

File No. 200778

Committee Item No. \_\_\_\_\_

Board Item No. 49

## COMMITTEE/BOARD OF SUPERVISORS

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

Board of Supervisors Meeting

Date: July 21, 2020

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Prepared by: Lisa Lew

Date: July 17, 2020

Prepared by: \_\_\_\_\_

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

1 [Urging the California State Legislature and Governor to Overturn Assembly Bill No. 1838  
2 Passed in 2018]

3 **Resolution urging the California State Legislature and the Governor to recognize that**  
4 **due to the COVID-19 crisis impact on municipal budgets to immediately overturn**  
5 **Assembly Bill No. 1838 that was passed in 2018, and give California counties back their**  
6 **right to improve public health and raise revenue by disincentivizing consumption of**  
7 **soda and other sugary beverages.**

8  
9 WHEREAS, In June 28 2018, the California State Legislature and former Governor  
10 Jerry Brown enacted Assembly Bill No. 1838 (AB 1838) - Local government: taxation:  
11 prohibition: groceries, also known as the “Keep Groceries Affordable Act of 2018” with a  
12 retroactive effective date of January 1, 2018; and

13 WHEREAS, AB 1838 limits the ability of local governments to impose an excise tax or  
14 fees on all groceries including sugary beverages essentially banning localities from  
15 implementing any Sugary Sweetened Beverage (SSB) taxes; and

16 WHEREAS, Groceries, as defined by AB 1838, excludes alcoholic beverages,  
17 cannabis products, cigarettes, tobacco products, and electronic cigarettes; and

18 WHEREAS, While The City of San Francisco and other cities with existing SSB taxes  
19 were not affected, Sacramento, Santa Cruz, Richmond and others that were considering local  
20 tax measures on sugary beverages will not be able to do so until January 1, 2031; and

21 WHEREAS, According to the Sacramento Bee, the California Governor and Legislature  
22 were the victims of a type of “extortion” and “shakedown” by the American Beverage  
23 Association in the summer of 2018 to implement AB 1838; and

24 WHEREAS, The Governor and Legislature were essentially forced to enact a law  
25 temporarily prohibiting and preempting the ability of California cities and counties of their right

1 to enact popular sugary drink taxes despite the fact they are proven tools for cities to improve  
2 public health and raise revenue; and

3 WHEREAS, The City and County of San Francisco voters passed a one-cent-per-  
4 ounce soda tax (Proposition V) passed with over 61% of the vote in November 2016; and

5 WHEREAS, The City of Seattle enacted a soda tax in 2018 and has been able to use  
6 that revenue this year to give \$800 in grocery vouchers to thousands of Seattle families hard  
7 hit by COVID-19; and

8 WHEREAS, California voters who passed soda taxes in their cities before the  
9 successful 2018 “extortion” by the American Beverage Association have improved the health  
10 of their residents and given their cities millions of dollars in revenue available to stave off  
11 budget cuts due to the COVID-19 induced economic downturn; and

12 WHEREAS, A majority vote of the California Legislature and a signature by the  
13 Governor now would give California counties one more tool to fight the devastating health and  
14 economic impacts of the COVID-19 pandemic; and

15 WHEREAS, California counties need every single tool available in the war against  
16 COVID-19 and to give their residents the possibility of a healthier future; and

17 WHEREAS, The world has changed since COVID-19 and California can no longer  
18 afford to handcuff counties and prevent voters from using proven tools to improve health  
19 equity and public health and provide for safe, accessible and affordable drinking water; now,  
20 therefore, be it

21 RESOLVED, That the City and County of San Francisco Board of Supervisors urges  
22 the California State Legislature and Governor Gavin Newsom to overturn AB 1838 to allow  
23 residents the right to vote on whether or not they want a sugary drink tax in their county; and,  
24 be it

25

1           FURTHER RESOLVED, That the San Francisco Board of Supervisors hereby directs  
2 the Clerk of the Board to transmit copies of this Resolution to all State Legislators and  
3 Governor with a request to take all action necessary to achieve the objectives of this  
4 Resolution.

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## Assembly Bill No. 1838

### CHAPTER 61

An act to add and repeal Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 28, 2018. Filed with Secretary of State June 28, 2018.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1838, Committee on Budget. Local government: taxation: prohibition: groceries.

Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions. The California Constitution also authorizes a charter city to levy local taxes to raise revenues for local purposes, subject to restrictions imposed by that city's charter or preemption in matters of statewide concern.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose a local sales and use tax in accordance with that law for tangible personal property sold at retail in the county or city, or purchased for storage, use, or other consumption in the county or city. That law requires the county or city to contract with the California Department of Tax and Fee Administration for the administration of the taxes and requires the department to transmit those taxes to the city or county.

This bill, on and after the effective date of this chapter and until January 1, 2031, would prohibit the imposition, increase, levy and collection, or enforcement by a local agency of any tax, fee, or other assessment on groceries, except as provided. This bill would allow a local agency to continue to levy and collect, enforce, or reauthorize any tax, fee, or other assessment on groceries imposed, extended, or increased on or before January 1, 2018. This bill would make inoperative on the effective date of this measure any tax, fee, or other assessment on groceries imposed by a local agency after January 1, 2018.

This bill would require the California Department of Tax and Fee Administration to cease to administer and to terminate its contract to administer any sales or use tax ordinance of a local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law if that local agency imposes, increases, levies and collects, or enforces any tax, fee, or other assessment on groceries for which a court of competent jurisdiction has determined that (1) the tax, fee, or other assessment is in conflict with the prohibition set forth in this bill and is not excepted from that prohibition

and (2) the tax, fee, or other assessment is a valid exercise of a city's authority under the California Constitution with respect to the municipal affairs of that city.

