

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

3 **Motion ordering submitted to the voters at an election to be held on November 4, 2014,**
4 **an Ordinance amending the Business and Tax Regulations Code by adding a new**
5 **Article 8, imposing a tax of two cents per ounce on the distribution of bottled sugar-**
6 **sweetened beverages to fund access to healthy nutrition and physical activity**
7 **programs.**

8
9 MOVED, That the Board of Supervisors hereby submits the following Ordinance to the
10 voters of the City and County of San Francisco, at an election to be held on November 4,
11 2014:

12
13 **Ordinance amending the Business and Tax Regulations Code by adding a new**
14 **Article 8, imposing a tax of two cents per ounce on the distribution of bottled sugar-**
15 **sweetened beverages to fund access to healthy nutrition and physical activity**
16 **programs.**

17
18 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
19 **Additions to Codes** are in *single-underline italics Times New Roman font*.
20 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
21 **Asterisks (* * * *)** indicate the omission of unchanged Code
22 subsections or parts of tables.

23
24 Be it ordained by the People of the City and County of San Francisco:
25

1 Section 1. Pursuant to Article XIIC of the Constitution of the State of California, this
2 ordinance shall be submitted to the qualified electors of the City and County of San Francisco,
3 at the November 4, 2014 consolidated general election.

4
5 Section 2. The Business and Tax Regulations Code is hereby amended by adding
6 Article 8, to read as follows:

7
8 **SEC. 570. TITLE.**

9 *This Article shall be known as the “Establishment of the Healthy Nutrition and Physical Activity*
10 *Access Fund and Sugar-Sweetened Beverage Distributor Tax.”*

11
12 **SEC. 571. FINDINGS AND PURPOSE.**

13 *Human consumption of sugar-sweetened beverages (SSBs) is linked to a myriad of serious*
14 *health problems including, but not limited to: weight gain, obesity, coronary heart disease, diabetes,*
15 *cavities, and tooth decay.*

16 *Obese children suffer more often from sleep apnea, asthma, joint problems, fatty liver disease,*
17 *gallstones and acid reflux (heartburn). Obese children are more likely to become obese adults, further*
18 *increasing their risks for higher rates of type 2 diabetes, heart disease, and some cancers later in life.*
19 *Profound mental health and quality of life impacts are seen in children with severe obesity. 17.2*
20 *percent of San Francisco children and adolescents consume two or more glasses of soda or sugary*
21 *drink per day. Within this, there are significant variations by ethnicity, with 24.2 percent of Asian and*
22 *33.9 percent Latino, while only 4.4 percent of white children consume two or more glasses of soda or*
23 *sugary drink per day. Approximately 25 percent of children in the San Francisco Bay Area are*
24 *overweight or obese.*

1 Among adults, consumption of SSBs is associated with a risk of weight gain and obesity,
2 cardiovascular risk, a significantly higher risk of stroke, high blood pressure, type 2 diabetes, dental
3 erosion, and the risk of pancreatic cancer.

4 Caloric sweetened soda, and fruit drinks containing less than 100 percent juice by volume, are
5 major sources of added sugars in American diets, contributing an average of 10.58 teaspoons of added
6 sugars each day. Children consumed 11.96 teaspoons of added sugars from sodas and fruit drinks per
7 day – 47 percent of their total intake of added sugars. Unfortunately, most Americans get more than 22
8 teaspoons or 355 calories of sugar per day.

9 The American Heart Association recommends children consume no more than three teaspoons
10 of added sugars (not including naturally occurring sugars in whole foods such as fruit and plain milk)
11 per day, which is about 50 calories. Typical container sizes of popular sugary drinks marketed to
12 children far exceed this recommendation. Plain water and—unless advised otherwise by a
13 pediatrician—low-fat (1 percent) or nonfat milk are the most appropriate beverages for healthy
14 children older than the age of two.

15 The annual cost of being overweight and obese to California families, employers, the health
16 care industry, and the government is estimated to be \$21 billion.

17 Caloric sweetened beverages have been targeted as part of a tax policy to reduce caloric intake,
18 improve diet and health, and generate revenue that governments can use to address obesity-related
19 health and economic burdens.

