

BOARD of SUPERVISORS



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MEMORANDUM

TO: Dr. Grant Colfax, Director, Department of Public Health
Adrienne Pon, Executive Director, Office of Civic Engagement and Immigrant Affairs
Jose Cisneros, Treasurer
Anne Pearson, Office of the City Attorney

FROM: John Carroll, Assistant Clerk,
Public Safety and Neighborhood Services Committee,
Board of Supervisors

DATE: December 20, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following proposed legislation, introduced by Supervisor Walton on December 17, 2019:

File No. 191284

Ordinance amending the Health Code by amending the Sugar-Sweetened Beverage (SSB) Warning Ordinance to 1) update the statement of findings and purpose; 2) revise the definition of Advertiser; 3) reduce the required warning size; 4) modify the required warning text; 5) require use of a translated version of the warning text on certain SSB advertisements in languages other than English; 6) remove exemptions for certain types of SSB advertisements; and 7) revise the enforcement provisions.

Please note that this ordinance replaces a version introduced and referred in September, in Board File No. 190929. The previously-introduced and referred ordinance will be filed.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Greg Wagner, Department of Public Health
Dr. Naveena Bobba, Department of Public Health
Sneha Patil, Department of Public Health
Amanda Kahn Fried, Office of the Treasurer & Tax Collector
Jon Givner, Office of the City Attorney

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

2
3 **Ordinance amending the Health Code by amending the Sugar-Sweetened Beverage**
4 **(SSB) Warning Ordinance to 1) update the statement of findings and purpose; 2) revise**
5 **the definition of Advertiser; 3) reduce the required warning size; 4) modify the required**
6 **warning text; 5) require use of a translated version of the warning text on certain SSB**
7 **advertisements in languages other than English; 6) remove exemptions for certain**
8 **types of SSB advertisements; and 7) revise the enforcement provisions.**

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

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

17 Section 1. Article 42 of the Health Code is hereby amended by revising Division I,
18 Sections 4201 through 4204, to read as follows:

19 **SEC. 4201. FINDINGS AND PURPOSE.**

20 Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of
21 serious health problems including, but not limited to: weight gain, obesity, coronary heart
22 disease, type 2 diabetes, tooth decay, and other health problems. According to the U.S.
23 Department of Agriculture's 2015-2020 Dietary Guidelines for Americans promulgated by the
24 Secretaries of Health and Human Services and Agriculture pursuant to congressional command every
25 five years (USDA Dietary Guidelines), a healthy eating pattern limits added sugars to no more than
10% of total energy intake per day. The American population consumes added sugars in excess of this
recommended limit. Added sugar accounts for about 13% of calories per day in the U.S. population.

1 and SSBs are Americans' single largest source of added sugar. SSBs account for 39% of all added
2 sugar intake, with 25% attributable to soda consumption alone. A single-serving 20-ounce soda bottle
3 exceeds the recommended daily allowance of added sugars, as does even a 12-ounce can of soda for
4 children.

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

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

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

18 The local health impact of type 2 diabetes falls disproportionately upon minorities and less
19 fortunate populations. For instance, hospitalization rates for uncontrolled type 2 diabetes and its
20 consequences are four to eight times higher in minority communities and communities with lower
21 educational attainment. And deaths attributable to type 2 diabetes in San Francisco are five times
22 higher among African Americans.

23 Calories from SSBs tend to increase with age in childhood, with survey data showing that
24 children ages 2-5, 6-11, and 12-19 years consume 2, 5, and 12 ounces per day respectively. Based on
25 another analysis, 5% of young children, 16% of adolescents, and 20% of young adults consume more

1 than 500 calories per day from soda (equivalent to 40 ounces). Among boys under 19, 70% drink SSBs
2 daily, and 16% of adolescents and 20% of young adults consume more than 500 calories of soda per
3 day (the equivalent of two 20-oz single-serving bottles). A 2011 report measured obesity rates among
4 5th, 7th and 9th graders and found that 32% of San Francisco youth were overweight or obese.

