

BOARD of SUPERVISORS



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MEMORANDUM

TO: Naomi Kelly, City Administrator
Jose Cisneros, Treasurer/Tax Collector
Barbara Garcia, Director, Department of Public Health
Richard Carranza, Superintendent, SF Unified School District Harlan
Kelly, General Manager, Public Utilities Commission
Phil Ginsburg, General Manager, Recreation and Park Department
Maria Su, Director, Department of Children, Youth and Their Families
Regina Dick-Endrizzi, Director, Office of Small Business
Phimy Truong, Director, Youth Commission

FROM: Alisa Miller, Clerk, Rules Committee
Board of Supervisors

DATE: February 18, 2014

SUBJECT: INITIATIVE ORDINANCE INTRODUCED

The Board of Supervisors' Rules Committee has received the following Initiative Ordinance, introduced by Supervisor Mar on February 4, 2014. This matter is being referred to you, in accordance with Board of Supervisors Rules of Order 2.22.4, since your department may be affected by this matter.

File No. 140098

Motion ordering submitted to the voters at an election to be held on November 4, 2014, an Ordinance amending the Business and Tax Regulations Code by adding a new Article 8, imposing a tax of two cents per ounce on the distribution of sugar-sweetened beverages, to fund City-operated programs and City grants for active recreation and improving food access, health, and nutrition, and to fund San Francisco Unified School District physical education, after-school physical activity, health, or nutrition programs, and school lunch and other school nutrition programs.

Please review immediately.

If you have any concerns or to submit documentation, please direct those to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Greg Kato, Office of the Treasurer/Tax Collector
Colleen Chawla, Department of Public Health
Chris Armentrout, SF Unified School District
Juliet Ellis, Public Utilities Commission
Sarah Ballard, Recreation and Park Department
Christian Murdock, Office of Small Business

1 [Initiative Ordinance - Business and Tax Regulations Code - Tax on Sugar-Sweetened
2 Beverages to Fund Food and Health Programs]

3 **Motion ordering submitted to the voters at an election to be held on November 4, 2014,**
4 **an Ordinance amending the Business and Tax Regulations Code by adding a new**
5 **Article 8, imposing a tax of two cents per ounce on the distribution of sugar-sweetened**
6 **beverages, to fund City-operated programs and City grants for active recreation and**
7 **improving food access, health, and nutrition, and to fund San Francisco Unified School**
8 **District physical education, after-school physical activity, health, or nutrition programs,**
9 **and school lunch and other school nutrition programs.**

10
11 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
12 voters of the City and County of San Francisco, at an election to be held on November 4,
13 2014:

14
15 **Ordinance amending the Business and Tax Regulations Code by adding a new**
16 **Article 8, imposing a tax of two cents per ounce on the distribution of sugar-sweetened**
17 **beverages, to fund City-operated programs and City grants for active recreation and**
18 **improving food access, health, and nutrition, and to fund San Francisco Unified School**
19 **District physical education, after school physical activity, health, or nutrition programs,**
20 **and school lunch and other school nutrition programs.**

21
22 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
23 **Additions to Codes** are in *single-underline italics Times New Roman font*.
24 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
25 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or parts of tables.

1 Be it ordained by the People of the City and County of San Francisco:

2
3 Section 1. Pursuant to Article XIIC of the Constitution of the State of California, this
4 ordinance shall be submitted to the qualified electors of the City and County of San Francisco,
5 at the November 4, 2014 consolidated general election.

6
7 Section 2. The Business and Tax Regulations Code is hereby amended by adding
8 Article 8, to read as follows:

9
10 **ARTICLE 8:**

11 **THE SUGAR-SWEETENED BEVERAGE TAX ORDINANCE**

12
13 **SEC. 550. SHORT TITLE.**

14 *This Article shall be known as the "Sugar-Sweetened Beverage Tax Ordinance."*

15
16 **SEC. 551. FINDINGS AND PURPOSE.**

17 *Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of serious*
18 *health problems including, but not limited to: weight gain, obesity, coronary heart disease, diabetes,*
19 *cavities, tooth decay, and other health problems.*

20 *Calorically sweetened soda, and fruit drinks containing less than 100 percent juice by volume,*
21 *are major sources of added sugars in American diets, contributing an average of 10.58 teaspoons of*
22 *added sugars each day. The American Heart Association recommends children consume no more than*
23 *three teaspoons of added sugars (not including naturally occurring sugars in whole foods such as fruit*
24 *and plain Milk) per day, which is about 50 calories. However, most Americans consume more than 22*
25 *teaspoons or 355 calories of sugar per day.*

1 Obese children suffer more often from sleep apnea, asthma, joint problems, fatty liver disease,
2 gallstones, and acid reflux (heartburn). Obese children are more likely to become obese adults, further
3 increasing their risks for higher rates of type 2 diabetes, heart disease, and some cancers later in life.
4 Profound mental health and quality of life impacts are seen in children with severe obesity. As of 2010,
5 nearly one-third (31.7 percent) of children and adolescents in San Francisco were either obese or
6 overweight. Among adults, consumption of SSBs is associated with a risk of weight gain and obesity,
7 cardiovascular risk, a significantly higher risk of stroke, high blood pressure, type 2 diabetes, dental
8 erosion, and the risk of pancreatic cancer. In 2011-2012, 41.8 percent of adults in San Francisco were
9 either obese or overweight.

