

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Derek Evans, Clerk, Rules Committee
Board of Supervisors

DATE: June 24, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Rules Committee

The Board of Supervisors' Rules Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 160729 Hearing - Initiative Ordinance - Business and Tax Regulations Code - One Cent per Ounce Tax on the Distribution of Sugary Beverages

Hearing to consider the proposed initiative ordinance submitted by four or more Supervisors to the voters at the November 8, 2016, Election, entitled "Ordinance amending the Business and Tax Regulations Code by imposing a tax of one cent per ounce on the distribution of sugar-sweetened beverages, and amending the Administrative Code by creating a Sugary Drinks Distributor Tax Advisory Committee."

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

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Submittal Form
For Proposed Initiative Measure(s)
Prior to the Submittal
to the
Department of Elections

16 JUN 21 PM 4:20

BY: EH

By 4 or more Board of Supervisors or the Mayor

I, hereby submit the following proposed initiative measure(s) for hearing before the Board of Supervisors, Rules Committee prior to the submittal of the proposed initiative measure to the Department of Elections. (Prop C. Nov. 2007)

This matter is for the November 8, 2016 Election.

Sponsor(s): Supervisor

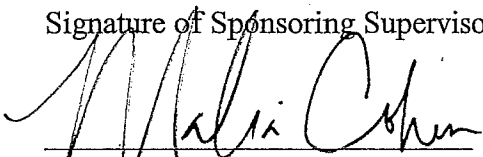
Cohen

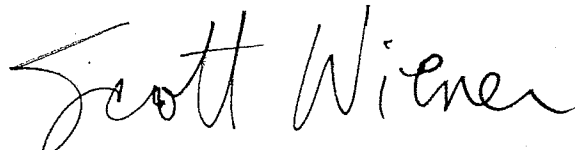
SUBJECT: Initiative Ordinance – Business and Tax Regulations Code – One Cent Per Ounce Tax on the Distribution of Sugary Beverages

The text is listed below or attached:

Attached

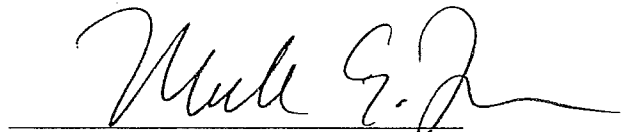
Signature of Sponsoring Supervisor(s) or Mayor


Malia Cohen


Scott Wiener

See end of Ordinance for signature

Eric Mar


Mark Farrell

Time Stamp by Clerk's Office:

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PROPOSED INITIATIVE ORDINANCE TO BE SUBMITTED BY FOUR OR MORE SUPERVISORS TO THE VOTERS AT THE NOVEMBER 8, 2016 ELECTION.

[Under Charter Section 2.113(b), this measure must be submitted to the Board of Supervisors and filed with the Department of Elections no less than 45 days prior to deadline for submission of such initiatives to the Department of Elections set in Municipal Elections Code Section 300(b).]

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[Initiative Ordinance - Business and Tax Regulations Code - One Cent Per Ounce Tax on the Distribution of Sugary Beverages]

Ordinance amending the Business and Tax Regulations Code by imposing a tax of one cent per ounce on the distribution of sugar-sweetened beverages, and amending the Administrative Code by creating a Sugary Drinks Distributor Tax Advisory Committee.

NOTE: **Unchanged Code text and uncodified text** are in plain font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

Section 1. The Business and Tax Regulations Code is hereby amended by adding Article 8, consisting of Sections 550 through 560 to read as follows:

ARTICLE 8: SUGARY DRINKS DISTRIBUTOR TAX ORDINANCE

SEC. 550. SHORT TITLE.

This Article shall be known as the "Sugary Drinks Distributor Tax Ordinance."

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As recently as 2010, nearly a third of children and adolescents in San Francisco were obese or overweight; and in San Francisco, 46.4% of adults are obese or overweight, including 61.7% of Hispanics and 51.3% of African Americans. Nationally, 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. Every additional sugary beverage consumed daily can increase a child's risk for obesity by 60%; and one or two sugary beverages per day increases the risk of Type II diabetes by 26%.

Sugary beverages, including sweetened alcoholic drinks, represent nearly 50% of added sugar in the American diet, and, on average, 11% of daily calories consumed by children in the U.S.