5 ~~Scientific evidence shows that underlying these chronic health problems is metabolic syndrome~~
6 ~~(MetS). MetS is characterized by changes in a body's normal biochemistry that can lead to obesity,~~
7 ~~insulin resistance, hypertension, dyslipidemia (high cholesterol), and visceral fat. SSBs are linked to~~
8 ~~excess weight and obesity, which are putting more Americans on the path to MetS. Heavy added sugar~~
9 ~~consumption may itself be a direct cause of MetS by increasing the risk for hypertension, dyslipidemia,~~
10 ~~and visceral fat. While most people with MetS are obese, normal-weight individuals can acquire the~~
11 ~~syndrome as well, given poor dietary habits. Heavy consumption of sugary drinks has been linked to~~
12 ~~MetS through a variety of biological pathways, and is therefore a risk factor in chronic disease.~~

13 ~~The consumption of soft drinks, according to the American Dental Association, has displaced~~
14 ~~nutritious beverages and foods from the diet. According to the American Heart Association, for the~~
15 ~~American diet, soft drinks and other sugar-sweetened beverages are the primary source of added~~
16 ~~sugar. According to the first print (February 2015) of the United States Department of Agriculture's~~
17 ~~Scientific Report of the 2015 Dietary Guidelines Advisory Committee (the "2015 USDA Report"),~~
18 ~~although added sugars provide calories, they do not provide other nutrients.~~

19 ~~Sugar-sweetened sodas, and fruit drinks containing less than 100% juice by volume, are~~
20 ~~major sources of added sugars in American diets, contributing an average of 10.58 teaspoons of added~~
21 ~~sugars each day. The American Heart Association recommends that adult women consume no more~~
22 ~~than six teaspoons of added sugars daily, that adult men consume no more than nine teaspoons daily,~~
23 ~~and that children ages 4-8 years old consume no more than three teaspoons daily. However, most~~
24 ~~Americans consume more than 19.6 teaspoons of added sugars per day. Even regular, moderate~~
25

1 ~~consumption of sugary drinks (one 12-ounce can a day) increases the risk of cardiovascular disease~~
2 ~~mortality by nearly one-third.~~

3 ~~The American Heart Association reports that about one in three teen or younger children in~~
4 ~~the United States are overweight or obese and that childhood obesity is now the number one health~~
5 ~~concern among American parents, ahead of drug abuse and smoking. Obese children suffer more often~~
6 ~~from sleep apnea, asthma, joint problems, fatty liver disease, gallstones, and acid reflux (heartburn).~~

7 ~~Obese children are more likely to become obese adults, further increasing their risks for~~
8 ~~higher rates of type 2 diabetes, heart disease, and some cancers later in life. Profound mental health~~
9 ~~and quality of life impacts are seen in children with severe obesity. Obese children are more prone to~~
10 ~~low self-esteem, negative body image, and depression. As of 2010, nearly one-third of children and~~
11 ~~adolescents in San Francisco were either obese or overweight.~~

12 ~~Among adults, consumption of SSBs is associated with a risk of weight gain and obesity,~~
13 ~~cardiovascular disease, a significantly higher risk of stroke, high blood pressure, type 2 diabetes,~~
14 ~~dental erosion, and the risk of pancreatic cancer. The 2015 USDA Report concludes that the~~
15 ~~consumption of added sugars negatively impacts obesity, type 2 diabetes, cardiovascular diseases and~~
16 ~~dental caries, and "strong evidence supports reducing added sugar intake to reduce health risks." (See~~
17 ~~also, USDA, Report of the Dietary Guidelines Advisory Committee on Dietary Guidelines for~~
18 ~~Americans, 2010.) In 2011-2012, 41.8% of adults in San Francisco were either obese or overweight.~~

