



**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
BOARD OF HEALTH**

**Notice of Public Hearing and Opportunity to Comment
on Proposed Amendment to Article 81 of the New York City Health Code**

What are we proposing? The Department of Health and Mental Hygiene (“the Department”) is proposing that the Board of Health adopt §81.49 (sodium warning) of Article 81 of the Health Code to require food service establishments to warn diners about menu items containing high amounts of sodium.

When and where is the hearing? The Department will hold a public hearing on the proposed Health Code amendments from 2PM to 4PM on July 29, 2015 in Room 3-32

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 3rd Floor
Long Island City, NY 11101-4132

How do I comment on the proposed amendment to the Health Code? Anyone can comment on the proposed amendments by:

- **Website.** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail comments to
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132
- **Fax.** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078. You can also sign up in the hearing room before or during the hearing on July 29, 2015. You can speak for up to five minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 p.m. on July 29, 2015.

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by July 15, 2015.

Can I review the comments made on the proposed amendments? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department’s Office of the General Counsel.

What authorizes the Board of Health to make this amendment? Section 558 of the New York City Charter (“the Charter”) authorizes the Board of Health to adopt and amend the Health Code and to include in the Health Code all matters to which the authority of the Department extends. Section 556 of the Charter authorizes the Department to supervise and regulate the City’s food supply.

This proposed amendment was not included in the Department’s regulatory agenda for Fiscal Year 2015.

Where can I find the Health Code and the Department’s rules? The Health Code and the rules of the Department are found in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Board of Health must meet the requirements of §1043 of the Charter when creating or changing the Health Code. This notice is made according to the requirements of the Charter §1043.

Statement of Basis and Purpose

Statutory Authority

Section 558 of the New York City Charter (“the Charter”) authorizes the Board of Health (“the Board”) to amend the Health Code and to include in the Health Code all matters to which the authority of the New York City Department of Health and Mental Hygiene (“the Department”) extends. Section 556 of the Charter gives the Department jurisdiction to regulate all matters affecting health in the City of New York (“the City” or “NYC”) and makes the Department responsible for controlling disease and regulating the City’s food supply.

The regulation of food service establishments (“FSEs”), a category that includes both quick-service and sit-down restaurants, is a core public health function. The Department issues permits to and inspects FSEs in New York City to ensure safe and healthy dining options.

The Department proposes an amendment to the Health Code that would require FSEs that are part of chains with more than 15 locations across the nation to add a warning label to menus and menu boards, identifying food items that contain very high levels of sodium.

Sodium and Cardiovascular Disease

Cardiovascular disease is the leading cause of death in New York City, claiming nearly 17,000 lives in in 2012.¹ Hypertension, or high blood pressure, is a major risk factor for heart disease and stroke. A 2013 survey conducted by the Department revealed that 29.1% of adult New Yorkers had been told they had hypertension by a healthcare professional.² Although hypertension is a complex vascular disease with many origins, a well-established connection between sodium intake and blood pressure has been documented in the scientific literature. Specifically, there is a continuous relationship between sodium and blood pressure – typically, the higher an individual’s sodium intake, the higher the individual’s blood pressure.³ In addition, disparities exist in terms of sodium intake, hypertension control, and related risk of disease – for example, premature stroke mortality is nearly three times as high among non-Hispanic Blacks in NYC compared to Whites and Asians.

New Yorkers Consume Too Much Sodium

Americans consume excessive amounts of sodium. Recent estimates indicate that the typical daily sodium intake of more than 95% of American adults exceeds the recommended daily limit of no more than 2,300mg.^{4,5} On average, American adults consume approximately 3,400mg of sodium daily, well above the recommended

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limit.⁶ Sodium overconsumption is a reality in NYC as well. A 2010 study conducted found that more than 80% of adults in NYC exceeded recommended daily sodium limits (2,300mg/day), and average daily sodium consumption among New Yorkers was more than 3,200mg.⁷ The NYC study also revealed disparities in consumption with higher sodium intake among non-Hispanic Blacks and Hispanics compared to non-Hispanic Whites.⁸

