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Title: A Local Law to amend the administrative code of the city of New York, in relation to accommodation of food allergies and dietary restrictions in certain food service establishments

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Indexes: Agency Rule-making Required

Attachments: 1. Summary of Int. No. 1405, 2. Int. No. 1405, 3. February 13, 2019 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 2-13-19, 5. Minutes of the Stated Meeting - February 13, 2019

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Int. No. 1405

By Council Members Dromm, Holden, Brannan, Barron, Louis, Adams and Rivera

A Local Law to amend the administrative code of the city of New York, in relation to accommodation of food allergies and dietary restrictions in certain food service establishments

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 17-195.1 to read as follows:

§ 17-195.1 Food allergen information to be made available. a. Definitions. As used in this section, the following terms have the following meanings:

Chain food service establishment. The term “chain food service establishment” means a food-service establishment that is part of a chain with 15 or more locations nationally doing business under the same name and offering for sale substantially the same menu items.

Food allergen. The term “food allergen” means milk and dairy products, eggs, fish, crustaceans, tree nuts, peanuts, soybeans, grains that contain gluten, and any ingredient that contains protein derived from such foods.

Menu item. The term “menu item” means any food item that a customer may select for purchase from a chain food service establishment.

Point of purchase. The term “point of purchase” means any location within a food service establishment where a customer may order food, including each table at which a customer may be seated.

b. Each chain food service establishment shall post a sign advising customers or potential customers to ask for information on food allergens, located in a prominent and conspicuous location at or near each point of purchase.

c. Each chain food service establishment shall maintain, along with the additional written nutritional information required by paragraph 2 of subdivision b of section 101.11 of title 21 of the code of federal regulations, or a successor regulation, information on the existence of food allergens in its menu items in the form of a full list of ingredients in each item, with allergens emphasized. Such nutrition and allergen information shall be made available upon request to any customer or potential customer, and shall be available for inspection by the department.

§ 2. Chapter 15 of title 17 of the administrative code of the city of New York is amended by adding new sections 17-1507 and 17-1508 to read as follows:

§ 17-507 Food allergen protection course. a. Definitions. As used in this section, the term “food preparer” means an employee, independent contractor or volunteer in a food service establishment who is charged with the handling, preparing, or cooking of food intended for customer consumption either on or off the premises.

b. The commissioner shall establish a food protection course for all food service establishments. Such course shall provide food service establishments with training on food allergens and related food safety issues.

c. Any person who is employed as a food preparer or charged with the management or supervision of a food service establishment shall obtain a food protection certificate issued by the department following successful completion of a course in food protection, and passage of an examination administered by the department. All such employees shall obtain a certificate within 30 days of employment. Each certificate shall be available for inspection at all times by the department.

d. In addition to food preparers and managers or supervisors of food operations, the department shall require the following persons to complete the course pursuant to subdivision c of this section: any persons supervising one or more specific food operations; the current holder of a food protection certificate in any food service establishment if the department finds imminent health hazards, or a food borne illness outbreak implicates food prepared or processed under the supervision of such person; a food service establishment supervisor if the department determines that such a course is necessary to acquaint such supervisor with current developments in food protection principles; and when otherwise deemed necessary by the commissioner for the protection of the public.

e. The department shall conduct such food protection course, or any part thereof, provided that such course receives accreditation by the American National Standards Institute or similar national accrediting organization. The commissioner may approve additional courses conducted by organizations provided that such courses are accredited and meet the requirements set for the course in food protection required in subdivision c of this section. Approved courses and organizations shall be listed on the department's website. Persons electing to enroll in such courses conducted by the department may be charged a reasonable fee to defray all or part of the costs incurred by the department for course registration, materials, training, testing and certificate issuance. Persons who supervise food service operations for a religious, fraternal or charitable organization that is open to the public for the purpose of providing food to the needy, free of charge, shall not be charged a fee for a food protection course conducted by the department.

f. A food protection certificate issued under this section shall expire three years after its date of issuance.

To be re-certified, the food preparer or manager or supervisor of food operations shall be required to retake and pass the examination given by the department pursuant to subdivision c of this section. The holder of an expired certificate may also be required to retake the course if required by a rule of the department.

§ 17-508 Certification of dietary restriction compliance. a. Definitions. As used in this section, the following terms have the following meanings:

Dietary restriction. The term “dietary restriction” means a diet that a person maintains in order to avoid ingesting particular food items or ingredients.

Menu or menu board. The term “menu” or “menu board” means a printed list of the names or images of a food item or items and the prices of such items, that is the primary writing of a food service 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 posted on the internet. Menus may be in various forms, including booklets, pamphlets, single sheets of paper, or electronic screens. A primary writing of a food service establishment includes, but is not limited to, a writing that lists the name of a standard menu item or an image depicting the standard menu item, and the price of the standard menu item. Menu boards include those inside the food service establishment as well as menu boards used for drive-through service located outside such establishment.

