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## THE COUNCIL

# COMMITTEE REPORT OF THE HUMAN SERVICES Division

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**COMMITTEE ON HEALTH**

*Hon. Mark Levine, Chair*

#### March 26, 2019

**proposed Int. No. 1064-B:** By Council Members Kallos, Levine, Espinal, Ayala, Rose, Reynoso, Rosenthal, Richards, Rivera, Cohen, Powers and Ulrich

**Title:** A Local Law to amend the administrative code of the city of New York, in relation to selections for beverages included in children’s meals

**Administrative Code:** Adds a new section 17-199.11.

**Introduction**

 On March 26, 2019, the Committee on Health, chaired by Council Member Mark Levine, will hold a hearing on legislation relating to sugar consumption and diabetes in New York City. The Committee will hear Proposed Introduction Number 1064-B (Int. 1064-B), a Local Law to amend the administrative code of the city of New York, in relation to selections for beverages included in children’s meals. This legislation was originally heard at a hearing of this Committee on February 25, 2019, at which the Committee received testimony from the New York City Department of Health and Mental Hygiene (DOHMH), advocates, and other interested parties.

**Background**

**Diabetes, Obesity and Prepared Foods**

*Diabetes*

Diabetes is a disease involving a hormone called insulin, which is released by the pancreas to guide the body in storing and using the sugar and fat from ingested food.[[1]](#footnote-1) Diabetes causes a production of too much or too little insulin, which causes the blood glucose (sugar) levels to rise higher or lower than normal.[[2]](#footnote-2) Type 2 diabetes is the most common form of diabetes and occurs when the body’s cells become resistant to the action of insulin, and the pancreas is unable to make sufficient insulin to overcome this resistance, causing sugar to build up in the bloodstream.[[3]](#footnote-3) Although not all causes of diabetes are known, Type 2 diabetes is caused by genetic and environmental factors, and is most closely linked with obesity and being overweight.[[4]](#footnote-4)
 In the United States, it is estimated that more than 100 million Americans have diabetes or prediabetes.[[5]](#footnote-5) Approximately 1 in 4, or 7.2 million, adults are living with diabetes, and an additional 84.1 million have prediabetes, which can lead to Type 2 diabetes within five years if not treated.[[6]](#footnote-6) In New York City, an estimated 987,000 New Yorkers have diabetes, many without knowledge of their condition.[[7]](#footnote-7) Diabetes in New York is also economically, racially, and ethnically determined, with black, Hispanic, and Asian New Yorkers being twice as likely as white New Yorkers to have diabetes, as of 2013.[[8]](#footnote-8) Diabetes disproportionately affects high-poverty communities in New York City, where the neighborhoods with the highest prevalence of diabetes were Fordham-Bronx Park (14.6%), East New York (14.4%) and Williamsburg-Bushwick (13.9%) in Brooklyn, Northeast Bronx (13.9%), and the South Bronx (13.9%), and the neighborhoods with the lowest prevalence of diabetes were Upper East Side-Gramercy and Chelsea-Village in Manhattan (4.4% and 4.1%).[[9]](#footnote-9) As of 2013, diabetes was almost 70% more common in high-poverty neighborhoods than in low-poverty neighborhoods.[[10]](#footnote-10) Interestingly, racial and ethnic disparities in diabetes persist across levels of household poverty, where white New Yorkers had the lowest prevalence of diabetes among the wealthiest New Yorkers and had a lower prevalence than both blacks and Hispanics among the poorest.

