

1 [Health Code - Sugar-Sweetened Beverage Warning for Advertisements]

2

3 **Ordinance amending the Health Code to repeal the requirement that advertisements for**
4 **sugar-sweetened beverages include a warning about the potentially harmful health**
5 **effects of consuming such beverages.**

6

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underlined italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in *strikethrough Arial font*.
12 **Asterisks** (*) indicate the omission of unchanged Code
13 subsections or parts of tables.

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

15 Section 1. The Health Code is hereby amended by deleting Article 42, consisting of
16 Sections 4200, 4201, 4202, 4203, 4204, 4205, and 4206, as follows:

17 **ARTICLE 42: SUGAR-SWEETENED BEVERAGES**

18 **DIVISION I: SUGAR-SWEETENED BEVERAGE WARNING ORDINANCE**

20 **SEC. 4200. TITLE.**

21 ~~—Division I of this Article 42 shall be known as the "Sugar-Sweetened Beverage Warning~~
22 ~~Ordinance."~~

23 **SEC. 4201. FINDINGS AND PURPOSE.**

24 ~~—Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of serious~~
25 ~~health problems including, but not limited to: weight gain, obesity, coronary heart disease, type 2~~

1 ~~diabetes, tooth decay, and other health problems. According to the U.S. Department of Agriculture's~~
2 ~~2015-2020 Dietary Guidelines for Americans promulgated by the Secretaries of Health and Human~~
3 ~~Services and Agriculture pursuant to congressional command every five years (USDA Dietary~~
4 ~~Guidelines), a healthy eating pattern limits added sugars to no more than 10% of total energy intake~~
5 ~~per day. The American population consumes added sugars in excess of this recommended limit. Added~~
6 ~~sugar accounts for about 13% of calories per day in the U.S. population, and SSBs are Americans'~~
7 ~~single largest source of added sugar. SSBs account for 39% of all added sugar intake, with 25%~~
8 ~~attributable to soda consumption alone. A single serving 20 ounce soda bottle exceeds the~~
9 ~~recommended daily allowance of added sugars, as does even a 12 ounce can of soda for children.~~

10 ~~—About half of Americans aged two years and over drink soda on a daily basis. On average,~~
11 ~~adults who drink soda consume 155 calories per day from that source (equivalent to 13 ounces). One in~~
12 ~~four gets at least 200 calories per day from such beverages, and 5% obtain at least 567 calories per~~
13 ~~day from soda, equivalent to four cans.~~

14 ~~—Yet SSBs supply no meaningful nutrition. These empty calories make it difficult for consumers~~
15 ~~to maintain a high quality diet that incorporates the proper amounts from various food groups to meet~~
16 ~~nutrient needs, while also staying within their recommended daily calorie limits.~~

17 ~~—SSB consumption is particularly high among African Americans, Hispanics, and low-income~~
18 ~~individuals—groups that also experience disproportionately high prevalence of obesity, and obesity-~~
19 ~~related chronic diseases. In San Francisco, 46.4% of adults are obese or overweight, including 61.7%~~
20 ~~of Hispanics and 51.3% of African Americans. Minority children in San Francisco likewise experience~~
21 ~~comparatively higher rates of obesity. By fifth grade, 50% of Black/African American residents are~~
22 ~~overweight or obese, as compared to 25% of White residents.~~

23 ~~—The local health impact of type 2 diabetes falls disproportionately upon minorities and less~~
24 ~~fortunate populations. For instance, hospitalization rates for uncontrolled type 2 diabetes and its~~
25 ~~consequences are four to eight times higher in minority communities and communities with lower~~

1 ~~educational attainment. And deaths attributable to type 2 diabetes in San Francisco are five times~~
2 ~~higher among African Americans.~~

3 ~~Calories from SSBs tend to increase with age in childhood, with survey data showing that~~
4 ~~children ages 2-5, 6-11, and 12-19 years consume 2, 5, and 12 ounces per day respectively. Based on~~
5 ~~another analysis, 5% of young children, 16% of adolescents, and 20% of young adults consume more~~
6 ~~than 500 calories per day from soda (equivalent to 40 ounces). Among boys under 19, 70% drink SSBs~~
7 ~~daily, and 16% of adolescents and 20% of young adults consume more than 500 calories of soda per~~
8 ~~day (the equivalent of two 20 oz single serving bottles). A 2011 report measured obesity rates among~~
9 ~~5th, 7th and 9th graders and found that 32% of San Francisco youth were overweight or obese.~~