10 Low-income families are more likely to be affected by obesity and diabetes. For example, the
11 Bayview-Hunters Point neighborhood had more per capita emergency room visits due to diabetes
12 between 2009 and 2011 than any other neighborhood in San Francisco. 18 percent of three- to four-
13 year-olds enrolled in San Francisco Head Start were obese, with an additional 13 percent being
14 overweight. Head Start serves children of low-income families.

15 According to the American Dental Association, a steady diet of sugary foods and drinks,
16 including juice and sports drinks, can damage teeth. Cavity-causing bacteria in the mouth feed on
17 sugar and produce acids that attack tooth enamel for up to 20 minutes after eating or drinking. Sipping
18 sugary beverages or eating sugary foods all day results in repeated acid attacks that weaken tooth
19 enamel and lead to cavities. In extreme cases, softer enamel combined with improper brushing,
20 grinding of the teeth, or other conditions can lead to tooth loss.

21 The annual cost of being overweight and obese to California families, employers, the health
22 care industry, and the government is estimated to be \$21 billion. The total national cost of diabetes in
23 2007 was \$174 billion. Research shows that lifestyle interventions are more cost-effective than
24 medications in preventing or delaying type 2 diabetes. Calorically sweetened beverages have been
25 targeted as part of a tax policy to reduce caloric intake, improve diet and health, and generate revenue

1 that governments can use to address obesity-related health and economic burdens. The San Francisco
2 Budget and Legislative Analyst estimates costs up to \$61.8 million incurred by San Franciscans with
3 obesity and diabetes that are attributable to sugary beverage consumption.

4 The Institute of Medicine and other beverage tax advocates suggest that the generated tax
5 revenues could be used to promote healthier eating and reduce or prevent obesity, and in 2009, the
6 Institute of Medicine recommended that local governments implement a tax strategy for calorie-dense,
7 nutrient-poor food, and beverages to discourage consumption. Likewise, in 2010, the White House
8 Task Force on Childhood Obesity recommended that Federal, state, and local governments analyze the
9 effects of taxes on less healthy, energy-dense foods, such as calorically sweetened beverages.

10 The purpose of taxing SSBs is to make San Francisco healthier. Plain water and—unless
11 advised otherwise by a pediatrician—low-fat (1 percent) or nonfat Milk are the most appropriate
12 beverages for healthy children older than the age of two. Yet, 17.2 percent of San Francisco children
13 and adolescents consume two or more glasses of soda or sugary drink per day. Within this, there are
14 significant variations by ethnicity, with 24.2 percent of Asian and 33.9 percent Latino, and only 4.4
15 percent of white children, consuming two or more glasses of soda or sugary drink per day. Children
16 consumed 11.96 teaspoons of added sugars from sodas and fruit drinks per day – 47 percent of their
17 total intake of added sugars. A single 12-ounce can of soda contains eight to ten teaspoons of sugar,
18 and typical container sizes of popular sugary drinks marketed to children far exceed recommended
19 amounts.

20 Assessing a tax on SSBs is intended to help address the high levels of obesity, type 2 diabetes,
21 and other diseases by reducing consumption and providing a revenue stream for City-directed and
22 grant-funded physical activity and nutrition programs in schools, parks, community centers, and
23 through community-based organizations.

1 **SEC. 552. DEFINITIONS.**

2 Unless otherwise defined in this Article 8, terms that are defined in Article 6 of the Business and
3 Tax Regulations Code shall have the meanings provided therein.

4 “Active Recreation Programs” are programs where participants are able to engage in exercise
5 or physical activity.

6 “Base Product” means the same as Powder.

7 “Baseline” means the Controller’s calculation of the appropriated amount of the City
8 expenditures for Eligible Programs for the fiscal year July 1, 2014 through June 30, 2015, described in
9 Section 560.

10 “Beverage Container” means a closed or sealed container regardless of size or shape,
11 including, without limitation, containers made of glass, metal, paper, plastic, or any other material or
12 combination of materials.

13 “Beverage Dispensing Machine” means a device that mixes Concentrate with one or more
14 other ingredients and dispenses the resulting mixture into an open container as a ready-to-drink
15 beverage.

16 “Bottled Sugar-Sweetened Beverage” means a Sugar-Sweetened Beverage contained in a
17 Beverage Container.

18 “Caloric Substance” means a substance that adds calories to the diet of a person who
19 consumes that substance.