*Obesity*

Obesity rates in the United States have been climbing nationwide for decades and have led to massive increases in the prevalence of Type 2 diabetes, heart disease, and certain types of cancer.[[11]](#footnote-11) Among children, 1 in 5 school age children and young people (6 to 19 years) has obesity.[[12]](#footnote-12) Obese children and adolescents are more likely to become obese adults and even young children can develop chronic health conditions and diseases, including asthma, sleep apnea, bone and joint problems, Type 2 diabetes, and risk factors for heart disease.[[13]](#footnote-13)

According to DOHMH, more than half of adult New Yorkers are overweight (34%) or obese (22%), while almost half of all elementary school children and Head Start children are currently at an unhealthy weight.[[14]](#footnote-14) In New York City, 1 in 5 kindergarten students and 1 in 4 Head Start children is obese. New York City has made strides in starting to reverse this trend by improving the food environment, making public spaces more amenable to physical activity, increasing the availability of tap water, and discouraging the drinking of sugar-sweetened beverages.[[15]](#footnote-15) However, obesity rates among NYC students is still too high, with over 20 percent of children categorized as obese and even more defined as overweight.[[16]](#footnote-16)

*Prepared foods*

Prepared food is a growing and problematic part of New Yorkers’ diets, particularly among children, making up approximately 25 percent of a child’s daily calories, on average.[[17]](#footnote-17) Consumption of restaurant foods has been linked with increased caloric intake, poor nutrition, and higher risk for being overweight and obese.[[18]](#footnote-18) Eating out has also been shown to influence the future food preferences and eating habits of children.[[19]](#footnote-19)

Research has found that food marketing influences children’s food preferences, food choices, diets, and health.[[20]](#footnote-20) For restaurants, including toys with children’s meals is the leading form of food marketing directed at children by expenditure.[[21]](#footnote-21) In 2009, fast food restaurants sold slightly more than 1 billion children’s meals with toys to children ages 12 and under.[[22]](#footnote-22) Restaurant toys or premiums are often tied to movie characters, cartoon characters and celebrities and studies have shown this practice affects children’s food choices and preferences.[[23]](#footnote-23)

In 2013, McDonald’s, the largest fast food retailer in the world, committed to healthy substitutes for fries and soda in its children’s meal and has included nutrition information in children’s promotional material.[[24]](#footnote-24) In recent years, some restaurants have made improvements to their children’s meals and even removed toys altogether, while others have done little.[[25]](#footnote-25) According to a 2013 study, the vast majority of restaurant children’s meals do not meet nutrition standards created by the National Restaurant Association.[[26]](#footnote-26)

**Current Research and Programs to Impact Purchasing Choices**

In 2010, Santa Clara County in California became the first jurisdiction in the United States to regulate the nutritional content of restaurant children’s meals that provided a toy or other incentive item “linked with” the meal.[[27]](#footnote-27) A study published in 2012 in the American Journal of Preventative Medicine found the regulation “appear[ed] to have positively influenced marketing of healthful menu items and toys…but did not affect the number of healthful food items offered.”[[28]](#footnote-28)

In 2011, San Francisco became the first city to regulate the nutritional content of restaurant children’s meals with toys or other incentive items.[[29]](#footnote-29) That law prohibits the distribution of a free toy or other incentive item with a meal that fails to meet certain nutrition standards. A study published in 2014 in Preventing Chronic Disease found that, among the restaurants studied, the only effect of the law was to induce them to charge 10 cents for the toy or other incentive item.[[30]](#footnote-30) Restaurants did not change their menus to comply with the ordinance.

In 2016, New York City Council held a hearing on Introduction Number 442, sponsored by Council Member Kallos, a Local Law to amend the administrative code of the city of New York, in relation to setting nutritional standards for distributing incentive items aimed at children.

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This bill would require that restaurants in New York City that serve children’s meals limit the selection of drinks that contain added sugars or sweeteners advertised with these meals. Specifically, combination children’s meals may only offer water, sparkling water, flavored water, nonfat or one percent milk, non-dairy milk, 100% fruit or vegetable juice, or fruit or vegetable juice combined with water or carbonated water as the default option. However, a customer could substitute a different drink of their choice by request, rather than selecting one of the default options. The bill would impose monetary penalties on restaurants that violate this law.

Since introduction, significant technical edits were made to the structure and content of the bill’s definitions section. Moreover, the monetary penalties to be imposed on restaurants that violate this law were amended to bring them in line with penalties for similar violations in the health code.

