lane County's Commissioners have the opportunity to address not only obesity and its negative health outcomes, but also to address health disparities based on income and social status.

Reducing the rate of obesity and resulting chronic diseases, has the potential to

dramatically reduce disabilities and costs to the community for health care; and to improve the overall health and well-being of the community.

D. Financial and/or Resource Considerations

Public Health Division: Observation of compliance by chain restaurants will be complaint-driven, but Environmental Health Sanitarians, who routinely visit these outlets as part of the existing food borne illness safety program, will also report non-compliance. It is not anticipated that this function will add measurably to sanitarian workload, nor is any cost analysis of same herein provided.

Follow-up work with establishments not in compliance to develop a plan to meet compliance, to conduct "hearings" and/or impose fines will be handled by a Public Health prevention education specialist, funded out of the supplemental assistance (\$65,000 per year) being received from the state for the chronic disease program. As noted below, only two chains in Lane County are not already subject to similar menu labeling provisions in other jurisdictions in which they operate, therefore, the estimate of .1 FTE for the already-funded prevention educator is anticipated to be adequate.

Public Health will need to produce and disseminate brochures, both to educate restaurants concerning the ordinance and to advise the public on the policy and how they may report non-compliance. Public Health has already procured models of brochures and will be able to adapt these for use in Lane County without the need for outside design assistance. The nominal development/printing and dissemination costs are estimated at less than \$100.

Restaurants: The proposed ordinance applies only to major chain restaurants with at least 15 nation-wide outlets. Most food prepared in major chains is standardized in terms of ingredients, cooking instructions, and portion sizes; and most have a nutritional analysis of their menu items.

Although the fiscal impact of menu labeling has not been definitively established, several mitigating factors to the cost have been identified: a majority of national chain restaurants have established the caloric and nutritional values of their menu items, menu boards in fast food restaurants are set up for frequent changes; requirements will not be immediately applicable and any increased cost will be passed to the consumer rather than being borne by the restaurant.

Of the chain restaurants in Lane County, all but two will have previously determined caloric and other nutritional information available in order to meet the requirements of other jurisdictions (cities, counties, state) in which the chain has outlets and menu labeling is required. Only eight of Lane County's chain restaurants do not have an outlet in Multnomah County; and six of those eight have outlets in other jurisdictions that have passed and/or implemented menu labeling policies, thus requiring analysis of caloric/nutritional information.

If the two chain restaurants have not already conducted an analysis of the calories and nutrition of their products, they will be required to use a reliable and verifiable calorie and nutrient analysis such as calorie and nutrient databases, cookbooks, laboratory analyses or other means to establish caloric and nutritional data.

Public Health believes that the potential fiscal impact on chain restaurants is outweighed by the potential long-term benefits to the health of Lane County residents and the 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.²

E. Analysis

“Fundamentally, obesity represents an imbalance between energy intake (e.g. calorie intake) and energy output (expended both as physical activity and metabolic activity). Although there is much discussion about the appropriate makeup of the diet in terms of relative proportions of macronutrients (fats [lipids], carbohydrates, and protein) that provide calories and the foods that provide these micronutrients, for maintenance of a health body weight it is the consumption and expenditure of calories that is most important. In other words, ‘calories count’.”³

Obesity is one of the greatest public health challenges facing the nation and Lane County. National obesity rates have doubled in children and tripled in teens over the past twenty years; and fifty percent of the overweight children and teens remain overweight as adults FDA. Two thirds of adults in Lane County are overweight or obese; and obesity-related chronic diseases, including cardiovascular disease, diabetes, hypertension, cancer, and asthma, are the leading causes of death and disability in Oregon and Lane County.⁴ The indirect and direct costs of adult obesity in America are \$117 billion each year.³

