

BOARD of SUPERVISORS



City Hall

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## MEMORANDUM

TO: Regina Dick-Endrizzi, Director  
**Small Business Commission, City Hall, Room 448**

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

DATE: September 18, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Public Safety and Neighborhood Services Committee

The Board of Supervisors' Public Safety and Neighborhood Services Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File No. 190929**

**Ordinance amending the Health Code by amending the Sugar-Sweetened Beverage Warning Ordinance to update the statement of findings and purpose; revise the definition of Advertiser; reduce the required warning size; modify the required warning text; and revise the enforcement provisions.**

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102.

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**RESPONSE FROM SMALL BUSINESS COMMISSION - Date:** \_\_\_\_\_

**No Comment**

**Recommendation Attached**

**Chairperson, Small Business Commission**

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

2

3 **Ordinance amending the Health Code by amending the Sugar-Sweetened Beverage**  
4 **Warning Ordinance to update the statement of findings and purpose; revise the**  
5 **definition of Advertiser; reduce the required warning size; modify the required warning**  
6 **text; and revise the enforcement provisions.**

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

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

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

17 **SEC. 4201. FINDINGS AND PURPOSE.**

18 Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of  
19 serious health problems including, but not limited to: weight gain, obesity, coronary heart  
20 disease, type 2 diabetes, tooth decay, and other health problems. According to the U.S.  
21 Department of Agriculture's 2015-2020 Dietary Guidelines for Americans promulgated by the  
22 Secretaries of Health and Human Services and Agriculture pursuant to congressional command every  
23 five years (USDA Dietary Guidelines), a healthy eating pattern limits added sugars to no more than  
24 10% of total energy intake per day. The American population consumes added sugars in excess of this  
25 recommended limit. Added sugar accounts for about 13% of calories per day in the U.S. population,  
and SSBs are Americans' single largest source of added sugar. SSBs account for 39% of all added  
sugar intake, with 25% attributable to soda consumption alone. A single-serving 20-ounce soda bottle

1 exceeds the recommended daily allowance of added sugars, as does even a 12-ounce can of soda for  
2 children.

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

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

10 SSB consumption is particularly high among African-Americans, Hispanics, and low-income  
11 individuals—groups that also experience disproportionately high prevalence of obesity, and obesity-  
12 related chronic diseases. In San Francisco, 46.4% of adults are obese or overweight, including 61.7%  
13 of Hispanics and 51.3% of African Americans. The local health impact of type 2 diabetes falls  
14 disproportionately upon minorities and less fortunate populations. For instance, hospitalization rates  
15 for uncontrolled type 2 diabetes and its consequences are four to eight times higher in minority  
16 communities and communities with lower educational attainment. And deaths attributable to type 2  
17 diabetes in San Francisco are five times higher among African Americans.

18 Calories from SSBs tend to increase with age in childhood, with survey data showing that  
19 children ages 2-5, 6-11, and 12-19 years consume 2, 5, and 12 ounces per day respectively. Based on  
20 another analysis, 5% of young children, 16% of adolescents, and 20% of young adults consume more  
21 than 500 calories per day from soda (equivalent to 40 ounces). Among boys under 19, 70% drink SSBs  
22 daily, and 16% of adolescents and 20% of young adults consume more than 500 calories of soda per  
23 day (the equivalent of two 20-oz single-serving bottles). A 2011 report measured obesity rates among  
24 5th, 7th and 9th graders and found that 32% of San Francisco youth were overweight or obese.

1        In addition, the causal link between added dietary sugars, particularly from SSBs, and tooth  
2        decay is well established. Tooth decay is the single most common chronic disease of childhood in the  
3        United States, and can lead to pain, infection, and tooth loss. In recent years, 35% of San Francisco  
4        Unified School District kindergartners experienced caries, and 22% had untreated tooth decay.

5        Minority children in San Francisco experience higher rates of both obesity and dental caries.  
6        By fifth grade, 50% of Black/African American residents are overweight or obese, as compared to 25%  
7        of White residents. And 40% of Black/African American children have experienced cavities by  
8        kindergarten, as compared to 17% of White children the same age.

