

Proposed Menu Labeling Regulation in Nashville, Tennessee: Informational Session Enforcement

Background:

The Metro Public Health Department (MPHD) views itself as a leader, and a partner, in establishing conditions in which the citizens of Nashville can be healthy. It is from this position that MPHD anticipates continued communication and collaboration with the restaurant industry to insure menu labeling compliance if/when a regulation is established by the Board of Health (BOH).

During dialogue sessions with industry stakeholders as well as during the public hearing, industry spokespersons expressed concern that enforcement was not explicitly stated and, therefore, not clear within the proposed regulations. To follow is an overview of processes that have or will be implemented to insure compliance. It is important to note that MPHD anticipates that efforts will be primarily focused on education, consultation, and support to reduce the need to seek enforcement measures – to be proactive, not reactive.

Overview:

Policy Development: Upon enactment of the proposed regulation, MPHD will establish policies, practices, and procedures to assess, insure, and enforce compliance. Similar to the rulemaking process, details of operations will be established contingent upon the specifics of the regulation. Of significant importance are the following: 1) all policies, practices, and procedures will be consistent to, similar in language to, and enforced similar to existing restaurant industry regulations including enforcement of food safety standards and non-smoking standards; 2) due process will be followed; 3) Tennessee codes/laws will be adhered to; and 4) MPHD will make efforts to educate, support, and assist the industry to come into compliance. Enforcement steps will be taken as a last resort to insure compliance.

Revisions to Proposed Regulations: Based on feedback from industry spokespersons, the time period for establishing compliance was revised from 90 days, May 2009, to more than 9 months, December 31, 2009. During this period, MPHD is available to provide education, consultation, and assistance to restaurants attempting to come into compliance.

Education Campaign: Upon enactment of the proposed regulation, MPHD will implement an educational campaign that targets the following audiences: community at large, restaurant industry management and staff, as well as MPHD staff such as food inspectors. Message development and dissemination strategy development are already underway. Message design is intended to be audience as well as culturally and linguistically appropriate.

Process of Enforcement: Enforcement of compliance would follow due process. MPHID Food inspectors would be responsible for monitoring regulation compliance. If it is noted that calories are not posted, a notice of violation (NOV) would be sent from Director of Health to the establishment. The establishment would have an opportunity for a hearing. If NOV is not adhered to, a second NOV would be sent. If the establishment fails to comply, the Director of Health would notify Chancery Court. Further penalties would be determined by the Chancery Court Judge.

Associated Tennessee Code Annotated:

Tennessee Code Annotated

West's Tennessee Code Annotated Currentness

Title 68. Health, Safety, and Environmental Protection

Chapter 2. Local Health Services

Part 6. County Health Departments

688-2-608. Orders:injunctions

68-2-608. Administrative orders and judicial remedies of county health director.

- (a) (1) Whenever it appears to the county health director that a condition or activity exists or is threatened that may violate the laws, regulations, resolutions, ordinances, permits or licenses that are within the enforcement responsibility of the county health director, the county health director may, after notice and opportunity for a hearing, issue an order for any of the following
- (A) Cessation of the activity;
 - (B) Correction of the condition or activity;
 - (C) Removal of the condition in whole or in part;
 - (D) Revocation, suspension or imposition of conditions on a license or permit; or
 - (E) Abatement of a nuisance that involves a violation of the health laws of the state and that can be reasonably expected to adversely affect the health of the public.
- (2) Any person served with an order pursuant to subdivision (a)(1) shall immediately comply with the order at the person's own expense.
- (b) Whenever a condition or activity exists or is threatened that, in the opinion of the county health director, causes or threatens an imminent or immediate danger to the public health under circumstances in which an opportunity for prior hearing might further seriously endanger the health of the public, the county health director may issue an order requiring the actions listed in subdivision (a)(1). The person to whom the order is addressed shall immediately comply with

the order. However, such person shall be provided an opportunity for a hearing as promptly as is reasonable under the circumstances.

(c) The county health director may petition the appropriate chancery court for injunctive relief and any other remedy available at law or equity as necessary to enforce the provision of an order issued pursuant to this section, or to otherwise require compliance with the laws, regulations, resolutions, ordinances, permits or licenses that are within the enforcement responsibility of the county health director. It shall not be necessary that an order be issued prior to seeking relief in chancery court. The court shall have the power to assess the cost of corrective measures against any and all persons failing to comply with the order.

[Acts 1985, ch. 172, § 1.]

(<http://www.state.tn.us/environment/permits/tcalink.shtml>, Retrieved December 30, 2008)