

File No. 100865

Committee Item No. _____
Board Item No. 05

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 09/28/10

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget Analyst Report
- Legislative Analyst Report
- Introduction Form (for hearings)
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Award Letter
- Application
- Public Correspondence

OTHER

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** Amended in Board on 9/14/10*

Completed by: Rana Calonsag

Completed by: _____

Date 9-15-10

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Establishing an Alcohol Mitigation Cost Recovery Fee.]

2

3 Ordinance adding Chapter 106, Sections 106 through 106.28, to the San Francisco
4 Administrative Code to impose a fee on Alcoholic Beverage Wholesalers and certain
5 other persons who distribute or sell Alcoholic Beverages in San Francisco to 1)
6 recover a portion of San Francisco's alcohol-attributable unreimbursed health costs,
7 and 2) fund administration costs.

8 NOTE: Additions are single-underline italics Times New Roman;
9 deletions are ~~strike-through italics Times New Roman~~.
10 Board amendment additions are double-underlined;
11 Board amendment deletions are ~~strikethrough normal~~.

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

12 Section 1. The San Francisco Administrative Code is hereby amended adding a new
13 Chapter 106, Section 106 through 106.28, to read as follows:

14 **SEC. 106. FINDINGS.**

15 1. Illness, disability and premature death can be directly attributed to alcohol use. The
16 Centers for Disease Control and Prevention (CDC) has called excessive alcohol consumption the third
17 leading preventable cause of death, or modifiable behavioral risk factor, in the United States, after
18 tobacco and the combination of poor diet and physical inactivity.

19 2. In a 2010 study published in The Open Epidemiology Journal, researchers found that
20 alcohol use resulted in approximately 10,600 deaths and 72,000 nonfatal hospitalizations in California
21 during 2006 alone.

22 3. In one study, researchers estimated that the annual economic costs of alcohol use in
23 California for 2005 are between \$35.4 billion and \$42.2 billion, including \$5.4 billion in medical and
24 mental health spending, \$25.3 billion in work losses, and \$7.8 billion in criminal justice spending,
25 property damage, and other public program costs.

Supervisor Avalos , Daly, Campos , Mar, Mirkarimi, Maxwell
BOARD OF SUPERVISORS

1 4. Two-thirds of San Francisco adults are current drinkers, compared with 55% of United
2 States adults. The San Francisco Department of Public Health considers alcohol a major public health
3 problem.

4 5. In San Francisco, alcohol use ranks among the leading causes of premature mortality.
5 Analyzing data from 2004-2007, the Department of Public Health found that alcohol is a leading cause
6 of premature death among men in San Francisco, accounting for approximately 10% of all their years
7 of life lost. The Department of Public Health also found that alcohol use is a notable cause of
8 premature death among women in San Francisco, falling between fifth and fifteenth as the leading
9 cause of premature death for that group, depending on the analytical method used.

10 6. Alcohol also plays a role in a significant number of deaths in San Francisco. In Fiscal
11 Year 2006-2007 – the most recent year for which the San Francisco Medical Examiner published
12 findings – alcohol was the primary cause of death in 7.7% of natural deaths certified by that office.
13 Alcohol also is involved in a significant number of accidental deaths in San Francisco. In FY 2006-
14 2007, 33% percent of all non-vehicular accidental death victims tested by the Medical Examiner had
15 significant levels of alcohol in their blood. In that same year, alcohol was present in 32.7% of all
16 vehicular fatalities in San Francisco. Alcohol also was present in 25% of all suicides tested by the
17 Medical Examiner that year. In addition, 31.8% of all tested homicide victims in San Francisco in FY
18 2006-2007 had positive blood alcohol levels at the time of death.

19 7. The City and County of San Francisco incurs a range of substantial costs that are
20 attributable to alcohol consumption, including but not limited to, the costs of medical care for people
21 with alcohol-related illnesses, treatment and prevention of alcohol misuse, law enforcement for
22 alcohol-related incidents, and emergency response for alcohol-related motor vehicle collisions. In
23 addition, San Francisco incurs costs when individuals experience disability, diminished capacity, and
24 premature death due to alcohol use.

1 8. In 2010, The Lewin Group and Oxford Outcomes, Inc. ("Nexus Study Authors")
2 conducted a nexus study to calculate a portion of the City and County of San Francisco's health costs
3 attributable to Alcoholic Beverages. The report, entitled *The Cost of Alcohol to San Francisco:*
4 *Analyses Supporting an Alcohol Mitigation Fee ("Nexus Study")* is on file with the Clerk of the Board of
5 Supervisors in File No. _____ and is incorporated herein by reference.

