

# County of Santa Clara Public Health Department



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DATE: April 27, 2010

TO: Board of Supervisors

FROM:   
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Public Health Director

SUBJECT: Report Regarding Public Health Ordinance on Childhood Obesity

## **RECOMMENDED ACTION**

Consider recommendations relating to an ordinance regarding toys and other incentives with restaurant food.

Possible action:

- a. Under advisement from March 23, 2010 (Item No. 10): Accept report relating to Ordinance No. NS-300.820 aimed at addressing the problem of childhood obesity in Santa Clara County.
- b. Introduction and preliminary adoption of Ordinance No. NS-300.820 adding Chapter XXII of Division A18 of the County of Santa Clara Ordinance Code relating to an ordinance regarding toys and other incentives with restaurant food.

## **FISCAL IMPLICATIONS**

There is no impact on the General Fund as a result of this action. There is no immediate financial impact to the Public Health Department with respect to accepting this report back or adopting the ordinance. Costs to the Public Health Department and the Department of Environmental Health for implementation and evaluation in the unincorporated area

will not exceed an initial cost of \$4000 and a yearly cost of \$8000 for implementation. Costs to the County Counsel's Office connected to implementation of this ordinance should be minimal and can be absorbed within the existing budget.

## **REASONS FOR RECOMMENDATION**

At the March 23, 2010 Board of Supervisors meeting, the Board directed Administration to report back on a public health ordinance aimed at addressing the problem of childhood obesity in Santa Clara County.

More specifically, the Board requested that the proposed ordinance consider the following options:

1. Prevent restaurants from offering toys or other incentive items in conjunction with food marketed to children that fails to meet specified nutritional criteria;
2. Promote healthy eating among children in the County of Santa Clara by allowing restaurants to offer toys and other incentive items in conjunction with healthy meals and food items; and
3. Support families seeking healthy eating choices for their children by allowing incentives with healthier meals and food items.

The recommended ordinance would only allow restaurants to give away toys or other incentives with menu items if those offerings meet the nutritional criteria established by the ordinance. These requirements will help support consumers in making healthy food choices by preventing restaurants from using toys to make unhealthy food choices more appealing to children. This follows on prior County efforts regarding improving nutrition and reducing obesity, including the "Be Sugar Savvy/Rethink Your Drink" campaign, the menu labeling ordinance, and the vending machine policy.

Adoption of this ordinance, the first of its kind in the country, will allow the County to continue its efforts to address childhood obesity and promote nutrition through a novel initiative.

## **BACKGROUND**

The Board of Supervisors directed Administration to draft an ordinance to address toys and incentives provided to children at restaurants.

Under the proposed ordinance, restaurants in the unincorporated areas will only be allowed to provide toys with food that meet certain nutritional criteria. The nutritional criteria in the ordinance help promote nationally recognized standards for children's health, including the Dietary Guidelines for Americans published by the Department of Health and Human Services (DHHS) and the Department of Agriculture (USDA) and recommendations for children's food

published by the Institute of Medicine ( IOM). These nutritional criteria have been developed through consideration of national dietary guidelines for children, review of recent scientific literature, and consultation with experts in nutrition. It is the intent that the nutrition standards ensure that toys and other incentives are only permitted with menu items that support child nutrition.

I. Obesity is a threat to public health in the County of Santa Clara

Rising rates of overweight and obesity in children and adolescents pose an urgent public health problem. The prevalence of childhood obesity within the County presents a significant public health problem, as evidenced by the following:

- The results of the 2007-2008 California Healthy Kids survey revealed that nearly one in four 7th, 9th, and 11th graders in the County's public schools was either obese (10.4%) or overweight (14.3%).
- Statistics from the County's Child Health & Disability Prevention (CHDP) Program, which serves toddlers from low-income families, revealed that one in three 2-5 year olds was either obese (17.2%) or overweight (16.2%).

Nationally, obesity rates doubled in children and tripled in teenagers over the course of three decades. California has some of the highest rates of increasing obesity and overweight in children and adolescents.

Overweight children are not only more likely to be obese as adults, they face a greater risk of developing health problems, including heart disease, cancer, and Type 2 diabetes. In recent years, Type 2 diabetes in children and adolescents has risen dramatically in conjunction with increases in obesity and overweight. The Institute of Medicine estimates that 30% of boys and 40% of girls born in the United States in 2000 will be diagnosed with Type 2 diabetes. According to the Centers for Disease Control, developing diabetes can result in the loss of, on average, 10-15 years of life.

In addition to these personal health risks, the prevalence of childhood obesity and overweight within the County imposes substantial costs on our healthcare system. The costs of providing inpatient treatment for obese children are increasing, with the national total increasing from \$125.9 million to \$237.6 million between 2001 and 2005. In addition to inpatient costs, on a national level, childhood obesity is associated with an estimated \$14.1 billion annually in additional prescription drug, emergency room, and outpatient visit costs. As obese and overweight children and adolescents become adults, they continue to contribute to the County's already high economic cost of healthcare (\$420 million in 2006) and loss of productivity (\$496 million in 2006) associated with adult obesity and overweight.

II. Incentives are linked to food as a means to directly appeal to children

The IOM has stated that food and beverage marketing—including the use of sales practices that appeal to children, like giving away toys—contribute to an environment that puts children's health at risk. The Federal Trade Commission (FTC) reported that fast-food restaurants sold 1.2 billion meals with toys to children under 12 in 2006. One report sampling children's meals at restaurants found that many exceed the recommended caloric limits for children and that, of those high-calorie meals, 10 out of 12 came with toys. Recent reports also document an increasing use of digital incentives to make meals more appealing to children, such as selling a meal along with a password that gives children access to online games.