Americans eat an increasing number of meals outside the home, and such meals are linked to higher caloric intake. In 1970, Americans spent 26% of their food dollars on restaurant meals and other food prepared outside the home. Today, Americans spend 47.8% of their food dollars on away-from-home foods.⁵ On average, children and teens visit fast food outlets twice a week, and consume nearly twice as many calories from restaurant meals as from home cooked meals.⁶ Restaurant foods are generally higher in nutrients for which over-consumption is a problem, such as fat and saturated fat, and lower in nutrients required for good health, such as calcium and fiber. In addition, portion sizes are often large at restaurants, and it is not uncommon for a restaurant entrée to provide half a day’s calories, saturated and trans fat, or sodium.^{6, 7}

Consumers have difficulty making informed choices about food purchases in restaurants because of an absence of relevant nutrient information at point of decision and purchase. An FDA commissioned report concluded that without access to nutritional information, consumers are not able to assess the caloric content of foods.³ Multiple studies have shown that restaurant foods contain almost twice the calories estimated by consumers.^{5, 6, 8, 9}

The availability of nutrition information informs consumer choices.¹⁰ Three quarters of American adults report using nutritional labels on packaged foods; studies have said that people who use food labels are more likely to eat healthfully; and almost half of consumers report that the information provided on food labels has caused them to change their food purchasing habits. Nutrition labeling in fast food and chain restaurants is well-supported by the public. Six national representative consumer polls found that between 61% and 87% of

Americans support nutrition labeling in restaurants;⁶ and 69% of Oregonians support requiring nutritional labeling in fast and chain food restaurants.¹¹

The Food and Drug Administration, the National Academies' Institute of Medicine, the American Heart Association, the American Diabetes Association, the American Cancer Society, and the American Medical Association recommend providing caloric content on menus that is prominently visible at point of choice; and the United States Surgeon General and the U.S. Department of Health and Human Service recommend the provision of nutrition information at restaurants as a strategy to address rising obesity rates.⁶

The current system of voluntary nutritional labeling at restaurants has not been found to be effective. Approximately half of the largest chain restaurants fail to provide any nutritional information about their menu items to customers. Restaurants that do provide such information often do not do so at the point of sale, but rather on websites, tray-liners, on fast-food packages or in brochures that are available only by request.⁵

Two nutrition labeling bills were introduced into the 2009 Oregon Legislature. One bill was sponsored by the Oregon Nutrition Policy Alliance (HB 2726) and one by the Oregon Restaurant Association (HB 2982). The Oregon Nutrition Policy Alliance bill was based on the Multnomah County menu labeling policy.¹² The Oregon Restaurants Association bill did not require menu labeling and precludes local choice through preemption.¹³ One of the bills passed out of committee, the other did not. The bill that moved to the floor of the House, HB 2726-15 has been amended to preempt all local jurisdictions from adopting menu labeling policies; "Section 6. A local government may not adopt a requirement for the determination or disclosure of nutritional information by a chain restaurant." There is no assurance that a state menu labeling law will pass.

Many individual, family, community, and societal factors influence dietary patterns and levels of physical activity. Addressing obesity will require a broad range of interventions, and nutrition labeling is one tool to empower Lane County residents to take greater control of their own health and make healthier choices about what they eat.

1. UCLA Center for Health Policy Research. *Low-Income Adolescents Face More Barriers to Healthy Weight*. December 2008.
2. 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).
3. U. S. Food and Drug Administration Center for Food Safety and Applied Nutrition. *Counting Calories: Report of the Working Group on Obesity*. March 24, 2004.
4. Oregon Department of Human Services. *Oregon Overweight, Obesity, Physical Activity, and Nutrition Facts*. 2007.
5. Yale University Rudd Center for Food Policy and Obesity. *Menu Labeling in Chain Restaurants: Opportunities for Public Policy*. 2008.
6. Center for Science in the Public Interest. *Anyone's Guess: The need for Nutrition Labeling At Fast-Food and Other Chain Restaurants*. November 2003.
7. Bassett, M., et al. Purchasing Behavior and Calorie Information at Fast-Food Chains in New York City, 2007. *American Journal of Public Health*. August 2008, 98 (8) 1-3.
8. Oregon Public Health Division. *Obesity in Oregon, Part 2: Menu Labeling Helps Consumers*. *CD Summary*. March 3, 2009, 58 (5).
9. Burton, S., et al. Attacking the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants. *American Journal of Public Health*. September 2006, 96 (9): 1669-1675.
10. The Keystone Center. *The Keystone Forum on Away-From-Home Foods: Opportunities for Preventing Weight Gain and Obesity*. Final Report. May 2006.
11. Davis, Hibbitts, and Midghall, Inc. *Community Health Priorities Survey*. Northwest Health Foundation.

