

MEMORANDUM

April 6, 2021

TO: Health and Human Services Committee

FROM: Linda McMillan, Senior Legislative Analyst

SUBJECT: Executive Regulation 21-20, Eating and Drinking Establishments Regulations – Nutrition Labeling

PURPOSE: Worksession; Recommendation/Vote Expected

Expected for this session:

Clark Beil, Administrator, Licensure and Regulatory Services, DHHS

Leslie Frey, Legislative Analyst, Office of Intergovernmental Relations and DHHS

Executive Regulation 21-20, Eating and Drinking Establishments Regulation – Nutrition Labeling was received by the Council on February 23, 2021. The regulation as transmitted says it is subject to Council review under Method 1. However, the County Code specifies that it is to be reviewed under Method 2. Under Method 2, the Council must approve, disapprove, or extend time for consideration within 60 days (April 24) or it will be automatically approved. The Council's Attorney has concluded that since the advertising requirements are the same for Method 1 and Method 2 there is no need to readvertise.

This regulation is completely technical in nature. Its main purpose is to update formatting.

Council staff recommendation: Approve as transmitted. As background to this program the remainder of this memo provides information from the County's website on the menu labeling law and requirements. Mr. Beil can respond to Councilmember questions about how they include this requirement in inspections and compliance. When the County enacted its program, Federal requirements were not in place as they are now.

Attached:

Executive Regulation 21-20 – Memo from County Executive	1
Executive Regulation 21-20, Underlined and Brackets	2-10
County Code, Section 15, Nutrition Labeling	11-14

FROM COUNTY WEBSITE:

Food and Facilities Licensing

Environmental Health - Menu Labeling

What You Need to Know to Comply with MC Code Chapter 15 - Nutrition Labeling Law

What Is Montgomery County's menu labeling law?

The Montgomery County Council, acting as the Board of Health, adopted Resolution 16-1194 (Montgomery County Code Chapter 15, Section 15-15a) which requires an eating and drinking establishment to post nutritional information for any standardized menu item by July 1, 2010. Regulation 7-10 identifies the criteria for complying with Resolution 16-1194. Click [here](#) for a copy of the Resolution.

When must an establishment comply with the Resolution?

An establishment must submit to Licensure & Regulatory Services, no later than September 15, 2010, a written implementation plan indicating when compliance is expected to be achieved. Compliance is mandatory no later than January 1, 2011.

What establishments must comply with the law?

Any eating or drinking establishment located in Montgomery County that is part of a chain with at least 20 locations in the United States offering substantially the same menu items and doing business under the same trade name, regardless of individual ownership.

What establishments are exempt from the law?

Grocery stores, convenience stores and movie theaters.

What is a standard menu item?

A standard menu item is a food or drink item as usually prepared and offered for sale. A standardized menu item does NOT include food or drink that:

- Appears on a menu for less than 60 cumulative days per calendar year,
- Is not listed on a menu or menu board (for example, condiments, spices or sweeteners placed on a table or counter for general use without charge)

- Is a test market item that appears on the menu for less than 90 cumulative days per calendar year, or
- Is a daily special.

What food items are exempt from the law?

Condiments, garnishes and self-service commercially packaged items that already contain the complete nutritional labeling.

What is a "menu" or "menu board"?

A "menu" or "menu board" is the primary writing of an eating and drinking establishment from which a consumer makes an order selection. This includes menus or menu boards posted at a drive-thru, on a children's placemat, for delivery or carryout, or as a table tent at a bar or on a dining table. Menus mailed or dropped off to a business or private residence must also comply with the law. Advertisements such as coupons and window posters are not included.

What information must be posted on each menu or menu board?

- The number of calories for any standardized menu item posted next to that menu item and in a manner that is clear and conspicuous to the consumer.
- A statement as to the current suggested daily caloric intake determined by the U.S. Department of Health and Human Services. An example of an approved statement is: "A 2,000 calorie diet is used as the basis for general nutrition advice. However, individual caloric needs may vary. Visit www.mypyramid.gov; for more information."
- A statement that additional nutrition information is available in writing upon request.

What additional nutrition information must be available in writing?

