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DEDICATED TO THE HEALTH OF ALL CHILDREN



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November 16, 2007

Thomas R. Frieden, MD, MPH
Commissioner of Health
New York City Department of Health and Mental Hygiene
125 Worth Street
New York, NY 10013

Dear Dr. Frieden:

The American Academy of Pediatrics enthusiastically supported the amendment to the New York City Health Code (81.50) that mandates the posting of the caloric content of foods in certain restaurants when it was proposed last year and enthusiastically supports the current revision. We were saddened by the efforts of the New York Restaurant Association to prevent this regulation from passing. We believe that the posting of caloric information in restaurants would be an effective weapon in the battle against childhood obesity. As the AAP has asserted in a policy statement "Prevention of overweight is critical, because long-term outcome data for successful treatment approaches are limited." We agree that "there is no one cause of obesity" and thus we must address each contributing factor in our effort to prevent the current crisis from becoming a catastrophe. We have to address the role that schools, the media, the environment, genetics and, yes, the food that is eaten away from home in restaurants play in engendering obesity in our children. We believe that this amendment does provide a tool that will enable parents and adolescents to make healthier choices when they eat out.

Critics have asserted that "The City can make no case that the Regulation will have a plausible effect on obesity levels in the City." Although such an effect has not been definitively proven, there are research data that suggest that providing caloric content at the time of ordering does influence the purchasers' choices. Since the causes of the obesity epidemic are multiple, correcting only one factor may not demonstrably decrease the problem of overweight children, but, as a part of an overall societal change, will contribute to diminishing this growing health problem.

As pediatricians practicing in New York City, we encounter, on a daily basis, overweight children who are suffering the medical and psychological consequences of obesity. As pediatricians we are committed to the concept of preventive care whether we are providing immunizations to prevent infectious diseases, anticipatory guidance to prevent childhood injury or recommending fluoride treatment to prevent dental caries. Offering information about caloric content in city restaurants at the time of purchase—not afterward on a napkin or placemat and not prior to even entering the restaurant on a web site - is a similar preventive measure.

We applaud the New York City Department of Health and Mental Hygiene for promulgating this amendment and fervently hope that it is adopted as law.

Sincerely,



Henry Schaeffer, MD, FAAP
Chair, District II (New York State), AAP



Ishvar S. Patel, MD, FAAP
President, NY Chapter 2, AAP



Sheila L. Palevsky MD, MPH, FAAP
President, NY Chapter 3, AAP



Abraham Jelin, MD, FAAP
Vice President, NY Chapter 2, AAP
Co-Chair, NYC Youth Advocacy Com.
NY Chapters 2 and 3, AAP



Andrew Racine, MD, PhD, FAAP
Vice President, NY Chapter 3, AAP
Co-Chair, NYC Youth Advocacy Com.
NY Chapters 2 and 3, AAP



RECEIVED OFFICE
OF THE BOARD OF HEALTH
2007 NOV 21 P 12:38

November 20, 2007

Rena Bryant
Secretary to the Board of Health
125 Worth Street CN-31
New York, NY 10013

Dear Board of Health members,

On behalf of the 54 corporate stores and 80 franchise stores, owned by 25 small business owners who are our franchisees, I am contacting you today to urge your opposition to regulation §81.50 of the New York City Health Code, mandating nutritional labeling for those companies that have 10 or more locations nationally doing business under the same trade name. While we are in favor of providing consumers with greater access to nutrition information, we do not believe the regulation as it stands provides our company with the proper forum for the communication of nutritional information.

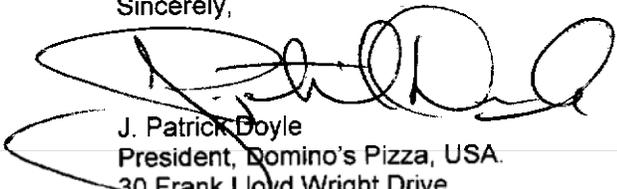
Domino's Pizza has been providing its customers nutritional brochures in our stores since 1994 and has also provided that information online for the past four years. With over 223,000 ways to order a Domino's pizza, you can see how a one-size-fits-all menu labeling regulation could prove to be virtually impossible. We have successfully created a very useful nutritional chart for our consumers that more thoroughly explains the nutritional implications of the MANY choices they have when choosing to have Domino's pizza. This regulation, which would force us to provide consumers a broad calorie range for the many iterations of a Domino's pizza, is really an inferior way to present this information and is more likely to confuse consumers than inform them.

Any nutrition labeling requirement adopted should allow us to retain some flexibility in selecting the format that works best for our particular business concept and customer preferences. We understand that for some, posting nutrition information directly on menus/menu boards may work best. For Domino's Pizza, an alternative format is absolutely necessary.

The bottom line is that one size does not fit all. If the true goal is to provide consumers with more information, then efforts to restrict that information to menus/menu boards are misguided.

We urge you to vote to oppose this regulation and consider re-writing it to better serve the interests of your constituents and your tax-paying small business owners. We would be more than happy to assist you in that process.

Sincerely,



J. Patrick Doyle
President, Domino's Pizza, USA.
30 Frank Lloyd Wright Drive
Ann Arbor, Michigan
48105

**New York State Restaurant Association
Comments presented by E. Charles Hunt**



**Department of Health and Mental Hygiene
New York, New York
November 27, 2007**

Good morning. My name is Chuck Hunt and I am the Executive Vice President of the New York City Chapters of the New York State Restaurant Association. I would like to thank the Department of Health and Mental Hygiene for the opportunity to discuss its intention to repeal and reenact section 81.50 of the New York City Health Code.

Our colleagues at the National Restaurant Association have submitted a detailed outline of the industry's objections to this menu labeling proposal and why it is not feasible. NYSRA concurs in large part with the objections raised by the National Restaurant Association and I encourage the board to review these written comments in their entirety.

I would first like to point out the remarkable efforts that have been made by many of the city's restaurants and chain restaurants in the past few years to provide more nutrition information to consumers - on the web, in brochures, posters, tray liners and in other forms. I urge the Board of Health to review this information once again and try to implement a more flexible proposal that can apply to all of the different restaurants now covered by the proposal.

During the past year many of the multi-unit companies have met with members of the Board of Health to ask for flexibility in providing calorie information and every time, they were refused. In order to achieve the goal of providing meaningful and understandable nutritional information to the customer, a one size fits all approach simply will not work.

Research shows that more than 70% of restaurant customers customize their orders. Restaurants provide ample opportunities for consumers to personalize their food orders - whether it's pizza, entrées, beverages or desserts. In some cases, there could be hundreds or even thousands of combinations that consumers could choose from in ordering a coffee drink or sandwich. That is precisely the reason many restaurants have chosen brochures or the web to provide more detailed nutrition information to consumers.

Additionally, there are many unanswered questions raised by the way the proposal is written. The proposal applies to "a food service establishment within New York City that is one of a group of 15 or more doing business nationally...". Doing business nationally is undefined in the proposal. If there is a local chain operating exclusively in New York City with 15 or more units are they exempt?

What if they operate in New York City and one other state is that "operating nationally"? Since the text refers to food service establishments does that include grocery store chains that sell food prepared on-premise and ready to eat food items?

There are also questions as to the scope of the regulation. The word menu is defined as "a ...pictorial display of a food item or items, and their price(s)". Is it the case that every time a food item is displayed pictorially with the price, that the calorie information must be displayed as well? Does that mean that table tents, stanchions or other in-store advertisements must provide caloric information? The definition of menus includes menus "distributed or provided outside of the establishment." Does this definition cover advertisements on websites, in newspapers or on billboards if those advertisements include a picture and a price?

The new term "food item tag" also seems to create more questions than it addresses. It is defined as a "label or tag that identifies any food item displayed for sale..." Does that include packaged food items that are being displayed with a food tag? Does that mean the restaurant must display the calorie information already required by federal law for these packaged food items, as well as the calorie information required by the City's proposal?

The proposal states that restaurants are covered if they serve "standardized" portions. However, there is no definition of what "standardized" means for restaurants. In addition, if a consumer purchases a packaged product, the nutritional information on that product will be the same in each package. However, a restaurant provides food that is prepared by people. Factors such as available ingredients, substitutions and that the meal is prepared by a human being and not a machine, all support the notion that a "standard" for restaurants sometimes does not exist.

Many grocery stores also sell ready-to-eat food items from their delis such as salads, soups, ready-to-eat meals with a sandwich, chips and fruit, etc. Does proposed Regulation 81.50 cover this food?

In subsection (c)(1), the regulation requires that the calorie value be derived from a "verifiable analysis ... which may include the use of nutrient databases, laboratory testing, or other reliable methods of analysis" Does this "verifiable analysis" include cookbooks?

The proposal provides for an effective date of March 31, 2008, which would give restaurants a very short period of time between the adoption date and the effective date of the regulation. Even if the regulation were adopted promptly after the public hearing, there is not enough time for restaurants to comply.

Finally, the proposal does not take into account the cost to restaurants to comply with the proposed regulations on menu board and menu labeling. The proposal imposes real costs for restaurateurs for extensive laboratory testing of each menu item – and each time a new item is added or modified.

Instituting regulations that are not flexible or effective will not achieve the intention of providing consumers with access to information. It will hurt restaurants in New York City. The uncertainty and unpredictability of the prohibitions sets forth in the proposed regulations will make it difficult for our members to know whether they are in compliance and will inevitably lead to arbitrary and unnecessary investigations.

Once again, I encourage the Board to take a look at some of the companies that are already providing this information to the customer. In most cases they are providing the information in a manner that is far more detailed and less confusing to the customer than the proposed regulation. Instead of offering a range of calories for different flavors and varieties, some companies are providing detailed information about each possible combination on their website or in a brochure; it just isn't on the menu board. If the intent of this regulation is to improve information to the customer so that they make informed decisions, wouldn't allowing each company to provide detailed nutritional information in the way that works best for them make more sense?

Our industry wants to work with the Board to do what is in the best interests of our customers' health, the city's economy and our restaurants. We look forward to the opportunity to establish an ongoing dialogue with the Board of Health, toward a shared goal of providing restaurant customers with information so that they can make positive nutrition and lifestyle choices.

Thank you for the opportunity to speak on this proposal.

Respectfully submitted,

E. Charles Hunt
Executive Vice President
New York City Chapters
New York State Restaurant Association



Auntie Anne's™

PRETZEL PERFECT

**Testimony Provided By
Auntie Anne's, Inc.**

Written by

**Andrew D. Weikert,
Director, Government Affairs**
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To

The New York City Department of Health and Mental Hygiene

November 27, 2007

Members of the New York Department of Health and Mental Hygiene, thank you for the opportunity to submit written testimony regarding New York City's revised proposal to require caloric labeling on restaurant menus and menuboards.

We are providing these comments on behalf of the 18 Auntie Anne's® Hand-Rolled Soft Pretzels stores located in New York City. These stores are owned and operated by five franchisees, who pay royalties to Auntie Anne's, Inc. For the royalties it collects, Auntie Anne's, Inc. provides business support services to approximately 300 franchisees, who privately own over 930 stores in 44 states and 14 countries. Auntie Anne's locations provide customers with a variety of soft pretzels, dips and drinks with a commitment to exceeding customers' expectations.

Auntie Anne's is opposed to the Department's proposed reenactment of §81.50 to the New York City Health Code, which would require Auntie Anne's stores to post caloric information on menuboards.

Having said that, we strongly commend the intent of the proposed rule. It is the same intent that prompted Auntie Anne's to provide an even more comprehensive range of nutrition information than is required by the proposed rule – years ago.

The Auntie Anne's franchise system has long-provided comprehensive nutrition information to its customers at the point-of-sale via tear sheets. We have provided a copy of Auntie Anne's nutrition tear sheet with our written testimony for your review. By providing such complete nutrition information at the point of sale, Auntie Anne's customers have been able to make informed nutrition decisions before they purchase food and beverage items at our stores.

While the Auntie Anne's franchise system continues to place a high priority on providing comprehensive nutrition information to customers directly at the point of sale, we are respectfully asserting that the



Auntie Anne's

PRETZEL PERFECT

proposed caloric labeling rule unduly interferes with our ability and freedom to communicate with existing and potential customers via Auntie Anne's menuboard, in a manner we deem to be most effective.

To elaborate on the above point further, other restaurant chains are very fortunate to have revenue streams that support multi-million dollar marketing budgets – allowing for mass T.V., radio, print and web advertising. Given the relatively small size of the Auntie Anne's franchise system in comparison to other chains – and the limited marketing budget our franchise system is able to support as a result – Auntie Anne's simply can not afford such advertising luxuries. We are forced to rely very heavily on our in-store marketing, the centerpiece of which is our menuboard.

On that point, please see the image of Auntie Anne's standard menuboard that is attached with our written testimony. As you can see, roughly 65% of Auntie Anne's menuboard is dedicated to graphical representations of products, designed to reach repeat, but more importantly, first-time customers. As a result of this customer communication strategy, the area of the menuboard actually dedicated to product listings and pricing is very limited.

When merchandising products on a menuboard, it is critically important to provide information that is clearly easy to read and understand. Providing nutrition information right on the menuboard unduly interferes with this communication objective – making it very difficult to achieve and resulting in a menuboard that appears cluttered and confusing.

To this point, when Auntie Anne's decided that it was in its franchisees' best interests to comply with the City's original menu labeling rule by July 1, 2007, Auntie Anne's Marketing Department and graphic designers found it very challenging to present calorie information in a format that, in their judgment, adequately preserved clear and concise communication of Auntie Anne's product offerings to our customers. Advocates in favor of menuboard caloric labeling will surely dispute this point, to which Auntie Anne's, Inc. will maintain its position that we know our customers best and how to best communicate with them from our menuboard.

In closing, let us assert again that we strongly commend the intent of the proposed rule. It is the same intent that prompted Auntie Anne's to provide an even more comprehensive range of nutrition information than the rule requires— years ago. Please understand, we are not opposed to providing this information right at the point of sale. We already do this. This is something we are very happy to continue as we have for years.

However, in order to preserve our freedom to communicate with our customers in a matter we deem to be most effective, we are respectfully asking you to oppose the reenactment of §81.50 and instead, adopt an approach that allows restaurants the flexibility to convey nutrition information to customers in a way that is sensitive to each restaurant concept's unique set of circumstances – such as Auntie Anne's very limited advertising budget, which, as a result, causes a heavy reliance on our menuboard for marketing purposes.

In conclusion, thank you once again for the opportunity to submit written comments on this important topic. We look forward to working with the City of New York to find a solution that will satisfy the wider public good, as well as the freedom of food service chains to communicate with their customers as they deem most effective.



Auntie Anne's
 PRETZEL PERFECT

Auntie Anne's Standard Menuboard



Auntie Anne's Inc. 160-A Route 41 | Gap, PA 17527 | USA
 717.442.3417 | 717.442.1951(fax)

www.auntieannes.com



Nutrition Fact Sheet

Serving Size	Calories	Calories From Fat	Total Fat / % Daily Value	Saturated Fat / % Daily Value	Trans Fat	Cholesterol / % Daily Value	Sodium / % Daily Value	Total Carbohydrate / % Daily Value	Dietary Fiber / % Daily Value	Sugars	Protein	Vitamin A / % Daily Value	Vitamin C / % Daily Value	Calcium / % Daily Value	Iron / % Daily Value
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PRETZELS & MORE

Almond Pretzel	1	400	70	8g/12%	5g/24%	0g	20mg/6%	400mg/17%	72g/24%	2g/9%	15g	9g	0%	0%	2%	12%
Almond Pretzel, no Butter	1	350	15	1.5g/3%	.5g/3%	0g	0mg/0%	390mg/16%	72g/24%	2g/8%	15g	9g	0%	0%	2%	13%
Cinnamon Sugar Pretzel	1	450	80	6g/14%	5g/27%	0g	25mg/8%	430mg/18%	83g/28%	3g/11%	26g	8g	6%	0%	3%	13%
Cinnamon Sugar Pretzel, no Butter	1	350	5	2g/5%	0g/0%	0g	0mg/0%	410mg/17%	74g/25%	2g/7%	16g	9g	0%	0%	2%	11%
Garlic Pretzel	1	350	40	4.5g/7%	2.5g/13%	0g	10mg/4%	350mg/35%	68g/23%	2g/9%	9g	9g	4%	0%	2%	14%
Garlic Pretzel, no Butter	1	320	10	1g/2%	0g/0%	0g	0mg/0%	830mg/33%	66g/22%	2g/9%	9g	9g	0%	0%	2%	12%
Glazin' Raisin' Pretzel	1	510	35	4g/6%	2g/10%	0g	10mg/4%	480mg/20%	107g/36%	4g/15%	38g	11g	2%	0%	3%	13%
Glazin' Raisin' Pretzel, no Butter	1	470	5	.5g/1%	0g/0%	0g	0mg/0%	460mg/19%	104g/35%	3g/14%	37g	11g	0%	0%	3%	13%
Jalapeño Pretzel	1	310	40	4.5g/7%	2.5g/12%	0g	10mg/4%	940mg/39%	59g/20%	2g/10%	9g	8g	4%	0%	2%	10%
Jalapeño Pretzel, no Butter	1	270	10	1g/2%	0g/0%	0g	0mg/0%	780mg/32%	58g/19%	2g/10%	8g	8g	0%	0%	2%	12%
Original Pretzel	1	320	35	4g/6%	2g/9%	0g	10mg/4%	930mg/39%	72g/24%	3g/14%	10g	10g	2%	0%	3%	12%
Original Pretzel, no Butter	1	340	10	1g/1%	0g/0%	0g	0mg/0%	900mg/38%	72g/24%	3g/12%	10g	10g	0%	0%	3%	13%
Pretzel Dog	1	290	150	16g/23%	7g/33%	0.5g	40mg/13%	600mg/25%	25g/8%	1g/4%	3g	10g	2%	0%	0%	25%
Sesame Pretzel	1	410	110	12g/19%	4g/20%	0g	15mg/4%	860mg/36%	64g/21%	7g/27%	9g	12g	4%	0%	2%	15%
Sesame Pretzel, no Butter	1	350	50	6g/9%	1g/5%	0g	0mg/0%	840mg/35%	63g/21%	3g/13%	9g	11g	0%	0%	2%	16%
Sour Cream & Onion Pretzel	1	340	45	5g/8%	3g/14%	0g	10mg/4%	930mg/39%	56g/22%	2g/7%	10g	9g	4%	0%	4%	12%
Sour Cream & Onion Pretzel, no Butter	1	310	10	1g/2%	0g/0%	0g	0mg/0%	920mg/38%	66g/22%	2g/8%	9g	8g	0%	0%	3%	11%
Stix	6 sticks	370	35	4g/6%	2g/9%	0g	10mg/4%	930mg/39%	72g/24%	3g/14%	10g	10g	2%	0%	3%	12%
Stix, no Butter	6 sticks	340	10	1g/1%	0g/0%	0g	0mg/0%	900mg/38%	72g/24%	3g/12%	10g	10g	0%	0%	3%	13%
Whole Wheat Pretzel	1	320	40	4.5g/7%	1.5g/6%	0g	10mg/4%	120mg/17%	72g/24%	7g/28%	10g	11g	2%	0%	3%	13%
Whole Wheat Pretzel, no Butter	1	350	10	1.5g/2%	0g/0%	0g	0mg/0%	1100mg/46%	72g/24%	7g/28%	10g	11g	0%	0%	3%	11%

DIP FLAVORS

Light Cream Cheese Dip	1.25 oz.	70	50	6g/9%	4g/18%	0g	25mg/8%	140mg/6%	1g/1%	0g/0%	1g	3g	4%	0%	2%	0%
Caramel Dip	1.5 oz.	135	30	3g/5%	1.5g/7%	0g	5mg/2%	110mg/4%	27g/9%	0g/0%	21g	1g	2%	0%	2%	2%
Cheese Sauce Dip	1.25 oz.	100	70	8g/12%	4g/19%	0g	10mg/4%	310mg/13%	4g/1%	0g/0%	3g	3g	2%	0%	10%	0%
Hot Salsa Cheese Dip	1.25 oz.	100	70	8g/13%	4g/18%	0g	10mg/4%	550mg/23%	4g/1%	0g/0%	4g	2g	2%	2%	10%	0%
Marinara Sauce Dip	1.25 oz.	10	0	0g/0%	0g/0%	0g	0mg/0%	180mg/7%	4g/1%	0g/0%	2g	0g	0%	0%	3%	0%
Sweet Pretzel Dip	1.4 oz.	40	0	0g/0%	0g/0%	0g	0mg/0%	0mg/0%	10g/3%	0g/0%	10g	0g	0%	0%	0%	0%
Sweet Mustard Dip	1.25 oz.	60	15	1g/2%	1g/5%	0g	40mg/13%	120mg/5%	6g/2%	0g/0%	8g	<1g	0%	0%	0%	0%

BEVERAGES

Auntie Anne's Lemonade	22 fl. oz.	180	0	0g/0%	0g/0%	0g	0mg/0%	0mg/0%	43g/14%	0g/0%	43g	0g	0%	11%	0%	0%
Auntie Anne's Strawberry Lemonade	22 fl. oz.	190	0	0g/0%	0g/0%	0g	0mg/0%	0mg/0%	48g/16%	0g/0%	48g	0g	0%	0%	0%	0%
Caramel Dutch Latte™	14 fl. oz.	350	130	15g/23%	11g/56%	0g	55mg/19%	170mg/7%	49g/16%	0g/0%	39g	4g	10%	0%	15%	0%
Caramel Dutch Latte™	22 fl. oz.	520	210	23g/35%	17g/85%	0g	90mg/30%	270mg/11%	7g/14%	0g/0%	58g	7g	20%	0%	25%	0%
Chocolate Dutch Shake	14 fl. oz.	580	240	27g/42%	18g/90%	0g	105mg/35%	380mg/16%	75g/25%	0g/0%	67g	10g	25%	0%	30%	0%
Chocolate Dutch Shake	20 fl. oz.	680	260	41g/63%	26g/130%	0g	155mg/52%	575mg/24%	13g/38%	0g/0%	101g	14g	35%	0%	50%	0%
Coffee Dutch Latte™	14 fl. oz.	290	120	14g/21%	9g/44%	0g	50mg/17%	135mg/6%	38g/13%	0g/0%	35g	4g	10%	0%	15%	0%
Coffee Dutch Latte™	20 fl. oz.	460	200	22g/33%	14g/72%	0g	85mg/28%	230mg/10%	59g/20%	0g/0%	53g	7g	20%	0%	20%	0%
Coffee Dutch Shake	14 fl. oz.	590	240	27g/42%	18g/90%	0g	105mg/35%	304mg/13%	77g/26%	0g/0%	70g	10g	25%	0%	30%	0%

BEVERAGES (CONT.)