December 2007.

12. Kotek, Greenlick, Bates, Morrisette. *House Bill 2726*. 75th Oregon Legislative Assembly, 2009 Regular Session.
13. LC 1616, Draft 2/23/09. 75th Oregon Legislative Assembly, 2009 Regular Session.

F. Alternatives / Options

1. Approve the third reading and schedule the fourth reading.
2. Withdraw this ordinance from consideration.

IV. TIMING/IMPLEMENTATION

Board concurrence being received, Public Health will work with County Administration to ensure the fourth reading on May 20, 2009. Board adoption being received, Public Health will produce and disseminate brochures to educate restaurant owners and the public and begin enforcement on January 1, 2010.

V. RECOMMENDATION

Health & Human Services and Public Health staff support approval of this request.

VI. FOLLOW-UP

If, after due deliberations and public input, the Board of Commissioners, sitting as the Lane County Board of Health, determines that a menu labeling rules ordinance for chain restaurants shall be implemented in Lane County, the Board of County Commissioners, on behalf of the County will make the decision concerning codification of those Board of Health rules in Counsel will amend Chapter 9 of the Lane Code, per the attached. The Public Health Division will then design, print and disseminate brochures and the prevention education specialist will commence outreach to the affected outlets. Public Health will also request the assistance of County Administration in earning media coverage of the new ordinance.

VII. ATTACHMENTS

Board Order
Lane Code Chapter 9 Revision (Legislative and Final Formats)

**THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON
SITTING AS THE LANE COUNTY BOARD OF HEALTH**

ORDER:) ORDER _____ IN THE MATTER OF CONSIDERATION OF
) THE ADOPTION OF A POLICY AND RULES REQUIRING THE
) NUTRITION LABELING OF FOOD ITEMS AT CHAIN
) RESTAURANTS
)

THIS MATTER now comes before the Board of County Commissioners for Lane County, acting as the Lane County Board of Health; and

WHEREAS, the Lane County Board of Commissioners constitutes and is the Lane County Board of Health ("Board of Health") under ORS 431.410 and ORS 431.415; and

WHEREAS, the Board of Health is statutorily responsible for making policies and adopting rules to implement the Lane County Department of Health and Human Services' ("Public Health Division") duties under the county's public health authority; and

WHEREAS, Lane County as a public health authority is required to submit and obtain approval from the state Department of Human Services ("DHS) for a countywide public health plan and work plans, and in order to receive funding through DHS for public health activities; and

WHEREAS, Lane County's approved plan and work plans and funding includes a DHS program element relating to chronic disease prevention and management. This includes addressing lack of physical activity, poor nutrition and promoting healthy eating habits, healthy retail environments, and addressing menu labeling for chain restaurants; and

WHEREAS, the Public Health Division has responsibility to implement the chronic disease prevention program and plan; and

WHEREAS, the Nutrition Council of Oregon and the Oregon Coalition for Promoting Physical Activity published *A Healthy Active Oregon: Statewide Physical Activity and Nutrition Plan 2007-2012* (Community Objectives and Strategies III.n): "Restaurants shall expand and promote options for healthy foods, beverages, and meals by providing caloric content and other key nutritional information;" and

WHEREAS, consumers have difficulty making informed choices about food purchases in restaurants because of the absence of relevant nutrient information; and

WHEREAS, the Lane County Board of Health makes these findings:

A. Obesity is one of the greatest public health challenges facing the nation and the communities of Lane County.

B. Americans eat an increasing number of meals outside the home, and such meals are linked to higher caloric intake.

C. The Federal Nutrition Labeling and Education Act requires food manufacturers to provide nutrition information on nearly all packaged foods but exempts restaurants from that requirement.

