

FILE NO. **07/661**

3/11/08

ORDINANCE NO. **40-08**

1 [Menu Labeling At Chain Restaurants.]

2
3 Ordinance amending Sections 468 through 468.8 of the San Francisco Health Code to
4 (1) require chain restaurants to disclose, per standard menu item, the total number of
5 calories on menu boards and food tags, and the total amount of calories, saturated fat,
6 carbohydrates and sodium on menus; (2) revise existing requirements for providing
7 nutritional information on alternative disclosure media; and (3) authorize the
8 Department of Public Health to impose a fee on chain restaurants for implementation of
9 the ordinance.

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 through 468.8 to read as follows:

17 **SEC. 468. PURPOSE. POLICY**

18 The purpose of Sections 468 through 468.8 is to provide consumers with information about the
19 nutritional components of Food prepared, purchased, and eaten outside the home. Consumers must
20 have basic nutritional information readily available in order to make informed choices about the Food
21 that they, and their children and dependants, eat. These sections require Chain Restaurants to provide
22 consumers with specific nutritional information on Menu Items, such as calorie content, so that
23 consumers may be better able to make nutritional choices consistent with their health needs.
24 Furthermore, ensuring informed food choices supports societal public health goals of preventing
25 obesity, diabetes, and other avoidable nutrition-related diseases.

1 *It is the policy of the City and County of San Francisco to require fast food establishments to*
2 *make readily available to their customers in San Francisco ingredient and nutrition information*
3 *regarding the products on their menus.*

4 **SEC. 468.1. FINDINGS.**

5 *The Board of Supervisors hereby finds and declares as follows:*

6 *Chronic diseases and obesity are concurrent, serious and growing public health crises affecting*
7 *states and localities across the country. In California and the City and County of San Francisco, the*
8 *two epidemics are among the greatest public health challenges, as evidenced by the following:*

- 9 • *Chronic diseases, including cardiovascular disease, diabetes, hypertension, cancer, asthma,*
10 *are the leading cause of death and disability in San Francisco and California;*
11 • *Seventy percent of all US deaths are attributable to chronic disease;*
12 • *Hypertension and diabetes are the leading reasons for San Francisco Department of Public*
13 *Health primary care clinic visits;*
14 • *Obesity rates have doubled in children and tripled in teenagers over the past twenty years;*
15 • *The rate at which obesity is increasing in California is among the fastest in the country;*
16 • *One third of California children, one fourth of California teenagers, and one half of*
17 *California adults are either overweight or obese;*
18 • *Fifty percent of overweight children and teenagers remain overweight as adults;*
19 • *Over half of Californians are at greater risk for heart disease, type-2 diabetes, high blood*
20 *pressure, stroke, arthritis-related disabilities, depression, sleep disorders, and some cancers*
21 *because of increasing obesity rates;*
22 • *In San Francisco, 43% percent of adults are overweight or obese and 24% of school-age*
23 *children are overweight or obese.*

1 The burden of increasing overweight and obesity and accompanying chronic diseases manifests
2 itself in premature death and disability, health care costs, and lost productivity. Obesity greatly
3 increases the risk of chronic diseases such as high cholesterol, high blood pressure, asthma, and type-2
4 diabetes. 22% of San Franciscans have high blood pressure and 6.5% of San Franciscans have
5 diabetes. Heart disease is the leading cause of death in San Francisco. The financial cost of chronic
6 disease and obesity is evidenced by the following:

- 7 • Health care costs rose nearly two billion dollars in inflation adjusted dollars between 1987
8 and 2000. Fifteen conditions including diabetes, hypertension, heart disease,
9 cerebrovascular disease accounted for more than half the overall growth;
- 10 • Medicare costs for those who were obese when they were middle aged are roughly twice as
11 great as those who were at ideal weight;
- 12 • In 2005, California's costs related to obesity, overweight, and lack of physical activity were
13 projected to reach \$28 billion for health care and lost work productivity;
- 14 • The indirect and direct costs of adult obesity in America are between \$69 and \$117 billion
15 each year;
- 16 • If 10% of currently obese or overweight Californians were to reach and maintain a healthy
17 weight over a five-year period, savings would amount to \$13 billion;
- 18 • Obesity-related expenditures are thought to have accounted for more than 25% of the
19 increase in national health care spending between 1987 and 2001;
- 20 • The San Francisco Department of Public Health estimates that the obesity epidemic costs
21 San Francisco \$192 million a year in medical expenses, lost productivity and workers'
22 compensation. The estimated costs to the Department for diabetes for the year 2005 was
23 \$25 million.