Seven 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.

This Article 8 is intended to discourage the distribution and consumption of sugar-sweetened beverages in San Francisco by taxing their distribution. Mexico, where an average of 163 liters of sugar-sweetened beverages are consumed per person each year, enacted an excise tax on sugary drinks, with the result that the purchase of taxed sugar sweetened beverages declined by 12% generally and by 17% among low-income Mexicans. The Mexico data indicate that, when people cut back on SSBs, to a significant extent they choose lower-caloric or non-caloric alternatives. This body of research demonstrates that taxation can provide a powerful incentive for individuals to reduce their consumption of SSBs, which in turn will reduce obesity and DM2.

The City of Berkeley became the first city in the United States to follow in Mexico's footsteps, by passing a one-cent-per-ounce general tax on distributors of SSBs within the city limits. 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.

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also includes the transfer of physical possession in the City by any person other than a common carrier, without consideration, for promotional or any other commercial purpose.

(b) The possession, storage, ownership, or control in the City, by any person other than a common carrier, of Sugar-Sweetened Beverages, Syrup, or Powder for resale in the ordinary course of business, obtained by means of a transfer of physical possession outside the City or from a common carrier in the City.

“Distribution” does not include:

(a) The return of any Sugar-Sweetened Beverages, Syrup, or Powder to a person, if that person refunds the entire amount paid in cash or credit.

(b) A retail sale or use.

“Distributor” means any person engaged in the business of Distribution of Bottled Sugar-Sweetened Beverages, Syrup, or Powder. A Distributor does not include a common carrier. Where a common carrier obtains physical possession of Sugar-Sweetened Beverages, Syrup, or Powder outside the City and transfers physical possession of the Sugar-Sweetened Beverages, Syrup, or Powder in the City, the transferee of the Sugar-Sweetened Beverages, Syrup, or Powder is a Distributor.

“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 (1) water and (2) 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 milk, almond milk, rice milk, coconut milk, hemp milk, oat milk, hazelnut milk, or flax milk;

“Natural Fruit Juice” means the original liquid resulting from the pressing of fruit, the liquid resulting from the complete reconstitution of natural fruit juice concentrate, or the liquid resulting from the complete restoration of water to dehydrated natural fruit juice.

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

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

(a) Effective January 1, 2018, 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 Sugary Drinks Distributor Tax, which shall be a general excise tax, on the Distributor making the initial Distribution of a Bottled Sugar-Sweetened Beverage, Syrup, or Powder in the City.

(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 is a general tax. Proceeds of the Tax are to be deposited in the General Fund.

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

(a) Each Distributor shall register with the Tax Collector according to rules and regulations of the Tax Collector, but no earlier than 30 days after the effective date of Article 8.

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

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SEC. 558. 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.

SEC. 559. 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.

SEC. 560. AMENDMENT.

The Board of Supervisors may by ordinance amend or repeal Article 8 of the Business and Tax Regulations Code without a vote of the people except as limited by Article XIIC of the California Constitution.

Section 2. The Administrative Code is hereby amended by adding Article XXXIII, consisting of Sections 5.33-1 through 5.33-6, to Chapter 5, to read as follows:

ARTICLE XXXIII:

SUGARY DRINKS DISTRIBUTOR TAX ADVISORY COMMITTEE

SEC. 5.33-1. CREATION OF ADVISORY COMMITTEE.

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(f) Seat 10 shall be held by an employee of the Department of Public Health who has experience or expertise in the field of chronic disease prevention or treatment, appointed by the Director of Health.

(g) Seat 11 shall be held by a person with experience or expertise in the field of oral health, appointed by the Director of Health.

(h) Seat 12 shall be held by a person with experience or expertise in the field of food security or access, appointed by the Director of Health.

(i) Seat 13 shall be held by an employee of the Department of Children, Youth & Their Families, appointed by the Director of that Department.

(j) Seat 14 shall be held by an employee of the Recreation and Park Department, appointed by the General Manager of that Department.

(k) Seat 15 shall be held by a parent or guardian of a student enrolled in the San Francisco Unified School District at the time of appointment, nominated by the San Francisco Unified School District's Parent Advisory Council, and appointed by the Board of Supervisors. If at any time the Parent Advisory Council declines to nominate a member to a vacant seat for 60 days or longer, the Board of Supervisors may appoint a member of the public to fill the seat until the seat becomes vacant again.

