

File No. 210490

Committee Item No. 2

Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight

Date: July 15, 2021

Board of Supervisors Meeting:

Date: July 27, 2021

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- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

OTHER

- Joint Stipulation – May 7, 2021
- _____
- _____
- _____
- _____

Prepared by: John Carroll

Date: July 9, 2021

Prepared by: John Carroll

Date: July 16, 2021

Prepared by: John Carroll

Date: _____

BOARD of SUPERVISORS



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MEMORANDUM

GOVERNMENT AUDIT AND OVERSIGHT COMMITTEE

SAN FRANCISCO BOARD OF SUPERVISORS

TO: Supervisor Dean Preston, Chair
Government Audit and Oversight Committee

FROM: John Carroll, Assistant Clerk

DATE: July 16, 2021

SUBJECT: **COMMITTEE REPORT, BOARD MEETING**
Tuesday, July 20, 2021

The following file should be presented as COMMITTEE REPORT at the regular Board meeting on Tuesday, July 20, 2021. This ordinance was acted upon at the regular Government Audit and Oversight Committee meeting on Thursday, July 15, 2021, at 10:00 a.m., by the votes indicated.

Item No. 64 File No. 210490

Ordinance authorizing the entry of a joint stipulation in the lawsuit filed by the American Beverage Association, California State Outdoor Advertising Association, and California Retailers Association against the City and County of San Francisco; the lawsuit was filed on July 24, 2015, in U.S. District Court for the Northern District of California, Case No. No. 3:15-cv-03415 EMC; entitled American Beverage Association et al. v. City and County of San Francisco; the lawsuit claims that the City's sugar-sweetened beverage warning law, codified in Article 42 of the San Francisco Health Code, violates the United States Constitution; the joint stipulation provides for dismissal of the lawsuit if the City repeals Article 42 of the San Francisco Health Code and conditionally extends Plaintiffs' time to file a motion for attorneys' fees and costs by four years.

RECOMMENDED AS A COMMITTEE REPORT

Vote: Supervisor Dean Preston - Aye
Supervisor Connie Chan - Excused
Supervisor Rafael Mandelman - Aye

Cc: Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy
Anne Pearson, Deputy City Attorney

1 [Joint Stipulation - American Beverage Association, California State Outdoor Advertising
2 Association, and California Retailers Association - \$0]

3 **Ordinance authorizing the entry of a joint stipulation in the lawsuit filed by the**
4 **American Beverage Association, California State Outdoor Advertising Association, and**
5 **California Retailers Association against the City and County of San Francisco; the**
6 **lawsuit was filed on July 24, 2015, in U.S. District Court for the Northern District of**
7 **California, Case No. No. 3:15-cv-03415 EMC; entitled American Beverage Association et**
8 **al. v. City and County of San Francisco; the lawsuit claims that the City's sugar-**
9 **sweetened beverage warning law, codified in Article 42 of the San Francisco Health**
10 **Code, violates the United States Constitution; the joint stipulation provides for**
11 **dismissal of the lawsuit if the City repeals Article 42 of the San Francisco Health Code**
12 **and conditionally extends Plaintiffs' time to file a motion for attorneys' fees and costs**
13 **by four years.**

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

16 Section 1. The Board of Supervisors hereby approves the parties' entry of a joint
17 stipulation in the action entitled American Beverage Association et al. v. City and County of
18 San Francisco, U.S. District Court for the Northern District of California, Case
19 No. 3:15-cv-03415 EMC, available in Board of Supervisors File No.210490. Under the terms
20 of the stipulation, if the City repeals Article 42 of the San Francisco Health Code, Plaintiffs
21 agree to dismiss the lawsuit and the City agrees to extend by four years Plaintiffs' time to file a
22 motion for costs and attorneys' fees, except Plaintiffs shall file no such motion unless, within
23 that time, the City enacts a new law requiring warning labels on advertisements for sugar-
24 sweetened beverages. The lawsuit claims that Article 42 of the San Francisco Health Code
25 violates the United States Constitution.

1 Section 2. The above-named action was filed in U.S. District Court for the Northern
2 District of California on July 24, 2015, and the following parties were named in the lawsuit:
3 Plaintiffs American Beverage Association, California State Outdoor Advertising Association,
4 and California Retailers Association; Defendant City and County of San Francisco.

