

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

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**Section 1. Title.**

DEPARTMENT OF ELECTIONS

This measure shall be known and may be cited as “The Sugary Drinks Distributor Tax Ordinance.”

**Section 2. Election.**

Pursuant to Article XIII C of the Constitution of the State of California, this measure shall be submitted to the qualified electors of the City and County of San Francisco, at the November 8, 2016 consolidated general election or, if this measure does not qualify for the November 8, 2016 election, then at the next regularly scheduled election which includes elections for members of the Board of Supervisors.

**Section 3. The Sugary Drinks Distributor Tax Ordinance.**

The Business and Tax Regulations Code is hereby amended by adding Article 8, to read as follows:

**ARTICLE 8: THE 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.**

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; and

Diseases connected to sugary beverages disproportionately impact minorities and low-income communities. Diabetes hospitalizations are more than triple in low-income communities as compared with higher income areas; and

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; and

7 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; and

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Every additional sugary beverage consumed daily can increase a child's risk for obesity by 60 percent; and one or two sugary beverages per day increases the risk of Type II diabetes by 26 percent; and

Sugary beverages represent 50 percent of added sugar in the American diet and, on average, 11 percent of daily calories consumed by children in the U.S. A recent survey found that California teenagers are consuming more sugary beverages than ever; and

Sugary beverages, though they can contain hundreds of calories in a serving, do not signal "fullness" to the brain and thus facilitate overconsumption; and

As recently as 2010, nearly a third of children and adolescents in San Francisco were obese or overweight; and two thirds of African American and Latino adults were overweight/obese; and

Mexico, where an average of 163 liters of sugar sweetened beverages are consumed per person each year, successfully passed an excise tax on sugary drinks, reducing the purchase of taxed sugar sweetened beverages by 12 percent generally and by 17 percent among low-income Mexicans; and

The City of Berkeley became the first city in the United States to follow Mexico's footsteps and pass a penny per ounce general tax on distributors of sugar-sweetened beverages within the City limits; and

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; and

The Berkeley City Council has voted to use \$500,000 to improve health education and nutrition programs for children and families.

This measure is intended to discourage the distribution and consumption of sugar-sweetened beverages in San Francisco by taxing their distribution.

## **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.

“Advisory Committee” means the Sugary Drinks Distributor Tax Advisory Committee described in Section 557.

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“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 common names that are derivations thereof.

“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.

“Business Entity” means any Person except for a natural person.

“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.

“Distribution” means the transfer of title or possession: (a) from one Business Entity to another for consideration; or (b) within a single Business Entity, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors. “Distribution” or “Distribute” shall not mean the retail sale to a consumer.

“Distributor” means any person engaged in the business of Distribution of Bottled Sugar-Sweetened Beverages, Syrup or Powder.

“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 (i) water and (ii) 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

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“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.”

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Powder” means any solid mixture, containing one or more Caloric Sweetener 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.

“Small Business” means any Business Entity with less than \$100,000 in annual gross receipts in the most recent calendar year.

“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 common names that are derivations thereof. “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; or (b) any Beverage for Medical Use; or (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 common names that are derivations thereof, which are defined as Sugar-Sweetened Beverages); or (d) any Milk Product.

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

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

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

(a) 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 Sugar-Sweetened Beverage Tax, which shall be a general excise tax, on the Distributor making the initial Distribution of a Bottled Sugar Sweetened Beverage, Syrup or Powder.

(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 shall not apply to:

(1) The Distribution of any Bottled Sugar-Sweetened Beverage if the Tax has been paid on a previous Distribution of the Bottled Sugar-Sweetened Beverage, Syrup or Powder.

(2) The Distribution of any Bottled Sugar-Sweetened Beverage, Syrup or Powder to a Small Business.

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

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

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

(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.**

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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. ADVISORY COMMITTEE.**

(a) There is hereby established a Sugary Drinks Distributor Tax Advisory Committee that shall consist of fifteen (15) members.

(b) The Advisory Committee shall advise and make recommendations to the Mayor and the Board of Supervisors on the effectiveness of the Sugary Drinks Distributor Tax. The Advisory Committee shall make recommendations on how and to what extent the Mayor and Board of Supervisors should establish and/or fund programs to reduce the consumption of Sugar-Sweetened Beverages in San Francisco and to address the effect of such consumption.

(c) The Advisory Committee shall evaluate the impact of the Tax on beverage prices, consumer purchasing behavior, and public health impacts.

(d) Members of the Advisory Committee shall be appointed as follows:

(1) The Board of Supervisors shall appoint individuals to Seats One, Two, and Three, who shall be representatives from different community based organizations whose mission is to address the health equity of the communities they represent and the residents who are disproportionately impacted by diseases related to the consumption of Sugar-Sweetened Beverages, as measured by the most recent data available to the Department of Public Health.

(2) The Board of Supervisors shall appoint individuals to Seats Four and Five, who shall be representatives from different local medical institutions that engage in whole or in part in the diagnosis, treatment, research of, or education about, chronic diseases linked to the consumption of Sugar-Sweetened Beverages.

(3) The Food Security Task Force shall appoint an individual to Seat Six, who may be a member that Task Force.

(4) The San Francisco Youth Commission shall appoint an individual to Seat Seven, who may be a member of the Youth Commission. Appointees to Seat Seven must be 18 years of age or younger at the commencement of the initial term, and at the commencement of any succeeding term.

(5) The Economic and Workforce Development Office shall appoint an individual to Seat Eight.

(6) The San Francisco Unified School District shall appoint individuals to Seats Nine and Ten.

(7) The Department of Public Health shall appoint individuals to Seats Eleven and Twelve. Seat Eleven shall be an employee in that Department who is an expert in chronic disease prevention. Seat Twelve shall be an expert in oral health prevention.

(8) The Department of Children, Youth, and their Families shall appoint an individual to Seat Thirteen, who shall be a professional employee in that Department.

(9) The Recreation and Park Department shall appoint an individual to Seat Fourteen, who shall be a professional employee in that Department.

(10) The San Francisco Unified School District's Parent Teacher Association shall appoint an individual to Seat Fifteen, who shall be a parent or guardian of a student enrolled in San Francisco Unified School District at the commencement of the initial term, and at the commencement of any succeeding term.

(e) Members of the Advisory Committee shall serve two (2) year terms but shall serve at the pleasure of their respective appointing authorities. No member shall serve more than three (3) consecutive two (2) year terms. The initial two (2) year term for each of the initial members shall commence as of the date that nine members have been appointed, which is when the Advisory Committee may begin its work. A quorum of the Committee shall be eight (8) members. Absence from three (3) consecutive regular meetings, or four (4) regular meetings, during a single fiscal year constitutes resignation from the Advisory Committee.

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

(g) The Advisory Committee shall meet at least four (4) times per fiscal year.

(h) Unless otherwise reauthorized by the Board of Supervisors, this section shall expire by operation of law, and the Advisory Committee shall terminate, as of December 31, 2028. After that date, the City Attorney shall cause this Section to be removed from the Administrative Code.

#### **Section 4. Effective Date.**

This Article 8 shall become operative on July 1, 2017.

#### **Section 5. Conflicting Measures.**

This measure 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 measures relating to 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 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 6. Liberal Construction.**

This measure is an exercise of the initiative power of the people of the City and County of San Francisco for the protection of the health, safety, and welfare of the people, and shall be liberally construed to effectuate its purposes.

#### **Section 7. 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.

**Section 8. 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.

**Section 9. 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.

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