	Serving Size	Calories	Calories From Fat	Total Fat / % Daily Value	Saturated Fat / % Daily Value	Trans Fat	Cholesterol / % Daily Value	Sodium / % Daily Value	Total Carbohydrate / % Daily Value	Dietary Fiber / % Daily Value	Sugars	Protein	Vitamin A / % Daily Value	Vitamin C / % Daily Value	Calcium / % Daily Value	Iron / % Daily Value
Coffee Dutch Shake	16 fl. oz.	300	360	41mg/8%	26g/50%	0g	15mg/3%	45mg/10%	11g/38%	0g/0%	0g	0g	5%	3%	0%	0%
Grape Dutch Ice	14 fl. oz.	180	0	0g/0%	0g/0%	0g	0mg/0%	20mg/5%	43g/14%	0g/0%	41g	0g	0%	0%	0%	0%
Grape Dutch Ice	20 fl. oz.	260	0	0g/0%	0g/0%	0g	0mg/0%	30mg/7%	62g/21%	0g/0%	59g	0g	0%	0%	0%	0%
Grape Dutch Smoothie	14 fl. oz.	230	60	8g/12%	5g/25%	0g	30mg/10%	100g/4%	35g/12%	0g/0%	35g	3g	8%	0%	8%	0%
Grape Dutch Smoothie	20 fl. oz.	400	110	14g/22%	9g/45%	0g	55mg/18%	180g/8%	65g/22%	0g/0%	63g	5g	15%	0%	15%	0%
Kiwi-Banana Dutch Ice	14 fl. oz.	190	0	0g/0%	0g/0%	0g	0mg/0%	30mg/7%	44g/15%	0g/0%	41g	0g	0%	4%	1%	0%
Kiwi-Banana Dutch Ice	20 fl. oz.	270	0	0g/0%	0g/0%	0g	0mg/0%	40mg/2%	63g/21%	0g/0%	58g	0g	0%	6%	1%	0%
Kiwi-Banana Dutch Smoothie	14 fl. oz.	240	60	8g/12%	5g/25%	0g	30mg/10%	100mg/4%	38g/13%	0g/0%	35g	3g	8%	2%	10%	0%
Kiwi-Banana Dutch Smoothie	20 fl. oz.	430	110	14g/22%	9g/45%	0g	55mg/18%	180mg/8%	68g/23%	0g/0%	64g	3g	15%	4%	20%	0%
Lemonade Dutch Ice	14 fl. oz.	315	0	0g/0%	0g/0%	0g	0mg/0%	0mg/0%	77g/26%	0g/0%	77g	0g	0%	12%	0%	0%
Lemonade Dutch Ice	20 fl. oz.	450	0	0g/0%	0g/0%	0g	0mg/0%	0mg/0%	110g/36%	0g/0%	10g	0g	0%	17%	0%	0%
Lemonade Dutch Smoothie	14 fl. oz.	300	60	8g/12%	5g/25%	0g	30mg/10%	80mg/3%	53g/18%	0g/0%	53g	3g	8%	6%	8%	0%
Lemonade Dutch Smoothie	20 fl. oz.	540	110	14g/22%	9g/45%	0g	55mg/18%	150mg/6%	95g/32%	0g/0%	95g	5g	15%	10%	15%	0%
Mocha Dutch Ice	14 fl. oz.	400	90	10g/15%	9g/45%	0g	0mg/0%	100mg/4%	74g/24%	0g/0%	52g	0g	0%	0%	0%	0%
Mocha Dutch Ice	20 fl. oz.	570	130	15g/23%	12.5g/50%	0g	0mg/0%	150mg/6%	105g/35%	0g/0%	75g	0g	0%	0%	0%	0%
Mocha Dutch Latte™	14 fl. oz.	360	150	17g/26%	11g/53%	0g	55mg/18%	135mg/6%	47g/16%	0g/0%	37g	5g	0%	0%	15%	0%
Mocha Dutch Latte™	20 fl. oz.	530	230	26g/39%	16g/81%	0g	85mg/29%	230mg/10%	68g/23%	0g/0%	56g	8g	20%	0%	20%	0%
Mocha Dutch Smoothie	14 fl. oz.	330	110	13g/20%	9g/45%	0g	30mg/10%	130mg/5%	50g/17%	0g/0%	39g	3g	8%	0%	8%	0%
Mocha Dutch Smoothie	20 fl. oz.	590	200	23g/35%	16g/80%	0g	55mg/18%	240mg/10%	90g/30%	0g/0%	70g	5g	15%	0%	15%	0%
Orange Creme Dutch Ice	14 fl. oz.	280	0	0g/0%	0g/0%	0g	0mg/0%	35mg/1%	64g/21%	0g/0%	59g	0g	0%	18%	1%	0%
Orange Creme Dutch Ice	20 fl. oz.	400	0	0g/0%	0g/0%	0g	0mg/0%	50mg/2%	92g/31%	0g/0%	85g	0g	0%	25%	2%	0%
Orange Creme Dutch Smoothie	14 fl. oz.	280	60	8g/12%	5g/25%	0g	30mg/10%	100mg/4%	46g/15%	0g/0%	44g	3g	8%	6%	10%	0%
Orange Creme Dutch Smoothie	20 fl. oz.	500	110	14g/22%	9g/45%	0g	55mg/18%	180mg/8%	83g/28%	0g/0%	79g	5g	15%	15%	20%	0%
Pina Colada Dutch Ice	14 fl. oz.	220	0	0g/0%	0g/0%	0g	0mg/0%	15mg/1%	53g/18%	0g/0%	50g	0g	0%	17%	0%	2%
Pina Colada Dutch Ice	20 fl. oz.	330	0	0g/0%	0g/0%	0g	0mg/0%	50mg/2%	125g/42%	0g/0%	120g	0g	0%	42%	2%	3%
Pina Colada Dutch Smoothie	14 fl. oz.	260	60	8g/12%	5g/25%	0g	30mg/10%	90mg/4%	44g/15%	0g/0%	41g	3g	8%	8%	8%	0%
Pina Colada Dutch Smoothie	20 fl. oz.	470	110	14g/22%	9g/45%	0g	55mg/18%	170mg/7%	79g/26%	0g/0%	74g	5g	15%	15%	15%	0%
Blue Raspberry Dutch Ice	14 fl. oz.	160	0	0g/0%	0g/0%	0g	0mg/0%	20mg/1%	38g/13%	0g/0%	35g	0g	0%	0%	2%	6%
Blue Raspberry Dutch Ice	20 fl. oz.	230	0	0g/0%	0g/0%	0g	0mg/0%	30mg/1%	55g/18%	0g/0%	47g	0g	0%	0%	2%	11%
Blue Raspberry Dutch Smoothie	14 fl. oz.	230	60	8g/12%	5g/25%	0g	30mg/10%	100mg/4%	34g/11%	0g/0%	33g	3g	8%	0%	10%	6%
Blue Raspberry Dutch Smoothie	20 fl. oz.	400	110	14g/22%	9g/45%	0g	55mg/18%	180mg/8%	61g/20%	0g/0%	59g	5g	15%	0%	20%	10%
Strawberry Dutch Ice	14 fl. oz.	220	0	0g/0%	0g/0%	0g	0mg/0%	40mg/2%	50g/17%	0g/0%	48g	0g	0%	7%	1%	0%
Strawberry Dutch Ice	20 fl. oz.	330	0	0g/0%	0g/0%	0g	0mg/0%	60mg/2%	72g/24%	0g/0%	68g	0g	0%	10%	2%	0%
Strawberry Dutch Shake	14 fl. oz.	670	210	27g/42%	18g/90%	0g	105mg/35%	304mg/13%	76g/26%	0g/0%	7g	10g	25%	0%	30%	0%
Strawberry Dutch Shake	20 fl. oz.	910	350	41g/63%	26g/130%	0g	155mg/52%	456mg/19%	118g/39%	0g/0%	10g	14g	35%	0%	30%	0%
Strawberry Dutch Smoothie	14 fl. oz.	250	60	8g/12%	5g/25%	0g	30mg/10%	100mg/4%	40g/13%	0g/0%	39g	3g	8%	2%	10%	0%
Strawberry Dutch Smoothie	20 fl. oz.	450	110	14g/22%	9g/45%	0g	55mg/18%	180mg/8%	72g/24%	0g/0%	70g	5g	15%	4%	20%	0%
Strawberry Lemonade Dutch Ice	14 fl. oz.	330	0	0g/0%	0g/0%	0g	0mg/0%	0mg/0%	81g/27%	0g/0%	81g	0g	0%	10%	0%	0%
Strawberry Lemonade Dutch Ice	20 fl. oz.	480	0	0g/0%	0g/0%	0g	0mg/0%	5mg/0%	116g/39%	0g/0%	116g	0g	0%	15%	0%	0%
Vanilla Dutch Shake	14 fl. oz.	510	240	27g/42%	17g/85%	0g	105mg/35%	300mg/13%	58g/19%	0g/0%	54g	10g	25%	0%	30%	0%
Vanilla Dutch Shake	20 fl. oz.	770	350	41g/63%	26g/130%	0g	155mg/52%	460mg/19%	87g/29%	0g/0%	82g	15g	35%	0%	30%	0%
Watermelon Dutch Ice	14 fl. oz.	200	0	0g/0%	0g/0%	0g	0mg/0%	35mg/1%	50g/17%	0g/0%	48g	0g	0%	0%	0%	0%
Watermelon Dutch Ice	20 fl. oz.	280	0	0g/0%	0g/0%	0g	0mg/0%	45mg/2%	72g/24%	0g/0%	69g	0g	0%	0%	0%	0%
Wild Cherry Dutch Ice	14 fl. oz.	210	0	0g/0%	0g/0%	0g	0mg/0%	25mg/1%	48g/16%	0g/0%	45g	0g	0%	0%	0%	0%
Wild Cherry Dutch Ice	20 fl. oz.	300	0	0g/0%	0g/0%	0g	0mg/0%	35mg/1%	69g/23%	0g/0%	66g	0g	0%	0%	0%	0%
Wild Cherry Dutch Smoothie	14 fl. oz.	250	60	8g/12%	5g/25%	0g	30mg/10%	90mg/4%	41g/14%	0g/0%	39g	3g	8%	0%	8%	0%
Wild Cherry Dutch Smoothie	20 fl. oz.	450	110	14g/22%	9g/45%	0g	55mg/18%	170mg/7%	74g/25%	0g/0%	70g	5g	15%	0%	15%	0%

Products may contain nuts and/or other allergens. *Naturally-occurring Trans Fat.

If you have questions or comments about this nutritional information, please call us at 717-442-4766, or you can e-mail us at nutrition@huntingtonessence.com.

**Testimony of the Honorable Blondell Reynolds Brown
Councilwoman At-Large – Philadelphia City Council
Tuesday, November 27, 2007**

Good Morning, Members of the New York City Health Department and the other officials present this morning. I appreciate you embracing today's hearing and inviting participation from the Commonwealth of Pennsylvania and City of Philadelphia. I am here today to testify on the new and improved menu labeling regulations in New York.

In March 2007, I introduced menu labeling legislation for Philadelphia in an effort to acknowledge the concern being placed around the health of Philadelphians. This measure will promote healthy consumption of food by requiring restaurants to provide labels which pronounce the number of calories, grams of fat, carbohydrates, and milligrams of sodium. The legislation also requires publicizing The Food and Drug Administration's recommendation for a 2,000 calorie a day diet for grams of fat, which also includes trans-fat.

The goal of the measure is to require chain restaurants and retail establishments with 10 or more locations nationally will have to disclose calorie and other nutrition information if this legislation becomes law. The proposed legislation calls for restaurants to not only serve but educate customers. If the City can enforce legislation around smoking, it definitely can enlighten citizens on their food intake. The Philadelphia Health Department will be provided with a better tool to ensure the health of all Philadelphians is being watched by more than a citizen's individual healthcare provider.

Americans are increasingly relying on restaurants to feed themselves and their families. Results from the National Health Interview Survey indicate that the proportion

of Americans reporting three or more commercially prepared meals per week increased from 36 percent in 1987 to 41 percent in 2000. The average adult now eats out four meals per week, and American adults and children now consume about one-third of their calories from restaurants and other food-service establishments.

Too often, nutrition information in chain restaurants is hard to find, hard to read, or missing altogether. I support any effort to take the guesswork out of restaurant dining. As an advocate for improving life opportunities of youth in the Philadelphia posting this information will help everyone, more importantly children, because they and their caregivers will now eat with an awareness that wasn't provided before.

The Institute of Medicine, FDA, Surgeon General of the United States, and the U.S. Department of Health and Human Services all recommend providing nutrition information at restaurants, and so do consumers. A nationwide survey by a large food service corporation in 2005 found that 83 percent of Americans believe that restaurants should make nutrition information available for all menu items. Half of all large chain restaurants already have nutrition information and would not incur any new costs for analyzing their products.

That's why I have championed this effort because sends a strong message to food operators and distributors. As the New York City considers changes to menu labeling rules again, it's critical that the citizens are heard. As one of the nation's largest cities with a diverse population and thriving cultural community.

I understand the genuine concern for how such a requirement could affect restaurant sales, however, I do not share the belief in the recent judgment rendered in New York City that menu labeling is too complex to implement. Restaurants and

franchises assert that there are simply too many possible meal combinations at a chain restaurant to make menu labeling accurate. This ignores the fact that more than half of chain restaurants already do make calorie and other nutrition information available on websites and brochures based on standard ingredients. My goal is to have a countless hearings and discussions around my legislation to evaluate the interest because I detect there is an overwhelming amount of support for menu labeling here in Philadelphia. I am certain many people will testify offering their perspectives. The smoking ban wasn't an easy measure to pass but it made sense at the end of the day. In my opinion, menu labeling makes sense!

Thank you for receiving my testimony this morning, and I appreciate your responsiveness by holding this hearing in your state.



Medical and Health Research Association of New York City, Inc.

Promoting the Health of the Community Since 1957

November 26, 2007

Rena Bryant
Secretary
Board of Health
125 Worth Street CN -31
New York, New York 10013
Fax: 212-788-4315

Dear Ms. Bryant:

Medical & Health Research Association of New York City, Inc. (MHRA) is proud to support the New York City Department of Health and Mental Hygiene's intention to repeal and re-enact Article 81.50 of the New York City Health Code.

As a large not-for-profit public health agency that has been operating the largest WIC program (45,000 individuals served annually) in New York State for 33 years, we have a long-standing interest in and concern for nutritional issues and the health of all New Yorkers.

In light of the growing obesity epidemic in our City, we feel strongly that every New Yorker has the right to basic information about the nutritional value of the foods s/he eats. This is an essential component of any long-term strategy to fight obesity. Even given the constraints of a limited income, low-income parents are in a much better position to ensure a healthy start for their children if they are able to better understand the importance of good nutrition for themselves and for their families.

Therefore, it is beneficial to regulate New York City restaurants by standardizing portion sizes and making calorie information publicly available so consumers are able to make healthy decisions.

Although this new regulation will only go into effect for restaurants with 15 or more locations, we applaud your efforts to assist consumers, specifically those living in low-income neighborhoods where there are disproportionate obesity rates, as well as a high percentage of chain establishments such as fast-food and/or quick service restaurants.

In addition to supporting calorie labeling of menu items, we believe it is imperative to provide detailed nutritional information right on the menu or menu board, next to the price and in the same size lettering. This will provide necessary information to consumers as well as help consumers make informed decisions about food purchases.

We thank you for this opportunity to share our thoughts and look forward to working with the NYC Department of Health and Mental Hygiene to ensure all New Yorkers have the opportunity to live healthier lives.

Sincerely,



Ellen Rautenberg
President & CEO

DARDEN[®] RESTAURANTS

Red Lobster[®]Olive Garden[®]Bahama Breeze[®]Smokey Bones[®]

The Honorable Thomas Frieden
c/o Rena Bryant
Secretary to the Board of Health
125 Worth Street CN-31
New York, NY 10013
212-788-4315

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November 27, 2007

Dear Commissioner Frieden:

On behalf of Darden Restaurants, owner and operator of Red Lobster, Olive Garden, and The Capital Grille restaurants in New York City, I am writing in opposition to proposed changes to §81.50 of the Health Code mandating nutritional disclosure by restaurants. Government efforts should be focused on educating people on ways to live healthy lifestyles, not mandating specific nutritional disclosures.

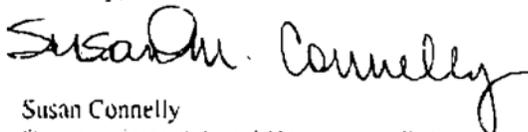
Darden Restaurants takes pride in providing guests with a wide variety of menu choices to nourish and delight everyone we serve. These menu choices coupled with our guests' desire to customize their menu choice outside of our standard recipes make providing usable, accurate nutritional information very difficult for restaurants. For example, a guest ordering a pasta dish made from five ingredients (noodles, sauce, protein, cheese, accompanying vegetable) can order it 120 ways with great discrepancy in the nutritional and caloric content. The proposed revisions to the Health Code will not provide guests with accurate information for their varied choices and substitutions they elect to make.

The restaurant industry is a dynamic group of businesses that must adapt to their guests' wants and needs in order to remain viable. As our guests became more health-conscious, Darden Restaurants responded to their needs by highlighting the most healthful items offered on the menu for their information. Olive Garden was an industry pioneer in highlighting its healthful menu items on its *Garden Fare* menu beginning in the 1980's, Red Lobster's *Lighthouse* menu launched in 2004 and it continues to provide guests with several different options for choosing the most healthful items on the menu. Darden already voluntarily provides nutritional information on select menu items based on what guests demand. Mandating nutritional disclosures on all menu items on the core menu will confuse our guests and diminish the distinction and value of the select items we already provide.

If approved, this proposal would go into effect March 31. This expedited timetable provides only a couple of months to analyze thousands of menu components, redesign almost twenty menus in a way that will not confuse our guests, and test the information properly with our guests to ensure that their dining experience remains at the level they have come to expect from our restaurants. It is unrealistic to expect full compliance of such a complex regulation in the time provided for implementation. I encourage the Board to work closely with the restaurant industry directly on finding ways of providing consistent, accurate nutritional information that is useful to our guests and is available in multiple mediums, not just a printed menu.

Again, we urge you to oppose the proposed changes to §81.50 of the Health Code. The City should work with restaurants to educate people on ways that they can live a healthy lifestyle and encourage restaurants to continue and expand their voluntary efforts to highlight their most healthful menu items.

Sincerely,



Susan Connelly
Director, State & Local Government Relations

Laurie Tansman, MS, RD, CDN
Department of Clinical Nutrition
The Mount Sinai Hospital
and
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Mount Sinai School of Medicine
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Re: Proposal to repeal and reenact §81.50 of the New York City Health Code

I want to preface my comments by stating that I am speaking on behalf of myself.

