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**Model Healthy Children’s Meals Ordinance**

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## Introduction

Today, one-third of American children and adolescents are obese or overweight.[[1]](#endnote-1) Overweight children are at increased risk for serious health problems in adulthood, including heart disease, type 2 diabetes, asthma, and cancer.[[2]](#endnote-2) The costs of obesity are high, estimated to be $147 billion per year in the United States alone.[[3]](#endnote-3) Roughly one-half of these costs are paid by taxpayers through Medicare and Medicaid.[[4]](#endnote-4) Medicare and Medicaid spending would be reduced by 8.5 percent and 11.8 percent, respectively, in the absence of obesity-related expenditures.[[5]](#endnote-5)

American children consume 19 percent of their daily calories at fast food and other restaurants.[[6]](#endnote-6) Studies link eating out with higher caloric intakes and obesity; children eat almost twice as many calories when they eat a meal at a restaurant as they do when they eat a meal at home.[[7]](#endnote-7) A 2013 study, which examined the nutritional quality of kids’ meals sold at 18 of the most profitable fast food restaurant chains in the United States, found that only 3 percent of the 3,494 meal combinations met nutrition standards developed by a panel of nutrition and health experts.[[8]](#endnote-8)

Recent evidence suggests that consumer demand for healthier dining out options is on the rise. A 2013 study examined servings, traffic data, and sales trends of 21 national restaurant chains to determine if sales of “better-for-you” and lower-calorie menu items resulted in improved business performance.[[9]](#endnote-9) The study concluded that the restaurant chains that increased the number of healthier options delivered superior same-store sales, and experienced growth in traffic and servings.[[10]](#endnote-10)

The National Restaurant Association manages the Kids LiveWell program to encourage restaurants to offer healthier options for children.[[11]](#endnote-11) Unfortunately, a restaurant is only required to offer one children’s meal and one side dish that meet the nutrition standards to join the program and receive the promotional materials.[[12]](#endnote-12) Providing only one healthy meal option limits the choices of parents and children when dining out. Moreover, a 2013 study found that of the children’s meal combinations offered at the top 50 restaurant chains, only 9 percent met the Kids LiveWell nutrition standards.[[13]](#endnote-13)

### **What Can Communities Do?**

While state law regulates the health and sanitation of restaurants, many cities and counties have the authority to regulate aspects of restaurant operations through zoning and other laws by exercising their “police power” – the authority of government to regulate private conduct to protect and further the public’s health, safety, or general welfare. Many communities already regulate restaurants with zoning laws or by regulating other aspects of restaurant operations; for instance, some communities have banned smoking or restricted the sale of foods containing artificial trans fats on restaurant premises.

The *Model Healthy Children’s Meals Ordinance* provides local governments with an additional way to steer restaurants toward providing healthier options for children by setting nutrition standards for children’s meals. The nutrition standards used in the model are based on criteria developed by experts who were convened by the RAND Corporation to develop nutrition performance standards for restaurant meals with the goal of reducing the risk of certain chronic diseases.[[14]](#endnote-14) The beverage standards are based on the Robert Wood Johnson Foundation’s Healthy Eating Research program’s “Recommendations for Healthier Beverages.”[[15]](#endnote-15) The model ordinance offers two options for communities: (1) setting nutrition standards for the entire children’s meal or (2) setting nutrition standards only for the beverages served to children as part of a children’s meal. Some communities may wish to start by focusing on the beverages sold as part of a children’s meal because sugar-sweetened beverages are prevalent and there is strong evidence linking sugary drink consumption with poor nutrition and health.[[16]](#endnote-16)

After a community enacts an ordinance regulating the nutrition of children’s meals, there is a risk that a restaurant or restaurant chain will manipulate its menus to avoid being subject to the ordinance. For example, a restaurant could discontinue children’s meals entirely. A restaurant could also discontinue children’s meals and instead offer “budget meals” that provide smaller portion sizes but are not uniquely targeted to children. Finally, restaurants could “unbundle” children’s meals and charge separate prices for children’s entrees, side dishes, and beverages. That being said, children’s meals are a large part of fast food and family restaurants’ business. For example, in 2009, fast food restaurants sold slightly more than one billion children’s meals with toys.[[17]](#endnote-17) A 2009 study found that 84 percent of parents reported taking their child to a fast food restaurant at least once a week.[[18]](#endnote-18) Given the substantial revenue fast food and casual dining restaurants receive from children’s meals, it seems unlikely that many restaurants will discontinue children’s meals.

