

**ATTACHMENT B: December 10, 2009**

CITY OF PHILADELPHIA

DEPARTMENT OF PUBLIC HEALTH

Board of Health

Regulations Regarding Delegation of Certain Board of Health

Powers to the Health Commissioner

Adopted \_\_\_\_\_, 2009

Section 1. Definitions

*Board:* The Philadelphia Board of Health

*Commissioner:* The Health Commissioner, or his or her designee.

Section 2. Delegations to the Commissioner with Respect to Menu Labeling Requirements and Variations

A. Pursuant to the authority granted to the Board in Section 6-308(1)(c) of The Philadelphia Code, and within the limits of the standards set forth in that section, the Commissioner is hereby authorized to review, on behalf of the Board, requests for variation from the requirements of Section 6-308, and to determine whether or not such variation is allowable.

B. Within 30 days of the submission of a request for variance, the Commissioner shall inform applicants in writing of his or her determination as to whether a variation of the requirements of section 6-308 will be allowed.

C. The Commissioner's determination that an applicant will not be allowed a variation from the requirements of Section 6-308 may be appealed to the Board of Health, by written application submitted to the Board within 30 days of receipt of the Commissioner's determination. The Board will make a determination within 60 days of receipt.

**Presentation to the Board of Health  
10 December 2009**

Delegation of Menu Labeling Variance Applications

Background:

Section 6.308(1) of the Philadelphia Code requires chain restaurants, defined as 15 or more outlets operating under the same trade name nationwide, to provide nutritional information for all food and beverage items listed for sale.

- Nutritional information required on a menu must include calories, saturated and trans fats, carbohydrates and sodium
- If menu boards or food tags are used in lieu of menus, the establishment must post, at a minimum, the total number of calories and must provide the remaining required nutritional information upon request
- Our records indicate approximately 720 chain food establishments in the City of Philadelphia that are further categorized in to 91 separate chains (e.g., 107 Dunkin Donut establishments equal 1 chain).

Variance Request:

Section 6-308(1)(c) of the Code authorizes the Board of Health to approve a variation in the method of presentation of the required nutritional information, provided:

- the proposed method is appropriate for the protection of public health in that it allows the consumer to make an informed decision of food choices, and
- the proposed method provides the required nutritional information to the consumer at the point of decision-making, and
- until a variance request is approved, the establishment must comply with the requirements of the Ordinance

The Department is requesting, through resolution, delegation to the Health Commissioner for review and approval of variance requests to facilitate responses to the business community. A variance application form with instructions has been developed (attached) that provides for a reasonable response period of ten (10) business days from date of receipt. If this authority were to remain with the Board of Health, it would delay review and response of these applications.

Appeals of the Commissioner's decision would be made to the Board of Health within 30 days of the decision disapproving an application. (What is a timely response protocol by the Board?)