

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

2
3 **Ordinance amending the Health Code to require advertisements for sugar-sweetened**
4 **beverages to include a warning about the harmful health effects of consuming such**
5 **beverages; and authorizing the Director of Health to impose penalties for**
6 **noncompliance.**

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. The Health Code is hereby amended by adding Article 42, Division I,
16 consisting of Sections 4200 through 4206, to read as follows:

17 **ARTICLE 42: SUGAR-SWEETENED BEVERAGES**

18 **DIVISION I: Sugar-Sweetened Beverage Warning Ordinance**

19 **SEC. 4200. TITLE.**

20 *Division I of this Article 42 shall be known as the “Sugar-Sweetened Beverage Warning*
21 *Ordinance.”*

22 **SEC. 4201. FINDINGS AND PURPOSE.**

23 *Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of serious*
24 *health problems including, but not limited to: weight gain, obesity, coronary heart disease, diabetes,*
25 *tooth decay, and other health problems. Scientific evidence shows that underlying these chronic health*
problems is metabolic syndrome (MetS). MetS is characterized by changes in a body’s normal

1 biochemistry that can lead to obesity, insulin resistance, hypertension, dyslipidemia (high cholesterol),
2 and visceral fat. SSBs are linked to excess weight and obesity, which are putting more Americans on
3 the path to MetS. Heavy added sugar consumption may itself be a direct cause of MetS by increasing
4 the risk for hypertension, dyslipidemia, and visceral fat. While most people with MetS are obese,
5 normal-weight individuals can acquire the syndrome as well, given poor dietary habits. Heavy
6 consumption of sugary drinks has been linked to MetS through a variety of biological pathways, and is
7 therefore a risk factor in chronic disease.

8 The consumption of soft drinks, according to the American Dental Association, has displaced
9 nutritious beverages and foods from the diet. According to the American Heart Association, for the
10 American diet, soft drinks and other sugar-sweetened beverages are the primary source of added
11 sugar. According to the first print (February 2015) of the United States Department of Agriculture’s
12 Scientific Report of the 2015 Dietary Guidelines Advisory Committee (the “2015 USDA Report”),
13 although added sugars provide calories, they do not provide other nutrients.

14 Sugar-sweetened sodas, and fruit drinks containing less than 100% juice by volume, are major
15 sources of added sugars in American diets, contributing an average of 10.58 teaspoons of added sugars
16 each day. The American Heart Association recommends that adult women consume no more than six
17 teaspoons of added sugars daily, that adult men consume no more than nine teaspoons daily, and that
18 children ages 4-8 years old consume no more than three teaspoons daily. However, most Americans
19 consume more than 19.6 teaspoons of added sugars per day. Even regular, moderate consumption of
20 sugary drinks (one 12-ounce can a day) increases the risk of cardiovascular disease mortality by nearly
21 one-third.

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

1 Obese children are more likely to become obese adults, further increasing their risks for higher rates of
2 type 2 diabetes, heart disease, and some cancers later in life. Profound mental health and quality of
3 life impacts are seen in children with severe obesity. Obese children are more prone to low self-
4 esteem, negative body image, and depression. As of 2010, nearly one-third of children and adolescents
5 in San Francisco were either obese or overweight. Among adults, consumption of SSBs is associated
6 with a risk of weight gain and obesity, cardiovascular disease, a significantly higher risk of stroke, high
7 blood pressure, type 2 diabetes, dental erosion, and the risk of pancreatic cancer. The 2015 USDA
8 Report concludes that the consumption of added sugars negatively impacts obesity, type 2 diabetes,
9 cardiovascular diseases and dental caries, and “strong evidence supports reducing added sugar intake
10 to reduce health risks.” (See also, USDA, Report of the Dietary Guidelines Advisory Committee on
11 Dietary Guidelines for Americans, 2010.) In 2011-2012, 41.8% of adults in San Francisco were either
12 obese or overweight.

13 The World Health Organization recommends that not more than 10% of calories be from added
14 sugars, and the Institute of Medicine (U.S.) recommends not more than 25%. Medical research has
15 shown that for over 70% of adults, 10% or more of calories is from added sugars, and for
16 approximately 10% of adults, 25% or more of calories is from added sugars, and that the risk of
17 mortality from cardiovascular disease increased exponentially with an increase in the percentage of
18 calories from added sugars. The 2015 USDA Report concludes that even though an appropriate
19 pattern of consumption of added sugars for most people is 4% to 6% of total calories, the mean intake
20 of total calories from the consumption of added sugars in the U.S. population is 13%, and from 15% to
21 17% for children 9 years of age and older, adolescents, and young adults, and the evidence shows that
22 when added sugars in foods exceed 3% to 9% of total calories, a healthful food pattern may be difficult
23 to achieve.

24 Low-income families are more likely to be affected by obesity and diabetes. For example, the
25 Bayview-Hunters Point neighborhood had more per capita emergency room visits due to diabetes

1 between 2009 and 2011 than any other neighborhood in San Francisco. Eighteen percent of three- to
2 four-year-olds enrolled in San Francisco Head Start were obese, with an additional 13% being
3 overweight. Head Start serves children of low-income families.

