

Ordinance No. 524-2020

AS AMENDED

By Council Members Griffin and B. Jones

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Section 241.43 relating to sale of beverages offered with children's meals by food service operations.

WHEREAS, the U.S. Centers for Disease Control reports that the percentage of children and adolescents in the United States affected by obesity has more than tripled since the 1970s; and

WHEREAS, according to the 2018 Youth Risk Behavioral Survey in Cleveland, 29.6% of children are overweight or obese; and

WHEREAS, children and adults with obesity are at a greater risk for numerous adverse health consequences, including type 2 diabetes, heart disease, high blood pressure, high cholesterol, tooth decay and other debilitating diseases; and

WHEREAS, according to the American Heart Association and the American Academy of Pediatrics, children consume 30 gallons of sugary drinks each year, which is 10 times the recommended amount; and

WHEREAS, children and adults who are overweight or obese are at greater risk for numerous serious health outcomes that place a large burden on the health care system and increase health care costs; and

WHEREAS, the City's Department of Public Health's work through the Healthy Cleveland Initiative has increased awareness of residents that consuming healthy foods will improve health; and

WHEREAS, many restaurants and beverage companies have taken steps to help people address obesity by introducing lower and non-calorie options, displaying calorie information, encouraging people to drink more water, removing full-calorie beverages from schools, and reducing calories from many of their products; and

WHEREAS, this Council believes that restaurants in the City can help make it easier for parents and kids to make healthy choices by offering healthy drink options on children's menus, instead of sugary drinks; and

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WHEREAS, this ordinance constitutes an emergency measure providing for the immediate preservation of public peace, property, health, or safety; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Section 241.43 to read as follows:

Section 241.43 Beverages Offered with Children's Meals

(a) Definitions.

(1) "Food service operation" has the same meaning as in RC Section 3717.01.

(2) "Children's meal" means a combination of food items and a beverage that is prepared by and offered for purchase at a food service operation as a unit at a single price and is primarily intended for consumption by children.

(b) Beverage limitation. No food service operation shall offer a children's meal that includes a beverage unless the beverage is:

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

(2) nonfat or one (1) percent milk or a non-dairy milk alternative containing no more than ~~130 calories~~ 150 calories per container or serving as offered for sale; or

(3) 100% fruit juice or fruit juice combined with water or carbonated water, with no added sweeteners, in a serving size of no more than ~~six (6) ounces~~ eight (8) ounces.

(c) Exception. Upon customer's request, a food service operation may sell, and a customer may purchase, a substitute or alternative beverage instead of the beverages offered pursuant to division (b) of this section.

(d) Educational Material. The Director of Public Health or a designee shall make available educational material regarding the nutritional and health reasons to limit a child's consumption of sugared beverages.

(e) Civil Penalty.

(1) Any food service operation offering a children's meal that includes a beverage but that fails to limit the beverages offered in violation of division (b) of this section shall be given a warning on its first offense, and shall be charged a civil penalty of \$25.00 for the second offense and \$50.00 for a third and any subsequent offense. The Director of Public Health or a designee is authorized to charge and collect the civil penalties under this section.

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(2) Any food service operation charged with a violation of division (b) of this section may appeal in writing to the Director of Public Health or designee within ten (10) days from the date of the civil charge. The Director shall have jurisdiction to affirm, reverse, or modify the decision and shall do so within ~~ten (10) days~~ thirty (30) days of the date of the appeal. ~~The Director's decision on appeal shall be final.~~ A person aggrieved by a final decision of the Director may further appeal to the Board of Zoning Appeals within thirty (30) days after the Director's decision. Failure to file an appeal or pay the fines imposed within this time period shall constitute a waiver of the right to contest the charge and shall be considered an admission.

(3) The offering, by a food service operation on its written or posted menu, of a children's meal with the beverage limitation set forth in division (b) is prima facie evidence of compliance with this chapter.

Section 2. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force six (6) months after its passage and approval by the Mayor.

BG:rns
7/1/2020

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THERE IS NO LEGAL OBJECTION TO THIS LEGISLATION IF AMENDED AS FOLLOWS:

1. In Section 1, at new Section 241.43(b), line 2, strike "130 calories" and insert "150 calories"; and in Section 241.43(c), line 2, strike "six (6) ounces" and insert "eight (8) ounces".

2. In Section 1, at new Section 241.43(e)(2), line 4, strike "ten (10) days" and insert "thirty (30) days"; and in line 5, strike "The Director's decision on appeal shall be final." and insert "A person aggrieved by a final decision of the Director may further appeal to the Board of Zoning Appeals within thirty (30) days after the Director's decision.".

Date: July 28, 2020 (Signed): _____
Christopher Hetzel
Chief Assistant Director of Law

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