In my introduction last year at the Public Hearing regarding the proposal to ban the use of trans fats and to require caloric labeling on menus, I reviewed the two opposing theories of public health:

- 1) Minimal government interference and
- 2) Social justice philosophy. This refers to the fact that society may share in the responsibility for a person's health – namely that "society" is the government.

The mission of public health is to assure conditions in which people can be healthy. To assure this requires public policies that do result in government intervention. For example, the closing of food service establishments (hereafter referred to as FSEs) because of unacceptable infestation.

"We want the government to ensure that our food supply is safe, yet we want the freedom to purchase unhealthful food," as identified in "Nutrition in Public Health" – a text edited by Sari Edelstein.

The current proposal is an **important** first step by the government to help the public become an educated consumer yet allowing the consumer the freedom to make what might be an unhealthful food choice if that consumer has a significant weight problem and the particular menu item is especially calorically dense. And, because it is only being applied to FSEs which are one of a group of at least fifteen doing business nationally under the same name and offering for sale substantially the same menu items that are served in portions – the size and content of which are standardized – should not pose a burden, although Charles Hunt of the New York State Restaurant Association thinks otherwise as reported in The New York Sun on October 25th. The majority, if not all such establishments already have the nutritional information calculated.

But what is of concern to me is if you stop here. There must be a next step so that eventually all FSEs will be required to post the caloric content of their menu items.

The purpose of the proposed amendment to the Health Code, as indicated in the Notice of Public Hearing for today, is to enable New Yorkers to make more informed, healthier choices and reasonably be expected to reduce obesity. But this proposal does not go far enough, especially as it relates to addressing obesity in some of our most obese

neighborhoods such as East Harlem. As per the New York City Department of Health and Mental Hygiene website:

“One third of East Harlem adults (31%) is overweight and another third (31%) is obese, which is the highest proportion of obese adults among all neighborhoods in New York City.”

So let me give you some statistics, as per an internet search:

There are only four McDonald's in East Harlem, three Subway's, two Burger King's and two Domino's and one each of Kentucky Fried Chicken, Popeyes and Wendy's as well as seven Dunkin Donuts.

But there are thirty-five Chinese FSEs, twenty-four Mexican, and seventeen Pizzerias (two of which are Domino's) that for the most part would not fall under this new proposal.

So this new proposal may not be very helpful to the residents of East Harlem until you take that next step. And, which by the way, Mr. Hunt, will definitely be more challenging to small businesses. But Dr. Frieden, let me tell you that the City can help to educate such businesses to do their own nutritional analyses of menu items because of free tools that are available on the internet. Furthermore, many of our universities have nutrition programs that require their students to do field work. Then there are the multitude of graduates who have to do their internships and which requires that they do a community rotation – we can send all of these students and interns to help such establishments when you are ready for the next step.

And now for some “Show & Tell”

Contrary to what many might think, although small independent FSEs might not have the type of standardization of recipes and portions that an establishment such as McDonald's has and therefore nutritional analyses of their menu items might not be so reliable, let me tell you that there is greater standardization than you think and the task for such establishments to likewise make available the caloric content of their menu items is therefore realistic.

For example, these Chinese egg rolls, fried wontons and rice were purchased at different times from the same establishment. And there is consistency in their portion so a nutrient analysis of these items would be relatively accurate.

Better yet, a number of items for sale in FSEs are purchased as ready-to-serve such as this Jamaican beef patty, which can be found in many FSEs throughout the city, including the bodegas and many pizzerias in East Harlem. This was prepared by a commercial food business and comes with the nutrient analysis!

In conclusion, the proposed amendment to the Health Code regarding the appearance of the caloric content of foods on menus and menu boards is an important first step. But you must continue to go further so that all FSEs will be required to post the caloric content of foods on menus and menu boards thus enabling all our residents to reap the benefits.

American Heart Association Testimony: Board of Health Proposal to Reenact §81.50 of the New York City Health Code

November 27, 2007

Good afternoon (morning) Commissioner Frieden and Members of the Board. My name is Dr. Judith Wylie-Rosett, and I am speaking today on behalf of the American Heart Association. I would like to thank you for allowing us to testify and for the opportunity to express our support for the reenactment of §81.50 of the New York City Health Code.

The American Heart Association is the largest voluntary organization in the world dedicated to the reduction of disability and death due to heart disease and stroke – the number one and three causes of death nationally. To achieve this mission, we fund research; develop benchmark treatment guidelines; implement educational and awareness programs; and advocate for policies that will reduce the incidence of cardiovascular disease (CVD).

The American Heart Association supports providing calorie information on menus and menu boards at the point-of-purchase, as outlined in §81.50, in order to allow consumers to make more informed choices about the food they purchase in restaurants. This policy is an important part of a comprehensive approach to addressing New York City's obesity epidemic and the concurrent rise in risk levels for cardiovascular and other chronic diseases.

Obesity is of particular concern with respect to cardiovascular disease, because it raises blood cholesterol and triglyceride levels; lowers HDL "good" cholesterol, which is linked with lower heart disease and stroke risk; raises blood pressure levels; and can induce diabetes. Even when none of these adverse effects are present, obesity *by itself* increases the risk of heart disease. Unfortunately, this increased risk of cardiovascular disease begins early in life. Obese children between the ages of 5 and 10 are more than twice as likely as their peers to present at least one risk factor for cardiovascular disease, and a quarter of obese children will present at least two risk factors for CVD.

The obesity rate in New York City has risen significantly over the past few decades, and it continues to climb. One of every five residents is obese. Among both minority and low-income residents, the rate of obesity is higher still; approximately one-in-four New Yorkers in these populations is now obese. And New York City's children are not immune to this epidemic. By kindergarten, approximately one-fifth of our children are obese and a further 19% are overweight.

For the first time in history, today's children are predicted to have a shorter life expectancy than their parents. If current trends continue, the Institute of Medicine expects poor nutrition and physical inactivity to surpass tobacco as the leading underlying cause of preventable deaths in the United States by the year 2010.

Fortunately, we know that obesity and the risk of concomitant disease (whether heart disease or other chronic disease) can be both prevented and treated through healthy eating and physical activity. The root cause of obesity is generally understood to be an imbalance in caloric intake and energy expenditure, in other words, taking in more calories than are used in physical activity and daily life. If individuals are to maintain a healthy weight, it is vital that they are educated about their nutritional needs and have access to information about how many calories are contained in the food and beverages they consume.

For well over a decade, nutrition labeling regulations at the federal level have allowed individuals to evaluate the nutritional content of most foods purchased for home consumption. Seventy to 85% of the American adolescent, college, and adult populations read food labels at least sometimes, and studies have shown that individuals who read food labels while shopping tend to have diets lower in fat and higher in fruit and vegetable consumption when compared with those who do not read food labels.

Unfortunately, when it comes to foods purchased outside the home, consumers currently have little, if any, nutritional information available at the point of service. At the same time, New York City residents are consuming an ever greater number of meals outside the home, making the posting of calorie information at the point-of-purchase in

restaurants more important than ever. People typically underestimate the calorie content of the foods they consume, and restaurant foods tend to be served in larger portions and are often higher in calories than foods prepared at home. Not surprisingly, studies show that eating out more frequently is associated with obesity and higher body mass index (BMI). It is clear that if New Yorkers are to make healthy choices in restaurant settings, they must have access to accurate calorie information at the point of service.

While the American Heart Association acknowledges that there is not yet conclusive data showing that consumers will adjust their behavior in response to menu labeling, there are several published studies that suggest this is, in fact, the case. A 2006 study published in the American Journal of Public Health concluded that when objective, quantitative nutrition information was provided, consumers had more unfavorable attitudes towards the less healthful items and their purchase intentions for those items were significantly diminished. A similar conclusion was reached as far back as 1976, when a study in a cafeteria setting concluded that signs indicating the calorie content of available foods significantly decreased the number of calories purchased.

Based on the preliminary data, the American Heart Association believes that providing calorie information at the point-of-service in restaurants will result in consumers purchasing fewer calories and a consequent reduction in the rate of obesity and concomitant disease. Our recommendations for policies on menu labeling are as follows:

- 1) We endorse requirements for chain restaurants to post calorie information on menus and menu boards at the point-of-purchase. While it would be ideal to have calorie labeling more widely available, the American Heart Association acknowledges that for casual and fine dining restaurants where preparation and menu items may vary substantially, the provision of calorie information would currently be difficult and potentially costly.
- 2) We encourage provisions allowing restaurants to provide a calorie range in instances where consumer choice or flavor variations make an exact count impractical.

- 3) We support continuing research into the most effective informational formats for menu labeling.
- 4) And, finally, we recommend that a consumer education campaign on individual calorie requirements be planned to coincide with the implementation of any menu labeling requirements.

The American Heart Association offers its enthusiastic support for the Board's proposal to reenact §81.50 of the New York City Health Code. We believe it strikes a very fair balance between the informational needs of consumers and the costs associated with its implementation.

Our desired outcome is that all New York City residents have the information they need to make informed choices about the food and beverages they consume. These regulations are not about controlling what consumers choose to order or what restaurants make available for purchase. Rather, they will empower consumers and give them more choices by providing additional information about the menu items on offer. Access to nutritional information is vital if we are to address our national obesity epidemic and the concurrent rise in cardiovascular and other chronic diseases.

Thank you, once again, for your time. The American Heart Association looks forward to continuing to work with you to reduce the rate of obesity and resultant chronic disease in New York City.



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Akram Khan
Falco Holdings, LLC

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InterContinental Hotels Group

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The UPS Store

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Larry Tala
Golden Corral Buffet & Grill

Samuel Wright
FedState Strategic Consulting, Inc.

George Zografos
Z Donut Co.

Matthew R. Shay
President

November 27, 2007

Rena Bryant
Secretary to the Board of Health
125 Worth Street CN-31
New York, NY 10013

Via Facsimile: (212) 788-4315

RE: Mandatory Menu Labeling

Dear Ms. Bryant:

The International Franchise Association and its members urge your opposition to the proposed amendments to §81.50 of the New York City Health Code regarding nutritional information, which is before you today. This restaurant menu mandate unfairly targets franchised restaurants, while not comprehensively addressing nutrition and overweight issues.

By way of background, International Franchise Association is the largest and oldest franchising trade group, representing more than 85 industries, including more than 9,600 franchisee, 1,200 franchisor and 470 supplier members nationwide. According to a 2004 PricewaterhouseCoopers study, the state of New York has more than 39,000 franchise establishments, employing 376,000 workers and generating an economic output of \$28.7 billion.

The fact is a great many franchised restaurants affected by this proposal are small businesses. Franchising combines local investors with a known national brand to create an expectation of quality, consistency and value to consumers. Although they may be managed in accordance with guidelines provided by a corporate entity, these small business owners should not be exposed to additional regulatory burdens simply because they are franchised.

The myth that small business owners will not be impacted by this proposal is false. Franchisees are independent business owners that conduct business under the franchisor's trademark or trade name. Franchisees are solely responsible for the costs of updating their menus and menu-boards, just as they have sole responsibility over their business finances and labor relations. Franchisees and franchisors have separate bank accounts, operating budgets, tax identification numbers, payroll accounts and personnel records.

Many of our restaurant members have been providing nutritional information to their customers for decades. Our members have varied ways of providing this information, including posters, tray liners, or kiosks just to name a few. There is

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Ms. Rena Bryant
November 27, 2007

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no one size fits all approach for the way nutrition information is provided in stores, especially with a diverse membership of food service members such as IFA maintains. Hotels, restaurants and convenience stores, all members of IFA, would be impacted by this proposal, but yet are not alike in their operations.

Enactment of this bill will affect a mere 19% of the nation's eating or drinking establishments and is not only discriminatory, but fails to address the nutritional needs of 100% of the nation's restaurant customers.

Please oppose this proposal when it comes before you.

Sincerely,



M. Troy Flanagan
Director, Government Relations

NYC Calorie Menu Listing Hearing Testimony 11/27/07

Good morning. I am Assemblyman Felix Ortiz representing the Sunset Park/Red Hook neighborhood in Brooklyn. I have always fought hard to protect the lives and health of New Yorkers. Some of you may know me as the sponsor of the law banning the use of handheld cell phones while driving. That battle took five years. It took almost as long to pass the law I sponsored creating a State Childhood Obesity Program and it has been four years since I introduced one of the nation's first menu labeling bills. I welcome New York City's efforts to require calorie information along the lines of my bill. A similar bill was also passed by the California legislature this year and even though it was vetoed by the Governor I can see the light at the end of the tunnel.

Obesity and its complications, such as heart disease and diabetes, are serious problems and we must all join together to solve it. We are spending \$3.5 billion in Medicaid alone in New York State to treat the results of obesity. That is by far the highest amount in the country. This has also led to a diabetes epidemic which is killing thousands of our

citizens and also costing billions of dollars. And these problems are getting worse and starting at earlier ages.

The NYC Health Department issued a report that found that by the age of 2, there is a one-in-four chance that a child will be obese if he or she is from a low-income family. As bad as those numbers are the figures jumped to one in three by the age of 4! This is a wake up call that we are in a health emergency.

We need to turn this around for the children who will suffer and for the taxpayers who will pay.... including businesses. But to turn it around we need to take some bold steps to prevent the problem from getting worse. For example, food businesses need to provide healthy alternatives that are really healthy for kids. Especially in low-income neighborhoods where healthy foods are hard to find or very expensive. That is why I commend you for your Trans fat ban and strongly urge you to adopt your revised rule requiring calorie information.

Banning Trans fat and calorie labeling aren't the only solutions to our society's nutrition and health crisis. The federal and state government and school districts need to provide support for schools so they don't have to sell candy and soda to pay for football uniforms and so they can provide healthier foods and provide physical activity and education for students. We in government also need to spend more on community programming to prevent childhood obesity.

While government programs are extremely important we also need to change our "food environment" to address this problem. If we teach children to eat healthier foods and they are not available in the marketplace.... or we teach them they need more exercise but don't provide gym class or playgrounds... then all of our programs will fail. For example, we need to offer assistance to small groceries and bodegas to encourage them to sell more fresh fruits and vegetables and low-fat dairy products so families can find healthier foods.

However, everyone, including the restaurant industry, knows that people are eating more of their food at restaurants and take-out from other food establishments. This is true even in low-income communities. We required nutrition information on food packages in grocery stores 13 years ago when more parents cooked meals for their families. Today we get half of our food away from home. Critics of menu labeling always say it is the parents' responsibility to choose healthier foods. Then we must provide them information so they can make healthier choices where they buy most of their food...at restaurants and other food establishments.

Your proposal for requiring calories information on menus is similar to my chain restaurant labeling bill that I have been advocating for the last 4 years. Providing this information will change the food "environment" and could eventually lead to better food choices when people are shocked at the level of calories on some of the foods they buy.

And they will be shocked, because even nutritionists with PhD's underestimate the amount of calories in foods. How can we expect the average parent to make an educated choice?

If these chains have to disclose the amount of calories... they may decide to change the nutrition quality of their products. Some of them have already done this and I applaud them for offering more salads and fresh fruit.

I am pleased that your revised proposal is modeled after the bill that I have carried in the past. I believe your new plan is better than your original and will be more fair for the affected restaurants. I still believe our goal should be my original legislation which would affect even more food establishments and would require chain restaurants to list calorie **and other** nutrition information on their menus. However, your proposed regulation will be a historic start on the road to State legislation and eventually we will have menu information across the country.

Although the menu labeling bill is a high priority for me, I am also sponsoring other bills to help make our communities healthier. I co-sponsor legislation that would further restrict the sale of soda and candy and other snacks in schools. I also sponsor legislation to increase the physical education.

Another bill I carry is called the so-called "Fat Tax". This legislation is very modest. Under my bill if you purchased a kid's meal at \$4.00 the tax would equal one penny! If you bought a Playstation at \$200 it would cost an extra 50 cents! However, the bill would still raise close to \$50 million for nutrition education, and exercise or physical activity programs in neighborhoods where there are no gyms but many fast food restaurants. This bill would actually help every taxpayer including chain restaurants and other businesses by preventing skyrocketing health care costs.

I only mention these other bills today because the restaurant industry always claims they can't solve this problem by themselves.

They are right. We don't expect them to fix the problem by themselves.

But they have become the major food provider for our children, who will one day work in the restaurants! Helping improve the nutrition of our kids will benefit the restaurant industry in the long run.

Preventing obesity or heart disease or diabetes is easier, and less expensive, than treating it. Even if a child is not obese now it can occur at any age so teaching them healthy food choices is important for every child. We owe it to our children and to our future society to give them the opportunity to become healthy, productive adults -- not cursed with illness and out-of-control health care costs. Creating healthier food environments in our communities is one of the keys to success. We need to make the invisible...visible.

Once again I applaud your actions. I also urge you to support my State proposal for improved restaurant nutrition information and my other legislation. I thank you for this opportunity to support efforts to improve the health of my fellow New Yorkers. If you have any questions I will be happy to answer them.

Hello, I'm MeMe Roth of the National Action Against Obesity, as well as a coalition member of the Center for Science in the Public Interest's National Alliance for Nutrition and Activity. Also, I'm part of the Columbia University and Institute for Integrative Nutrition Health Counselor program. And I live and work here in New York City (which means I eat at a lot of New York City restaurants.)

Part of the National Action Against Obesity mission is to expel junk food from our nation's schools and childcare centers. We're also working toward eliminating obesity- and disease-accelerating substances from the food supply. And finally--**and most pertinent to today's proceedings**--is National Action Against Obesity's efforts to eradicate Secondhand Obesity. That's obesity handed down from one generation to the next and across the culture.

I don't need to quote obesity statistics to **anyone** in this room. You know we Americans are eating ourselves sick. And we all suffer from the effects.

Thankfully Mayor Bloomberg, Dr. Thomas R. Frieden and the entire New York City Department of Health ~~and Hygiene~~ are willing to help.

When I say “we Americans” and “we all suffer from the effects,” I intend to say “we.” We, as in, “**me too.**” When you look at me you might not realize it, but you are looking at obesity. I come from a **long line** of obesity—those so-called “**fat genes**” run strong in my family. I’ve needed to watch my weight since about age 12, and of course I was extra-vigilant through 2 pregnancies, and well, **sadly**, I seem to be getting older—and that cruel, **slowing** metabolism is aging right along with me. I say all this because regardless of these potential strikes against me, I consider myself to be someone who lives in **Defiance of Obesity.**

How am I doing it? **There’s no magic diet.** Instead I rely on **information.** I read **every word** on nutrition labels—grateful to be **warned** if something might contain added trans-fat or high fructose corn syrup. Sure, I exercise daily and eat loads of vegetables, lean protein and whole grains, but **vital** to my success in keeping healthy is arming myself with **every bit of information** I can. And like **everyone else**, maintaining weight for me is the same equation: Energy In / Energy Out. **Calories.**

*as Lisa
young
said*

I intend to keep living in defiance of obesity. I’ve never understood the notion that prevention is optional. I’d like to lower **my risk** for disease and

premature death. And I certainly don't want to pay **higher** health insurance premiums...or cause anyone else to.

What I'm asking for today is that you make it **just a little** easier for me to take **personal responsibility** for my health...**by boldly and ubiquitously** posting **Calories** on menu **boards** and on menus—right alongside the price. When I intend to buy a meal, I need to know how much it will **cost**. Not just in terms of my wallet, but also my **waistline**.

It is vital that I, and New York City citizens like me, have all the information necessary to make **informed decisions** about food. Please respect my health and **my right** to have all the necessary information possible to make the best decisions for myself—**and for my children**. I'd like the obesity cycle in my family to end with me.

It's imperative that we make **many** changes in an effort to reverse the obesity **health** crisis. Displaying **Calories** alongside menu items is a **small yet important** change that will impact **all** New Yorkers—**saving lives, health and quality of life**.

I thank you, New York City Board of Health, for hearing my remarks.

The Center For Consumer Freedom

November 27, 2007

Testimony before the New York City Department of Health and Mental Hygiene Board of Health concerning its intention to repeal and reenact §81.50 of the New York City Health Code

J. Justin Wilson
Senior Research Analyst
Center for Consumer Freedom

Good morning. Before I begin, I'd like to thank the Board for allowing me to address its consideration of mandating nutrition information on restaurant menus and menu boards.

My name is J. Justin Wilson. I am a Senior Research Analyst at the Center for Consumer Freedom, a nonprofit organization that promotes personal responsibility and consumer choice.

In that capacity, I've spent the last three years studying the costs, causes, and potential policy solutions to the nation's burgeoning waistlines. After examining thousands of studies and writing two books on the issue, it is clear to me that the policy proposed today is based on a series of false assumptions and unproven theories that will have little impact on the city's obesity rates, but will no doubt spawn untold frivolous lawsuits against the city's restaurant community.

