

## Healthy Menu Choices Act, 2015

# Application of the Act to Advertisements and Promotional Flyers

This document is intended to help food service premises owners and operators, public health stakeholders, and the general public understand, implement and enforce Ontario's menu labelling legislation as it may apply to advertisements and promotional flyers. This fact sheet should be used in conjunction with ***A Guide to Menu Labelling Requirements in Regulated Food Service Premises in Ontario***.

The *Healthy Menu Choices Act, 2015* and its accompanying regulation (O.Reg 50/16) ("menu labelling legislation") come into effect on January 1<sup>st</sup>, 2017 (with the exception of the revised contextual statement, which comes into effect January 1<sup>st</sup>, 2018). Owners and operators of regulated food service premises are required to comply with the menu labelling legislation as of January 1<sup>st</sup>, 2017.

## What is a standard food item?

A "standard food item" is any restaurant-type food or drink item that:

- Is sold or offered for sale in servings that are standardized for portion and content
- is served or processed and prepared primarily in a regulated food service premises; and
- is intended for immediate consumption on the premises or elsewhere without further preparation by the consumer.

## Where must calories be displayed?

Subsection 2(2) of the *Healthy Menu Choices Act, 2015* states that calories are to be displayed on:

- each menu on which the standard food item is listed or depicted **at the regulated food service premises**; and
- where the standard food item is put on display at the regulated food service premises, on a label or tag identifying the standard food item.

Subsection 2(3) of the Act adds that:

- where a regulated food service premises lists or depicts a standard food item on a menu that is distributed or available **outside the regulated food service premises**, calories are to be displayed on that menu.

## What is the definition of a “menu”?

Subsection 3(1) of the regulation defines “menu” as “any document or other written means of communicating information that lists standard food items offered for sale by a regulated food service premise”. A menu includes but is not limited to:

- Paper Menus;
- Electronic Menu (e.g. menus on tablets, self-order kiosks);
- Menu Boards;
- Drive-through Menus
- Online Menus/Applications;
- **Advertisements**, other than a billboard, radio or television advertisements, and
- **Promotional Flyers.**

## Advertisements or Promotional Flyers Inside a Regulated Food Premises


Section 3(1) of O. Reg. 50/16 includes advertisements in the definition of a menu.

**In store advertisements and promotional flyers are considered menus** if they list or depict standard food items offered for sale, regardless of whether or not they include a price.

Subsection 2(2) of the *Healthy Menu Choices Act, 2015* requires calories to be posted on any menu where standard food items are **listed or depicted**. This applies to, but is not limited to, signs, posters, table toppers, and promotional flyers.

Example #1: Displaying Calories on an In-store Advertisement (item is depicted)

Calories posted for depicted muffins even when the product name is not listed. Range accounts for varieties of muffins (because varieties are not listed). In-store advertisement exempted from including contextual statement



The advertisement features a top section with a photo of various muffins and a blue text box stating "Made Fresh Daily (220-350 Cals)". Below this is a white box containing a disclaimer: "Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary." The bottom section shows a display of three muffin varieties: Cherry (270 Cals), Chocolate (350 Cals), and Carrot (220 Cals). A price tag at the bottom indicates "Muffins \$1.99".

Example #2: Displaying Calories on an In-store Advertisement (no price listed)

Calories posted for multi-person combination meal that is offered for more than 90 days in a year. In-store advertisement exempted from including contextual statement



The advertisement is titled "WEEKEND SPECIAL" and "Available Saturdays and Sundays Only". It features an illustration of a multi-person meal consisting of a large pizza, a bowl of salad, and a pitcher of beer. At the bottom, it states "1050 Calories, Serves 4" and "\$12.99".

## Advertisements Outside a Regulated Food Premises

Per section 3(1) of the regulation, **advertisements and promotional flyers** that list standard food items for sale are considered menus for the purposes of the legislation.

However, the regulation adds an exemption that online menus, menu applications, **advertisements, and promotional flyers distributed or available outside** of a regulated food premises are exempt from posting calories as long as they satisfy either of the following criteria:

1. They do not list prices for standard food items; or
2. They do not list standard food items that a person can order for delivery or takeaway ordering and do not provide a method to place an order (e.g., phone number or website).