Calories, calories from fat, total fat, saturated fat, cholesterol, sodium, total carbohydrates, sugars, fiber and protein must be provided per serving or, when the menu item is offered as a single unit (such as a bagel or muffin), per menu item from a self-service unit or display case.

Does the law allow for rounding the amount of calories and additional nutrition information?

Yes, in accordance with the menu labeling regulations. Refer to the Code of Federal Regulations (CFR) Titles 9 and 21 for additional information on rounding nutritional values.

What is the required font size for the number of calories or the required statements?

The printing must be clear and conspicuous to the consumer, such that a person may read the information when standing at the ordering counter or from the menu or food tag. The information must be easily located on the menu, menu board, self-service unit or display case and clearly associated with that menu item.

Can an eating and drinking establishments use an abbreviation for the word "calorie" or for the additional nutrition information?

An eating or drinking establishment may propose an alternative designation for the term "calorie" or for any other term in the additional nutrition information.

Is an eating and drinking establishment required to provide the number of calories for items that accompany a sandwich (such as chips, pickles or cheese) and are printed on a menu or menu board?

Yes, if the item is listed separately on the menu or menu board and is not presented to the consumer in an original commercial package with the federally required nutrition information provided.

What are the requirements for buffets, salad bars, cafeteria lines, beverage stations or similar self-service operations?

The number of calories per serving or per item must be posted on a food tag adjacent to each food or drink offered for sale, unless the information is provided on a menu or menu board. If the menu item is not listed on a menu or menu board, the two required statements must be posted at the cafeteria line, self-service unit or display case.

What about menu items that may have a range of calories based on a consumer's choice of flavor or variety?

If the item is listed as a single menu item, post the minimum and maximum range of calories for each size offered (for example: "Build your own burrito. Choose from chicken, steak, pork or veggies. Add rice with red or black beans, all for \$6.99 (310-600 cal.)"). The minimum and maximum values of the additional nutrition information must be available in writing upon request for each flavor or variety of that item. If the menu item lists the different flavors or varieties separately (for example, "add cheese for \$1.00"), the number of calories must be listed separately next to the flavor or variety.

Can a medium caloric value be posted instead of a minimum and maximum range?

The minimum and maximum caloric range must be posted for menu items that offer differing flavors or varieties. Each size offering must have a calorie count or the minimum and maximum range posted.

Does the law apply to alcoholic beverages?

Yes, if the beverage is listed on a menu or menu board. The following average nutritional values shall be used:

- Wine (5 ounces) - 122 calories, 4 grams carbohydrate, 7 milligrams sodium.
- Regular beer (12 ounces) - 153 calories, 13 grams carbohydrate, 14 milligrams sodium.
- Light beer (12 ounces) - 103 calories, 6 grams carbohydrate, 14 milligrams items that offer differing flavors or varieties. Each size offering must have a calorie count or the minimum and maximum range posted.

What if the menu item is listed and served as a combination of different food items such as an appetizer sampler, sandwich meal or combination meal?

Post the minimum and maximum range of calories for all combinations of that menu item next to the item on the menu or menu board (for example, "choose two from the following list"). If the menu item is presented to the consumer as it is listed on the menu or menu board without a choice of flavors or variety, then the total number of calories must be posted next to the menu

item (for example, "The appetizer sampler platter includes mozzarella sticks, buffalo wings and fried onions all for \$10.00 (610 calories)");

How should I calculate the calorie and other nutrition content of a standardized menu item?

Calories must be posted for each standardized menu item as it is listed on a menu or menu board.

What will happen if I do not comply with the menu labeling law?

- Any violation is a Class A civil violation which could result in the owner receiving a civil citation with a \$500 fine for each offense. Each day a violation exists is a separate offense.
- The Director of Health and Human Services may suspend a license for up to three days if the Director finds that the operator of an eating and drinking establishment has knowingly and repeatedly violated the law.

Why is the menu labeling law necessary?