10 ~~The annual cost of being overweight and obese to California families, employers, the health~~
11 ~~care industry, and the government is estimated to be \$21 billion. A 2013 San Francisco Budget and~~
12 ~~Legislative Analyst report estimates that up to \$61.8 million in costs incurred by San Franciscans with~~
13 ~~obesity and diabetes are attributable to sugary beverage consumption.~~

14 ~~SSBs are aggressively marketed, and SSB advertisements do not contain information about~~
15 ~~added sugar or health risks. The City's purpose in requiring warnings for SSBs is to advance its strong~~
16 ~~interest in promoting the health of all San Franciscans, including children and adolescents and~~
17 ~~members of disadvantaged communities who more often lack access to important health facts, by~~
18 ~~ensuring they receive information about the health risks of SSBs as they make beverage choices.~~
19 ~~Advertising warnings afford consumers the opportunity to consider health information while they also~~
20 ~~process other information about a product. This information can help consumers reduce caloric intake~~
21 ~~and improve diet and health, thereby reducing illnesses to which SSBs contribute and associated~~
22 ~~economic burdens.~~

23 **SEC. 4202. DEFINITIONS.**

24 ~~"Advertiser" means any Person who is any of the following: (a) in the business of~~
25 ~~manufacturing, distributing, promoting, or selling Sugar-Sweetened Beverages, including without~~

1 ~~limitation, a Retailer, or (b) is an agent or contractor of a Person described in (a). The term~~
2 ~~"Advertiser" shall not include Persons generally in the business of placing, installing, or providing~~
3 ~~space for display of advertisements, nor shall it include the employees of a Person, including, without~~
4 ~~limitation, employees of agents or contractors, except that it shall include individuals acting as sole~~
5 ~~proprietors.~~

6 ~~— "Base Product" means the same as Powder.~~

7 ~~— "Beverage Dispensing Machine" means an automated device that mixes Concentrate with one~~
8 ~~or more other ingredients and dispenses the resulting mixture into an open container as a ready-to-~~
9 ~~drink beverage.~~

10 ~~— "Caloric Substance" means a substance that adds calories to the diet of an individual who~~
11 ~~consumes that substance.~~

12 ~~— "Caloric Sweetener" means any Caloric Substance suitable for human consumption that~~
13 ~~humans perceive as sweet and includes, but is not limited to, sucrose, fructose, high fructose corn~~
14 ~~sugar, glucose, and other sugars.~~

15 ~~— "City" means the City and County of San Francisco.~~

16 ~~— "Concentrate" means a Syrup, Powder, or Base Product that is used for mixing,~~
17 ~~compounding, or making Sugar Sweetened Beverages in a Beverage Dispensing Machine.~~

18 ~~Notwithstanding the foregoing sentence, "Concentrate" does not include the following:~~

19 ~~— (a) Any product that is designed to be used primarily to prepare coffee or tea.~~

20 ~~— (b) Any product that is sold and is intended to be used for the purpose of an individual~~
21 ~~consumer mixing, compounding, or making a Sugar Sweetened Beverage.~~

22 ~~— (c) Any product sold for consumption by infants, which is commonly referred to as "infant~~
23 ~~formula," or any product whose purpose is infant rehydration.~~

24 ~~— (d) Medical Food.~~

25

1 —(e) ~~Any product designed as supplemental, meal replacement, or sole source nutrition that~~
2 ~~includes proteins, carbohydrates, and multiple vitamins and minerals.~~

3 —“~~Director~~” means the ~~Director of Health, or the Director’s designated agents or~~
4 ~~representatives.~~

5 —“~~Medical Food~~” means ~~medical food as defined in Section 109971 of the California Health~~
6 ~~and Safety Code, including amendments to that Section.~~

7 —“~~Milk~~” means ~~natural liquid milk, natural milk concentrate or dehydrated natural milk~~
8 ~~(whether or not reconstituted), regardless of animal source or butterfat content. For purposes of this~~
9 ~~definition, “Milk” includes flavored milk containing no more than 40 grams of total sugar (naturally-~~
10 ~~occurring and from added Caloric Sweetener) per 12 ounces.~~

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

14 —“~~Natural Vegetable Juice~~” means ~~the original liquid resulting from the pressing of vegetables,~~
15 ~~the liquid resulting from the complete reconstitution of natural vegetable juice concentrate, or the~~
16 ~~liquid resulting from the complete restoration of water to dehydrated natural vegetable juice.~~

17 —“~~Nonalcoholic Beverage~~” means ~~any beverage that is not subject to tax under Part 14~~
18 ~~(commencing with Section 32001) of the California Revenue and Taxation Code, as amended from time~~
19 ~~to time.~~