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

9 The annual cost of being overweight and obese to California families, employers, the health
10 care industry, and the government is estimated to be \$21 billion. The San Francisco Budget and
11 Legislative Analyst estimates that up to \$61.8 million in costs incurred by San Franciscans with obesity
12 and diabetes are attributable to sugary beverage consumption. The total national cost of diabetes in
13 2007 was \$174 billion.

14 For adults in San Francisco, approximately 29% of Caucasians, 50% of Latinos, 29% of
15 Asians, and 43% of African Americans consume one or more sodas each day. Of 9th graders in San
16 Francisco, approximately 31% of Caucasians, 48% of Latinos, 31% of Asians, and 58% of African
17 Americans consume one or more sodas each day. On average, children consumed 11.96 teaspoons of
18 added sugars from sodas and fruit drinks per day – 47% of their total intake of added sugars. A single
19 12-ounce can of soda contains eight to ten teaspoons of sugar, and typical container sizes of popular
20 sugary drinks marketed to children far exceed the American Heart Association’s recommended daily
21 amounts.

22 Research shows that lifestyle interventions are more cost-effective than medications in
23 preventing or delaying type 2 diabetes. The American Heart Association reports that U.S. food labels
24 do not distinguish between sugars that naturally occur in foods and added sugars, making it difficult
25 for consumers to know the amount of added sugars that are in food or beverages. And food producers

1 and distributors do not typically communicate this information to consumers, in advertisements or
2 otherwise. Yet sugar-sweetened beverages are aggressively marketed, without providing such basic
3 information to consumers, be they children, adolescents, young adults, or others. According to the
4 2015 USDA Report, young adults are among the largest consumers of sugar-sweetened beverages and
5 are the direct targets of marketing for sugar-sweetened beverages.

6 The City’s purpose in requiring warnings for SSBs is to inform the public of the presence of
7 added sugars and thus promote informed consumer choice that may result in reduced caloric intake
8 and improved diet and health, thereby reducing illnesses to which SSBs contribute and associated
9 economic burdens. Posting warnings that beverages are sugar-sweetened will inform the public before
10 purchases, which will help ensure that San Franciscans make a more informed choice about the
11 consumption of drinks that are a primary source of added dietary sugar.

12 **SEC. 4202. DEFINITIONS.**

13 “Advertiser” means any Person who is any of the following: (a) in the business of
14 manufacturing, distributing, or selling sugar-sweetened beverages, including without limitation, a
15 Retailer; (b) is in the business of placing or installing advertisements, or who provides space for the
16 display of advertisements; or (c) is an agent or contractor of a Person described in (a) or (b) assisting
17 such Person with the manufacture, distribution or sale of sugar-sweetened beverage, the placement or
18 installation of advertisements, or the provision of space for advertisements. The term “Advertiser” shall
19 not include the employees of a Person, including, without limitation, employees of agent or contractors,
20 except that it shall include individuals acting as sole proprietors.

21 “Base Product” means the same as Powder.

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

1 “Caloric Substance” means a substance that adds calories to the diet of a person who
2 consumes that substance.

3 “Caloric Sweetener” means any Caloric Substance suitable for human consumption that
4 humans perceive as sweet and includes, but is not limited to, sucrose, fructose, high fructose corn
5 sugar, glucose, and other sugars.

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

7 “Concentrate” means a Syrup, Powder, or Base Product that is used for mixing, compounding,
8 or making Sugar-Sweetened Beverages in a Beverage Dispensing Machine. Notwithstanding the
9 foregoing sentence, “Concentrate” does not include the following:

10 (a) Any product that is designed to be used primarily to prepare coffee or tea.

11 (b) Any product that is sold and is intended to be used for the purpose of an individual
12 consumer mixing, compounding, or making a Sugar-Sweetened Beverage.

13 (c) Any product sold for consumption by infants, which is commonly referred to as “infant
14 formula,” or any product whose purpose is infant rehydration.

15 (d) Medical Food.

16 (e) Any product designed as supplemental, meal replacement, or sole-source nutrition that
17 includes proteins, carbohydrates, and multiple vitamins and minerals.

18 “Director” means the Director of Health, or his designated agents or representatives.

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

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

1 “Natural Fruit Juice” means the original liquid resulting from the pressing of fruit, the liquid
2 resulting from the complete reconstitution of natural fruit juice concentrate, or the liquid resulting from
3 the complete restoration of water to dehydrated natural fruit juice.

4 “Natural Vegetable Juice” means the original liquid resulting from the pressing of vegetables,
5 the liquid resulting from the complete reconstitution of natural vegetable juice concentrate, or the
6 liquid resulting from the complete restoration of water to dehydrated natural vegetable juice.

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

9 “Person” shall mean an individual, firm, partnership, joint venture, association, corporation,
10 estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a
11 unit.

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

16 “Retailer” means any Person who sells Sugar-Sweetened Beverages to the ultimate consumer
17 (retail sales), including, without limitation, the operation of a facility where Sugar-Sweetened
18 Beverages may be purchased from vending machines.