19 ~~The World Health Organization recommends that not more than 10% of calories be from~~
20 ~~added sugars, and the Institute of Medicine (U.S.) recommends not more than 25%. Medical research~~
21 ~~has shown that for over 70% of adults, 10% or more of calories is from added sugars, and for~~
22 ~~approximately 10% of adults, 25% or more of calories is from added sugars, and that the risk of~~
23 ~~mortality from cardiovascular disease increased exponentially with an increase in the percentage of~~
24 ~~calories from added sugars. The 2015 USDA Report concludes that even though an appropriate pattern~~
25 ~~of consumption of added sugars for most people is 4% to 6% of total calories, the mean intake of total~~

1 ~~calories from the consumption of added sugars in the U.S. population is 13%, and from 15% to 17% for~~
2 ~~children 9 years of age and older, adolescents, and young adults, and the evidence shows that when~~
3 ~~added sugars in foods exceed 3% to 9% of total calories, a healthful food pattern may be difficult to~~
4 ~~achieve.~~

5 ~~—Low income families are more likely to be affected by obesity and diabetes. For example, the~~
6 ~~Bayview-Hunters Point neighborhood had more per capita emergency room visits due to diabetes~~
7 ~~between 2009 and 2011 than any other neighborhood in San Francisco. Eighteen percent of three- to~~
8 ~~four-year-olds enrolled in San Francisco Head Start were obese, with an additional 13% being~~
9 ~~overweight. Head Start serves children of low-income families.~~

10 ~~According to the American Dental Association, a steady diet of sugary foods and drinks,~~
11 ~~including juice and sports drinks, can damage teeth. Cavity-causing bacteria in the mouth feed on~~
12 ~~sugar and produce acids that attack tooth enamel for up to 20 minutes after eating or drinking. In~~
13 ~~extreme cases, softer enamel combined with improper brushing, grinding of the teeth, or other~~
14 ~~conditions can lead to tooth loss.~~

15 The annual cost of being overweight and obese to California families, employers, the
16 health care industry, and the government is estimated to be \$21 billion. *The A 2013 San*
17 *Francisco Budget and Legislative Analyst report estimates that up to \$61.8 million in costs*
18 *incurred by San Franciscans with obesity and diabetes are attributable to sugary beverage*
19 *consumption. The total national cost of diabetes in 2007 was \$174 billion.*

20 ~~—For adults in San Francisco, approximately 29% of Caucasians, 50% of Latinos, 29% of~~
21 ~~Asians, and 43% of African Americans consume one or more sodas each day. Of 9th graders in San~~
22 ~~Francisco, approximately 31% of Caucasians, 48% of Latinos, 31% of Asians, and 58% of African~~
23 ~~Americans consume one or more sodas each day. On average, children consumed 11.96 teaspoons of~~
24 ~~added sugars from sodas and fruit drinks per day—47% of their total intake of added sugars. A single~~
25 ~~12-ounce can of soda contains eight to ten teaspoons of sugar, and typical container sizes of popular~~

1 ~~sugary drinks marketed to children far exceed the American Heart Association's recommended daily~~
2 ~~amounts.~~

3 ~~Research shows that lifestyle interventions are more cost-effective than medications in~~
4 ~~preventing or delaying type 2 diabetes. The American Heart Association reports that U.S. food labels~~
5 ~~do not distinguish between sugars that naturally occur in foods and added sugars, making it difficult~~
6 ~~for consumers to know the amount of added sugars that are in food or beverages. And food producers~~
7 ~~and distributors do not typically communicate this information to consumers, in advertisements or~~
8 ~~otherwise.~~