20 The Institute of Medicine and other beverage tax advocates suggest that the generated tax
21 revenues could be used to promote healthier eating and reduce or prevent obesity, and in 2009, the
22 Institute of Medicine recommended that local governments implement a tax strategy for calorie-dense,
23 nutrient-poor food, and beverages to discourage consumption. Likewise, in 2010, the White House
24 Task Force on Childhood Obesity recommended that Federal, state and local governments analyze the
25 effects of taxes on less healthy, energy-dense foods, such as calorically-sweetened beverages.

1 The purpose of taxing SSBs is to make San Francisco healthier. It aims to do so in two ways:
2 to reduce SSB consumption through increased prices, and to fund community programs that promote
3 nutrition and physical exercise. An increase in the price of SSBs would likely deter the purchase and
4 consumption of SSBs and mitigate their adverse health effects, as it has done so with tobacco.
5 Promoting healthier food access, especially in disproportionately impacted neighborhoods, has been
6 shown to improve the diets of nearby communities. The taxes collected will go to a fund that promotes
7 nutrition and physical exercise. Chronic disease prevention programs have been shown to
8 substantially and rapidly improve community health.

9
10 **SEC. 572. DEFINITIONS.**

11 Unless otherwise defined in this Article, terms that are defined in Article 6 of the Business and
12 Tax Regulations Code shall have the meanings provided therein. For purposes of this Article, the
13 terms below are defined as follows:

14 “Bottle” means any closed or sealed container regardless of size or shape, including, without
15 limitation, those made of glass, metal, paper or plastic or any other material or combination of
16 materials.

17 “Bottled Sugar-Sweetened Beverage” means any Sugar-Sweetened Beverage contained in a
18 Bottle that is ready for consumption without further processing such as, without limitation, dilution or
19 carbonation.

20 “Caloric Sweetener” means any caloric substance suitable for human consumption that humans
21 perceive as sweet and includes, without limitation, sucrose, fructose, glucose, other sugars, and fruit
22 juice concentrates. For purposes of this definition, “caloric substance” means a substance that adds
23 calories to the diet of a person who consumes that substance.

24 “City” means the City and County of San Francisco.
25

1 “Committee” means the Healthy Nutrition and Physical Activity Access Fund Committee as
2 described in Section 576.

3 “Consumer” means a person who purchases a Bottled Sugar-Sweetened Beverage for a
4 purpose other than resale in the ordinary course of business.

5 “Controller’s Baseline Budget” means the Controller’s calculation of the actual amount of the
6 City expenditures for Eligible Programs for the year July 1, 2013 through June 30, 2014.

7 “Distribution” includes:

8 (a) The sale of Bottled Sugar-Sweetened Beverages to a Retailer.

9 (b) The retail sale of untaxed Bottled Sugar-Sweetened Beverages.

10 (c) The use or consumption of untaxed Bottled Sugar-Sweetened Beverages by a person
11 other than a Consumer. For purposes of this paragraph (c), “use or consumption” includes the exercise
12 of any right or power over Bottled Sugar-Sweetened Beverages incident to the ownership thereof, except
13 that it does not include the sale of such beverages, or the keeping or retention thereof by a Distributor
14 or Retailer for the purpose of sale.

15 “Distributor” or “Sugar-Sweetened Beverage Distributor” means any person engaged in the
16 Distribution of Bottled Sugar-Sweetened Beverages.

17 “Eligible Programs” means programs described in Section 575(a)(3).

18 “Food Access Program” means any City-sponsored program that increases the availability of
19 healthy foods in areas identified by the San Francisco Department of Public Health as lacking
20 sufficient healthy food retailers or to individuals identified as having insufficient resources to procure
21 healthy foods.

22 “Fund” is the Healthy Nutrition and Physical Activity Access Fund described in Section 573.

23 “Natural Fruit Juice” means the original liquid resulting from the pressing of fruits.

24 “Natural Vegetable Juice” means the original liquid resulting from the pressing of vegetables.

25

1 "Milk" means a whitish liquid containing proteins, fats, lactose, and various vitamins and
2 minerals produced by cows, goats, or other animals, or from plants, which is used as food by humans.

3 "New Programs" are as described in Section 575.

4 "Nonalcoholic Beverage" means any beverage that contains less than one-half of one percent
5 alcohol by volume.

