

**PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE NOVEMBER 8, 2016 ELECTION.**

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than 45 days prior to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

[Initiative Ordinance - Business and Tax Regulations Code - One Cent Per Ounce Tax on the Distribution of Sugary Beverages]

**Ordinance amending the Business and Tax Regulations Code by imposing a tax of one cent per ounce on the distribution of sugar-sweetened beverages, and amending the Administrative Code by creating a Sugary Drinks Distributor Tax Advisory Committee.**

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

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

Section 1. The Business and Tax Regulations Code is hereby amended by adding Article 8, consisting of Sections 550 through 560 to read as follows:

**ARTICLE 8: SUGARY DRINKS DISTRIBUTOR TAX ORDINANCE**

**SEC. 550. SHORT TITLE.**

*This Article shall be known as the "Sugary Drinks Distributor Tax Ordinance."*

**SEC. 551. FINDINGS AND PURPOSE.**

The U.S. Department of Health and Human Services, the U.S. Department of Agriculture, and the World Health Organization, based on a summary of the available evidence linking intake of added sugar and sugar-sweetened beverages (SSBs) to adverse health outcomes including obesity and diabetes, have recommended that Americans consume no more than 10% of their daily calories in the form of added sugar. Yet, standard single serving sizes of SSBs provide all (in a 20-ounce serving of many SSBs) or nearly all (in a 12-ounce serving) of the recommended maximum daily added sugar amount for most adults, and generally exceed the recommended maximum daily added sugar amount for children.

Numerous organizations and agencies, including the American Heart Association, American Diabetes Association, American Academy of Pediatrics, Institute of Medicine of the National Academies, American Medical Association, and the Centers for Disease Control, recommend limiting intake of added sugar and SSBs to improve health. Sugary beverages, though they can contain hundreds of calories in a serving, do not signal “fullness” to the brain and thus facilitate overconsumption.

Studies show that sugary beverages flood the liver with high amounts of sugar in a short amount of time, and that this “sugar rush” over time leads to fat deposits and metabolic disturbances that cause diabetes, cardiovascular disease, and other serious health problems. Diseases connected to sugary beverages disproportionately impact minorities and low-income communities. For example, diabetes hospitalizations are more than triple in low-income communities as compared with higher income areas. African American death rates from DM2 are five times higher than San Francisco’s overall rate. DM2 is the fifth leading cause of death in SF (which is an underestimate, since heart disease, the leading killer, is often a result of DM2); DM2 reduces the lifespan of San Franciscans by eight to ten years.

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As recently as 2010, nearly a third of children and adolescents in San Francisco were obese or overweight; and in San Francisco, 46.4% of adults are obese or overweight, including 61.7% of Hispanics and 51.3% of African Americans. Nationally, childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years; in 2010, more than one-third of children and adolescents were overweight or obese. Every additional sugary beverage consumed daily can increase a child's risk for obesity by 60%; and one or two sugary beverages per day increases the risk of Type II diabetes by 26%.

Sugary beverages, including sweetened alcoholic drinks, represent nearly 50% of added sugar in the American diet, and, on average, 11% of daily calories consumed by children in the U.S.

Seven percent of San Franciscans are diagnosed with diabetes, and it is estimated that the City and County of San Francisco pays over \$87 million for direct and indirect diabetes care costs.

This Article 8 is intended to discourage the distribution and consumption of sugar-sweetened beverages in San Francisco by taxing their distribution. Mexico, where an average of 163 liters of sugar-sweetened beverages are consumed per person each year, enacted an excise tax on sugary drinks, with the result that the purchase of taxed sugar sweetened beverages declined by 12% generally and by 17% among low-income Mexicans. The Mexico data indicate that, when people cut back on SSBs, to a significant extent they choose lower-caloric or non-caloric alternatives. This body of research demonstrates that taxation can provide a powerful incentive for individuals to reduce their consumption of SSBs, which in turn will reduce obesity and DM2.

The City of Berkeley became the first city in the United States to follow in Mexico's footsteps, by passing a one-cent-per-ounce general tax on distributors of SSBs within the city limits. It is estimated that the City of Berkeley, which began implementing the tax in March 2015, will collect at least \$1.2 million from the tax annually.

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**SEC. 552. DEFINITIONS.**

Unless otherwise defined in this Article 8, terms that are defined in Article 6 of the Business and Tax Regulations Code shall have the meanings provided therein. For purposes of this Article, the following definitions shall apply.

“Beverage for Medical Use” means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness. “Beverage for Medical Use” also means a “medical food” as defined in Section 109971 of the California Health and Safety Code. “Beverage for Medical Use” shall not include beverages commonly referred to as “sports drinks,” or any other similar names.

