



November 2, 2023

Hon. Keith Powers  
Majority Leader  
New York City Council  
211 East 43rd Street, Suite 1205  
New York, NY 10017

**Re: INT-687-A-2022 - sugar notifications for menu items in chain restaurants**

Dear Majority Leader Powers:

I am writing on behalf of NATO, Theatre Owners of New York State, Inc., a not-for-profit trade association representing movie theatres. While we appreciate the good intentions behind INT-687-A-2022, we believe a more comprehensive approach that provides both daily sugar intake information, and a full list of all nutritional information and ingredients, can better help address the public health crises of diabetes and obesity through even greater transparency. At the same time, we believe that this more comprehensive approach will help struggling City food service establishments comply with City Council menu-related mandates and avoid costly fines. Therefore, we are respectfully suggesting amendments to INT-687-A-2022 to ensure that it facilitates even greater transparency, and helps all consumers make more informed decisions at the point of sale.

City movie theatres want all audience members to feel safe and welcome as they return to the cinema. While the pandemic continues to financially harm many businesses, it acutely impacted the movie theatre industry. Movie theatres were ordered closed in New York for fifty weeks at the start of the pandemic, and despite a few well-known superhero or action releases, the box office continues to suffer because of the accelerated adoption of several at home streaming options. Moreover, the quantity of new releases is down 35%, and an estimated 8-10% of the audience may never return. Compared with the pre-pandemic 2019, which itself was a down year, the 2022 nation-wide box office was down 40%. With less content, and more at-home competition, there are less patrons. Consequently, individual theatres see less revenue from advertising and concessions. In 2019, City audiences spent \$325 million at nearby bars, restaurants, and retail when seeing a film, and if they continue to stay home, so do those dollars.


Simply put, movie theatres cannot afford another reason for patrons to stay home. Accordingly, we want to avoid any added confusion for patrons who may choose to purchase concessions, and any additional City fees and fines. We also do not want to continue to add icons that could clutter the menus. In 2015, sodium warning icons were required. Last year, the Council passed a sugar warning icon for prepackaged foods. Now, we are discussing broadening the adoption of that sugar warning icon to cover all foods. But, what comes next? Separate icons for each of the eight major allergens? Sustainability icons? Fair-trade certification? While each of these may contain laudable public policy goals, we do question the saliency of continually adding government-mandated messaging on restaurant menus. With limited space, at a certain point the menu becomes

cluttered, confusing, and may compound the financial recovery of the City’s theatres and restaurants.

So, instead of yet another icon, we are proposing a comprehensive and transparent alternative that will provide one sign at the point of sale to encompass all nutrition and ingredient information. This proposal would amend the [menu-labeling language](#) mandated by the Affordable Care Act. Those provisions largely stemmed from the City’s calorie count requirement that started in 2008, and which the City later amended to conform with the federal standard in 2015. The current City and federal law require covered establishments to provide additional nutritional information, including nutrient contents and ingredients, and to post a statement about the daily recommended dietary intake of 2,000 calories. This current posting requirement states: “2,000 calories a day is used for general nutrition advice, but calorie needs vary. Additional nutrition information available upon request.”

We are respectfully suggesting amending this existing sign, by adding specific daily sugar-intake nutritional information at the point of sale, as well as information about allergens. We believe that such information is more actionable and meaningful to educate consumers, and that the use of just one existing sign will not cause cluttering and confusion on the menu board. In addition, we believe that INT-687-2022 should also mandate the inclusion of a Quick Response Code (“QR”) on the sign that will direct patrons to a website with full nutrition information for every menu item, as well as a printed version at the point of purchase for patrons without access to a cellular phone. A QR Code would eliminate the need for the burdensome reporting requirement contemplated by INT-687-A-2022, which would require each covered establishments to report the list of menu items every ninety days. This nutritional information from the QR Code would then become easily accessible and transparent at the point of sale for patrons on the already existing sign. Doing so would follow the widely adopted [SmartLabel](#) example, which currently covers over 100,000 food, beverage, and consumer products. SmartLabel minimizes costly packaging or graphics changes, and despite space constraints on many small packages, enables further nutritional information to be shared and updated in real-time with customers. Similarly, for space constrained menu boards, a QR code at the point of sale could provide readily accessible and actionable information for theatre patrons.

Therefore, we suggest inserting the following language:

2,000 calories a day is used for general nutrition advice, **with calories from added sugars for women not to exceed 100 per day (6 teaspoons or 25g), and for men 150 per day (9 teaspoons or 36g)**, but calorie needs vary. Additional nutrition **and allergen** information available upon request. 