Restaurant Food is a Primary Source of Sodium

The contemporary food retail environment is an important contributor to the epidemic of sodium overconsumption. Despite myriad efforts and initiatives to curb sodium consumption by public health and other organizations, the sodium content of fast food, in particular, appears to be on the rise. A 2013 study examining the change in the sodium content of menu offerings at 8 leading fast food chains found that the mean sodium content of menu items had increased more than 23% between 1997 and 2010.⁹ Heavily marketed and competitively priced, the food available in many restaurants contains very high levels of sodium. A 2014 study analyzing the nutritional profile of more than 2,500 items from chain restaurants in and near Philadelphia, Pennsylvania, found that adult meals contained an average of 3,512mg of sodium, more than 50% above the *daily* recommended intake limit.¹⁰ A similar study using receipt data collected in 2007 from over 6,500 transactions occurring at fast food chain outlets in NYC demonstrated that the sodium content of 20% of meals exceeded the *daily* recommended sodium intake limit.¹¹ Today, nearly one-third of the sodium consumed by Americans comes from restaurant food.¹²

New Yorkers Need to be Warned about High Sodium Foods

An additional factor that contributes to sodium overconsumption is the lack of awareness regarding the risks related to excess sodium intake. Consumers typically underestimate the sodium content of restaurant food¹³ and are generally unaware of both sodium intake recommendations and the major sources of dietary sodium.¹⁴ In addition, menu items that are promoted as healthy options, like salads, can contain high levels of sodium (Applebee's Grilled Shrimp 'n Spinach Salad with regular dressing contains 2,990 mg of sodium, Baja Fresh Mexican Grill's Shrimp Tostada Salad contains nearly 2,500mg of sodium), putting even the most health-conscious consumers at risk. Differences in formulation that result in similar foods containing highly variable amounts of sodium present another obstacle to consumers trying to comply with sodium intake recommendations. For example, Panera Bread offers a Smokehouse Turkey® Panini that contains 2,590 mg of sodium and a Roasted Turkey & Avocado BLT Sandwich that contains 960mg of sodium.

It is imperative that consumers are readily able to identify menu items containing the recommended daily limit of 2,300mg or more of sodium, because these items are clearly incompatible with recommendations regarding sodium consumption. The proposed consumer warning label will provide consumers with information about food items that contain exceedingly high sodium levels and will empower them to make well-informed decisions when making choices for themselves and their family members in the food retail environment.

Proposed Changes

The Department proposes amending Health Code Article 81 to add a new section 81.49 requiring chain FSEs (those with 15 or more locations nationally) to warn consumers about any menu items containing 2,300mg of sodium or more.¹⁵

This policy would impact FSEs with 15 or more locations nationally, capturing leading fast-food and fast-casual restaurants, which can easily make sodium information available.

The resolution is as follows.

“Shall” and “must” denote mandatory requirements and may be used interchangeably.

New text is underlined.

RESOLVED, that Article 81 of the New York City Health Code, set forth in title 24 of the Rules of the City of New York, be amended to add a new section 81.49, to be printed together with explanatory notes to read as follows:

§81.49 Sodium warning.

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

(1) Combination meal means a standard menu item that consists of more than one food item. A combination meal may be represented on the menu or menu board in narrative form, numerically, or pictorially. Some combination meals may include a variable menu item or be a variable menu item, as defined in this subdivision, where the components may vary and the customer selects which components will be included in the meal.

(2) Covered establishment means a food service establishment, as defined in §81.03 of the Health Code and permitted by the Department, that is part of a chain with 15 or more locations doing business under the same name and offering for sale substantially the same menu items, as well as a food service establishment, as defined in §81.03 of the Health Code and permitted by the Department, that voluntarily registers with the United States Food and Drug Administration to be subject to the federal requirements for nutrition labeling of standard menu items.

(3) Food item with a high sodium content means any standard menu item offered by a covered establishment that contains per standard serving more than or equal to 2300 milligrams of sodium, or a combination meal offered by a covered establishment if any combination of food items available to the consumer contains more than or equal to 2300 milligrams of sodium.

(4) Food on display means food that is visible to the customer before the customer makes a selection, so long as there is not an ordinary expectation of further preparation by the customer before consumption.

(5) Menu or menu board means a printed list of the names or images of a food item or items, and the primary writing of a covered establishment from which a customer makes an order selection. Menus include breakfast, lunch, and dinner menus; dessert menus; beverage menus; children’s menus; other specialty menus; electronic menus; and menus on the internet, and may be in various forms, including booklets, pamphlets, single sheets of paper, or electronic screens. Determining whether a writing is or is part of the primary writing of a covered establishment depends on a number of factors, including whether the writing lists the name of a

standard menu item (or an image depicting the standard menu item) and the price of the standard menu item, and whether the writing can be used by a customer to make an order selection at the time the customer is viewing the writing. Menu boards include menu boards inside the establishment as well as drive-through menu boards outside the establishment.

(6) Point of purchase means any place where a customer may order food within an establishment.

