

Is the “nanny state” in Montgomery working?

By Victor Zapana, *The Washington Post*. Published: August 3, 2012

It was right there on the label of the white tuna salad, an outlawed ingredient flaunted for anyone to see: “partially hydrogenated soybean oil.”

A customer filed a formal complaint with the authorities. An investigation was launched. A Montgomery County health inspector arrived on the scene, a deli in Potomac. He reviewed the evidence and handed down his verdict: The fish was guilty.

“Wrote them up for a labeling violation and made them aware that Montgomery County is a Trans Fat Free county,” he later wrote in his report. This time the deli would get off with a warning.

The banning of trans fat was among a series of controversial county laws passed in recent years, creating vigorous fights over the reach and role of government and testing the boundaries between personal liberties and the collective good.

Laws such as requiring calorie counts on menus, and requiring domestic workers to be offered a job contract, reinforced the county’s reputation as being one of the most progressive areas in the region, a county that, as one critic said, “loves to act as God.”

The same charge has been leveled against New York, which also has banned trans fat and is now targeting sugary, supersized drinks like 7-Eleven’s “Big Gulp.” Critics call them “nanny state” laws. Defenders say they’re well-intentioned attempts at prodding residents to make better life choices and ones about health, safety and equality.

But is Montgomery County any healthier? Or safer? Or more equitable?

The results are mixed. There have been significant improvements. The bag tax is generating hundreds of thousands of dollars for water-quality programs. Major traffic collisions are down, according to county police, and federal studies show that the rate of diabetes is decreasing in the county.

There are troubling signs as well. Obesity has worsened in the county compared to the rest of the state, and federal data show that fewer residents feel healthier than just a few years ago.

But the effect of much of the legislation remains a mystery, in large part because the county often does not measure whether the laws have any impact.

Many of the health regulations “were put into place without much thinking about evaluation,” said Ulder J. Tillman, the county’s health officer.

Another problem is that, while the county has spent a lot of time and resources passing these regulations, there has been little to no enforcement of some of them.

Take the law passed in 2008 requiring residents to offer domestic workers a written contract. At the time, Council member Roger Berliner (D-Potomac-Bethesda) said he was worried about “whether we would be deemed to be the nanny government of all time.”

Still, the bill passed unanimously.

Since then, it’s been enforced once.

‘It’s an uphill battle’

In 2007, county legislators made national headlines by unanimously approving the trans fat ban.

The measure provoked scores of residents and business leaders to weigh in. Legislators held several hearings over two months to discuss the bill, which drew jeers from restaurant owners and irate bloggers. “Are we really going to regulate everything?” Trevor Bothwell, author of the “Who’s Your Nanny?” blog, lamented at the time.

County officials rebuffed the criticism, and health officials said it would become a critical step in curbing all kinds of health problems, including heart disease, at a time when Americans consume about a fifth of their calories at restaurants.

“The goal is to protect the public health,” said former Council member Duchy Trachtenberg (D-At Large).

But five years later, it’s not clear whether there has been an impact on the county’s health, and even Tillman said the effect could be marginal at best.

“It’s well intentioned,” she said of the ban. “But it may not have a marked impact all around, because there are too many variables out there. And you have food industries that basically want you to keep drinking the soft drinks and eating the fatty foods. It’s an uphill battle.”

In 2009, county officials approved another food regulation, requiring large chains to list calorie counts and nutritional information on menus.

But even Trachtenberg, one of the bill’s sponsors, and county officials say they’re not sure whether the law changes behavior. Although they track the number of violations, they have no plans to see whether it will work — which public-policy experts said is a problem.

“You don’t want to spend all of your money evaluating everything, but if you don’t evaluate, you don’t know the value of what you’re doing,” said Donald F. Kettl, dean of the University of Maryland’s School of Public Policy.

The law has empowered citizen whistleblowers, like the one who dropped a dime on the FroZenYo store in Silver Spring in May.

The complainant “alleges to have seen discrepancies in the nutritional labeling food items served in the facility. Specifically Dulce de Leche,” according to the county’s inspection report. The problem was soon remedied: “You are in violation of Montgomery County Regulation chapter 15. 15A,” the inspector wrote. And the labeling went up.

But aside from the enforcement, research shows that many people aren’t swayed by calorie labels.

Just ask Berni Rand and Lourdes Bautista, who were having lunch recently at T.G.I. Friday’s on Rockville Pike.

On the menus, alongside the prices and glossy photos of juicy cheeseburgers and pasta bathed in cream sauce, were the calorie counts for each dish.

Rand, 61, ordered the \$13 special for the Friday’s Shrimp, French onion soup, salted caramel cake and unsweetened ice tea. Total calories: 1,710.

Bautista, 59, ordered the \$10 bruschetta chicken pasta special with white cheddar spicy beef queso, chips and two mango teas. Total calories: 2,280.

“They say you need 2,000 calories for the day, not for lunch,” Bautista said.

Rand pledged to skip dinner.

Sending a message

Calorie labels might not affect behavior, but roadside cameras do.

In 2008, the county’s red-light cameras generated nearly 64,000 tickets. In 2011, the number dropped to 40,000 citations.

The bane of county drivers, red-light and speed cameras have reduced major crashes, according to county police. Capt. Thomas Didone said his department monitors violations and traffic collision data daily to determine which cameras are working and which aren’t. Didone declined to provide crash data at sites where cameras are located, but countywide, fatal auto collisions have slightly decreased in recent years, from 39 collisions in 2007 to 31 in 2011.

Nationally, the cameras have been effective in reducing crashes, according to the Insurance Institute for Highway Safety. “People are going to slow down when they think there’s a risk of them getting a ticket,” said Anne T. McCartt, senior vice president for research for the institute.

The 5-cent bag tax, which went into effect Jan. 1, seems to have had an effect as well, although not as much as the county first anticipated. Bag use dropped by a third, not by half as initially predicted. The tax has brought in more money for water-quality programs than anticipated — which has actually dismayed county officials, who want people to be using fewer bags.

“It’s not meant to generate more revenue,” said County Executive Isiah Leggett (D).

In July 2008, after three years of lobbying by labor, religious and student advocates and six public hearings over six months, the county became the first jurisdiction in the nation to pass a bill requiring county residents to offer domestic workers, such as nannies, to be hired with a contract spelling out job conditions such as wages and benefits.

At the time, the so-called nanny bill got a lot of attention. But in the four years it’s been on the books, the law has been enforced only once. And the violation was discovered only after the domestic worker filed a federal lawsuit against her bosses.

Berliner, the council member, said he’s not bothered by the lack of enforcement.

“Sometimes,” he said, “you do things to reinforce and send a message.”