- An increase in caloric intake is a key factor contributing to the increase in obesity in the United States. Obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders and cancer. Obese adults are also more likely to have high blood pressure and high cholesterol.
- Consumption of saturated fat results in a high level of low-density lipoprotein (LDL). Elevated levels of LDL lead to the buildup of cholesterol in arteries which increases an individual's risk of heart disease.
- Excess dietary sodium may contribute to high blood pressure which, in turn, can lead to congestive heart failure, kidney failure and stroke.
- Data from 2003 showed that nearly 60 percent of all deaths in Maryland were caused by heart disease, cancer, stroke and diabetes. Heart disease alone accounted for 27 percent of all deaths. In addition, 25 percent of Maryland adults were diagnosed with high blood pressure and 34 percent were diagnosed with high cholesterol.
- The economic cost of obesity in the United States in 2000 was calculated at \$117 billion. In 2007, the economic costs of heart disease and stroke were estimated at \$432 billion.
- Food from eating and drinking establishments is generally higher in calories and saturated fat and lower in nutrients than home-prepared food.
- When eating out, individuals make healthier choices if provided with nutrition information at the point of service.

Who should I contact for additional information?

Contact the Office of Licensure & Regulatory Services (Department of Health and Human Services) at 240-777-3986 during business hours (Monday through Friday 8 a.m. to 4 p.m.) or by email to HHSEmail@montgomerycountymd.gov.

Sample Menus: Menu

TASTES GREAT DELI

SUBS

Pick your bread / Pick your meat / Pick your cheese

Whole - \$7.95 (540 - 1680 cal) Half - \$5.50 (270 - 840 cal)

(all subs are topped with lettuce and tomato)

MEAT

Roast Beef Ham Veggie Turkey Breast

Tuna Salad Chicken Salad Italian Cold Cut

Grilled Chicken: add \$1.00 (150 cal) Bacon: add \$1.00 (136 cal)

CHEESE

Provolone Swiss American Cheddar

SOUPS

Bowl - \$3.99 (100 - 225 cal) Cup - \$3.50 (125 - 301 cal)

Chicken Noodle Tomato Cheddar Broccoli Minestrone

SALADS

Small - \$6.99 (311 - 635 cal) Large - \$8.99 (611 - 935 cal)

Garden Grilled Chicken Crispy Chicken Grilled Steak

Served with a roll and your choice of dressing
(Italian, Ranch, Caesar, Honey Mustard, Vinaigrette)

Please see your server for additional nutrition information.
A 2,000 Calorie daily diet is used as the basis for general nutrition
advice.

Visit <http://myplate.gov> for more information.

MENU BOARD

BREAKFAST:	Price	Calorie
Egg Sandwich	\$3.00	655 C
Egg, Sausage and Cheese Sandwich	\$4.50	560 C
Scrambled Egg / with Cheese	\$3.00/\$4.00	85 / 185 C
Home Fries	\$3.00	680 C
Toast (White, Wheat, or Rye)	\$1.50	95 - 105 C
Bagel / with Cream Cheese	\$1.50/\$2.50	132 / 184 C
LUNCH:		
Hamburger / Cheeseburger	\$5.00/\$6.00	540 / 650 C
Grilled Chicken Sub	\$6.50	530 C
Grilled Cheese Sandwich	\$4.00	350 C
Turkey Sandwich	\$4.50	260 C
Roast Beef Sandwich	\$5.00	375 C
Tuna Salad Sandwich	\$4.50	465 C
Chicken Salad Sandwich	\$5.00	490 C
Egg Salad Sandwich	\$4.50	650 C
French Fries	\$2.50	315 C
Fried Chicken Tenders	\$4.00	275 C
Bottled Drink	\$1.50	
Bag of Chips	\$1.00	
<p>Additional nutrition information is available upon request.</p> <p>A 2,000 Calorie daily diet is used as the basis for general nutrition advice. Individual caloric needs may vary. Visit http://myplate.gov for more information.</p>		



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Marc Elrich
County Executive

MEMORANDUM

February 23, 2021

TO: Tom Hucker, President, County Council

FROM: Marc Elrich County Executive *Marc Elrich*

SUBJECT: Executive Regulation 21-20: Eating and Drinking Establishments Regulations – Nutrition Labeling

I am attaching for consideration of County Council, Executive Regulation 21-20, Eating and Drinking Establishments – Regulations – Nutrition Labeling. This regulation makes formatting changes. The regulation reflects the updating of formatting and minor stylistic changes.