“Bottle” means any closed or sealed container regardless of size or shape, including, without limitation, those made of glass, metal, paper, plastic, or any other material or combination of materials.

“Bottled Sugar-Sweetened Beverage” means any Sugar-Sweetened Beverage contained in a Bottle that is ready for consumption without further processing, such as, and without limitation, dilution or carbonation.

“Caloric Sweetener” means any substance or combination of substances that is suitable for human consumption, that humans perceive as sweet, and that adds calories to the diet of any human who consumes it. “Caloric Sweetener” includes, but is not limited to, sucrose, fructose, glucose, other sugars, and high fructose corn syrup.

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

“Distribution” includes:

(a) The transfer in the City, for consideration, of physical possession of Sugar-Sweetened Beverages, Syrup, or Powder by any person other than a common carrier. “Distribution”

also includes the transfer of physical possession in the City by any person other than a common carrier, without consideration, for promotional or any other commercial purpose.

(b) The possession, storage, ownership, or control in the City, by any person other than a common carrier, of Sugar-Sweetened Beverages, Syrup, or Powder for resale in the ordinary course of business, obtained by means of a transfer of physical possession outside the City or from a common carrier in the City.

“Distribution” does not include:

(a) The return of any Sugar-Sweetened Beverages, Syrup, or Powder to a person, if that person refunds the entire amount paid in cash or credit.

(b) A retail sale or use.

“Distributor” means any person engaged in the business of Distribution of Bottled Sugar-Sweetened Beverages, Syrup, or Powder. A Distributor does not include a common carrier. Where a common carrier obtains physical possession of Sugar-Sweetened Beverages, Syrup, or Powder outside the City and transfers physical possession of the Sugar-Sweetened Beverages, Syrup, or Powder in the City, the transferee of the Sugar-Sweetened Beverages, Syrup, or Powder is a Distributor.

“Milk Product” means: (a) any beverage whose principal ingredient by weight is natural liquid milk secreted by an animal. “Milk” includes natural milk concentrate and dehydrated natural milk, whether or not reconstituted; and (b) any plant-based substance or combination of substances in which (1) water and (2) grains, nuts, legumes, or seeds constitute the two greatest ingredients by volume. For purposes of this definition, “Milk Product” includes, but is not limited to, soy milk, almond milk, rice milk, coconut milk, hemp milk, oat milk, hazelnut milk, or flax milk;

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

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

“Nonalcoholic Beverage” means any beverage that is not subject to tax under California Revenue and Taxation Code sections 32001 et seq. as “beer, wine or distilled spirits.”

“Powder” means any solid mixture, containing one or more Caloric Sweeteners as an ingredient, intended to be used in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Powder with one or more other ingredients.

“Sugar-Sweetened Beverage” means any Nonalcoholic Beverage intended for human consumption that contains added Caloric Sweetener and contains more than 25 calories per 12 fluid ounces of beverage, including but not limited to all drinks and beverages commonly referred to as “soda,” “pop,” “cola,” “soft drinks,” “sports drinks,” “energy drinks,” “sweetened ice teas,” or any other similar names. “Sugar-Sweetened Beverage” does not include:

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

(b) Any Beverage for Medical Use.

(c) Any beverage designed as supplemental, meal replacement, or sole-source nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals (this exclusion does not include beverages commonly referred to as “sports drinks,” or any other similar names, which are defined as Sugar-Sweetened Beverages).

(d) Any Milk Product.

(e) Any beverage that contains solely 100% Natural Fruit Juice, Natural Vegetable Juice, or combined Natural Fruit Juice and Natural Vegetable Juice.

“Sugary Drinks Distributor Tax” or “Tax” means the general excise tax imposed under Section 553.

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“Syrup” means any liquid mixture, containing one or more Caloric Sweeteners as an ingredient, intended to be used, or actually used, in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Syrup with one or more other ingredients.

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

(a) Effective January 1, 2018, for the privilege of engaging in the business of making an initial Distribution within the City of a Bottled Sugar-Sweetened Beverage, Syrup, or Powder, the City imposes a Sugary Drinks Distributor Tax, which shall be a general excise tax, on the Distributor making the initial Distribution of a Bottled Sugar-Sweetened Beverage, Syrup, or Powder in the City.

(b) The Tax shall be calculated as follows:

(1) One cent (\$0.01) per fluid ounce of a Bottled Sugar-Sweetened Beverage upon the initial Distribution within the City of the Bottled Sugar-Sweetened Beverage; and

(2) One cent (\$0.01) per fluid ounce of a Sugar-Sweetened Beverage that could be produced from Syrup or Powder upon the initial Distribution of Syrup or Powder. The Tax for Syrups and Powders shall be calculated using the largest volume of Sugar-Sweetened Beverage that would typically be produced by the amount of Syrup or Powder based on the manufacturer’s instructions or, if the Distributor uses the Syrup or Powder to produce a Sugar-Sweetened Beverage, the regular practice of the Distributor.

