



## NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Notice of Adoption of Amendments to

### Title 24 of the Rules of the City of New York

In compliance with section 1043(b) of the New York City Charter (“Charter”), a notice of intention to add Chapter 39 (Added Sugar Warning) to Title 24 of the Rules of the City of New York was published in the New York City Record on April 23, 2024, and a public hearing was held on May 23, 2024. The rule requires food service establishments with 15 or more locations nationally to display added sugar warning icons informing consumers about food items for which a serving size contains added sugars in an amount that is equal to or more than the Daily Value for added sugars (currently 50 grams of added sugars (or 200 calories)).

At the hearing, four people testified, and twenty-three written comments were received. The testimony, as well as the written comments, largely supported the rule but some commenters recommended changes to the text of the warning, the placement of the warning text and the image of the warning icon. Specifically, several commenters made recommendations regarding the warning statement, including: to make it clearer that consuming added sugars (whether eating or drinking) increased health risks, to include dental disease among the health risks, and to clarify that risks are associated with high added sugars intake over time.

In response, the Department made changes to the language of the warning statement. Additionally, the Department has updated section 39-01(c) requiring the placement of the warning statement to include the menu, menu board and self-service location. Since “menu or menu board” is defined to include online menus, the added sugar warning statement and icon must appear on a covered establishment’s online menus. Additionally, the Department made changes to clarify that the rule applies to combination meals. The Statement of Basis and Purpose was also updated to reflect current data.

After review of the available evidence, consideration of the desire for consistency with the sodium icon and evaluation of implementation considerations, the Department chose to keep the originally proposed icon.

### Statement of Basis and Purpose

#### **Statutory Authority**

This amendment to Title 24 of the Rules of the City of New York (“RCNY”) is promulgated pursuant to sections 556 and 1043 of the New York City Charter and section 17-199.18 of the Administrative Code.

#### **Background**

Local Law 33 of 2022 (“Local Law 33”) and Local Law 150 of 2023 (“Local Law 150”) amended the Administrative Code of the City of New York (“Administrative Code”) by adding a new section 17-199.18, requiring Food Service Establishments (“FSE” or “restaurant”) that are inspected pursuant to the restaurant grading program established pursuant to subdivision a of section 81.51 of the New York City health code and are part of chains with 15 or more locations across the nation to display added sugars notifications for certain food items displayed and listed on menus or menu boards that contain high levels of added sugars and a warning statement about the harms of high added sugars intake.

## **Sugar Consumption That Exceeds Dietary Recommendations is Associated with Negative Health Outcomes**

The 2020-2025 Dietary Guidelines for Americans (“2020 DGA”) recommends limiting consumption of added sugars, starting at age 2 years, to less than 10% of daily caloric intake, the equivalent of 200 calories of added sugars per day for a 2,000-calorie daily diet.<sup>1</sup> The 2020 DGA also recommends avoiding foods and beverages with added sugars for those younger than age 2.<sup>2</sup> Despite national recommendations, the average American consumes more than 13 percent of total daily calories from added sugars, about 270 calories.<sup>3</sup> There is an established body of scientific literature demonstrating the health harms of high added sugars intake. Regarding excess body weight and type 2 diabetes, the Scientific Report of the 2015 Dietary Guidelines Advisory Committee (“2015 DGAC”) concluded the following<sup>4</sup>:

“Strong and consistent evidence shows that intake of added sugars from food and/or sugar sweetened beverages are associated with excess body weight in children and adults. The reduction of added sugars and sugar-sweetened beverages in the diet reduces body mass index in both children and adults. Comparison groups with the highest versus the lowest intakes of added sugars in cohort studies were compatible with a recommendation to keep added sugars intake below 10 percent of total energy intake.”

“Strong evidence shows that higher consumption of added sugars, especially sugar-sweetened beverages, increases the risk of type 2 diabetes among adults and this relationship is not fully explained by body weight.”

Type 2 diabetes is among the leading causes of premature deaths in New York City.<sup>5</sup>

Dental caries, also known as tooth decay, is the most common noncommunicable disease worldwide.<sup>6</sup> The prevalence of dental caries in the United States is 45.8% among children ages 2 to 19 years, 89.9% among adults aged 20 to 64 years, and 96.1% among adults aged 65 years and older.<sup>7</sup> The 2015 DGAC noted<sup>8</sup> its concurrence with the World Health Organization’s (“WHO”) commissioned systematic review<sup>9</sup> that “moderate consistent evidence supports a relationship between the amount of free sugars intake and the development of dental caries among children and adults.”

---

<sup>1</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://www.dietaryguidelines.gov).

<sup>2</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://www.dietaryguidelines.gov).

