

## **LEGISLATIVE DIGEST**

[Initiative Ordinance - Business and Tax Regulations Code - Tax on Sugar-Sweetened Beverages to Fund Recreation Programs]

**Ordinance amending the Business and Tax Regulations Code, by adding a new Article 8, imposing a tax of two cents per ounce on the distribution of sugar-sweetened beverages, to fund City-operated programs and grants for active recreation and improving food access and nutrition, and San Francisco Unified School District physical education, after school physical activity, health, or nutrition programs, and school lunch and other school nutrition programs.**

### Existing Law

The City currently does not regulate or tax the distribution of nonalcoholic sugar-sweetened beverages, except that such businesses are subject to the City's general business registration and business tax laws.

### Amendments to Current Law

This ordinance, which would be submitted to the voters for approval by a two-thirds majority, would create a new "Sugar-Sweetened Beverage Tax," codified in new Article 8, Sections 550-564, of the Business and Tax Regulations Code. The tax would be imposed on the first distribution in the City of sugar-sweetened beverages, or concentrate (powder, syrup) that can be made into sugar-sweetened beverages. The distributor of the sugar-sweetened beverage would be liable for the tax. This would be a special tax, with the proceeds of the tax used only to fund specified recreation, health and nutrition programs.

Rate of Tax. The tax would be at a rate of two cents per ounce of sugar-sweetened beverage distributed. The tax would also apply to sales of concentrate, at the rate of two cents per ounce of sugar-sweetened beverage that could be made by mixing the concentrate with liquid to produce a sugar-sweetened beverage.

What is Taxed. A sugar-sweetened beverage is any nonalcoholic beverage sold for human consumption that has added caloric sweeteners, as defined, and contains more than 25 calories per 12 ounces. A caloric sweetener is any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, including high fructose corn sweetener, glucose, other sugars, and fruit juice concentrates. A "caloric substance" is a substance that adds calories to the diet of a person who consumes that substance.

Sugar-sweetened beverages include, but are not limited to, the following:

- Sodas, colas, and other soft drinks
- Sports drinks
- Energy drinks
- Iced tea
- Juice drinks (unless the beverage contains more than 50 percent natural fruit and/or vegetable juice)

However, a sugar-sweetened beverage does not include:

- Liquids sold for weight reduction or infant rehydration, medical foods, or infant formula.
- Milk
- Beverages that contain more than 50 percent natural fruit juice, vegetable juice, or combined fruit and vegetable juice.
- Diet sodas, sports drinks, energy drinks, bottled water, flavored water, or any other drink that does not exceed 25 calories per 12 ounces, even if the beverage has added caloric sweeteners.

Who is Liable for the Tax. A “retailer” under the tax is a person who sells a sugar-sweetened beverage to a “consumer,” or customer. A “distributor” is a person who either:

- Sells a sugar-sweetened beverage or concentrate to another distributor or a retailer; or
- Purchases a sugar-sweetened beverage or concentrate for resale without paying the tax, then uses or consumes it.

All retailers and distributors would be required to register with the Tax Collector and prepare and keep appropriate records. The person who makes the first sale or use of an untaxed beverage or concentrate in the City would be liable for the tax. Failure to pay the tax or comply with tax administration requirements would subject the person to the penalties and interest provided under Article 6, Common Administrative Provisions, of the Business and Tax Regulations Code.

Funding of Recreation, Health, and Nutrition Programs. The proceeds of the tax would be distributed to the following City agencies, community-based organizations, and the San Francisco Unified School District as follows:

- One-third to the Recreation and Park Department for active recreation programs, with the additional authority to distribute up to ten percent of this one-third to community-based organizations for active recreation programs;

- One-third to the San Francisco Unified School District for physical education, after school physical activity, health, or nutrition programs, school lunches, and other school nutrition programs; and
- One-third to be divided between the Department of Public Health, for physical activity programs and programs that improve food nutrition and food access, and the Department of Children, Youth & Their Families, for programs that support active recreation and food nutrition.

Programs eligible for funding from the proceeds of the tax are City-operated programs and grants for active recreation and improving food access and nutrition, and San Francisco Unified School District physical education, after school programs and school lunch and other school nutrition programs, but limited to the following:

- Active recreation programs and programs that support active recreation and health, including, without limitation, in-school and after-school programs;
- School lunches and other school nutrition programs; and
- Programs that improve food and nutrition access and support food nutrition.

The funds would only be able to be used for new or expanded programs, and could not be used to replace funding for existing programs. To this end, the ordinance would not allow the Mayor and the Board of Supervisors to expend monies from the fund unless existing programs had already been funded from other sources, as certified by the Controller. Monies that are not expended would be held in the fund until the funding conditions are met.

A nine-member Active Recreation and Nutrition Oversight Committee (“the Committee”) would advise the Mayor, the Board of Supervisors, and City departments in directing the funds. The Committee members would be appointed by the Board of Supervisors to serve a three-year term, without compensation. The Committee would meet at least quarterly. The membership of the Committee would include the following:

- At least one parent.
- At least one person under the age of 18 at the time of appointment.
- At least one resident of a district that is disproportionately affected by obesity or diabetes.
- At least one Committee member with professional and/or volunteer expertise in that area: parks and recreation, school nutrition, public health, working with vulnerable populations, and physical education.

### Background Information

Calorically sweetened sugary beverages are significant contributors to diabetes, obesity, cardiovascular disease, tooth decay, and other health problems. A single 12-ounce

can of soda contains eight to ten teaspoons of sugar, whereas the American Heart Association recommends no more than nine teaspoons of refined sugar per day.

Research shows that 41 percent of California children ages 2 to 11 and 62 percent of California children ages 12 to 17 drink sugar-sweetened beverages daily, and for each sugar-sweetened beverage that a child consumes a day, the likelihood of the child becoming obese increases by 60 percent.

As of 2010, nearly one-third (31.7%) of children and adolescents in San Francisco were either obese or overweight. In 2011-2012, 41.8 percent of adults in San Francisco were either obese or overweight, and 18 percent of three- to four-year-olds enrolled in San Francisco Head Start were obese, with an additional 13 percent being overweight. Head Start serves children of low-income families. Minority and low-income families are more likely to be affected by obesity and diabetes. For example, the Bayview-Hunters Point neighborhood, which has one of the highest African-American populations in San Francisco, had more per capita emergency room visits due to diabetes between 2009-2011 than any other neighborhood in San Francisco.

Research shows that lifestyle interventions are more cost-effective than medications in preventing or delaying type 2 diabetes. Assessing a tax on sugar-sweetened drinks is intended to help address the high levels of obesity, type 2 diabetes, and other diseases by reducing consumption and providing a revenue stream for City-directed and grant-funded physical activity and nutrition programs in schools, parks, community centers, and elsewhere.

n:\legana\as2013\1300530\00881358.doc