(l) Seat 16 shall be held by a person with experience or expertise in services and programs for children five and under, appointed by the Board of Supervisors.

SEC. 5.33-3. ORGANIZATION AND TERMS OF OFFICE.

(a) Members of the Advisory Committee shall serve at the pleasure of their respective appointing authorities, and may be removed by the appointing authority at any time.

(b) Appointing authorities shall make initial appointments to the Advisory Committee by no later than September 1, 2017. The initial term for each seat on the Advisory Committee shall begin

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of the report, the City Administrator shall submit to the Board of Supervisors a proposed resolution for the Board to receive the report.

SEC. 5.33-5. MEETINGS AND PROCEDURES.

(a) There shall be at least 10 days' notice of the Advisory Committee's inaugural meeting. Following the inaugural meeting, the Advisory Committee shall hold a regular meeting not less than four times each year.

(b) The Advisory Committee shall elect officers and may establish bylaws and rules for its organization and procedures.

SEC. 5.33-6. SUNSET.

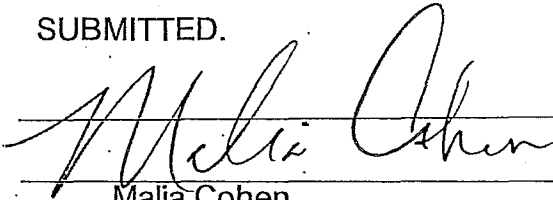
Unless the Board of Supervisors by ordinance extends the term of the Advisory Committee, this Article XXXIII shall expire by operation of law, and the Advisory Committee shall terminate, on December 31, 2028. In that event, after that date, the City Attorney shall cause this Article XXXIII to be removed from the Administrative Code.

Section 3. Effective Date. The effective date of this ordinance is 10 days after the date the official vote count is declared by the Board of Supervisors.

Section 4. Conflicting Measures. This ordinance 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 other measures regarding 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

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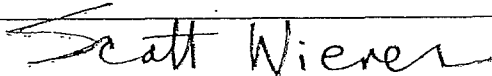
SUBMITTED.



Malia Cohen
Member, Board of Supervisors

Date:

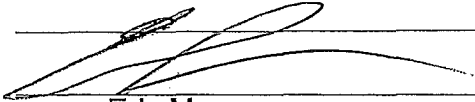
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Scott Wiener
Member, Board of Supervisors

Date:

6/16/16

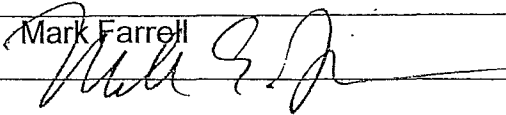


Eric Mar
Member, Board of Supervisors

Date:

6/19/16

Mark Farrell



Member, Board of Supervisors

Date:

6/21/16

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Chan, Yoyo (BOS)

From: Jon Givner <Jon.Givner@sfgov.org>
Sent: Tuesday, June 21, 2016 3:21 PM
To: Chan, Yoyo (BOS)
Cc: Somera, Alisa (BOS); Shen, Andrew (CAT); White, Joshua (CAT)
Subject: four-Supervisors measure cover sheet

Hi Yoyo. You are planning to submit a four-Supervisor measure to the Department of Elections and the Clerk's Office today. Four Supervisors have signed the final page of the proposed measure. You have asked whether you are also legally required to submit a cover submission form with additional signatures from the same four Supervisors. The answer is no. The Department of Elections and the Clerk's Office request that sponsoring Supervisors submit the cover sheet as an administrative step, but it is not a legal requirement. If you submit the signed measure today before 5:00, with the number of copies set out in the email Alisa sent yesterday, your measure will be timely submitted in compliance with Charter section 2.113.

The Clerk's Office may request that you submit the submission form later this week for inclusion in the file, but I defer to Alisa on that question.
Jon

Jon Givner, Deputy City Attorney
Office of San Francisco City Attorney Dennis J. Herrera
1 Dr. Carlton B. Goodlett Place, Suite 234
San Francisco, CA 94102
phone: (415) 554-4694
fax: (415) 554-4745

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