9 ~~Yet sugar-sweetened beverages (SSBs) are aggressively marketed, and SSB advertisements do~~
10 ~~not contain information about added sugar or health risks. without providing such basic information~~
11 ~~to consumers, be they children, adolescents, young adults, or others. According to the 2015 USDA~~
12 ~~Report, young adults are among the largest consumers of sugar-sweetened beverages and are the direct~~
13 ~~targets of marketing for sugar-sweetened beverages. The City's purpose in requiring warnings for~~
14 ~~SSBs is to advance its strong interest in promoting the health of all San Franciscans, including~~
15 ~~children and adolescents and members of disadvantaged communities who more often lack access to~~
16 ~~important health facts, by ensuring they receive information about the health risks of SSBs as they make~~
17 ~~beverage choices. Advertising warnings afford consumers the opportunity to consider health~~
18 ~~information while they also process other information about a product. inform the public of the~~
19 ~~presence of added sugars and thus promote consumer choice that may result inThis information can~~
20 ~~help consumers reduced caloric intake and improved diet and health, thereby reducing illnesses~~
21 ~~to which SSBs contribute and associated economic burdens. ~~Posting warnings that beverages~~~~
22 ~~~~are sugar-sweetened will inform the public before purchases, which will help ensure that San~~~~
23 ~~~~Franciscans make a more informed choice about the consumption of drinks that are a primary source~~~~
24 ~~~~of added dietary sugar.~~~~

25 **SEC. 4202. DEFINITIONS.**

1 "Advertiser" means any Person who is any of the following: (a) in the business of
2 manufacturing, distributing, promoting, or selling ~~s~~Sugar-~~s~~Sweetened ~~b~~Beverages, including
3 without limitation, a Retailer, or (b) is an agent or contractor of a Person described in (a); (b) is in
4 the business of placing or installing advertisements, or who provides space for the display of
5 advertisements; or (c) is an agent or contractor of a Person described in (a) or (b) assisting such
6 Person with the manufacture, distribution or sale of sugar-sweetened beverage, the placement or
7 installation of advertisements, or the provision of space for advertisements. The term "Advertiser"
8 shall not include Persons generally in the business of placing, installing, or providing space for
9 display of advertisements, nor shall it include the employees of a Person, including, without
10 limitation, employees of agents or contractors, except that it shall include individuals acting as
11 sole proprietors.

12 "Base Product" means the same as Powder.

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

16 "Caloric Substance" means a substance that adds calories to the diet of an individual
17 person who consumes that substance.

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

21 "City" means the City and County of San Francisco.

22 "Concentrate" means a Syrup, Powder, or Base Product that is used for mixing,
23 compounding, or making Sugar-Sweetened Beverages in a Beverage Dispensing Machine.
24 Notwithstanding the foregoing sentence, "Concentrate" does not include the following:

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

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

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

5 (d) Medical Food.

6 (e) Any product designed as supplemental, meal replacement, or sole-source
7 nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals.

8 "Director" means the Director of Health, or ~~his or her~~ the Director's designated agents
9 or representatives.

10 "Medical Food" means medical food as defined in Section 109971 of the California
11 Health and Safety Code, including amendments to that Section.

12 "Milk" means natural liquid milk, natural milk concentrate or dehydrated natural milk
13 (whether or not reconstituted), regardless of animal source or butterfat content. For purposes
14 of this definition, "Milk" includes flavored milk containing no more than 40 grams of total sugar
15 (naturally-occurring and from added Caloric Sweetener) per 12 ounces.

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

19 "Natural Vegetable Juice" means the original liquid resulting from the pressing of
20 vegetables, the liquid resulting from the complete reconstitution of natural vegetable juice
21 concentrate, or the liquid resulting from the complete restoration of water to dehydrated
22 natural vegetable juice.

23 "Nonalcoholic Beverage" means any beverage that is not subject to tax under Part 14
24 (commencing with Section 32001) of the California Revenue and Taxation Code, as amended
25 from time to time.

1 "Person" shall mean the City, an individual, firm, partnership, joint venture,
2 association, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other
3 group or combination acting as a unit.

4 "Powder" means a solid or liquid mixture of ingredients with added Caloric Sweetener
5 used in making, mixing, or compounding Sugar-Sweetened Beverages by mixing the Powder
6 with any one or more other ingredients, including, without limitation, water, ice, Syrup, Simple
7 Syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

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

11 "Simple Syrup" means a mixture of sugar and water.