20 “Caloric Sweetener” means any Caloric Substance suitable for human consumption that
21 humans perceive as sweet and includes, but is not limited to, sucrose, fructose, including high fructose
22 corn sweetener, glucose, and other sugars.

23 “City” means the City and County of San Francisco.

24 “Committee” means the Healthy Nutrition and Physical Activity Access Fund Committee
25 described in Section 561.

1 “Concentrate” means a Syrup, Powder, or Base Product that is used for mixing, compounding,
2 or making Sugar-Sweetened Beverages in a Beverage Dispensing Machine. Notwithstanding the
3 foregoing sentence, “Concentrate” does not include the following:

4 (a) Any product that is designed to be used primarily to prepare coffee or tea.

5 (b) Any product that is sold and is intended to be used for the purpose of an individual
6 consumer mixing a Sugar-Sweetened Beverage.

7 (c) Medical Food.

8 “Consumer” means a person who purchases a Bottled Sugar-Sweetened Beverage, Sugar-
9 Sweetened Beverage, or Concentrate for a purpose other than resale in the ordinary course of business.

10 “Distribution” includes:

11 (a) The Sale of untaxed Bottled Sugar-Sweetened Beverages, Sugar-Sweetened Beverages,
12 or Concentrate.

13 (b) The receipt of untaxed Bottled Sugar-Sweetened Beverages, Sugar-Sweetened
14 Beverages, or Concentrate by any person other than a Consumer.

15 (c) The use or consumption of untaxed Bottled Sugar-Sweetened Beverages, Sugar-
16 Sweetened Beverages, or Concentrate by any person other than a Consumer. For purposes of this
17 paragraph (c), “use or consumption” includes the exercise of any right or power over Bottled Sugar-
18 Sweetened Beverages, Sugar-Sweetened Beverages, or Concentrate incident to the ownership thereof,
19 except that it does not include the Sale of such beverages or Concentrate, or the keeping or retention
20 thereof for the purpose of Sale.

21 (d) “Distribution” shall not include the return of any Bottled Sugar-Sweetened Beverages,
22 Sugar-Sweetened Beverages, or Concentrate to the person who sold the Bottled Sugar-Sweetened
23 Beverages, Sugar-Sweetened Beverages, or Concentrate, if that person refunds the entire amount paid
24 in cash or credit.

1 “Distributor” means any person who makes a Distribution of Bottled Sugar-Sweetened
2 Beverages, Sugar-Sweetened Beverages, or Concentrate, whether or not that person is also a Retailer.

3 “Eligible Programs” means City-operated programs and City grants for active recreation
4 and/or improving food access, health, and nutrition, and San Francisco Unified School District
5 physical education, after school physical activity, health, or nutrition programs, school lunch, and
6 other school nutrition programs. Eligible Programs shall include only:

7 (a) Active Recreation Programs and programs that support active recreation, including,
8 without limitation, in-school and after-school programs;

9 (b) School lunches and other school nutrition programs; and

10 (c) Programs that improve food and nutrition access and health, and support food nutrition.

11 “Fund” is the Active Recreation, Nutrition, and Public Health Fund described in Section 553.

12 “Medical Food” means medical food as defined in Section 109971 of the California Health and
13 Safety Code, including amendments to that Section.

14 “Milk” means natural liquid milk, regardless of animal source or butterfat content, natural milk
15 concentrate, whether or not reconstituted, regardless of animal source, plant source, or butterfat
16 content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source,
17 plant source, or butterfat content. For purposes of this definition, “Milk” includes flavored milk
18 containing no more than 40 grams of total sugar (naturally-occurring and from added Caloric
19 Sweetener) per 12 ounces.

20 “Natural Fruit Juice” means the original liquid resulting from the pressing of fruit, the liquid
21 resulting from the complete reconstitution of natural fruit juice concentrate, or the liquid resulting from
22 the complete restoration of water to dehydrated natural fruit juice.

23 “Natural Vegetable Juice” means the original liquid resulting from the pressing of vegetables,
24 the liquid resulting from the complete reconstitution of natural vegetable juice concentrate, or the
25 liquid resulting from the complete restoration of water to dehydrated natural vegetable juice.

1 “Nonalcoholic Beverage” means any beverage that is not subject to tax under Part 14
2 (commencing with Section 32001) of the California Revenue and Taxation Code.

3 “Powder” means a solid or liquid mixture of ingredients with added Caloric Sweetener used in
4 making, mixing, or compounding Sugar-Sweetened Beverages by mixing the Powder with any one or
5 more other ingredients, including, without limitation, water, ice, Syrup, Simple Syrup, fruits,
6 vegetables, fruit juice, vegetable juice, or carbonation or other gas.

7 “Retail Sale” means the sale of Sugar-Sweetened Beverages to a Consumer.

8 “Retailer” means any person who sells Sugar-Sweetened Beverages to a Consumer, whether or
9 not that person is also a Distributor.

