

1 [Initiative Ordinance - Business and Tax Regulations Code - Tax on Sugar-Sweetened
2 Beverages to Fund Recreation 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 sugar-sweetened**
6 **beverages, to fund City-operated programs and grants for active recreation and**
7 **improving food access and nutrition, and San Francisco Unified School District**
8 **physical education, after school physical activity, health, or nutrition programs, and**
9 **school lunch and other school nutrition programs.**

10
11 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
12 voters of the City and County of San Francisco, at an election to be held on November 4,
13 2014:

14
15 **Ordinance amending the Business and Tax Regulations Code by adding a new**
16 **Article 8, imposing a tax of two cents per ounce on the distribution of sugar-sweetened**
17 **beverages, to fund City-operated programs and grants for active recreation and**
18 **improving food access and nutrition, and San Francisco Unified School District**
19 **physical education, after school physical activity, health, or nutrition programs, and**
20 **school lunch and other school nutrition programs.**

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

1
2 Be it ordained by the People of the City and County of San Francisco:
3

4 Section 1. Pursuant to Article XIIC of the Constitution of the State of California, this
5 ordinance shall be submitted to the qualified electors of the City and County of San Francisco,
6 at the November 4, 2014 consolidated general election.
7

8 Section 2. The Business and Tax Regulations Code is hereby amended by adding
9 Article 8, to read as follows:
10

11 **SEC. 550. SHORT TITLE.**

12 *This Article shall be known as the "Sugar-Sweetened Beverage Tax Ordinance."*
13

14 **SEC. 551. FINDINGS AND PURPOSE.**

15 *Calorically sweetened sugary beverages are significant contributors to diabetes, obesity,*
16 *cardiovascular disease, tooth decay, and other health problems.*

17 *A single 12-ounce can of soda contains eight to ten teaspoons of sugar, whereas the American*
18 *Heart Association recommends no more than nine teaspoons of refined sugar per day.*

19 *Calories from sugar-sweetened beverages provide no nutritional benefit, but they have a*
20 *deleterious effect on public health. During the regular consumption of sugar-sweetened beverages, fat*
21 *accumulates in the liver due to the process by which the sugar is absorbed. This leads to nonalcoholic*
22 *fatty liver disease (NAFLD), which is associated with obesity, diabetes, and cardiovascular disease.*

23 *Consumption of one or two sugar-sweetened beverages a day is associated with a 26 percent*
24 *increased risk of developing type 2 diabetes, as compared with occasional intake.*
25

1 More than one-third of Americans are pre-diabetic, meaning they have a higher than normal
2 blood sugar that is not classified as diabetes, but is high enough to lead to an increased risk of
3 developing type 2 diabetes, heart disease, and stroke.

4 As of 2010, nearly one-third (31.7%) of children and adolescents in San Francisco were either
5 obese or overweight. In 2011-2012, 41.8 percent of adults in San Francisco were either obese or
6 overweight, and 18 percent of three- to four- year-olds enrolled in San Francisco Head Start were
7 obese, with an additional 13 percent being overweight. Head Start serves children of low-income
8 families.

9 Minority and low-income families are more likely to be affected by obesity and diabetes. For
10 example, the Bayview-Hunters Point neighborhood, which has one of the highest African-American
11 populations in San Francisco, had more per capita emergency room visits due to diabetes between
12 2009-2011 than any other neighborhood in San Francisco.

13 Research shows that 41 percent of California children ages 2 to 11 and 62 percent of California
14 children ages 12 to 17 drink sugar-sweetened beverages daily, and for each sugar-sweetened beverage
15 that a child consumes a day, the likelihood of the child becoming obese increases by 60 percent.

16 Research shows one-half of the extra calories Americans have been consuming since the 1970s
17 could come from sugar-sweetened beverages, with the average American drinking nearly 50 gallons of
18 sugar-sweetened beverages a year.

19 The total national cost of diabetes in 2007 was \$174 billion. Research shows that lifestyle
20 interventions are more cost-effective than medications in preventing or delaying type 2 diabetes.