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

18 (a) ~~A~~any advertisement that is in any newspaper, magazine, periodical,
19 advertisement circular, or other publication, or on television, the internet, or other electronic
20 media;

21 (b) ~~C~~ontainers or packages for Sugar-Sweetened Beverages;

22 (c) ~~A~~any menus or handwritten listings or representations of foods and/or
23 beverages that may be served or ordered for consumption in a Retailer's establishment;

24 (d) ~~A~~any display or representation of or other information about, a ~~s~~Sugar-
25 ~~s~~Sweetened ~~b~~Beverage, including, without limitation, any logo, on a vehicle, if the vehicle is

1 being used by any Person who is in the business of manufacturing, distributing, or selling the
2 ~~s~~Sugar-~~s~~Sweetened ~~b~~Beverage in the performance of such business;

3 (e) ~~A~~any logo that occupies an area that is less than 36 square inches and is
4 unaccompanied by any *other* display, representation, or other information identifying,
5 promoting, or marketing a ~~s~~Sugar-~~s~~Sweetened ~~b~~Beverage; ~~or~~.

6 (f) ~~A~~any shelf tag or shelf label that states the retail price, order code,
7 description, or size of a product for sale.

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

13 (a) Milk.

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

17 (c) Any beverage that contains solely 100% Natural Fruit Juice, Natural
18 Vegetable Juice, or combined Natural Fruit Juice and Natural Vegetable Juice.

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

21 (e) Medical Food.

22 (f) Any product designed as supplemental, meal replacement, or sole-source
23 nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals.
24
25

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

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

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

9 **SEC. 4203. SUGAR-SWEETENED BEVERAGE WARNING ON ADVERTISEMENTS.**

10 (a) ~~Commencing on the operative date of this Division I (Ordinance No. 100-15) (the~~
11 ~~"Operative Date"), which is one year after the effective date of this Division, Beginning on the operative~~
12 ~~date of the ordinance in File No. 191284 amending Sections 4201-4204, any Advertiser who posts~~
13 ~~an SSB Ad, or causes an SSB Ad to be posted, in San Francisco shall place on the SSB Ad~~
14 ~~the following warning, including as amended in accordance with S₅subsection 4203(c) below (the~~
15 ~~"Warning"):~~

16 "SAN FRANCISCO GOVERNMENT WARNING: Drinking beverages with added sugar(s)
17 can cause weight gain, which increases the risk of obesity and type 2 diabetes." ~~contributes to obesity,~~
18 ~~diabetes, and tooth decay. This is a message from the City and County of San Francisco."~~

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

22 (b) All the letters in the Warning shall appear in conspicuous and legible type in
23 contrast by typography, layout, or color with all other printed material in the SSB Ad. The
24 words "SAN FRANCISCO GOVERNMENT WARNING" shall appear in capital letters. The
25 Warning shall be enclosed in a rectangular border within the printed advertisement that is the

1 same color as the letters of the Warning and that is the width of the first downstroke of the
2 capital "W" of the word "WARNING." The Warning shall occupy at least ~~20~~10% of the area of
3 each SSB Ad and the text shall be printed in a size and manner so as to be clearly legible to
4 the intended viewers of the SSB Ad. The text of the Warning shall be positioned such that the
5 Warning and the other information on the SSB Ad have the same orientation, such that text in
6 the SSB Ad and the Warning are read in the same direction (for example, left to right, or
7 bottom to top). The Warning shall be indelibly printed on or permanently affixed to each SSB
8 Ad.