10 “Sale” means the transfer of title or possession for consideration in any manner or by any
11 means.

12 “Simple Syrup” means a mixture of sugar and water.

13 “Sugar-Sweetened Beverage” means any Nonalcoholic Beverage sold for human consumption
14 that has one or more added Caloric Sweeteners and contains more than 25 calories per 12 ounces of
15 beverage. Notwithstanding the foregoing sentence, “Sugar-Sweetened Beverage” does not include any
16 of the following:

17 (a) Any product sold in liquid form for consumption by infants, which is commonly referred
18 to as “infant formula,” or any product whose purpose is infant rehydration.

19 (b) Any product sold in liquid form designed for use for weight reduction.

20 (c) Milk.

21 (d) Medical Food.

22 (e) Any beverage comprised solely of 100 percent Natural Fruit Juice, Natural Vegetable
23 Juice, or combined Natural Fruit Juice and Natural Vegetable Juice.

24 “Sugar-Sweetened Beverage Tax” is the Tax imposed under Section 553.

1 “Syrup” means the liquid mixture of ingredients used in making, mixing, or compounding
2 Sugar-Sweetened Beverages using one or more ingredients, including, without limitation, water, ice, a
3 Base Product, Powder, Simple Syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or
4 other gas.

5 “Tax” is the Sugar-Sweetened Beverage Tax.

6
7 **SEC. 553. IMPOSITION OF TAX; DEPOSIT OF PROCEEDS.**

8 (a) For the privilege of making the initial Distribution in the City of Bottled Sugar-
9 Sweetened Beverages, Sugar-Sweetened Beverages, or Concentrate, the City imposes on every
10 Distributor an annual Sugar-Sweetened Beverage Tax. The City intends to levy the Tax on the initial
11 Distribution in the City, and in cases where the initial Distribution in the City is not subject to the Tax
12 or the Tax is not paid, the next Distribution in the City shall be treated as the initial Distribution in the
13 City, until the Tax has been paid. The Tax Collector is authorized to adopt such rules, regulations, and
14 interpretations to ensure that the City’s collection of the Tax is consistent with this policy. However, the
15 absence of a rule, regulation, or interpretation by the Tax Collector is not a ground for nonpayment of
16 the Tax.

17 (b) The Tax shall be calculated as follows:

18 (1) Two cents (\$0.02) per fluid ounce of Bottled Sugar-Sweetened Beverage or
19 Sugar-Sweetened Beverage distributed in the City; or

20 (2) Two cents (\$0.02) per fluid ounce of Sugar-Sweetened Beverages that could be
21 produced from Concentrate distributed in the City. For purposes of calculating the Tax for
22 Concentrate, the Tax shall be calculated using the largest volume of Sugar-Sweetened Beverage that
23 could result from the use of the Concentrate according to any manufacturer’s instructions.

1 (c) All monies collected pursuant to the Tax shall be deposited to the credit of the Active
2 Recreation, Nutrition, and Public Health Fund. The Fund shall be maintained separate and apart from
3 all other City funds and shall be appropriated by annual or supplemental appropriation.

4
5 **SEC. 554. REGISTRATION OF DISTRIBUTORS AND RETAILERS; DOCUMENTATION.**

6 (a) Each Distributor and Retailer shall register with the Tax Collector.

7 (b) Each Distributor and Retailer shall keep and preserve all such records as the Tax
8 Collector may require for the purpose of ascertaining and determining compliance under this Article 8.

9
10 **SEC. 555. CREDITS AND REFUNDS.**

11 (a) The Tax Collector shall refund or credit to a Distributor the Tax that is paid on the
12 Distribution of a Bottled Sugar-Sweetened Beverage, Sugar-Sweetened Beverage, or Concentrate that
13 is shipped to a point outside the City for Distribution outside the City, or on which the Tax has already
14 been paid by another person, or which has been returned to the person who sold it and the entire
15 purchase price has been refunded in cash or credit.

16 (b) To the extent that any taxpayer has paid a substantially similar tax on the Distribution in
17 the City of a Bottled Sugar-Sweetened Beverage, Sugar-Sweetened Beverage, or Concentrate to any
18 other taxing jurisdiction, the tax paid to such taxing jurisdiction shall be credited against the tax due
19 under this Article, but in no event shall such credit reduce the taxpayer's liability to less than zero.

20
21 **SEC. 556. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.**

22 (a) The Department of Public Health shall provide to the Tax Collector technical assistance
23 to identify Bottled Sugar-Sweetened Beverages, Sugar-Sweetened Beverages, or Concentrate subject to
24 the Tax.