6 "Retailer" means a person who engages in the sale of Sugar-Sweetened Beverages for
7 consumption and not for resale.

8 "Sell", "Sale", or "To Sell" means any transaction whereby, for any consideration, title to
9 Sugar-Sweetened Beverages is transferred from one person to another, and includes the delivery of
10 Sugar-Sweetened Beverages pursuant to an order placed for the purchase of such beverages and
11 soliciting or receiving an order for such beverages, but does not include the return of Sugar-Sweetened
12 Beverages by a purchaser to the vendor from whom such beverages were purchased.

13 "Sugar-Sweetened Beverage" means any Nonalcoholic Beverage, carbonated or
14 noncarbonated, which is intended for human consumption and contains any added Caloric Sweetener.
15 Notwithstanding the foregoing sentence, "Sugar-Sweetened Beverage" does not include any of the
16 following:

17 (a) Beverages consisting of one hundred percent Natural Fruit Juice or Natural Vegetable
18 Juice, with or without added carbonated or uncarbonated water, with no added Caloric Sweetener.

19 (b) Beverages containing Milk.

20 (c) Dietary aids, which means liquid products manufactured for use as:

21 (i) An oral nutritional therapy for persons who cannot absorb or metabolize dietary
22 nutrients from food or beverages;

23 (ii) A source of necessary nutrition used due to a medical condition;

24 (iii) An oral electrolyte solution for infants and children formulated to prevent
25 dehydration due to illness; or

1 (iv) Infant formula.

2 "Tax" means the Sugar-Sweetened Beverages Tax imposed under Section 573.

3
4 **SEC. 573. IMPOSITION OF TAX; DEPOSIT OF PROCEEDS; REGISTRATION OF**
5 **DISTRIBUTORS AND RETAILERS.**

6 (a) The City hereby imposes a Sugar-Sweetened Beverage Distributor Tax on each Sugar-
7 Sweetened Beverage Distributor who Distributes in the City a Bottled Sugar-Sweetened Beverage to a
8 Retailer for resale within the City.

9 (b) The tax shall be imposed on an annual basis and shall be calculated as follows: \$0.02
10 per fluid ounce of Bottled Sugar-Sweetened Beverage.

11 (c) Each Distributor and Retailer shall register with the Tax Collector.

12 (d) The City hereby establishes the Healthy Nutrition and Physical Activity Access Fund.
13 All monies collected pursuant to the Sugar-Sweetened Beverages Tax shall be deposited to the credit of
14 the Fund. The Fund shall be maintained separate and apart from all other City and County funds and
15 shall be appropriated by annual or supplemental appropriation.

16
17 **SEC. 574. [RESERVED.]**

18
19 **SEC. 575. EXPENDITURE OF PROCEEDS.**

20 (a) Monies in the Fund shall be used exclusively for the purposes specified in this Article 8.
21 No monies from the Fund shall be appropriated or expended for any funding requirement imposed by
22 The Arts, Music, Sports, and Pre-School for Every Child Amendment of 2003 (Charter Sec. 16.123-1
23 et seq.). Subject to the budgetary and fiscal provisions of the City Charter, monies in the Fund shall be
24 appropriated on an annual basis to the following departments and used solely for the following
25 purposes:

1 (1) Administrative Costs. Up to two percent of the proceeds of the Tax to the Tax
2 Collector for administration of the Tax.

3 (2) Refunds of any overpayments of the Tax imposed under this Article 8.

4 (3) Funding of Eligible Programs that are “New Programs,” as defined in this
5 Section 575, that target populations identified by the Director of the Department of Public Health in
6 consultation with the Committee as heavily impacted by high sugar consumption, and that are
7 consistent with the findings, purpose, and goals stated in this Article 8, in the following proportions:

8 (A) One-half to improve access to healthy foods, with

9 (i) One-quarter to the San Francisco Unified School District for
10 student nutrition services; school-based gardens, nutrition classes, and cooking classes for students
11 and parents; teacher training and curricular support in nutrition education; and after-school
12 programs, including but not limited to nutrition education, healthy snacks, school-based gardening,
13 and cooking classes; and

14 (ii) One-quarter to one or more City Departments for healthy food
15 access initiatives; drinking fountains and water bottle filling stations; public education campaigns,
16 including but not limited to nutrition education and breastfeeding education; and civic engagement in
17 health policy toward mitigating the impact of sugar-sweetened beverages.

