

SUBSTITUTED
5/6/2014

FILE NO. 140098

LEGISLATIVE DIGEST

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

Motion ordering submitted to the voters at an election to be held on November 4, 2014, an Ordinance amending the Business and Tax Regulations Code by adding a new Article 8, imposing a tax of two cents per ounce on the distribution of sugar-sweetened beverages, to fund City-operated programs and City grants for active recreation and improving food access, health, and nutrition, and to fund San Francisco Unified School District physical education, after-school physical activity, health, or nutrition programs, and school lunch and other school nutrition programs.

Existing Law

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

Amendments to Current Law

This ordinance, which would be submitted to the voters for approval by a two-thirds majority, would create a new "Sugar-Sweetened Beverage Tax," codified in new Article 8, Sections 550-561, of the Business and Tax Regulations Code. The tax would be imposed on the initial distribution in the City of sugar-sweetened beverages, or concentrate (powder, syrup) that can be made into sugar-sweetened beverages. The distributor of the sugar-sweetened beverage would be liable for the tax. This would be a special tax, with the proceeds of the tax used only to fund specified recreation, health, and nutrition programs.

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

What is Taxed. A sugar-sweetened beverage is any nonalcoholic beverage sold for human consumption that has added caloric sweeteners, as defined, and contains more than 25 calories per 12 ounces. A caloric sweetener is any caloric substance suitable for human consumption that humans perceive as sweet and includes, but is not limited to, sucrose, fructose, high fructose corn sweetener, glucose, and other sugars. A caloric substance is a substance that adds calories to the diet of a person who consumes that substance.

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

- Sodas, colas, and other soft drinks
- Sports drinks
- Energy drinks
- Iced tea
- Juice drinks (unless the beverage contains 100 percent natural fruit and/or vegetable juice)

However, a sugar-sweetened beverage does not include:

- Milk from animal sources containing no more than 40 grams of total sugar per 12 ounces, and milk alternatives from plant sources (e.g., soy, rice, almond).
- Beverages that contain only 100 percent natural fruit juice, vegetable juice, or combined fruit and vegetable juice.
- Medical foods, infant formula, and infant rehydration products.
- Meal replacement, supplemental and sole-source nutrition products, and oral nutrition therapy and weight reduction beverages.
- Diet sodas, sports drinks, energy drinks, bottled water, flavored water, or any other drink that does not exceed 25 calories per 12 ounces, even if the beverage has added caloric sweeteners.

Who is Liable for the Tax. The “distributor” is liable for the tax. A “distributor” is a person who either:

- Transfers physical possession of a sugar-sweetened beverage or concentrate in the City; or
- Brings a sugar-sweetened beverage or concentrate into the City for resale.

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

Funding of Access to Healthy Food and Recreation Programs. The proceeds of the tax would be distributed to the following City agencies and the San Francisco Unified School District as follows:

- 40 percent to the San Francisco Unified School District for nutrition education, healthy food access, and expansion and improvement of physical education.

SUBSTITUTED

5/6/2014

FILE NO. 140098

- 25 percent to the Department of Public Health and Public Utilities Commission for healthy food access initiatives, drinking fountains and water bottle filling stations, oral health services, and chronic disease prevention programs.
- 25 percent to the Recreation and Park Department for recreation centers, organized sports, athletic programming, and grants to community-based organizations.
- 10 percent for grants to community-based organizations that support physical activity, food access, public education campaigns, and health programs.

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

A fifteen-member Healthy Nutrition and Physical Activity Access Fund Committee (“the Committee”) would advise the Mayor, the Board of Supervisors, and City departments in directing the use of funds. Five Committee members would be appointed by the Board, seven would be appointed by specified City Departments and other City entities, and three would be appointed by the School District and the San Francisco Unified School District Parent Advisory Council. Members would serve up to three consecutive two-year terms. The Committee would meet at least six times per year.

The membership of the Committee would include the following:

- Two members residing in neighborhoods disproportionately impacted by diseases related to the consumption of Sugar-Sweetened Beverages.
- Two representatives of local medical institutions focused on chronic diseases linked to the consumption of Sugar-Sweetened Beverages.
- Employees of the Department of Public Health, Recreation and Park Department, Department of Children, Youth, and Their Families, and the San Francisco Unified School District.
- Members appointed by the Department of Public Health, Food Security Task Force, San Francisco Youth Commission, and San Francisco Unified School District Parent Advisory Council.

Background Information

This substitute legislation makes the following changes: (1) the substitute ordinance defines a distribution as a transfer of physical possession of sugar-sweetened beverages in the City or bringing of sugar-sweetened beverages into the City, rather than a sale of sugar-sweetened beverages in the City; (2) beverages and concentrates for meal supplements and

SUBSTITUTED

5/6/2014

FILE NO. 140098

replacement, and oral nutrition therapy are not subject to the tax; (3) two seats are added to the Committee; and (4) the Committee terminates on December 31, 2020 unless reauthorized by the Board.

Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of serious health problems including, but not limited to: metabolic syndrome, weight gain, obesity, coronary heart disease, diabetes, cavities, tooth decay, and other health problems. Calorically sweetened soda, and fruit drinks containing less than 100 percent juice by volume, are major sources of added sugars in American diets, contributing an average of 10.58 teaspoons of added sugars each day.

Among adults, consumption of SSBs is associated with a risk of weight gain and obesity, cardiovascular risk, a significantly higher risk of stroke, high blood pressure, type 2 diabetes, dental erosion, and the risk of pancreatic cancer. In 2011-2012, 41.8 percent of adults in San Francisco were either obese or overweight.

Plain water and—unless advised otherwise by a pediatrician—low-fat (1 percent) or nonfat milk are the most appropriate beverages for healthy children older than the age of two. Yet, 17.2 percent of San Francisco children and adolescents consume two or more glasses of soda or sugary drink per day. Within this, there are significant variations by ethnicity, with 24.2 percent of Asian and 33.9 percent of Latino, and only 4.4 percent of white children, consuming two or more glasses of soda or sugary drink per day. On average, children consumed 11.96 teaspoons of added sugars from sodas and fruit drinks per day – 47 percent of their total intake of added sugars. A single 12-ounce can of soda contains eight to ten teaspoons of sugar, and typical container sizes of popular sugary drinks marketed to children far exceed recommended amounts.

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

The purpose of taxing SSBs is to make San Franciscans healthier. Research shows that lifestyle interventions are more cost-effective than medications in preventing or delaying type 2 diabetes. Assessing a tax on SSBs is intended to help address the high levels of obesity, type 2 diabetes, and other diseases by reducing consumption and providing a revenue stream for City-directed and grant-funded physical activity and nutrition programs in schools, parks, community centers, and through community-based organizations.

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