1 The rise in obesity rates has coincided with Americans eating more meals outside of the home.

2 Such meals contribute to the growing rate of obesity, as evidenced by the following:

- 3 • In 1970, Americans spent just 26% of their food dollars on restaurant meals and other foods
- 4 prepared outside the home. Today, Americans spend 47.9% of their food dollars on away-
- 5 from-home foods;
- 6 • Between 1972 and 1997, the per capita number of fast-food restaurants doubled, and the
- 7 per-capita number of full-service restaurants rose by 35%;
- 8 • The increase in per capita restaurants accounts for 65% of the increase in the percentage of
- 9 those who are obese;
- 10 • About one-third of the calories in an average American's diet come from restaurant or other
- 11 away-from-home foods;
- 12 • On average, children and youth aged 11-18 visit fast food outlets of twice a week;
- 13 • Studies have shown a positive association between eating out and higher caloric intakes and
- 14 higher body weights;
- 15 • Children eat almost twice as many calories (770) when they eat a meal at a restaurant as
- 16 they do when they eat at home (420);
- 17 • Restaurant foods are generally higher in those nutrients for which over consumption is a
- 18 problem, such as fat and saturated fat, and lower in nutrients required for good health, such
- 19 as calcium and fiber;
- 20 • It is not uncommon for a restaurant entrée to provide half of a day's calories, saturated and
- 21 trans fat, or sodium;
- 22 • Portion sizes are often large at restaurants and people tend to eat greater quantities of food
- 23 when they are served more, whether or not they are hungry;

- 1 • Observational studies have shown that people who frequently consume food away from
2 home tend to weigh more.

3 Without nutrition information, consumers consistently underestimate the nutritional content of
4 restaurant foods, as evidenced by the following:

- 5 • In a California field poll about the nutritional value of typical fast food and restaurant menu
6 items, not a single respondent was able to answer all four questions correctly. Less than 1%
7 answered three out of four questions correctly, and only 5% answered two out of four
8 questions correctly. Nearly 68% were not able to answer a single question correctly;
9 • An FDA-commissioned report concluded that without access to nutritional information,
10 consumers are not able to assess the caloric content of foods;
11 • One study illustrated that restaurant foods contain almost twice the number of calories
12 estimated by consumers;
13 • Another study showed that even trained nutrition professionals consistently underestimate
14 the calorie content of restaurant foods by 200 to 600 calories;
15 • The public's knowledge of the nutritional content of restaurant foods is incomplete,
16 especially compared to pre-packaged foods. Moreover, the fact that chain restaurants'
17 serving sizes are so varied and large, and their prices are so low, can mislead and even
18 deceive the public regarding the amount of an actual serving size and how many calories a
19 portion contains.

20 When nutrition information is provided, consumers use it to make healthier choices, as
21 evidenced by the following:

- 22 • Three quarters of American adults report using nutritional labels on packaged foods;
23 • Studies show that the use of food labels is associated with eating more healthful diets;
24
25

- 1 • Almost half of consumers report that the information provided on food labels has caused
2 them to change their mind about buying a food product;
3 • With nutrition information, consumers are 24%-37% less likely to select high-calorie items.

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

7 The current system of voluntary nutritional disclosures by restaurants is inadequate.
8 Approximately two-thirds of the largest chain restaurants fail to provide any nutritional information
9 about their menu item to customers. Those that do provide such information often do not do so at the
10 point of sale, but rather on websites or in brochures available only by request.

11 Competition within the food service industry is healthy and desirable but cannot lead to
12 healthier food options when consumers are not able to make choices based upon the nutritional value
13 of the food offered.

14 84% of Californians are in favor of nutritional labeling in restaurants. The United States
15 Surgeon General, the Food and Drug Administration, the National Academies' Institute of Medicine,
16 and the American Medical Association have all recommended nutritional labeling of restaurant food as
17 a strategy to address rising obesity rates.