### **Enacting the Policy**

Whether a local government has the authority to regulate restaurants – and to implement this model ordinance – is usually determined by state law. It is important to consult state law to determine whether the local government has the police power to regulate restaurants. It is equally important to consult the state’s retail food code to identify provisions that would prohibit local regulation of restaurant operations or otherwise govern children’s meals. These laws may preempt or prohibit local regulation of the same subject matter.

Although it has been designed as a local ordinance, the model can be adapted for other uses, including as a state law. In some states, a state or local board of health may be able to implement the policy. Cities and counties could also pass a resolution urging restaurants to adopt these nutrition standards, or they could use the standards as part of a healthy restaurant initiative. Finally, restaurants or restaurant associations could choose to adopt the standards voluntarily.

The language in the model ordinance is designed to be tailored to the needs of an individual community. The language written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the ordinance. The “comments” provide additional information and explanation. In considering which options to choose, the community should balance public health benefits against practical and political considerations in the particular jurisdiction. One purpose of including a variety of options is to stimulate broad thinking about the types of provisions a community might wish to explore, perhaps even beyond those described in the model. ChangeLab Solutions is interested in learning about novel provisions that communities are considering; the best way to contact us is through our website: *www.changelabsolutions.org*.

The appendix (“Appendix: Enforcement Provisions”) that accompanies this model outlines a range of enforcement options. Though options vary according to local law and custom, enforcement clauses are an important component of any ordinance.

## Model Healthy Children’s Meals Ordinance

An Ordinance of the [*City/County of \_\_\_\_\_*] Setting Nutrition Standards for Children’s Meals in Restaurants and Amending the [*City/County*] Municipal Code.

The [*Municipality*] does ordain as follows:

**SECTION I.** **Findings.** The [*City/County*] hereby finds and declares as follows:

(a) Over the past 30 years, the obesity rate in the United States has more than doubled. According to the Centers for Disease Control and Prevention, in 2009, nearly two-thirds (68.5 percent) of American adults were overweight or obese.[[19]](#endnote-19) In [*insert the year of the most recently available information*] in [*insert name of city/county*], [*insert city/county’s obese adult population percentage here*] of adult residents were overweight or obese. About a third of children nationwide are overweight or obese.[[20]](#endnote-20) In [*insert name of city/county*], [*insert city/county’s obese youth population percentage here*] of children are overweight or obese. Obese children are at least twice as likely as non-obese children to become obese adults.[[21]](#endnote-21)

(b) Obese children and adults are at greater risk for numerous adverse health consequences, including type 2 diabetes, heart disease, stroke, high blood pressure, high cholesterol, certain cancers, asthma, low self-esteem, depression, and other debilitating diseases.[[22]](#endnote-22)

(c) Obesity-related health conditions have serious economic costs. The medical burden of obesity in the United States is about $147 billion annually, or almost 10 percent of all medical spending.[[23]](#endnote-23) Roughly one-half of these costs are paid through Medicare and Medicaid, which means that taxpayers foot much of the bill.[[24]](#endnote-24) Medicare and Medicaid spending would be reduced by 8.5 percent and 11.8 percent, respectively, in the absence of obesity-related spending.[[25]](#endnote-25) Obesity-related annual medical expenditures in [*insert name of city/county*] are estimated at [*insert city/county’s cost of obesity here*].[[26]](#endnote-26)

(d) [*Insert name of city/county*] has invested considerable resources to combat childhood obesity. [*Briefly summarize efforts of city/county*.]

(e) Families in [*insert name of city/county*] have limited time to obtain and prepare healthy food, making dining out an appealing and often necessary option. Nationwide, American children eat 19 percent of their calories at fast food and other restaurants.[[27]](#endnote-27) [*Add local statistics on eating out, if available*.] Children eat almost twice as many calories when they eat a meal at a restaurant as they do when they eat at home.[[28]](#endnote-28) A 2013 study, which examined the nutritional quality of kids’ meals sold at 18 of the most profitable fast food restaurant chains in the U.S., found that only 3 percent of the 3,494 meal combinations assessed met the expert nutrition standards for children’s meals.[[29]](#endnote-29)

(f) By enacting this ordinance, [*City/County legislators*] intend to support parents’ efforts to feed their children healthfully by ensuring healthy meals are readily available to children in restaurants.

