

LOCAL LAW INTRO. NO. -2008

A LOCAL LAW amending the Laws of Westchester County in relation to requiring chain food service establishments to display calorie content values for menu items.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. A new Chapter 708 of the Laws of Westchester County is hereby added to read as follows:

**Chapter 708
Calorie Labeling by Chain Food Service Establishments**

- Sec. 708.01. Legislative findings.**
- Sec. 708.02. Definitions.**
- Sec. 708.03. Calorie labeling.**
- Sec. 708.04. Enforcement and penalties.**
- Sec. 708.05. Reverse preemption.**
- Sec. 708.06. Severability.**

Sec. 708.01. Legislative findings.

According to the United States Centers for Disease Control, since the mid-seventies, the prevalence of overweight and obesity has increased sharply for both adults and children. Data from two National Health and Nutrition Examination Surveys show that among adults aged 20–74 years, the prevalence of obesity increased from 15.0% (in the 1976–1980 survey) to 32.9% (in the 2003–2004 survey). The two surveys also show increases in overweight among children and teens. For children aged 2–5 years, the prevalence of overweight increased from 5.0% to 13.9%; for those aged 6–11 years, prevalence increased from 6.5% to 18.8%; and for those aged 12–19 years, prevalence

increased from 5.0% to 17.4%. These increasing rates raise concern because of their implications for Americans' health. Being overweight or obese increases the risk of many diseases and health conditions, including the following: hypertension, dyslipidemia (for example, high total cholesterol or high levels of triglycerides), type 2 diabetes, coronary heart disease, stroke, gallbladder disease, osteoarthritis, sleep apnea and respiratory problems, and some cancers (endometrial, breast, and colon). A prime cause of overweight and obesity is eating too many calories and not getting enough physical activity.

A key recommendation of a recent Food and Drug Administration-sponsored expert group report on obesity and eating away from the home was that, "Away-from-home food establishments should provide consumers with calorie information in a standard format that is easily accessible and easy to use. Participants believe that information should be provided in a manner that is easy for consumers to see and use as part of their purchasing and eating decisions. Information should be provided for any standard menu item offered on a regular and ongoing basis that is prepared from a standardized recipe, whether the item is an entire meal or a meal component."

This law will require chain food service establishments in Westchester County to list the calorie content values of menu items on menus and menu boards. Such information, clearly displayed at the point of decision, will allow consumers in Westchester County to exercise personal responsibility and make informed choices for a growing part of their diets.

Sec. 708.02. Definitions

For purposes of this chapter, the meaning of terms used in this chapter shall be as follows:

1. “Chain food service establishment” means a food service establishment, as defined in section 873.411(1)(c) of the Westchester County Sanitary Code, that is one of a group of 15 or more food service establishment locations anywhere, whether in Westchester County or elsewhere, offering for sale substantially the same menu items, in servings that are standardized for portion size and content, that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.
2. Department shall mean the Westchester County Department of Health.
3. Menu shall mean a printed list or pictorial display of a food item or items, and their price(s), that are available for sale from a chain food service establishment and shall include menus distributed or provided outside of the establishment.
4. Menu board shall mean any list or pictorial display of a food item or items and their price(s) posted in and visible within a chain food service establishment or outside of a chain food service establishment for the purpose of ordering from a drive-through window.
5. Menu item shall mean any individual food item, or combination of food items, listed or displayed on a menu board or menu that is/are sold by a chain food service establishment.

Sec. 708.03. Calorie labeling.

A. Calorie information for menu items. Chain food service establishments shall post on menu boards and menus the calorie content values (in kcal) for each menu item next to the listing of each menu item. Calorie content values (in kcal) required by this section shall be based upon a verifiable analysis of the menu item, which may include the use of nutrient databases, laboratory testing, or other reliable methods of analysis, and shall be rounded to the nearest ten (10) calories for calorie content values above 50 calories and to the nearest five (5) calories for calorie content values 50 calories and below. Subject to prior approval by the Department, chain food service establishments may use alternative means for making calorie information available to patrons, provided such information is made available at the point of purchase and is at least as prominent as required in paragraph (1) below.

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

(a) Menu boards. On menu boards, calorie content values shall be legible, posted conspicuously, and displayed in a color as or more prominent than the color in which the name of the menu item or price of the menu item are displayed. Calorie content values shall also be posted in a size and typeface at least as large as the name of the menu item or price, whichever is larger.

(b) Menus. On printed menus, calorie content values shall be legible, printed conspicuously, and displayed in a color as or more prominent than the color in which the

name of the menu item or price of the menu item are displayed. Calorie content values shall also be printed in a size and typeface at least as large as the name or price of the menu item.

B. For menu items that come in different flavors and varieties but that are listed as a single menu item, such as, but not limited to, soft drinks, ice cream, pizza, and doughnuts, the median value for calories for all flavors or varieties shall be listed on menus and menu boards if the calorie values for all flavors or varieties are within 20% of the median. If the calorie values are not within 20% of the median, then the range for all the flavors or varieties of that menu item shall be listed from the lowest to the highest value. If a menu item that comes in different varieties is on display with a name placard or similar signage, the calories per serving as-offered-for-sale shall be listed on the placard along with the name. If a menu item is not on display, nutrition information for each individual flavor or variety shall be provided by means of an in-store brochure, booklet, kiosk, or other device that is easily accessible to customers. Signage shall alert customers to the availability of such information.

C. Chain food service establishment owners or operators shall provide to the Department, if requested, information documenting the accuracy of the calorie labeling required by this section.

D. The Westchester County Board of Health may promulgate rules and regulations as may be necessary to outline parameters and procedures and as may otherwise be necessary to effectuate the purposes of this chapter.

Sec. 708.04. Enforcement and penalties.

Any person who violates a provision of this chapter shall be subject to the imposition of a civil penalty by the Department, which shall have sole jurisdiction to enforce the provisions of this chapter. Every person that violates the provisions of this chapter shall be liable for a civil penalty as prescribed in section 873.219 of the Westchester County Sanitary Code. The penalty provided for by this chapter may be sued for and recovered by the Department through the County Attorney in the name of the County of Westchester in any court of competent jurisdiction. The penalties imposed herein are the sole penalties to be imposed for a violation of this chapter. No civil penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him and has had an opportunity to be heard as provided for in the Westchester County Sanitary Code.

Sec. 708.05. Reverse Preemption.

This chapter shall be null and void on the day that federal or statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Westchester. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Sec. 708.06. Severability.

If any word, phrase, clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section of part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 2. This Local Law shall take effect one hundred and eighty (180) days after its enactment, except that any rules and regulations necessary for the timely implementation of this Local Law on its effective date may be promulgated on or before such date.