21 Assessing a tax on sugar-sweetened beverages is intended to help address the high levels of
22 obesity, type 2 diabetes, and other diseases by reducing consumption and providing a revenue stream
23 for City-directed and grant-funded physical activity and nutrition programs in schools, parks,
24 community centers, and elsewhere.

1 **SEC. 552. DEFINITIONS.**

2 Unless otherwise defined in this Article, terms that are defined in Article 6 of the Business and
3 Tax Regulations Code shall have the meanings provided therein.

4 “Active Recreation Programs” are programs where participants are able to engage in exercise
5 or physical activity.

6 “Beverage Container” means a closed or sealed container regardless of size or shape,
7 including, without limitation, those made of glass, metal, paper, plastic, or any other material or
8 combination of materials.

9 “Beverage Dispensing Machine” means a device that mixes Concentrate with any one or more
10 other ingredients and dispenses the resulting mixture into an open container as a ready-to-drink
11 beverage.

12 “Bottled Sugar-Sweetened Beverage” means a Sugar-Sweetened Beverage contained in a
13 Beverage Container.

14 “Caloric Substance” means a substance that adds calories to the diet of a person who
15 consumers that substance.

16 “Caloric Sweetener” means any Caloric Substance suitable for human consumption that
17 humans perceive as sweet and includes, without limitation, sucrose, fructose, including high fructose
18 corn sweetener, glucose, other sugars, and fruit juice concentrates.

19 “Caloric” means a substance that adds calories to the diet of a person who consumes that
20 substance.

21 “City” means the City and County of San Francisco.

22 “Concentrate” means a Syrup, Powder, or Base Product that is used for mixing, compounding,
23 or making Beverages in a Beverage Dispensing Machine. Notwithstanding the foregoing sentence,

24 “Concentrate” does not include any of the following:

25 (a) Any product that is solely used in preparing coffee or tea.

1 **(b) Any product for consumption by infants and which is commonly referred to as “infant**
2 **formula” or any product whose purpose is infant rehydration.**

3 **(c) Any product for use for weight reduction.**

4 **(d) Milk.**

5 **(e) Any syrup, powder, or base product to which only water is added to produce a beverage**
6 **containing more than 50 percent Natural Fruit Juice, more than 50 percent Natural Vegetable Juice, or**
7 **more than 50 percent combined Natural Fruit Juice and Natural Vegetable Juice.**

8 **(f) Any product that is sold and is intended to be used for the purpose of an individual**
9 **consumer mixing a Sugar-Sweetened Beverage.**

10 **(g) Medical Food.**

11 **“Consumer” means a person who purchases a Bottled Sugar-Sweetened Beverage, Sugar-**
12 **Sweetened Beverages, or Concentrate for a purpose other than resale in the ordinary course of**
13 **business.**

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

16 **“Distribution” includes:**

17 **(a) The sale of Bottled Sugar-Sweetened Beverages or Concentrate to a Retailer or another**
18 **Distributor.**

19 **(b) The receipt of untaxed Bottled Sugar-Sweetened Beverages or Concentrate from an**
20 **unregistered Distributor by a Retailer or another Distributor.**

21 **(c) The retail sale of untaxed Bottled Sugar-Sweetened Beverages, Sugar-Sweetened**
22 **Beverages, or Concentrate.**

23 **(d) The use or consumption of untaxed Bottled Sugar-Sweetened Beverages or Concentrate**
24 **by a Distributor or Retailer. For purposes of this paragraph (d), “use or consumption” includes the**
25 **exercise of any right or power over Bottled Sugar-Sweetened Beverages or Concentrate incident to the**

1 ownership thereof, except that it does not include the sale of such beverages or Concentrate, or the
2 keeping or retention thereof by a Distributor or Retailer for the purpose of sale.

3 “Distributor” means any person who makes a Distribution of Bottled Sugar-Sweetened
4 Beverages, Sugar-Sweetened Beverages, or Concentrate, whether or not that person is also a Retailer.

