

[Setting Nutritional Standards for Restaurant Food Sold Accompanied by Toys or other Youth Focused Incentive Items.]

Ordinance amending Article 8 of the San Francisco Health Code by adding Sections 471.1 through 471.9 ~~471.8~~, to set nutritional standards for restaurant food sold accompanied by toys or other youth focused incentive items.

NOTE: Additions are *single-underline italics Times New Roman*;
deletions are ~~*strike-through italics Times New Roman*~~.
Board amendment additions are double-underlined;
Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Health Code is hereby amended by adding Sections 471.1 through 471.9 ~~471.8~~, to read as follows:

SEC. 471.1. FINDINGS.

1. In the last thirty-five years, obesity has grown into a public health problem of epidemic proportions. Seventy-three million Americans are obese according to a 2010 report issued by the CDC-- an increase of 2.4 million from 2007. At least 17 percent of American children ages 2-19 years are now considered overweight or obese. An additional 17 percent are identifiably at risk of becoming overweight. Since the 1970s, obesity rates have doubled among preschool children ages 2-5 years and adolescents aged 12-19 years, and more than tripled among children aged 6-11 years.

2. According to the 2007 California Health Interview Survey (CHIS), 15 percent of adolescents in the greater Bay Area between 12 and 17 years of age are overweight or obese for their age, and 8 percent of children under age 12 are overweight for their age. In 2004, nearly one-fourth of San Francisco children in grades 5, 7, and 9 were overweight. By In 2008, approximately 29 percent of 5th graders, 26 percent of 7th graders, and 25 percent of 9th graders in San Francisco had weights above the healthy fitness zone range of the California Department of Education fitnessgram assessment.

Supervisors Mar, Campos, Chiu, Avalos
BOARD OF SUPERVISORS

1 3. Obesity, overweight, and unhealthy eating habits pose a serious risk to the health and
2 welfare of San Francisco's children and adolescents. Children and adolescents who are obese or
3 overweight have an increased risk of being obese or overweight as adults, with 75 percent of children
4 who are overweight expected to be overweight as adults.

5 4. Childhood obesity also increases children's chances of experiencing chronic health problems
6 later in life. During childhood and adolescence, obese and overweight individuals are already more
7 likely than their peers to exhibit risk factors for heart disease (including elevated cholesterol levels,
8 triglyceride levels, and blood pressure), risk factors for cancer, and impaired glucose tolerance, a
9 precursor for development of Type 2 diabetes. In recent years, Type 2 diabetes in children and
10 adolescents has risen dramatically in conjunction with increases in obesity and overweight.

11 5. The Institute of Medicine has found that the prevalence of obesity among children is so great
12 that it may reduce the life expectancy of the current generation of children and diminish the overall
13 quality of their lives.

14 6. Childhood obesity and overweight also have serious economic costs. Nationally, the annual
15 costs of providing inpatient treatment to children diagnosed with obesity increased from \$125.9 million
16 in 2001 to \$237.6 million in 2005. In addition to inpatient treatment, an estimated \$14.1 billion is
17 spent nationally on prescription drug, emergency room, and outpatient visit expenses each year as a
18 result of childhood obesity and overweight. About 7 percent of San Francisco Public Health
19 Department's unreimbursed medical payments are attributable to obesity among San Franciscans. As
20 children and adolescents in San Francisco become adults, their high rates of obesity and overweight
21 are likely to contribute to the already high economic costs of healthcare and loss of productivity
22 associated with adult obesity in San Francisco.

23 7. San Francisco has invested considerable resources to combat childhood obesity, offering a
24 wide range of community programs. Shape Up San Francisco, a multidisciplinary government
25 coalition, provides an annual Walking Challenge, a Safe Routes to School program to encourage

1 children to walk or bike to school, and the Rethink Your Drink marketing campaign to discourage soda
2 consumption. The San Francisco WIC program also has a Healthy Eating, Active Living campaign to
3 increase WIC families' access to fresh, healthy food. Despite these measures, childhood obesity rates
4 continue to rise and concern San Franciscans.

5 8. San Francisco parents identify childhood obesity as a significant concern for their families.
6 A 2003 survey by the Kaiser Family Foundation found that nearly all Bay Area adults said that being
7 overweight or obese was a significant problem currently faced by children and teens, with 69 percent of
8 adults describing it as major problem. In 2006, 21 percent of Bay Area parents in the Bay Area Parent
9 Poll reported being somewhat or very concerned about their child's weight. The 2007 Bay Area Parent
10 Poll showed that 26 percent of parents picked weight as their primary concern for their children– the
11 second highest primary concern, after stress.