Therefore, an advertisement or promotional flyer that is available outside the premises (e.g. a poster outside the store) would not require calorie posting if either the price is not listed or if a method to order, such as a website or phone number, is not listed. Similarly, a standard coupon mailer or grocery store flyer that has to be taken into the store to order a product and does not provide a method to order take out, would not be required to post calories.

An online menu or promotional flyer available or distributed outside the premises that lists both the prices for standard food items available for sale and provides a method to order would require calorie posting.

Billboard, radio and television advertisements are exempted from the requirements of the menu labelling legislation. .

### Example #3: Exempted Out-of-store Advertisements



#### Example #4: Displaying Calories on Out-of-store Advertisements (not exempted)

Calories posted on online menu/application (outside the premises), since prices for standard food items available for sale are listed, and a method to place an order is included

The screenshot shows a mobile application interface for a restaurant. At the top, it says "Restaurant APP". Below that is a button that says "Click on items to add them to your order". There are three food items listed: "Guacamole and Nachos" for \$5.99 (400 Cals; serves 2), "Salsa and Nachos" for \$4.99 (200 Cals; serves 2), and "Chicken Quesadilla" for \$8.99 (700 Cals). At the bottom, there is a "Scroll" button with a downward arrow. Below the scroll button, a contextual statement is displayed: "Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary".

Calories posted on take out promotional flyer distributed outside the premises, since prices for standard food items available for sale are listed, and a method to place an order is included

The flyer is for "PIZZA DELIVERY" with the phone number "(444)444-4444". It features an image of a pizza with various toppings. The text says "2 Medium Pizzas" for "\$15.99" and "90-150 Cals per slice, 16 slices". At the bottom, the same contextual statement is displayed: "Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary".

## Contextual Statement

A contextual statement, in English or in French, must be displayed.

As of January 1<sup>st</sup>, 2018, the following contextual statement must be displayed:

***“Adults and youth (ages 13 and older) need an average of 2,000 calories a day, and children (ages 4 to 12) need an average of 1,500 calories a day. However, individual needs vary.”***

Between January 1<sup>st</sup>, 2017 and December 31<sup>st</sup>, 2017, food service premises can choose to post the contextual statement above, or post the contextual statement as stated below:

***“The average adult requires approximately 2,000 to 2,400 calories per day; however, individual calorie needs may vary.”***

The contextual statement must be displayed on all menus, subject to limited exemptions, in close proximity to the standard food items listed on the menu, in the same font and format, and at least the same size and prominence as the name or price of the standard food items listed on the menu (e.g. same colour, boldness, style, etc.).

In-store advertisements are exempt from posting the contextual statement. In addition, out-of-store advertisements and promotional flyers that are distributed or made available outside of the regulated food service premises that do not list prices for standard food items or do not provide a method to place an order are also exempt from posting the contextual statement.

## Disclaimer

This fact sheet is intended to reflect the policy intent, as supported by the legislation. The ministry recognizes that application to each regulated food service premises is subject to the specific realities of each food service premises. Stakeholders are encouraged to speak to their legal counsel about specific questions that they may have regarding how the Act and regulation apply to their food service premises.

This document is intended to help owners and operators of regulated food service premises understand and implement Ontario's menu labelling legislation. This document provides summary information about the *Healthy Menu Choices Act, 2015* and the regulation (O. Reg. 50/16) made under the Act. The document is provided for educational use only, and is not complete or exact reproductions of the legislation. It is not intended, or to be used, as legal advice about the requirements for menu labelling. Such advice should be obtained from lawyers. Where there is a discrepancy between anything in this document and a legislative provision, the legislation prevails.

## Additional Information

For further information about the *Healthy Menu Choices Act, 2015*, please access the legislation and regulation at <https://www.ontario.ca/laws/statute/15h07>.

Questions or comments about this fact sheet can be directed to [menulabelling@ontario.ca](mailto:menulabelling@ontario.ca).