AN ACT to:
(1) require certain eating and drinking establishments to post certain nutrition information on menu boards and menus; and
(2) generally amend County law regarding eating and drinking establishments.

By adding
Montgomery County Code
Chapter 15, Eating and Drinking Establishments
Section 15-5A

The County Council for Montgomery County, Maryland approves the following Act:
Sec. 1. Section 15-15A is added as follows:

(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.

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.

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.

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. "Convenience store" means a retail business less than 5,000 square feet that has a primary emphasis placed on providing the public a convenient location to quickly purchase from a wide array of consumable products and services.

2. "Grocery store" means a store primarily engaged in the retail sale of canned foods, dry goods, fresh fruits and vegetables, fresh and prepared meats, fish, and poultry, and nonfood grocery products. In this Section, "grocery store" does not include a convenience store.

3. "Menu" or "menu board" means a printed or handwritten list, provided at an eating and drinking establishment, of one or more food or drink items available at the primary writing of an eating and drinking establishment from which a consumer makes an order selection. A menu does not include a wine list.

4. (A) "Standardized menu item" or "menu item" means a food or drink item served in portions for which the size and content are standardized 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; [or]
(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; [or]

(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.

[(3) "Wine list" means a printed or handwritten list, provided at an eating and drinking establishment, of the wines available as sold by the bottle.]

(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 nationally in the United States and that:

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

[(2)] (B) offers substantially the same menu items.

(2) This Section applies to a convenience store, but 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 [next to or beneath] adjacent to the
[listing] name of that item[:]

(A) number of calories;
(B) grams of saturated fat; and
(C) milligrams of sodium]]

[[2] An eating and drinking establishment is not required to post
nutrition information for menu items that are not standardized.]]

[[3] The posted nutrition information must be within 20% of the
actual nutrition content of a menu item or the margin of error
allowed by federal law, whichever is the smallest variation.]]

(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.

[[2]] (3) The required nutrition information must be clear and
conspicuous and located [next to or beneath] adjacent to each
menu item [[in a size and typeface]] [[at least as large as the
name of the menu item or its price] [[that is clear and conspicuous]] 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.

((3)) (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) **Menu Boards.** If an eating and drinking establishment uses a menu board, the establishment may limit the nutrition information posted on the menu board to the number of calories per menu item. However, the establishment must provide the additional nutrition information required in subsection (d)(1) to each customer in writing on request. For purposes of this Section, a single-item list must be treated as a menu board.]]

((f)) (1) The bottom of each menu page must contain the following statement:
Recommended limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium.

(2) Each menu board must contain the following statement:

A 2,000 calorie daily diet is used as the basis for general nutrition advice; however, individual calorie needs may vary.

(3) An eating and drinking establishment may include the following statement on a menu or menu board:

The nutrition information provided is based on standard recipes and product formulations. Small variations may occur because of differences in preparation, serving sizes, ingredients, or special orders.

(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).

[(g) Substitute Ingredients. An establishment may use a substitute ingredient for any menu item for no more than 30 days without replacing the menu or menu board. However, if an establishment permanently substitutes an ingredient in any menu item, the establishment must comply with this Section within 90 days.]

[(h)] (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.

[(i) Nothing in this Section is intended to create a private right of action for civil damages or attorney's fees.]

Sec. 2. Effective Date.

Section 15-15A, inserted by Section 1 of this Act, takes effect on July 1, 2010.

[(a) August 1, 2008 for any eating and drinking establishment that must comply with a similar menu labeling requirement in any other jurisdiction by August 1, 2008; and
(b)] [August 1, 2009] [(for all other eating and drinking establishments)]

Approved:

Philip M. Andrews, President, County Council

Isiah Leggett, County Executive

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council