**Comment:** Cities and counties usually include in new legislation “findings” of fact that support the purposes of the legislation. The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal codes. The findings contain factual information supporting the need for the law – in this case, documenting the need for and benefits of the ordinance. A city or county may select findings from this list to include in their legislation, along with additional findings addressing the specific conditions in the particular community.

**SECTION II.** [*Chapter*] of the [*City/County*] Municipal Code is hereby amended to read as follows:

**Section \_\_\_1. Purpose.** The purpose of this [*article/chapter*] is to support children’s health by setting nutrition standards for restaurant children’s meals.

**Section \_\_\_2. Definitions.** The following words and phrases, whenever used in this [*article/chapter*], shall have the meanings defined in this section:

(a) “Children’s Meal” means a combination of food items, or food item(s) and a beverage, sold together at a single price, primarily intended for consumption by children.

(b) “Restaurant” means a retail food establishment that prepares, serves, and vends food directly to the consumer.

**Comment:** The “Restaurant” definition is adapted from the definition of a food establishment in the FDA Model Food Code. Localities should use an existing definition in their municipal or state code.

***[Option One: Nutrition Standards for Children’s Meals]***

**Section \_\_\_3. Nutrition Standards.** A Restaurant may not sell a Children’s Meal unless the Children’s Meal meets the following nutrition standards.

(a) The Children’s Meal must contain no more than:

(1) 600 calories;

(2) 770 milligrams of sodium;

(3) 35% of calories from total sugars;

(4) 35% of calories from fat;

(5) 10% of calories from saturated fat; and

(6) 0.5 grams of trans fat.

(b) The Children’s Meal must include at least 0.5 cup (or equivalent) of non-fried fruit or non-fried vegetables (excluding white potatoes), and at least one of the following:

(1) A whole grain product that contains no less than 51% by weight whole grain ingredients or lists whole grains as the first ingredient;

(2) A lean protein food, consisting of at least two ounces of meat; one ounce of nuts, seeds, dry beans, or peas; or one egg. For purposes of this section, a lean protein contains less than 10 grams of fat, 4.5 grams or less of saturated fat, and less than 95 milligrams of cholesterol per 100 grams and per labeled serving; or

(3) At least 0.5 cup of nonfat or 1 percent milk or low-fat yogurt, or 1 ounce of reduced fat cheese.

For purposes of this subsection, juices, condiments, and spreads may not be considered fruits or vegetables.

(c) If the Children’s Meal includes a beverage, that beverage must be:

(1) Water, sparkling water, or flavored water, with no added natural or artificial sweeteners;

(2) Nonfat or 1 percent milk or non-dairy milk alternative containing no more than 130 calories per container and/or serving as offered for sale; or

(3) 100 percent juice, with no added sweeteners, in a serving size of no more than eight ounces.

**Comment**: The nutrition standards used in the model are based on criteria formulated by experts convened by the RAND Corporation to develop nutrition performance standards for restaurant meals with the goal of reducing the risk of certain chronic diseases.[[30]](#endnote-30) The beverage standards are based on the Robert Wood Johnson Foundation’s Healthy Eating Research project’s “Recommendations for Healthier Beverages.”[[31]](#endnote-31)

The ordinance sets nutrition standards for the entire meal because the majority of restaurants sell “bundled” meals to children (a combination of foods and beverages for a single price). In addition, it eases implementation of the ordinance. An alternative would be to set separate nutrition standards for the separate components of the meal (e.g., entrée, sides, dessert).

***[Option Two: Beverage Standards for Children’s Meals]***

**Section \_\_\_3. Beverage Standards.**A Restaurant may not sell a Children’s Meal that includes a beverage, unless the beverage is:

(a) Water, sparkling water, or flavored water, with no added natural or artificial sweeteners;

(b) Nonfat or 1 percent milk or non-dairy milk alternatives containing no more than 130 calories per container and/or serving as offered for sale; or

(c) 100 percent juice, with no added sweeteners, in a serving size of no more than eight ounces.

**Comment**: Some communities may prefer to focus on improving the nutrition content of the beverages served with children’s meals because of the prevalence of sugar-sweetened beverages in those meals and the evidence connecting sugar-sweetened beverages to obesity.[[32]](#endnote-32) The second option allows a community to address only the beverages included as part of a children’s meal.