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

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

23        Sugar sweetened sodas, and fruit drinks containing less than 100% juice by volume, are  
24        major sources of added sugars in American diets, contributing an average of 10.58 teaspoons of added  
25        sugars each day. The American Heart Association recommends that adult women consume no more

1 than six teaspoons of added sugars daily, that adult men consume no more than nine teaspoons daily,  
2 and that children ages 4-8 years old consume no more than three teaspoons daily. However, most  
3 Americans consume more than 19.6 teaspoons of added sugars per day. Even regular, moderate  
4 consumption of sugary drinks (one 12 ounce can a day) increases the risk of cardiovascular disease  
5 mortality by nearly one third.

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

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

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

22 —The World Health Organization recommends that not more than 10% of calories be from  
23 added sugars, and the Institute of Medicine (U.S.) recommends not more than 25%. Medical research  
24 has shown that for over 70% of adults, 10% or more of calories is from added sugars, and for  
25 approximately 10% of adults, 25% or more of calories is from added sugars, and that the risk of

1 mortality from cardiovascular disease increased exponentially with an increase in the percentage of  
2 calories from added sugars. The 2015 USDA Report concludes that even though an appropriate pattern  
3 of consumption of added sugars for most people is 4% to 6% of total calories, the mean intake of total  
4 calories from the consumption of added sugars in the U.S. population is 13%, and from 15% to 17% for  
5 children 9 years of age and older, adolescents, and young adults, and the evidence shows that when  
6 added sugars in foods exceed 3% to 9% of total calories, a healthful food pattern may be difficult to  
7 achieve.

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

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

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

23 —For adults in San Francisco, approximately 29% of Caucasians, 50% of Latinos, 29% of  
24 Asians, and 43% of African Americans consume one or more sodas each day. Of 9th graders in San  
25 Francisco, approximately 31% of Caucasians, 48% of Latinos, 31% of Asians, and 58% of African

1 Americans consume one or more sodas each day. On average, children consumed 11.96 teaspoons of  
2 added sugars from sodas and fruit drinks per day—47% of their total intake of added sugars. A single  
3 12-ounce can of soda contains eight to ten teaspoons of sugar, and typical container sizes of popular  
4 sugary drinks marketed to children far exceed the American Heart Association's recommended daily  
5 amounts.

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

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

1 *Franciscans make a more informed choice about the consumption of drinks that are a primary source*  
2 *of added dietary sugar.*

3 **SEC. 4202. DEFINITIONS.**

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

15 "Base Product" means the same as Powder.

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

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

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

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

1        "Concentrate" means a Syrup, Powder, or Base Product that is used for mixing,  
2 compounding, or making Sugar-Sweetened Beverages in a Beverage Dispensing Machine.

3        Notwithstanding the foregoing sentence, "Concentrate" does not include the following:

- 4                (a) Any product that is designed to be used primarily to prepare coffee or tea.
- 5                (b) Any product that is sold and is intended to be used for the purpose of an  
individual consumer mixing, compounding, or making a Sugar-Sweetened Beverage.
- 6                (c) Any product sold for consumption by infants, which is commonly referred to  
as "infant formula," or any product whose purpose is infant rehydration.
- 7                (d) Medical Food.
- 8                (e) Any product designed as supplemental, meal replacement, or sole-source  
nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals.

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

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

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

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

20        "Natural Vegetable Juice" means the original liquid resulting from the pressing of  
21 vegetables, the liquid resulting from the complete reconstitution of natural vegetable juice  
22

1 concentrate, or the liquid resulting from the complete restoration of water to dehydrated  
2 natural vegetable juice.

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

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

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

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

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

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

23 (a) Any advertisement that is in any newspaper, magazine, periodical,  
24 advertisement circular, or other publication, or on television, the internet, or other electronic  
25 media;

- (b) Containers or packages for Sugar-Sweetened Beverages;
- (c) Any menus or handwritten listings or representations of foods and/or beverages that may be served or ordered for consumption in a Retailer's establishment;
- (d) Any display or representation of or other information about, a sSugar-sSweetened bBeverage, including, without limitation, any logo, on a vehicle, if the vehicle is being used by any Person who is in the business of manufacturing, distributing, or selling the sSugar-sSweetened bBeverage in the performance of such business;
- (e) Any logo that occupies an area that is less than 36 square inches and is unaccompanied by any other display, representation, or other information identifying, promoting, or marketing a sSugar-sSweetened bBeverage; or
- (f) Any shelf tag or shelf label that states the retail price, order code, description, or size of a product for sale.