6 9. This Ordinance establishes the Alcohol Mitigation Cost Recovery Fee to reimburse the
7 City and County of San Francisco for portion of its otherwise unreimbursed annual costs attributable
8 to alcohol use as identified in the Nexus Study.

9
10 **SEC. 106.1. TITLE AND PURPOSE.**

11 This Ordinance shall be known as the "Alcohol Mitigation Cost Recovery Fee Ordinance"
12 and the Fee imposed herein shall be known as the "Alcohol Mitigation Cost Recovery Fee" or "Fee."
13 The purpose of this Fee is to at least partly recover the City's unreimbursed 1) health care costs of
14 alcohol-attributable conditions, 2) costs of emergency transport due to alcohol, 3) alcohol prevention
15 and treatment programs administered by the Department of Public Health, and 4) administration costs,
16 including but not limited to collection, investigation, and enforcement costs (Eligible Costs).

17
18 **SEC. 106.4. DEFINITIONS.**

19 (a) "Account" or "San Francisco Alcohol Mitigation Cost Recovery Account" means the
20 account the City maintains to receive monies collected under this Chapter.

21 (b) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever
22 source or by whatever process produced.

23 (c) "Alcoholic Beverage" means Alcohol, Spirits, liquor, Wine, or Beer, and every liquid
24 containing Alcohol, Spirits, Wine, or Beer, which contains one-half of 1 percent or more of Alcohol by
25

1 volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with
2 other substances.

3 (d) "Beer" means any Alcoholic Beverage obtained by the fermentation of any infusion or
4 decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and
5 includes ale, porter, brown, stout, lager beer, small beer, and strong beer but does not include sake,
6 known as Japanese rice wine.

7 (e) "City" means the City and County of San Francisco.

8 (f) "Controller" means the Office of the Controller of the City and County of San
9 Francisco.

10 (g) "Eligible Costs" means the City's unreimbursed 1) health care costs of alcohol-
11 attributable conditions, 2) costs of emergency transport due to alcohol, 3) alcohol prevention and
12 treatment programs administered by the Department of Public Health, and 4) administration costs,
13 including but not limited to collection, investigation, and enforcement costs identified in the Nexus
14 Study.

15 (h) "Fee" means the Alcohol Mitigation Cost Recovery Fee imposed under this Chapter
16 106 of the San Francisco Administrative Code.

17 (i) "Fee Payer" means a Person responsible for paying the Fee.

18 (j) "Manufacturer" or "Alcoholic Beverage Manufacturer" means any Person engaged in
19 the manufacture of alcoholic beverages.

20 (k) "Person" means any individual, firm, association, copartnership, cooperative
21 association, joint venture, corporation, personal representative, receiver, trustee, assignee, or any
22 entity, public or private in nature, but not the City or other governmental agencies exempted from local
23 fees under State or Federal law.

24 (l) "Retailer" or "Alcoholic Beverage Retailer" means a Person who engages in the sale
25 of Alcoholic Beverages for consumption and not for resale.

1 (m) "Rule" means any rule, regulation, guideline, instruction or prescribed form that the Tax
2 Collector duly issues, promulgates, or adopts to enforce and administer this Alcohol Mitigation Cost
3 Recovery Fee Ordinance.

4 (n) "Sell", "Sale", or "To Sell" means any transaction whereby, for any consideration, title
5 to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic
6 beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving
7 an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the
8 licensee from whom such beverages were purchased. For purposes of this definition, "licensee" means
9 any person holding a license, a permit, a certification, or any other authorization issued by the
10 California Department of Alcoholic Beverage Control.

11 (o) "Spirits" means an Alcoholic Beverage obtained by the distillation of fermented
12 agricultural products, and includes but is not limited to, alcohol for beverage use, spirits of wine,
13 whiskey, rum, brandy, vodka, and all dilutions and mixtures thereof.

14 (p) "Tax Collector" means the Office of the Treasurer and Tax Collector of the City and
15 County of San Francisco.

16 (q) "Wholesaler" or "Alcoholic Beverage Wholesaler" means every Person other than a
17 Manufacturer, Winegrower or rectifier, who is engaged in business as a jobber or wholesale merchant,
18 selling Alcoholic Beverages to Retailers for resale.

19 (r) "Wine" means the product obtained from normal alcoholic fermentation of the juice of
20 sound ripe grapes or other agricultural products containing natural or added sugar or any such
21 alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled
22 from the particular agricultural product or products of which the wine is made and other rectified wine
23 products and by whatever name and which does not contain more than 15 percent added flavoring,
24 coloring, and blending material and which contains not more than 24 percent of alcohol by volume,
25 and includes vermouth and sake, known as Japanese rice wine.