D. Competition within the food industry is healthy and desirable, and the availability of nutrition information can serve as another factor to inform consumer choices.

E. Nutrition labeling in fast food and chain restaurants is well-supported by the public.

F. The United States Surgeon General, the Food and Drug Administration, the National Academies' Institute of Medicine, the American Heart Association, the American Diabetes Association, and the American Medical Association have recommended the provision of nutritional information at restaurants as a strategy to address rising obesity rates.

G. The current system of voluntary nutritional labeling at restaurants is inadequate with approximately half of the largest chain restaurants failing to provide any nutritional information about their menu items.

H. Nutrition labeling is one tool to empower Lane County residents to take greater control of their own health and make healthier choices about what they eat.

WHEREAS, adopting countywide menu labeling rules for chain restaurants would provide consumers with basic nutrition information and other product information about foods sold at chain restaurants in Lane County so that consumers can make informed food choices; and

WHEREAS, adopting countywide menu labeling rules for chain restaurants would be consistent with the chronic disease prevention program, plan, and the Public Health Division's implementation responsibilities; and

WHEREAS, Board of County Commissioners, sitting as the Lane County Board of Health, has heard public testimony, both for and against the proposed policy and order adopting rules and has carefully weighed the relative benefits

and determined adoption to be of benefit to the residents of Lane County;

NOW THEREFORE, IT IS HEREBY RESOLVED AND ORDERED that the Lane County Board of Health adopts the policy and findings set forth in this order; and

IT IS HEREBY FURTHER RESOLVED AND ORDERED, that the following rules set forth in Exhibit A are adopted with respect to Chain Restaurant Nutrition Labeling, and

IT IS HEREBY FURTHER RESOLVED AND ORDERED, that these rules should be published in the Lane Code to provide ease of public access as follows:

NEW SECTION

9.711 – 9.730 (inserted as pages 9.29 to 9.34)

IT IS FURTHER HEREBY ORDERED that if any provision of this policy or its application to any person or circumstance is held invalid, the remainder of the policy or regulation of the policy to other persons or circumstances shall not be affected; and

IT IS FURTHER HEREBY RESOLVED that the Board of Commissioners, acting as the Lane County Board of Health, encourages the use of seasonal and fresh produce and products and encourages residents to support their local farmers' markets.

DATED this _____ day of _____, 2009.

,
Pete Sorenson, Chair
Lane County Board Of Commissioners

APPROVED AS TO FORM
Date _____ Lane County

OFFICE OF LEGAL COUNSEL

CHAIN RESTAURANT NUTRITION LABELING

(Legislative Format)

The following rules were adopted by the Lane County Board of Health on its policy order (Board of Health #04-1-2 with decision on _____) and published here pursuant to LM 9.901. The Board of Health is granted specific authority by the state, including ORS 431.415 for these countywide actions.

9.711 Authority, Purpose and Policy.

- 1) The purpose of this policy is to provide Lane County residents with basic nutrition information about prepared foods sold at chain restaurants licensed by Lane County Health & Human Services. 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. The Lane County Board of Health has adopted this policy and following rules pursuant to ORS 431.415.
- 2) **Scope. These rules apply to Chain Restaurants defined in section 9.715(2) below that are licensed and inspected by the Lane County Department of Health and Human Services.**

9.715 Definitions.

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

- 1) "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.
- 2) "Chain Restaurant" means a Restaurant that is licensed by Lane County as a full service restaurant, and that is part of an affiliation of Restaurants and for which the affiliated Restaurants:
 - a) Have at least fifteen or more restaurants within the United States;
 - b) Sell Standard Menu Items that comprise at least eighty percent of Menu Items served in at least fifteen restaurants; and
 - c) Operate under the same or substantially the same brand name, regardless of whether **individual** restaurants are subject to the same ownership or type of ownership (e.g., corporate ownership, individually-owned franchise, etc.).
- 3) "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.
- 4) "Food Tag" means any informational label placed in proximity to an individual Food Product it identifies or characterizes for example:
 - a) A label placed next to a cherry pie showing a picture of a cherry and listing the price per slice, or
 - b) 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.
- 5) "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 or take out menu). A menu does not include printed or pictorial materials intended for the purpose of marketing.
- 6) "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 to assist customers in ordering Food Products, and may take various forms, including but not 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.