18 The aforementioned findings are based on studies referenced in the "Statement of Legislative
19 Findings," a copy of which is on file with the Clerk of the Board of Supervisors in File No.
20 _____ and is incorporated herein by reference.

21 Therefore, it is the intent of the Board of Supervisors, in enacting this ordinance to provide
22 consumers with basic nutritional information about prepared Foods sold at Chain Restaurants so that
23 consumers can make informed Food choices; and to foster fairness and encourage beneficial
24 competition among the Chain Restaurants of the City and County of San Francisco.

1 *The Board of Supervisors finds that major cardiovascular diseases are responsible for more*
2 *than one million deaths in the United States each year. As a result, almost one out of every two*
3 *Americans die of cardiovascular diseases. In 1984, nearly 50 percent of all deaths in San Francisco*
4 *were from heart disease, stroke and related disorders. It has been estimated that coronary heart*
5 *disease costs the United States over \$60 billion a year in direct and indirect costs.*

6 *There is increasing evidence of a relationship between diet and many of the leading causes of*
7 *death in the United States. A number of risk factors have been identified as strongly associated with*
8 *coronary heart disease. High blood pressure and high blood cholesterol are two of the most clearly*
9 *established of these factors.*

10 *A large body of evidence reveals that the blood cholesterol level of most Americans is*
11 *undesirably high, in large part because of our high dietary intake of calories, saturated fat, and*
12 *cholesterol. In countries with diets lower in these constituents, blood cholesterol levels are lower, and*
13 *coronary heart disease is less common. There is no doubt that appropriate changes in the American*
14 *diet will reduce blood cholesterol levels.*

15 *The \$47 billion fast food industry provides a sizeable and growing portion of the American diet.*
16 *Studies indicate that Americans eat out often and that younger groups eat more often at fast food*
17 *places. A Gallup study over a three year period (1978 to 1980) revealed that 30 to 42 percent of those*
18 *polled had eaten out the day before. Twenty-eight percent ate at fast food establishments. Other studies*
19 *have shown that one out of every five working women eat at a fast food establishment four times a*
20 *week. It is apparent that fast foods comprise a significant portion of the diet of many Americans, San*
21 *Franciscans included.*

22 *Recent studies have shown that some fast food establishments use highly saturated fats, such as*
23 *beef tallow, in the preparation of fried foods. Fast foods can supply more calories than needed from*
24 *one meal. Sodium levels may be high, which is of special concern for people on sodium restricted diets.*

1 *Various studies have noted the high fat and sugar content of some fast foods, and the low levels of*
2 *Vitamins A and C in many fast foods. Further, the majority of fast food establishments provided few*
3 *vegetables, fruits and whole grain products on their menus.*

4 *When it comes to selecting a nutritious meal, most fast food diners are provided little, if any,*
5 *information regarding foods on the menu. Requiring ingredient and nutrition disclosure would enable*
6 *consumers, particularly consumers with histories of heart disease, stroke, or allergies, to make*
7 *informed choices concerning their eating habits, choices more consistent with their long term health.*

8 *Most fast food establishments, unlike many local, nonfranchised restaurants, are not capable of*
9 *changing their menus on a daily basis. In fact, they are more like small, decentralized food*
10 *manufacturing facilities than restaurants. Each franchise in a chain uses the same ingredients to make*
11 *the same standardized product. The variety of food is limited and most foods come in standardized*
12 *containers or wrappers that could easily bear ingredient and nutrition labels. Section 343(i) of the*
13 *Federal Food, Drug and Cosmetic Act requires ingredient information to be included on the labels of*
14 *packaged food. Moreover, in a statement of policy issued December 3, 1985, regarding the disclosure*
15 *of ingredients in restaurant served foods, the United States Department of Agriculture went on record*
16 *supporting state and local efforts to require accurate descriptions of food served in, among other*
17 *places, fast food establishments.*

18 *Therefore, the Board of Supervisors declares that it is in the public interest to require fast food*
19 *establishments to make readily available to their customers in San Francisco ingredient and nutrition*
20 *information regarding the products on their menus.*

21 **SEC. 468.2. DEFINITIONS.**

22 *(a) “Chain Restaurant” means a Restaurant within the City and County of San Francisco that*
23 *offers for sale substantially the same Menu Items, in servings that are standardized for portion size and*
24 *content, and is one of a group of 20 or more Restaurants in California that either: (1) operates*
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1 under common ownership or control with at least 14 or more Restaurants in California; or (2)
2 operates as a franchised outlets of a parent company with at least 14 or more franchised outlets in
3 California, or (3) does business under the same name with at least 14 or more Restaurants in
4 California.

