

1 [Menu Labeling at Chain Restaurants.]

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3 **Ordinance amending Sections 468.2, 468.3, 468.4, 468.5, 468.6, and 468.8 of the San**
4 **Francisco Health Code to (1) set rounding rules for disclosure of nutritional**
5 **information, (2) allow nutritional information for pizzas to be listed per serving size, (3)**
6 **allow chain restaurants to display the information required by Section 468.4 in**
7 **brochures and booklets, (4) authorize the Director of the Department of Public Health to**
8 **adopt rules and regulations to enforce these provisions, and (5) extend the deadlines**
9 **for electronic reporting and disclosure on menus, food tags, and posters.**

10 Note: Additions are single-underline italics Times New Roman;
11 deletions are ~~strikethrough italics Times New Roman~~.
12 Board amendment additions are double underlined.
13 Board amendment deletions are ~~strikethrough normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. The San Francisco Health Code is hereby amended by amending Sections
16 468.2, 468.3, 468.4, 468.5, 468.6, and 468.8 to read as follows:

17 SEC. 468.2. DEFINITIONS.

18 (a) "Chain Restaurant" means a Restaurant within the City and County of San
19 Francisco that offers for sale substantially the same Menu Items, in servings that are
20 standardized for portion size and content, and is one of a group of 20 or more Restaurants in
21 California that either: (1) operate under common ownership or control; or (2) operate as
22 franchised outlets of a parent company, or (3) do business under the same name.

23 (b) "Director" shall mean the Director of Health, or his designated agents or
24 representatives.
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1 (c) "Food" means any substance in whatever form for sale in whole or in any part for
2 human consumption such as, for example, meals, snacks, desserts, and beverages of all
3 kinds.

4 (d) "Food Tag" shall mean a label or tag that identifies any Food item offered for sale
5 at a Chain Restaurant, such as, for example, a label placed next to a cherry pie showing a
6 picture of a cherry and listing the price per slice.

7 (e) "Menu" means any list or pictorial display of Food, and price(s), offered for sale at a
8 Restaurant including menus distributed or provided outside of the Restaurant, but does not
9 include a Menu Board.

10 (f) "Menu Board" means any list or pictorial display of Food, and price(s), offered for
11 sale at a Restaurant that is posted in a Restaurant and intended for shared viewing by
12 multiple customers such as, for example, back-lit marquee signs above the point of sale at
13 fast-food outlets and chalk boards listing offered Food items or any list of Food offered for sale
14 at a Restaurant that is posted and intended for viewing by customers purchasing Food to go,
15 such as, for example, a drive-through menu.

16 (g) "Menu Item" means an item described on a Menu, a Menu Board, or a Food Tag
17 that is prepared, un-prepackaged Food; and also means a combination item appearing on a
18 Menu, a Menu Board, or a Food Tag such as, for example, a "kids meal," that contains any
19 prepared, un-prepackaged Food, such as a hamburger, and any prepackaged Food, such as
20 a carton of milk.

21 (h) "Restaurant" means a facility at which any prepared, un-prepackaged Foods are
22 offered for sale and consumption on or off the premises such as, for example sit-down
23 restaurants; cafes; coffee stands; and fast-food outlets, but not grocery stores. "Restaurant"
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1 may also include separately owned food facilities that are located in a grocery store but does
2 not include the grocery store.

3 SEC. 468.3. MENU LABELING REQUIRED AT CHAIN RESTAURANTS.

4 (a) Required Nutritional Information. Except as provided in Subsection (h), each Chain
5 Restaurant shall make nutritional information available to consumers for all Menu Items. This
6 information shall include, but not be limited to, all of the following, per Menu Item, as usually
7 prepared and offered for sale:

8 (1) Total number of calories, expressed to the nearest 10 calories for values above 50
9 calories and to the nearest 5 calories for values 50 calories and below;

10 (2) Total number of grams of saturated fat, expressed to the nearest gram for values 5
11 grams and above, to the nearest half gram for values below 5 grams, and as 0 for values below one half
12 gram;

13 (3) Total number of grams of carbohydrates, expressed to the nearest gram for values 1
14 gram and above, as "less than 1g" for values below 1 gram, and as 0 for values below one half gram;
15 and

16 (4) Total number of milligrams of sodium, expressed to the nearest 10 milligrams for values
17 above 140 milligrams, to the nearest 5 milligrams for values between 5 and 140 milligrams, and as 0
18 for values below 5 milligrams.

19 (b) Information on Menus.

20 (1) Each Chain Restaurant that uses a Menu shall provide the nutritional information
21 required by ~~§~~Subsection (a) next to or beneath each Menu Item using a size and typeface that
22 is clear and conspicuous.

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1 (2) Each Chain Restaurant that uses a Menu shall include the following statement on
2 the Menu in a clear and conspicuous manner: "Recommended limits for a 2,000 calorie daily
3 diet are 20 grams of saturated fat and 2,300 milligrams of sodium."

4 (c) Information on Menu Boards.

