

Introduced by: Legislators Toback, Denenberg and Mejias

LOCAL LAW NO.20 -2009

A LOCAL LAW in relation to the posting of calorie information by permitted food service establishments within the county of Nassau.

Passed by the Nassau County Legislature on September 9, 2009

Voting: ayes: 11, naves: 8, abstained: 0

Became a law on October 8, 2009 with the approval of the County Executive.

FORM APPROVED

[Signature]
Interim
MAJORITY COUNSEL

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF NASSAU, AS FOLLOWS:

Section 1. Chapter IX of chapter 272 of the laws of 1939 constituting the Nassau County Administrative Code is amended to add a new Title I, to read as follows:

Title I

Nassau County Calorie Labeling Law

§ 9-26.0. Short title. This law shall be known as the "Nassau County Calorie Labeling Law".

§ 9-26.1. Legislative Intent. This legislature finds that the obesity rate among U.S. adults has more than doubled over the past three decades. People who are overweight are at an increased risk for diabetes, heart disease, stroke, high blood pressure, arthritis and various forms of cancer. This legislature also finds that Americans are eating meals away from home at an increasing rate. On average, Americans consume about one third of their calories from restaurants. This legislature further finds that since the enactment of the Federal Nutrition Labeling and Education Act, adults have widely used available nutrition information in order to change or alter their diet and eating habits. This legislature further finds that very few restaurants and food establishments voluntarily offer nutrition information such as calories for menu items. This legislature finds that without calorie information, consumers lack crucial information to

compare food options and make informed decisions that will impact their health. Therefore, the purpose of this law is to require certain food establishments to post calorie information in order to facilitate informed diet and food choices among Nassau County residents.

§ 9-26.2. Definitions. As used in this law, the following terms shall have the meanings indicated:

“Commissioner” shall mean the Commissioner of the Nassau County Department of Health.

“Food item tag” shall mean a label or tag that identifies any food item displayed for purchase at a permitted food service establishment.

“Menu” shall mean a printed list or pictorial display of a food item or items, and the price(s) at which they are available for sale from a permitted food service establishment, and shall include menus distributed or posted outside of the permitted food service establishment. Menu shall not include printed or pictorial materials for the purpose of advertising, except if used for the purposes of ordering, take-out or delivery.

“Menu board” shall mean any list or pictorial display of a food item or items and their respective price(s), posted and visible within a permitted food service establishment or outside of a permitted food service establishment for the purpose of ordering from a drive-through window. A menu board shall not include printed or pictorial materials for the purpose of advertising, except if used for the purposes of ordering, take-out or delivery.

“Menu item” shall mean any individual food item, or combination of food items, listed or displayed on a menu board or menu that is sold by a permitted food service establishment.

“Permitted food service establishment” shall mean a food service establishment which is required, pursuant to section 1 of Article III-A of the Nassau County Public Health Ordinance, to apply and receive a food service establishment permit from the Nassau County Department of Health, and which is one of a group of fifteen (15) or more such establishments doing business nationally and operating under common ownership or control, or as franchised outlets of a parent business, or which does business under the same name, and offers for sale substantially the same menu items in servings that are standardized for portion size and content,

“Person” shall mean any individual, business, firm, partnership, limited liability partnership, corporation, company, limited liability company, society, association, or any organized group of persons whether incorporated or not.

§ 9-26.3. Posting calorie information for menu items. (a) All menu boards and menus in any permitted food service establishment shall bear the total number of calories derived from any source for each menu item. Such information shall be stated clearly and conspicuously, adjacent or in close proximity to the menu item such as to be clearly associated with it, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the menu item.

(b) When a food item is displayed for purchase with a food item tag, such food item tag shall include the calorie content value for that food item in a font size and format at least as prominent as the font size of the name of the food item.

(c) Calorie content values at drive-through windows shall be displayed on either the drive through menu board, or on an adjacent stanchion visible at or prior to the point of ordering so long as the calorie content values are as clearly and conspicuously posted on the stanchion adjacent to their respective menu item names as the price or menu item is on the drive through menu board.

§ 9-26.4. Range of calorie content values for different flavors, varieties and combinations.

(a) For menu items offered in different flavors and varieties, including, but not limited to, beverages, ice cream, pizza, and doughnuts, the range of calorie content values showing the minimum to maximum number of calories for all flavors and varieties of that item shall be listed on menu boards and menus for each size offered for sale, provided, however, that the range need not be displayed if calorie content information is included on the food item tag identifying each flavor or variety of the food item displayed for sale, in accordance with subsection (b) of this section.

(b) For combinations of different food items listed or pictured as a single menu item, the range of calorie content values showing the minimum to maximum number of calories for all combinations of that menu item shall be listed on menu boards and menus. If there is only one possible calorie total for the combination, then that total shall be listed on menu boards and menus.

§ 9-26.5. Calculating calories. Calorie content values, measured in kilocalories, as required by this title 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 fifty (50) calories and to the nearest five (5) calories for calorie content values fifty (50) calories and below.

§ 9-26.6. Scope and applicability. This law shall apply to menu items that are served in portions the size and content of which are standardized at a permitted food service establishment, and does not preclude any food service establishment, including permitted food service establishments, from voluntarily providing additional nutritional information or disclaimers regarding variations in calorie content values. This law shall not apply to menu items that are listed on a menu or menu board for less than thirty (30) days in a calendar year.

§9-26.7. Rules and Regulations. The Commissioner shall promulgate such rules and regulations as are necessary to effectuate the provisions of this title.

§ 9-26.8. Penalties. Any person who violates a section of this title shall be subject to a civil penalty of not greater than five hundred dollars (\$500) for the first offense, not greater than thousand dollars (\$1,000) for the second offense and not greater than two thousand and five hundred dollars (\$2,500) for every offense thereafter.

§ 9-26.9. Severability. If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 2. SEQRA Determination.

This legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this action is an unlisted action under the provisions of Title 6 NYCRR Part 617, and that based on an evaluation of the environmental criteria set forth in §617.7(c) that are considered to be indicia of significant adverse environmental impacts, along with the recommendation of the Nassau County Planning Commission acting in its advisory capacity to the legislature, that such action will not have significant adverse impacts on the environment, and that no additional environmental review or action is necessary.

Section 3. Effective date. This local law shall be effective one hundred and eighty (180) days after it shall have become law.

APPROVED

Maureen Gottlieb

County Executive

DATE Oct. 8, 2009