No comments were received during the comment period. If you have any questions, please contact Ms. Leslie Frey, Intergovernmental Relations Legislative Analyst, Department of Health and Human Services, at 240-372-7441 or leslie.frey@montgomerycountymd.gov.

ME:gh

Attachments



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: Eating and Drinking Establishments – Regulations – Nutrition Labeling

Number: 21-20

Originating Department:
Office of Health and Human Services

Effective Date:

Office of Health and Human Services
Montgomery County Regulation on:

EATING AND DRINKING ESTABLISHMENTS – REGULATIONS - NUTRITION LABELING

Issued by: County Executive
COMCOR No. 15.15A.01

Authority: Code Section 2-42A(e)

Supersedes: Executive Regulation 7-10, in part
Council Review Method (1) Under Code Section 2A-15

Register Vol. 38 ____, No. 1__

Comment Deadline: January 31, 2021

Effective Date: _____

Sunset Date: None

SUMMARY: This regulation amends Section 15.15A.01 of the Code of Montgomery County Regulations to update the formatting.

ADDRESS: Department of Health and Human Services
401 Hungerford Drive
Rockville, Maryland 20850

STAFF CONTACT: Leslie Frey, 240-372-7441, or Leslie.Frey@montgomerycountymd.gov

BACKGROUND: The changes reflect formatting adjustments.

COMCOR 15.15A.01 Eating and Drinking Establishments – Nutrition Labeling

15.15A.01.01 Definitions

Calorie – The energy content of food. The Calories may be expressed to the nearest 5 Calorie increment up to and including 50 Calories and the nearest 10 Calorie increment above 50 Calories.

Calories From Fat – The Calorie content derived from the total fat. The Calories from fat may be expressed to the nearest 5 Calorie increment up to and including 50 Calories and the nearest 10 Calorie increment above 50 Calories.



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Office of Health and Human Services

Effective Date:

Chain Eating and Drinking Establishment – An eating and drinking establishment that has at least 20 locations in the United States, is not a grocery store, convenience store, or movie theater, and that:

- a. does business under the same trade name, regardless of the ownership of individual locations; and,
- b. offers substantially the same menu items.

Cholesterol – A sterol or class of solid cyclic alcohol naturally found in animal tissue as expressed in milligrams to the nearest 5 milligram increment.

Clearly and Conspicuously – Of a font type and size such that an average consumer may read the information when standing at the ordering counter or from a menu or food tag. The information must be easily located on the menu, menu board, self-service unit, or display case.

Combination Meal – A standardized menu item that is comprised of two or more food items or provides a consumer the option of selecting two or more food items from a menu or menu board.

Condiment – A sauce, sweetener, or seasoning that is not listed on a menu or menu board and is placed on a table or counter for general use or provided to the customer upon request without charge. Condiments include, but are not limited to, individual sugar packets, ketchup, mustard, hot sauce, salt, and pepper.

Convenience Store – A retail business that primarily provides the consumer a convenient location to quickly purchase an item or items from a wide array of products that is not an eating and drinking establishment.

Director – The Director of the Department of Health and Human Services or designated agents or designee.

Eating and Drinking Establishments – Any enterprise that prepares, serves, or sells food or drink for human consumption, on or off the premises, with or without charge. A food service facility includes any restaurant, coffee shop, retail market, cafeteria, short-order café, luncheonette, tavern, sandwich stand, soda fountain, and any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.

Fiber – A non-digestible carbohydrate as expressed in grams.



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Food Tag – A label or sign that identifies any food item displayed for sale such as in a display case, salad bar, or buffet.

[Eating and Drinking Establishments – Any enterprise that prepares, serves, or sells food or drink for human consumption, on or off the premises, with or without charge. A food service facility includes any restaurant, coffee shop, retail market, cafeteria, short-order café, luncheonette, tavern, sandwich stand, soda fountain, and any food service facility in an industry, institution, hospital, club, school, church, catering kitchen, or camp.]

Garnish – A food item that is not a condiment and that is placed on a plate or in a carryout container to adorn the menu item, improve the presentation, or to add flavoring to a menu item (such as a lemon).