Restaurants use physical and digital incentives of this sort because of their direct appeal to children. Studies show that parents frequently make purchases based on requests made by children, particularly for products that are aimed at children, leading to a high proportion of food industry sales that appear to be influenced by children. The Committee on Food Marketing and the Diets of Children and Youth also found that children and adolescents ages 4-17 years have increasing discretionary income and purchasing capacity, and that restaurants account for a significant portion of children and adolescents' discretionary spending.

### III. Stronger nutritional standards are a nationally recognized strategy for reducing childhood obesity

Research shows that dietary intake has a significant impact on children's and adolescents' risk of developing obesity, overweight, or other health risks. The U.S. Surgeon General recommends that Americans of all ages reduce consumption of sodas and juices with added sugars; eat more fruits, vegetables, whole grains, and lean proteins; drink more water; and choose low-fat or no-fat dairy products.

There is national support for setting nutritional standards for food and beverages provided to children. In 2008, the FTC recommended to Congress that all companies that sell food or beverages to children adopt nutritional standards for products that are targeted toward children under age 12. However, as of March 2010, 35 of 45 major national restaurant chains surveyed had no policies or extremely vague policies governing their marketing practices to children, and the remaining 10 restaurant chains were found to have key weaknesses in their policies or the nutritional criteria used.

The nutritional criteria in the ordinance help promote nationally recognized standards for children's health, including the Dietary Guidelines for Americans published by the Department of Health and Human Services (HHS) and the Department of Agriculture (USDA) and recommendations for children's food published by the IOM. The Public Health Department took extensive steps to ensure that the nutrition criteria established for toys and other incentives are based on best practices and current research. These criteria were drafted with the input of national stakeholders and public health experts who have a specific focus on reducing childhood obesity and promoting child nutrition. They reflect extensive input from public health professionals from leading education institutions, national food and nutrition programs, and other leaders who have expertise and experience in child nutrition, child health, and nutrition standards.

Where nutritional requirements such as calorie limits vary by age, the ordinance uses recommendations from the IOM and other sources to establish criteria generally acceptable for children under 12. The ordinance is the culmination of extensive professional input from national experts on preventing and reducing childhood obesity and overweight, and the accompanying health risks.

### IV. The ordinance helps protect the public health, safety and welfare

The CDC has concluded that American society has become characterized by environments that promote increased food intake, nonhealthful foods, and physical inactivity. The CDC therefore promotes policy change initiatives that make healthy choices in nutrition available, affordable, and easy as the most effective strategies in combating obesity.

While restaurants can be a source of nutritionally balanced food, research suggests that the food and beverages that restaurants typically market and serve to children and adolescents diverge greatly from nutritional recommendations. Frequent consumption of fast food, sugar-sweetened beverages, and other restaurant offerings by children and adolescents has been associated with overeating, poor nutrition, and weight gain. Studies that have compared children and adolescents' who consume fast food to those who consume other options showed that the ones eating fast food consume:

- More total calories
- More calories per gram of food,

- More total carbohydrates,
- More added sugars,
- More sugar-sweetened beverages,
- More sodium,
- More fat,
- More saturated fat,
- Less fiber,
- Less milk, and
- Fewer fruits and nonstarchy vegetables.

The Public Health Department is working on many fronts (1) to educate children and parents about nutrition so that they can make healthy choices and (2) to increase the availability of healthy food options and opportunities for physical activity for children in the County. However, while the Department is conducting this education and outreach, food and beverage corporations are encouraging children to buy unhealthy products like fast food and sugar sweetened beverages by using incentives like toys or free digital media.

By setting nutritional criteria for meals that are accompanied by toys and other incentives, the proposed ordinance supports families seeking healthy eating choices for their children. Under the ordinance, restaurants could no longer use toys and other incentives to attract children to sugar-sweetened beverages or to meals or food items that are high in calories, added sugars, sodium, and unhealthy fats. Restaurants that do want to give out incentives can offer them with meals already on their menus that meet the nutritional criteria, or they can reformulate current meals as needed. Restaurants whose offerings do not comply with the ordinance that want to avoid changing menu options could refrain from offering incentives altogether or could give them away for free rather than linking them to an unhealthy meal.

#### V. Proposed Ordinance

**The attached proposed ordinance would prohibit restaurants in the unincorporated areas of Santa Clara County from giving away toys or other incentives with menu items, unless those offerings meet the nutritional criteria established by the ordinance.**

It is recommended that the attached ordinance be adopted by the Board. Once the Board has taken final action, we recommend the ordinance be implemented in three phases:

- 1) Provide restaurants with a 30-day grace period to comply with the ordinance.
- 2) During said 30 days:
  - Public education and coalition outreach regarding the public health goal of reducing childhood obesity will continue.
  - The Public Health Department will inform affected restaurants of the requirements of the ordinance and the date for compliance.

- Through the Public Health Department website, inform the public of the hotline to call to report violations.

3) Thirty days from Board approval, begin enforcement of the ordinance, including the potential imposition of fines, pursuant to the ordinance enforcement provision.

The Department of Environmental Health and the Public Health Department will share responsibility for enforcement of this ordinance.

### **STEPS FOLLOWING APPROVAL**

The Clerk of the Board will process the ordinance for the Ordinance Code and notify the Public Health Department, the Office of the County Counsel, and the Department of Environmental Health when it has taken final action.

### **ATTACHMENTS**

- Ordinance No. NS-300.820