9 (c) The Director shall adopt a translation of the Warning ("official translation") into each
10 of the languages spoken by a Substantial Number of Limited English Speaking Persons, as defined in
11 Administrative Code Section 91.2 and certified by the Office of Civic Engagement and Immigrant
12 Affairs ("OCEIA") as of the effective date of the ordinance in File No. 191284, no later than 90 days
13 after such date. Furthermore, the Director may at any time adopt official translations of the Warning
14 in additional languages as it deems appropriate. OCEIA shall support the Director to ensure that
15 official translations accord with generally-accepted professional standards. Any Advertiser who
16 displays, or causes display, of an SSB Ad the text of which is predominantly in a language for which the
17 Director adopted an official translation 180 days or more prior to the date of display, must use the
18 official translation of the Warning in that same language, in order to comply with Section 4203(a). The
19 Director may by regulation, following a publicly noticed hearing, modify the Warning in any of the
20 following ways: (1) change the text of the Warning based on available medical or scientific information
21 regarding the health impact of Sugar-Sweetened Beverages; (2) set, and later modify in the Director's
22 discretion, the size of the text of the Warning within the 20% area specified in Subsection 4203(b) to
23 ensure the Warning is clear, legible, and conspicuous; or (3) modify the minimum area of SSB Ads that
24 the Warning must occupy to improve or ensure the effectiveness of the Warning. Any such regulations
25 adopted by the Director shall not be effective before one year after the date of the adoption of the

1 ~~regulation. In addition,~~ The Director may, after a publicly noticed hearing, adopt ~~other~~ rules and
2 regulations for the interpretation and implementation of this Division I. The Director may also
3 issue guidelines pertaining to implementation.

4 (d) This Division I does not apply to any action by an Advertiser regarding:

5 ~~(1) any sign, excluding any general advertising sign unless it satisfies (2) below,~~
6 ~~permitted by the City on or before October 20, 2015;~~

7 ~~———— (2) any general advertising sign permitted by the City before the Operative~~
8 ~~Date operative date of the ordinance in File No. 191284 amending Sections 4201-4204 that includes~~
9 an SSB Ad, if the SSB Ad has not been substantially changed for a period of 50 or more years
10 before ~~that~~ ~~Operative~~ ~~D~~date and the Advertiser provides the Director, on the Director's
11 request, records or other information that substantiates the SSB Ad has not been substantially
12 changed over the 50-year period, ~~or~~

13 ~~———— (3) any SSB Ad, other than those excepted from the application of this Division in~~
14 ~~subsections (d)(1) and (2) above, including any reproduction, that was created before December 31,~~
15 ~~1985 for which the Advertiser provides to the Director, on the Director's request, records or other~~
16 ~~information that substantiates the date that the SSB Ad was created before December 31, 1985.~~

17 For purposes of this Division I, "business sign," "general advertising sign," and "sign"
18 shall have the meanings provided in Section 602.7 of the Planning Code (Business Sign,
19 General Advertising Sign, Sign), as amended or renumbered from time to time, ~~and "sign" shall~~
20 ~~have the meaning provided in Section 602.19 of the Planning Code (Sign), as amended or renumbered~~
21 ~~from time to time.~~

22 **SEC. 4204. PENALTIES AND ENFORCEMENT.**

23 (a) The Director may assess and collect administrative penalties from an Advertiser for any
24 violation of the provisions of this Division I. The Director may assess an administrative penalty not
25

1 exceeding \$250 for a first violation; not exceeding \$500 for the second violation within a 12-month
2 period; and not exceeding \$1,000 for the third and each subsequent violation within a 12-month period.

3 (b) Before imposing an administrative penalty, the Director must serve upon the Advertiser a
4 notice of determination. The notice of determination shall include both the proposed administrative
5 penalty and the alleged acts or failures to act that constitute the basis for the administrative penalty.
6 The notice of determination shall inform the Advertiser that it has the right to request administrative
7 review of the notice of determination within 15 days of the date of the notice. Each date on which the
8 Director generates a notice of determination documenting a violation shall constitute a separate
9 violation for purposes of administrative penalties.

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

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

24 (e) No later than 30 days following the hearing specified in subsection (d) above, the Director
25 shall serve written notice of the Director's decision ("Decision") on the Advertiser. If the Decision is

1 that the Advertiser must pay an administrative penalty, the Decision shall state that the recipient has 10
2 days in which to pay the administrative penalty. Any administrative penalty assessed and received in
3 an action brought under this Article shall be paid to the Treasurer of the City and County of San
4 Francisco.