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

- (a) Milk.
- (b) Milk alternatives, including but not limited to non-dairy creamers or beverages primarily consisting of plant-based ingredients (e.g., soy, rice, or almond milk products), regardless of sugar content.
- (c) Any beverage that contains solely 100% Natural Fruit Juice, Natural Vegetable Juice, or combined Natural Fruit Juice and Natural Vegetable Juice.
- (d) Any product sold for consumption by infants, which is commonly referred to as "infant formula," or any product whose purpose is infant rehydration.

- (e) Medical Food.
- (f) Any product designed as supplemental, meal replacement, or sole-source nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals.
- (g) Any product sold in liquid form designed for use as an oral nutritional therapy for persons who may have a limited ability to absorb or metabolize dietary nutrients from traditional food or beverages.
- (h) Any product sold in liquid form designed for use for weight reduction.

"Syrup" means the liquid mixture of ingredients used in making, mixing, or

compounding Sugar-Sweetened Beverages using one or more ingredients, including, without limitation, water, ice, a Base Product, Powder, Simple Syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or other gas.

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

(a) *Commencing on the operative date of this Division I (Ordinance No. 100-15) (the "Operative Date"), which is one year after the effective date of this Division, Beginning on the operative date of the ordinance in File No. 190929 amending Sections 4201-4204, any Advertiser who posts an SSB Ad, or causes an SSB Ad to be posted, in San Francisco shall place on the SSB Ad the following warning, including as amended in accordance with Subsection 4203(c) below (the "Warning"):*

"SAN FRANCISCO GOVERNMENT WARNING: Drinking beverages with added sugar(s) may contribute to obesity, type 2 diabetes, and tooth decay. ~~This is a message from the City and County of San Francisco.~~"

Any SSB Ad not expressly exempt from this requirement under Section 4203(d) must meet this requirement, whether or not the SSB Ad was posted prior to the operative date of the ordinance in File No. 190929 amending Sections 4201-4204.

(b) All the letters in the Warning shall appear in conspicuous and legible type in contrast by typography, layout, or color with all other printed material in the SSB Ad. The words "SAN FRANCISCO GOVERNMENT WARNING" shall appear in capital letters. The Warning shall be enclosed in a rectangular border within the printed advertisement that is the same color as the letters of the Warning and that is the width of the first downstroke of the capital "W" of the word "WARNING." The Warning shall occupy at least 2010% of the area of each SSB Ad and the text shall be printed in a size and manner so as to be clearly legible to the intended viewers of the SSB Ad. The text of the Warning shall be positioned such that the Warning and the other information on the SSB Ad have the same orientation, such that text in the SSB Ad and the Warning are read in the same direction (for example, left to right, or bottom to top). The Warning shall be indelibly printed on or permanently affixed to each SSB Ad.

(c) *The Director may by regulation, following a publicly noticed hearing, modify the Warning in any of the following ways: (1) change the text of the Warning based on available medical or scientific information regarding the health impact of Sugar-Sweetened Beverages; (2) set, and later modify in the Director's discretion, the size of the text of the Warning within the 2010% area specified in Subsection 4203(b) to ensure the Warning is clear, legible, and conspicuous; or (3) modify the minimum area of SSB Ads that the Warning must occupy to improve or ensure the effectiveness of the Warning. Any such regulations adopted by the Director shall not be effective before one year after the date of the adoption of the regulation. In addition, the Director may, after a publicly noticed hearing, adopt other rules and regulations for the implementation of this Division I. The Director may also issue guidelines pertaining to implementation.*

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

(1) any business sign, ~~excluding any general advertising sign unless it satisfies (2) below~~, permitted by the City on or before October 20, 2015January 1, 2020;

(2) any general advertising sign permitted by the City before the *Operative Date*~~operative date of the ordinance in File No. 190929 amending Sections 4201-4204~~ that includes an SSB Ad, if the SSB Ad has not been substantially changed for a period of 50 or more years before *that Operative Date* and the Advertiser provides the Director, on the Director's request, records or other information that substantiates the SSB Ad has not been substantially changed over the 50-year period; or

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

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

#### **SEC. 4204. PENALTIES AND ENFORCEMENT.**

(a) The Director may assess and collect administrative penalties from an Advertiser for any violation of the provisions of this Division I. The Director may assess an administrative penalty not exceeding \$250 for a first violation; not exceeding \$500 for the second violation within a 12-month period; and not exceeding \$1,000 for the third and each subsequent violation within a 12-month period.