18 (B) One-half to improve access to physical activities, with

19 (i) One-quarter to the San Francisco Unified School District for
20 expansion and improvement of physical education, which may include teachers, education specialists,
21 athletic equipment, and training; and

22 (ii) One-quarter in any proportion for one or more of the following
23 purposes: Capital improvements, equipment, and staffing for low-cost and free physical activity
24 programs conducted by one or more City departments, including but not limited to the Recreation and
25 Park Department, the Police Department, and the Department of Children, Youth, and their Families;

1 and promotion of “active commuting,” including promotion of walking and biking, bicycle and
2 pedestrian infrastructure improvements.

3 Should any of the above entities cease to exist, or if Eligible Programs are transferred from any
4 of these to another department or agency, then the Mayor and the Board of Supervisors are authorized
5 to expend the proceeds of this Tax to any agency or entity that is a successor to that department or
6 agency and that operates Eligible Programs, or to an agency or entity to which those Eligible
7 Programs are transferred, for expenditures that would otherwise be authorized under this ordinance.

8 (b) Any balance remaining in the Fund at the close of any fiscal year shall be deemed to
9 have been provided for a specified purpose within the meaning of Section 9.113(a) of the Charter and
10 shall be carried forward and accumulated in the Fund for the purposes and goals recited in this
11 Article 8.

12 (c) [Reserved.]

13 (d) New Programs. Except as otherwise specified in this Article 8, the Fund shall be used
14 exclusively to increase the aggregate City appropriations and expenditures for those programs that are
15 eligible to be paid from the Fund (exclusive of expenditures mandated by state or federal law). To this
16 end, monies in the Fund shall be used exclusively to fund New Programs, defined as Eligible Programs
17 above and beyond the expenditures made for Eligible Programs under the Controller’s Baseline
18 Budget. Monies from the Fund shall not be appropriated or expended to replace levels of expenditures
19 that are included in the Controller’s Baseline Budget, whether or not the cost of such Eligible
20 Programs increases. Nor shall monies from the Fund be appropriated or expended for services that
21 substitute for or replace services included or partially included in the Controller’s Baseline Budget,
22 except and solely to the extent that the City ceases to receive federal, state or private agency funds that
23 the funding agency required to be spent only on those Eligible Programs.

24 Notwithstanding the preceding paragraph, Eligible Programs shall not include:
25

1 (1) Any program for which a fixed or minimum level of expenditure is mandated by
2 state or federal law, to the extent of the fixed or minimum level of expenditure;

3 (2) Acquisition of any capital item not for primary and direct use of participants in
4 an Eligible Program;

5 (3) Acquisition (other than by lease for a term of years of ten years or less) of any
6 real property; or

7 (4) Maintenance, utilities or any similar operating costs of any facility not used
8 primarily and directly by participants in eligible programs, or a library, hospital, or any recreation or
9 park facility that is a zoo.

10 (e) Baseline. No Funds shall be expended in any fiscal year following a fiscal year in which
11 the amounts expended for Eligible Programs (not including appropriations from the Fund and
12 exclusive of expenditures mandated by state or federal law) is below the amount expended in the
13 Controller’s Baseline Budget, as adjusted in the manner provided in the following paragraph (the
14 “Base Amount”). All funds unexpended in accordance with the preceding sentence shall be held in the
15 Fund and may be expended in any future fiscal year in which other expenditures from the Fund may be
16 made.

17 The Base Amount shall be adjusted for each fiscal year after the base year by the Controller
18 based on calculations consistent from fiscal year to fiscal year by the percentage increase or decrease
19 in aggregate City discretionary revenues. In determining aggregate City discretionary revenue, the
20 Controller shall only include revenues received by the City that are unrestricted and may be used at the
21 option of the Mayor and the Board of Supervisors for any lawful City purpose. The method used by the
22 Controller to determine discretionary revenues shall be consistent with the method used by the
23 Controller to determine the Library and Children’s Fund baseline calculations, as provided in
24 Charter Section 16.108(g). Errors in the Controller’s estimate of discretionary revenues for a fiscal
25 year shall be corrected by an adjustment in the next year’s estimate. Within 90 days following the end

1 of each fiscal year, the Controller shall calculate and publish the actual amount of City expenditures
2 for programs that would have been eligible to be paid from the Fund but are paid from other sources,
3 separately identifying expenditures mandated by state or federal law.