5 APPROVED AS TO FORM AND RECOMMENDED:

6 DENNIS J. HERRERA
7 City Attorney

8 /s/ Wayne Snodgrass
9 WAYNE SNODGRASS
10 Deputy City Attorney

1 DENNIS J. HERRERA, State Bar #139669
 City Attorney
 2 WAYNE SNODGRASS, State Bar #148137
 JEREMY M. GOLDMAN, State Bar #218888
 3 Deputy City Attorneys
 1 Dr. Carlton B. Goodlett Place
 4 City Hall, Room 234
 San Francisco, California 94102-4682
 5 Telephone: (415) 554-6762
 Facsimile: (415) 554-4699
 6 E-Mail: jeremy.goldman@sfcityatty.org

7 Attorneys for Defendant
 8 CITY AND COUNTY OF SAN FRANCISCO

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11

12 THE AMERICAN BEVERAGE
 13 ASSOCIATION, CALIFORNIA RETAILERS
 ASSOCIATION, CALIFORNIA STATE
 14 OUTDOOR ADVERTISING
 ASSOCIATION,

15 Plaintiffs,

16 vs.

17 THE CITY AND COUNTY OF SAN
 18 FRANCISCO,

19 Defendant.

Case No. 3:15-cv-03415 EMC

**JOINT STIPULATION AND [PROPOSED]
 ORDER SUSPENDING BRIEFING
 SCHEDULE, TAKING SUMMARY
 JUDGMENT HEARING OFF CALENDAR,
 VACATING CASE MANAGEMENT DATES,
 PROVIDING FOR DISMISSAL OF THIS
 ACTION, AND CONDITIONALLY
 EXTENDING THE TIME WITHIN WHICH
 PLAINTIFFS MAY FILE A MOTION FOR
 FEES AND COSTS**

Hon. Edward M. Chen

Trial Date: December 6, 2021

1 Pursuant to Civil Local Rules 6-2 and 7-12, Plaintiffs The American Beverage Association,
2 California Retailers Association, and California State Outdoor Advertising Association (“Plaintiffs”),
3 and Defendant The City and County of San Francisco (“Defendant”) (collectively, the “Parties”), hereby
4 stipulate as follows:

5 WHEREAS, on May 4, 2021, San Francisco Supervisor Shamann Walton introduced an
6 Ordinance, File No. 210496 (“the Repeal Ordinance”), to repeal Article 42 of the San Francisco Health
7 Code, which codifies the Sugar-Sweetened Beverage Warning Ordinance at issue in this action;

8 WHEREAS, Plaintiffs have agreed not to seek fees or costs if Article 42 is repealed, subject to
9 their right to file a motion for fees or costs if Defendant enacts a new ordinance requiring advertisers to
10 include health warnings on advertisements for sugar-sweetened beverages within the next four years;

11 WHEREAS, the City’s agreement to a four-year extension of Plaintiffs’ time to file a motion for
12 fees or costs is subject to approval by the San Francisco Board of Supervisors by ordinance (“the
13 Extension Ordinance”);

14 WHEREAS, the Parties anticipate that enactment of the Repeal Ordinance and the Extension
15 Ordinance may take several months in the ordinary legislative process;

16 NOW, THEREFORE, in the interest of judicial economy and good cause showing, the
17 undersigned parties, by and through their counsel of record, hereby agree and stipulate, and the Court
18 hereby orders, as follows:

19 1. The remaining briefing schedule on the Parties’ cross-motions for summary judgment
20 and *Daubert* motions is suspended and the hearing on those motions, currently scheduled for June 24,
21 2021, is taken off calendar;

22 2. The dates for the pretrial conference (October 9, 2021) and trial (December 6, 2021) are
23 vacated;

24 3. The parties may stipulate to, or any party may file an administrative motion requesting,
25 reinstatement of a briefing schedule and summary judgment hearing, and to the resetting of dates for the
26 pretrial conference and trial, if both the Repeal Ordinance and the Extension Ordinance are not enacted;

27 4. If the Repeal Ordinance and Extension Ordinance are enacted, the following additional
28 provisions shall apply.

1 5. Plaintiffs shall dismiss this action within seven days of the effective date of the Repeal
2 Ordinance or the date of enactment of the Extension Ordinance, whichever date comes latest;

3 6. The time within which Plaintiffs may file a motion seeking an award of fees or costs shall
4 be extended to four years from the date the action is dismissed pursuant to the preceding paragraph, and
5 the Court shall retain jurisdiction to adjudicate such a motion, but Plaintiffs shall not file a motion for
6 fees or costs unless, within that time, Defendant enacts a new ordinance requiring a warning label or
7 other mandatory disclosure on advertising for sugar-sweetened beverages that concerns or relates to
8 alleged health risks associated with or attributed to sugar-sweetened beverage consumption;

9 7. Plaintiffs’ right to file such a motion as provided herein is without prejudice to
10 Defendant’s right to oppose that motion on grounds other than timeliness; and

11 8. Except as otherwise ordered in a ruling on any such motion, each party shall bear its own
12 fees and costs.