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Proposed Int. No. 1064-B

By Council Members Kallos, Levine, Espinal, Ayala, Rose, Reynoso, Rosenthal, Richards, Rivera, Cohen, Powers and Ulrich

A LOCAL LAW

To ..Title

..Title

amend the administrative code of the city of New York, in relation to selections for beverages included in children’s meals

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 17 of the administrative code of the city of New York is amended by adding a new section 17-199.11 to read as follows:

§ 17-199.11 Food service establishment beverage options for children’s meals. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Children’s meal. The term “children’s meal” means a food or combination of food items listed on a menu or menu board and intended for consumption by children to which the presumption described in subdivision e attaches.

Food. The term “food” has the same meaning as in article 71 of the New York city health code.

Food service establishment. The term “food service establishment” means any establishment inspected pursuant to the restaurant grading program established pursuant to subdivision a of section 81.51 of the New York city health code.

 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.

b. The selection of beverages listed as part of the children’s meal shall be limited to the following:

1. Water, sparkling water or flavored water, with no added natural or artificial sweeteners;

2. Flavored or unflavored nonfat or one percent fat dairy milk, or flavored or unflavored non-dairy beverage that is nutritionally equivalent to fluid milk, in a serving size of eight ounces or less; or

3. One hundred percent fruit or vegetable juice, or any combination thereof, with no added natural or artificial sweeteners, in a serving size of eight ounces or less. Such juice may contain water or carbonated water.

c. Nothing in this section prohibits a food service establishment from providing upon request by a customer a substitute beverage other than the beverage required under subdivision b of this section.

d. Any food service establishment that violates any of the provisions of this section or any rule promulgated by the department shall be liable for a civil penalty not to exceed $200. Where a person is found to have violated this section or any rule promulgated by the department, the department shall commence a proceeding to recover any civil penalty authorized by this section by the service of a summons returnable to the office of administrative trials and hearings.

e.It shall be a rebuttable presumption that a food item or combination of food items on a menu or menu board is intended for consumption by children if the item or items are shown on the menu or menu board in any one of the following ways:

1. Alongside any of the following words: “child,” “children,” “kids,” “junior,” “little,” “kiddie,” “kiddo,” “tyke,” any synonym or abbreviation of such words, or any word the department determines would similarly identify a children’s meal;

2. Alongside a cartoon illustration, puzzle or game;

3. Accompanied or being offered with a toy or kid’s game; or

4. With a limitation on the maximum age of a person who can select the item or items.

§ 2. This local law takes effect 1 year after it becomes law, provided that the commissioner of health and mental hygiene may take all actions necessary for its implementation, including the promulgation of rules, before such effective date.

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1. “Diabetes Overview,” WebMD, *available at* <https://www.webmd.com/diabetes/default.htm>. [↑](#footnote-ref-1)
2. *Id*. [↑](#footnote-ref-2)
3. “Diabetes,” Mayo Clinic, *available at* <https://www.mayoclinic.org/diseases-conditions/diabetes/symptoms-causes/syc-20371444>. [↑](#footnote-ref-3)
4. *Id*. [↑](#footnote-ref-4)
5. #  “New CDC Report: More than 100 million Americans have diabetes or prediabetes,” CDC, *available at* <https://www.cdc.gov/media/releases/2017/p0718-diabetes-report.html>.