**Section \_\_\_4. Implementation.**

(a) The [*name of* *agency, department, or official*] shall implement, administer, and enforce this [*article/chapter*]. The[*name of* *agency, department, or official*] is hereby authorized to issue all rules and regulations consistent with this [*article/chapter*] and shall have all necessary powers to carry out the purpose of this [*article/chapter*].

(b) The following classes of employees are authorized to issue citations for violation of this [*article/chapter*]*:* [*enumerate classes of employees*].

**Comment**: The Ordinance authorizes the agency or city department charged with administering and enforcing the ordinance to issue rules and regulations to carry out the law. For purposes of ease in implementation and enforcement, the agency should require Restaurants to maintain records documenting the nutritional content of food and to make those records available on request by the department. Alternatively, these requirements could be placed in the ordinance.

The ordinance can be incorporated into existing laws and procedures that involve inspections of retail food businesses, such as food retail codes.

**Section \_\_\_5. Enforcement and Remedies.**

**See APPENDIX: Enforcement Provisions**

**Comment**: A draft ordinance based on this model is not completewithout enforcement provisions. Realistic and meaningful enforcement is essential. An unenforceable law or a law with trivial penalties that are easily absorbed as the “cost of doing [illegal] business” can be worse than no law at all; an unenforced – or unenforceable – law undermines the effectiveness of the ordinance and legitimacy of the municipality’s laws in general.

Each municipality must consider its own practices and philosophy on enforcement – and state law – when choosing which options to include. Municipalities often include multiple options to provide maximum enforcement flexibility. A list of enforcement options that municipalities may want to contemplate accompanies this model ordinance in “Appendix: Enforcement Provisions.”

**Section \_\_\_6. Effective Date.**

The provisions of the Ordinance shall become effective on [*insert date up to six months from the enactment of the Ordinance*].

**Comment**: The enforcement agency, likely the department of health, will require time to educate local restaurants about the new law. Restaurants will also require time to conform their practices to the new law. Accordingly, we suggest that the municipality allow up to six months after enactment for the ordinance to be effective.

**SECTION III. Statutory Construction & Severability.**

This [*article/chapter*] shall be construed so as not to conflict with applicable federal or state laws, rules, or regulations. Nothing in this [*article/chapter*] authorizes any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal or state law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this [*article/chapter*] or the application thereof to any person or circumstances, it is the intent of the [*Municipal Legislators* *(e.g., city council)*] that the court or agency sever such clause, sentence, paragraph, or section so that the remainder of this [*article/chapter*] remains in effect.

