

File No. 210490

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Date: July 15, 2021

Board of Supervisors Meeting:

Date: \_\_\_\_\_

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- Introduction Form
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#### OTHER

- Joint Stipulation – May 7, 2021
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: John Carroll

Date: July 9, 2021

Prepared by: John Carroll

Date: \_\_\_\_\_

Prepared by: John Carroll

Date: \_\_\_\_\_

1 [Joint Stipulation - American Beverage Association, California State Outdoor Advertising  
2 Association, and California Retailers Association - \$0]

3 **Ordinance authorizing the entry of a joint stipulation in the lawsuit filed by the**  
4 **American Beverage Association, California State Outdoor Advertising Association, and**  
5 **California Retailers Association against the City and County of San Francisco; the**  
6 **lawsuit was filed on July 24, 2015, in U.S. District Court for the Northern District of**  
7 **California, Case No. No. 3:15-cv-03415 EMC; entitled American Beverage Association et**  
8 **al. v. City and County of San Francisco; the lawsuit claims that the City's sugar-**  
9 **sweetened beverage warning law, codified in Article 42 of the San Francisco Health**  
10 **Code, violates the United States Constitution; the joint stipulation provides for**  
11 **dismissal of the lawsuit if the City repeals Article 42 of the San Francisco Health Code**  
12 **and conditionally extends Plaintiffs' time to file a motion for attorneys' fees and costs**  
13 **by four years.**

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

16 Section 1. The Board of Supervisors hereby approves the parties' entry of a joint  
17 stipulation in the action entitled American Beverage Association et al. v. City and County of  
18 San Francisco, U.S. District Court for the Northern District of California, Case  
19 No. 3:15-cv-03415 EMC, available in Board of Supervisors File No.210490. Under the terms  
20 of the stipulation, if the City repeals Article 42 of the San Francisco Health Code, Plaintiffs  
21 agree to dismiss the lawsuit and the City agrees to extend by four years Plaintiffs' time to file a  
22 motion for costs and attorneys' fees, except Plaintiffs shall file no such motion unless, within  
23 that time, the City enacts a new law requiring warning labels on advertisements for sugar-  
24 sweetened beverages. The lawsuit claims that Article 42 of the San Francisco Health Code  
25 violates the United States Constitution.

1 Section 2. The above-named action was filed in U.S. District Court for the Northern  
2 District of California on July 24, 2015, and the following parties were named in the lawsuit:  
3 Plaintiffs American Beverage Association, California State Outdoor Advertising Association,  
4 and California Retailers Association; Defendant City and County of San Francisco.

5 APPROVED AS TO FORM AND RECOMMENDED:

6 DENNIS J. HERRERA  
7 City Attorney

8 /s/ Wayne Snodgrass  
9 WAYNE SNODGRASS  
10 Deputy City Attorney

1 DENNIS J. HERRERA, State Bar #139669  
 City Attorney  
 2 WAYNE SNODGRASS, State Bar #148137  
 JEREMY M. GOLDMAN, State Bar #218888  
 3 Deputy City Attorneys  
 1 Dr. Carlton B. Goodlett Place  
 4 City Hall, Room 234  
 San Francisco, California 94102-4682  
 5 Telephone: (415) 554-6762  
 Facsimile: (415) 554-4699  
 6 E-Mail: jeremy.goldman@sfcityatty.org

7 Attorneys for Defendant  
 8 CITY AND COUNTY OF SAN FRANCISCO

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA  
 11

12 THE AMERICAN BEVERAGE  
 13 ASSOCIATION, CALIFORNIA RETAILERS  
 ASSOCIATION, CALIFORNIA STATE  
 14 OUTDOOR ADVERTISING  
 ASSOCIATION,

15 Plaintiffs,

16 vs.

17 THE CITY AND COUNTY OF SAN  
 18 FRANCISCO,

19 Defendant.

Case No. 3:15-cv-03415 EMC

**JOINT STIPULATION AND [PROPOSED]  
 ORDER SUSPENDING BRIEFING  
 SCHEDULE, TAKING SUMMARY  
 JUDGMENT HEARING OFF CALENDAR,  
 VACATING CASE MANAGEMENT DATES,  
 PROVIDING FOR DISMISSAL OF THIS  
 ACTION, AND CONDITIONALLY  
 EXTENDING THE TIME WITHIN WHICH  
 PLAINTIFFS MAY FILE A MOTION FOR  
 FEES AND COSTS**

Hon. Edward M. Chen

Trial Date: December 6, 2021

1 Pursuant to Civil Local Rules 6-2 and 7-12, Plaintiffs The American Beverage Association,  
2 California Retailers Association, and California State Outdoor Advertising Association (“Plaintiffs”),  
3 and Defendant The City and County of San Francisco (“Defendant”) (collectively, the “Parties”), hereby  
4 stipulate as follows:

5 WHEREAS, on May 4, 2021, San Francisco Supervisor Shamann Walton introduced an  
6 Ordinance, File No. 210496 (“the Repeal Ordinance”), to repeal Article 42 of the San Francisco Health  
7 Code, which codifies the Sugar-Sweetened Beverage Warning Ordinance at issue in this action;

8 WHEREAS, Plaintiffs have agreed not to seek fees or costs if Article 42 is repealed, subject to  
9 their right to file a motion for fees or costs if Defendant enacts a new ordinance requiring advertisers to  
10 include health warnings on advertisements for sugar-sweetened beverages within the next four years;

11 WHEREAS, the City’s agreement to a four-year extension of Plaintiffs’ time to file a motion for  
12 fees or costs is subject to approval by the San Francisco Board of Supervisors by ordinance (“the  
13 Extension Ordinance”);