 [↑](#footnote-ref-5)
6. *Id*. [↑](#footnote-ref-6)
7. “Type 2 Diabetes,” DOHMH, *available at* <https://www1.nyc.gov/site/doh/health/health-topics/diabetes.page>. [↑](#footnote-ref-7)
8. “Diabetes in New York City,” EPI Data Brief, DOHMH, Apr. 2013, *available at* <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief26.pdf>. [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. “Adult Obesity Facts,” Centers for Disease Control and Prevention (CDC), *available at* <https://www.cdc.gov/obesity/data/adult.html>. [↑](#footnote-ref-11)
12. “Childhood Obesity Facts,” CDC Healthy Schools, *available at* <https://www.cdc.gov/healthyschools/obesity/facts.htm>. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. “Obesity,” DOHMH, *available at* <https://www1.nyc.gov/site/doh/health/health-topics/obesity.page>. [↑](#footnote-ref-14)
15. NYC Obesity Task Force, “Reversing the Epidemic: The New York City Obesity Task Force Plan to Prevent and Control Obesity,” NYC Obesity Task Force, May 31, 2012, *available at* <http://www.nyc.gov/html/om/pdf/2012/otf_report.pdf>. [↑](#footnote-ref-15)
16. Sophia E. Day, et al. “Severe Obesity Among Children in New York City Public Elementary and Middle Schools, School Years 2006–07 Through 2010–11,” Preventing Chronic Disease, July 10, 2014, *available at* <http://www.cdc.gov/pcd/issues/2014/13_0439.htm>. [↑](#footnote-ref-16)
17. Otten JJ, “Food Marketing: Using Toys to Market Children’s Meals,” Healthy Eating Research, 2014, *available at* <http://healthyeatingresearch.org/wp-content/uploads/2014/07/her_marketing_toys_AUGUST_14.pdf>. [↑](#footnote-ref-17)
18. Koplan J, Liverman CT, Kraak VI, editors. Institute of Medicine Committee on Prevention of Obesity in Children and Youth. Preventing Childhood Obesity: Health in the Balance. National Academies Press (2005), *available at* <http://www.nap.edu/catalog/11015/preventing-childhood-obesity-health-in-the-balance>; Larson N, Neumark-Sztainer D, Laska MN, Story M. Young adults and eating away from home: Associations with dietary intake patterns and weight status differ by choice of restaurant. J Acad Nutr Diet. (Nov 2011);111(11):1696-1703, *available at* <http://www.ncbi.nlm.nih.gov/pubmed/22027052>; Powell LM, Nguyen BT. Fast-food and full-service restaurant consumption among children and adolescents effect on energy, beverage, and nutrient intake. JAMA Pediatr. (Jan 2013);167(1):14-20, *available at* <http://www.ncbi.nlm.nih.gov/pubmed/23128151>. [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. Supra, note 7. [↑](#footnote-ref-20)
21. Leibowitz J RJ, Ramirez E, Brill J, Ohlhausen M. “A Review of Food Marketing to Children and Adolescents: Federal Trade Commission Follow-Up Report,” Dec. 2012, *available at* <https://www.ftc.gov/sites/default/files/documents/reports/review-food-marketing-children-and-adolescents-follow-report/121221foodmarketingreport.pdf>. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. Supra, note 7. [↑](#footnote-ref-23)
24. Clinton Foundation Press Release, “Alliance for a Healthier Generation and McDonald’s Announce Groundbreaking CGI Commitment to Promote Balanced Food and Beverage Choices,” Sept. 26, 2013, *available at* <https://www.clintonfoundation.org/press-releases/alliance-healthier-generation-and-mcdonalds-announce-groundbreaking-cgi-commitment>. [↑](#footnote-ref-24)
25. Supra, note 7. [↑](#footnote-ref-25)
26. Center for Science in the Public Interest. Kids’ Meals II: Obesity and Poor Nutrition on the Menu, 2013, *available at* <https://cspinet.org/new/pdf/cspi-kids-meals-2013.pdf>. [↑](#footnote-ref-26)
27. Codified at Santa Clara County Code of Ordinances §§ A18-350–355. [↑](#footnote-ref-27)
28. Jennifer Otten, et. al, “Food Marketing to Children Through Toys,” American Journal of Preventive Medicine, Volume 42, Issue 1 (Jan. 2012). [↑](#footnote-ref-28)
29. The Health Food Incentives Ordinance, No. 290-10, San Francisco, CA. [↑](#footnote-ref-29)
30. Jennifer Otten, et. al., “Impact of San Francisco’s Toy Ordinance on Restaurants and Children’s Food Purchases, 2011-2012” Preventing Chronic Disease (2014). [↑](#footnote-ref-30)