

[Healthy Food Incentives Ordinance] ***SEC. 471.1. FINDINGS.**

1. In the last thirty-five years, obesity has grown into a public health problem of epidemic proportions. Seventy-three million Americans are obese according to a 2010 report issued by the CDC - an increase of 2.4 million from 2007. At least 17 percent of American children ages 2-19 years are now considered overweight or obese. An additional 17 percent are identifiably at risk of becoming overweight. Since the 1970s, obesity rates have doubled among preschool children ages 2-5 years and adolescents aged 12-19 years, and more than tripled among children aged 6-11 years.
2. In 2008, approximately 29 percent of 5th graders, 26 percent of 7th graders, and 25 percent of 9th graders in San Francisco had weights above the healthy fitness zone range of the California Department of Education fitnessgram assessment.
3. Obesity, overweight, and unhealthy eating habits pose a serious risk to the health and welfare of San Francisco's children and adolescents. Children and adolescents who are obese or overweight have an increased risk of being obese or overweight as adults, with 75 percent of children who are overweight expected to be overweight as adults.
4. Childhood obesity also increases children's chances of experiencing chronic health problems later in life. During childhood and adolescence, obese and overweight individuals are already more likely than their peers to exhibit risk factors for heart disease (including elevated cholesterol levels, triglyceride levels, and blood pressure), risk factors for cancer, and impaired glucose tolerance, a precursor for development of Type 2 diabetes. In recent years, Type 2 diabetes in children and adolescents has risen dramatically in conjunction with increases in obesity and overweight.
5. The Institute of Medicine has found that the prevalence of obesity among children is so great that it may reduce the life expectancy of the current generation of children and diminish the overall quality of their lives.
6. Childhood obesity and overweight also have serious economic costs. Nationally, the annual costs of providing inpatient treatment to children diagnosed with obesity increased from \$125.9 million in 2001 to \$237.6 million in 2005. In addition to inpatient treatment, an estimated \$14.1 billion is spent nationally on prescription drug, emergency room, and outpatient visit expenses each year as a result of childhood obesity and overweight. About 7 percent of San Francisco Public Health Department's unreimbursed medical payments are attributable to obesity among San Franciscans. As children and adolescents in San Francisco become adults, their high rates of obesity and overweight are likely to contribute to the already high economic costs of healthcare and loss of productivity associated with adult obesity in San Francisco.
7. San Francisco has invested considerable resources to combat childhood obesity, offering a wide range of community programs. Shape Up San Francisco, a multidisciplinary government coalition, provides an annual Walking Challenge, a Safe Routes to School program to encourage children to walk or bike to school, and the Rethink Your Drink marketing campaign to discourage soda consumption. The San Francisco WIC program also has a Healthy Eating, Active Living campaign to increase WIC families' access to fresh, healthy food. Despite these measures, childhood obesity rates continue to rise and concern San Franciscans.
8. San Francisco parents identify childhood obesity as a significant concern for their families. A 2003 survey by the Kaiser Family Foundation found that nearly all Bay Area adults said that being overweight or obese was a significant problem currently faced by children and teens, with 69 percent of adults describing it as major problem. In 2006, 21 percent of Bay Area parents in the Bay Area Parent Poll reported being somewhat or very concerned about their child's weight. The 2007 Bay Area Parent Poll showed that 26 percent of parents picked weight as their primary concern for their children- the second highest primary concern, after stress.
9. San Francisco families want their children to have access to healthy, nutritional food and to make healthy choices from the food available. The 2003 survey by the Kaiser Foundation found that approximately 70 percent of Bay Area parents consider nutritional value to be very important when buying food for their household. In addition, the survey showed that 42 percent of Bay Area adults felt that the food industry has a significant responsibility in addressing obesity.
10. San Francisco families also face limited time to obtain and prepare nutritional food, making dining out an appealing and often necessary option. The 2003 Kaiser Foundation study showed that 40 percent of Bay Area parents said that their child ate at least one fast food meal or snack on a typical day. More San Franciscans are eating out at least several times a week, with 14 percent of Bay Area parents reporting that their child did not eat dinner cooked at home on most nights in 2003. Fifty-seven percent of Bay Area parents said their child eats out at a restaurant at least once a week, and 14 percent of Bay Area parents said their child eats out at a restaurant between two and seven days a week.
11. The food that children and adolescents consume at restaurants has a significant impact on their risk of developing obesity,

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

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

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

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

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

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

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

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

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

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

21. The FTC recommends that companies adopt nutrition-based standards for food and beverages targeted at children. However, as of March 2010, 35 of 45 major national restaurant chains surveyed had no policies or extremely vague policies on this issue, and the remaining 10 restaurant chains were found to have key weaknesses in their policies or the nutritional criteria used.

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

(Added by Ord. 290-10, File No. 101096)

SEC. 471.2. TITLE AND PURPOSE.

This Ordinance shall be known as the "Healthy Food Incentives Ordinance." The intent of this Ordinance is to improve the health of children and adolescents in San Francisco by setting healthy nutritional standards for children's meals sold at restaurants in combination

with free toys or other incentive items. These standards will support families seeking healthy eating choices for their children by permitting restaurants to give away free toys and other incentive items in combination with foods only if those foods meet specified nutritional criteria. This Ordinance imposes no requirements or regulations for the advertising or labeling of food or beverages or the disclosure of ingredients.

(Added by Ord. 290-10, File No. 101096)

SEC. 471.3. DEFINITIONS.

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

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

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

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

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

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

(Added by Ord. 290-10, File No. 101096)

SEC. 471.4. INCENTIVE ITEMS WITH RESTAURANT FOOD.

(a) **Meals.** A Restaurant may give away a free Incentive Item in combination with the purchase of a Meal only if the Meal meets the following nutritional standards:

(1) **Calories.** Less than six hundred (600) calories;

(2) **Sodium.** Less than six hundred and forty milligrams (640 mg) of sodium;

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

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

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

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

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

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

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

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

(Added by Ord. 290-10, File No. 101096)

SEC. 471.5. ADMINISTRATIVE PENALTIES AND ENFORCEMENT.

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

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

(Added by Ord. 290-10, File No. 101096)

SEC. 471.6. PREEMPTION.

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

(Added by Ord. 290-10, File No. 101096)

SEC. 471.7. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

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

(Added by Ord. 290-10, File No. 101096)

SEC. 471.8. SEVERABILITY.

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

(Added by Ord. 290-10, File No. 101096)

SEC. 471.9. EFFECTIVE DATE.

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

(Added by Ord. 290-10, File No. 101096)