20 —“~~Person~~” shall mean ~~the City, an individual, firm, partnership, joint venture, association,~~
21 ~~corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or~~
22 ~~combination acting as a unit.~~

23 —“~~Powder~~” means ~~a solid or liquid mixture of ingredients with added Caloric Sweetener used~~
24 ~~in making, mixing, or compounding Sugar Sweetened Beverages by mixing the Powder with any one or~~
25

1 ~~more other ingredients, including, without limitation, water, ice, Syrup, Simple Syrup, fruits,~~
2 ~~vegetables, fruit juice, vegetable juice, or carbonation or other gas.~~

3 ~~"Retailer" means any Person who sells Sugar Sweetened Beverages to the ultimate consumer~~
4 ~~(retail sales), including, without limitation, a Person who operates a facility where Sugar Sweetened~~
5 ~~Beverages may be purchased from vending machines.~~

6 ~~"Simple Syrup" means a mixture of sugar and water.~~

7 ~~"SSB Ad" means any advertisement, including, without limitation, any logo, that identifies,~~
8 ~~promotes, or markets a Sugar Sweetened Beverage for sale or use that is any of the following: (a) on~~
9 ~~paper, poster, or a billboard; (b) in or on a stadium, arena, transit shelter, or any other structure; (c)~~
10 ~~in or on a bus, car, train, pedicab, or any other vehicle; or (d) on a wall, or any other surface or~~
11 ~~material. Notwithstanding the foregoing sentence, "SSB Ad" does not include the following:~~

12 ~~(a) Any advertisement that is in any newspaper, magazine, periodical, advertisement~~
13 ~~circular, or other publication, or on television, the internet, or other electronic media;~~

14 ~~(b) Containers or packages for Sugar Sweetened Beverages.~~

15 ~~(c) Any menus or handwritten listings or representations of foods and/or beverages that may~~
16 ~~be served or ordered for consumption in a Retailer's establishment.~~

17 ~~(d) Any display or representation of or other information about, a Sugar Sweetened~~
18 ~~Beverage, including, without limitation, any logo on a vehicle, if the vehicle is being used by any~~
19 ~~Person who is in the business of manufacturing, distributing, or selling the Sugar Sweetened Beverage~~
20 ~~in the performance of such business.~~

21 ~~(e) Any logo that occupies an area that is less than 36 square inches and is unaccompanied~~
22 ~~by any other display, representation, or other information identifying, promoting, or marketing a~~
23 ~~Sugar Sweetened Beverage.~~

24 ~~(f) Any shelf tag or shelf label that states the retail price, order code, description, or size of a~~
25 ~~product for sale.~~

1 —"Sugar Sweetened Beverage" means any Nonalcoholic Beverage sold for human consumption,
2 including, without limitation, beverages produced from Concentrate, that has one or more added
3 Caloric Sweeteners and contains more than 25 calories per 12 ounces of beverage. Notwithstanding the
4 foregoing sentence, "Sugar Sweetened Beverage" does not include any of the following:

5 —(a) Milk.

6 —(b) Milk alternatives, including but not limited to non-dairy creamers or beverages primarily
7 consisting of plant-based ingredients (e.g., soy, rice, or almond milk products), regardless of sugar
8 content.

9 —(c) Any beverage that contains solely 100% Natural Fruit Juice, Natural Vegetable Juice, or
10 combined Natural Fruit Juice and Natural Vegetable Juice.

11 —(d) Any product sold for consumption by infants, which is commonly referred to as "infant
12 formula," or any product whose purpose is infant rehydration.

13 —(e) Medical Food.

14 —(f) Any product designed as supplemental, meal replacement, or sole-source nutrition that
15 includes proteins, carbohydrates, and multiple vitamins and minerals.

16 —(g) Any product sold in liquid form designed for use as an oral nutritional therapy for
17 persons who may have a limited ability to absorb or metabolize dietary nutrients from traditional food
18 or beverages.

19 —(h) Any product sold in liquid form designed for use for weight reduction.

20 —"Syrup" means the liquid mixture of ingredients used in making, mixing, or compounding
21 Sugar Sweetened Beverages using one or more ingredients, including, without limitation, water, ice, a
22 Base Product, Powder, Simple Syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or
23 other gas.