1 **(b) All City Departments shall provide to the Tax Collector technical assistance to identify**
2 **Distributors and Retailers of Bottled Sugar-Sweetened Beverages, Sugar-Sweetened Beverages, or**
3 **Concentrate.**

4
5 **SECTIONS 557-559.**

6 **[Reserved]**

7
8 **SEC. 560. EXPENDITURE OF PROCEEDS.**

9 **(a) Monies in the Fund shall be used exclusively for the purposes specified in this Article 8.**
10 **No monies from the Fund shall be appropriated or expended for any funding requirement imposed by**
11 **The Arts, Music, Sports, and Pre-School for Every Child Amendment of 2003 (Charter Sec. 16.123-1**
12 **et seq.). Subject to the budgetary and fiscal provisions of the City Charter, monies in the Fund shall be**
13 **appropriated on an annual basis to the following departments and used solely for the following**
14 **purposes:**

15 **(1) Administrative Costs. Up to two percent of the proceeds of the Tax, in any**
16 **proportion, to the Tax Collector and other City Departments for administration of the Tax, and to the**
17 **City Administrator for administration of the Oversight Committee established pursuant to Section 561,**
18 **and for the Committee's evaluation of programs funded by the Tax, and development of strategic and**
19 **expenditure plans.**

20 **(2) Refunds of any overpayments of the Tax imposed under this Article 8.**

21 **(3) Funding of Eligible Programs that are "New Programs," as defined in this**
22 **Section 560, that are consistent with the findings, purpose, and goals stated in this Article 8, in the**
23 **following proportions:**

24 **(A) 40 percent to the San Francisco Unified School District for (i) student**
25 **nutrition services; school-based gardens, nutrition classes, and cooking classes for students and**

1 parents; teacher training and curricular support in nutrition education; and after-school programs,
2 including but not limited to nutrition education, healthy snacks, school-based gardening, and cooking
3 classes; and (ii) expansion and improvement of physical education, which may include teachers,
4 education specialists, athletic equipment, training, and programming, provided that programs under
5 both subsections (i) and (ii) are each appropriated no less than one-quarter of this 40 percent; and

6 (B) 25 percent, in any proportion, to the Department of Public Health and
7 the Public Utilities Commission for healthy food access initiatives, drinking fountains and water bottle
8 filling stations, oral health services, chronic disease prevention, and public education campaigns; and

9 (C) 25 percent to the Recreation and Park Department for recreation centers,
10 organized sports, and athletic programming, provided that up to two-fifths of this 25 percent may be
11 allocated by the Recreation and Park Department to community-based organizations for Active
12 Recreation Programs, with a priority on programs serving low-income and underserved communities;
13 and

14 (D) 10 percent to be allocated through the Department of Public Health to
15 fund grants for community-based organizations that support physical activity, food access, public
16 outreach, and health programs.

17 Should any of the above governmental entities cease to exist, or if Eligible Programs are
18 transferred from any of these entities to another department or agency, then the Mayor and the Board
19 of Supervisors are authorized to expend the proceeds of this Tax to any department or agency that is a
20 successor to that entity and that operates Eligible Programs, or to a department or agency to which
21 those Eligible Programs are transferred, for expenditures that would otherwise be authorized under
22 this Article 8.

23 (b) Any balance remaining in the Fund at the close of any fiscal year shall be deemed to
24 have been provided for a specified purpose within the meaning of Section 9.113(a) of the Charter and
25

1 shall be carried forward and accumulated in the Fund for the purposes and goals recited in this
2 Article 8.

3 (c) Goals. The goals of expenditures from the Fund shall be to:

4 (1) Promote active recreation, health, nutrition, and food access programs among
5 all San Francisco residents;

6 (2) Improve physical activity, health, and nutrition programs in the San Francisco
7 Unified School District; and

8 (3) Give special consideration for expenditures from the Fund to communities that
9 are disproportionately affected by diseases related to Sugar-Sweetened Beverage consumption,
10 including obesity, diabetes, and coronary disease, as measured by the most recent data available to the
11 Department of Public Health.

12 (d) New Programs. The intent of this Section 560 is to provide dedicated revenues to
13 increase Eligible Programs. Therefore, except as otherwise specified in this Article 8, revenues in the
14 Fund may only be appropriated to the extent that the Controller certifies that appropriations contained
15 in the adopted budget from other funding sources exceed those in a given year, as measured and
16 adjusted by the Controller pursuant to Section 560, subsection (e).

17 Notwithstanding the preceding paragraph, Eligible Programs shall not include:

18 (1) Any program for which a fixed or minimum level of expenditure is mandated by
19 state or federal law, to the extent of the fixed or minimum level of expenditure;

20 (2) Acquisition of any capital item not for primary and direct use of participants in
21 an Eligible Program;

22 (3) Acquisition (other than by lease for a term of ten years or less) of any real
23 property; or

1 (4) Maintenance, utilities, or any similar operating costs of any facility not used
2 primarily and directly by participants in Eligible Programs, or a library, hospital, or any recreation or
3 park facility that is a zoo.