5 (b) "Director" shall mean the Director of Health, or his designated agents or
6 representatives.

7 (c) "Food" means any substance in whatever form for sale in whole or in any part for human
8 consumption such as, for example, meals, snacks, desserts, and beverages of all kinds.

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

12 (e) "Menu" means any list of Food offered for sale at a Restaurant including menus distributed
13 or provided outside of the Restaurant, but does not include a Menu Board.

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

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

23 (h) "Restaurant" means a facility at which any prepared, un-prepackaged Foods are offered
24 for sale and consumption on or off the premises such as, for example sit-down restaurants; cafés;

1 coffee stands; and fast-food outlets, but not grocery stores. "Restaurant" may also include
2 separately owned food facilities that are located in a grocery store but does not include the
3 grocery store.

4 (a) ~~"Color additive" shall mean a substance which satisfies both of the following requirements:~~

5 (1) ~~It is a dye, pigment, or other substance which is made by a process of synthesis or similar~~
6 ~~artifice, or which is extracted, isolated or otherwise derived, with or without intermediate or final~~
7 ~~change or identity, from a vegetable, animal, mineral, or other source.~~

8 (2) ~~When added or applied to a food, it is capable, alone or through reaction with any other~~
9 ~~substance, of imparting color to the food to which it is added or applied.~~

10 ~~The term "color additive" does not include any material which is used, or intended to be used,~~
11 ~~solely for a purpose or purposes other than coloring.~~

12 ~~The term "color," as used in this Section, includes black, white, and intermediate grays.~~

13 (c) ~~"Fast Food Establishment" shall mean a restaurant where ready to eat cooked food and~~
14 ~~beverages, primarily served in or on disposable wrappers, packages, or containers, for consumption on~~
15 ~~or off the premises, is offered for retail sale, and which is part of a chain of 10 or more franchised~~
16 ~~restaurants. This definition is not applicable to bakeries, or to food operations which are an incidental~~
17 ~~part of a grocery or a supermarket business.~~

18 (d) ~~"Food" shall mean any article intended for use for food, drink, confection, condiment, or~~
19 ~~chewing gum, or any article which is used or integrated for use as a component of any such article.~~

20 (e) ~~"Food Additive" shall mean any substance, the intended use of which results or may~~
21 ~~reasonably be expected to result, directly or indirectly, in such substance becoming a component of the~~
22 ~~food or otherwise affecting the characteristics of the food.~~

23 ~~This includes any substance or radiation source which is intended for use in producing,~~
24 ~~manufacturing, packing, treating, packaging, transporting, or holding any food.~~

1 The term "food additive" does not include any of the following:

2 (1) A pesticide chemical in or on a raw agricultural commodity.

3 (2) A pesticide chemical that is used, or intended for use, in the production, storage, or
4 transportation of any raw agricultural commodity.

5 (3) A color additive.

6 (4) Any substance which is used in accordance with a sanction or approval granted prior to the
7 enactment of the Food Additives Amendment of 1958 (72 Stat. 1784), pursuant to the federal act; the
8 Poultry Products Inspection Act (71 Stat. 441; 21 U.S.C., Sec. 451 et seq.); the Meat Inspection Act of
9 March 4, 1907 (34 Stat. 1260) as amended and extended (21 U.S.C. Sec. 71 et seq.); or the Food and
10 Agricultural Code of this State.

11 (f) "Federal Act" shall mean the Federal Food, Drug, and Cosmetic Act, as amended (52 Stat.
12 1040; 21 U.S.C., Sec. 301 et seq.).

13 (g) "Label" shall mean a display of written, printed, or graphic matter upon a food or upon its
14 package.

15 (h) "Labeling" shall mean label or other written, printed or graphic matter upon a food or upon
16 its package.

17 (i) "Package" shall mean any container or wrapper for enclosing or containing any food
18 product.