12 9. San Francisco families want their children to have access to healthy, nutritional food and to
13 make healthy choices from the food available. The 2003 survey by the Kaiser Foundation found that
14 approximately 70 percent of Bay Area parents consider nutritional value to be very important when
15 buying food for their household. In addition, the survey showed that 42 percent of Bay Area adults felt
16 that the food industry has a significant responsibility in addressing obesity.

17 10. San Francisco families also face limited time to obtain and prepare nutritional food,
18 making dining out an appealing and often necessary option. The 2003 Kaiser Foundation study
19 showed that 40 percent of Bay Area parents said that their child ate at least one fast food meal or snack
20 on a typical day. More San Franciscans are eating out at least several times a week, with 14 percent of
21 Bay Area parents reporting that their child did not eat dinner cooked at home on most nights in 2003.
22 Fifty-seven percent of Bay Area parents said their child eats out at a restaurant at least once a week,
23 and 14 percent of Bay Area parents said their child eats out at a restaurant between two and seven
24 days a week.

1 11. The food that children and adolescents consume at restaurants has a significant impact on
2 their risk of developing obesity, overweight, or other related health risks. Studies have shown a
3 positive association between eating out and higher caloric intakes and higher body weights. Research
4 shows that consumption of fast food, sugar-sweetened beverages, and other restaurant offerings by
5 children and adolescents is frequently associated with overeating, poor nutrition, and weight gain.
6 About one-third of the calories in an average American's diet come from restaurant or other away-
7 from-home foods. Children eat almost twice as many calories (770) when they eat a meal at a
8 restaurant as they do when they eat at home (420).

9 12. The Institute of Medicine and the U.S. Department of Health and Human Services, among
10 other public health agencies, have developed guidelines and recommendations on healthy nutritional
11 standards for children's meals. The food and beverages that restaurants typically serve to children and
12 adolescents often fail to meet these accepted nutritional recommendations. Ninety eight percent of
13 California school children have diets that do not meet the current dietary recommendations.

14 13. Restaurant foods are generally higher in those nutrients for which over-consumption is a
15 problem, such as fat and saturated fat, and lower in nutrients required for good health, such as calcium
16 and fiber. An analysis of nutrient quality of children's meals served by restaurant chains found that
17 only 3 percent met USDA criteria for meals served under the National School Lunch Program.
18 Children who ate restaurant food compared with those who did not consumed more total fat, more total
19 carbohydrates, more sugar-sweetened beverages, less fiber, less milk, and fewer fruits and non-starchy
20 vegetables.

21 14. Dietitians with the non-profit Physicians Committee For Responsible Medicine
22 (PCRM) analyzed the menu offerings at five major restaurants and found that most childrens
23 meals are alarmingly high in fat, cholesterol and calories. Some contain more sodium and as
24 much saturated fat as a child should consume in an entire day.

1 ~~44.~~ 15. America's rising obesity rates reflect increased intake of oils, cheese, meat and
2 frozen deserts, as reported in the American Journal of Clinical Nutrition. Children's menus at the
3 largest chain restaurants are dominated by burgers, chicken nuggets, macaroni and cheese, French
4 fries, and soft drinks. The most common entree on children's menus is fried chicken in some form,
5 available at 89 percent of the largest chain restaurants.

6 ~~45.~~ 16. Portion sizes are often large at restaurants and people tend to eat greater quantities of
7 food when they are served more, whether or not they are hungry.

8 ~~46.~~ 17. Restaurants encourage children and adolescents to choose specific menu items by
9 linking them with free toys and other incentive items. The Federal Trade Commission (FTC) estimated
10 that the ten restaurant chains surveyed spent \$360 million in 2006 to acquire toys distributed with
11 children's meals. The FTC reported that in 2006, fast food restaurants sold more than 1.2 billion
12 meals with toys to children under 12, accounting for 20 percent of all child traffic.

13 ~~47.~~ 18. The Center for Science in the Public Interest Research analyzed children's
14 meals at major restaurant chains in 2008 and found that many exceed the recommended caloric limits
15 for children. And almost every high-calorie meal in the study came with toys.