- 7) "Menu Item" means
 - a) A single Food Product listed on a Menu, Menu Board, or Food Tag, or
 - b) 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.
- 8) "Standard Menu Item" means a Menu Item that is essentially the same between affiliated restaurants and prepared using a consistent standardized recipe.
- 9) "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".

~~(10) A Supplemental Menu Board is an alternative printed or pictorial list of Menu Items offered for sale and provides the full set of nutrition information required by Lane Code 9.720(1) for each Menu Item. A "Supplemental Menu Board" must be similar in appearance to the Menu Board, and must list food categories and Menu Items in the same order as these appear on the Menu Board. All nutritional information required by Lane Code 9.720(1) shall be displayed next to each Menu Item on the Supplemental Menu Board. The nutrition labeling shall be easily readable, in a typeface similar to the Menu Board, clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calorie). The Supplemental 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. A supplemental menu is not required to contain photos or menu item descriptions that may appear on the menu.~~

~~(11) 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 Lane Code 9.720(1) 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 Lane Code 9.720(1) 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. The use of abbreviations is acceptable (e.g. cal for calorie). A supplemental menu is not required to contain photos or menu item descriptions that may appear on the menu.~~

~~(12) 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 Lane Code 9.720(1) 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 Lane Code 9.720(1) 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 nine point. The use of abbreviations is acceptable (e.g. cal for calorie). A Menu Insert is not required to contain photos or menu item descriptions that may appear on the menu.~~

- 10) "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.

9.720 Food Nutrition Labeling Requirements.

- 1) Required Product Information. Each Chain Restaurant shall accurately ascertain, and make available to customers the following product information for each **Standard Menu Item**, as the item is usually prepared and offered for sale, **including condiments routinely added to a menu item as part of a standard recipe**:
 - a) Total calories;
 - b) Total grams of saturated fat;
 - c) Total grams of trans fat;
 - d) Total grams of carbohydrates;
 - e) Total milligrams of sodium.