4 (e) Baseline. No Funds shall be expended in any fiscal year following a fiscal year in which
5 the amounts appropriated for Eligible Programs (not including appropriations from the Fund and
6 exclusive of expenditures mandated by state or federal law) is below the amount appropriated in the
7 Baseline, as adjusted in the manner provided in the following sentences (the “Base Amount”). All
8 funds unexpended in accordance with the preceding sentence shall be held in the Fund and may be
9 expended in any future fiscal year in which other expenditures from the Fund may be made. The Base
10 Amount shall be adjusted for each fiscal year after the base year by the Controller based on
11 calculations consistent from fiscal year to fiscal year by the percentage increase or decrease in
12 aggregate City discretionary revenues. In determining aggregate City discretionary revenues, the
13 Controller shall only include revenues received by the City that are unrestricted and may be used at the
14 option of the Mayor and the Board of Supervisors for any lawful City purpose. The method used by the
15 Controller to determine discretionary revenues shall be consistent with the method used by the
16 Controller to determine the Library and Children’s Fund Baseline calculations, as provided in
17 Charter Section 16.108(g). The change in aggregate discretionary revenues will be adjusted at year
18 end when final revenues are known. Within 90 days following the end of each fiscal year, the
19 Controller shall calculate and publish the actual amount of City expenditures for programs that would
20 have been eligible to be paid from the Fund but are paid from other sources, separately identifying
21 expenditures mandated by state or federal law.

22
23 **SEC. 561. OVERSIGHT COMMITTEE.**

24 (a) There is hereby established a Healthy Nutrition and Physical Activity Access Fund
25 Committee that shall consist of thirteen members. Members shall have two-year terms but shall serve

1 at the pleasure of their respective appointing authorities. No member shall serve more than three
2 consecutive two-year terms. The initial two-year term for each of the initial members shall commence
3 as of the date that nine members have been appointed, which is when the Committee may begin its
4 work. Notwithstanding the previous sentence, a quorum of the Committee shall be eight members.
5 Absence from three consecutive regular meetings, or four regular meetings during a fiscal year,
6 constitutes resignation from the Committee.

7 (b) Members of the Committee shall be appointed as follows:

8 (1) Seats One through Four by the Board of Supervisors. Seats One and Two shall
9 be residents of neighborhoods disproportionately impacted by diseases related to the consumption of
10 Sugar-Sweetened Beverages, as measured by the most recent data available to the Department of
11 Public Health. Seats Three and Four shall be representatives of different local medical institutions that
12 engage in whole or in part in the diagnosis, treatment, or research of, or education about, chronic
13 diseases linked to the consumption of Sugar-Sweetened Beverages.

14 (2) Seat Five by the Food Security Task Force, who may be a member of the Food
15 Security Task Force.

16 (3) Seats Six and Seven by the San Francisco Youth Commission, who may be
17 members of the Youth Commission. Appointees to Seats Six and Seven must be 18 years of age or
18 younger at the commencement of the initial term, and at the commencement of any succeeding term.

19 (4) Seats Eight and Nine by the San Francisco Unified School District. Seat Eight
20 shall be a School District employee working in the area of Nutrition Services; Seat Nine shall be a
21 School District employee working in the area of physical education.

22 (5) Seat Ten by the Department of Public Health, who shall be a professional
23 employee in that Department.

24 (6) Seat Eleven by the Department of Children, Youth, and their Families, who shall
25 be a professional employee in that Department.

1 (7) Seat Twelve by the Recreation and Park Department, who shall be a professional
2 employee in that Department.

3 (8) Seat Thirteen by the San Francisco Unified School District's Parent Advisory
4 Council.

5 (c) Members of the Committee shall serve without pay, but may be reimbursed for expenses
6 actually incurred. The City Administrator shall provide clerical assistance and administrative support
7 to the Committee, and the Controller shall provide it with technical assistance. All City departments,
8 boards, and commissions shall reasonably assist and cooperate with the Committee.

9 (d) The Committee shall meet at least six times per fiscal year, except that during the fiscal
10 year ending June 30, 2015, it shall meet at least three times.

11 (e) The committee shall evaluate the impact of the Tax on beverage prices, consumer
12 purchasing behavior, and health outcomes. The Committee shall advise and make recommendations to
13 the Mayor, Board of Supervisors, and City departments receiving monies from the Fund, on the use and
14 expenditure of monies from the Fund consistent with the findings, purpose, and goals stated in this
15 Article 8.

16 (f) The Committee shall evaluate existing and past programming to identify existing and
17 emerging needs and shall adopt a strategic plan by December 1 of each fifth year to inform the use of
18 the Fund. The initial strategic plan shall be adopted by December 1, 2016.

19 (g) The Committee shall submit to the Board of Supervisors, no later than March 1 of each
20 fiscal year, an annual expenditure plan for the Fund based on the strategic plan adopted pursuant to
21 this Section. The initial annual expenditure plan shall be submitted no later than March 1, 2017.