5 (f) Once the administrative penalty amount becomes final after any administrative appeal or
6 judicial review or upon expiration of time to take such appeal or seek such review, the amount of the
7 administrative penalty shall be an obligation due and owing to the City and County of San Francisco
8 and shall accrue interest at the rate of 10% per annum until paid.

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

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

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

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

6 ~~The Director may assess and collect administrative penalties for the violation of Section 4203 in~~
7 ~~accordance with Administrative Code Chapter 100, "Procedures Governing the Imposition of~~
8 ~~Administrative Fines," as may be amended from time to time. Chapter 100, which is incorporated~~
9 ~~herein in its entirety, shall govern the amount of fees and the procedures for imposition, enforcement,~~
10 ~~collection, and administrative review of administrative citations; provided that, for each placement of~~
11 ~~an SSB Ad, each day a violation is committed or permitted to continue shall constitute a separate~~
12 ~~violation of Section 4203 and each Advertiser that posted or caused the SSB Ad to be posted is a~~
13 ~~separate violator of Section 4203 subject to penalties under this Section.~~

14 ~~(b) A Retailer shall not be deemed in violation of Section 4203 unless the Retailer continues~~
15 ~~to allow an SSB Ad to be posted in or on the Retailer's establishment 30 days after the Retailer received~~
16 ~~a written notice from the Director that the SSB Ad is in violation of Section 4203.~~

17 (ek) City departments shall cooperate with the Director and City Attorney's Office in
18 the enforcement of this Division I.

19
20 Section 2. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the
23 Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board
24 amendment additions, and Board amendment deletions in accordance with the "Note" that
25 appears under the official title of the ordinance.

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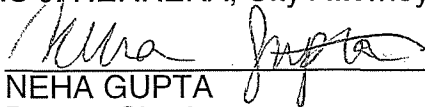
Section 3. Undertaking for the General Welfare. In enacting and implementing this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

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

Section 5. No Conflict with Federal or State Law. Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

1 Section 6. Effective and Operative Dates. This ordinance shall become effective 30
2 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
3 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
4 or the Board of Supervisors overrides the Mayor's veto of the ordinance. Other than where
5 specifically noted, this ordinance shall become operative one year from its effective date.

6
7 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

8 By: 
9 NEHA GUPTA
Deputy City Attorney

10 n:\legana\as2019\1900406\01413809.docx

LEGISLATIVE DIGEST

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

Ordinance amending the Health Code by amending the Sugar-Sweetened Beverage Warning Ordinance to 1) update the statement of findings and purpose; 2) revise the definition of Advertiser; 3) reduce the required warning size; 4) modify the required warning text; 5) require use of a translated version of the warning text on certain SSB advertisements in languages other than English; 6) remove exemptions for certain types of SSB advertisements; and 7) revise the enforcement provisions.

Existing Law

The City's Sugar-Sweetened Beverage Warning Ordinance was enacted in 2015 in Article 42 of the Health Code. It mandated that "advertisers" who post, or cause others to post, ads in San Francisco for sugar-sweetened beverages ("SSBs") include on the ads a 20% size warning about the health effects of sugar consumption. The required text of the health warning was as follows: "WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay. This is a message from the City and County of San Francisco."

It defined "advertisers" to include persons or entities, as well as their agents or contractors, that are in the business of manufacturing, distributing, or selling sugar-sweetened beverages, or in the business of placing or installing ads, or providing space for ads. The requirement applied to ads on paper, poster, billboards, or in or on transit shelters, stadiums, or other structures, buses, trains, cars, or other vehicles, or on walls or other surfaces or materials, but not print, television, or electronic media ads. It provided for a 2016 operative date.