Grocery Store – A store primarily engaged in the retail sale of bakery products, canned foods, dry goods, fresh fruits and vegetables, fresh and prepared meats, seafood, and poultry, and nonfood grocery products.

Menu Item – Standardized menu item.

Menu or Menu Board – The primary writing of an eating and drinking establishment from which a consumer makes an order selection. A menu includes a take-out menu, table tent, wine or beverage lists or a placemat. Advertisements (such as coupons or window posters) are not included in the definition.

Point of Ordering – That point at which a consumer orders food or drink from a menu or menu board, or selects a food or drink from a self-service unit or display case.

Protein – Complex organic compounds comprised of a chain of amino acids as expressed in grams.

Saturated Fat – The sum of all fatty acids containing no double bonds as expressed in grams.

Self-Service – Where a consumer has the ability to directly obtain a menu item that is prepackaged or from a salad bar, cafeteria line, buffet, or beverage station without ordering from a menu or a menu board.



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Serving or Serving Size – The amount of food customarily consumed per eating occasion by persons 4 years or age or older which is expressed in a common household measure that is appropriate to the food. The serving size must be calculated according to applicable federal law.

Single Menu Item – A food or drink as it is listed on a menu or menu board separate from any other menu item.

Sodium – The amount of sodium chloride as expressed in milligrams to the nearest 5 milligram increment when the menu item contains 5 to 140 milligrams of sodium and to the nearest 10 milligram increment when the menu item contains greater than 140 milligrams.

Standardized Menu Item – A food or drink item as usually prepared and offered for sale. A standardized menu item does not include a food or drink item that:

- a. appears on the menu for less than 60 cumulative days per calendar year;
- [a.]b. is not listed on a menu or menu board, including an item that is placed on a table or counter for general use without charge;
- [b.]c. is a test-market menu item that appears on the menu for less than 90 cumulative days per calendar year; or
- [c.]d. is a daily special. _

Sugars – A simple carbohydrate that is the sum of all free mono- and disaccharides as expressed in grams.

Total Carbohydrates – Compounds of carbon, hydrogen, and oxygen as sugars, starches, and fiber. Total carbohydrate content shall be calculated by subtraction of the sum of protein, total fat, moisture, and ash from the total weight of the food and expressed in grams.

Total Fat – The amount of total lipid fatty acids as expressed in grams of triglycerides.

15.15A.01.02 Applicability and Exceptions

A. Applicability

Under Chapter 15, Section 15-15A of the Montgomery County Code, [2004] 2014, as amended, chain eating and drinking establishments with at least 20 locations in the United



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Effective Date:

States must post the Calories of each standardized menu item on the menu or menu board adjacent to the name of that item and provide additional written nutrition information to a consumer upon request.

B. Exceptions

This regulation does not apply to:

[(1)]1. grocery stores;

[(2)]2. convenience stores;

[(3)]3. movie theaters;

[(4)]4. condiments;

[(5)]5. garnishes; or

[(6)]6. self-serve pre-packaged items whose label already contains complete nutritional labeling.

15.15A.01.03 Menu Labeling – General

A. Calorie Labeling. An eating and drinking establishment must post the number of Calories (as “Calories” or other approved descriptive designation), calculated according to applicable federal law:

[(1)]1. Menu and menu board. On all menus and menu boards adjacent to each menu item.

[(2)]2. Self service and display cases: Per serving or per item on a food tag adjacent to each food or drink offered for sale.

[(3)]3. Combination meals or menu items of differing flavors or variety: As a range of the minimum and maximum values of Calories for a menu item if listed as a single menu item and if:

[(a)]a. offered as a combination meal;



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[(b)]b. offered in more than one flavor or variety.

B. Required Statements: An eating and drinking establishment must post the following statements on each menu or menu board at the point of ordering and in accordance with Section IV(C) of these regulations:

[(1)]1. A statement regarding the suggested daily Caloric intake as determined by the United States Department of Health and Human Services; and

[(2)]2. A statement regarding the availability in writing and upon request of additional nutrition information as required in Section III(C).