<sup>3</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://www.dietaryguidelines.gov).

<sup>4</sup> Dietary Guidelines Advisory Committee. 2015. Scientific Report of the 2015 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Health and Human Services and the Secretary of Agriculture. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC

<sup>5</sup> Li W, Onyebeke C, Castro A, Gurung S, Maduro G, Sun Y, Seil K, and Van Wye G. Summary of Vital Statistics, 2021. New York, NY: Bureau of Vital Statistics, New York City Department of Health and Mental Hygiene

<sup>6</sup> Sugars and dental caries. World Health Organization. November 9, 2017. Accessed June 3, 2024. [Sugars and dental caries \(who.int\)](https://www.who.int)

<sup>7</sup> Dietary Guidelines Advisory Committee. 2020. Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.

<sup>8</sup> Dietary Guidelines Advisory Committee. 2015. Scientific Report of the 2015 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Health and Human Services and the Secretary of Agriculture. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC

<sup>9</sup> Moynihan PJ, Kelly SA. Effect on caries of restricting sugars intake: systematic review to inform WHO guidelines. J Dent Res. 2014 Jan;93(1):8-18. doi: 10.1177/0022034513508954. Epub 2013 Dec 9. PMID: 24323509; PMCID: PMC3872848.

## **Added Sugars are Pervasive in the Food Supply**

Restaurants are an important source of food for Americans, with an estimated 41% of adults in the United States consuming food from quick-service restaurants and 24% from full-service restaurants on a given day.<sup>10</sup> Also, added sugars are widespread in the national food supply. More than 60% of packaged foods in the U.S. contain added sugars<sup>11</sup>, making it difficult for individuals to reduce their sugar consumption. Further, most added sugars consumed in the U.S. diet comes from processed and packaged foods.<sup>12</sup>

Sugary drinks are the leading contributor to added sugars in the American diet: nearly 25% of all added sugars consumed comes from sodas, fruit drinks, sports and energy drinks, and other sugar drinks.<sup>13</sup> Just one bottled sugary drink can exceed the daily added sugars limit for adults, for example: a 20 oz. bottle of Coca-Cola, Red Bull and Arizona Iced-Tea contains 65, 64 and 60 grams of added sugars, or the equivalent of approximately 260, 256, and 240 calories of added sugars, respectively. A 2020 study found that 32% of fast-food or quick-service restaurants (“QSR”) respondents and 21% of full-service restaurant (“FSR”) respondents ordered sugary drinks, including fountain drinks and bottle drinks: at QSR, among those who did so, mean sugary drink caloric contributions was 262 calories, and 71% purchased sugary drinks containing at least 200 calories, or 50 grams of added sugars.<sup>14</sup> At FSR, mean sugary drink calories amounted to 133 calories, and 10% of respondents had 200 or more calories, or 50 or more grams of added sugars, from sugary drinks, among those who purchased one.<sup>15</sup>

## **Foods that are Not Offered Prepackaged but Are Represented as the Same Brand and Product as a Prepackaged Food Item**

The U.S. Food and Drug Administration requires disclosure of added sugars content on the Nutrition Facts label of prepackaged foods but does not currently require such disclosure for non-prepackaged food offered by chain restaurants. However, the New York City Administrative Code does require the notification label on chain restaurant’s non-prepackaged food items that are identical to prepackaged food items because foods offered that are non-prepackaged in chain restaurants have essentially the same high sugar content as the same prepackaged foods sold in retail stores.

The notification and warning requirements also apply when chain restaurants offer products that are represented to the public as the same brand and product as a prepackaged food item with high added sugars content. Identical to prepackaged food items include, but are not limited to, fountain sodas, coffee beverages and salad dressings.

---

<sup>10</sup> Hoy MK, Clemens JC, Murayi T, Moshfegh AJ. Consumption of restaurant foods by US adults: *What We Eat in America*, NHANES 2017-2018. Food Surveys Research Group Dietary Data Brief No. 48.

<sup>11</sup> Popkin BM, Hawkes C. Sweetening of the global diet, particularly beverages: patterns, trends, and policy responses. *Lancet Diabetes Endocrinol.* 2016 Feb;4(2):174-86. doi: 10.1016/S2213-8587(15)00419-2. Epub 2015 Dec 2. PMID: 26654575; PMCID: PMC4733620.

<sup>12</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://www.dietaryguidelines.gov).

<sup>13</sup> U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2020-2025. 9th Edition. December 2020. Available at [DietaryGuidelines.gov](https://www.dietaryguidelines.gov).