The suggested language above regarding sugar quantities comes from the [American Heart Association](#) (“AHA”). It should be noted, however, the AHA language is more stringent than the United States Food and Drug Administration’s (“FDA”) “[Dietary Guidelines for Americans](#)”, which recommends limiting calories from added sugars to less than 10 percent of total calories per



day. For example, for a 2,000-calorie daily diet, that would be 200 calories or 50 grams of added sugar per day. Last year, the FDA released the new nutrition facts information labeling requirements to include added sugars on prepackaged foods to help consumers make more informed choices. These new nutrition facts labels are already printed on all the labels for the prepackaged candy sold in movie theatres, including total and added sugars.

Adding the AHA language to the existing sign will inform customers how much sugar is recommended in both grams and teaspoons, and how that fits overall with their daily caloric intake. We believe that information is more actionable for New Yorkers than adding another icon to the menu. Furthermore, the additional information available upon request through the QR Code for each menu item would include: total calories, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, fiber, sugars, and protein. This additional information can further help educate New Yorkers about their dietary intake and nutrition.

Moreover, the inclusion of allergen information would identify every menu item that includes nuts, tree nuts, sesame, fish, shellfish, wheat, soy, eggs, or dairy. Over 10% of the population has a food allergy, and adults are the fastest growing population with food allergies. The City Council introduced numerous allergen related pieces of legislation over the years, and with this suggestion, New York City could become a national leader on allergens and menu labeling. Simply put, adding a few words to the already existing sign will go much farther than cluttering a menu board with more icons. Also, it would provide New Yorkers with more transparency through more readily understandable information.

Enclosed, please find these suggested revisions in a red-line version of INT-687-2022. We look forward to an opportunity to discuss this with you at your earliest convenience. Thank you for your time.

Sincerely,

Robert Sunshine  
Executive Director  
Enclosure

CC:

Chair Lynn Schulman  
Council Member Velazquez  
Council Member Feliz  
Council Member Ariola  
Council Member Hudson  
Council Member Barron  
Council Member Yeger  
Council Member Narcisse



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**Suggested Amendments to INT-687-A-2022 (Sugar Warning Icon)**

Int. No. 687-A

By Council Members Powers, Schulman, Narcisse, Ung, Brooks-Powers, Ayala, Hudson, Brewer, Abreu, De La Rosa, Velázquez, Bottcher, Menin, Holden, Restler, Gutiérrez, Brannan, Riley Lee, Gennaro, Louis, Nurse, Joseph, Sanchez, Williams, Marte, Cabán, Krishnan, Hanks, Barron, Farías, Avilés, Richardson Jordan, Dinowitz, Feliz, Salamanca and Won (in conjunction with the Bronx and Brooklyn Borough Presidents) (by request of Manhattan Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to requiring added sugar notifications for menu items in chain restaurants

Be it enacted by the Council as follows:

Section 1. Section 17-199.18 of the administrative code of the city of New York, as added by local law number 33 for the year 2022, is amended to read as follows:

§ 17-199.18 Added sugar notifications. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Added sugars. The term “added sugars” has the same meaning as used in title 21, section 101.9 (c)(6)(iii) of the code of federal regulations, or any successor regulations.

Covered establishment. The term “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 New York city health code that is part of a chain with 15 or more locations in New York City doing business under the same name and offering for sale substantially the same food items.

~~Daily value. The term “daily value” means the daily reference value establish in title 21, section 101.9(c)(9) of the code of federal regulations, or any successor regulations.~~

~~Food item on display. The term "food item on display" means a prepackaged food item or non packaged food item that is visible to the customer before the customer makes a selection.~~

Food service establishment. The term “food service establishment” has the same meaning as in section 81.03 of the New York city health code.

~~Icon. The term “icon” means a graphic or illustrated image, with or without accompanying text.~~

~~Identical to prepackaged food item. The term “identical to prepackaged food item” means a non packaged food item offered by a food service establishment that has the same product name as a prepackaged food item and is promoted, advertised, or presented as substantially the same as that prepackaged food item as determined by the department, such as a fountain soda, coffee beverage, salad dressing, or dessert product that is sold under the same brand name in other retail locations.~~

Menu or menu board. The term “menu or menu board” has the same meaning as in section 81.49 of the New York city health code.

Menu item. The term “menu item” means any food item listed on a menu or menu board, as well as any seasonal, temporary, or variable menu item as defined by the department.

~~Non packaged food item. The term “non packaged food item” means a food item on display that does not have a nutrition facts label attached to it by the manufacturer pursuant to title 21, part 101 of the code of federal regulations, or any successor regulations.~~

Prepackaged food item. The term “prepackaged food item” means a 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.

[Prepackaged item on display. The term “prepackaged item on display” means a prepackaged food item that is visible to the customer before the customer makes a selection.]