22
23 **SEC. 562. ADMINISTRATION OF THE TAX; CONTROLLER'S REPORT.**

24 (a) Except as otherwise provided under this Article 8, the Sugar-Sweetened Beverage Tax
25 shall be administered pursuant to Article 6 of the Business and Tax Regulations Code.

1 **(b) The Controller shall file annually with the Board of Supervisors, within 90 days**
2 **following the end of each fiscal year, a report containing the following:**

3 **(1) The amount of funds collected and expended, and the allocation of expenditures**
4 **from the Fund, during the prior fiscal year.**

5 **(2) The status of any Eligible Program required or authorized to be funded under**
6 **this Article 8.**

7 **(3) Such other information as the Controller, in the Controller's sole discretion,**
8 **shall deem relevant to the operation of this Article 8.**

9
10 **SEC. 563. AMENDMENT OF ARTICLE.**

11 **The Board of Supervisors may amend or repeal this Article 8 without a vote of the people except**
12 **as limited by Article XIII C of the California Constitution.**

13
14 **SEC. 564. SEVERABILITY.**

15 **If any section, subsection, sentence, clause, phrase, or word of this Article 8 is for any reason**
16 **held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not**
17 **affect the validity of the remaining portions of the Article. If imposition of the Tax on any person or**
18 **activities is held to be invalid or unconstitutional by any court of competent jurisdiction, the Tax shall**
19 **continue to be imposed in all other respects. The people of the City and County of San Francisco**
20 **hereby declare that they would have enacted this Article and each and every section, subsection,**
21 **sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether**
22 **any other portion of this Article would be subsequently declared invalid or unconstitutional and would**
23 **have imposed this Tax in all other respects.**

1 **SEC. 565. OPERATIVE DATE.**

2 *This Article 8 shall become operative on January 1, 2016, except that Sections 556 and 561 of*
3 *this Article 8 shall become operative on January 1, 2015.*

4
5 Section 3. Effective Date and Operative Date. The effective date of this ordinance
6 shall be ten days after the date the official vote count is declared by the Board of Supervisors.
7 As stated in Section 565 of the Business and Tax Regulations Code, this Article 8 shall
8 become operative on January 1, 2016, except that Sections 556 and 561 of this Article 8 shall
9 become operative on January 1, 2015.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By:


14 Carole F. Ruwart
15 Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Business and Tax Regulations Code - Tax on Sugar-Sweetened Beverages to Fund Food and Health Programs]

Motion ordering submitted to the voters at an election to be held on November 4, 2014, an Ordinance amending the Business and Tax Regulations Code by adding a new Article 8, imposing a tax of two cents per ounce on the distribution of sugar-sweetened beverages, to fund City-operated programs and City grants for active recreation and improving food access, health, and nutrition, and to fund San Francisco Unified School District physical education, after-school physical activity, health, or nutrition programs, and school lunch and other school nutrition programs.

Existing Law

The City currently does not regulate or tax the distribution of nonalcoholic sugar-sweetened beverages, except that businesses distributing such beverages are subject to the City's general business registration and business tax laws.

Amendments to Current Law

This ordinance, which would be submitted to the voters for approval by a two-thirds majority, would create a new "Sugar-Sweetened Beverage Tax," codified in new Article 8, Sections 550-565, of the Business and Tax Regulations Code. The tax would be imposed on the initial distribution in the City of sugar-sweetened beverages, or concentrate (powder, syrup) that can be made into sugar-sweetened beverages. The distributor of the sugar-sweetened beverage would be liable for the tax. This would be a special tax, with the proceeds of the tax used only to fund specified recreation, health, and nutrition programs.

Rate of Tax. The tax would be at a rate of two cents per ounce of sugar-sweetened beverage distributed. The tax would also apply to sales of concentrate, at the rate of two cents per ounce of sugar-sweetened beverage that could be made by mixing the concentrate with liquid to produce a sugar-sweetened beverage.

What is Taxed. A sugar-sweetened beverage is any nonalcoholic beverage sold for human consumption that has added caloric sweeteners, as defined, and contains more than 25 calories per 12 ounces. A caloric sweetener is any caloric substance suitable for human consumption that humans perceive as sweet and includes, but is not limited to, sucrose, fructose, including high fructose corn sweetener, glucose, and other sugars. A caloric substance is a substance that adds calories to the diet of a person who consumes that substance.

Sugar-sweetened beverages include, but are not limited to, the following:

- Sodas, colas, and other soft drinks
- Sports drinks
- Energy drinks
- Iced tea
- Juice drinks (unless the beverage contains 100 percent natural fruit and/or vegetable juice)

However, a sugar-sweetened beverage does not include:

- Liquids sold for weight reduction or infant rehydration, medical foods, or infant formula.
- Milk from animal or plant sources, or flavored milk containing no more than 40 grams of total sugar per 12 ounces (naturally-occurring and from added caloric sweetener).
- Beverages that contain only 100 percent natural fruit juice, vegetable juice, or combined fruit and vegetable juice.
- Diet sodas, sports drinks, energy drinks, bottled water, flavored water, or any other drink that does not exceed 25 calories per 12 ounces, even if the beverage has added caloric sweeteners.