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

20 “SSB Ad” means any advertisement that identifies, promotes, or markets a Sugar-Sweetened
21 Beverage for sale or use that is any of the following: (a) on paper, poster, or a billboard; (b) in or on a
22 stadium, arena, transit shelter, or any other structure; (c) in or on a bus, car, train, pedicab, or any
23 other vehicle; or (d) on a wall, or any other surface or material. Notwithstanding the foregoing
24 sentence, “SSB Ad” does not include any advertisement that is in any newspaper, magazine, periodical,
25 advertisement circular or other publication, or on television, the internet, or other electronic media.

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

5 (a) Milk.

6 (b) Milk alternatives, including but not limited to non-dairy creamers or beverages primarily
7 consisting of plant-based ingredients (e.g., soy, rice, or almond milk products), regardless of sugar
8 content.

9 (c) Any beverage that contains solely 100% Natural Fruit Juice, Natural Vegetable Juice, or
10 combined Natural Fruit Juice and Natural Vegetable Juice.

11 (d) Any product sold for consumption by infants, which is commonly referred to as “infant
12 formula,” or any product whose purpose is infant rehydration.

13 (e) Medical Food.

14 (f) Any product designed as supplemental, meal replacement, or sole-source nutrition that
15 includes proteins, carbohydrates, and multiple vitamins and minerals.

16 (g) Any product sold in liquid form designed for use as an oral nutritional therapy for persons
17 who may have a limited ability to absorb or metabolize dietary nutrients from traditional food or
18 beverages.

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

20 “Syrup” means the liquid mixture of ingredients used in making, mixing, or compounding
21 Sugar-Sweetened Beverages using one or more ingredients, including, without limitation, water, ice, a
22 Base Product, Powder, Simple Syrup, fruits, vegetables, fruit juice, vegetable juice, or carbonation or
23 other gas.

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

25

1 (a) Commencing on the operative date of this Division I (Ordinance No. _____) (the
2 “Operative Date”), which is one year after the effective date of this Division, any Advertiser who posts
3 an SSB Ad, or causes an SSB Ad to be posted, in San Francisco shall place on the SSB Ad the following
4 warning, including as amended in accordance with Subsection 4203(c) below (the “Warning”):

5 “WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and
6 tooth decay. This is a message from the City and County of San Francisco.”

7 (b) All the letters in the Warning shall appear in conspicuous and legible type in contrast by
8 typography, layout, or color with all other printed material in the SSB Ad. The word “WARNING”
9 shall appear in capital letters. The Warning shall be enclosed in a rectangular border within the
10 printed advertisement that is the same color as the letters of the Warning and that is the width of the
11 first downstroke of the capital “W” of the word “WARNING.” The Warning shall occupy at least 20%
12 of the area of each SSB Ad and the text shall be printed in a size and manner so as to be clearly legible
13 to the intended viewers of the SSB Ad. The text of the Warning shall be positioned such that the
14 Warning and the other information on the SSB Ad have the same orientation such that text in the SSB
15 Ad and the Warning are read in the same direction (for example, left to right, or bottom to top). The
16 Warning shall be indelibly printed on or permanently affixed to each SSB Ad.

17 (c) The Director may by regulation, following a publicly noticed hearing, modify the Warning in
18 any of the following ways: (1) change the text of the Warning based on available medical or scientific
19 information regarding the health impact of Sugar-Sweetened Beverages; (2) set, and later modify, in
20 the Director’s discretion, the size of the text of the Warning within the 20% area specified in subsection
21 4203(b) to ensure the Warning is clear, legible, and conspicuous; or (3) modify the minimum area of
22 SSB Ads that the Warning must occupy to improve or ensure the effectiveness of the Warning. Any such
23 regulations adopted by the Director shall not be effective before one year after the date of the adoption
24 of the regulation. In addition, the Director may, after a publicly noticed hearing, adopt other rules and

1 regulations for the implementation of this Division I. The Director may also issue guidelines
2 pertaining to implementation.

3 (d) This Division does not apply to any action by an Advertiser regarding an SSB Ad posted in
4 San Francisco before the Operative Date.

5 **SEC. 4204. PENALTIES AND ENFORCEMENT.**

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

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

17 **SEC. 4205. SEVERABILITY.**

18 If any section, subsection, sentence, clause, phrase, or word of this Division I, or any
19 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
20 decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining
21 portions or applications of the Division. The Board of Supervisors hereby declares that it would have
22 passed this Division and each and every section, subsection, sentence, clause, phrase, and word not
23 declared invalid or unconstitutional without regard to whether any other portion of this Division would
24 be subsequently declared invalid or unconstitutional.

25 **SEC. 4206. NO CONFLICT WITH FEDERAL OR STATE LAW.**

1 Nothing in this Division I shall be interpreted or applied so as to create any requirement,
2 power, or duty in conflict with any federal or state law.

3
4 Section2. Effective Date. This ordinance shall become effective 30 days after
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
7 of Supervisors overrides the Mayor's veto of the ordinance.

8
9
10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By: _____
14 Robert A. Bryan
15 Deputy City Attorney

16 n:\legana\as2014\1500300\00998289.doc