(c) The Tax is a general tax. Proceeds of the Tax are to be deposited in the General Fund.

**SEC. 554. REGISTRATION OF DISTRIBUTORS; DOCUMENTATION; ADMINISTRATION.**

(a) Each Distributor shall register with the Tax Collector according to rules and regulations of the Tax Collector, but no earlier than 30 days after the effective date of Article 8.

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

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(c) Except as otherwise provided under Article 8, the Tax shall be administered pursuant to Article 6 of the Business and Tax Regulations Code.

**SEC. 555. CREDITS AND REFUNDS.**

The Tax Collector shall refund or credit to a Distributor the Tax that is paid with respect to the initial Distribution of a Bottled Sugar-Sweetened Beverage, Syrup, or Powder: (a) that is shipped to a point outside the City for Distribution outside the City; or (b) on which the Tax has already been paid by another Person; or (c) that has been returned to the Person who Distributed it and for which the entire purchase price has been refunded in cash or credit.

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

(a) The Department of Public Health shall provide to the Tax Collector technical assistance to identify Bottled Sugar-Sweetened Beverages, Syrups, and Powders subject to the Tax.

(b) All City Departments shall provide technical assistance to the Tax Collector to identify Distributors of Bottled Sugar-Sweetened Beverages, Syrups, and Powders.

**SEC. 557. MUNICIPAL AFFAIR.**

The People of the City and County of San Francisco hereby declare that the taxation of the distribution of Sugar-Sweetened Beverages, Syrups and Powders, and that the public health impact of Sugar-Sweetened Beverages, separately and together constitute municipal affairs. The People of the City and County of San Francisco hereby further declare their desire for this measure to coexist with any similar tax adopted at the local or state levels.

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**SEC. 558. NOT A SALES AND USE TAX.**

The tax imposed by this measure is a general excise tax on the privilege of conducting business within the City and County of San Francisco. It is not a sales tax or use tax or other excise tax on the sale, consumption, or use of sugar-sweetened beverages.

**SEC. 559. SEVERABILITY.**

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The voters hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

**SEC. 560. AMENDMENT.**

The Board of Supervisors may by ordinance amend or repeal Article 8 of the Business and Tax Regulations Code without a vote of the people except as limited by Article XIIC of the California Constitution.

Section 2. The Administrative Code is hereby amended by adding Article XXXIII, consisting of Sections 5.33-1 through 5.33-6, to Chapter 5, to read as follows:

**ARTICLE XXXIII:**

**SUGARY DRINKS DISTRIBUTOR TAX ADVISORY COMMITTEE**

**SEC. 5.33-1. CREATION OF ADVISORY COMMITTEE.**

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There is hereby established the Sugary Drinks Distributor Tax Advisory Committee (the "Advisory Committee") of the City and County of San Francisco.

**SEC. 5.33-2. MEMBERSHIP.**

The Advisory Committee shall consist of the following 16 voting members.

(a) Seats 1, 2, and 3 shall be held by representatives of nonprofit organizations that advocate for health equity in communities that are disproportionately impacted by diseases related to the consumption of Sugar-Sweetened Beverages, as defined in Business and Tax Regulations Code Section 552, appointed by the Board of Supervisors.

(b) Seats 4 and 5 shall be held by individuals who are employed at medical institutions in San Francisco and who have experience in the diagnosis or treatment of, or in research or education about, chronic and other diseases linked to the consumption of Sugar-Sweetened Beverages, appointed by the Board of Supervisors.

(c) Seat 6 shall be held by a person who is under 19 years old at the time of appointment and who may be a member of the Youth Commission, nominated by the Youth Commission and appointed by the Board of Supervisors. If the person is under legal voting age and unable to be an elector for that reason, the person may hold this seat, but upon reaching legal voting age, the person shall relinquish the seat unless he or she becomes an elector, in which case the person shall retain the seat.

(d) Seat 7 shall be held by a person appointed by the Director of the Office of Economic and Workforce Development or any successor office.

(e) Seats 8 and 9 shall be held by persons appointed by the Board of Education of the San Francisco Unified School District. If at any time the Board of Education declines to appoint a member to Seat 8 or 9 and leaves the seat vacant for 60 days or longer, the Board of Supervisors may appoint a member of the public to fill the seat until such time as the Board of Education appoints a member.

(f) Seat 10 shall be held by an employee of the Department of Public Health who has experience or expertise in the field of chronic disease prevention or treatment, appointed by the Director of Health.

(g) Seat 11 shall be held by a person with experience or expertise in the field of oral health, appointed by the Director of Health.