~~b. [Warning] Icon and warning statement rule. 1. The department shall issue a rule designating an icon to be displayed in a clear and conspicuous manner [on] (i) on menus or menu boards adjacent to the [listed prepackaged food items] menu items and (ii) [prepackaged] on or near food items on display, that exceed a specified level of added sugars, including[, but not limited to,] 100 percent or more of the daily value for added sugars, as determined by the federal food and drug administration, or [exceed] another amount as specified in rules of the department.~~

~~2. For the purposes of this subdivision, 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 panel of the corresponding prepackaged food item, as set forth in department rules, unless the food service establishment demonstrates otherwise to the satisfaction of the department.~~

~~**Quick Response Code.** The term “**Quick Response Code” means a type of barcode that can be read easily by a digital device, such as a cellular phone, and which stores information as a series of pixels in a square-shaped grid.**~~

- ~~a. **Covered establishments must have written nutritional information on the premises in the manner provided for in 21 CFR 101.11(b)(2)(ii).**~~
- ~~b. **All menus and menu boards must prominently state in a clear and conspicuous manner: “Additional nutritional information available upon request.”**~~

- c. The information must be made available to any customer who requests it in either an electronic or printed format.
- d. The written nutritional information provided for in 21 CFR 101.11(b)(2)(ii) shall also include daily added sugar intake information in terms of calories, grams, and teaspoons, as recommended by the Department.
- e. The daily added sugar intake information recommended by the Department shall be added in a clear and conspicuous manner to the language “Additional nutritional information available upon request.”
- f. The written nutritional information provided for in 21 CFR 101.11(b)(2)(ii) shall include allergen information, as recommended by the Department.
- g. The allergen information recommended by the Department shall be added in a clear and conspicuous manner to the language “Additional nutritional information available upon request.”
- h. The Department shall provide, at no cost to the covered establishment, a printed sign with the inclusion of the daily added sugar intake and allergen information to the written nutritional information provided for in 21 CFR 101.11(b)(2)(ii).
- i. The Department shall provide, at no cost to the covered establishment, a printed quick response code, which shall be affixed to the written nutritional information provided for in 21 CFR 101.11(b)(2)(ii).
- j. The quick response code shall connect to a website that provides the nutritional information for the menu items offered for sale by the covered establishment.

~~d. k.~~ Any covered establishment that violates any of the provisions of this section shall be liable for a civil penalty of not less than \$100 nor more than \$300 for a violation thereof.

~~e. l.~~ No later than three months after the department issues the rule required by subdivision b of this section, the department shall conduct public outreach to educate covered establishments about the requirements of this local law.

~~3. Such rule shall also provide a factual warning statement about high added sugars intake.~~

~~c. Icon and warning statement required. No later than [one] 1 year after the department issues the rule required pursuant to subdivision b of this section, a covered establishment that offers [one] 1 or more [prepackaged food] menu items or [prepackaged] food items on display that qualify for an icon pursuant to subdivision b of this section shall, in accordance with rules promulgated by the department:~~

~~1. Post a clearly visible icon on or near [the] any prepackaged food item or food item identical to a prepackaged food item on display that qualifies for such icon pursuant to subdivision b of this section;~~

~~2. Post a clearly visible icon on the menu or menu board next to [the] any prepackaged food item [wherever such item appears] or food item identical to a prepackaged food item that qualifies for such icon pursuant to subdivision b of this section; [and]~~

~~3. Post the factual warning statement required pursuant to subdivision b of this section 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 item dispensed directly to the consumer; and~~

~~4. No later than 1 year after the effective date of federal regulations that require a covered establishment to include added sugars in the nutritional information of non packaged food items available to customers, post a clearly visible icon on or near any non packaged food item on display or on a menu or menu board that qualifies for such icon pursuant to subdivision b of this section.~~

~~d. Any covered establishment that violates any of the provisions of this section shall be liable for a civil penalty of [not less than] \$200 [nor more than \$500] for a violation thereof.~~

~~e. No later than [three] 3 months after the department issues the rule required by subdivision b of this section, the department shall conduct public outreach to educate covered establishments about the requirements of this local law.~~

~~f. The department shall promulgate rules for the facilitation and enforcement of this section. Nothing in this local law prohibits the department from requiring an icon or warning statement regarding additional foods, ingredients, or nutrients of concern.~~

~~f. Nothing in this local law prohibits the department from requiring an icon or warning statement regarding additional foods, ingredients, or nutrients of concern.~~

~~g. Reporting Requirement. Once every 90 days, the chain menu developer shall report to the department the amount of added sugars and sodium in each menu item offered for sale in a covered establishment, or that no changes to the menu information have been made since the last report.~~

§ 2. Section 2 of local law number 33 for the year 2022 is amended to read as follows:



§ 2. This local law takes effect [no later than one year after the expiration of the declaration of the local state of emergency for COVID-19 declared in emergency executive order number 98 of Mayor Bill de Blasio, dated March 12, 2020, including any subsequent extensions] on June 19, 2024.

§ 3. This local law takes effect on December 1, 2024. Nothing herein shall be construed to affect the effective date of local law number 33 for the year 2022.