14 WHEREAS, the Parties anticipate that enactment of the Repeal Ordinance and the Extension  
15 Ordinance may take several months in the ordinary legislative process;

16 NOW, THEREFORE, in the interest of judicial economy and good cause showing, the  
17 undersigned parties, by and through their counsel of record, hereby agree and stipulate, and the Court  
18 hereby orders, as follows:

19 1. The remaining briefing schedule on the Parties’ cross-motions for summary judgment  
20 and *Daubert* motions is suspended and the hearing on those motions, currently scheduled for June 24,  
21 2021, is taken off calendar;

22 2. The dates for the pretrial conference (October 9, 2021) and trial (December 6, 2021) are  
23 vacated;

24 3. The parties may stipulate to, or any party may file an administrative motion requesting,  
25 reinstatement of a briefing schedule and summary judgment hearing, and to the resetting of dates for the  
26 pretrial conference and trial, if both the Repeal Ordinance and the Extension Ordinance are not enacted;

27 4. If the Repeal Ordinance and Extension Ordinance are enacted, the following additional  
28 provisions shall apply.

1 5. Plaintiffs shall dismiss this action within seven days of the effective date of the Repeal  
2 Ordinance or the date of enactment of the Extension Ordinance, whichever date comes latest;

3 6. The time within which Plaintiffs may file a motion seeking an award of fees or costs shall  
4 be extended to four years from the date the action is dismissed pursuant to the preceding paragraph, and  
5 the Court shall retain jurisdiction to adjudicate such a motion, but Plaintiffs shall not file a motion for  
6 fees or costs unless, within that time, Defendant enacts a new ordinance requiring a warning label or  
7 other mandatory disclosure on advertising for sugar-sweetened beverages that concerns or relates to  
8 alleged health risks associated with or attributed to sugar-sweetened beverage consumption;

9 7. Plaintiffs’ right to file such a motion as provided herein is without prejudice to  
10 Defendant’s right to oppose that motion on grounds other than timeliness; and

11 8. Except as otherwise ordered in a ruling on any such motion, each party shall bear its own  
12 fees and costs.

13 The parties respectfully request that the Court enter an Order approving this Stipulation.

14 IT IS SO STIPULATED.

15  
16 Dated: May 7, 2021

DENNIS J. HERRERA  
City Attorney  
WAYNE SNODGRASS  
JEREMY M. GOLDMAN  
Deputy City Attorneys

17  
18  
19 By: /s/ Jeremy M. Goldman  
20 JEREMY M. GOLDMAN  
21 Attorneys for Defendant  
CITY AND COUNTY OF SAN FRANCISCO

22 Dated: May 7, 2021

LATHAM & WATKINS LLP

23 By: /s/ Michael E. Bern  
24 Steven M. Bauer  
25 Richard P. Bress (*pro hac vice*)  
26 Michael E. Bern (*pro hac vice*)  
27 George C. Chipev (*pro hac vice*)  
28 Caroline A. Flynn  
Shannon Grammel (*pro hac vice*)  
Attorneys for Plaintiffs  
THE AMERICAN BEVERAGE ASSOCIATION AND  
CALIFORNIA RETAILERS ASSOCIATION

1 Dated: May 7, 2021

GIBSON, DUNN & CRUTCHER LLP

2 By: /s/ Joshua D. Dick

3 Theodore B. Olson  
4 Andrew S. Tulumello  
5 Helgi C. Walker (*pro hac vice*)  
6 Charles J. Stevens  
7 Joshua D. Dick

8 Attorneys for Plaintiff  
9 CALIFORNIA STATE OUTDOOR ADVERTISING  
10 ASSOCIATION

11 **ATTESTATION CLAUSE**

12 Pursuant to Civil Local Rule 5-1(i)(3), I hereby certify that I obtained in the filing of this  
13 document the concurrence from all parties whose electronic signatures appear above.

14 Dated: May 7, 2021

15 /s/ Jeremy M. Goldman  
16 JEREMY M. GOLDMAN

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

18 DATED: \_\_\_\_\_

19 \_\_\_\_\_  
20 Hon. Edward M. Chen  
21 United States District Judge

## LEGISLATION RECEIVED CHECKLIST

Date 05/03/21 File Number (if applicable) \_\_\_\_\_

- |                                     |   |     |                   |
|-------------------------------------|---|-----|-------------------|
| <input checked="" type="checkbox"/> | Legislation for Introduction ( <b>NEW</b> )         | ▶▶▶ | Legislative Clerk |
| <input type="checkbox"/>            | Legislation Pending in Committee ( <b>AMENDED</b> ) | ▶▶▶ | Committee Clerk   |
| <input type="checkbox"/>            | Legislation for Board Agenda ( <b>AMENDED</b> )     | ▶▶▶ | Deputy Clerk      |

### Supervisor, Mayor, and Departmental Submittals

#### Grant Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Grant budget/application
  - Grant information form, including signed disability checklist
  - Letter of Intent or grant award letter from funding agency
  - Contract, Leases/Agreements (if applicable)
  - Ethics Form 126 (*if applicable*) in **Word** format
  - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

#### Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Settlement Report/Agreement (for settlements)
  - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

#### Grant Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Grant budget/application
  - Grant information form, including signed disability checklist
  - Letter of Intent or grant award letter from funding agency
  - Contract, Leases/Agreements (if applicable)
  - Ethics Form 126 (*if applicable*) in **Word** format
  - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

#### Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
  - Cover letter (original)
  - Settlement Report/Agreement (for settlements)
  - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Joy Perez 415-554-3869  
Name and Telephone Number

City Attorney  
Department