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2. U.S. Department of Health and Human Services, Office of the Surgeon General. *The Surgeon General’s Call to* *Action to Prevent and Decrease* *Overweight and Obesity*. Rockville (MD): Office of the Surgeon General (US), 2001. Available at: [*www.ncbi.nlm.nih.gov/books/NBK44206/*](http://www.ncbi.nlm.nih.gov/books/NBK44206/); Food and Nutrition Board and Board on Health Promotion and Disease Prevention. *Preventing Childhood Obesity: Health in the Balance*. Washington, D.C.: The National Academies Press, 2005, pp. 67-69. Available at: [*http://books.nap.edu/openbook.php?record\_id=11015&page=67*](http://books.nap.edu/openbook.php?record_id=11015&page=67)*.* [↑](#endnote-ref-2)
3. Finkelstein EA, Trogdon JG, Cohen JW, et al. “Annual Medical Spending Attributable to Obesity: Payer- and Service-Specific Estimates.” *Health Affairs,* 28(5): w822–w831, w822, 2009. Available at: [*http://content.healthaffairs.org/content/28/5/w822.full.pdf+html*](http://content.healthaffairs.org/content/28/5/w822.full.pdf%2Bhtml)*.* [↑](#endnote-ref-3)
4. *Id.* at w822. [↑](#endnote-ref-4)
5. *Id.* at w828. [↑](#endnote-ref-5)
6. Lin BH and Morrison RM. “Food and Nutrient Intake Data: Taking a Look at the Nutritional Quality of Foods Eaten at Home and Away From Home.” U.S. Department of Agriculture, Economic Research Service, 2012. Available at: [*www.ers.usda.gov/amber-waves/2012-june/data-feature-food-and-nutrient-intake-data.aspx*](http://www.ers.usda.gov/amber-waves/2012-june/data-feature-food-and-nutrient-intake-data.aspx)*.* [↑](#endnote-ref-6)
7. Zoumas-Morse C, Rock CL, Sobo EJ, et al. “Children’s Patterns of Macronutrient Intake and Associations with Restaurant and Home Eating.” *Journal of the American Dietetic Association,* 101(8): 923-925, 925, 2001. [↑](#endnote-ref-7)
8. Center for Science in the Public Interest*. Kids’ Meals: Obesity on the Menu*. 2013, pp. 3, 5. Available at: [*http://cspinet.org/new/pdf/cspi-kids-meals-2013.pdf*](http://cspinet.org/new/pdf/cspi-kids-meals-2013.pdf)*.* [↑](#endnote-ref-8)
9. Cardello H, Wolfson J, Yufera-Leitch M, et al. *Better-For-You Foods: An Opportunity to Improve Public Health and Increase Food Industry Profits.* Hudson Institute, March 2013. Available at: [*www.hudson.org/content/researchattachments/attachment/1096/better\_for\_you\_combinedfinal.pdf*](http://www.hudson.org/content/researchattachments/attachment/1096/better_for_you_combinedfinal.pdf)*.* [↑](#endnote-ref-9)
10. *Id.* at 11. [↑](#endnote-ref-10)
11. See [*www.restaurant.org/Industry-Impact/Food-Healthy-Living/Kids-LiveWell/About*](http://www.restaurant.org/Industry-Impact/Food-Healthy-Living/Kids-LiveWell/About)*.* [↑](#endnote-ref-11)
12. *Id.* [↑](#endnote-ref-12)
13. Center for Science in the Public Interest. *Kids’ Meals: Obesity on the Menu*. 2013, p. 3. Available at: [*http://cspinet.org/new/pdf/cspi-kids-meals-2013.pdf*](http://cspinet.org/new/pdf/cspi-kids-meals-2013.pdf)*.* [↑](#endnote-ref-13)
14. Cohen D, Bhatia R, Story M, et al. “Performance Standards for Restaurants: A New Approach to Addressing the Obesity Epidemic.” RAND Corporation, 2013. Available at: [*www.rand.org/content/dam/rand/pubs/conf\_proceedings/CF300/CF313/RAND\_CF313.pdf*](http://www.rand.org/content/dam/rand/pubs/conf_proceedings/CF300/CF313/RAND_CF313.pdf)*.* [↑](#endnote-ref-14)
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16. Vartanian LR, Schwartz MB, and Brownwell KD. “Effects of Soft Drink Consumption on Nutrition and Health: A Systematic Review and Meta-Analysis.” *American Journal of Public Health*, 97(4): 667-675, 667, 2007. Available at: [*www.ncbi.nlm.nih.gov/pmc/articles/PMC1829363/pdf/0970667.pdf*](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1829363/pdf/0970667.pdf)*.* [↑](#endnote-ref-16)
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24. *Id.* [↑](#endnote-ref-24)
25. *Id.* at w828. [↑](#endnote-ref-25)
26. For state-specific health care spending data, see Finkelstein EA, Fiebelkorn IC, and Wang G. “State-Level Estimates of Annual Medical Expenditures Attributable to Obesity.” *Obesity Research*, 12(1): 18–24, 2004. These state-level data are for 2003. State health agencies may have more recent spending data. [↑](#endnote-ref-26)
27. Lin BH and Morrison RM. “Food and Nutrient Intake Data: Taking a Look at the Nutritional Quality of Foods Eaten at Home and Away From Home.” U.S. Department of Agriculture, Economic Research Service, 2012. Available at: [*www.ers.usda.gov/amber-waves/2012-june/data-feature-food-and-nutrient-intake-data.aspx*](http://www.ers.usda.gov/amber-waves/2012-june/data-feature-food-and-nutrient-intake-data.aspx)*.*  [↑](#endnote-ref-27)
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31. Healthy Eating Research. “Recommendations for Healthier Beverages.” Robert Wood Johnson Foundation. March 2013. Available at: [*www.rwjf.org/content/dam/farm/reports/issue\_briefs/2013/rwjf404852*](http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2013/rwjf404852)*.* [↑](#endnote-ref-31)
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