

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Youth Commission
FROM: Derek Evans, Assistant Clerk
DATE: April 3, 2015
SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following legislation. At the request of the Youth Commission, this item is being referred as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 150243

Ordinance amending the Administrative Code to bar City departments from using City funds to purchase sugar-sweetened beverages, and to bar the sale or distribution of sugar-sweetened beverages under City food services contracts.

Please return this cover sheet with the Commission's response to Derek Evans, Clerk, Public Safety & Neighborhood Services Committee.

RESPONSE FROM YOUTH COMMISSION Date: _____

- No Comment
Recommendation Attached

Chairperson, Youth Commission

1 [Administrative Code - Barring City Departments from Purchasing and City Contractors from
2 Selling or Distributing Sugar-Sweetened Beverages]

3 **Ordinance amending the Administrative Code to bar City departments from using City
4 funds to purchase sugar-sweetened beverages, and to bar the sale or distribution of
5 sugar-sweetened beverages under City food services contracts.**

6
7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

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

15 Section 1. The Administrative Code is hereby amended by adding Chapter 101,
16 Sections 101.1 through 101.7, to read as follows:

17 **CHAPTER 101. RESTRICTING THE PURCHASE, SALE, OR DISTRIBUTION**
18 **OF SUGAR-SWEETENED BEVERAGES BY OR FOR THE CITY.**

19 Section 101.1. Title.

20 Section 101.2. Definitions.

21 Section 101.3. Barring City Departments From Using City Funds To Purchase
22 Sugar-Sweetened Beverages.

23 Section 101.4. Barring the Sale, Provision, or Distribution of Sugar-Sweetened Beverages
24 Under a City Food Services Contract.

25 Section 101.5. Waivers and Exclusions.

Section 101.6. Enforcement and Penalties.

1 Section 101.7. Administrative Regulations.

2
3 **SEC. 101.1. TITLE.**

4 The title of this Chapter 101 shall be the Sugar-Sweetened Beverage Funding Ban Ordinance.

5
6 **SEC. 101.2. DEFINITIONS.**

7 For purposes of this Chapter 101,

8 “Base Product” means the same as Powder.

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

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

14 “Caloric Sweetener” means any Caloric Substance suitable for human consumption that
15 humans perceive as sweet and includes, but is not limited to, sucrose, fructose, high fructose corn
16 syrup, glucose and other sugars.

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

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

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

22 (b) Any product that is sold and is intended to be used for the purpose of an individual
23 consumer mixing, compounding, or making a Sugar-Sweetened Beverage.

24 (c) Any product sold for consumption by infants, which is commonly referred to as
25 “infant formula,” or any product whose purpose is infant rehydration.

1 (d) Medical Food.

2 (e) Any product designed as supplemental, meal replacement, or sole-source nutrition
3 that includes proteins, carbohydrates, and multiple vitamins and minerals.

4 "Contractor" means any person or persons, firm, partnership, corporation, or combination
5 thereof who enters into a Food Services Contract with the City. "Contractor" also means a
6 subcontractor of a Contractor.

7 "Food Services" means selling, providing or otherwise distributing meals, snacks, or beverages
8 for immediate on-premises or off-premises consumption.

9 "Food Services Contract" means an agreement for Food Services to be purchased at the expense
10 of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the
11 control of or collected by the City. "Food Services Contract" shall include grant agreements pursuant
12 to which the City gives funds to a Contractor for Food Services to be provided to all or any portion of
13 the public rather than to City government. "Food Services Contract" shall also include any material
14 amendment to a Food Services Contract entered into after the operative date of the ordinance adding
15 this Chapter to the Municipal Code.

16 "Medical Food" means medical food as defined in Section 109971 of the California Health and
17 Safety Code, including amendments to that Section.

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

22 "Natural Fruit Juice" means the original liquid resulting from the pressing of fruit, the liquid
23 resulting from the complete reconstitution of natural fruit juice concentrate, or the liquid resulting from
24 the complete restoration of water to dehydrated natural fruit juice.

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

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

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

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

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

15 (a) Milk.

16 (b) Milk alternatives, including but not limited to non-dairy creamers or beverages
17 primarily consisting of plant-based ingredients (such as soy, rice, or almond milk products), regardless
18 of sugar content.

19 (c) Any beverage that contains solely 100 percent Natural Fruit Juice, Natural
20 Vegetable Juice, or combined Natural Fruit Juice and Natural Vegetable Juice.