To begin, I challenge the Board's assertion that restaurants in general—and chain restaurants in particular—are disproportionate contributors to the city's growing waistlines.

Even the Board's own documentation does not support this position, which is especially significant considering that it was the trigger for today's hearing.

As the Board plainly states, only one-third of calories are consumed at restaurants, and only 10% of those restaurants meet the Board's standard definition of a chain.

Thus, calories consumed at the City's chain restaurants could account for as little as 3% of an average New Yorker's diet.

More importantly, the Board's analysis seems to ignore the complicated relationship between food, exercise, and the numerous other factors that significantly contribute to increased rates of obesity. Recent research suggests that while excess eating can be a factor, it is only one among many that ultimately contribute to obesity.

**How can the Board contend that just 3% of calories are the primary cause of obesity?
The bottom line is simple: it can't.**

It would appear that even Dr. Frieden recognizes that menu labeling won't work. In a recent interview on *60 Minutes* he admitted that there is little scientific evidence to suggest that menu labeling will be effective.

Dr. Frieden is not alone in questioning the effectiveness of his own policy. In fact, numerous clinical trials and observational studies have come to the same conclusion: Providing nutrition information does not influence an individual's caloric intake.

A recent study published in the *Journal of the American Dietetic Association* determined that:

"...pilot data suggest that the recent legislation advocating for greater labeling of restaurant food may not be particularly effective in combating the obesity epidemic if people are not looking at existing food labels and are not able to use this information for nutrition planning."

And researchers from the University of Vermont write:

"Despite the growing push for such legislation to be developed, and more importantly, the need for research in the area that has been identified, there has been no research demonstrating the impact that food labeling will have on consumer behavior with respect to eating out."

While some surveys indicate support for menu labeling, a study in the September 2007 edition of the *American Journal of Preventative Medicine* explains that what consumers say in a survey is much different than what they ultimately order. The researchers wrote:

"Consumers claim that they want healthier choices at restaurants, but purchase more indulgent fare when they eat out."

A 2006 study conducted by researchers from Purdue University asked respondents what they would like to see added to restaurant menus. Only **8 percent** indicated they wanted calorie information.

More important to this debate is the detrimental effect mandatory nutrition labeling will have on New Yorkers' eating habits as well as the city's restaurants.

Better put, the Board should be careful what it wishes for.

Former Food and Drug Administration Commissioner Lester Crawford suggests looking at packaged food labeling as a model for restaurant menu labels. He recently observed:

"What we did in making nutrition labeling mandatory did not help obesity. In fact, some people would say it hurt."

Beyond the fact that nutritional information on packaged foods has had little to no effect on obesity rates, Crawford is reflecting on a phenomenon called the "health halo," which was coined by the incoming Executive Director of the USDA Center for Nutrition Policy and Promotion, Dr. Brian Wansink.

Dr. Wansink's research indicates that consumers eat "compensation calories" after eating a meal they perceived to be healthy. For instance, in one of his studies, Subway customers ultimately ate more calories than those who ate at a McDonald's. Wansink explains: "If [customers] believe they ate this nice, healthy lunch, they're more likely to eat snacks and eat more calories of it later on in the day."

Beyond the potential for creating counterproductive "health halos" around certain menu items, **the Board's menu labeling mandate fails to provide a realistic litigation "safe harbor" for recipe variances.**

Specifically, the proposal fails to explicitly outlaw private action against restaurants by trial lawyers, as many other proposals have done.

As I'm sure you're aware, a cadre of lawyers—including some from the Center for Science in the Public Interest—have demonstrated their eagerness to sue restaurants for a variety of dubious legal claims, including failure to post nutrition information.

It also fails to provide a realistic safe harbor to account for recipe variance. Unlike packaged food companies which enjoy a 20% legal cushion, restaurants do not rely on assembly lines to prepare their food. As a recent study by the Center for Science in the Public Interest indicates, restaurant nutrient content can legitimately vary by as much as 50% or more from the average caloric content of a meal.

Finally, it does not set a willful negligence standard for violating the statute.

California's experience with labeling laws should be instructive to the Board. California's Proposition 65, which enables private citizens to sue manufacturers for failing to warn against potentially carcinogenic products, has created an entire industry of lawyers who file hundreds of lawsuits each month against manufacturers whose products contain perfectly safe trace amounts of various chemicals.

Without addressing the proposal's numerous deficiencies, the Board risks exposing the city's restaurants to a legal quagmire that will likely put an undue financial hardship on businesses which already operate on small profit margins.

If the Council is serious about having an impact on obesity rates, politically expedient solutions that ignore the numerous causes of obesity will surely fail.

Thank you. I am happy to answer any questions you might have.

J. Justin Wilson
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Restaurant labeling regulations in NYC

Good morning. I am Lisa Young. I am a nutritionist [in private practice], author of *The Portion Teller Plan*, a user-friendly weight loss guide, and an adjunct professor at New York University (NYU).

I am in support of New York City's Health Department proposal to require chain restaurants to display the calorie content of standard food items on menu boards. Restaurants should post calorie information in a manner that is easy for consumers to read and use as part of their purchasing decisions.

Obesity is currently a major public health concern in New York City and is caused by an imbalance of energy intake (calories in) and energy expenditure (calories out). People tend to eat more calories when they eat out than when they eat at home.

Few people have a clue how many calories are in foods prepared by restaurants. In a study I conducted with colleagues at NYU and the Center for Science in the Public Interest (CSPI), [I'd like to acknowledge my collaborator Margo Wootan who is here today] we found that not even trained nutritionists were able to determine the calories in restaurant meals. Without knowing how much a food weighs and how a food is prepared, it is virtually impossible to correctly estimate its calorie count.

Particularly problematic is the fact that portion sizes have ballooned in recent years. And these large portions are providing consumers with many more calories. While conducting research on portion sizes, I found that the increase in the prevalence of obesity has occurred in parallel to an increase in the portion sizes of foods eaten away from home, suggesting that larger portions may be contributing to the obesity epidemic. Portion sizes offered by fast-food chains, for example, are often 2 to 5 times larger than their original size, and have increased considerably since the 1970s. Large portions contain more calories than small portions and encourage people to eat more and to underestimate those calories.

Finally, despite public health initiatives encouraging the food industry to reduce portion sizes, food portions at fast-food chains continue to increase according to research I recently published in the *Journal of Public Health Policy* with my NYU colleague Dr Marion Nestle. And, rather than reducing portion sizes, the top fast-food chains are also engaged in sleight of name. McDonald's and Wendy's, for example, have dropped fattening-sounding descriptors such as Supersize, Biggie, and Great Biggie and replaced them with the terms Small, Medium and Large. The former "Biggie" soda at Wendy's is now called "Medium." **This soda once called "Biggie" is now**

called “medium” ! (LY-show cup). And last year, the company introduced a new 42-ounce drink, called “Large” (LY-show cup) with a slogan “a whole river of icy cold refreshment.” Name changes such as these are unlikely to help with weight maintenance, and may even confuse consumers to believe that they are eating less than they actually are. Requiring chain restaurants to post the calories of its menu items would hopefully dispel such myths as well as educate consumers on the relationship between portion sizes and calories, and perhaps encourage them to purchase smaller sizes.

Thank you.

Lisa R. Young, PhD, RD

Author, *The Portion Teller Plan* (Broadway 2005)

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Portion Sizes and Obesity: Responses of Fast-Food Companies

LISA R. YOUNG* and MARION NESTLE

ABSTRACT

Because the sizes of food portions, especially of fast food, have increased in parallel with rising rates of overweight, health authorities have called on fast-food chains to decrease the sizes of menu items. From 2002 to 2006, we examined responses of fast-food chains to such calls by determining the current sizes of sodas, French fries, and hamburgers at three leading chains and comparing them to sizes observed in 1998 and 2002. Although McDonald's recently phased out its largest offerings, current items are similar to 1998 sizes and greatly exceed those offered when the company opened in 1955. Burger King and Wendy's have increased portion sizes, even while health authorities are calling for portion size reductions. Fast-food portions in the United States are larger than in Europe. These observations suggest that voluntary efforts by fast-food companies to reduce portion sizes are unlikely to be effective, and that policy approaches are needed to reduce energy intake from fast food.

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Keywords: overweight, obesity, portion sizes, serving sizes, fast food, calories

INTRODUCTION

Overweight and obesity have increased sharply since the early 1980s in the United States (1–4) and worldwide (5,6). As weight gains show no signs of abating, these conditions constitute a major public health concern (1), as they raise risks for a variety of medical conditions including type 2 diabetes, hyperlipidemia, hypertension, coronary heart disease, and certain cancers (7), as well as for premature death (8,9).

Since the early 1980s, increases in the portion sizes of foods commonly eaten away from home have occurred in parallel with

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increases in body weights, and constitute an important contributing factor to rising rates of obesity (10,11). Portion sizes offered by fast-food chains are often two to five times larger than when first introduced (12). Large portions contribute to overweight in three ways: they provide more calories, than smaller portions (10,12), encourage people to consume significantly more calories and to greatly underestimate those calories (13-16).

The United States food supply (food produced, less exports, plus imports) currently provides 3,900 kcal/day, a per capita increase of 700 kcal/day since the early 1980s (17), whereas dietary intake surveys report only an additional 200-300 kcal/day (18). Although the precise size of the increase in caloric intake is uncertain, data from many sources suggest that people are consuming more calories than they did in the 1980s (19,20).

Americans spend nearly half of their food budget on foods prepared outside of the home and consume about one-third of daily calories from outside sources, much of it from fast food (21,22). Concerns about the effect on body weight of calories from restaurant foods in general, and from fast foods in particular, make sense; regular fast-food consumption is associated with weight gain and obesity in both adults (23,24) and children (25).

In 2001, the US Surgeon General's *Call to Action* to prevent obesity challenged health professionals, communities, and the food industry to confront portion size as a factor in weight control, provide foods in more appropriate amounts, and raise consumer awareness of appropriate portion sizes (26). In 2004, the filmmaker, Morgan Spurlock, released *Super Size Me!*, a documentary account of his 25-pound weight gain from consuming all meals at McDonald's for just 1 month. Perhaps in response, McDonald's announced plans to phase out its Supersize menu items (27). No agency, however, holds fast-food companies accountable for responding to calls for decreases in portion sizes. Here, we report recent trends in the portion sizes of commonly consumed menu items from leading fast-food chains.

METHODS

In 1998 (28) and 2002 (10,12), we reported the increasing sizes of fast-food portions from leading chains. For the present study, we

examined subsequent changes through 2006, a 4-year period in which calls for methods to address and prevent childhood obesity have become much more pronounced (21,29). To assess the response of fast-food companies, we compared current portion sizes to earlier ones. Because consumption of soft drinks is associated with weight gain and obesity (30,31), and French fries and hamburgers are the most popular foods consumed in fast-food restaurants (32), we examined the sizes of these items at McDonald's, Burger King, and Wendy's, the chains ranked highest in sales of such foods (33).

We obtained information about portion weights, volumes, and calorie contents from nutrition information provided in company brochures and Websites. To observe how companies are marketing newly introduced portion sizes, we also examined newspaper accounts, promotional advertisements, brochures, materials provided by manufacturers in trade publications, and marketing materials.

RESULTS

Table 1 compares the portion sizes of fountain soda, French fries, and hamburgers served at McDonald's, Burger King, and Wendy's in 1998, 2002, and 2006.

Sodas

As promised, McDonald's phased out its 42-oz Supersize soda; its largest size is now a 32-oz Large. In 1998, the largest size soda at Burger King was 32 oz. In 2002, however, the chain increased the largest size to 42 oz. At Wendy's, a Medium soda was 22 oz in 1998 and the largest soda was a 32-oz Biggie. In 2002, Wendy's reduced the Medium to 20 oz, but increased the size to 32 oz in 2006. Also in 2006, this company introduced a new 42-oz size. Wendy's accompanied these additions with some name changes. The former 32-oz Biggie is now called Medium, and the new 42-oz soda is called Large.

French fries

McDonald's offered French fries in three sizes in 1998: Small (2.4 oz), Large (5.3 oz), and Supersize (6.3 oz). In 2002, it increased the Supersize to 7.1 oz, and renamed the other three sizes Small, Medium, and Large. Following the release of *Super Size Me!*, McDonald's

Table 1: Portion sizes of soda, French fries, and hamburgers available at three of the largest fast-food establishments in the U.S in 1998, 2002, and 2006

	<i>Size 1998</i> (oz or fl oz)	<i>Size 2002</i> (oz or fl oz)	<i>Size 2006</i> (oz or fl oz)
<i>Fountain soda</i>			
McDonald's	12 Child	12 Child	12 Child
	16 Small	16 Small	16 Small
	21 Medium	21 Medium	21 Medium
	32 Large	32 Large 42 Supersize	32 Large
Burger King	12 Kiddie	12 Kiddie	No change
	16 Small	16 Small	
	21 Medium	21 Medium	
	32 Large	32 Large 42 King	
Wendy's	12 Kid	12 Kid	12 Kid
	16 Small	16 Small	20 Small
	22 Medium	20 Medium	32 Medium
	32 Biggie	32 Biggie	42 Large
<i>French fries</i>			
McDonald's	2.4 Small	2.4 Small	2.4 Small
	5.3 Large	5.3 Medium	4.0 Medium
	6.3 Supersize	6.3 Large	6.0 Large
		7.1 Supersize	
Burger King	2.6 Small	2.6 Small	No change
	4.1 Medium	4.1 Medium	
	6.1 Large	5.7 Large 6.9 King	
Wendy's	3.2 Small	3.2 Kids' meal	3.2 Kids' meal
	4.6 Medium	5.0 Medium	5.0 Small
	5.6 Biggie	5.6 Biggie	5.6 Medium
	6.7 Great Biggie	6.7 Great Biggie	6.7 Large

Table 1 (continued)

	Size 1998 (oz or fl oz)	Size 2002 (oz or fl oz)	Size 2006 (oz or fl oz)
<i>Hamburger, beef only (Precooked wt)</i>			
McDonald's	1.6	No change	No change
	3.2		
	4.0		
	8.0		
Burger King	1.9	No change	1.9
	3.8		3.8
	4.0		4.0
	8.0		8.0
			12.0
Wendy's	2.0	No change	No change
	4.0		
	8.0		
	12.0		

New introductions indicated in bold face.

eliminated the Supersize and reduced the sizes of the Large and Medium. The 2006 Large was just slightly smaller (6.0 oz) than the 1998 Supersize (6.3 oz). In 2002, Burger King introduced a new larger French fries, called King, a size that the company still sells. Wendy's discontinued the terms Biggie and Great Biggie to describe French fries in 2006, replacing them with Medium and Large, but its portion sizes remain the same as they were 4 years earlier.

Hamburgers

McDonald's and Wendy's still offer the same size hamburger patties as they did in 1998, but Burger King has introduced a larger, 12 oz (precooked) hamburger. The sizes of the largest hamburgers at all three chains now exceed the amount recommended by the USDA for an entire day – 5.5 oz for someone consuming 2,000 kcal/day (34). The largest meat portion at McDonald's is 8 oz. The 12-oz portions at Burger King and Wendy's constitute 2 days' recommended portions of meat.

Table 2 highlights recent events in the history of portion sizes at these chains. In the last several years, McDonald's discontinued its Supersize French fries and sodas, but both Burger King and Wendy's introduced new portions in larger sizes. Burger King has also introduced several large specialty hamburgers.

Table 2: Selected events in the history of portion sizes from McDonald's, Burger King, and Wendy's, 2002-2006

2002 Burger King introduces the Meaty-Cheesy-Bacony-X-treme Whopper (940 kcal) with an advertising campaign featuring basketball player Shaquille O'Neal; adds 42-oz King soda (390 kcal).

Wendy's introduces Classic Triple with Everything (14.5 oz, 1030 kcal).

2004 McDonald's discontinues Supersize sodas and French fries.

2005 Burger King introduces Triple Whopper (17 oz, 1230 kcal); adds King Kong-themed Triple Whopper (1320 kcal); introduces Enormous Omelet sandwich (9.5 oz, 730 kcal) and Pounder[®] Normous (10.5 oz, 770 kcal) with slogan: "a full pound of sausage, bacon, and ham. Have a meaty morning."

2006 Burger King advertising campaign features Texas Whopper (12.2 oz, 820 kcal), Double Whopper (15.1 oz, 1050 kcal), and Triple Whopper (18.1 oz, 1290 kcal), with mob of men waving signs saying "Eat This Meat" and singing "I am Man, I am incorrigible, and I am way too hungry to settle for chick food"; also introduces BK Stacker sandwiches in four sizes: Single, Double, Triple and Quad; Quad size has 4 beef patties, weighs 11.1 oz and contains 1000 kcal, Slogan: "It's the flame-broiled meat lover's burger and it's here to stay - no veggies allowed."

Wendy's drops the terms Biggie and Great Biggie to describe soda and French fries and instead adopts the terms Small, Medium, and Large; changes 32-ounce Biggie to Medium; adds Large 42-oz soda (advertised as "a whole river of icy cold refreshment"); changes Medium French fries to Small, Biggie to Medium, and Great Biggie to Large.

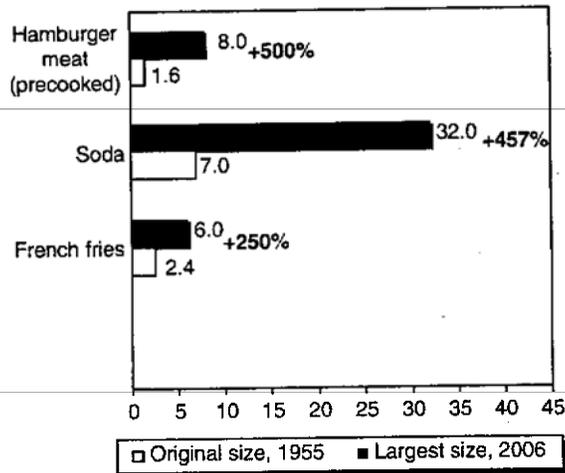


Figure 1

Actual difference (oz or fluid oz) and percent difference between the largest size currently available and the original size of selected foods at McDonald's.

Despite McDonald's steps to reduce the sizes of its largest items, its current portions remain much larger than they were in 1955 when first introduced (see Figure 1). In 1955, for example, the company's only hamburger meat weighed 1.6 oz; today's largest portion weighs 8.0 oz and is 500% larger. Its largest soda was 7.0 fl oz in comparison to today's 32.0 fl oz size, and 457% larger. And today's largest portion of French fries weighs 6.0 oz and is 250% larger than the 2.4 oz size in 1955.

DISCUSSION

Our observations indicate that fast-food chains have responded little or not at all to calls to reduce the portion sizes of soda, French fries, and hamburgers. McDonald's has made the most progress in reducing its portion sizes, but its sizes greatly exceed those offered in 1955. As indicated in Tables 1 and 2, Burger King and Wendy's have added larger sized sodas, and Burger King has introduced several larger hamburgers. Other US chains have followed suit (35). In 2003, for example, Hardee's introduced the "Monster Thickburger" with 12 oz beef and 1,420 calories – two-thirds of the calories recommended for an entire day for certain segments of the population.

Rather than reducing portion sizes, the top fast-food chains are engaged in sleight of name. McDonald's and Wendy's have dropped descriptors such as Supersize, Biggie, and Great Biggie and replaced them with Medium or Large. Name changes, however, are unlikely to help with weight maintenance as they may induce people to believe they are eating smaller amounts of food (35).

Our observations also indicate that the portion sizes of these items offered in the United States exceed those available in Europe. The largest orders of French fries and soda at McDonald's in the United States contain about 100 calories more than the largest sizes offered in Sweden, for example. The largest portion of French fries available at US Burger Kings is nearly 2 oz larger – and contains 250 calories more – than the largest size offered in the United Kingdom (UK). The US Burger King offers a Triple Whopper, but the largest size available in the UK is a Double Whopper.

Nevertheless, fast-food portions in Europe also are larger today than they were in 1998. Today's largest soda at Burger King in the UK is 10 oz larger than in 1998. Also since 1998, McDonald's added double cheeseburgers to UK menus.

Thus, fast-food chains have not responded to any great extent to the 2001 Surgeon General's *Call to Action* (26) or to more recent calls on restaurants to reduce portion sizes (21,29) nor are they likely to do so voluntarily. Because portion size has such a large effect on caloric intake and balance, public health efforts to explain and act on the relationship between portion sizes, calorie intake, and weight gain are urgently needed. The New York City Health Department recently approved regulations to require fast-food chains to post the calorie counts of foods directly on menu boards (36). This and other policies to make it easier to reduce energy intake deserve serious consideration by any government agency concerned about the effects of obesity on public health.