1 (s) "Winegrower" means any person who has facilities and equipment for the conversion of
2 grapes, berries or other fruit into wine and is engaged in the production of wine.

3
4 **SEC. 106.7. IMPOSITION OF ALCOHOL MITIGATION COST RECOVERY FEE**

5 (a) Commencing January 1, 2011, The City hereby imposes an Alcohol Mitigation Cost
6 Recovery Fee at the rate of \$.076 per ounce of Alcohol sold on (1) Alcoholic Beverage
7 Wholesalers, or other Persons, who sell an Alcoholic Beverage to a Retailer for resale within the
8 geographic limits of the City, and (2) Alcoholic Beverage Manufacturers, such as brew pubs,
9 breweries, or Winegrowers, that sell within the geographic limits of the City Alcoholic Beverages
10 directly to Persons for consumption and not resale. Where an Alcoholic Beverage Wholesaler or
11 other Person sells Alcoholic Beverages to a Retailer at a location outside the geographic
12 boundaries of the City, and the Retailer then resells some or all of those beverages at a
13 location within the geographic boundaries of the City, the Retailer shall pay the Fee unless it
14 can demonstrate that the Wholesaler already paid the Fee for those beverages, and (3)
15 Alcoholic Beverage Retailers, or their agents, that purchase outside the geographic
16 boundaries of the City Alcoholic Beverages from Persons for resale within the geographic
17 boundaries of the City.

18 (b) The Fee shall be established at the following rates: (1) \$0.35 per gallon of Beer
19 and at a proportionate rate for any other quantity, (2) \$1.00 per gallon of Wine and at a
20 proportionate rate for any other quantity, and (3) \$3.20 per gallon of Spirits and at a
21 proportionate rate for any other quantity. The City may collect the Fee only once for each
22 ouncegallon of alcohol sold within the geographic limits of the City. The Fee shall be subject to
23 adjustment from time to time under Section 106.16.

24 (b)(c) The Fee Payer shall remit the Fee to the Tax Collector each calendar quarter on or
25 before the last day of the month immediately following each respective quarterly period, and in

1 accordance with the Tax Collector's Rules, except that all such amounts shall be due immediately upon
2 the transfer of ownership or cessation of a Fee Payer's business for any reason. The first Fee payment
3 is due January 1-April 30, 2011 for Fee Payers doing business during the quarter starting January
4 1, 2011 ending December-March 31, 20112010.

5 (e)(d) The City may expend the proceeds of the Fee only to offset, in whole or in part, the
6 Eligible Costs.

7 (d)(e) The Tax Collector shall deposit all monies collected pursuant to this Alcohol Mitigation
8 Cost Recovery Fee Ordinance to the credit of the San Francisco Alcohol Mitigation Cost Recovery
9 Fee Account authorized by Section 106.28.

10 (f) Quarterly Exclusion Up to \$1,000. Fee Payers may exclude the first \$1,000 of Fees
11 from their total fee liability each quarter. If a Fee Payer's total fee liability for the quarter is
12 less than \$1,000, the Fee Payer shall not be required to pay any Fee for that quarter.

13
14 **SEC. 106.10. COLLECTION AND ENFORCEMENT.**

15 (a) The Tax Collector shall enforce the provisions of this Alcohol Mitigation Cost
16 Recovery Fee Ordinance. The Tax Collector shall collect the Fee, conduct audits, and issue
17 deficiency and jeopardy determinations pursuant to the Business and Tax Regulations Code, Article 6,
18 provided that nothing in this Ordinance or in Article 6 of the Business and Tax Regulations Code shall
19 be construed to mean that the Alcohol Mitigation Cost Recovery Fee is a tax rather than a fee. The
20 Tax Collector may issue, and serve, subpoenas to carry out these duties.

21 (b) The Tax Collector shall have the power and duty to promulgate Rules to implement and
22 administer this Ordinance, including but not limited to Rules prescribing methods for Fee collection,
23 payment and verification and the quarterly exclusion under Section 106.7(f). A Fee Payer's failure
24 or refusal to comply with any Rule shall be a violation of this Ordinance and may subject the violator
25 to the penalties set forth herein or in Business and Tax Regulations Code, Article 6.