21 (d) Any product sold for consumption by infants, which is commonly referred to as
22 “infant formula,” or any product whose purpose is infant rehydration.

23 (e) Medical Food.

24 (f) Any product designed as supplemental, meal replacement, or sole-source nutrition
25 that includes proteins, carbohydrates, and multiple vitamins and minerals.

1 (g) Any product sold in liquid form designed for use as an oral nutritional therapy for
2 persons who may have a limited ability to absorb or metabolize dietary nutrients from traditional food
3 or beverages.

4 (h) Any product sold in liquid form designed for use for weight reduction.

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

9
10 **SEC. 101.3. BARRING CITY DEPARTMENTS FROM USING CITY FUNDS TO PURCHASE**
11 **SUGAR-SWEETENED BEVERAGES.**

12 No City officer, department, or agency (collectively, "department") shall use City funds to
13 purchase Sugar-Sweetened Beverages in any form, except as specifically exempted from or allowed
14 under this Chapter 101.

15
16 **SEC. 101.4. BARRING THE SALE, PROVISION, OR DISTRIBUTION OF SUGAR-**
17 **SWEETENED BEVERAGES UNDER A CITY FOOD SERVICES CONTRACT.**

18 No Contractor shall sell, provide, or otherwise distribute Sugar-Sweetened Beverages, in any
19 form, as part of its performance of a Food Services Contract.

20
21 **SEC. 101.5. WAIVERS AND EXCLUSIONS.**

22 (a) A City officer, department, or agency (collectively, "department"), with the approval of the
23 Purchaser, may waive the requirements of Sections 101.3 and 101 4 in full or in part if the department
24 determines that strict application of the requirement would not be feasible, would create an undue
25

1 hardship or practical difficulty, or that similar circumstances otherwise warrant granting of the waiver.

2 The department's decision to grant a waiver shall be in writing.

3 (b) The provisions of Sections 101.3, 101.4, or both, shall not apply where the department
4 makes a written finding that the application or inclusion of such provisions would violate or be
5 inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State
6 of California or the United States or the instructions of an authorized representative of any such
7 agency with respect to any such grant, subvention or contract.

8 (c) Nothing in this Chapter 101 shall be construed to impair a contract, lease, management
9 agreement or other agreement to which the City is a party on the effective date of this Chapter.

10 (d) Departments shall annually report all waivers granted under subsection (a) and
11 determinations of non-applicability made under subsections (b) and (c) to the City Administrator, and
12 include the reason for each waiver.

13
14 **SEC. 101.6. ENFORCEMENT AND PENALTIES.**

15 (a) Any person or entity subject to Section 101.4 that sells, provides, or otherwise distributes
16 Sugar-Sweetened Beverages in violation of this Chapter 101 may be subject to administrative fines
17 imposed by the City Administrator in the amount of:

18 (1) Up to \$500 for the first violation;

19 (2) Up to \$750 for a second violation within a twelve-month period; and

20 (3) Up to \$1,000 for a third and subsequent violations within a twelve-month period.

21 (b) Except as provided in subsection (a), setting forth the amount of administrative fines,
22 Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as
23 may be amended from time to time, is hereby incorporated in its entirety and shall govern the
24 imposition, enforcement, collection, and review of administrative citations issued by the Director to
25 enforce this Chapter 101 or any administrative regulation adopted under this Chapter.

1 (c) Any person or entity subject to Section 101.4 that sells, provides, or otherwise distributes
2 Sugar-Sweetened Beverages in the performance of a Food Services Contract with the City in violation
3 of that Section shall be deemed to have committed a material breach of the Contract and, after a
4 noticed hearing, the person or entity may be barred for two years from receiving any City contract,
5 grant agreement, or loan agreement.

6
7 **SEC. 101.7. ADMINISTRATIVE REGULATIONS.**

8 The City Administrator, or at the City Administrator's discretion, the Purchaser, may adopt
9 rules, regulations, or guidelines for the implementation of this Chapter 101.

10
11 Section 2. Effective and Operative Dates. This ordinance shall become effective 30
12 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
13 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
14 or the Board of Supervisors overrides the Mayor's veto of the ordinance. The operative date
15 of this ordinance shall be July 1, 2015.

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17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20
21 By:


THOMAS J. OWEN
Deputy City Attorney

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