Acknowledgment: We thank Somantha Peterson for technical assistance.

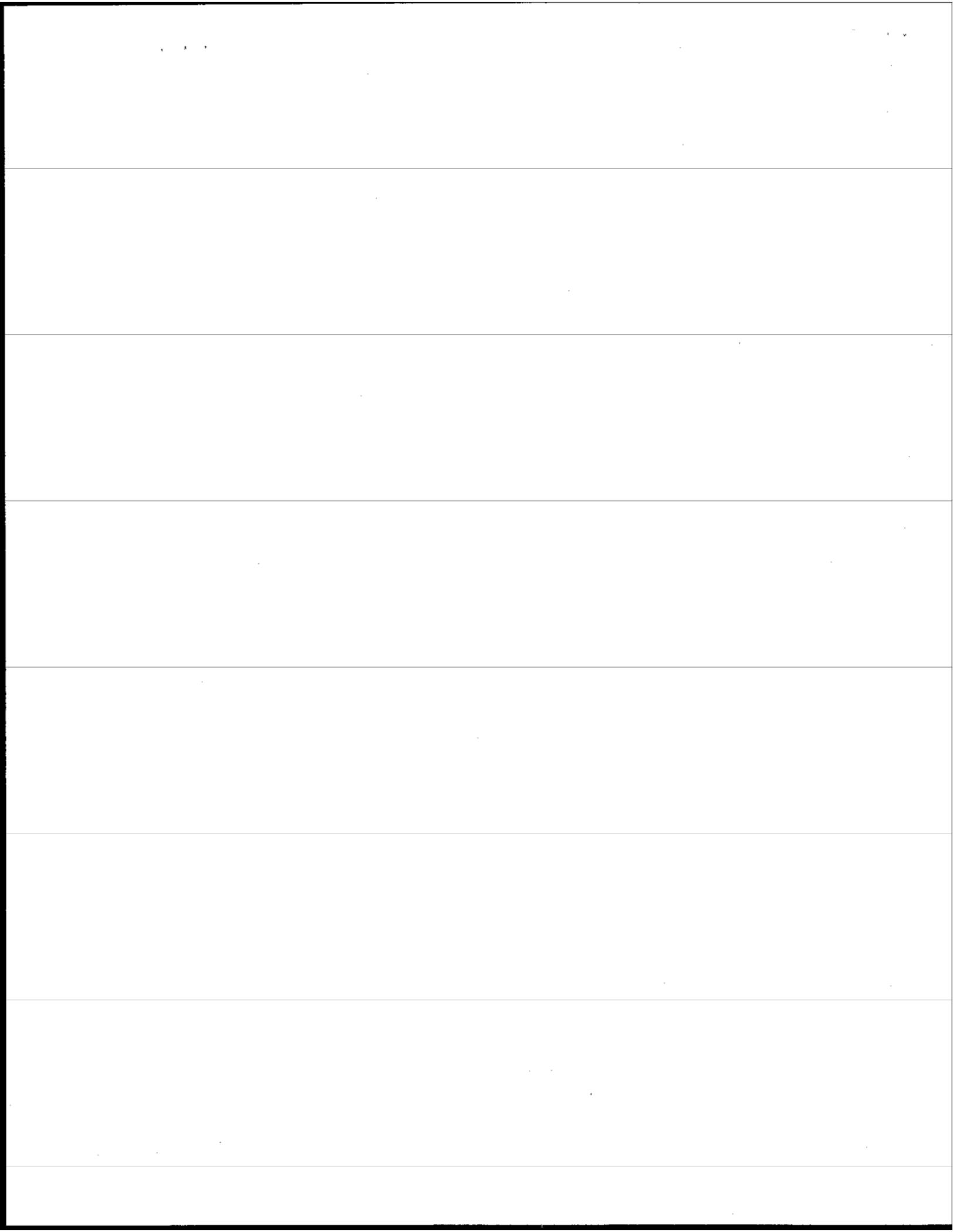
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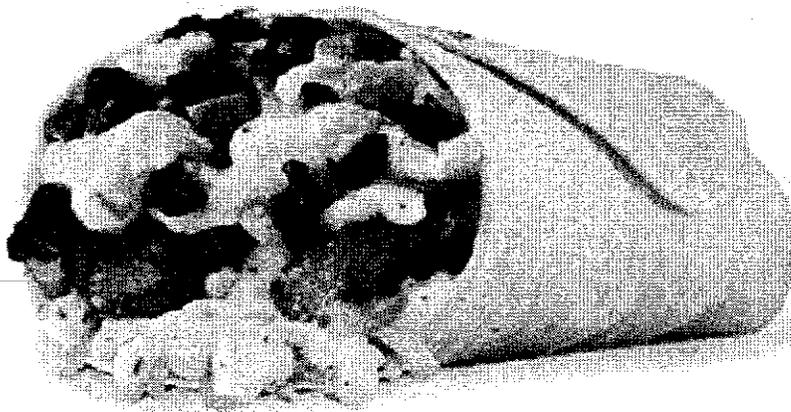
By any other name, it's still a supersize

Fast-food portions keep getting bigger, but you might not know it

By Lisa R. Young, Ph.D, R.D.

MSNBC contributor

Updated: 9:16 a.m. ET Oct 19, 2007



Hardee's Country Breakfast Burrito, which the fast-food chain introduced Monday, packs 920 calories and 60 fat grams. Hardee's Via AP

Fast-food restaurants may brag about their premium salads and apple fries, but for all the healthier items they've added to menus, portion bloat is bigger than ever.

Not only are servings getting larger, some top fast-food chains are engaged in a sleight-of-name game — marketing ploys which could confuse customers who think they're ordering less than they actually are, according to a study I co-authored with Dr. Marion Nestle, a professor of nutrition at New York University, published in a recent *Journal of Public Health Policy*.

When McDonald's dumped its Supersize selections three years ago, many nutritionists were hopeful that restaurant chains and fast-food establishments would get back to thinking small.

Fat chance.

Are you going to finish that?

In the last few years, Hardee's, Burger King and Wendy's all have introduced 1,000-calorie-plus sandwiches stuffed with 12 ounces of beef — the amount of meat recommended for two days for most adults. In addition, Hardee's just rolled out a new Country Breakfast Burrito, a tortilla wrap stuffed with two egg omelets, sausage, bacon, ham, cheddar cheese, hash browns and gravy. The burrito contains 920 calories and 60 grams of fat, almost all the fat an adult needs in a single day.

Gorging on fast-food occasionally wouldn't be such a disaster, but Americans spend half their yearly food budget eating out. In my research on portion size trends, I found a parallel between rising rates of obesity and increasing portion sizes. Current fast-food servings are two to five times larger than they were in the 1950s. It's hard to believe the Big Mac was considered large when McDonald's introduced it 40 years ago. Today the Big Mac's roughly 3 ounces of meat are puny compared to the new mega-burgers. When McDonald's first opened, a soda was 7 ounces. Today, the child size is 12 ounces, a small is 16 ounces, and the large 32 ounces.

Are we that much thirstier or hungrier than we used to be?

That's a really big gulp

You can't order a Supersize soda at McDonald's anymore, but the fast-food giant recently introduced the Hugo, pouring in at a bladder-busting 42-ounces and 410-calories. Last year Wendy's rolled out its own 42-ounce version and Burger King also promotes a 42-ounce King Size soda. 7-Eleven offers the 64-ounce Double Gulp soda — a half-gallon, nearly 800-calorie drink marketed for *one* person. And Starbucks sells jumbo-sized coffee drinks, such as the Venti Frappuccino Strawberries and Crème which contains well over 600 calories.

Biggie lives

The problem is, people tend to eat or drink what's in front of them. We also significantly underestimate how many calories we consume. But even when consumers try to do right by their diets by choosing a small or medium of something at a fast-food chain, they may be getting more than they expect.

Wendy's dropped the fattening-sounding Biggie sodas and Great Biggie french fries and went back to small, medium, and large sizes. But it was just a marketing gimmick. What was a medium order of french fries is now a small; the Biggie became a medium, and the Great Biggie became a large. Instead of a Biggie soda, you can order a large drink — but large is now 42 ounces, 10 ounces larger than it was a year ago as the Biggie.

Scaling back

To be fair, some restaurants have tried to scale it back. When Ruby Tuesday cut serving sizes in 2004, customers balked, and the big portions returned.

But that's because consumers are programmed into thinking that bigger size means bigger value. Larger portions are presented as a bargain for consumers because they're relatively cheap for restaurants to offer. Food costs less than other operating costs such as rent, staff, and equipment.

Big servings are not going away any time soon, but you don't have to be a victim of portion distortion. Here are some strategies to try:

- Steer clear of large, jumbo and king size orders. Even a medium portion can be big, so share it with a friend. Better yet, opt for the small.
- Eat half of what you order. Ask for a doggie bag and enjoy the rest on another day.
- Have a bottle of water or diet soda instead of a regular sugar-laden soda.
- Order a side salad with your meal.
- Savor your food and eat more slowly. Put your fork down between bites. This will help you eat less.

Reality check: More food = more calories

Before you order, know how much you're eating and drinking

Food	Brand or establishment	Calories (Regular or small)	Calories (Large or Jumbo)
Soft drink	Coca-Cola	100, 8 fl. oz	250, 20 fl. oz.
French fries	McDonald's	210	540
Hamburger	Burger King	320, 4.4 oz.	Double Whopper, 920, 12.6 oz.
Coffee	Starbucks	180, 12. fl. oz. (Tall)	300, 20 fl. oz. (Venti)
Frappuccino			
Popcorn (popped in oil)	Movie theater	400, 7 cups	1,160, 20 cups

Source: *"The Portion Teller Plan: The No-Diet Reality Guide to Eating, Cheating and Losing Weight Permanently"* (Broadway, 2005)

How much is too much?

A serving may be smaller than you think. Use these visuals as a guide.

- 3 ounces of meat = 1 deck of cards
- 1 cup of cereal = a baseball
- 2 tablespoons salad dressing = a shot glass
- ¼ cup nuts = a golf ball

Source: *The Portion Teller Plan: The No-Diet Reality Guide to Eating, Cheating, and Losing Weight Permanently*

Lisa R. Young, Ph.D., R.D. author of "The Portion Teller Plan: The No-Diet Reality Guide to Eating, Cheating, and Losing Weight permanently" (Broadway, 2005) is a nutritionist in private practice in New York City and an adjunct professor at New York University.

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Good Morning and thank you for the opportunity to speak to you on this important matter.

I am Dr. Abraham Jelin, Vice President of New York Chapter 2 of the American Academy of Pediatrics and Co-Chairman of the AAP NYC Youth Advocacy Committee. I am also the Associate Chairman of Pediatrics and the Chief of Pediatric Gastroenterology at the Brooklyn Hospital Center.

Today, I am speaking for the nearly 1000 AAP members who practice in NYC and confront the obesity epidemic every day. We support the adoption of 81.50 because it proactively addresses one of the root causes of that epidemic. Critics of this amendment suggest that posting calories in fast food restaurants has not been shown to influence obesity. They suggest that fast food is not the only culprit and is being unfairly singled out. It is true that there are many factors contributing to the current explosion of

overweight children and adults in the city. Those factors include the food choices people make at home and when eating out and inadequate levels of physical activity. These in turn are influenced by the media and by the physical environment. The causality of obesity is very complex and maybe not as well understood as we would like and so a simple solution is not readily apparent. To be effective we must address this epidemic in a multi pronged manner. Posting caloric content in fast food restaurants will not alone solve the problem, but it will contribute positively to the solution. For this reason, we applaud the NYC DOHMH for taking action and urge the adoption of this amendment.

We have all heard the alarming statistics attesting to the dramatic increase in overweight and obese New Yorkers, so I would like to take a different approach in highlighting the urgency of the problem, an approach that reflects my clinical practice. The field of pediatric gastroenterology includes caring for children with liver disorders in addition to intestinal ones. It's in this aspect of my

practice, that I confront the obesity epidemic. Everyone is familiar with the fact that obesity has contributed to skyrocketing numbers of adults and recently children with Type 2 diabetes and its complications. We are all aware of the other medical problems like heart disease, stroke and cancer and the myriad of psychological problems that have been associated with being overweight. The liver disease associated with obesity doesn't attract the press's attention that those other more well-known disorders seem to attract, except of course to pediatric gastroenterologists. The livers of overweight individuals can become infiltrated with fat and then become inflamed because of that infiltration. That inflammation can, and often does, cause scar formation and ultimately cirrhosis which can lead to liver failure and potentially to liver transplantation. I have been in practice for 30 years and am staggered by the recent explosion in the number of children who suffer from fatty livers.

I will not recite more statistics but will try to bring home the seriousness of the epidemic by citing a few real case histories. I want to skip the global picture in an effort to highlight the issues by describing the type of children I see every day and the travails they face. I hope to convey what it's like on the front lines of this battle.

I take care of an Hispanic family of four children. The oldest brother who is 14 years old has diabetes and requires insulin and an oral hypoglycemic agent. His BMI is elevated. He has evidence of non alcoholic fatty liver disease. This is the current nomenclature describing the liver disease seen in obese individuals reminding us that this liver problem though not related to alcohol unfortunately can have the same consequences as alcoholic liver disease. This sibling after being counseled by me and his endocrinologist has actually begun to lose weight. His three younger siblings have BMIs well over the 97th % ile for age. Because of their age, they are much less cooperative in complying

with the recommended diet and exercise regimen. Their mother who is also somewhat overweight is frustrated and worried about her kids. Her efforts to cajole and entice her younger children to eat properly and exercise more have met with failure. When I speak to these children they giggle and laugh. At their age, an understanding of the seriousness and consequences of their condition is lacking, as is their cooperation. The foods available in schools and promoted on TV commercials undermine their mom's efforts to alter her children's behavior. The opportunity for them to regularly exercise is limited by the distance they travel to school, the inability to safely play outside in the neighborhood and the absence of physical education in school. It isn't even safe for them to walk up and down the stairs in their apartment building. All four of these kids have evidence on non alcoholic steatohepatitis which indicates that their livers are not only filled with fat but are also inflamed. If we are not successful in getting them to lose weight and subsequently decrease their risk, they will

require liver biopsies to determine whether or not they have scarring in addition to the inflammation.

I also take care of a young Caucasian girl who was referred to me by an obesity center to evaluate her liver dysfunction. She has been struggling with her weight for years. She is already showing evidence of insulin resistance, a precursor to Type 2 Diabetes. She differs from the children in the family I previously described in that, although from a large family, she is the only one who is overweight. She has been stigmatized because of her size not only at school but also at home. Her parents put persistent pressure on her to lose weight and so her self image suffers not only in her school community but at home. Her poor self image and previous unsuccessful struggles to lose weight have left her so frustrated that, at this time, she does not even try to restrict her intake.

These children are typical of the patients I see every day. I feel stymied by the lack of effective tools to treat them and their obesity thus diminishing their long term health risks. The only real public health solution is prevention that is preventing them from becoming overweight in the first place.

As the AAP has asserted in a recent policy statement "Prevention of overweight is critical, because long-term outcome data for successful treatment approaches are limited." We agree with the critics that "there is no one cause of obesity." Since there is no one cause we must address each contributing factor in our effort to PREVENT the current crisis from becoming a catastrophe. We have to address the role that schools, the media, the environment, genetics and, yes, the food that is eaten away from home in restaurants play in engendering obesity in our children. We believe that this amendment does provide a tool that will enable

parents and adolescents to make healthier choices when they eat out.

As pediatricians we are committed to the concept of preventive care whether we are providing immunizations to prevent infectious diseases, anticipatory guidance to prevent childhood injury or recommending fluoride treatment to prevent dental caries.

Offering information about caloric content in city restaurants at the time of purchase –not afterward on a napkin or placemat and not prior to entering the restaurant on a web site - is a similar preventive measure.

We applaud the New York City Department of Health and Mental Hygiene for promulgating this amendment and urge that it be formally adopted.

Thank you again for the opportunity to address you.

Jennifer Pomeranz
Director Legal Initiatives Rudd Center Food Policy & Obesity at Yale University

Based on the best public health evidence, menu labeling in restaurants that serve what is commonly referred to as fast food is an excellent strategy to address and combat obesity and diabetes in NYC. The NYC Dept Health and Mental Hygiene's Revised Regulation 81.50 is one such law.

The prior rendition of the NYC menu label law based compliance on previous disclosure of calorie information by restaurants. Judge Howell of the Southern District of New York found that this aspect of the regulation violated the preemption provisions of the Nutrition Labeling and Education Act because it was based on voluntary disclosures. The Court found that because NYC's regulation was based on previous voluntary disclosures, it triggered the voluntary claims section of the NLEA, and as such it was preempted.

However, the NLEA does not preempt mandatory nutrition labeling requirements for restaurants. Judge Howell expressly stated that: "the City has the power to mandate nutritional labeling by restaurants." This is because the NLEA exempts restaurants from its mandatory nutrition labeling requirements, allowing states and locales to set nutrition labeling standards. Both the FDA and the Senators and Representatives responsible for passing the NLEA have expressly recognized the power of states and locales to require nutrition labels for restaurant food and beverages.

This may legally be done by regulations that "require restaurants to provide nutrition information." Judge Howell explained that locales can enact regulations that "impose a blanket mandatory duty on all restaurants meeting a standard definition such as operating ten or more restaurants under the same name."

This is exactly what NYC's Regulation 81.50 does. NYC's revised regulation mandates compliances based on the standard definition of an establishment having 15 or more restaurant units nationally. Basing compliance on the number of units an establishment has nationally is the most common triggering mechanism of all proposed laws and regulations by states, counties and cities across the country. Targeting chain

restaurants serves the public health purpose of menu labeling because these restaurants are ubiquitous and consumption of the food they serve is associated with a higher intake of calories, saturated fat, carbohydrates and added sugars, and a lower intake of essential micronutrients. Studies show that consuming fast-food is positively associated with excess energy intake, weight gain, insulin resistance and increased risk for obesity and type two diabetes.

By mandating compliance based on the number of units a restaurant has nationally, NYC has aptly addressed and corrected the narrow grounds the court found the original regulation violated the preemption provision of the NLEA. Enacting menu label laws is a sound public health strategy to address the obesity epidemic in NYC.\

I would also like to respond to the parade of horrors set forth by Justin Wilson of the Center for Consumer Freedom.

First, the Supreme Court has confirmed that governments are allowed to address problems piecemeal. Thus, NYC's menu labeling law is one step to address the city's problem with obesity and corresponding health problems.

Second, the 3% calculation he set forth is inaccurate. A certain part of the population consumes inordinate amounts of fast food so for them, the percent fast food in their total diet is much higher. The 3% number is irrelevant.

Third, the Center for Consumer Freedom is trying to scare the NYC Department of Health from enacting 81.50 by saying that frivolous lawsuits will result. Not only did he not give even one example of a potential frivolous lawsuit, but the only lawsuit filed after the previous rendition of 81.50 was by the restaurant industry.

Thank you.

Rebecca A Sparks, MS, RD
Testimony on Calorie Listing
On Behalf of NYCEN
November 27, 2007

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I want to thank Commissioner Frieden and the New York City Department of Health and Mental Hygiene for persevering in the initiative to post calories on menu boards in chain restaurants. I am Rebecca Sparks a registered dietitian and nutrition educator, working at NYU, Department of Nutrition, Food Studies and Public Health. I am the Chair of the New York City Nutrition Education Network known as NYCEN. Today I speak on behalf of NYCEN. Founded in 1998, it is a membership-driven collaborative comprised of individuals representing over forty nutrition and public health organizations. NYCEN is dedicated to educating and supporting a network of members who seek to improve the food and nutrition environment for a healthier New York City. We value opportunities to enhance nutrition education practices that embrace cultural competency, empowerment, critical thinking and a full range of literacy levels, and believe menu labeling supports this. To make informed decisions one must have access to information.

NYCEN supported the New York City Department of Health's groundbreaking regulation to post calorie information directly on menu boards and this support continues for repeal and reenactment of Article 81.50. We urge others to continue to support this important tool for community health and nutrition education. The changes encompassed in the proposed amendments are precisely the type of actions NYCEN members support in their efforts to improve New Yorker's health through food and nutrition initiatives and education. The Board's proposal is firmly rooted in numerous science-based studies that have demonstrated that the majority of the populace is incapable of accurately assessing the caloric content of meals prepared outside of the home.

Providing New York City residents with the basic calorie information, at the point of purchase, will finally provide consumers with the needed means to make informed food choices when it can influence their decision-making. Nutrition educators can also emphasize the importance of moderating calorie intake with the aid of specific calorie counts for popular, standardized, fast food menu items conspicuously posted and readily available at the point of purchase.