Restricted food. The term “restricted foods” means any food item that a person intends to have eliminated from such person’s diet as part of a dietary restriction. Such foods include: milk and dairy products, eggs, fish, crustaceans, tree nuts, peanuts, soybeans, grains that contain gluten, meat from any animals including land animals and fish, meat from any animal-derived ingredients, and any ingredient that contains protein derived from such foods. The department may designate by rule additional restricted foods to be covered by this section.

b. The commissioner shall establish a voluntary certification program in which any food service establishment may participate to ensure such establishment is able to produce meals that are compliant with

particular dietary restrictions. Only a food service establishment that completes such certification program may advertise or publish on its menu or menu boards the availability of menu items that do not contain restricted foods as “Certified” by the department. Such advertisement or publication may be immediately preceded by the notation “Certified,” followed by such particular dietary restriction for which a food service establishment has been certified. No food service establishment may advertise itself as being certified to produce meals that comply with particular dietary restrictions unless such establishment has in fact been so certified by the department pursuant to this section.

c. Such certification program shall require a participating food service establishment to complete a dietary restriction protection course, which shall be implemented by the department and shall include, at a minimum, the following requirements:

1. No person who is charged with the management or supervision of the operations of a food service establishment participating in such certification program shall be employed in such capacity unless such person obtains, within 30 days of employment, a certificate of dietary restriction compliance issued by the department after successful completion of:

(a) A course on selecting food ingredients and protecting food from cross-contamination by restricted foods within food service establishments; and

(b) Passage of an examination administered by the department.

2. Such examination shall at a minimum test the examinee’s knowledge of cross-contamination protections for a particular restricted food, and protocols to ensure that individuals employed by a food service establishment are properly trained in preventing such cross-contamination as it relates to their assigned duties.

3. The department shall conduct such dietary restriction protection course, or any part thereof, or shall approve courses conducted by other nationally accredited exam organizations from which a manager or supervisor of the operations of an establishment participating in the certification program may choose to receive a certificate of dietary restriction compliance. Approved exam organizations shall be listed on the

department's website.

4. All dietary restriction compliance certificates expire three years after their date of issuance. To be re-certified, the manager or supervisor of food operations must pass the examination required by paragraph 1 of this subdivision. The holder of an expired certificate may also be required to retake the course.

d. In addition to successful completion of such dietary restriction protection course required by subdivision c of this section, such certification program shall require a food service establishment to demonstrate the following dietary restriction protection procedures:

1. The food service establishment employs at least two managers or supervisors of food operations who have received a certificate of dietary restriction compliance from the department, at least one of whom must be on the premises and supervise food preparation activities during all hours of operation;

2. The food service establishment has procedures in place to prevent cross-contamination from the advertised restricted food; and

3. The food service establishment makes available upon request additional written allergen information for all menu items in the form of a full list of ingredients in each item, with allergens emphasized.

e. Following completion of such dietary restriction course required by subdivision c of this section and a demonstration of adherence to dietary restriction protection procedures required by subdivision d of this section, a food service establishment shall receive a dietary restriction certification card. The department shall provide each certified food service establishment with such dietary restriction certification card indicating the particular dietary restriction for which the food service establishment has obtained certification. A food service establishment that displays advertising described in subdivision b of this section shall conspicuously post such certification card next to its letter grade card received pursuant to section 23-03 of chapter 23 of title 24 of the rules of the city of New York. The certification card shall not be defaced, marred, camouflaged or hidden from public view.

f. A food service establishment that has received certification shall be re-certified as part of its periodic

health inspections conducted by the department pursuant to section 81.51 of title 4 of the New York city health code.

g. Failure to comply with provisions of this section shall constitute a violation punishable by a civil penalty in the amount of not less \$250 and not more than \$500 for the first violation, not less than \$500 and not more than \$750 for the second violation occurring within one year, and not less than \$750 and not more than \$1,000 for the third and each subsequent violation occurring within one year.

h. The commissioner may charge a food service establishment electing to participate in the certification program a reasonable fee to defray all or part of the costs incurred by the department for registration, training, testing and certificate issuance.

i. The commissioner shall maintain a database, to be made available on the department's website, of all food service establishments that have been certified as compliant with particular dietary restrictions, specifying the dietary restriction certificates that such establishments have received.

§ 3. This local law takes effect 120 days after it becomes law, except that the commissioner of health and mental hygiene may take such actions as are necessary to implement this local law, including the promulgation of rules, before such date.

JEF
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12/6/2018