5 (1) Each Chain Restaurant that uses a Menu Board shall provide on the Menu Board
6 the nutritional information required by Subsection (a)(1) next to or beneath each Menu Item on
7 the Menu Board using a font and format that is at least as prominent, in size and appearance,
8 as that used to post either the name or price of the Menu Item.

9 (d) Information on Food Tags. Each Chain Restaurant that uses a Food Tag shall
10 provide on the Food Tag the nutritional information required by ~~s~~Subsection (a)(1) using a font
11 and format that is at least as prominent, in size and appearance, as that used to post either
12 the name or price of the Menu Item.

13 (e) Range of nutritional information for different flavors and varieties.

14 (i) If a Chain Restaurant offers a Menu Item in more than one flavor or variety (such as
15 beverages, ice cream, ~~pizza~~, or doughnuts) and lists the item as a single Menu Item, the range
16 of values for the nutritional information for all flavors and varieties of that item (i.e., the
17 minimum to maximum numbers of calories) shall be listed for each size offered for sale. If the
18 Menu Item's flavors and/or varieties include diet items containing less than 10 calories, the Chain
19 Restaurant shall post a separate range of values for such diet items.

20 (ii) If a Chain Restaurant offers pizzas in different sizes as Menu Items, the nutritional
21 information required by Subsection (a) may be listed on the Menu and/or Menu Board by serving size
22 for each type of pizza if the Chain Restaurant does both of the following: (1) displays the definition of
23 the serving size (i.e., 1 slice) on the Menu and/or Menu Board using a size and typeface that is clear
24 and conspicuous, and (2) displays the number of servings for each size of each type of pizza next to or
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1 beneath the price for each size using a font and format that is at least as prominent, in size and
2 appearance, as that used to post either the name or price of the Menu Item.

3 (f) Disclaimers. Menus, Menu Boards, and Food Tags may include a disclaimer that
4 indicates that there may be minimal variations in nutritional content across servings, based on
5 slight variations in overall size and quantities of ingredients, and based on special ordering.

6 (g) Verifiable and Reliable Information Required.

7 (1) The nutrition information required by this section and Section 468.4 shall be based
8 on a verifiable analysis of the Menu Item, which may include the use of nutrient databases,
9 cookbooks, laboratory testing, or other reliable methods of analysis.

10 (2) A Restaurant is in violation of this section and Section 478.4 if the provided
11 nutritional information required by these sections:

12 (i) Is not present in the location or in the form required by these sections:

13 (ii) Is different than what the Restaurant knows or believes to be the true and accurate
14 information; or

15 (iii) Deviates from what actual analysis or other reliable evidence shows to be the
16 average content of a representative sample of the Menu Item by more than 20%.

17 (h) Food Items Excluded. This section and ~~s~~Section 468.4 shall not apply to:

18 (1) Items placed on the table or at a counter for general use without charge, such as,
19 for example, condiments:

20 (2) Alcoholic beverages; and

21 (3) Items that are on the Menu, Menu Board or Food Tag for less than 30 consecutive
22 days in a calendar year.

23 SEC. 468.4. NUTRITION INFORMATION REQUIRED TO BE DISCLOSED ON
24 DISCLOSURE MEDIA OTHER THAN MENUS, MENU BOARDS AND FOOD TAGS.

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1 (a) Each Chain Restaurant shall make the following nutrition information available to
2 consumers per Menu Item, as usually prepared and offered for sale, on the disclosure media
3 provided for in ~~s~~Subsection (c): calories, protein, carbohydrates, total fat, saturated fat, trans
4 fat, cholesterol, fiber and sodium. The nutrition information shall consist of the following items:

5 (1) A heading titled "Nutrition Information" or equivalent heading acceptable to the
6 Department of Public Health.

7 (2) The nutritional information required by Section 468.3(a).

8 (3) Protein, ~~fiber, total fat, and trans fat~~ shall be expressed to the nearest gram for values
9 1 gram and above, as "less than 1g" for values below 1 gram, and as 0 for values below one half gram
10 per serving.

11 (4) Cholesterol shall be expressed to the nearest 5 milligrams for values above 5
12 milligrams, expressed as "less than 5 mg" for values between 2 and 5 milligrams, and expressed as
13 zero for values below 2 milligrams per serving.

14 (5) Fiber shall be expressed to the nearest gram for values 1 gram and above, as "less than 1g"
15 for values below 1 gram, and as 0 for values below one half gram

16 (6) Total fat and trans fat shall be expressed to the nearest gram for values 5 grams and above,
17 to the nearest half gram for values below 5 grams, and as 0 for values below one half gram.

18 (b) Customers must be able to obtain nutrition information without the necessity of
19 purchasing food.

20 (c) The information required by ~~s~~Subsection (a) must be disclosed, in a size and
21 typeface that is clear and conspicuous, either on a printed poster of a size no smaller than
22 ~~eighteen (18)~~ inches by ~~twenty four (24)~~ inches or in a printed brochure or booklet, that is
23 displayed in a conspicuous place and readily visible to customers either: (1) at the point of
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1 sale, (2) near the front door; (3) on or near the host/hostess desk or reception area, or (4) at
2 any point in or near the entryway or waiting area of the restaurant.