- 2) Food Item Exclusions and Exemptions. Requirement Lane Code 9.720(1) does not apply to:
 - a) Food Products or Menu Items that are offered for sale for less than ninety (90) days in a calendar year;
 - b) Condiments available for use without charge.
 - c) Alcoholic beverages not listed as **Standard Menu Items**.
 - d) Unopened pre-packaged food products that are not intended to be part of the standard menu item or combination meal. Examples include a jar of sauce or dressing intended primarily for home use, or a bag of coffee beans. In contrast, pre-packaged food products that are intended to be part of the standard menu item, or combination meal (e.g. a bag of potato chips that comes as part of the meal) must be included in Required Product Information per Lane Code 9.720(1).
- 3) Nutrition Labeling on Menus. Each Chain Restaurant that uses a Menu shall list the total number of calories next to each Standard Menu Item in a size and typeface that is easily readable, clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calorie). The Menu shall include, in an easily readable, clear and conspicuous manner, a statement substantially similar to the following: "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."
- 4) Nutrition Labeling on Menu Boards. Each Chain Restaurant that uses a Menu Board shall list the total number of calories next to each **Standard** Menu Item on the Menu Board in a size and typeface that is clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calories). ~~no less prominent than the price.~~ The Menu Board shall include, in an easily readable, clear and conspicuous manner, a statement substantially similar to the following: "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."
- 5) Nutrition Labeling of Food Tags. Each Chain Restaurant that uses a Food Tag shall list the total number of calories for each Standard Menu Item represented on the Food Tag in a size and typeface that is clear and conspicuous, and at least as prominent in size and appearance as that used to post either the name or price of the Menu Item. The use of abbreviations is acceptable (e.g. cal for calories). Menu Items labeled with Food Tags do not need to be labeled on Menu Boards.
- 6) Listing of Additional Nutrition Information. Upon the request by a customer, Chain Restaurants shall provide at the time of ordering a list of values for nutrition information other than calories required under Lane Code 9.720(1). The nutrition information shall be in an easily readable format, in a typeface similar to the Menu, and in a font no less than nine point. The use of abbreviations is acceptable (e.g. cal for calories). This listing is not required to contain photos or Menu Item descriptions that may appear on the Menu. Approved methods for providing this information to a customer, if requested, include:
 - a) A supplemental menu, or
 - b) A menu insert, or
 - c) A brochure or printed handout, or
 - d) An electronic kiosk, or
 - e) An alternate method not otherwise provided for in this section only after the method has been submitted to and approved by the Department of Health & Human Services as being substantially equivalent to the identified methods for providing the additional nutritional information. A Chain Restaurant shall seek approval of the proposed **alternative method for providing the additional nutritional information** by submitting a written proposal to the Department of Health & Human Services 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.
- 7) Nutritional Labeling of Self-Service and Buffet Items. Each Self-Service and Buffet Item shall be accompanied by a Food Tag or a Self-Service/ Buffet Item shall be listed on a Menu Board that is readily visible from the self-service/ buffet location. ~~Each Standard Buffet Menu Item must specify the size of the serving and nutritional information for an individual serving.~~

- 8) **Nutrition Labeling of Variable Items.** For any Standard Menu Item that comes in more than one flavor, variety, or size (e.g. varieties of bagels), the Chain Restaurant shall provide required nutrition information for Standard Menu Items as follows:
 - a) If both the highest and lowest value of the Standard Menu Item that comes in more than one flavor, variety, or size are within 0-10% of the median value, the median value alone of the required nutrition information may be listed;
 - b) If both the highest and lowest value of the Standard Menu Item that comes in more than one flavor, variety, or size are within 11-20% of the median value, the range of values of the required nutrition information may be listed; and
 - c) If neither subsection (a) or (b) applies, each flavor, variety, or size of the Standard Menu Item must be listed as a separate Standard Menu Item and accompanied by the appropriate ascertained values of the required nutrition information.
- 9) **Nutrition Labeling of Combination Meals.** A combination meal means a Standard Menu Item that is comprised of two or more food items products and gives the consumer a choice of food items to be included in the meal.
 - a) A Chain Restaurant may provide calorie labeling for a combination meal that uses a range of the lowest and highest values of calorie content among all possible combinations of food products offered in a combination meal.
 - b) If the calorie range for combination meals is greater than 20%, labeling of individual combinations is not required as long as nutrition labeling is provided on the menu board, menu, or food tag for the individual food products that comprise the combination meal.
- 10) **Nutrition Labeling of Shared Meals.** By nature or manner of serving, some Standard Menu Items can be intended to serve either one or multiple individuals. Nutrition Information for such Standard Menu Items must be provided for the entire Menu Item. In addition, the number of diners intended to be served may also be listed. Pizzas intended to serve more than one individual can be listed by two options: 1) by the slice or 2) the whole pizza.
- 11) **Approval Process for Proposed Substantially Equivalent Methods of Nutrition Labeling.** A chain restaurant may propose a method of nutrition labeling not otherwise identified in these rules for approval by the Department of Health & Human Services as a substantially equivalent method for use in lieu of requirements in Section 9.720(7) Nutrition Labeling of Self-Service items, Section 9.720(8) Nutrition Labeling of Variable Items, Section 9.720(9) Nutrition Labeling of Combination Meals, and Section 9.720(10) Nutrition Labeling of Shared Meals.
 - a) Restaurants shall obtain approval from the Department of Health & Human Services of any proposed substantially equivalent method for nutrition labeling before implementation.
 - b) A chain restaurant shall seek approval of a proposed substantially equivalent method by submitting a written proposal to the Department of Health & Human Services that demonstrates how the proposed method is expected to allow for consumers at the point of ordering to:
 - i. Perceive that nutrition information is readily available;
 - ii. Encounter nutrition information routinely and automatically; and
 - iii. Access nutrition information in a manner that does not interrupt the normal flow of business.
 - c) The written proposal shall include documentation of the following:
 - i. Sample nutrition labeling materials or other documents such as photographs that demonstrate that the form in which nutrition information would be provided to consumers is substantially equivalent to the requirements of the relevant sections(s) of these rules – i.e., Section 9.720(7), Section 9.720(8), Section 9.720(9), Section 9.720(10), and
 - ii. Evidence from consumer surveys or other methods that demonstrate that the proposed nutrition labeling method results in at least 75% of consumers seeing nutrition information before placing their order. This percentage may be changed by the Department of Health & Human Services based on findings from future research.