19 **SEC. 468.3. MENU LABELING REQUIRED AT CHAIN RESTAURANTS. INGREDIENT**
20 **INFORMATION REQUIRED TO BE DISCLOSED.**

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

- 1 (1) Total number of calories;
2 (2) Total number of grams of saturated fat;
3 (3) Total number of grams of carbohydrates; and
4 (4) Total number of milligrams of sodium.

5 (b) Information on Menus.

6 (1) Each Chain Restaurant that uses a Menu shall provide the nutritional information required
7 by subsection (a) next to or beneath each Menu Item using a size and typeface that is clear and
8 conspicuous.

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

12 (c) Information on Menu Boards.

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

17 (d) Information on Food Tags. Each Chain Restaurant that uses a Food Tag shall provide on
18 the Food Tag the nutritional information required by subsection (a)(1) using a font and format that is
19 at least as prominent, in size and appearance, as that used to post either the name or price of the Menu
20 Item.

21 (e) Range of nutritional information for different flavors and varieties. If a Chain Restaurant
22 offers a Menu Item in more than one flavor or variety (such as beverages, ice cream, pizza, or
23 doughnuts) and lists the item as a single Menu Item, the range of values for the nutritional information
24 for all flavors and varieties of that item (i.e., the minimum to maximum numbers of calories) shall be
25 listed for each size offered for sale.

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

4 (g) Verifiable and Reliable Information Required.

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

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

10 (i) Is not present in the location or in the form required by these sections;

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

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

15 (h) Food Items Excluded. This section and section 468.4 shall not apply to:

16 (1) Items placed on the table or at a counter for general use without charge, such as, for
17 example, condiments;

18 (2) Alcoholic beverages; and

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

21 (a) The ingredient information relating to a packaged food sold for consumption by customers
22 of fast food establishments must be included on the label of the package, or on any of the alternative
23 disclosure media provided for in Section 468.5. The information must include ingredients, cooking
24

1 ~~medium, spices, flavorings, coloring, artificial flavorings, artificial colorings, and chemical~~
2 ~~preservatives. The ingredient information shall consist of the following items:~~

3 ~~(1) A heading titled "Ingredient Information".~~

4 ~~(2) The common or usual name of each ingredient of the food, in descending order of~~
5 ~~predominance by weight.~~

6 ~~(3) The cooking medium.~~

7 ~~(4) Spices, flavorings, and colorings may be designated as spices, flavorings, and colorings~~
8 ~~without naming each.~~

9 ~~(5) Artificial flavorings, artificial colorings, and chemical preservatives must be designated as~~
10 ~~such.~~

11 ~~(6) Any other food additives, or color additives. FD&C Yellow No. 5 must be specifically~~
12 ~~declared.~~

13 ~~(b) This Section does not require that any trade secret be divulged.~~

14 ~~(c) Customers will be able to obtain ingredient information without the necessity of purchasing~~
15 ~~food.~~

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

18 (a) ~~Each Chain Restaurant shall make the following nutrition information available to~~
19 ~~consumers per Menu Item, as usually prepared and offered for sale, relating to a packaged food sold~~
20 ~~for consumption by customers of fast food establishments must be included on the label of the package,~~
21 ~~or on any of the alternative disclosure media provided for in subsection (c): Section 468.5. The~~
22 ~~information must include calories, protein, carbohydrates, total fat, saturated fat, trans fat~~
23 ~~polyunsaturated fat, cholesterol, fiber and sodium, vitamins and minerals. The nutrition~~
24 information shall consist of the following items:

1 (1) A heading titled "Nutrition Information *Per Serving*" or equivalent heading
2 acceptable to the Department of Public Health.

3 ~~(2) A statement of the serving size.~~

4 ~~(3) A statement of the number of servings per container.~~

5 ~~(4) Calorie content shall be expressed to the nearest five calorie increment per serving.~~

6 ~~(2 4) The nutritional information required by Section 468.3(a).~~

7 ~~(35) Protein, carbohydrates, fiber, total fat, and trans fat-saturated fat, and polyunsaturated~~
8 ~~fat shall be expressed to the nearest gram per serving.~~

9 ~~(46) Cholesterol and sodium shall be expressed to the nearest milligram per serving.~~

10 ~~(7) In the case of vitamins and minerals, information regarding vitamin A, Vitamin C, thiamine,~~
11 ~~riboflavin, niacin, calcium, and iron must be expressed in percentages of the U.S. RDA as derived from~~
12 ~~the Recommended Dietary Allowances of the National Academy of Sciences National Research~~
13 ~~Council, by the Food and Drug Administration, U.S. Department of Health and Human Services.~~

14 (b) Customers ~~will~~ must be able to obtain nutrition information without the necessity of
15 purchasing food.