Litigation regarding the ordinance prevented it from becoming operative. Shortly after the ordinance's enactment in 2015, the American Beverage Association, California Retailers Association, and California State Outdoor Advertising Association (collectively, "the plaintiffs") filed a lawsuit in federal court alleging that the ordinance presented a misleading, and an unjustified or unduly burdensome, disclosure requirement that offends the First Amendment by chilling protected commercial speech. Supreme Court precedent set forth in *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 471 U.S. 626 (1985), requires that government-mandated warnings in connection with commercial speech be purely factual and uncontroversial, not unduly burdensome, and reasonably related to a substantial government interest. The plaintiffs moved for a preliminary injunction to halt enforcement of the ordinance. While the District Court ruled for the City and denied the preliminary injunction, it enjoined enforcement of the ordinance while the plaintiffs sought an appeal. First a three-judge appellate panel of the Ninth Circuit, and then an 11-judge panel that reheard the appeal en banc, reversed the District Court's decision and found in the plaintiffs' favor. See *American Beverage, et al. v. City and County of San Francisco*, 916 F.3d 749 (9th Cir. 2019). The en

banc court concluded only that the City had not carried its burden to justify the requirement that the required health warning occupy 20% of the advertisement. The District Court recently entered a preliminary injunction pursuant to the Ninth Circuit's decision.

Amendments to Current Law

The proposed ordinance would amend the Sugar-Sweetened Beverage Advertising Warning Ordinance in several ways. First, it updates the ordinance's statement of findings and purpose with more recent information about the U.S. Department of Agriculture's Dietary Guidelines and patterns of consumption. Second, it amends the definition of "advertiser" to include persons in the business of manufacturing, selling, or promoting SSBs or their agents or contractors, but to exclude persons generally in the business of placing, installing, or providing space for display of advertisements. Third, it reduces the size of the required warning from 20% to 10% of the total area of the ad.

Fourth, it modifies the text of the required warning to: "SAN FRANCISCO GOVERNMENT WARNING: Drinking beverages with added sugar(s) can cause weight gain, which increases the risk of obesity and type 2 diabetes."

Fifth, it requires the Director of the Department of Public Health to adopt official translations of the required warning message into certain languages prior to the ordinance's operative date, and permits the Director to adopt official translations in additional languages. An advertiser who displays, or causes display, of a SSB ad containing text predominantly in a language other than English for which the Director has adopted an official translation, must use the Director's official translation of the warning in that language, to comply with the warning requirement. Sixth, it eliminates certain exemptions from the warning requirement for specific types of SSB ads.

And seventh, it revises the ordinance's enforcement provisions, charging the Director of the Department of Public Health with issuing administrative notices, conducting hearings, and ordering administrative penalties. The revised enforcement provisions would also permit the City Attorney's Office to pursue civil enforcement.

Except as otherwise noted, these proposed amendments would become operative one year from the ordinance's effective date.

Background Information

This legislative digest accompanies a substitute ordinance introduced at the December 17, 2019 Board of Supervisors' meeting. The initial ordinance was introduced at the Board's September 10, 2019 meeting. As compared with the initial ordinance, the substitute ordinance further revises the ordinance's findings and the proposed text of the required warning message, adds the requirement for adoption and use of a translated version of the warning message on certain SSB ads in languages other than English, and eliminates certain exemptions for specific types of SSB ads.

Introduction Form

By a Member of the Board of Supervisors or Mayor

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BOARD OF SUPERVISORS
SAN FRANCISCO

2019 DEC 17 PM 4:29

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):


Walton, Brown

Subject:

Sugar-Sweetened Beverage Warning for Advertisements

The text is listed:

Ordinance amending the Health Code by amending the Sugar-Sweetened Beverage Warning Ordinance to 1) update the statement of findings and purpose; 2) revise the definition of Advertiser; 3) reduce the required warning size; 4) modify the required warning text; 5) require use of a translated version of the warning text on certain SSB advertisements in languages other than English; 6) remove exemptions for certain types of SSB advertisements; and 7) revise the enforcement provisions.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only