24 **SEC. 4203. SUGAR SWEETENED BEVERAGE WARNING ON ADVERTISEMENTS.**

25

1 (a) ~~Beginning on the operative date of the ordinance in File No. 191284 amending Sections~~
2 ~~4201-4204, any Advertiser who posts an SSB Ad, or causes an SSB Ad to be posted, in San Francisco~~
3 ~~shall place on the SSB Ad the following warning, in accordance with subsection 4203(e) below (the~~
4 ~~“Warning”):~~

5 ~~“SAN FRANCISCO GOVERNMENT WARNING: Drinking beverages with added sugar(s)~~
6 ~~can cause weight gain, which increases the risk of obesity and type 2 diabetes.”~~

7 ~~Any SSB Ad not expressly exempt from this requirement under Section 4203(d) must meet this~~
8 ~~requirement, whether or not the SSB Ad was posted before, on, or after the operative date of the~~
9 ~~ordinance in File No. 191284 amending Sections 4201-4204.~~

10 (b) ~~All the letters in the Warning shall appear in conspicuous and legible type in contrast by~~
11 ~~typography, layout, or color with all other printed material in the SSB Ad. The words “SAN~~
12 ~~FRANCISCO GOVERNMENT WARNING” shall appear in capital letters. The Warning shall be~~
13 ~~enclosed in a rectangular border within the printed advertisement that is the same color as the letters~~
14 ~~of the Warning and that is the width of the first downstroke of the capital “W” of the word~~
15 ~~“WARNING.” The Warning shall occupy at least 10% of the area of each SSB Ad and the text shall be~~
16 ~~printed in a size and manner so as to be clearly legible to the intended viewers of the SSB Ad. The text~~
17 ~~of the Warning shall be positioned such that the Warning and the other information on the SSB Ad have~~
18 ~~the same orientation, such that text in the SSB Ad and the Warning are read in the same direction (for~~
19 ~~example, left to right, or bottom to top). The Warning shall be indelibly printed on or permanently~~
20 ~~affixed to each SSB Ad.~~

21 (c) ~~The Director shall adopt a translation of the Warning (“official translation”) into each of~~
22 ~~the languages spoken by a Substantial Number of Limited English Speaking Persons, as defined in~~
23 ~~Administrative Code Section 91.2 and certified by the Office of Civic Engagement and Immigrant~~
24 ~~Affairs (“OCEIA”) as of the effective date of the ordinance in File No. 191284, no later than 90 days~~
25 ~~after such date. Furthermore, the Director may at any time adopt official translations of the Warning in~~

1 additional languages as it deems appropriate. OCEIA shall support the Director to ensure that official
2 translations accord with generally accepted professional standards. Any Advertiser who displays, or
3 causes display, of an SSB Ad the text of which is predominantly in a language for which the Director
4 adopted an official translation 180 days or more prior to the date of display, must use the official
5 translation of the Warning in that same language, in order to comply with Section 4203(a). The
6 Director may, after a publicly noticed hearing, adopt rules and regulations for the interpretation and
7 implementation of this Division I. The Director may also issue guidelines pertaining to implementation.

8 —(d) This Division I does not apply to any action by an Advertiser regarding: any general
9 advertising sign permitted by the City before the operative date of the ordinance in File No. 191284
10 amending Sections 4201-4204 that includes an SSB Ad, if the SSB Ad has not been substantially
11 changed for a period of 50 or more years before the that perative1 operative date and the Advertiser
12 provides the Director, on the Director's request, records or other information that substantiates the
13 SSB Ad has not been substantially changed over the 50 year period.

14 —For purposes of this Division I, "business sign," "general advertising sign," and "sign" shall
15 have the meanings provided in Section 602 of the Planning Code (Business Sign, General Advertising
16 Sign, Sign), as amended or renumbered from time to time.

17 **SEC. 4204. PENALTIES AND ENFORCEMENT.**

18 —(a) The Director may assess and collect administrative penalties from an Advertiser for any
19 violation of the provisions of this Division I. The Director may assess an administrative penalty not
20 exceeding \$250 for a first violation; not exceeding \$500 for the second violation within a 12 month
21 period; and not exceeding \$1,000 for the third and each subsequent violation within a 12 month period.

22 —(b) Before imposing an administrative penalty, the Director must serve upon the Advertiser a
23 notice of determination. The notice of determination shall include both the proposed administrative
24 penalty and the alleged acts or failures to act that constitute the basis for the administrative penalty.
25 The notice of determination shall inform the Advertiser that it has the right to request administrative

1 ~~review of the notice of determination within 15 days of the date of the notice. Each date on which the~~
2 ~~Director generates a notice of determination documenting a violation shall constitute a separate~~
3 ~~violation for purposes of administrative penalties.~~