- iii. **In addition, the Department of Health & Human Services may request that additional information be submitted before a proposal is considered for approval.**
 - d) **The Department of Health & Human Services may:**
 - i. **Approve a substantially equivalent method as submitted,**
 - ii. **Approve a substantially equivalent method conditional on changes to the proposed method required by the Department of Health & Human Services,**
 - iii. **Limit approval of a substantially equivalent method to use in one chain,**
 - iv. **Limit approval of a substantially equivalent method to use for a limited time.**
- 12) **Nutrition Labeling of Alcoholic Beverages.** A Chain Restaurant may use the following average nutritional values for beers, wines, and spirits:
- a) Wine – 5 ounces: 122 calories, 4 grams carbohydrates, 7 milligrams sodium;
 - b) Regular beer – 12 ounces: 153 calories, 13 grams carbohydrates, 14 milligrams sodium;
 - c) Light beer – 12 ounces: 103 calories, 6 grams carbohydrates, 14 milligrams sodium;
 - d) Distilled spirits (80 proof gin, rum, vodka, whiskey) – 1.5 ounces: 96 calories.
- Calorie values may be rounded in accordance with Lane Code 9.720(15). **These guidelines do not exempt or replace labeling of additional alcoholic beverages that are standard menu items (such as signature drinks).**
- 13) **Nutrition labeling of Buffets.** For Standard Menu Items offered in a buffet, nutrition labeling must specify:
- a) **The size of the individual serving.**
 - b) **The nutrition information for an individual serving.**
- 14) **Labeling of Trans Fat.** A Restaurant may follow FDA guidelines for labeling trans fat. This means that trans fat does not have to be listed if the total fat in a food is less than 0.5 gram (or ½ gram) per labeled serving and no claims are made about fat, fatty acids or cholesterol content.
- 15) **Rounding Rules.** Whenever a Restaurant, pursuant to this policy, is required to disclose information to the public, the Restaurant may shall round numerical values as follows:
- a) For values above 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by 10 (e.g., 322 calories is rounded to 320, 435 calories is rounded to 440, etc);
 - b) For values equal to or less than 50 calories, the disclosed value shall be rounded to the nearest value evenly divisible by 5 (e.g., 43 calories is rounded to 45, 21 calories is rounded to 20, etc.).
- 16) **Verifiable and Accurate Information Required.** If requested by the Department of Health & Human Services, Chain Restaurants shall provide information and documentation of the reasonable basis or bases of calorie and nutrient content of Food Products.
- 17) **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.
- 18) **Additional Nutrition Labeling Permitted.** Nothing in this policy precludes Restaurants from voluntarily providing additional nutrition labeling of Menu Items.
- 19) **Restaurant Exemptions.** The following types of food service facilities are exempted from the requirements of this policy:
- a) A food facility that is not a full service facility licensed by Lane County Department of Health & Human Services. Examples include: public and private school cafeterias, government operated food facilities, private organizations or association facilities, facilities whose revenue exceeds 51% from retail sales.
 - b) ~~Movie theatres and other theatrical venues~~
 - c) ~~Hospital cafeterias serving patients and staff only~~
- 20) **The nutrition labeling requirements do not apply to licensed temporary events. ~~food service points-of-sale~~**

9.730 Enforcement. The Director of the Lane County Department of Health & Human Services or his or her authorized representative is authorized to enforce the nutrition labeling requirements of this chapter.