<sup>14</sup> Prasad D, Mezzacca TA, Anekwe AV, Lent M, Farley SM, Kessler K, Angell SY. Sodium, calorie, and sugary drink purchasing patterns in chain restaurants: Findings from NYC. *Prev Med Rep.* 2020 Jan 7;17:101040. doi: 10.1016/j.pmedr.2019.101040. PMID: 32055437; PMCID: PMC7005460.

<sup>15</sup> Prasad D, Mezzacca TA, Anekwe AV, Lent M, Farley SM, Kessler K, Angell SY. Sodium, calorie, and sugary drink purchasing patterns in chain restaurants: Findings from NYC. *Prev Med Rep.* 2020 Jan 7;17:101040. doi: 10.1016/j.pmedr.2019.101040. PMID: 32055437; PMCID: PMC7005460.

Consumers must be able to easily identify items that exceed nationally recommended limits for daily added sugars consumption to decide whether they want to purchase an item that may harm their health. The warning label would provide this information for prepackaged foods, and items identical to prepackaged foods that mirror formulation of packaged foods and contain exceedingly high amounts of added sugars.

The amendment is as follows:

Underlined language is new.

Section one. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 39 to read as follows:

**§ 39-01 Added Sugar Warning.**

(a) Definitions. When used in this section the following words and terms have the following meanings:

(1) *Added sugars* has the meaning set forth in title 21, section 101.9 (c)(6)(iii) of the code of federal regulations, or any successor regulations.

(2) *Combination meal* has the meaning set forth in section 81.49 of the Health Code.

(3) *Covered establishment* means any food service establishment inspected pursuant to the restaurant grading program established pursuant to subdivision a of section 81.51 of the Health Code that is part of a chain with 15 or more locations doing business under the same name and offering for sale substantially the same food items.

(4) *Covered food item with a high added sugars content* means any prepackaged food item or food item identical to a prepackaged food item for which a serving size contains added sugars in an amount that is equal to or more than the Daily Value for added sugars, or any combination meal for which any combination of food items available to the consumer contains added sugars in an amount that is equal to or more than the Daily Value for added sugars.

(5) *Daily Value for added sugars* means the daily reference value established in title 21, section 101.9(c)(9) of the code of federal regulations, or any successor regulation, for adults and children aged 4 years and older.

(6) *Food* has the meaning set forth in article 71 of the Health Code.

(7) *Food item on display* means any food item that is visible to the customer before the customer makes a selection.

(8) *Identical to prepackaged food item* means a food item offered by a food service establishment that is not prepackaged but has the same product name and is promoted, advertised, or presented as substantially the same as a prepackaged food item offered under the same brand name, whether in the covered establishment or in a retail location, as determined by the Department. Such items include, for example, fountain sodas, coffee beverages, salad dressings and dessert products.

(9) Menu or menu board has the meaning set forth in section 81.49 of the Health Code.

(10) Menu item means any individual food item or combination of food items listed on a menu or menu board, as well as any temporary menu item or variable menu item. Temporary menu item and variable menu item have the meanings set forth in section 81.49 of the Health Code.

(11) Point of purchase has the meaning set forth in section 81.49 of the Health Code.

(12) Prepackaged food item means any food item that is packaged by the manufacturer and required to have a Nutrition Facts label pursuant to title 21, part 101 of the code of federal regulations, or any successor regulations.

(13) Self-Service food has the meaning set forth in section 81.50 of the Health Code.

(b) Required warning icon. A covered establishment that offers for sale any covered food item with a high added sugars content must display an added sugar warning icon as follows:


(1) The added sugar warning icon must appear on any menu or menu board next to the name of any covered food item with a high added sugars content, and on a tag next to any food item on display that is

a covered food item with a high added sugars content:



(2) The added sugar warning icon must be a black and white triangle with an image of a spoon bearing a heap of sugar and must be the same size and font and be equal in height to the largest letter in the name of the covered food item with a high added sugars content, as displayed on the menu, menu board, or tag next to any food item on display that is a covered food item with a high added sugars content; and

(c) Required warning statement. The following statement must be posted prominently and conspicuously at the point of purchase, on the menu or menu board, and at any location where a food item requiring an

icon pursuant to this subdivision is sold as a self-service food: “Warning:  indicates that the added sugars content of this item is equal to or higher than the total daily recommended limit of added sugars for a 2,000 calorie diet (50g). Eating or drinking high amounts of added sugars over time can increase risk of type 2 diabetes, weight gain, and tooth decay.”

(d) Sugar density of identical to prepackaged food items. For the purposes of this chapter, a food item that is identical to a prepackaged food item will be presumed to have the same density of added sugars as is displayed on the Nutrition Facts label of the corresponding prepackaged food item, unless the food service establishment demonstrates otherwise to the satisfaction of the Department.

(e) Severability. If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or application of the section to other persons or circumstances shall not be affected.