13 The parties respectfully request that the Court enter an Order approving this Stipulation.

14 IT IS SO STIPULATED.

15
16 Dated: May 7, 2021

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
JEREMY M. GOLDMAN
Deputy City Attorneys

17
18
19 By: /s/ Jeremy M. Goldman
20 JEREMY M. GOLDMAN
21 Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

22 Dated: May 7, 2021

LATHAM & WATKINS LLP

23 By: /s/ Michael E. Bern
24 Steven M. Bauer
25 Richard P. Bress (*pro hac vice*)
26 Michael E. Bern (*pro hac vice*)
27 George C. Chipev (*pro hac vice*)
28 Caroline A. Flynn
Shannon Grammel (*pro hac vice*)
Attorneys for Plaintiffs
THE AMERICAN BEVERAGE ASSOCIATION AND
CALIFORNIA RETAILERS ASSOCIATION

1 Dated: May 7, 2021

GIBSON, DUNN & CRUTCHER LLP

2 By: /s/ Joshua D. Dick

3 Theodore B. Olson
4 Andrew S. Tulumello
5 Helgi C. Walker (*pro hac vice*)
6 Charles J. Stevens
7 Joshua D. Dick

8 Attorneys for Plaintiff
9 CALIFORNIA STATE OUTDOOR ADVERTISING
10 ASSOCIATION

11 **ATTESTATION CLAUSE**

12 Pursuant to Civil Local Rule 5-1(i)(3), I hereby certify that I obtained in the filing of this
13 document the concurrence from all parties whose electronic signatures appear above.

14 Dated: May 7, 2021

15 /s/ Jeremy M. Goldman
16 JEREMY M. GOLDMAN

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

18 DATED: _____

19 _____
20 Hon. Edward M. Chen
21 United States District Judge

Member, Board of Supervisors
District 5



City and County of San Francisco

DEAN PRESTON

DATE: July 15, 2021

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Supervisor Preston
Chairperson

RE: Government Audit and Oversight Committee
COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Government Audit and Oversight Committee I have deemed the following matters to be of an urgent nature and request each be considered by the full Board on Tuesday, July 20, 2021, as Committee Reports:

210496 [Health Code - Sugar-Sweetened Beverage Warning for Advertisements]

210490 [Joint Stipulation - American Beverage Association, California State Outdoor Advertising Association, and California Retailers Association - \$0]

210772 [Purchase of Real Property - TC II 888 Post, LLC - 888 Post Street - Homelessness and Supportive Housing - \$29,000,000]

210773 [Real Property Lease Extension - Opera Plaza, L.P. - Administrative Offices - 601 Van Ness Avenue - \$363,132 Annual Base Rent]

210636 [Mental Health Services Act Annual Update - FY2021-2022] Resolution authorizing adoption of the San Francisco Mental Health Services Act Annual Update Fiscal Year (FY) 2021-2022. (Public Health Department)

These matters will be heard in the Government Audit and Oversight Committee on July 15, 2021, at 10 am.

A handwritten signature in blue ink that reads "Dean Preston".

LEGISLATION RECEIVED CHECKLIST

Date 05/03/21 File Number (if applicable) _____

- | | | | |
|-------------------------------------|---|-----|-------------------|
| <input checked="" type="checkbox"/> | Legislation for Introduction (NEW) | ▶▶▶ | Legislative Clerk |
| <input type="checkbox"/> | Legislation Pending in Committee (AMENDED) | ▶▶▶ | Committee Clerk |
| <input type="checkbox"/> | Legislation for Board Agenda (AMENDED) | ▶▶▶ | Deputy Clerk |

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (*if applicable*) in **Word** format
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Ordinance

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Grant Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Grant budget/application
 - Grant information form, including signed disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (*if applicable*) in **Word** format
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Resolution

- Legislation:** Original, 1 hard copy, and 1 electronic copy in **Word** format
- Signature:** None (Note: Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Supporting documents:** 1 full set, and separate **pdf** copies of each in email
 - Cover letter (original)
 - Settlement Report/Agreement (for settlements)
 - Other support documents *as identified in the cover letter and legislation*
- E-Copy of legislation/supporting documents: Sent to BOS.Legislation@sfgov.org**

Joy Perez 415-554-3869
Name and Telephone Number

City Attorney
Department