5 “Eligible Programs” means City-operated programs and City grants for active recreation
6 and/or improving food access and nutrition, and San Francisco Unified School District physical
7 education, after school physical activity, health, or nutrition programs, school lunch, and other school
8 nutrition programs, and shall include only:

9 (a) Active recreation programs and programs that support active recreation, including,
10 without limitation, in-school and after-school programs;

11 (b) School lunches and other school nutrition programs; and

12 (c) Programs that improve food and nutrition access and support food nutrition.

13 “Fund” is the Active Recreation, Nutrition and Public Health Fund described in Section 553.

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

16 “Milk” means natural liquid milk, regardless of animal source or butterfat content, natural milk
17 concentrate, whether or not reconstituted, regardless of animal source, plant source, or butterfat
18 content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source,
19 plant source, or butterfat content.

20 “Natural Fruit Juice” means the original liquid resulting from the pressing of fruit, the liquid
21 resulting from the reconstitution of natural fruit juice concentrate, or the liquid resulting from the
22 restoration of water to dehydrated natural fruit juice.

23 “Natural Vegetable Juice” means the original liquid resulting from the pressing of vegetables,
24 the liquid resulting from the reconstitution of natural vegetable juice concentrate, or the liquid
25 resulting from the restoration of water to dehydrated natural vegetable juice.

1 “Nonalcoholic Beverage” means any beverage that is not subject to tax under Part 14
2 (commencing with Section 32001) of the California Revenue and Taxation Code.

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

7 “Retail Sale” means the sale of Sugar-Sweetened Beverages to a Consumer.

8 “Retailer” means any person who sells Sugar-Sweetened Beverages to a Consumer, whether or
9 not that person is also a Distributor.

10 “Sale” means the transfer of title or possession for consideration in any manner or by any
11 means whatsoever.

12 “Simple Syrup” means a mixture of sugar and water.

13 “Sugar-Sweetened Beverage” means any nonalcoholic beverage sold for human consumption
14 that has added Caloric Sweeteners and contains more than 25 calories per 12 ounces of beverage.
15 Notwithstanding the foregoing sentence, “Sugar-Sweetened Beverage” does not include any of the
16 following:

17 (a) Any product sold in liquid form for consumption by infants, which is commonly referred
18 to as “infant formula” or any product whose purpose is infant rehydration.

19 (b) Any product sold in liquid form for use for weight reduction.

20 (c) Milk.

21 (d) Medical Food.

22 (e) Any beverage containing 50 percent or more of Natural Fruit Juice, Natural Vegetable
23 Juice, or combined Natural Fruit Juice and Natural Vegetable Juice.

24 “Sugar-Sweetened Beverage Tax” is the tax imposed under Section 553.

25

1 “Syrup” means the liquid mixture of ingredients used in making, mixing, or compounding
2 Sugar-Sweetened Beverages using one or more ingredients, including, without limitation, water, ice, a
3 powder, Simple Syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

4 “Tax” is the Sugar-Sweetened Beverage Tax.

5
6 **SEC. 553. IMPOSITION OF TAX; DEPOSIT OF PROCEEDS.**

7 (a) For the privilege of making the first Distribution in the City of Bottled Sugar-Sweetened
8 Beverages, Sugar-Sweetened Beverages, or Concentrate, the City imposes on every Distributor an
9 annual Sugar-Sweetened Beverage Tax. The City intends to levy the Tax only on the first Distribution
10 in the City. The Treasurer-Tax Collector is authorized and directed to adopt such rules, regulations,
11 and interpretations to ensure that the City’s collection of the Tax is consistent with this policy.

12 (b) The Tax shall be calculated as follows:

13 (1) Two cents (\$0.02) per fluid ounce of Bottled Sugar-Sweetened Beverage
14 distributed in the City.

15 (2) Two cents (\$0.02) per fluid ounce of Sugar-Sweetened Beverage distributed in
16 the City.