This bill would require a civil action with respect to the application of this measure to a tax, fee, or other assessment to be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action be speedily heard and determined. This bill would require the venue for such a civil action to be exclusively in Sacramento County.

This bill would appropriate from the General Fund \$12,000 to the California Department of Tax and Fee Administration to notify affected governmental entities of the requirements of this measure on its Internet Web site.

This bill would make a legislative finding and declaration regarding the statewide concern of the promotion of uniformity in the taxation of groceries.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Chapter 1.8 (commencing with Section 7284.8) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 1.8. KEEP GROCERIES AFFORDABLE ACT OF 2018

7284.8. This chapter shall be known and may be cited as the Keep Groceries Affordable Act of 2018.

7284.9. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to regulate the imposition and collection of taxes and other charges on groceries comprehensively and to occupy the field to the exclusion of local action except as specifically provided in this chapter.

(b) That the promotion of uniformity in the taxation of groceries is a matter of statewide concern and, therefore, is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution.

7284.10. For the purposes of this chapter, all of the following definitions shall apply:

(a) "Alcoholic beverages" has the same meaning as that term is defined in Section 23004 of the Business and Professions Code.

(b) "Cannabis products" has the same meaning as that term is defined in Section 11018.1 of the Health and Safety Code.

(c) "Cigarettes" has the same meaning as that term is defined in Section 30121.

(d) "Electronic cigarettes" has the same meaning as that term is defined in Section 30121.

(e) (1) “Groceries” means any raw or processed food or beverage including its packaging, wrapper or container, or any ingredient thereof, intended for human consumption, including, but is not limited to, meat, poultry, fish, fruits, vegetables, grains, bread, milk, cheese and other dairy products, carbonated and noncarbonated nonalcoholic beverages, kombucha with less than 0.5 percent alcohol by volume, condiments, spices, cereals, seasonings, leavening agents, eggs, cocoa, teas, and coffees whether raw or processed, including its packaging, wrapper, or container.

(2) “Groceries” does not include alcoholic beverages, cannabis products, cigarettes, tobacco products, and electronic cigarettes.

(f) “Local agency” has the same meaning as provided in Section 6252 of the Government Code, and includes the electorate of a local agency in exercising the initiative power.

(g) “Tax, fee, or other assessment on groceries” includes, but is not limited to, a sales tax, gross receipts tax, business and occupation tax, business license tax, excise tax, privilege tax, surcharge, or any other similar levy, charge, or exaction of any kind on groceries or the manufacture, supply, distribution, sale, acquisition, possession, ownership, transfer, transportation, delivery, use, or consumption thereof.

(h) “Tobacco products” has the same meaning as that term is defined in Section 30121.

7284.12. (a) Notwithstanding any other law, and except as provided in this section, on or after the effective date of this chapter, a local agency shall not impose, increase, levy and collect, or enforce any tax, fee, or other assessment on groceries.

(b) A local agency may continue to levy and collect, enforce, or reauthorize any tax, fee, or other assessment on groceries imposed, extended, or increased on or before January 1, 2018.

(c) Any tax, fee, or other assessment on groceries imposed by a local agency after January 1, 2018, and before the effective date of this section shall become inoperative as of the effective date of this section and shall cease to be imposed, levied and collected, and enforced as of that date.

(d) This section does not prohibit the imposition, extension, increase, levy and collection, or enforcement of a tax, fee, or other assessment on groceries if both of the following apply:

(1) The tax, fee, or other assessment is generally applicable to a broad range of businesses, business activity, or products.

(2) The tax, fee, or other assessment does not establish or rely on a classification related to or involving groceries or a subset of groceries for purposes of establishing or otherwise resulting in a higher tax rate due to that classification.

(e) This section does not prohibit or limit any tax levied by a local agency pursuant to, or in accordance with, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(f) The California Department of Tax and Fee Administration shall not administer and shall terminate its contract to administer any sales or use tax

ordinance of a local agency under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) if that local agency imposes, increases, levies and collects, or enforces any tax, fee, or other assessment on groceries, as defined in subdivision (g) of Section 7284.10, for which a court of competent jurisdiction has determined both of the following:

(1) The tax, fee, or other assessment is in conflict with the prohibition set forth in subdivision (a), and is not a tax, fee, or other assessment described in subdivision (b) or (d).

(2) The tax, fee, or other assessment is a valid exercise of a city's authority under Section 5 of Article XI of the California Constitution with respect to the municipal affairs of that city.

7284.13. The provisions of this chapter are to be construed liberally so as to effectuate their intent, policy, and purposes.

7284.14. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

7284.15. (a) A civil action with respect to the application of this chapter to a tax, fee, or other assessment shall be given preference over all other civil actions before the court in the matter of setting the same for hearing or trial, and in hearing the same, to the end that the action shall be speedily heard and determined.

(b) Venue for a civil action given preference in subdivision (a) shall be exclusively in Sacramento County.

7284.16. This chapter shall become inoperative on January 1, 2031, and shall be repealed as of that date.

SEC. 2. The sum of twelve thousand dollars (\$12,000) is hereby appropriated from the General Fund to the California Department of Tax and Fee Administration to notify affected governmental entities of the requirements of Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as added by this act, on its Internet Web site.

SEC. 3. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.



# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
2. Request for next printed agenda Without Reference to Committee.
3. Request for hearing on a subject matter at Committee.
4. Request for letter beginning : "Supervisor  inquiries"
5. City Attorney Request.
6. Call File No.  from Committee.
7. Budget Analyst request (attached written motion).
8. Substitute Legislation File No.
9. Reactivate File No.
10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only