The changes in the proposed amendments are significant steps forward in combating the dual threats of obesity and other diet-related chronic diseases. Specifically, NYCEN supports:

- Providing consumers with the basic calorie information they need for portions the size and content of which are standardized, in plain sight, at the point of purchase by clear and conspicuous posts on menu boards and menus. This readily available calorie information will finally provide consumers with the tools to make informed food choices at the time and place the information can influence their decision-making.
- The focus in the City of New York on food service establishments that are one of a group of fifteen or more doing business nationally under the same name, and offering for sale substantially the same menu items.
- The use of standardized menu items and posting their calorie counts based on these standardized recipes acts to counter typical consumer assumptions. Studies have shown that people tend to underestimate the calories of food choices. By posting the calories clearly on menu boards people will have a better opportunity to make informed choices.

Calorie information has been required for years in pamphlets that are often not available, on poster boards that are inconvenient or difficult to read, or on websites that are not readily available to all consumers, much less at the time they are eating.

The percentage of overweight and obese New Yorker's continues to rise, especially among low-income children. Studies have shown that children who are obese are more likely to become obese adults. The health risks and social burden that these obese children already have so early in life need to be addressed in any way possible. The financial cost of obesity and diet-related diseases will soon become overwhelming for individuals, insurance companies and the general public. Clearly, it is past time and we need to try a different approach.

We commend the Health Departments support for public health. Rather than insult the community that frequents fast food restaurants as not being interested in counting calories as part of a healthy eating habit, the Health Department recognized that many adults and children frequent these restaurants several times a week. The focus on restaurant chains with standardized menu items will educate thousands of New Yorkers about actual calorie counts of their favorite meals. Having this information posted next to menu choices is also important because of typical marketing campaigns to increase consumption through "value" meals. Large corporations spend billions of dollars marketing food to consumers.

It is important that consumers also be provided with the cold facts of the calorie count of these choices. Showing the calorie counts of different sized portions, might encourage people who are at risk for chronic diseases such as heart disease, stroke and diabetes to choose smaller sizes with less calories or more healthful choices. As consumers also tend to underestimate the calories of food choices, posting the calories clearly on menu boards will provide a better opportunity to make an informed choice. This regulation change provides excellent support for initiatives related to obesity influenced chronic diseases being addressed by the Department.

The Department of Health has determined to take a step in favor of a healthy community and should be applauded.

Thank you.

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Resolution Comments

From: Sheila Weiss [SWEISS@dineout.org] **Sent:** Mon 11/26/2007 5:17 PM
To: Resolution Comments
Cc: Amanda Rieter; Donna Garren; Kelly Benedetti
Subject: National Restaurant Association Comments
Attachments: NYC_Calorie_Comments.pdf(1MB)

Good Evening-
Written Comments on the Notice of Intention to Repeal and Reenact 81.50 of the New York City Health Code are attached.

Thank you,

Sheila Weiss

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REPRESENTING THE RESTAURANT INDUSTRY
The Cornerstone of the Economy, Career Opportunities and Community Involvement

**National Restaurant Association
Comments presented by Sheila Weiss, R.D.**

**New York City Board of Health
New York, New York
November 27, 2007**

Good Morning. My name is Sheila Weiss. I am a Registered Dietitian, and the Director of Nutrition Policy at the National Restaurant Association.

I would like to thank the New York City Board of Health for this opportunity to testify before you regarding the proposal to repeal and reenact 81.50 of the New York City Health Code.

Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry. Together with the National Restaurant Association Educational Foundation, the Association's mission is to represent, educate and promote an industry that is comprised of over 935,000 restaurant and foodservice outlets. As such, diversity, customer service and high quality foods are top priorities for the ever-growing restaurant industry.

While we represent our nation's restaurants, we are here today on behalf of your local restaurants, many of which are franchisees and small business owners.

We applaud the New York City Board of Health in its efforts to address food and nutrition issues. However, we do not support this proposal, as introduced. We strongly oppose any regulation that requires the industry to post information directly on the menu or menu board and make no allowance for alternative compliance. This is especially concerning because the Department has no research or evidence to support this restrictive approach as being "better" or more effective. Considering that the ordering, preparation and delivery process for restaurant food is uniquely different than purchasing packaged foods in a grocery store, the restaurant industry should be given flexibility in how we provide such information to our customers. This flexibility will also allow restaurants to provide much more comprehensive nutrition information that addresses a much broader range of dietary concerns.

Many restaurants are already providing nutrition information to their customers through the use of kiosks, posters, signs, brochures, tray liners, packaging and customized receipts. Any nutrition labeling initiative should allow restaurants to retain flexibility in selecting the format that works best for their customer preferences and particular business concept. For some, posting nutrition information directly on the menu or menu board may work. For others, an alternative format may be more suitable for the customer. The bottom line is that one size does not fit all. If the true goal is to provide consumers with more information, then efforts to restrict that information to menus/menu boards are misguided. Without any data to support the imposition of such a sweeping change and tremendous burden on the industry, the National Restaurant Association urges you reconsider this proposed regulation.

The restaurant industry's objective has always been to provide a wide variety of food options to accommodate the needs of diverse consumers. It is important that the New York City Board of Health examines its role and responsibilities in addressing the public health problem, with the understanding that our diverse population needs recommendations that are clear and relevant to modern life. Consistent positive messages that promote healthier thinking and lifestyles will always be more successful. The restaurant industry believes it can play a valuable role in serving as a point of dissemination for consumer-focused nutrition information in a meaningful way. Our industry has been successful because we have listened to our millions of customers and responded to their needs.

We would encourage the city to reconsider this regulation and to allow its restaurants to retain flexibility in selecting the format that works best for their particular business concept and customer preferences. We look forward to cooperating with the Board of Health and providing insight regarding the diverse nature of the restaurant industry and the consumers we serve.

Thank you again for this opportunity.



RESTAURANT INDUSTRY

November 27, 2007

Rena Bryant
Secretary to the Board of Health
125 Worth Street CN-31
New York, NY 10013

**Re: Comment; Notice of Intention to Repeal and Reenact 81.50 to
Article 81 of The New York City Health Code; Mandatory
Calorie Statements**

Dear Ms. Bryant:

The National Restaurant Association (the Association) is pleased to share its views on the above-referenced proposal (the Proposal) which would mandate that prominent calorie statements accompany food items and prices on restaurant menus. / Because the Proposal fails in its essential purpose to advance the public health of New York City residents this initiative should be permanently withdrawn. Alternately, the Association urges the members of the Board of Health (the Board or BOH) to reject any final rule based on this proposal. The Association pledges its willingness to work with the Board and other community and civic

/ Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry. The Association's mission is to represent, educate, and promote an industry that is comprised of over 935,000 restaurant and foodservice outlets employing more than 12.8 million people, making us the largest private sector employer in the United States. As such, diversity, customer service, and high quality foods are top priorities for the ever-growing restaurant industry.

membership and the substantial impact of the Proposal prompts every segment of our broad industry to urge that the Proposal be permanently withdrawn.

I. FLEXIBLE REGULATORY POLICIES MAXIMIZE CONSUMER ACCESS TO DIET, NUTRITION, AND HEALTH INFORMATION IN DIVERSE RESTAURANT SECTOR

Rising obesity rates and the risk factors associated with an imbalance between calorie intake and physical activity present a serious public health concern. The relationship between Americans' eating habits, lifestyle choices, and a myriad of other factors render a complex problem difficult to solve. This complexity cannot be an excuse for inaction or an impediment to meaningful change. National Restaurant Association members have embraced the need for action by deed, not word. The sheer range of our industry's efforts reflect the remarkable difference in the formats, menus, and consumer expectations for each one of us, depending on the day and eating occasion.

Action for action's sake rarely advances concrete public health objectives, no matter how bold or well-intended. The threshold question of whether the Proposal represents sound, rational public policy or an unfounded, arbitrary government intrusion is determined by examining the context in which the Proposal will play out. The Proposal fails in all of its stated objectives for the simple reason that the Department has cobbled together a series of assumptions, untested theories, concerns, and well-intended objectives to produce a regulatory framework that is flawed and doomed to fail. The ironic result of this "action" will be to move an important segment of the food industry in a direction that will inevitably undermine, not advance, the health of New Yorkers.

Calories "count" and the Department's findings concerning the risks associated with excessive caloric intake is true of a broad segment of the American population. The Association has long-supported consumer access to useful nutrition information. Many of our members have acted accordingly, their efforts reflecting numerous and varied approaches to furnishing consumers with calorie and other nutrition information that they want and will actually use. Such efforts are possible because of a flexible federal regulatory framework that fosters and allows for creative, tailored approaches by restaurants. The Proposal unduly impinges on such efforts, yielding unintended costs and resulting in regulatory conduct that will merely confuse consumers.

A. Diversity in Industry Precludes a "One-Size-Fits-All" Regulatory Mandate

The restaurant industry is an incredibly complex and diverse one. There is diversity in the types of operations which comprise the industry, the demographics of the consumers they serve, the types of foods provided, and the business units which make it all possible. Whereas some restaurants know most of their customers by name, others serve thousands of people daily. Some restaurants provide only a few menu items, others provide a multitude of options, which can be customized in a myriad of ways. Some restaurants use vast and complex supply chains, and still others might rely on local farmers' markets to determine the day's menu items. In sum, this is an industry where attempts at categorization will always find many exceptions such that there is no suitable rule.

Restaurants comprise an industry of at least 39 different segments.^{2/} These segments include fullservice restaurants, quickservice operations, neighborhood taverns, catering businesses, food and beverage operations at factories, hospitals, schools, and sports complexes. The restaurant industry extends to food service at military bases and officers' clubs and food service operations within retail or convenience stores. It also includes hotels and mobile caterers. Of course, even within these various segments there is incredible diversity. For example, the fullservice restaurant segment includes family dining operations, casual dining, and fine dining. In addition, the lines between these segments are increasingly becoming blurred as restaurants seek new business opportunities constantly evolving to meet consumer needs. Virtually all of these restaurant formats would be covered by the Proposal given the breadth of the proposed notion of "standardized menu item," as explained below.

Restaurants serve a demographic mix of customers – a mix that can vary from restaurant to restaurant by age, ethnicity, income, lifestyle, and dietary preference. Some restaurants need to consider all segments of the population as their customers, yet others are able to cater to very specific segments. Even those that do cater to a specific demographic mix do not always cater to the same mix. That is to say, one fullservice restaurant's typical customer can be very different from the next fullservice restaurant's typical customer. Those restaurants serving all segments of the population also need to be sure to offer food choices that appeal to all customers.

Consequently, diversity among food choices, both within a given restaurant and across the industry, is also apparent and prevalent. The industry is responding to constant demand from consumers for choice – indeed, consumer

^{2/} National Restaurant Association 2006 Forecast at 9.

choice is "a critical driver of restaurant patronage." ^{3/} This means that many restaurants are trying to increase the number of food options provided and increase the opportunity for consumers to change or add to a "base" item or "food platform." ^{4/} Moreover, there has been an increase in the number of specials or limited-time menu items, particularly among quickservice operations, where four out of five operations promote special or limited time menu items. ^{5/} Some formulations are unchanged over decades while many other menu items are regularly updated or modified.

In addition, restaurants are ever adapting to trends in consumer preferences. For example, at the height of the low-carb craze, restaurants met an increased demand for low-carb options and saw a decrease in the number of pasta orders. Yet, a year later, orders of pasta and Italian style fare had increased. While some trends in consumer preference affect all segments of the restaurant industry, other trends are specific to individual segments. For example, the increase in popularity of chicken sandwiches has been seen by a much greater number of quickservice operators than by fine dining establishments. ^{6/} In all, restaurant menus are constantly changing in a highly competitive environment. This is a constant within our industry.

The changes in menus are not just over time in response to trends. Changes are rapid and constant with each order placed. Our members estimate that approximately one-half to two-thirds of chain restaurant orders are customized by the consumer for a given "standard" menu item. This is not by accident. Chain restaurants' market their ability to customize. In the most uniform of chain restaurants a fixed menu item is merely a starting point for consumer customization. Indeed, some chain restaurants have made substantial investments in redesigned kitchens customization. For casual dining and many other dining formats the expectation is for complete customization. Throughout the restaurant industry a standardized menu item is a thing of the past. Assumptions to the contrary are simply incorrect and policies promised on such assumptions will inevitably lack a rational basis.

Restaurants not only sell food; they also buy it. These supply operations are as vast and varied as the industry itself. Some restaurants may only prepare fresh ingredients, whereas others may buy most of their items partially prepared or cooked by another operation. Some restaurants are part of a vast network or chain, providing economies of scale, yet other restaurants are one-of-a-

^{3/} *Id.* at 21.

^{4/} *Id.* at 17.

^{5/} *Id.* at 16.

^{6/} *Id.* at 24.

kind, single proprietorships. Some restaurants rely on local and in-season goods, while others may source supplies from around the country and around the world to meet consumer preferences. Accordingly, the business operation supporting each restaurant can be incredibly complex or relatively straightforward.

In all, the restaurant industry is one of complex variation. The common thread is that each restaurant, large or small, strives to meet the needs and expectations of each customer it serves. Restaurants want to provide consumers with a rewarding dining experience, one that will be repeated. This requires constant innovation and a desire to provide consumers with what they want, when they want it, and where they want it. Thus, as the preferences of the American consumer are diverse, so too is the restaurant industry. This heritage and dynamic reality is evident from nearly every corner and thorough-fare of New York City. The sheer size, diversity and world-renown reputation of the New York dining experience is valued by residents and visitors alike.

B. Restaurants' Efforts to Provide Information to Assist Consumers in Making Informed Purchasing Decisions Are Substantial and Evolving

Nutrition information at point of sale is not a new concept, with many such efforts dating back to at least the 1980's. As the vehicles of communication between restaurants and patrons have evolved, so too have the tools utilized to reach consumers with calorie and other nutrition and healthy living information, including websites, brochures, and public education campaigns. The utilization of these different vehicles reflects how consumers seek information concerning nutrition and dining options. Industry approaches are as diverse and "customized" as our consumers' expectations, eating habits, and preferences.

The restaurant industry's efforts are substantial and are continuing to evolve. A survey of such efforts compiled by the Association in 2005 highlights these efforts. The range of approaches is not by accident. Operators carefully develop, test, and ultimately offer varied ways to communicate diet and health information. A cursory review of the Association survey reflects the differing approaches by operators as to consumer expectations, preferences, and level of knowledge and interest. One cannot envision a local regulatory requirement that would account for, or produce, the varied and pervasive approach to nutrition outreach to consumers that currently exists across a broad spectrum of dining formats found throughout the City.

The Association is rightfully proud of its own efforts in developing a model nutrition program that can be consulted and adapted by its members. One of the most innovative programs the Association is pleased to support is the rapidly expanding HealthyDiningFinder.com. Originally pioneered in Southern California

it received a grant from the Centers for Disease Control and Prevention. The web-based program enables consumers to input their dieting objectives. In return, restaurants and selected menu items consistent with their goals are provided. The Association also serves as an important resource for medium size and smaller restaurants who are interested in developing nutrition programs but lack the experience or internal expertise. Many other organizations and companies play a similar role. Building on the success of our efforts such as this is far more likely to yield meaningful public health gains than the simplistic "uniform" approach envisioned by the Proposal.

Industry efforts are not static. Innovation and change abound due to what restaurants do best – listen to the customer and deliver. The dynamic nature of industry efforts is reflected in a visit to any number of our member's restaurants. The sophisticated yet accessible channels of communication utilized by our members mark a level of achievement and success for which our industry is deservedly proud.

These voluntary efforts provide achievable, suitable, and effective means by which consumers understand the role restaurant foods play as part of their individualized diets. The necessity, value, and attendant costs are judged against the backdrop of current, ongoing, and always-evolving industry efforts. We would be pleased to meet with City officials to share more details on the many in the many current and planned industry efforts and in working together our common goal of aiding consumers in making informed food choices.

C. Regulatory Importance of Fostering Flexible, Innovative Approaches to Furnishing Nutrition, Diet, and Health Information to Consumers

The Board is not the first regulatory body to determine that the nature of foods served in restaurants has important public health consequences. In implementing the Nutrition Labeling and Education Act of 1990 (NLEA), the U.S. Food and Drug Administration (FDA) found it was proper to exercise its authority over nutrition claims in restaurants, observing "that, from an overall public health perspective, this important segment of the diet cannot be ignored." ^{7/} FDA, however, reversed its proposed rule that would have applied the same compliance standards for packaged foods to restaurant foods. The constitutional significance of this determination is discussed further below.

^{7/} 58 Fed. Reg 2387 (Jan. 6, 1993) (final rule). FDA is, of course, the federal agency charged by Congress to bring its expertise and insight to establish a rational method of recognition in the very area that the Department now treads.

Most telling are the factual findings by FDA in arriving at a flexible compliance standard by which restaurants must demonstrate a "reasonable basis" for why a menu item complies with a defined nutrient content claim. ^{8/} First, the agency observes that prepackaged foods have some variability but that the agency "has been able to develop workable criteria that take into account these variations." ^{9/} Then, FDA identified and addressed the difficulty in regulating restaurant foods. The preamble to the NLEA final rules states:

However, the agency acknowledges that there are variations unique to restaurant foods (e.g., methods of preparation). Moreover, FDA recognizes that there are difficult questions, as demonstrated by the comments, as to how exactly to analyze restaurant foods in a reasonable and cost effective manner... FDA concludes that the difficulties are not so great as to preclude restaurants from making claims or to prevent the agency from being able to assure consumers that the nutrient content claims that appear on restaurant foods reasonably reflect the nutrient content of the food. ^{10/}

On this basis, FDA established a flexible compliance standard for restaurant foods that takes into account the need for flexibility to encourage (not discourage) efforts to provide patrons nutrition information. ^{11/} The Board has misunderstood this important difference between prepackaged and restaurant foods. In light of the unique nature of restaurant foods, it would be irrational and arbitrary to move forward with the Proposal. Against the same administrative record before the Department, FDA recognized the unique properties of restaurant foods in devising a rational approach that fosters consumer access to nutrition information for restaurant foods.

^{8/} FDA separately determined that when nutrient content claims are conveyed that the restaurant must meet the regulatory definition established by the agency, discussed below.

^{9/} *Id.* at 2387.

^{10/} *Id.*

^{11/} See 21 C.F.R. § 101.10. The constitutional significance of FDA's approach is addressed separately below.

II. FUNDAMENTAL FLAWS AND INCORRECT ASSUMPTIONS OF PROPOSAL WILL YIELD SUBSTANTIAL COSTS AND UNINTENDED CONSEQUENCES

A. The Myth of Standardization

The effectiveness of the proposal is dependant upon the Board's working assumption that for certain restaurant operators (presumably including chain restaurants) menu items are sufficiently standardized so that a statement of caloric content accurately reflects the menu item as order-and-consumed. Notwithstanding the central importance of this assumption, the Proposal makes no findings or assessment as to the degree of uniformity necessary to render a menu item "standardized" nor is there consideration as to whether the necessary degree of standardization in fact exists. It does not.

Standardization – uniformity between one "identical" item to those prepared before and after it – is a concept that exists for prepackaged foods displayed on supermarket shelves. Food processors operate using sophisticated equipment, weight control programs, and other measures that, indeed, do achieve a remarkable level of consistency and uniformity among packages often produced at a rate of several hundred per minute. ^{12/} Multiple-unit restaurants go to great lengths to ensure a consistent dining experience, yet inevitable variation and customization dictates the calorie content of what is served. The variation among employees, sourced ingredients and method of preparation are just a few of the many variables that yield differing nutritional values for seemingly identical menu items. ^{13/} For smaller restaurants, consistency relative to portion control of the kind envisioned by the Department is even more challenging and (as for all restaurants) in counter to the consumer's expectation to customize.

A restaurant meal is very different from a packaged food. If you purchase a can of beans, you get a can of beans (standard size, standard ingredients, and uniform weight). A restaurant meal can vary from chef to chef and from day to day. A restaurant cannot assure perfect consistency in recipes and portion sizes or the many other factors that influence calorie content for the millions of menu items our industry serves each day.

^{12/} This uniformity allows for the exacting compliance rules enforced by FDA. See 21 C.F.R. § 101.9. Commercial food processors who adhere to good manufacturing practices readily obtain the accuracy of nutrition labeling mandated by FDA for packaged foods.

^{13/} Chain restaurants often have entire teams of people dedicated to the development of procedures and employee training to ensure consistency. Even under the best of circumstances there is typically an unavoidable level of variability that creates nutritional variability for the same menu item. This variability exists even when there is no customization, which of course is frequent.

