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Int. No. 547-B

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A Local Law to amend the administrative code of the city of New York, in relation to amending the icon for added sugar warning labels and the amount for civil penalties, and to repeal subdivision b of section 17-199.18 in relation thereto

Be it enacted by the Council as follows:

Section 1. The definition of “icon” in subdivision a of section 17-199.18 of the administrative code of the city of New York, as amended by local law number 150 for the year 2023, is amended to read as follows:

Icon. The term "icon" means [a graphic or illustrated image, with or without accompanying text] a triangular warning symbol with the words “high sugar” in capital letters, bold typeface, and in a font size that may be smaller than the largest letter of the menu item as displayed on the menu or menu board, or on a tag on or near a food item on display, provided that such font size is readily visible to a consumer, and provided further that such words are displayed adjacent to or directly below the triangular warning symbol.

§ 2. Subdivision a of section 17-199.18 of the administrative code of the city of New York, as amended by local law number 150 for the year 2023, is amended by adding a new definition of “third-party food delivery platform” in alphabetical order to read as follows:

Third-party food delivery platform. The term “third-party food delivery platform” has the same meaning as such term is defined in section 20-563.

§ 3. Subdivision b of section 17-199.18 of the administrative code of the city of New York is REPEALED and a new subdivision b is added to such section to read as follows:

b. Icon and warning statement. 1. For any food item that meets or exceeds 100 percent of the daily value for added sugars determined by the federal food and drug administration or another amount of added sugars specified by the department, the department shall designate an icon to be displayed by covered establishments in accordance with subdivision c of this section in a clear and conspicuous manner in the following locations: (i) on menus or menu boards adjacent to the menu items, and (ii) on or near food items on display, including food items dispensed directly to the consumer as a self-service item.

2. For the purposes of this subdivision, a food item that is identical to a prepackaged food item is presumed to have the same amount of added sugars per serving as is displayed on the nutrition facts panel of the corresponding prepackaged food item unless the covered establishment demonstrates otherwise to the satisfaction of the department.

3. The department shall provide for a factual warning statement about high added sugars intake to be posted at 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. Such statement shall be posted at the bottom of any menu or menu board where any of the listed menu items meets or exceeds 100 percent of the daily value for added sugars, as determined by the federal food and drug administration, or another amount as specified by the department. Such statement shall include the words "high sugar" printed in capital letters, bold typeface, and in the same font size as the largest letter in the menu item's name as displayed on the menu or menu board.

4. A covered establishment shall ensure that the icon and factual warning statement required pursuant to this subdivision are on the menu or menu board displayed or otherwise viewed through a third-party food delivery platform.

§ 4. Subdivisions c, d, e, and f of section 17-199.18 of the administrative code of the city of New York, as amended by local law number 150 for the year 2023, are amended to read as follows:

c. Icon and warning statement required. A covered establishment that offers 1 or more menu items or

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 any [prepackaged food item or food item identical to a prepackaged] food item on display, including any food item dispensed directly to the consumer as a self-service item, that is either a prepackaged food item or identical to a prepackaged food item, 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 any prepackaged food item or [food item] identical to [a] prepackaged food item that qualifies for such icon pursuant to subdivision b of this section;

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. Civil penalty. Any covered establishment that, in the department's determination violates any of the provisions of this section or any of the rules promulgated thereunder, shall be liable for a civil penalty of [$200 for a violation thereof] $0 for a first such violation. The notice of violation for such first-time violation shall inform such covered establishment of the provisions of law or rule that the department believes the respondent has violated, describe the condition or activity that is the basis for the notice of violation, and advise the covered establishment that the law authorizes civil penalties for such violation and that subsequent violations may result in the imposition of such civil penalties. Any covered establishment that violates any of the

provisions of this section or any of the rules promulgated thereunder shall be subject to a civil penalty of $100 for a second violation and a civil penalty of $200 for a third or subsequent violation. It shall be an affirmative defense to a violation of paragraph 4 of subdivision b of this section that a covered establishment provided the icon and factual warning statement required pursuant to subdivision b of this section to a third-party food delivery platform.

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

f. Department authority. The department shall promulgate rules for the facilitation and enforcement of this section. These rules shall include, but not be limited to, designating an icon and providing for a warning statements pursuant to subdivision b of this section and prescribing the font size of such icon, and describing the posting of such icon and warning statement pursuant to subdivision c 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.

§ 5. This local law takes effect 6 months after it becomes law, provided that: (i) the department of health and mental hygiene shall not require the icon and warning statement required by subdivision c of section 17-199.18 of the administrative code of the city of New York, as amended by section four of this local law, to be posted until 18 months after this local law takes effect; and (ii) such department conduct the public outreach campaign required by subdivision e of such section 17-199.18, as amended by section four of this local law, beginning 1 year after this local law takes effect.SOS/CP
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