C. Additional Nutrition Information:

[(1)]1. An eating and drinking establishment must make the following nutrition information for each menu item available in writing upon request:

[(a)]a. Calories;

[(b)]b. Calories from fat;

[(c)]c. total fat;

[(d)]d. saturated fat;

[(e)]e. cholesterol;

[(f)]f. sodium;

[(g)]g. total carbohydrates;

[(h)]h. sugars;

[(i)]i. fiber; and

[(j)]j. protein.

[(2)]2. The additional nutrition information may be calculated according to the Code of Federal Regulations Titles 9 and 21 and any other applicable federal law,



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expressed in the increments indicated in section I and listed with an approved descriptive designation. Nutritional information may also be calculated using nutrient databases, laboratory analysis or other reliable verifiable means of analysis.

[(3)]3. The additional nutrition information must be provided per serving or per menu item when obtained from a self-service unit or a display case.

[(4)]4. The additional nutrition information must be provided as a range of the minimum and maximum values for each menu item if:

[(a)]a. listed as a single menu item and if offered as a combination meal;

[(b)]b. if substitution of one or more ingredients is permitted as so indicated on the menu; or,

[(c)]c. if offered in more than one flavor or variety.

[(5)]5. Nutritional value increments may be rounded consistent with U.S. Food and Drug Administration Center for Food Safety and Applied Nutrition/Office of Nutrition, Labeling, and Dietary Supplements April 2008, Appendix H: Rounding the Values According to FDA Rounding Rules.

15.15A.01.04 Posting of Information

- A. The number or range of Calories must be clearly and conspicuously posted adjacent to each menu item so as to be clearly associated with that menu item. For menu items that are offered in a variety of sizes, the number or range of Calories must be posted for each size offered. For beverages, the number or range of Calories must be posted for a full serving without the addition of ice.
- B. The statements required in Section III(B) must be clearly and conspicuously posted on a menu and on a menu board. In the event multiple menu boards are installed in succession the requirement statement must be posted on at least one [or] of the menu boards. In the event a menu item is obtained from a self-service unit or a display case and the item is not listed on a menu or menu board, the required statements must be posted at the self-service unit or display case.



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C. The additional nutrition information must be provided in a form that is clear and conspicuous, clearly associated with the food item, and easily accessible in writing to the consumer.

D. Alcoholic Beverage

[(1)]1. Food and Drink Establishments must provide nutritional labeling of alcoholic beverages listed on a menu or menu board. A separate wine or beverage list is considered a menu or menu board. An approved method for nutrition labeling of alcoholic beverages is to collectively label alcoholic beverages in a clear and prominent position using the average nutritional values for beers, wines and spirits. Nutritional labeling of alcoholic beverages collectively shall otherwise be in accordance with the provisions of these regulations.

Food and Drink Establishments that collectively label alcoholic beverages shall use the following average nutritional values:

[(a)]a. wine – 5 ounces: 122 calories, 4 grams carbohydrate, 7 milligrams sodium;

[(b)]b. regular beer – 12 ounces: 153 calories, 13 grams carbohydrate, 14 milligrams sodium;

[(c)]c. light beer – 12 ounces: 103 calories, 6 grams carbohydrate, 14 milligrams sodium; and

[(d)]d. distilled spirits (80 proof gin, rum, vodka, or whiskey) – 1.5 ounces: 96 calories.

15.15A.01.05 Enforcement

A. When an eating and drinking establishment is inspected by the Director for compliance with Chapter 15 of the Montgomery County Code, [2004] 2014, as amended, the Director must verify that the information required in Sections III and IV of this regulation is available and properly posted. The owner, food service manager, or person in charge of an eating and drinking establishment must be given written notice of any violation, including time frames for compliance.



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- B. The Director may request an establishment verify the accuracy of the information provided. The verification must be provided to the Director within 30 days of the date requested.
- C. The Director must investigate each complaint alleging a violation of this regulation and take appropriate action, including issuing a civil citation, when compliance cannot be otherwise obtained.
- D. Any violation of this regulation is a Class A civil violation. Each day a violation exists shall be considered a separate offense. The Director may suspend a license issued under Chapter 15 for up to three days if the Director finds that an owner has failed to correct all violations within the time frames established or knowingly and repeatedly violated this regulation.