In larger and presumably more sophisticated operations, typical of many chain restaurants, a great deal of training and oversight is in place to ensure standard serving amounts and consistency of quality, no matter the locality where the item is ordered and served. However, a person, not a machine, is spreading the mayonnaise. A restaurant simply cannot match the level of precision associated with a food manufacturing facility, which produces standardized packaged foods to exact specifications.

Restaurant meals are prepared by people on the spot. For many items, a "standard" does not exist. For example, what is the standard size of a "schmear" of cream cheese on a bagel? No two schmears are equal, especially in calorie count. In larger chain restaurants there is substantial focus on uniformity to both meet consumer expectations and to ensure that the restaurant delivers the value reflected by the menu price. Product "builds" (recipes), scoops, ladles and other utensils are uniform across a chain restaurant's system to support consistency. At the same time, hand-scales are not found in food preparation areas of chain restaurants and other restaurants and regardless operators cannot replicate the precision of industrial food processing equipment. Experience and expertise within the industry and common experience amongst all of us demonstrates that the assumptions on standardization by the Department are false.

The sources of variability within a restaurant setting are substantial and differ from one dining format to another. In addition to the factors listed above, consider these additional sources of inherent variability that affects calorie content: cooking time and method selected; natural variance in the weight of foods (e.g., pieces from a chicken, cuts of meat, size of fruit/vegetable); changes in base ingredients purchased from a vendor; differences among vendors even when all meet a single specification set by the restaurant; the amount of the menu item (main dish, side or other component); and the discretion of the chef or food preparer who may place more or less of a component or side dish to achieve a certain presentation for a given order.

The simplest of menus does not present the uniformity and purported standardization assumed by the Department. One national chain restaurant prides itself on quality and simplicity. The menu board reflects a choice from four meats, three formats (burrito, soft taco, etc.) and four toppings/sauces. There are no "standard menu items." Rather, one finds a fixed but not insignificant number of combinations that could not possibly be captured on the largest of menu boards. All of this variability is in addition to the side dishes offered. Hence, even in the most uniform of QSRs posting calorie information in the manner proposed will not reasonably capture what is ordered and served, as explained further below.

In addition to the "human factor" contributed by food preparers, there is a human factor resulting from consumer customization. Many QSRs are designed

around the concept of customers' self-selection of ingredients. According to National Restaurant Association research, for example, the make-up of a sandwich consisting of just five items or toppings (such as bread, meat, cheese, lettuce, tomato), can be ordered in a myriad of ways. A sandwich comprised of 10 items or toppings could theoretically yield millions of possible combinations. Further, an individual presented with 15 items for a sub or sandwich has a seemingly endless number of possible combinations.

It would be futile for restaurants to accurately provide nutrition labeling for the significant number of different ways it might serve a particular menu item on a particular day. Everyone recognizes that ordering a meal in a restaurant is personalized. It is far different than buying a prepackaged food where the consumer only has the option to buy the product presented to them (i.e., there is no opportunity for customization). This complexity must be appreciated and addressed by any scheme designed to mandate calorie or other nutritional information for restaurant foods.

Is it impossible or impractical to arrive at a single calorie value for a given menu item? No, of course not. Chain and other restaurants utilize pamphlets, brochures, websites and other communication tools to convey nutrient information for a given menu item. Indeed, several chain restaurants have developed remarkable web-based information tools that allow consumers to calculate the total nutrition values of any number of combinations of menu items. Such information is typically presented in a manner and context whereby consumers appreciate the utility and limitations of the information. 14/

A statement of a fixed number of calories on a menu board could reasonably lead a consumer to expect that, like a packaged food, the menu item served contains that precise amount of calories. This is, of course, precisely what is intended by the Department.

Menu labeling in this fashion reasonably creates expectations of accuracy that simply are not achievable in restaurants. Neither consumers nor operators would be well-served by this result. Restaurants in New York City would also face an impossible situation: violation of the Health Code (if caloric information is not posted) or risk legal liability or undeserved negative publicity when someone confirms that the calorie values lack the accuracy consumers might reasonably expect. 15/ Indeed one single-unit New York City restaurant shared

14/ For example some restaurants accomplish this important "qualification" with a short explanation of variability from the posted nutrient value(s) versus what is purchased.

15/ Many restaurants have reasonably managed this potential for confusion through a supplemental statement explaining the possibility and source of variability between the nutrition information provided as compared to the menu item purchased. Of course, no level of quality

that it has expended more than \$10,000 on analytical testing on menu items but will only provide information if asked. Why? The testing showed such a large variance that they determined posting average values would mislead their guests. This proposal would force them to do so.

The Department makes no particularized findings that the calorie information that would be mandated will be sufficiently uniform so as to be meaningful. The reality for restaurant foods, as demonstrated by this administrative record and the common experience of restaurant patrons, is incompatible with the premise of the Proposal. The context in which restaurant foods are ordered, prepared and consumed readily illustrates the flaw of the Proposal and why the lofty goals espoused by the Department will not be met. The Department, accordingly, lacks a rational basis for mandating calorie content statements in the manner proposed.

B. Scope of Proposal Ill-Defined and Over-Reaching

The scope of the proposal is ill-defined and reaches a far broader scope of operations than contemplated by the Notice. Proposed Section 81.50(5)(b) ("scope and applicability") identifies "menu items that are served in portions and the size and content of which are standardized...." No definition is offered beyond "size and content." We offer comments based on the plain meaning of the terms the Department uses to identify the scope of the Proposal.

The consequence of the Board's mis-estimation as to scope is of great policy and legal significance. There are legal ramifications of a proposal that is intended to apply to largely out-of-City chain restaurants (who operate, employ and pay local taxes), not locally-situated restaurants, discussed separately below. Indeed, the Proposal is largely premised on the assumption that "standardized menu item" has an established and clear meaning. Indeed, the Department confidently states (with no explanation or basis) that the Proposal will apply to only 10% of restaurants in the City.

"Standardized menu item" is not a term that lends itself to fair and consistent application. Defining "standardized" in terms of size and content fails to provide a level of specificity that clearly conveys who is covered under the Proposal, as noted. Standardization, as the Proposal contemplates, simply does not exist. 16/

assurance oversight and training could ever produce the consistent envisioned (and required) by the Proposal.

16/ An unfortunate outcome from the Proposal is that industry attempts to offer and encourage healthful modifications to existing menu items, serves to further undermine the very notion of standardization.

"Standardized menu items" would presumably cover many of the items that are offered at chain restaurants. At the same time, the Board intended to exempt all but the largest chain restaurants, not smaller restaurants where the supposed standardization does not exist. Consider, however, a three-egg cheddar cheese omelet offered on the menu of any number of high-end or other small restaurants where the Proposal supposedly does not reach. The omelet indeed is "standardized." The portion size is fixed at three eggs, and the formulation presumably is fixed (i.e., one scoop of cheddar cheese, using the scoop that is placed at the bulk container in the kitchen, and a relatively small amount of margarine to prevent the omelet from sticking to the hot pan).

The omelet is "standardized" and so are many other restaurant menu items found at numerous restaurants big and small. The deli on nearly every block in many areas of the City all offer a "standardized" turkey sandwich. Portion control is important to operators of any size as a simple matter of industry economics. There is no basis to distinguish "standardized menu items" in chain restaurants from foods in other restaurants that are offered for sale with a standard portion size, formulation, and ingredients. A slice of "vegetable lasagna," always sliced in proportionate shares before being plated with use of a spatula is standardized, and so is the "2-pound lobster," 12-ounce filet, and perhaps even the 4 lamb-chop special with a mint sauce served on the side. Each of these items, like traditional chain restaurant offerings, can be and often are "customized." The Proposal does not distinguish among these different menu offerings, and all could reasonably be subject to mandatory calorie labeling on the basis of consistent size, formulation and ingredients.

FDA has no definition of a standardized food in its regulations. Interestingly, in explaining the scope of an exemption for mandatory nutrition labeling of foods sold from the deli counter of a supermarket, the agency explained that a food that is standardized is one that "arrives at a store in a form to be sold directly to the consumer (i.e., it is 'standardized')." ^{17/} A food that is not standardized, according to FDA, undergoes processing or preparation, including portioning, before being sold to the consumer. ^{18/} Viewing FDA's formulation of "standardized" as reasonable on its face, the Proposal would cover virtually no restaurant foods, which by their very nature are prepared in some fashion.

Of course, the answer is not to extend an ill-conceived labeling requirement to 90 or 100 percent of restaurants, rather than just the estimated 10

^{17/} 58 Fed Reg at 2148.

^{18/} FDA cites as examples (for supermarket delis) filled, customized, shared or assembled bakery items that are prepared on-premise, and foods portioned per customer request. FDA observes: "In these examples, the food is not a 'standardized' in the form that it is sold to consumers when it arrives at the store." 58 Fed. Reg. at 2148.

percent targeted by the Department. Nor is there an appropriate definition of "standardized" that the BOH can adopt. Rather, the myth of standardization, and the impossibility of arriving at a clear, fair, and easy-to-apply definition underscores why the Proposal should be withdrawn from further consideration. The scope of the Proposal as intended by the Department bears no relationship to the reach of the language of Proposed Section 81.50. Moreover, the far-reach of a proposal based on the concept of "standardized menu item" imposes many costs on a broad segment of New York City restaurants.

C. The proposed "solution" to the Variety of options will not accomplish the desired goals of the Department.

There is some recognition in the Notice as to the sheer complexity of the Proposal with regards to multiple varieties of a similar menu item. Proposed Section 81.50 (4)(i) states: "For menu items offered in different flavors and varieties, including, but not limited to, beverages, ice cream, pizza, and doughnuts, the range of calorie content values showing the minimum to maximum numbers of calories for all flavors and varieties of that item shall be listed on menu boards and menus for each size offered for sale." This approach to calculating values is complex, confusing and unlikely to be applied (or enforced) in a uniform fashion.

This proposed "solution" will not accomplish the desired goals of the Department. It will be a disservice to restaurant guests. Take, for example, a coffee chain. Popular cafes typically offer a very broad variety of options for a coffee drink. A customer can order a cafe latte with skim, 2%, whole, or soy milk. The calorie content of this 16-ounce beverage can vary from 160 to 260 calories. That 100 calorie difference means a great deal to someone who is watching his or her caloric intake. Small, specific changes in food and physical activity behaviors can have a positive effect on health. Research shows that affecting energy balance by 100 calories per day could prevent weight gain in most of the population.^{19/} The deviation between actual calorie content and the value required to be declared by the Board could be significant.

In addition, the contemplated calculations are unclear, subject to differing interpretations, and complicated by ever-changing flavors and varieties offered at a given restaurant on a given day. The complexity of the proposed methodology would add additional costs exacerbated by the frequency of changes to menus of many restaurants. These costs could be significant given the breadth of what foods would be considered "standardized" as discussed above.

^{19/} See Krukowski, R., Harvey-Berino, PhD, RD, J., Kolodinsky, PhD, J., Narsana, MS, R.T., and DeSisto, T.P., "Consumers May Not Use or Understand Calorie Labeling in Restaurants," *Journal of the American Dietetic Association* (June 2006) at 917.

D. Department Failed to Consider, Define, or Reasonably Measure Other Costs

The Department provides no estimation of costs associated with the Proposal. This omission is not incidental or irrelevant. It is difficult, if not impossible, for the Department to make any reasoned conclusion as to the merits of a final rule without weighing costs. City restaurants, particularly mid-size and smaller operators, may lack the ability to fully appreciate the costs to their business and express such concerns via the public comment process. There are true costs associated with the Proposal. Those costs are also of significant legal consequence, as explained below.

The cost of compliance will, of course, vary by the operator. The cost of redesigning and maintaining menu boards is expensive and reprinting of printed menus is expensive as well. These costs are not borne by some unknown out-of-City corporation. Whether national or local, it is the New York City restaurant that ultimately bears the costs of ill-conceived regulation. New Yorkers pay for the Board's mis-calculation in higher menu prices and the impact on jobs. The prosperity of restaurant operators is necessarily local as well.

Changes in menus, a mainstay of most restaurants, will exacerbate these costs. One national chain and others were properly viewed as innovators when posting nutrition information on menus some time ago. Experimentation yielded to realism given the practical operational costs. Under the Proposal, the Board would view innovative operators as outlaws if they deemed other communication channels more effective and/or economically obtainable.

There is also a complete lack of consideration for the impact of the Proposal on small businesses. As explained above, the potential scope of the term "standardized menu item" could force numerous items to bear calorie information. Regardless of the size of the restaurant, these costs are real. It is rare in this age of government accountability and transparency that the Board would approve a new measure without instructing the Department to make a full accounting of costs and burdens weighed against the actual benefits.

E. Proposal Fails to Consider Consumer Expectations, Behavior and Limitations of Mandatory Calorie Labeling

The Department premises the Proposal on an enticing proposition: by placing calorie information next to the menu price, consumers will finally have the necessary information from which to make informed choices. This would, in-turn, change consumer behavior because at present the Department views City residents as completely unaware of the diet and health consequences of their purchasing decisions. We give New Yorker's more credit than that but believe that we have a

long way to go in supporting consumers in making healthful diet and lifestyle choices.

Theories and hypotheses are useful analytical tools, indispensable to scientists and useful to spur public debate. Sound public policy and principles of law preclude the reliance on a hypothesis to impose new regulation. In the present case, the Department's preferred view of the world is dubious. There are many factors that would impede or undermine the promised public health gains from mandating menu display of caloric values.

1. Practical Limitations of Posting Calories on Menus and Menu Boards

The ideal world of City menus cluttered with calorie and other information is not easily obtainable and not very useable. For menu boards there are practical space limitations. Mandated uniform font and type size would likely make all information unreadable and inaccessible. Consumers may mistakenly hand-over \$2.98 to a cashier for a 99-calorie hamburger that actually contains 298 calories and sells for 99-cents. Will the mandatory menu labeling requirement work? The Board will be left to guess because the Department has not evaluated the impact of its proposal. In contrast, before FDA mandated the Nutrition Facts panel for packaged foods it conducted extensive consumer research and invited public comment. The research and ensuing public discourse led regulators to abandon many "good ideas" that proved confusing or inaccessible to consumers when tested.

The Department's approach appears to be "mandate now, hope for the best later." A few member companies have tried to redesign menu boards and even preliminary efforts have yielded poor results. The menu boards will be difficult to read and will frustrate, not inform, patrons. 20/

2. Assumptions on Utility of Caloric Values Speculative and Incorrect

The notion that inflexible, mandatory caloric labeling will influence consumer behavior is plausible but incorrect. 21/ It is important to recognize that

20/ The consumer is the ultimate determinant of success. Research in this area reveals that the Department's preferred option is not shared by consumer. We find informative and significant the findings of the Hartman Group that has actually examined consumer behavior. Their findings further evidence the wide gap between reality and this Proposal.

21/ The Association does not view calorie information as itself irrelevant. Of course, nearly all chain restaurants provide an array of nutrition information precisely because they want to aid our consumers in making informed choices.

the benefit of this initiative does not depend on the Department's ability to demonstrate the value of calorie information generally, but rather that there is some (as yet unmeasured) benefit to the prescriptive proposed requirement below. Moreover, the Board, for reasons discussed below relative to constitutional considerations, must determine that the purported benefit is unobtainable by any other (less restrictive) means.

The Department cites the NLEA and derides restaurant websites (and presumably all other innovative means of communication) as inadequate because the information is not accessible at point-of-purchase. Remarkably, and without any citation or explanation, the Department posits of the Nutrition Facts panel on packaged foods: "This information is widely used." The unabated rise in obesity rates since 1994 suggests that access to nutrition information does not yield any measurable public health benefit. Even more speculative is the notion that calorie content alone in a restaurant will be successful when complete nutrition labeling on packaged foods, has had little impact for the majority of Americans.

Proponents will point to the rise in obesity and the number of away-from-home meals to suggest that restaurants are the culprit. Presumably, since the Department won't ban out-of-home dining its easier to mandate calorie values on menus. Perhaps, but the scientific literature suggests that the approach will not work, raising numerous issues that the Department must address. ^{22/}

Industry research has found that consumers do not respond favorably to attempts to regulate their eating behavior. They perceive such actions as meddling and condescending and, in many cases, may respond by rejecting altogether the idea of trying to "eat wisely." The Department's conjecture and assumptions stand in marked contrast to empirical data and studies of consumer expectations. Menu and menu board labeling will not achieve the desired effect. We know through industry research that customers do not favor placing nutrition information on menus or menu boards and that it will not dramatically change their behavior. They do not add up menu item calories when they are looking forward to a meal nor is calorie values for individual items itself necessarily useful (even though per-item values is the only feasible way to present nutrition labeling). Restaurants, no matter how responsible or committed, cannot present calorie values for individual menu items and for various "combo's" that might be offered or selected by consumers, as explained above.

From extensive ethnographic research, we find that there is a powerful disconnect between "label reading" behavior and actual food consumption. Put most

^{22/} Indeed, a great body of nutrition science literature is focused on dietary factors such as fat, fruits and vegetables. See Howard, PhD, B.V., Van Horn, PhD, L. et al, "Low-Fat Dietary Pattern and Risk of Cardiovascular Disease," *JAMA* (February 2006).

simply, we believe that while an interest in nutrition information *may* drive short term attitudes or purchase behaviors, this interest has no net effect on the overall amount of calories consumed or any number of other factors that influence diet and overall health.

There are many “disconnects” in how consumers see themselves and their views on diet and health that will render mandatory calorie labeling on menus irrelevant. The consumer research of the IFIC Foundation, “Away From Home Foods: Opportunities for Presenting Obesity” warrants careful consideration. ^{23/} We anticipate that the Board’s review of this study alone will prompt an instruction to the Department to go back to the drawing board.

Several notable findings of the IFIC research include the following.

- Consumers don’t readily understand that calories and other dietary changes impact their energy balance. Unaided, just 2 percent noted the value of eating fewer calories and just one-half identified consuming less of a specific type of food or beverage.
- Probing consumers on their understanding of calories reflects that many likely won’t utilize mandatory calorie information. Sixty-seven percent look for calorie information, but 18 percent answered incorrectly or declined to guess how many calories they should eat each day; only 29 percent correctly understood that calories in general cause weight gain.
- The study found that it is very difficult for individuals to manage energy balance and/or calculate discretionary calories.
- Consumers do not adhere to the Dietary Guidelines’ recommendation of moderate to intense activity 30 minutes most days of the week. IFIC’s Food and Health Survey noted that 36 percent of consumers are not physically active, and only 2 percent are active 1-2 days per week.
- Among the “learnings” highlighted by IFIC: lifestyle demands put health on the back burner, especially for parents; information doesn’t translate into action and consumers struggle for motivation to change behavior.

The IFIC study also sheds light on a number of other pieces to the puzzle. There is certainly a great deal left to be done.

As noted below, there are a number of studies and scientific evidence the Department is either not aware of or inexplicably failed to consider and decided to ignore. ^{24/} To make clear, the Association has certainly not had the time, nor do

^{23/} See IFIC Report (May 2006).

^{24/} If there was any greater evaluation of the issues by the Department it is not evident from the scant information presented in the Notice. Denying access to any such broader consideration to interested parties would itself warrant withdrawal of the Notice. Regardless, we further note with

we purport to set-out the body of relevant scientific literature. The 30-day comment period and lack of advance notice (via the Department's Regulatory Agenda) makes such a task impossible. The IFIC report and other studies do illustrate there is "more to the story" than is apparent in the Notice.

Ill-considered assumption that access to caloric values will influence behavior or public health is a study by Dr. Krukowski, et al. The large survey examined the ability of people to estimate their true calorie needs, whether consumers read labels and whether they seek calorie labeling for restaurant foods. The nearly 1000-person survey found that 44 to 57 percent of responses reported that "they would not likely use restaurant food calorie information." ^{25/} For whatever reason respondents who frequent QSRs "were significantly more likely to report that they rarely look at food labels . . . and would not use restaurant food labels to look for low-calorie foods. ^{26/} Experts have also cautioned against moving forward with new public policies absent a careful scientific basis for doing so. ^{27/}

Krukowski's research identified another confounding observation – the consumers with less healthy eating habits did not correlate to weight.

The influence of weight status on the use of food labels was examined and no significant patterns in reported food label use or desire for more information in restaurants were found. This finding is somewhat inconsistent with previous research that has suggested that those who have less healthful dietary habits are more likely to ignore food label information (13-15); however, weight status and the quality of ones dietary habits are not always related.

The study's findings and the inconsistency with some prior research suggest the obvious value of further scientific investigation. Further, the cited study reflects the premature speculation by the Department that mandating calorie values on menus will have any effect on body weight and obesity. Indeed, the authors conclude from the pilot data that "recent legislation advocating for greater labeling of restaurant food may not be particularly effective in combating the

great concern that the Department did not consult or utilize the expertise and perspective that resides within the restaurant industry that would be subject to the proposed new requirements.