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

21 **SEC. 468.5. REPORTING REQUIREMENTS. ALTERNATIVE DISCLOSURE MEDIA.**

22 By July 1, 2008, and July 1st of every year thereafter, Chain Restaurants shall report to the
23 Department of Public Health the information required by Sections 468.3 and 468.4 in an electronic

1 format determined by the Department. The Department shall make this information available to the
2 public.

3 Information required by Sections 468.3 and 468.4 must be disclosed either (a) on the label of
4 packaged food sold for consumption by customers of fast food establishments, or (b) on a notice
5 displayed in a conspicuous place and readily visible to customers at the point of sale, or (c) through the
6 provision of menu notices, or (d) brochures, made available to customers in a conspicuous place
7 readily available to said customers, or (e) tray liners.

8 **SEC. 468.6. PENALTIES AND ENFORCEMENT. ~~CONSPICUOUSNESS AND TERMS~~**
9 **~~OF INFORMATION REQUIRED TO BE DISCLOSED.~~**

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

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

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

22 (2) An administrative fine in an amount (1) not exceeding one hundred dollars (\$100) for a first
23 violation; (2) not exceeding two hundred dollars (\$200) for a second violation within one year; (3) not
24 exceeding five hundred dollars (\$500) for each additional violation within one year. In assessing the
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1 amount of the administrative penalty, the Director shall consider any one or more of the relevant
2 circumstances presented by any of the parties to the hearing, including but not limited to the following:
3 the nature and seriousness of the misconduct, the number of violations, the persistence of the
4 misconduct, the length of time over which the misconduct occurred, the willfulness of the Chain
5 Restaurant's misconduct, and the Chain Restaurant's assets, liabilities, and net worth. Any penalty
6 assessed and recovered pursuant to this paragraph shall be paid to the City Treasurer and credited to
7 the Department Environmental Health Section Special Revenue Account.

8 (c) Civil Penalties. Violations of Sections 468.3 through 468.5 are subject to a civil action
9 brought by the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250)
10 and not exceeding five hundred (\$500) per violation. Unless otherwise specified in this section, each
11 day of a continuing violation shall constitute a separate violation. In assessing the amount of the civil
12 penalty, the court shall consider any one or more of the relevant circumstances presented by any of the
13 parties to the case, including but not limited to the following: the nature and seriousness of the
14 misconduct, the number of violations, the persistence of the misconduct, the length of time over which
15 the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets,
16 liabilities, and net worth. Any penalty assessed and recovered in an action brought pursuant to this
17 paragraph shall be paid to the City Treasurer and credited to the Department Environmental Health
18 Section Special Revenue Account.

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

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

23 (f) Enforcement Agency. The Department of Public Health shall supervise compliance with
24 Sections 468.3 through 468.5 and shall enforce those sections. Notwithstanding, any other person
25

1 legally permitted under federal law, under state law, under Sections 468.3 through 468.5, or under
2 other provisions of this Code to enforce a provision of these sections may enforce that provision. Such
3 persons may include, for example: peace officers; code enforcement officials; and City officials,
4 employees, and agents.

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

8 (a) Information required by Sections 468.3 and 468.4 must be prominently placed upon the
9 label, or other disclosure media as provided for in Section 468.5, with such conspicuousness, as
10 compared with other words, statements, or designs and in such terms as to render it likely to be read
11 and understood by the ordinary individual under customary conditions of purchase and use.

12 (b) If the information required by Sections 468.3 and 468.4 is disclosed on a label, the
13 information must appear on the outside container or wrapper of the retail package, or be easily legible
14 through the outside container or wrapper.