16 ~~48.~~ 19. Toys, games, trading cards, admission tickets, and other items given out by restaurants
17 tend to be particularly appealing to children and adolescents. Digital incentives like computer games
18 and on-line media similarly appeal to youth.

19 ~~49.~~ 20. Research shows that parents frequently make purchases based on requests made by
20 children, particularly for items that are geared toward children. Additionally, children and
21 adolescents ages 4-17 years have increasing discretionary income that is frequently spent on restaurant
22 food.

23 ~~20.~~ 21. The FTC recommends that companies adopt nutrition-based standards for food and
24 beverages targeted at children. However, as of March 2010, 35 of 45 major national restaurant chains

1 surveyed had no policies or extremely vague policies on this issue, and the remaining 10 restaurant
2 chains were found to have key weaknesses in their policies or the nutritional criteria used.

3 22. By enacting this ordinance, the City seeks to regulate the sales practice of
4 restaurants physically packaging or tying a free toy (or other incentive item) with unhealthy
5 food for children. The City does not seek to limit or regulate any speech, communication or
6 advertising on the part of any restaurant in any manner. Nor does the City seek to ban
7 entirely the practice of tying free toys with children's meals. Rather, the ordinance allows
8 restaurants to engage in this conduct so long as the toy or incentive item is tied with a meal or
9 single food item that meets specified nutritional standards. By limiting this sales practice to
10 healthy food, the ordinance seeks to encourage and increase the likelihood that parents will
11 make healthier choices for their children when eating out in restaurants, and to encourage and
12 increase the likelihood that children will make healthier choices for themselves at restaurants.

13
14 **SEC. 471.2. TITLE AND PURPOSE.**

15 This Ordinance shall be known as the "Healthy Food Incentives Ordinance." The intent of this
16 Ordinance is to improve the health of children and adolescents in San Francisco by setting healthy
17 nutritional standards for children's meals sold at restaurants ~~accompanied by~~ in combination with
18 free toys or other incentive items. These standards will support families seeking healthy eating choices
19 for their children by permitting restaurants to ~~offer~~ give away free toys and other incentive items only
20 in combination with ~~in conjunction with~~ foods only if those foods meeting specified nutritional
21 criteria. This Ordinance imposes no requirements or regulations for the ~~advertising or~~ labeling of
22 food or beverages or ~~the~~ disclosure of ingredients.

23
24 **SEC. 471.3. DEFINITIONS.**

25 (a) "City" means the City and County of San Francisco.

1 (b) "Department" means the Department of Public Health.

2 (c) "Director" means the Director of the Department of Public Health, or his or her designee.

3 (d) "Incentive Item" means (1) any toy, game, trading card, admission ticket or other
4 consumer product, whether physical or digital, with particular appeal to children and teens but not
5 including "Single Use Articles" as defined in California Health & Safety Code Section 113914 as of
6 January 1, 2009, or (2) any coupon, voucher, ticket, token, code, or password redeemable for or
7 granting digital or other access to an item listed in (d)(1). If the incentive item consists of a food
8 product, the food product shall be considered as part of the Meal under Section 417.4. for purposes of
9 determining whether the Meal meets the nutritional standards.

10 (e) "Meal" means any combination of ~~Single Food Items~~ offered together for a single price.

11 (f) "Restaurant" means an establishment that stores, prepares, packages, serves, vends, or
12 otherwise prepares food for human consumption at the retail level for consumption on or off the
13 premises. "Restaurants" include, but are not limited to, establishments: (1) primarily engaged in
14 providing food services to patrons who order and are served while seated, and pay after eating,
15 (2) primarily engaged in providing food services where patrons generally order or select items and pay
16 before eating, or (3) engaged in providing take-out food services where patrons order ready-to-eat food
17 generally intended for immediate consumption off the premises. Restaurants may also include
18 separately owned food facilities that are located in a grocery store but does not include the grocery
19 store.