- 1) The Department of Health & Human Services shall maintain a system for receiving reports of failures

- to comply, providing educational materials and site visits, and issuing notices of failure to comply.
- 2) The Department of Health & Human Services 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 3) receive, respond to, and investigate reports of failure to comply and take appropriate action to assure compliance.
 - 3) An Environmental Health Specialist who notes a possible failure to comply of these rules during a regular inspection of a full service chain restaurant licensed and inspected by the Department of Health & Human Services shall note a possible failure to comply of these rules and report the possible failure to comply to the Department of Health & Human Services staff delegated to supervise compliance with these rules.
 - 4) Complaint Response. The Department of Health & Human Services shall respond to a report of failure to comply as follows:
 - a) The Department of Health & Human Services shall determine status as a Chain Restaurant and if confirmed:
 - i. Provide the owner or operator with a notice of possible failure to comply,
 - 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.
 - b) Finding of Failure to comply: A failure to comply is deemed to have occurred if the Department of Health & Human Services finds that:
 - i. Nutrition information required by this policy is not present or is not in the form required by Lane Code **9.715 – 9.720** ~~9.720(4)~~; or
 - ii. The nutritional content of one or more ~~Standard~~ 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.
 - c) Remediation Plan: After a finding of a failure to comply, the Department of Health & Human Services 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. Within 14 days of reaching agreement with the Department of Health and Human Services representative, the restaurant will submit and begin implementation of a remediation plan that is intended to remedy the failure to comply. 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.
 - d) Follow-up Visit: A Department of Health & Human Services representative shall make a follow-up visit within 14 days of the remediation plan completion date to confirm implementation.
 - e) Failure to Complete the Remediation Plan on Schedule. If during the follow-up visit, the Department of Health & Human Services 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.
 - 5) Civil Fine Schedule:
 - a) A fine of \$100 will be assessed for failure to submit a remediation plan that remedies the failure to comply within 14 days of reaching agreement with the Department of Health & Human Services representative.
 - b) 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.
 - c) Additional fines of \$250 will be assessed for each 30 day period that the remediation plan has not been fully implemented.
 - 6) Phased-in Implementation: These rules take effect on April 15, 2009 _____ . However, from April 15, 2009 _____ through Between the effective date of these rules and December 31, 2009, a Chain Restaurant shall not be deemed to have failed to comply **with these rules**.

- 7) Appeals Process: A Chain Restaurant cited with a failure to comply may request and shall be provided an opportunity to challenge the citation, including an opportunity to refute any evidence against it.
 - a) The owner or operator of a Restaurant receiving a notice of failure to comply or citation as provided in these rules may request a hearing by writing the Director of the Lane County Department of Health & Human Services or representative within seven days of the date of notice.
 - b) The Director or the Public Health Manager shall ~~designate a hearings official who shall schedule and oversee the hearing and issue a ruling submit a recommended ruling to the Director~~ within 20 days of the date of its conclusion. ~~In the absence of the Director of Health & Human Services, the Public Health Manager has designated authority to make a final ruling.~~ The Director or the Public Health Manager's ruling shall be final.
 - c) If the Director or Public Health Manager finds the failure to comply to exist, the ruling shall set a date for remedy of the failure to comply to be accomplished by the Chain Restaurant.
 - d) If the Director or Public Health Manager determines that the failure to comply was issued in error, the ruling may order the Department of Health & Human Service representative to vacate any fines and take other necessary and appropriate actions to remedy the situation.
- 8) 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.
- 9) **This section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law or limit any claim, right of action, or civil liability that otherwise exists under state law. The only enforcement mechanism of the rules is the local enforcement agency.**