Approved:

Marc Elrich, County Executive

2/23/21

Date

Approved as to form and legality:

/s/ Amy DiBiasio

Office of the County Attorney

12/14/2021

Date

Sec. 15-15A. Nutrition Labeling.

(a) Legislative Findings.

(1) Research reveals the strong link between diet and health and that diet-related diseases begin early in life.

(2) Increased caloric intake is a key factor contributing to the increase in obesity in the United States. According to the Centers for Disease Control and Prevention, two-thirds of American adults are overweight or obese, and the rates of obesity have tripled in children and teens since 1980. Data from the Maryland Behavioral Risk Factor Surveillance System indicated that 50.8 percent of Montgomery County residents were overweight or obese in 2005. According to the National Institutes of Health, obesity increases the risk for diseases such as diabetes, cardiovascular disease (heart disease and stroke), osteoarthritis, sleep disorders, and cancer. According to the Maryland Vital Statistics 2003 Annual Report, heart disease, cancer, stroke, and diabetes accounted for nearly 60 percent of all deaths in Maryland in 2003. The Report cites heart disease, cancer, stroke, and diabetes as the first, second, third, and fifth leading causes of deaths in Maryland in 2003. The United States Department of Health and Human Services cited that in 2000 the economic cost of obesity was \$117 billion in the United States.

(3) The National Institutes of Health identified saturated fat as the biggest dietary cause of high low-density lipoprotein cholesterol. High LDL cholesterol levels lead to the build up of cholesterol in arteries; the higher the level of LDL in a person's blood, the greater the risk of heart disease. In the United States, heart disease is the leading cause of death and a leading cause of disability among working adults. The American Heart Association estimated that the economic cost of heart disease and stroke in the United States in 2007 will be \$431.8 billion in health care expenditures and lost productivity. The Maryland Behavioral Risk Factor Surveillance System indicated that nearly 34 percent of Maryland adults were diagnosed with high cholesterol in 2003. Overweight or obese adults were more likely to have high cholesterol than normal weight adults. The Maryland Vital Statistics 2003 Report cited heart disease as the leading cause of death in Maryland during 2003, which accounted for over 27 percent of all deaths.

(4) The National Institutes of Health identified that excess dietary sodium will contribute to high blood pressure in people who are sensitive to sodium. High blood pressure can lead to congestive heart failure, kidney failure, and stroke. Nearly 1 in 3 American adults have high blood pressure. The Maryland Behavioral Risk Factor Surveillance System indicated that approximately 25 percent of Maryland adults were diagnosed with high blood pressure in 2003. As with high cholesterol, obese adults were more likely to have high blood pressure than normal weight adults.

(5) Over the past 2 decades, there has been a significant increase in the number of meals prepared and eaten outside of the home. A study in the USDA Agriculture Information Bulletin reported that Americans consume approximately one-third of their calories on food purchased in eating and drinking establishments, and the National Restaurant Association estimated that Americans spend nearly 48 percent of total food dollars on food purchased from eating and drinking establishments. Studies in the USDA Agriculture Information Bulletin, the International Journal of Obesity, the American Journal of Public Health, and the American Journal of Epidemiology link eating out with obesity and

higher caloric intake. Studies in the USDA Agriculture Information Bulletin and the American Journal of Epidemiology report that food from eating and drinking establishments is generally higher in calories and saturated fat and lower in nutrients, such as calcium and fiber, than home-prepared foods.

(6) The federal Nutrition Labeling and Education Act, in effect since 1994, requires nutrition labeling on packaged foods sold in retail stores. Using food labels is associated with healthier diets. The United States Department of Health and Human Services cited that three-quarters of American adults report using food labels on packaged foods, and a report from the Food and Drug Administration cited that 48 percent of people report that the nutrition information on food labels has caused them to change the food product they purchased. Nutrition information is required for food served in an eating and drinking establishment only if a nutrient content or health claim is made about the food. It is difficult for consumers to limit caloric intake at eating and drinking establishments because of the limited availability of nutrition information and the practice of serving food in larger-than-standard serving sizes. Studies in the Journal of Marketing and the American Journal of Clinical Nutrition show that people eat greater quantities of food when served more. A study in the Journal for Consumer Affairs indicated that people make healthier choices in eating and drinking establishments when provided with nutrition information at the point of purchase.