^{25/} *Id.* at 918.

^{26/} *Id.*

^{27/} The University of Chicago's Tomas Philipson observed with regard to sound federal policy: "Without solid scientific conclusions bearing on the issues of food labeling and the obesity epidemic, the proposals would not be in the interest of public health or in the tradition of a science-based agency such as the FDA." Philipson, T., "Government perspective: food labeling," *The American Journal of Clinical Nutrition*, (2005) at 263S.

obesity epidemic if people are not looking at existing food labels and are not able to use this information for nutrition planning.” ^{28/} Other studies have examined the need for education in advance of simple nutrient values. ^{29/}

Against this backdrop the assumption that calorie values on menus will yield any public health benefit is suspect. The Department must come to terms with the realities and challenges of the regulatory content they seek to influence. There is no rational, science-based justification for the Proposal nor is there any notion that the initiative would influence obesity or advance the public health. The theoretical appeal of the Proposal will not produce measurable benefits that could outweigh the associated costs.

3. **Hyper-focus on Calories Misinforms and Will Encourage Unsound Dietary Practices**

An over-emphasis on calorie content also undermines effective consumer education. The ability to convey complex information in useable, understandable ways creates a challenge. The Department’s solution – simplify the message to a single nutrient value – is short-sighted and out-of-sync with public health experts outside of City and a few small circles.

The Dietary Guidelines illustrate the gap between the Proposal and the consensus within the public health community. The 2005 Dietary Guidelines for Americans contrasts markedly from the Department’s single nutrient focus underpinning its proposed public health initiative. ^{30/} The nine areas of focus represent the scope of core areas that relate to diet and health – adequate nutrients within calorie needs, weight management, physical activity, food groups to encourage, fats, carbohydrates, sodium and potassium, alcoholic beverages and food safety. The focus and recommendations conveyed in the Dietary Guidelines have, of course, been readily accepted and espoused by federal policy-makers. ^{31/}

The downside to a distorted message focused on calories is apparent from an understanding of how consumers purchase and consume restaurant foods – the “hidden calorie” problem. Recall the level of customization at all restaurants.

^{28/} *Id.* at 919. The study states: “While it is always better for consumers to have access to more, rather than less, information, these preliminary results indicate that public health efforts to control obesity perhaps should first focus on an education campaign designed to teach appropriate calorie intake values and food label reading skills to the general public. *Id.* at 919-920.

^{29/} Rothman, MD, MPP, R.L., Housam, BS, R. et al, “Patient Understanding of Food Labels,” *American Journal of Preventative Medicine* (2006).

^{30/} Dietary Guidelines for Americans 2005. See also 2005 Dietary Guidelines Advisory Committee (2005).

^{31/} Schneeman, PhD, B. 2005 Dietary Guidelines for Americans presentation.

Assume that a posting of calories would encourage the purchase of a salad over a higher calorie alternative. Proponents of the Proposal will argue that the purchase of the salad validates the wisdom of mandatory calorie labeling – information is power. The consumer then selects a salad dressing, or requests a small portion of mayonnaise. There is now an undetected (i.e., unlabeled) bump in calories above that identified on the menu. Does the consumer recognize that the higher calorie choice negated any net savings from selection of the salad? Consider further that the consumer enjoys a dessert based on the mistaken belief that the salad afforded a sufficient calorie “savings” to justify the purchase of the dessert. The same would be true for any number of dipping sauces, side dishes or other customization with any array of supposedly “standardized” menu offerings. In numerous instances the consumer will be misinformed. The simplicity of calorie labeling is marred by the reality of how the information will be used (and, as pointed out above, not used). ^{32/}

The Proposal’s hyper-focus on calories will result in consumers not recognizing the importance of other food choices they make. Under the Proposal, more calories are consumed than listed on the menu board and the interest and awareness of other nutrients goes unnoticed. There is value in conveying caloric values in context of a food’s other nutrients. Many chain restaurants accomplish this very objective through innovative, diverse efforts. The Board will be unable to produce a similar result.

4. Structural Causes of Obesity Dooms Proposal

Studies also show the structural technology driven changes that have contributed prominently to rising obesity in this country. Lakdawalla and Philipson conducted extensive theoretical and empirical research in estimating that “40 percent of the recent growth in weight seems to be due to agricultural innovation that has lowered food prices, while 60 percent may be due to demand factors such as declining physical activity from technological changes in home and market production.” ^{33/}

Other dietary and consumer behaviors are contrary to the Department’s assumptions. We find calorie consumption is connected to either: (1) a set of tacit, ingrained behaviors (e.g. constant grazing) which go largely unnoticed – by consumers as well as researchers; or (2) culturally located eating behaviors.

^{32/} This scenario raises another issue that the Department ignores – education. Indeed, it is not missing “E” in the NLEA that some suspect explains the rise in obesity notwithstanding nutrition facts appearing on food labels. The Proposal isn’t concerned about education. Indeed it perpetuates the “hidden calorie” problem frustrating public education efforts.

^{33/} D. Lakdawalla and T. Philipson, “The Growth of Obesity and Technological Change: a Theoretical and Empirical Examination” NBER (May 2002). T. Philipson and R. Posner, “The Long-Run Growth of Obesity as a Function of Technological Change,” NBER (November 1999).

Specifically, those who eat together tend to eat less, while those who eat alone tend to over consume. In part, this observation stems from the fact that changes in eating behavior are less likely to arise from "information processing" than simple social or peer pressure. The administrative record before the Department will validate these considerations which must be addressed.

The Association's view is not that effective public health initiatives are not meritorious simply because there are multiple causes to complex problems. Rather, the Department must carefully consider these dominant structural and other factors and examine in what manner its Proposal will address these considerations and how the purported benefits will succeed in light of these realities. ^{34/} Particularly with regard to the attitudinal barriers, the calorie menu labeling will fail no matter how appealing one finds its simplicity.

5. Department Reliance on Isolated References Misplaced

The Notice cites just a few references in support of its sweeping assertion that menu calorie labeling will have meaningful influence over consumer behavior and health. Before addressing these references we note the scant number relative to the growing and substantial body of literature that bears on the issues at hand. ^{35/} Respectfully, the Federal Trade Commission (FTC) requires more to support a simple diet and health claim. Certainly, informed public policy should rest on more. The few cited references do not alone provide compelling support for the Department's insistence that if only consumers had calories on menus they would achieve behavioral changes and improve on obesity and other risk-factors.

The Department's broad assertion of purported benefits relies on several specific assumptions: consumers underestimate calorie content of foods and have less purchase intent when they are provided calorie information, allegedly because they are more aware of disease risk. The authority for these fundamental premises is not a governmental or third-party authoritative body, nor a wealth of studies, rather it is the work of two principle authors who conducted mail surveys in a single "southern state."

^{34/} Valuable consumer research and analysis performed by IFIC illustrates the complexity and obstacles in addressing obesity and weight control relative to consumer perceptions and behavior. See "Addressing the Obesity Debate: a Consumer Point of View," (June 2003).

^{35/} One would expect that the Department would embark upon a new initiative only after fully considering and taking account of the underlying body of scientific literature. From the limited citations, and the overly-broad and unsupportable conclusions reflected in the Notice, it appears that the Department sought out those who agree with their assumptions and hypotheses. The grant of authority to the Board to protect and advance the health of New York City residents surely requires a greater effort to examine all of the relevant literature.

The references relied upon by the Department are riddled with flaws and limitations that render the three published articles by the same two principle authors woefully insufficient to justify a sweeping, highly intrusive and costly burden on restaurants and their patrons.

- Significant flaws in methodology. The reliance on a mail panel survey has serious limitations – respondents are skewed in terms of income (not identified in the articles), there is no indication of follow-up with non-respondents, the sample sizes are small and thus not representative of U.S. population. The survey is surely not representative of New York City residents.
- At least one of the studies appears to have not even addressed calories, nor obesity (Burton, Creyer 2004).
- The surveys purport to measure “purchase intent.” References in the comment and other portions of the administrative record base research on actual consumer purchasing behavior.
- Notwithstanding the apparent bias/interest in forcing menu labeling of calories, even though authors acknowledge: “We also recognize that further research may identify additional nutrition formats that may be equally or more effective at conveying nutrition information, and that combining possible social marketing initiatives with future nutrition disclosure research seems warranted.” ^{36/}
- The studies do not address a central issue – the value of calorie information on menus and menu boards. The limited findings may be worthy of some consideration but do not address the essential issue: Is there a compelling benefit to mandating that calorie information be on menus and *menu boards*.

Finally, the authors cite to the value of “further research addressing the implications of inclusion of nutrition information on menu is warranted.” ^{37/} The conclusion is the context of the administrative record before the Board does not mirror the assumptions nor conviction reflected in the Notice that mandatory calorie menu labeling is justified.

If the Department’s hypothesis is correct we can assume that people are less likely to purchase higher calorie items at chain restaurants once the calorie

^{36/} Burton, PhD, S., Creyer, PhD, E. et al, “Attacking the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants,” *American Journal of Public Health* (September 2006) at 1675. It may be reasonable that the authors have not evaluated least burdensome or more effective means to address nutrition information in restaurants. For public policy and constitutional reasons, the Department is obliged to go further and address these issues head-on.

^{37/} Id. At 143.

value appears on menus and menu boards. 38/ Will City residents simply walk past a conveniently located restaurant and head home to prepare a balanced, nutritious, healthy meal?

They will only have to cross the street to one of the estimated 90% of restaurants that the Department has determined will not be required to post calorie information. 39/ Does the meal at the local deli across the street from targeted chain restaurants contain fewer calories than the posted values of affected restaurants? Worse, the disparate impact of the Proposal will erroneously lead consumers to believe that the food in the 90% of exempt restaurants is healthier. The Department's assumption that consumer choices will change is incorrect.

These barriers and challenges do not excuse inaction or the unwillingness to try bold, innovative approaches. This very energy drives many current and developing industry efforts. At the same time, the important public health issues at hand cannot be resolved by a majority vote of the Board. The residents of City will not benefit. There will be no public health benefits against which the costs and failures of the Proposal are balanced.

A regulatory approach should have a reasonable expectation of solving the problem; the restaurant industry has collectively known for a long time that menu labeling is not a promising solution or even an effective piece of it for many diverse operators in our industry. The Board must consider the Proposal in the context of the realities of restaurants, consumer behavior and the consensus views on nutrition education. The Department has made too many unfounded assumptions. "Good ideas" alone don't pass for effective policies that will produce meaningful change.

III. CONCLUSION

Calorie and other nutrition information is of unquestionable value to consumers. Moderating calorie intake relative to one's level of physical activity is important as well. Creative and effective solutions are critical to addressing this serious and growing public health challenge. The Association views the Proposed as largely ineffectual because it fails to appreciate the diversity of the industry, consumer behaviors and expectations. The Proposal also removes a large measure

38/ We supposed that this economic impact would be applauded by the Proponents of the Proposal as proof that the Board's bold action was effective. We suspect, at a minimum, that City restaurants and the residents they employ would not share this enthusiasm.

39/ Recall the Department hypothesizes that merely revealing calorie values on menus will discourage purchases of higher calorie food.

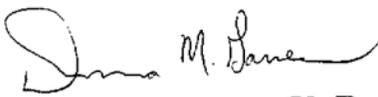
of regulatory flexibility and hence will stymie not foster innovation and access to information.

Irrespective of differing viewpoints among stakeholders, the legal framework that governs the Board's actions requires a minimum showing that the Proposal is rational and not arbitrary. For the reasons and information presented the Proposal falls well short. The National Restaurant Association opposes the Proposal for the simple reason that it will not work.

The National Restaurant Association recognizes the well-intentioned concerns that prompted the Department to seek comment on its novel public health approach to address obesity rates and foster consumer access to information. The restaurant industry recognizes the important contributions it can make. The nature and focus of these efforts are as varied and diverse as our industry. Our success – "what works" – can only be measured in the context of our industry. The Department has failed to appreciate and account for these realities.

The shortcomings and ultimate failure of the Proposal stem from misunderstandings and misconceptions about foods served in chain restaurants and other establishments. The Association welcomes the opportunity to establish an ongoing dialogue with the Board pledged toward our shared goal of maximizing the ability of restaurants to support their patrons in making positive dietary and lifestyle choices.

Sincerely,



Donna M. Garren, Ph.D.
Vice President, Health and Safety Regulatory Affairs



John Gay
Senior Vice President, Government Affairs and Public Policy



To: Rena Bryant, Department of Health and Mental Hygiene, Board of Health

Via Fax 212-788-4315

November 27, 2007

Re Resubmitting testimony with Additional Support for HC 81 50 - calorie posting

Pages: 6 (including this cover)

Ms. Bryant:

Yesterday, I submitted testimony from the American Cancer Society, Eastern Division in support of the repeal and reenactment of Section 81 50 HC. However, we recently learned that the American Cancer Society Cancer Action Network (our National Office) would also like to weigh in support of this rule. Because of this additional support, we would like to replace our earlier submission with the attached updated version that references both organizations. Please include this version for the record.

Feel free to contact me if there is any confusion, at 917-439-0026.

Thank you,
Michele Bonan

Michele Bonan
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American Cancer Society, Eastern Division
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FAXED
SECRETARY'S OFFICE
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To: Rena Bryant
Department of Health and Mental Hygiene, Board of Health

Via Fax: 212-788-4315

Re: Testimony of the American Cancer Society, Eastern Division (NY and NJ)
and the American Cancer Society Cancer Action Network
In Support of Proposed Amendment (§81.50) to the New York City Health Code
Requiring Calorie Labeling in Food Service Establishments

Date: November 27, 2007

The American Cancer Society (ACS), Eastern Division and American Cancer Society Cancer Action Network applauds the efforts of the New York City Board of Health in proposing this important policy initiative to help address the urgent problem of obesity.

Obesity is a major epidemic with serious implications for the health and economic status of New York City and our country. While most know that excess pounds raise the risk of heart disease, hypertension, diabetes, stroke, and other fatal health problems, few are aware of the link between obesity and cancer. It is currently estimated that 14% of cancer deaths among males and 20% of deaths among females are attributed to obesity (Calle et al., 2003). Consequently, more than 2250 New York City residents die each year from preventable obesity-related cancers. National health care expenditures are estimated at \$70 to \$100 billion per year and are expected to grow with the increasing rates of overweight and obesity (Olshansky, 2005). Healthcare costs are 56% higher for an obese person compared to a normal weight person. This puts significant financial pressure on the Medicaid program and the New York City budget since obesity is approximately twice as high in low-income populations compared to higher income groups (Willet and Domolky, 2003). The Centers for Disease Control and Prevention's Pediatric Nutrition Surveillance Study of 2002 found that New York State has the 3rd highest rate of low-income overweight children in the country.

Every five years the American Cancer Society issues Nutrition and Physical Activity Guidelines for Cancer Prevention. A national panel of experts in cancer research, prevention, epidemiology, public health, and policy develop the Guidelines, and as such, they represent the most current scientific evidence related to dietary and activity patterns and cancer risk. Given the mounting evidence regarding obesity and cancer, the current Guidelines, released September 28, 2006 (listed below), reflect an increased emphasis on weight control.

ACS Recommendations for Individual Choices

1. Maintain a healthy weight throughout life.
 - Balance caloric intake with physical activity.
 - Avoid excessive weight gain throughout the life cycle.
 - Achieve and maintain a healthy weight if currently overweight or obese.
2. Adopt a physically active lifestyle.
3. Consume a healthy diet, with an emphasis on plant sources.
4. If you drink alcoholic beverages, limit consumption.

Community efforts are also essential to create a social environment that promotes healthy food choices and physical activity. Therefore, the ACS Guidelines also include a key recommendation for community action to accompany the four recommendations for individual choices to reduce cancer risk. This recommendation for community action recognizes that a supportive social and physical environment is indispensable if individuals at all levels of society are to have genuine opportunities to choose healthy behaviors.

ACS Recommendations for Community Action

Public, private, and community organizations should work to create social and physical environments that support the adoption and maintenance of healthful nutrition and physical activity behaviors.

- Increase access to healthful foods in schools, worksites, and communities.

The American Cancer Society supports initiatives that empower individuals to make healthier choices, and therefore supports the repeal and reenactment of §81.50 to the New York City Health Code. This proposal to require calorie labeling is consistent with the ACS Guidelines

regarding community action and will help create the environmental changes needed to impact the current trend in obesity. An individual cannot avoid health risks unless they know where they are.

Like other voluntary health organizations, ACS disseminates nutrition guidelines in order to empower individuals with information to make informed decisions about their health. However, in order for an individual to make an informed decision about what they eat, it is important that nutritional information be readily available when the purchase decisions are being made. People have grown accustomed to having nutrition information on packaged foods in supermarkets (3/4 of people report using labels) and they want and deserve to have it on menus as well. A recent, industry-sponsored poll showed that 83% of Americans want restaurants to provide nutrition information. Menu labeling legislation has been introduced in 17 states and cities across the country, as well as in the U.S. Congress.

In addition to providing consumers with information to help them make informed decisions, menu labeling would provide an incentive for restaurants to add new menu items and reformulate existing options to reduce the calories. We saw this happen when Nutrition Facts labels went on packaged foods in 1994 and we see it now with companies lowering or eliminating trans fats in response to the FDA requiring trans fat labeling. The food industry may think twice about selling a quad burger (4 beef patties, 4 slices of cheese, and 8 slices of bacon), as a leading fast food company does, if they have to show the 1,000 calorie price tag that goes along with it.

With approximately half of the food dollar now being spent away from home (almost doubling since 1970), it is appropriate to make caloric information visible in restaurants, especially where foods are typically higher in fat, calories, and larger portion sizes prevail (Finkelstein et al, 2004). If implemented, most fast food chains in New York City will need to post the caloric content of their menu offerings. This is critically important since one study found that children who ate fast food obtained from 29 percent to 38 percent of their total energy intake from that source and ate more total fat, more saturated fat, more total carbohydrate, more added sugars, more sweetened beverages, less fluid milk, and fewer fruits and non-starchy vegetables than those who did not. The same study estimated that on a typical day nearly one third of children in the U.S. eat fast food (adolescents visit a fast-food outlet twice per week on average) and that

these extra calories pack on an extra six pounds per child per year. Parents especially deserve to have more easily viewed caloric information to compare menu items and inform their family food purchases outside the home.

Further, people need calorie labeling information because it is difficult to estimate the calories in restaurant meals. A study conducted by the Center for Science in the Public Interest and New York University found that even well-trained nutrition professionals couldn't estimate the calorie content of typical restaurant meals. They consistently underestimated calorie amounts and the underestimates were substantial – by 200 to 600 calories. For example, when shown a display of a typical dinner-house hamburger and onion rings, the dietitians estimated that it had 865 calories, when it actually contained about 1,500 calories. If trained nutrition professionals can't estimate the calories in restaurant meals, the average consumer doesn't stand a chance. Given the intense market research applied to the development of new food products, it is likely that fast food companies understand that few consumers can accurately estimate calories.

The current voluntary provision of nutrition information by many restaurants, although inconsistently offered, does show that providing food composition data is feasible, practical, affordable, and wanted by the consumer. Although having the information on a website or somewhere behind the counter is a good start, it is inadequate. Consumers should be able to at least see the information most related to weight gain (calories) when ordering their food and drinks. A patron should not be expected to request the information or go searching to view the caloric content of the food somewhere else like a poster on the wall with tiny print. The increased flexibility by the health department is a positive change that should be less burdensome for the industry to comply.

We have seen in the fight against tobacco the substantial benefits of taking an aggressive policy-based approach that makes it easier to pursue healthier behaviors while creating barriers to unhealthy practices. In the early years of tobacco control, some states such as California and Massachusetts implemented a variety of population-based interventions before the efficacy was clear. It was only when these initial "real-world" efforts, were evaluated and proven successful, that led to best practices being disseminated to other states. Like lessons learned in tobacco, strategies such as the proposed labeling provision, should be part of a comprehensive approach

to address obesity and the many factors contributing to the problem. Fortunately, New York City has already implemented other citywide changes such as improving the school lunch program and enhancing nutrition and physical activity regulations in daycare settings

Finally, the National Academies' Institute of Medicine recommends that restaurant chains "provide calorie content and other key nutrition information on menus and packaging that is prominently visible at point of choice and use" (2006). The Food and Drug Administration, Surgeon General, U.S. Department of Health and Human Services, and the 2007 President's Cancer Panel also recommend providing point of purchase nutrition information at restaurants as a strategy to reduce caloric intake and help combat the worsening obesity crisis.

The American Cancer Society supports the significant step proposed by the City of New York as part of a comprehensive approach to addressing obesity, and we believe it is likely to promote reductions in obesity and cancer. Therefore, we strongly urge the adoption of Proposed Amendment §81.50 to the New York City Health Code.