

FILE NO. 080826

ORDINANCE NO. 195-08

1 [Menu Labeling at Chain Restaurants.]  
 2

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 ~~*striketrough italics Times New Roman*~~.  
 12 Board amendment additions are double underlined.  
 Board amendment deletions are ~~striketrough-normal~~.

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

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

16 SEC. 468.2. DEFINITIONS.

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

22 (b) "Director" shall mean the Director of Health, or his designated agents or  
 23 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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25

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 sSubsection (a) next to or beneath each Menu Item using a size and typeface that  
22 is clear and conspicuous.

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 2,3400 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.

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 sSubsection (c): calories, protein, carbohydrates, total fat, saturated fat, artificial  
4 trans fat, cholesterol, fiber and sodium. The nutrition information shall consist of the following  
5 items:

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

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

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

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

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

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

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

21 (c) The information required by sSubsection (a) must be disclosed, in a size and  
22 typeface that is clear and conspicuous, either on a printed poster of a size no smaller than  
23 eighteen (18) inches by twenty-four (24) inches or in a printed brochure or booklet, that is  
24 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.



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  
10 the maximum extent permitted by applicable laws. The Department may impose the penalties  
11 provided in this section for failure to comply with such a request. Notwithstanding, any other  
12 person legally permitted under federal law, under state law, under Sections 468.3 through  
13 468.5, or under other provisions of this Code to enforce a provision of these sections may  
14 enforce that provision. Such persons may include, for example: peace officers; code  
15 enforcement officials; 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(e) (Menu Boards) shall become operative on~~  
23 ~~September 20, 2008. one hundred and fifty (150) days after its effective date.~~

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

3 By:   
4 FRANCESCA GESSNER  
5 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

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**File Number:** 080826

**Date Passed:**

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

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July 29, 2008 Board of Supervisors — PASSED ON FIRST READING

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

August 5, 2008 Board of Supervisors — FINALLY PASSED


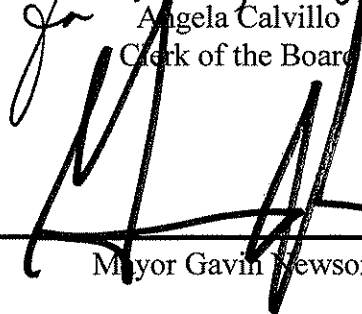
Ayes: 11 - Alioto-Pier, Ammiano, Chu, Daly, Dufty, Elsbernd, Maxwell, McGoldrick, Mirkarimi, Peskin, Sandoval

File No. 080826

I hereby certify that the foregoing Ordinance  
was **FINALLY PASSED** on August 5, 2008  
by the Board of Supervisors of the City and  
County of San Francisco.

8-7-08

Date Approved

  
\_\_\_\_\_  
for Angela Calvillo  
Clerk of the Board  
  
\_\_\_\_\_  
Mayor Gavin Newsom