3 SEC. 468.5. REPORTING REQUIREMENTS.

4 By ~~July~~ August 1, 2008, and July 1st of every year thereafter, Chain Restaurants shall
5 report to the Department of Public Health the information required by Sections 468.3 and
6 468.4 in an electronic format determined by the Department. The Department shall make this
7 information available to the public.

8 SEC. 468.6. PENALTIES AND ENFORCEMENT.

9 (a) Cumulative Remedies. The remedies provided by this section are cumulative and
10 in addition to any other remedies available at law or in equity.

11 (b) Administrative Remedies. The Director may enforce the provisions of Sections
12 468.3 through 468.5 by serving a Notice of Violation requesting a Chain Restaurant to appear
13 at an administrative hearing before the Director at least 20 days after the Notice of Violation is
14 mailed. At the hearing, the Chain Restaurant cited with violating the provisions of these
15 sections shall be provided an opportunity to refute all evidence against it. The Director shall
16 oversee the hearing and issue a ruling within 20 days of its conclusion. The Director's ruling
17 shall be final. If the Director finds that a Chain Restaurant has violated any of the provisions
18 of Sections 468.3 through 468.5 or refuses to comply with these sections, the Director may
19 order either of the following penalties:

20 (1) Suspension or revocation of the permit issued by the Director pursuant to Sections
21 451 et seq. of this Code; or

22 (2) An administrative fine in an amount (1) not exceeding one hundred dollars
23 (\$100.00) for a first violation; (2) not exceeding two hundred dollars (\$200.00) for a second
24 violation within one year; (3) not exceeding five hundred dollars (\$500.00) for each additional
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1 violation within one year. In assessing the amount of the administrative penalty, the Director
2 shall consider any one or more of the relevant circumstances presented by any of the parties
3 to the hearing, including but not limited to the following: the nature and seriousness of the
4 misconduct, the number of violations, the persistence of the misconduct, the length of time
5 over which the misconduct occurred, the willfulness of the Chain Restaurant's misconduct,
6 and the Chain Restaurant's assets, liabilities, and net worth. Any penalty assessed and
7 recovered pursuant to this paragraph shall be paid to the City Treasurer and credited to the
8 Department Environmental Health Section Special Revenue Account.

9 (c) Civil Penalties. Violations of Sections 468.3 through 468.5 are subject to a civil
10 action brought by the City Attorney, punishable by a civil fine not less than two hundred fifty
11 dollars (\$250.00) and not exceeding five hundred (\$500.00) per violation. Unless otherwise
12 specified in this section, each day of a continuing violation shall constitute a separate
13 violation. In assessing the amount of the civil penalty, the court shall consider any one or
14 more of the relevant circumstances presented by any of the parties to the case, including but
15 not limited to the following: the nature and seriousness of the misconduct, the number of
16 violations, the persistence of the misconduct, the length of time over which the misconduct
17 occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities,
18 and net worth. Any penalty assessed and recovered in an action brought pursuant to this
19 paragraph shall be paid to the City Treasurer and credited to the Department Environmental
20 Health Section Special Revenue Account.

21 (d) Action for Injunction. The City Attorney may bring a civil action to enjoin a violation
22 of Sections 468.3 through 468.5.

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1 (e) Aiding and Abetting. Causing, permitting, aiding, abetting, or concealing a violation
2 of any provision of Sections 468.3 through 468.5 shall also constitute a violation of this
3 ordinance.

4 (f) Enforcement Agency. The Department of Public Health shall supervise compliance
5 with Sections 468.3 through 468.5 and shall enforce those sections. The Director may adopt
6 rules and regulations to give effect to those sections. In addition to the reporting requirements of
7 Section 468.5, the Director may request information from Chain Restaurants that is reasonably
8 necessary to the enforcement of those sections including, but not limited to, recipe information,
9 provided however that the Department shall keep any proprietary information confidential to the
10 maximum extent permitted by applicable laws. The Department may impose the penalties provided in
11 this section for failure to comply with such a request. Notwithstanding, any other person legally
12 permitted under federal law, under state law, under Sections 468.3 through 468.5, or under
13 other provisions of this Code to enforce a provision of these sections may enforce that
14 provision. Such persons may include, for example: peace officers; code enforcement officials;
15 and City officials, employees, and agents.

16 (g) Fees. In order to implement the requirements set forth in this ordinance, the
17 Department of Public Health is hereby authorized to impose a surcharge of \$350.00 for the
18 permit issued to Chain Restaurants pursuant to Sections 451 et seq. of this Code.

19 SEC. 468.8. OPERATIVE DATE.

20 The disclosure requirements set forth in Sections 468.3 ~~(b) (Menus), 468.3(d) (Food~~
21 ~~Tags), and 468.4(c), shall become operative ninety (90) days after the effective date of this ordinance.~~
22 ~~The disclosure requirements set forth in Section 468.3(c) (Menu Boards) shall become operative on~~
23 ~~September 20, 2008. one hundred and fifty (150) days after its effective date.~~

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1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: FRANCESCA GESSNER
4 Deputy City Attorney

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