4 ~~(c) If no request for review of the Director's determination is filed by the Advertiser with the~~
5 ~~Department of Public Health within the period specified in subsection (b) above, the determination~~
6 ~~shall be deemed final and shall be effective 15 days after the notice of determination was served on the~~
7 ~~Advertiser. The Director shall issue an order of determination ("Order") imposing the administrative~~
8 ~~penalty specified in the notice of determination, and shall serve it on the Advertiser. Payment of any~~
9 ~~administrative penalty is due within 30 days of service of the Order. Any administrative penalty~~
10 ~~assessed and received under this Division shall be paid to the Treasurer of the City and County of San~~
11 ~~Francisco.~~

12 ~~(d) If the Advertiser files a timely request for review of the Director's notice of determination~~
13 ~~with the Department of Public Health, the Director shall conduct a hearing. Within 15 days of receipt~~
14 ~~of the request, the Director shall notify the Advertiser of the date, time, and place of the hearing. Such~~
15 ~~hearing shall be held no later than 30 days after the Director receives the request, unless time is~~
16 ~~extended by mutual agreement of the parties. The Director may adopt rules and regulations regarding~~
17 ~~the hearing procedures.~~

18 ~~(e) No later than 30 days following the hearing specified in subsection (d) above, the~~
19 ~~Director shall serve written notice of the Director's decision ("Decision") on the Advertiser. If the~~
20 ~~Decision is that the Advertiser must pay an administrative penalty, the Decision shall state that the~~
21 ~~recipient has 10 days in which to pay the administrative penalty. Any administrative penalty assessed~~
22 ~~and received in an action brought under this Article shall be paid to the Treasurer of the City and~~
23 ~~County of San Francisco.~~

24 ~~(f) Once the administrative penalty amount becomes final after any administrative appeal or~~
25 ~~judicial review or upon expiration of time to take such appeal or seek such review, the amount of the~~

1 ~~administrative penalty shall be an obligation due and owing to the City and County of San Francisco~~
2 ~~and shall accrue interest at the rate of 10% per annum until paid.~~

3 ~~(g) The City Attorney may at any time institute civil proceedings for injunctive and monetary~~
4 ~~relief including civil penalties, against any Advertiser for violations of this Division I, without regard to~~
5 ~~whether the Director has assessed or collected administrative penalties. The Director may refer a case~~
6 ~~to the City Attorney's Office for civil enforcement, but a referral is not required for the City Attorney to~~
7 ~~bring a civil action under this subsection (g).~~

8 ~~(h) Any Advertiser that violates any provision of this Division I shall be subject to injunctive~~
9 ~~relief and a civil penalty in an amount not to exceed \$1,000 for each violation per day each violation is~~
10 ~~committed or allowed to continue, which penalty shall be assessed and recovered in a civil action~~
11 ~~brought in the name of the people of the City and County of San Francisco by the City Attorney in any~~
12 ~~court of competent jurisdiction. In assessing the amount of the civil penalty, the court shall consider~~
13 ~~any one or more of the relevant circumstances presented by any of the parties to the case, including but~~
14 ~~not limited to, the nature and seriousness of the misconduct giving rise to the violation,~~
15 ~~the number of violations, the persistence of the misconduct, the length of time over which the~~
16 ~~misconduct occurred, the willfulness of the misconduct, and the defendant's assets, liabilities, and net~~
17 ~~worth.~~

18 ~~(i) The City may recover reasonable attorneys' fees and costs for civil actions brought~~
19 ~~pursuant to this Section 4204, whether brought pursuant to subsection (g), or brought to obtain a court~~
20 ~~order requiring payment of an administrative penalty.~~

21 ~~(j) Remedies under this Section 4204 are non-exclusive and cumulative to all other remedies~~
22 ~~available at law or equity.~~

23 ~~(k) City departments shall cooperate with the Director and City Attorney's Office in the~~
24 ~~enforcement of this Division I.~~

25 **SEC. 4205. SEVERABILITY.**

1 *If any section, subsection, sentence, clause, phrase, or word of this Division I or any*
2 *application thereof to any person or circumstance, is held to be invalid or unconstitutional by a*
3 *decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining*
4 *portions or applications of the Division. The Board of Supervisors hereby declares that it would have*
5 *passed this Division and each and every section, subsection, sentence, clause, phrase, and word not*
6 *declared invalid or unconstitutional without regard to whether any other portion of this Division would*
7 *be subsequently declared invalid or unconstitutional.*

8 **SEC. 4206. NO CONFLICT WITH FEDERAL OR STATE LAW.**

9 *Nothing in this Division I shall be interpreted or applied so as to create any requirement,*
10 *power, or duty in conflict with any federal or state law.*

11

12 Section 2. Effective Date. This ordinance shall become effective 30 days after
13 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
14 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
15 of Supervisors overrides the Mayor's veto of the ordinance.

16

17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: /s/
20 ANNE PEARSON
 Deputy City Attorney

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