15 **SEC. 468.7. SEVERABILITY. PENALTIES AND ENFORCEMENT.**

16 It is the intent of the Board of Supervisors to supplement applicable state and federal law and
17 not to duplicate or contradict such law and this ordinance shall be construed consistently with that
18 intention. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this
19 ordinance, or its application to any person or circumstance, is for any reason held to be invalid or
20 unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the
21 remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this
22 ordinance, or its application to any other person or circumstance. The Board of Supervisors hereby
23 declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause
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1 or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions,
2 paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

3 ~~(a) The Director of Public Health shall enforce Sections 468 through 468.6 against violations~~
4 ~~by serving notice requiring the correction of any violation within a reasonable time specified by the~~
5 ~~Director. If no response to the notice is received within the specified time period, the Director shall call~~
6 ~~upon the City Attorney to maintain an action for injunction to enforce the provisions of Sections 468~~
7 ~~and 468.6, to cause the correction of any such violation, and for assessment and recovery of a civil~~
8 ~~penalty for such violation.~~

9 ~~(b) Any individual, firm, partnership, corporation, company, association, society, group or~~
10 ~~other person or legal entity that violates any provision of Sections 468 through 468.6 shall be liable for~~
11 ~~a civil penalty, not to exceed \$500 for each day such violation is committed or permitted to continue,~~
12 ~~which penalty shall be assessed and recovered in a civil action brought in the name of the people of the~~
13 ~~City and County of San Francisco by the City Attorney in any court of competent jurisdiction. Any~~
14 ~~penalty assessed and recovered in an action brought pursuant to this paragraph shall be paid to the~~
15 ~~Treasurer of the City and County of San Francisco.~~


16 **SEC. 468.8. OPERATIVE DATE. SEVERABILITY.**

17 The disclosure requirements set forth in Sections 468.3(b) (Menus), 468.3(d) (Food Tags), and
18 468.4(c) (Posters), shall become operative ninety (90) days after the effective date of this ordinance.

19 The disclosure requirements set forth in Section 468.3(c) (Menu Boards) shall become operative one
20 hundred and fifty (150) days after its effective date.

21 ~~If any part or provision of Sections 468 through 468.7 or application thereof, to any person or~~
22 ~~circumstance is held invalid, the remainder of the section, including the application of such part of~~
23 ~~provisions to other persons or circumstances, shall not be affected thereby and shall continue in full~~
24 ~~force and effect. To this end the provisions of the sections are severable.~~

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

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3 By: 
FRANCESCA GESSNER
4 Deputy City Attorney
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 071661

Date Passed:

Ordinance amending Sections 468 through 468.8 of the San Francisco Health Code to (1) require chain restaurants to disclose, per standard menu item, the total number of calories on menu boards and food tags, and the total amount of calories, saturated fat, carbohydrates and sodium on menus; (2) revise existing requirements for providing nutritional information on alternative disclosure media; and (3) authorize the Department of Public Health to impose a fee on chain restaurants for implementation of the ordinance.

January 8, 2008 Board of Supervisors — SUBSTITUTED

March 11, 2008 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 10 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, Mirkarimi, Peskin, Sandoval
Excused: 1 - McGoldrick

March 11, 2008 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

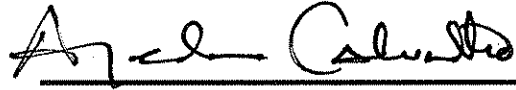
Ayes: 10 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, Mirkarimi, Peskin, Sandoval
Excused: 1 - McGoldrick

March 18, 2008 Board of Supervisors — FINALLY PASSED

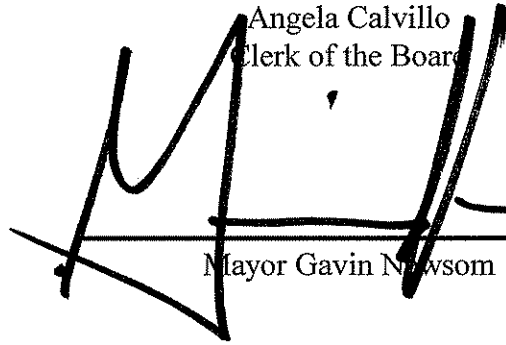
Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 071661

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on March 18, 2008
by the Board of Supervisors of the City and
County of San Francisco.



Angela Calvillo
Clerk of the Board



Mayor Gavin Newsom

3.24.08

Date Approved