1 (c) Until otherwise specified by Rule, the Tax Collector shall allow any Fee Payer to report
2 Alcoholic Beverage sales based on either its inventory purchase invoices for the reporting period or its
3 Alcoholic Beverage sales records for the reporting period. A Fee Payer shall use the same method for
4 calculating and reporting its Fees each reporting period until otherwise specified by Rule.

5 (d) The Fee is payable, when due, at the office of the Tax Collector, and if not paid the
6 penalties and interest set forth in Business and Tax Regulations Code Sec. 6.17-1 shall apply.

7 (e) The Tax Collector shall have the authority described in Business and Tax Regulations
8 Code Sec. 6.4-1(b) to obtain information pertinent to the collection and enforcement of this Fee.
9 Penalties for noncompliance shall be the same as those authorized under Article 6 of the Business and
10 Tax Regulations Code.

11
12 **SEC. 106.13. RECORDS FOR ENFORCEMENT ONLY.**

13 (a) Every Fee Payer shall keep and preserve all such records as the Tax Collector may
14 require for the purpose of ascertaining and determining compliance with this Alcohol Mitigation Cost
15 Recovery Fee Ordinance, including but not limited to, all local, State and Federal tax returns and all
16 inventory purchase invoices, for a period of ~~four~~ five years. The Fee Payer shall submit copies of such
17 records with its periodic Fee returns as the Tax Collector may by Rule require, and shall make its
18 original documents available at its retail location for review, inspection or copying by the Tax
19 Collector upon request during normal business hours as authorized under Article 6 of the Business
20 and Tax Regulations Code.

21 (b) The City shall access and use a Fee Payer's records required to be prepared or provided
22 under this Ordinance and Rules promulgated hereunder, including but not limited to its local, State and
23 Federal tax returns and inventory purchase invoices, solely for the purposes of enforcing this Alcohol
24 Mitigation Cost Recovery Fee Ordinance. The City shall adhere to all applicable laws, policies and
25

1 regulations pertaining to personal information, individual privacy, trade secrets and proprietary
2 information with respect to such records and such records shall not be considered public records.

3
4 **SEC. 106.16. ADJUSTMENT AND REVIEW OF FEES.**

5
6 (a) Annual Adjustment. Beginning with fiscal year 2011-2012, the Controller may
7 adjust the Fee each year, without further action by the Board of Supervisors, to reflect
8 changes in the Consumer Price Index: All Urban Consumers for the San
9 Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of
10 Labor Statistics, or any successor to that index. No later than April 15th of each year, the Tax
11 Collector shall submit the current fee schedule to the Controller, who shall apply the price
12 index adjustment to produce a new fee schedule for the following fiscal year. No later than
13 May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting
14 the new fee schedule and certifying that: (a) the Fee produces sufficient revenue to support
15 the Eligible Costs for which the Fee is assessed, and (b) the Fee does not produce revenue
16 which is more than the costs of providing the services for which the Fee is assessed.

17 (a)(b) Biannual Two Year Review. Beginning with fiscal year 20122011-12 and biannually
18 every two years thereafter, the City shall review and, if necessary, adjust the Fee as set forth in this
19 subsection. By March 1, the Tax Collector shall report to the Controller the monies generated by the
20 Fee for the prior fiscal year, and each involved City department shall report to the Controller the prior
21 fiscal year's Eligible Costs, and any other information that the Controller determines appropriate to
22 adjusting the Fee. The Controller shall determine whether the current Fee has produced or is
23 projected to produce funds sufficient to support the Eligible Costs but not funds that are more than
24 the costs of providing the services for which the Fee is assessed. The Controller shall, if necessary,
25 adjust the Fee by increasing or decreasing it for the upcoming fiscal year or years as appropriate to

1 ensure that over time the City recovers no more than the costs for which the City assesses the Fee. The
2 adjusted Fee rate shall become operative on July 1. The Controller shall publish the adjusted Fee rate.
3 Failure to publish the Fee rate shall not affect the rights of the City to collect the adjusted Fee.

4 ~~(b)(c) Five-Year Review. Commencing five years after the effective date of this~~
5 ~~ordinance, and every five years thereafter, or more often as the Controller may deem~~
6 ~~necessary, the Controller shall commission a report updating the Nexus Study. The Controller~~
7 ~~may also recommend new categories of unreimbursed costs attributable to alcohol to be~~
8 ~~recovered through the Fee. In making such recommendations, and to the extent that new~~
9 ~~information is available, the report shall update the information and estimates that were used~~
10 ~~in the Nexus Study to estimate the Fee, and any other information the Controller deems~~
11 ~~appropriate. The Controller then shall recommend to the Board whether Fee should be~~
12 ~~increased, decreased, or remain the same. Nothing in this subsection shall prevent the~~
13 ~~Controller from adjusting the Fee to ensure that the City recovers no more than the costs for~~
14 ~~which the City assesses the Fee under Section 106.16(a).~~

15
16 **SEC. 106.19. PREEMPTION.**

17 Nothing in this Chapter shall be interpreted or applied so as to create any power, duty or
18 obligation in conflict with, or preempted by, any Federal or State law.