Who is Liable for the Tax. A “retailer” under the tax is a person who sells a sugar-sweetened beverage to a “consumer,” or customer. A “distributor” is a person who either:

- Sells a sugar-sweetened beverage or concentrate; or
- Purchases a sugar-sweetened beverage or concentrate for resale without paying the tax, then uses or consumes it.

All retailers and distributors would be required to register with the Tax Collector and prepare and keep appropriate records. The person who makes the initial sale or use of an untaxed beverage or concentrate in the City would be liable for the tax. Failure to pay the tax or comply with tax administration requirements would subject the person to the penalties and interest provided under Article 6, Common Administrative Provisions, of the Business and Tax Regulations Code.

Funding of Access to Healthy Food and Recreation Programs. The proceeds of the tax would be distributed to the following City agencies and the San Francisco Unified School District as follows:

- 40 percent to the San Francisco Unified School District for nutrition education, healthy food access, and expansion and improvement of physical education.

- 25 percent to the Department of Public Health and Public Utilities Commission for healthy food access initiatives, drinking fountains and water bottle filling stations, oral health services, chronic disease prevention, and public education campaigns.
- 25 percent to the Recreation and Park Department for recreation centers, organized sports, athletic programming, and grants to community-based organizations.
- 10 percent for grants to community-based organizations that support physical activity, food access, public outreach, and health programs.

The funds could only be used for new or expanded programs, and could not be used to replace funding for existing programs. The ordinance would not allow the Mayor and the Board of Supervisors to expend monies from the fund unless existing programs had already been funded from other sources, as certified by the Controller. Monies that are not expended would be held in the fund until the funding conditions are met.

A thirteen-member Healthy Nutrition and Physical Activity Access Fund Committee (“the Committee”) would advise the Mayor, the Board of Supervisors, and City departments in directing the use of funds. Four Committee members would be appointed by the Board, six would be appointed by specified City Departments and other City entities, and three would be appointed by the School District and the San Francisco Unified School District Parent Advisory Council. Members would serve up to three consecutive two-year terms. The Committee would meet at least six times per year.

The membership of the Committee would include the following:

- Two members residing in neighborhoods disproportionately impacted by diseases related to the consumption of Sugar-Sweetened Beverages.
- Two representatives of local medical institutions focused on chronic diseases linked to the consumption of Sugar-Sweetened Beverages.
- Employees of the Department of Public Health, Recreation and Park Department, Department of Children, Youth, and Their Families, and the San Francisco Unified School District.
- Members appointed by the Food Security Task Force, San Francisco Youth Commission, and San Francisco Unified School District Parent Advisory Council.

Background Information

Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of serious health problems including, but not limited to: weight gain, obesity, coronary heart disease, diabetes, cavities, tooth decay, and other health problems. Calorically sweetened soda, and fruit drinks containing less than 100 percent juice by volume, are major sources of added

sugars in American diets, contributing an average of 10.58 teaspoons of added sugars each day.

Among adults, consumption of SSBs is associated with a risk of weight gain and obesity, cardiovascular risk, a significantly higher risk of stroke, high blood pressure, type 2 diabetes, dental erosion, and the risk of pancreatic cancer. In 2011-2012, 41.8 percent of adults in San Francisco were either obese or overweight.

Plain water and—unless advised otherwise by a pediatrician—low-fat (1 percent) or nonfat milk are the most appropriate beverages for healthy children older than the age of two. Yet, 17.2 percent of San Francisco children and adolescents consume two or more glasses of soda or sugary drink per day. Within this, there are significant variations by ethnicity, with 24.2 percent of Asian and 33.9 percent Latino, and only 4.4 percent of white children, consuming two or more glasses of soda or sugary drink per day. Children consumed 11.96 teaspoons of added sugars from sodas and fruit drinks per day – 47 percent of their total intake of added sugars. A single 12-ounce can of soda contains eight to ten teaspoons of sugar, and typical container sizes of popular sugary drinks marketed to children far exceed recommended amounts.

Low-income families are more likely to be affected by obesity and diabetes. For example, the Bayview-Hunters Point neighborhood had more per capita emergency room visits due to diabetes between 2009 and 2011 than any other neighborhood in San Francisco. Eighteen percent of three- to four-year-olds enrolled in San Francisco Head Start were obese, with an additional 13 percent being overweight. Head Start serves children of low-income families.

The purpose of taxing SSBs is to make San Francisco healthier. Research shows that lifestyle interventions are more cost-effective than medications in preventing or delaying type 2 diabetes. Assessing a tax on SSBs is intended to help address the high levels of obesity, type 2 diabetes, and other diseases by reducing consumption and providing a revenue stream for City-directed and grant-funded physical activity and nutrition programs in schools, parks, community centers, and through community-based organizations.