17 (3) Two cents (\$0.02) per fluid ounce of Sugar-Sweetened Beverages that could be
18 produced from Concentrate distributed in the City. For purposes of calculating the Tax for
19 Concentrate, the Tax shall be calculated using the largest volume of Sugar-Sweetened Beverage that
20 could result from the use of the Concentrate according to any manufacturer’s instructions.

21 (c) All monies collected pursuant to the Sugar-Sweetened Beverage Tax shall be deposited
22 to the credit of the Active Recreation, Nutrition and Public Health Fund. The Fund shall be maintained
23 separate and apart from all other City and County funds and shall be appropriated by annual or
24 supplemental appropriation.

1 **SEC. 554. REGISTRATION OF DISTRIBUTORS AND RETAILERS; DOCUMENTATION.**

2 *(a) Each Distributor and Retailer shall register with the Tax Collector.*

3 *(b) Each Distributor and Retailer shall include the following information on each receipt,*
4 *invoice, or other form of accounting for the distribution of Bottled Sugar-Sweetened Beverages or*
5 *Concentrate:*

6 *(1) The name and address of the Distributor;*

7 *(2) The name and address of the purchaser;*

8 *(3) The date of sale and invoice number;*

9 *(4) The kind, quantity, size, and capacity of packages of Bottled Sugar-Sweetened*
10 *Beverages, Sugar-Sweetened Beverages, or Concentrate sold;*

11 *(5) The amount of Sugar-Sweetened Beverage Tax due from the Distributor or*
12 *Retailer on the sale of Bottled Sugar-Sweetened Beverages, Sugar-Sweetened Beverages, or*
13 *Concentrate; and*

14 *(6) Any other information required by the Tax Collector.*

15 *(c) Every Distributor and Retailer shall keep and preserve all such records as the Tax*
16 *Collector may require for the purpose of ascertaining and determining compliance under this Article 8.*

17
18 **SEC. 555. EXEMPTIONS.**

19 *[Reserved.]*

20
21 **SECTIONS 556-559.**

22 *[Reserved]*

1 **SEC. 560 EXPENDITURE OF PROCEEDS.**

2 (a) Monies in the Fund shall be used exclusively for the purposes specified in this Article 8.
3 Subject to the budgetary and fiscal provisions of the City Charter, monies in the Fund shall be
4 appropriated on an annual basis to the following departments and used solely for the following
5 purposes:

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

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

9 (3) Funding of Eligible Programs that are "New Programs," as defined in this
10 Section 560, in the following proportions:

11 (A) One-third to the Recreation and Park Department for active recreation
12 programs; provided, further, that up to ten percent of this one-third may be allocated by the Recreation
13 and Park Department to community-based organizations for active recreation programs;

14 (B) One-third to the San Francisco Unified School District for physical
15 education, after school physical activity, health, or nutrition programs, school lunches, and other
16 school nutrition programs; provided, further, that monies allocated under this subsection shall not be
17 counted toward meeting the funding requirements imposed by The Arts, Music, Sports, and Pre-School
18 for Every Child Amendment of 2003 (Charter Sec. 16.123-1 et seq.); and

19 (C) One-third to be divided in any proportion between the Department of
20 Public Health, for physical activity programs and programs that improve food nutrition and food
21 access, and the Department of Children, Youth & Their Families, for programs that support active
22 recreation and food nutrition.

23 Should any of the above entities cease to exist, or if Eligible Programs are transferred from any
24 of these to another department or agency, then the Mayor and the Board of Supervisors are authorized
25 to expend the proceeds of this Tax to any agency or entity that is a successor to that department or

1 agency and that operates Eligible Programs, or to an agency or entity to which those Eligible
2 Programs are transferred, for expenditures that would otherwise be authorized under this ordinance.

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

7 (c) Goals. The goals of expenditures from the Fund shall be to:

8 (1) Promote active recreation, health, nutrition, and food access programs among
9 all San Francisco residents; and

10 (2) Improve physical activity, health, and nutrition programs in the San Francisco
11 Unified School District.

