

1 [Administrative Code - Barring City Departments from Purchasing and City Contractors or
2 Grantees from Selling or Distributing Sugar-Sweetened Beverages]

3 **Ordinance amending the Administrative Code to bar City departments from using City**
4 **funds to purchase sugar-sweetened beverages and to bar the sale or distribution of**
5 **sugar-sweetened beverages under City contracts and grants.**

6
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 Administrative Code is hereby amended by adding Chapter 101,
16 Sections 101.1 through 101.7, to read as follows:

17 **CHAPTER 101. RESTRICTING THE PURCHASE, SALE, OR DISTRIBUTION**
18 **OF SUGAR-SWEETENED BEVERAGES BY OR FOR THE CITY.**

19 Section 101.1. Title.

20 Section 101.2. Definitions.

21 Section 101.3. Barring City Departments From Using City Funds To Purchase
22 Sugar-Sweetened Beverages.

23 Section 101.4. Barring the Sale, Provision, or Distribution of Sugar-Sweetened Beverages
24 Under a City Contract or Grant.

25 Section 101.5. Waivers and Exclusions.

Section 101.6. Enforcement and Penalties.

1 Section 101.7. Administrative Regulations.

2
3 **SEC. 101.1. TITLE.**

4 The title of this Chapter 101 shall be the Sugar-Sweetened Beverage Funding Ban Ordinance.

5
6 **SEC. 101.2. DEFINITIONS.**

7 For purposes of this Chapter 101,

8 “Base Product” means the same as Powder.

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

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

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

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

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

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

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

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

1 (d) Medical Food.

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

4 “Contract” means any agreement between the City and a person to provide or procure
5 labor, materials, equipment, supplies, or services to, for, or on behalf of the City for a price to be paid
6 out of monies deposited in the City Treasury or out of trust monies under the control of or collected by
7 the City, but excluding agreements for a cumulative amount of \$5,000 or less per vendor in each fiscal
8 year.

9 “Grant” means any agreement between the City and a nonprofit entity to provide services to the
10 public or a portion of the public, whether the agreement is funded by the City or by Federal or State
11 grant funds.

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

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

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

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

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

1 "Person" means any natural person , corporation, sole proprietorship, partnership, association,
2 joint venture, limited liability company, or other legal entity.

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

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

8 "Sugar-Sweetened Beverage" means any Nonalcoholic Beverage sold for human consumption
9 that has one or more added Caloric Sweeteners and contains more than 25 calories per 12 ounces of
10 beverage. Notwithstanding the foregoing sentence, "Sugar-Sweetened Beverage" does not include any
11 of the following:

12 (a) Milk.

13 (b) Milk alternatives, including but not limited to non-dairy creamers or beverages
14 primarily consisting of plant-based ingredients (such as soy, rice, or almond milk products), regardless
15 of sugar content.

16 (c) Any beverage that contains solely 100 percent Natural Fruit Juice, Natural
17 Vegetable Juice, or combined Natural Fruit Juice and Natural Vegetable Juice.

18 (d) Any product sold for consumption by infants, which is commonly referred to as
19 "infant formula," or any product whose purpose is infant rehydration.

20 (e) Medical Food.

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

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

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

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

6
7 **SEC. 101.3. BARRING CITY DEPARTMENTS FROM USING CITY FUNDS TO PURCHASE**
8 **SUGAR-SWEETENED BEVERAGES.**

9 No City officer, department, or agency (collectively, "department") shall use City funds to
10 purchase Sugar-Sweetened Beverages in any form, except as specifically exempted from or allowed
11 under this Chapter 101.

12
13 **SEC. 101.4. BARRING THE SALE, PROVISION, OR DISTRIBUTION OF SUGAR-**
14 **SWEETENED BEVERAGES UNDER A CITY CONTRACT OR GRANT.**

15 No person shall sell, provide, or otherwise distribute Sugar-Sweetened Beverages, in any form,
16 as part of its performance of a City Contract or Grant.

17
18 **SEC. 101.5. WAIVERS AND EXCLUSIONS.**

19 (a) A City officer, department, or agency (collectively, "department"), with the approval of the
20 Purchaser, may waive the requirements of Sections 101.3 and 101.4 in full or in part if the department
21 determines that strict application of the requirement would not be feasible, would create an undue
22 hardship or practical difficulty, or that similar circumstances otherwise warrant granting of the waiver.
23 The department's decision to grant a waiver shall be in writing.

24 (b) The provisions of Sections 101.3, 101.4, or both, shall not apply where the department
25 makes a written finding that the application or inclusion of such provisions would violate or be

1 inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State
2 of California or the United States or the instructions of an authorized representative of any such
3 agency with respect to any such grant, subvention or contract.

4 (c) The provisions of Sections 101.3 shall not apply to the purchase by the Department of
5 Public Health of Sugar-Sweetened Beverages for its patients, to be used in cases where a medical
6 professional has determined that providing such beverages is part of the appropriate course of
7 treatment for the patient. The provisions of Sections 101.4 shall not apply to the sale, provision, or
8 other distribution of Sugar-Sweetened Beverages to patients as part of the performance of a Contract
9 with or a Grant from the Department of Public Health in cases where a medical professional has
10 determined that supplying such beverages is part of the appropriate course of treatment for the patient.

11 (d) Nothing in this Chapter 101 shall be construed to impair a contract, lease, management
12 agreement or other agreement to which the City is a party on the effective date of this Chapter.

13 (e) Departments shall annually report all waivers granted under subsection (a) and
14 determinations of non-applicability made under subsections (b) and (c) to the City Administrator, and
15 include the reason for each waiver.

16
17 **SEC. 101.6. ENFORCEMENT AND PENALTIES.**

18 (a) Any person that sells, provides, or otherwise distributes Sugar-Sweetened Beverages in
19 violation of Section 101.4 may be subject to administrative fines imposed by the City Administrator in
20 the amount of:

21 (1) Up to \$500 for the first violation;

22 (2) Up to \$750 for a second violation within a twelve-month period; and,

23 (3) Up to \$1,000 for a third and subsequent violations within a twelve-month period.

24 (b) Except as provided in subsection (a), setting forth the amount of administrative fines,
25 Administrative Code Chapter 100, "Procedures Governing the Imposition of Administrative Fines," as

1 may be amended from time to time, is hereby incorporated in its entirety and shall govern the
2 imposition, enforcement, collection, and review of administrative citations issued by the Director to
3 enforce this Chapter 101 or any administrative regulation adopted under this Chapter.

4 (c) Any person that sells, provides, or otherwise distributes Sugar-Sweetened Beverages in
5 violation of Section 101.4 shall be deemed to have committed a material breach of the Contract or
6 Grant and, after a noticed hearing, the person or entity may be barred for two years from receiving any
7 City contract, grant agreement, or loan agreement.

8
9 **SEC. 101.7. ADMINISTRATIVE REGULATIONS.**

10 The City Administrator, or at the City Administrator's discretion, the Purchaser, may adopt
11 rules, regulations, or guidelines for the implementation of this Chapter 101.

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13 Section 2. Effective and Operative Dates. This ordinance shall become effective 30
14 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
15 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
16 or the Board of Supervisors overrides the Mayor's veto of the ordinance. The operative date
17 of this ordinance shall be September 1, 2015.

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19 APPROVED AS TO FORM:
20 DENNIS J. HERRERA, City Attorney

21
22 By: _____
23 THOMAS J. OWEN
24 Deputy City Attorney

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