(h) Seat 12 shall be held by a person with experience or expertise in the field of food security or access, appointed by the Director of Health.

(i) Seat 13 shall be held by an employee of the Department of Children, Youth & Their Families, appointed by the Director of that Department.

(j) Seat 14 shall be held by an employee of the Recreation and Park Department, appointed by the General Manager of that Department.

(k) Seat 15 shall be held by a parent or guardian of a student enrolled in the San Francisco Unified School District at the time of appointment, nominated by the San Francisco Unified School District's Parent Advisory Council, and appointed by the Board of Supervisors. If at any time the Parent Advisory Council declines to nominate a member to a vacant seat for 60 days or longer, the Board of Supervisors may appoint a member of the public to fill the seat until the seat becomes vacant again.

(l) Seat 16 shall be held by a person with experience or expertise in services and programs for children five and under, appointed by the Board of Supervisors.

**SEC. 5.33-3. ORGANIZATION AND TERMS OF OFFICE.**

(a) Members of the Advisory Committee shall serve at the pleasure of their respective appointing authorities, and may be removed by the appointing authority at any time.

(b) Appointing authorities shall make initial appointments to the Advisory Committee by no later than September 1, 2017. The initial term for each seat on the Advisory Committee shall begin

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September 1, 2017 and end December 31, 2018. Thereafter, the term for each seat shall be two years. There shall be no limit on the number of terms a member may serve. A seat that is vacant on the Advisory Committee shall be filled by the appointing authority for that seat.

(c) Members of the Advisory Committee shall receive no compensation from the City, except that the members in Seats 4, 5, 7, 10, 11, 12, 13, and 14 who are City employees may receive their respective City salaries for time spent working on the Advisory Committee.

(d) Any member who misses three regular meetings of the Advisory Committee within any 12-month period without the express approval of the Advisory Committee at or before each missed meeting shall be deemed to have resigned from the Advisory Committee 10 days after the third unapproved absence. The Advisory Committee shall inform the appointing authority of any such resignation.

(e) The City Administrator shall provide administrative and clerical support for the Advisory Committee, and the Controller's Office shall provide technical support and policy analysis for the Advisory Committee upon request. All City officials and agencies shall cooperate with the Advisory Committee in the performance of its functions.

**SEC. 5.33-4. POWERS AND DUTIES.**

The general purpose of the Advisory Committee is to make recommendations to the Mayor and the Board of Supervisors on the effectiveness of the Sugary Drinks Distributor Tax in Business Tax and Regulations Code Article 8. Starting in 2018, by March 1 of each year, the Advisory Committee shall submit to the Board of Supervisors and the Mayor a report that (a) evaluates the impact of the Sugary Drinks Distributor Tax on beverage prices, consumer purchasing behavior, and public health, and (b) makes recommendations regarding the potential establishment and/or funding of programs to reduce the consumption of Sugar-Sweetened Beverages in San Francisco. Within 10 days after the submission

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of the report, the City Administrator shall submit to the Board of Supervisors a proposed resolution for the Board to receive the report.

**SEC. 5.33-5. MEETINGS AND PROCEDURES.**

(a) There shall be at least 10 days' notice of the Advisory Committee's inaugural meeting. Following the inaugural meeting, the Advisory Committee shall hold a regular meeting not less than four times each year.

(b) The Advisory Committee shall elect officers and may establish bylaws and rules for its organization and procedures.

**SEC. 5.33-6. SUNSET.**

Unless the Board of Supervisors by ordinance extends the term of the Advisory Committee, this Article XXXIII shall expire by operation of law, and the Advisory Committee shall terminate, on December 31, 2028. In that event, after that date, the City Attorney shall cause this Article XXXIII to be removed from the Administrative Code.

Section 3. Effective Date. The effective date of this ordinance is 10 days after the date the official vote count is declared by the Board of Supervisors.

Section 4. Conflicting Measures. This ordinance is intended to be comprehensive. It is the intent of the people of the City and County of San Francisco that in the event that this measure and one or more other measures regarding the taxation of Sugar-Sweetened Beverages shall appear on the same ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their

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entirety, and all provisions of the other measure or measures shall be null and void. If this measure is approved by a majority of the voters but does not receive a greater number of affirmative votes than any other measure appearing on the same ballot regarding taxation of Sugar-Sweetened Beverages, this measure shall take effect to the extent not in conflict with said other measure or measures.

Section 5. Appropriations Limit Increase. Pursuant to California Constitution Article XIII B and applicable laws, for four years from November 8, 2016, the appropriations limit for the City shall be increased by the aggregate sum collected by the levy of the Sugary Drinks Distributor Tax (Business and Tax Regulations Code, Article 8) imposed by this ordinance.

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***Sources for SEC. 551 Findings and Purpose***

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