(b) Before imposing an administrative penalty, the Director must serve upon the Advertiser a notice of determination. The notice of determination shall include both the proposed administrative

1 penalty and the alleged acts or failures to act that constitute the basis for the administrative penalty.  
2 The notice of determination shall inform the Advertiser that it has the right to request administrative  
3 review of the notice of determination within 15 days of the date of the notice. Each date on which the  
4 Director generates a notice of determination documenting a violation shall constitute a separate  
5 violation for purposes of administrative penalties.

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

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

20 (e) No later than 30 days following the hearing specified in subsection (d) above, the Director  
21 shall serve written notice of the Director's decision ("Decision") on the Advertiser. If the Decision is  
22 that the Advertiser must pay an administrative penalty, the Decision shall state that the recipient has 10  
23 days in which to pay the administrative penalty. Any administrative penalty assessed and received in  
24 an action brought under this Article shall be paid to the Treasurer of the City and County of San  
25 Francisco.

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

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

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

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

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

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

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

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

14  
15           Section 2. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
17 numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the  
18 Municipal Code that are explicitly shown in this ordinance as additions, deletions, Board  
19 amendment additions, and Board amendment deletions in accordance with the "Note" that  
20 appears under the official title of the ordinance.

21  
22           Section 3. Undertaking for the General Welfare. In enacting and implementing this  
23 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
24 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
25

1 is liable in money damages to any person who claims that such breach proximately caused  
2 injury.

3  
4       Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word  
5 of this ordinance, or any application thereof to any person or circumstance, is held to be  
6 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision  
7 shall not affect the validity of the remaining portions or applications of the ordinance. The  
8 Board of Supervisors hereby declares that it would have passed this ordinance and each and  
9 every section, subsection, sentence, clause, phrase, and word not declared invalid or  
10 unconstitutional without regard to whether any other portion of this ordinance or application  
11 thereof would be subsequently declared invalid or unconstitutional.

12  
13       Section 5. No Conflict with Federal or State Law. Nothing in this ordinance shall be  
14 interpreted or applied so as to create any requirement, power, or duty in conflict with any  
15 federal or state law.

16  
17       Section 6. Effective and Operative Dates. This ordinance shall become effective 30  
18 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor  
19 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,  
20 or the Board of Supervisors overrides the Mayor's veto of the ordinance. Other than where  
21 specifically noted, this ordinance shall become operative one year from its effective date.

22 APPROVED AS TO FORM:  
23 DENNIS J. HERRERA, City Attorney

24 By:   
25 NEHA GUPTA  
Deputy City Attorney  
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## LEGISLATIVE DIGEST

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

**Ordinance amending the Health Code by amending the Sugar-Sweetened Beverage Warning Ordinance to update the statement of findings and purpose; revise the definition of Advertiser; reduce the required warning size; modify the required warning text; and 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. In a separate concurring

opinion, two judges expressed the view that the warning should refer specifically to type 2 diabetes (because the evidence does not show an association between SSB consumption and type 1 diabetes), and that the phrase “may contribute,” rather than “contributes,” would better reflect the City’s understanding that not every consumer of SSBs will become obese or suffer from tooth decay or type 2 diabetes. 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) may contribute to obesity, type 2 diabetes, and tooth decay.” These modifications reduce the number of words in the required warning, and make the additional changes in light of the concurring opinion referred to above. And fifth, 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.

These proposed amendments would become operative one year from the ordinance’s effective date.

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**Introduction Form** RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

By a Member of the Board of Supervisors or Mayor

2019 SEP 10 PM 3:45 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:

Health Code - Modified Sugar Sweetened Beverage Warning for Advertisements

The text is listed:

Ordinance amending Health Code to 1) revise findings and purpose; 2) amend definition of Advertiser; 3) reduce required warning size; 4) modify required warning text; and 5) revise enforcement provisions.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only