12 Special consideration for expenditures from the Fund shall be given to communities that are
13 disproportionately affected by diseases related to Sugar-Sweetened Beverage consumption, including
14 obesity, diabetes, and coronary disease, as measured by the most recent data available to the
15 Department of Public Health.

16 (d) New Programs. Except as otherwise specified in this Article 8, the Fund shall be used
17 exclusively to increase the aggregate City appropriations and expenditures for those programs that are
18 eligible to be paid from the Fund (exclusive of expenditures mandated by state or federal law). To this
19 end, monies in the Fund shall be used exclusively to fund Eligible Programs above and beyond the
20 expenditures made for Eligible Programs under the Controller's Baseline Budget ("New Programs").
21 Monies from the Fund shall not be appropriated or expended to replace levels of expenditures that are
22 included in the Controller's Baseline Budget, whether or not the cost of such Eligible Programs
23 increases. Nor shall monies from the Fund be appropriated or expended for services that substitute for
24 or replace services included or partially included in the Controller's Baseline Budget, except and
25

1 solely to the extent that the City ceases to receive federal, state or private agency funds that the funding
2 agency required to be spent only on those Eligible Programs.

3 Notwithstanding the preceding paragraph, programs eligible for Fund assistance (“excluded
4 programs”) shall not include:

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

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

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

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

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

21 The Base Amount shall be adjusted for each fiscal year after the base year by the Controller
22 based on calculations consistent from fiscal year to fiscal year by the percentage increase or decrease
23 in aggregate City discretionary revenues. In determining aggregate City discretionary revenue, the
24 Controller shall only include revenues received by the City that are unrestricted and may be used at the
25 option of the Mayor and the Board of Supervisors for any lawful City purpose. The method used by the

1 Controller to determine discretionary revenues shall be consistent with the method used by the
2 Controller to determine the Library and Children’s Fund baseline calculations, as provided in Charter
3 Section 16.108(g). Errors in the Controller’s estimate of discretionary revenues for a fiscal year shall
4 be corrected by an adjustment in the next year’s estimate. Within 90 days following the end of each
5 fiscal year, the Controller shall calculate and publish the actual amount of City expenditures for
6 programs that would have been eligible to be paid from the Fund but are paid from other sources,
7 separately identifying expenditures mandated by state or federal law.

8
9 **SEC. 561. OVERSIGHT COMMITTEE.**

10 (a) There is hereby established an Active Recreation and Nutrition Oversight Committee
11 (“the Committee”) that shall consist of nine members, each appointed by the Board of Supervisors to a
12 three-year term, to serve at the pleasure of the Board of Supervisors. The three-year term for each
13 member shall commence as of the date that five members are appointed to the Committee, which is
14 when the Committee may begin its work.

15 (b) Membership of the Committee shall be comprised as follows:

16 (1) At least one member of the Committee shall be a parent.

17 (2) At least one member of the Committee shall be under the age of 18 at the time of
18 appointment.

19 (3) At least one member of the Committee shall reside in a district that is
20 disproportionately affected by obesity or diabetes, as measured by the most recent data available to the
21 Department of Health.

22 (4) For each of the following areas, there shall be at least one Committee member
23 with professional and/or volunteer expertise in that area: parks and recreation, school nutrition,
24 public health, working with vulnerable populations, and physical education.

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

5 (d) The Committee shall meet at least once per quarter.

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

9
10 **SEC. 562. ADMINISTRATION OF THE TAX; CONTROLLER'S REPORT.**

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

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

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

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

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

21
22 **SEC. 563. AMENDMENT OF ARTICLE.**

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

1 **SEC. 564. SEVERABILITY.**

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

9
10 Section 3. Effective Date and Operative Date. The effective date of this ordinance
11 shall be ten days after the date the official vote count is declared by the Board of Supervisors.
12 This ordinance shall become operative on January 1, 2015.

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: _____
17 Carole F. Ruwart
18 Deputy City Attorney

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