19
20 **SEC. 106.22. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL**
21 **WELFARE.**

22 In undertaking the adoption and enforcement of this Chapter, the City is assuming an
23 undertaking only to promote the general welfare. The City does not intend to impose the type of
24 obligation that would allow a Person to sue for money damages for an injury that the Person claims to
25

1 suffer as a result of a City officer or employee taking or failing to take an action with respect to any
2 matter covered by this Chapter.

3
4 **SEC. 106.25. SEVERABILITY.**

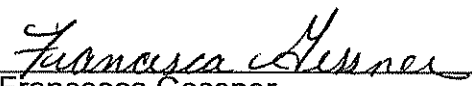
5 If any of the words, sentences, parts, or provisions of this Chapter or the application thereof to
6 any person or circumstance is held invalid, including any category of costs, the remainder of this
7 Chapter, including the application of such word, sentence, part or provisions to persons or
8 circumstances other than those to which it is held invalid, or the collection of the remaining costs, shall
9 not be affected thereby and shall continue in full force and effect. To this end, the words, sentences,
10 parts, and provisions of this Chapter are severable.

11
12 **SEC. 106.28. SAN FRANCISCO ALCOHOL MITIGATION COST RECOVERY FEE**
13 **ACCOUNT.**

14 (a) Establishment of Account. The City shall maintain an San Francisco Alcohol
15 Mitigation Cost Recovery Fee Account to receive monies collected under this Chapter.

16 (b) Use of Fee Monies. The Account shall be used solely to recover Eligible Costs.
17 Expenditures and encumbrances from the Account shall be subject to the budget and fiscal provisions
18 of the Charter and the Annual Appropriation Ordinance. The Controller shall allocate funds to
19 Departments based on each Department's share of the combined alcohol-attributable and alcohol fee
20 administration expenditures as determined by the most recent available nexus study and study of
21 administration expenditures.

22 APPROVED AS TO FORM:
23 DENNIS J. HERRERA, City Attorney

24 By: 
25 Francesca Gessner
Deputy City Attorney

Supervisor Avalos ,Daly, Campos ; Mar, Mirkarimi, Maxwell
BOARD OF SUPERVISORS

Office of the Mayor
City & County of San Francisco



File 100865
c: COB, Leg Dep, ~~Amette~~
PN file, page, BOS-11
Gavin Newsom

September 21, 2010

Members, Board of Supervisors
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

Dear Supervisors:

This letter communicates my veto of the ordinance pending in File Number 100865, finally passed by the Board of Supervisors today, September 21, 2010. This ordinance proposes an Alcohol Mitigation Fee to be imposed on alcoholic beverage wholesalers and others who sell or distribute alcoholic beverages in San Francisco.

I cannot support this unnecessary and harmful new fee that will hurt our City's economy and cost us jobs at a time when we most need them.

In this economy, I fundamentally believe that we need to be encouraging local businesses – large and small – to continue to work and operate in our neighborhoods, to continue to provide jobs and security to the residents of San Francisco, and to continue to support our City's economy in its recovery. It is in these times of struggle that we need to stimulate our local economy – not pursue policies that will stifle growth and put our county at a competitive disadvantage with every other county in California.

In addition, while we have faced significant budget deficits for the last three years, we consistently have supported the provision of critical health care services to our residents most in need – at a much higher rate than surrounding counties. And, we will continue to do so. Therefore, I do not accept the premise that, but for this fee, we will be slashing our health care programs.

I also strongly believe that we are in questionable legal territory due to state preemption issues, and that passing this ordinance would risk millions of dollars in attorney's fees that we can ill afford. I prefer to hold those battles for creative policy areas where we believe we are in strong legal standing.

I remain committed to working with the Board of Supervisors and City departments to continue to identify impactful programs to help chronic inebriates in San Francisco. However, I do not believe that an alcohol impact fee is the best approach in achieving that policy goal. Our best hope for continued strong financial standing of this City and support for public health services is to help our local economy grow and thrive.

Sincerely,

Gavin Newsom
Mayor

cc: Angela Calvillo, Clerk of the Board of Supervisors

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