(b) Definitions. In this Section, the following words have the meaning indicated:

(1) "Menu" or "Menu board" means the primary writing of an eating and drinking establishment from which a consumer makes an order selection.

(2) "Standardized menu item" or "menu item" means a food or drink item as usually prepared and offered for sale. "Standardized menu item" does not include a food or drink item that:

(A) appears on the menu for less than 60 cumulative days per calendar year;

(B) is not listed on a menu or menu board, including an item that is placed on a table or counter for general use without charge;

(C) is a test-market menu item that appears on the menu for less than 90 cumulative days per calendar year; or

(D) is a daily special.

(c) Applicability.

(1) Except as provided by (c)(2), this Section applies to an eating or drinking establishment that is part of a chain with at least 20 locations in the United States and that:

(A) does business under the same trade name, regardless of the ownership or individual locations; and

(B) offers substantially the same menu items.

(2) This Section does not apply to a:

(A) grocery store;

(B) convenience store; or

(C) movie theater.

(d) Labeling Required.

(1) An eating and drinking establishment must post the number of calories, calculated according to applicable federal law, for any standardized menu item on each menu or menu board adjacent to the name of that item.

(2) An eating and drinking establishment must make the following nutrition information available in writing on request on its premises:

- (a) calories;
- (b) calories from fat;
- (c) total fat;
- (d) saturated fat;
- (e) cholesterol;
- (f) sodium;
- (g) total carbohydrates;
- (h) complex carbohydrates;
- (i) sugars;
- (j) fiber; and
- (k) protein.

(3) The required nutrition information must be clear and conspicuous and located adjacent to each menu item so as to be clearly associated with the menu item.

(4) Self-Service Food. For self-service food, an eating and drinking establishment must post a sign with the information required in (d)(1) per serving or per item adjacent to each food offered for sale. In this paragraph, “self-service food” includes:

- (A) items in a salad bar, buffet line, cafeteria line, or a similar self-service facility;
- (B) self-service beverages; and
- (C) food that is on display and visible to customers.

(5) Range of Calorie Content Required for Different Flavors and Varieties. If an eating and drinking establishment offers a standardized menu item in more than one flavor or variety and lists the item as a single menu item, (such as beverages, ice cream, pizza, or doughnuts), the establishment must post the range of nutrition information for each size offered for sale. The range must include the minimum and maximum values for each flavor or variety of that item.

(e) Required statements. An eating and drinking establishment must include the following statements on each menu and menu board:

(1) a statement regarding suggested daily caloric intake as determined by the federal Department of Health and Human Services; and

(2) a statement regarding the availability of the written information required in paragraph (d)(2).

(f) Enforcement. When an eating and drinking establishment is inspected under Section 15-3, the Director must verify that required nutrition information is posted. The Director is not required to verify the accuracy of the information provided, but may request the establishment to document its accuracy. If the Director requests the establishment to document the accuracy of the nutrition information posted, the establishment must provide verification of the accuracy of the posted information in 30 days. (2009 L.M.C., ch. 29, §§ 1, 2; 2010 L.M.C., ch. 40, § 1.)

Editor's note—2009 L.M.C., ch. 29, § 2, as amended by 2010 L.M.C., ch. 40, § 1, states:

(a) Effective Date. Section 15-15A, inserted by Section 1 of this Act, takes effect on July 1, 2010.

(b) Implementation. Section 15-15A must be implemented according to the following schedule:

(1) Between July 1 and July 31, 2010, the Department must notify all eating and drinking establishments subject to the requirements of Section 15-15A of the applicable laws and regulations.

(2) By September 15, 2010, an eating and drinking establishment must submit to the Department an implementation plan. As part of the implementation plan, an eating and drinking establishment must identify a date by which the establishment will comply with Section 15-15A.

(3) Any eating and drinking establishment subject to Section 15-15A must comply with the requirements of that Section by January 1, 2011.