(7) Standard menu item means any individual food item or combination of food items listed or displayed on a menu or menu board that is sold by a covered establishment.

(8) Variable menu item means a standard menu item that comes in different flavors, varieties or combinations and is listed as a single menu item.

(b) Required warning. A covered establishment that offers for sale any food item with a high sodium content must provide the following warning:

(1) An icon must appear on a menu or menu board next to any food item with a high sodium content, or on a tag next to any food on display that is a food item with a high sodium content:



The icon must be a black and white equilateral triangle as wide as it is tall and equal in height to the largest letter in the food item’s name, as displayed on the menu, menu board, or tag next to any food on display; and

(2) The following statement must be posted conspicuously at the point of purchase: “Warning:  indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.”

(d) Enforcement. The monetary penalty for a violation of this section is \$200 dollars. Violations may be adjudicated at any tribunal operated by the Office of Administrative Trials and Hearings, and the penalty may be doubled if the respondent does not appear.

(e) Effective date. This section takes effect on December 1, 2015.

(f) 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 the application of the section to other persons or circumstances shall not be affected.

¹ Zimmerman R, Li W, Gambatese M, Madsen A, Lasner-Frater L, Van Wye G, Kelley D, Kennedy J, Maduro G, Sun Y. Summary of Vital Statistics, 2012: Mortality. New York, NY: New York City Department of Health and Mental Hygiene, Office of Vital Statistics, 2014.

² NYC DOHMH Community Health Survey, 2013

³ U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary Guidelines for Americans, 2010. 7th Edition, Washington, DC: U.S. Government Printing Office, December 2010.

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- ⁴ Centers for Disease Control and Prevention. Trends in the Prevalence of Excess Dietary Sodium Intake – United States 2003-2010. *MMWR* 2013;62:1021-1025.
- ⁵ U.S. Department of Agriculture and U.S. Department of Health and Human Services. *Dietary Guidelines for Americans, 2010*. 7th Edition, Washington, DC: U.S. Government Printing Office, December 2010.
- ⁶ Centers for Disease Control and Prevention. Trends in the Prevalence of Excess Dietary Sodium Intake – United States 2003-2010. *MMWR* 2013;62:1021-1025.
- ⁷ Angell SY, Yi S, Eisenhower D, Kerker BD, Curtis CJ, Bartley K, Silver LD, Farley TA. Sodium Intake in a Cross-Sectional, Representative Sample of New York City Adults. *American Journal of Public Health*. 2014;104(12):2409-16.
- ⁸ Angell SY, Yi S, Eisenhower D, Kerker BD, Curtis CJ, Bartley K, Silver LD, Farley TA. Sodium Intake in a Cross-Sectional, Representative Sample of New York City Adults. *American Journal of Public Health*. 2014;104(12):2409-16.
- ⁹ Rudelt A, French A, Harnack L. Fourteen-year trends in sodium content of menu offerings at eight leading fast-food restaurants in the USA. *Public Health Nutrition*. 2013;17(8):1682-88.
- ¹⁰ Auchincloss AH, Leonberg BL, Glanz K, Bellitz S, Ricchezza A, Jervis A. Nutritional Value of Meals at Full-service Restaurant Chains. *J Nutr Educ Behav*. 2014;46:75-81.
- ¹¹ Johnson CM, Angell SA, Lederer A, Dumanovsky T, Huang C, Bassett MT, Silver LD. *JAMA Internal Medicine*. 2010;170(8):732-34.
- ¹² Drewnowski A, Rehm CD. Sodium Intakes of US Children and Adults from Foods and Beverages by Location of Origin and by Specific Food Source. *Nutrients*. 2013;5:1840-55.
- ¹³ Burton S, Creyer E, Kees J, Huggins K. Attacking the obesity epidemic: The potential health benefits of providing nutrition information in restaurants. *American Journal of Public Health*. 2006;96:1669–1675.
- ¹⁴ Sarmugan R, Worsley A. Current Levels of Salt Knowledge: A Review of the Literature. *Nutrients*. 2014;6:5534-559.
- ¹⁵ Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments. Final Rule, 79 (230) Fed Reg 71156-71259. (December 1, 2014) (to be codified 21 CFR pt 11 and 101)

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Sodium Warning (Health Code Art. 81)

REFERENCE NUMBER: DOHMH-56

RULEMAKING AGENCY: DOHMH

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

June 2, 2015
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Sodium Warning (Health Code Art. 81)

REFERENCE NUMBER: 2015 RG 066

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: June 2, 2015