20 ~~(g) "Single Food Item" means the complete contents of any food offered for individual~~
21 ~~sale by a Restaurant, not including beverages. Single Food Item may include, but is not~~
22 ~~limited to, a single slice of pizza, a burrito, a hamburger, french fries, or a sandwich containing~~
23 ~~a meat or other protein filling.~~

24
25 **SEC. 471.4. INCENTIVE ITEMS WITH RESTAURANT FOOD.**

1 (a) ~~Single Food Item and Meals.~~ A Restaurant may give away a free Incentive Item in
2 combination with the purchase of a ~~Single Food Item or Meal only if the Single Food Item or Meal~~
3 meets the following nutritional standards:

4 (1) ~~Calories.~~ More than two hundred (200) calories for a Single Food Item, or
5 more ~~Less than six hundred (600) calories.~~ for a Meal;

6 (2) ~~Sodium.~~ Less than four hundred and eighty milligrams (480 mg) of sodium
7 for a Single Food Item, or more than ~~six hundred and forty milligrams (640 mg) of sodium.~~ for a
8 Meal;

9 (3) ~~Fat.~~ Less than thirty-five percent (35%) of total calories from fat, except for fat
10 contained in nuts, seeds, peanut butter or other nut butters, or an individually served or packaged egg,
11 or individually served or packaged low-fat or reduced fat cheese;

12 (4) ~~Saturated Fat.~~ Less than ten percent (10%) of total calories from saturated fats,
13 except for saturated fat contained in nuts, seeds, peanut butter or other nut butters, an individually
14 served or packaged egg, or individually served or packaged low-fat or reduced fat cheese; ~~or;~~

15 (5) ~~Trans Fat.~~ Less than 0.5 grams of trans fat;

16 (6) If the Meal includes a Beverage, the Beverage must meet the criteria set
17 forth below in (b).

18 (7) ~~Fruits and Vegetables.~~ Contains 0.5 cups or more of fruits and 0.75 cups or more
19 of vegetables for a Meal unless the Meal is served as breakfast and consists of food typically
20 considered to be breakfast items. Breakfast meals must contain 0.5 cups of fruit or
21 vegetables.~~and~~

22 (8). ~~Whole Grains.~~ If the Meal includes bread, including but not limited to a
23 hamburger bun or other bunsandwich, it must be made with at least 50 percent whole wheat.

1 **(b) Single Food Items and Beverages.** A Restaurant may give away a free Incentive Item
2 in combination with the purchase of a Single Food Item or Beverage only if the Single Food Item or
3 Beverage meets the following nutritional standards:

4 **(1) Fat.** Less than thirty-five percent (35%) of total calories from fat;

5 **(2) Sugars.** Less than ten percent (10%) of calories from added caloric sweeteners.

6
7 **SEC. 471.5. ADMINISTRATIVE PENALTIES AND ENFORCEMENT.**

8 **(a) The Director may issue administrative citations for the violation of Section-471.4. San**
9 Francisco Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative
10 Fines," is hereby incorporated in its entirety and shall govern the amount of fees and the procedure for
11 imposition, enforcement, collection, and administrative review of administrative citations issued under
12 this Section.

13 **(b) The Department of Public Health shall inspect restaurants for compliance with Section**
14 471.4 and shall enforce Sections 471.1-471.4. The Director may adopt rules and regulations to give
15 effect to those sections.

16
17 **SEC. 471.6. PREEMPTION.**

18 **In adopting this Chapter, the Board of Supervisors does not intend to regulate or affect the**
19 rights or authority of the State or Federal government to do those things that are required, directed, or
20 expressly authorized by federal or state law. Further, in adopting this Chapter, the Board of
21 Supervisors does not intend to prohibit or authorize that which is prohibited by Federal or State law.

22
23 **SEC. 471.7. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
24 **WELFARE.**

1 In undertaking the adoption and enforcement of this Chapter, the City is assuming an
2 undertaking only to promote the general welfare. The City does not intend to impose the type of
3 obligation that would allow a Person to sue for money damages for an injury that the Person claims to
4 suffer as a result of a City officer or employee taking or failing to take an action with respect to any
5 matter covered by this Chapter.

6
7 **SEC. 471.8. SEVERABILITY.**

8 If any of the provisions of this Chapter or the application thereof to any person or circumstance
9 is held invalid, the remainder of this Chapter, including the application of such part or provisions to
10 persons or circumstances other than those to which it is held invalid, shall not be affected thereby and
11 shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

12
13 **SEC. 471.9. EFFECTIVE DATE.**

14 The provisions of the Ordinance shall become effective on December 1, 2011.

15
16 APPROVED AS TO FORM:

17 DENNIS J. HERRERA, City Attorney

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19 By: ALEETA M. VAN RUNKLE
20 Deputy City Attorney
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