4
5 **SEC. 576. OVERSIGHT COMMITTEE.**

6 (a) There is hereby established a Healthy Nutrition and Physical Activity Access Fund
7 Committee (“the Committee”) that shall consist of eleven members. Members shall serve at the
8 pleasure of their respective appointing authorities. Each member shall serve no more than three
9 consecutive two-year terms. The initial two-year term for each of the initial members shall commence
10 as of the date that seven members have been appointed, which is when the Committee may begin its
11 work. Notwithstanding the previous sentence, a quorum of the Committee shall be six members.
12 Absence from three consecutive regular meetings or four regular meetings during a fiscal year
13 constitutes resignation from the Committee.

14 (b) Members of the Committee shall be appointed as follows:

15 (1) Five members by the Board of Supervisors, two of whom shall be representatives
16 of different community-based groups focused on food access or nutrition education; two of whom shall
17 be representatives of different local medical institutions focused on chronic diseases linked to the
18 consumption of Sugar-Sweetened Beverages; one of whom shall be a parent from the San Francisco
19 Unified School District Parent Advisory Council;

20 (2) One member by the Food Security Task Force;

21 (3) One member by the San Francisco Youth Commission;

22 (4) One member by the San Francisco Unified School District, who shall be a
23 School District employee working in the area of Nutrition Services;

24 (5) One member by the Department of Public Health, who shall be a professional
25 employee in that Department;

1 (6) One member by the Department of Children, Youth, and their Families, who
2 shall be a professional employee in that Department; and

3 (7) One member by the Recreation and Park Department, who shall be a
4 professional employee in that Department.

5 (c) Members of the Committee shall serve without pay, but may be reimbursed for expenses
6 actually incurred. The City Administrator shall provide clerical assistance and support to the
7 Committee, and the Controller shall provide it with technical assistance. All City departments, boards,
8 and commissions shall reasonably assist and cooperate with the Committee.

9 (d) The Committee shall meet at least six times per fiscal year, except that during the fiscal
10 year ending June 30, 2015, it shall meet at least three times.

11 (e) The Committee shall advise and make recommendations to the Mayor, Board of
12 Supervisors, and City departments receiving monies from the Fund, on the use and expenditure of
13 monies from the Fund consistent with the findings, purpose, and goals stated in this Article 8.

14 (f) This Section 576 shall expire by operation of law on December 31, 2017 and the City
15 Attorney shall cause this section to be removed from this Code unless extended by the Board of
16 Supervisors by December 31, 2017.

17
18 **SEC. 577. ADMINISTRATION OF THE TAX; CONTROLLER'S REPORT**

19 (a) Except as otherwise provided under this Article, the Sugar-Sweetened Beverages Tax
20 shall be administered pursuant to Article 6 of the Business and Tax Regulations Code.

21 (b) The Controller shall file annually with the Board of Supervisors, within 90 days
22 following the end of each fiscal year, a report containing both of the following:

23 (1) The amount of funds collected and expended, and the allocation of expenditures
24 from the Fund, during the prior fiscal year.

1 (2) The status of any Eligible Program required or authorized to be funded under
2 this Article 8.

3 (3) Such other information as the Controller, in the Controller's sole discretion,
4 shall deem relevant to the operation of this Article 8.

5
6 **SEC. 578. AMENDMENT OF ARTICLE.**

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

9
10 **SEC. 579. SEVERABILITY.**

11 If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason
12 held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not
13 affect the validity of the remaining portions of the ordinance. The people of the City and County of
14 San Francisco hereby declare that they would have passed this ordinance and each and every section,
15 subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard
16 to whether any other portion of this ordinance would be subsequently declared invalid or
17 unconstitutional.

1 Section 3. Effective Date and Operative Date. The effective date of this ordinance
2 shall be ten days after the date the official vote count is declared by the Board of Supervisors.
3 This ordinance shall become operative on January 1, 2015.

4
5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 Carole F. Ruwart
9 Deputy City Attorney

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