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San Francisco Business and Tax Regulations Code

ARTICLE 8: SUGARY DRINKS DISTRIBUTOR TAX ORDINANCE

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SEC. 550. SHORT TITLE.

This Article shall be known as the “Sugary Drinks Distributor Tax Ordinance.”

(Added by Proposition V, 11/8/2016)

SEC. 551. FINDINGS AND PURPOSE.

The U.S. Department of Health and Human Services, the U.S. Department of Agriculture, and the World Health Organization, based on a summary of the available evidence linking intake of added sugar and sugar-sweetened beverages (SSBs) to adverse health outcomes including obesity and diabetes, have recommended that Americans consume no more than 10% of their daily calories in the form of added sugar. Yet, standard single serving sizes of SSBs provide all (in a 20-ounce serving of many SSBs) or nearly all (in a 12-ounce serving) of the recommended maximum daily added sugar amount for most adults, and generally exceed the recommended maximum daily added sugar amount for children.

Numerous organizations and agencies, including the American Heart Association, American Diabetes Association, American Academy of Pediatrics, Institute of Medicine of the National Academies, American Medical Association, and the Centers for Disease Control, recommend limiting intake of added sugar and SSBs to improve health. Sugary beverages, though they can contain hundreds of calories in a serving, do not signal “fullness” to the brain and thus facilitate over-consumption.

Studies show that sugary beverages flood the liver with high amounts of sugar in a short amount of time, and that this “sugar rush” over time leads to fat deposits and metabolic disturbances that cause diabetes, cardiovascular disease, and other serious health problems. Diseases connected to sugary beverages disproportionately impact minorities and low-income communities. For example, diabetes hospitalizations are more than triple in low-income communities as compared with higher income areas. African American death rates from DM2 are five times higher than San Francisco’s overall rate. DM2 is the fifth leading

cause of death in SF (which is an underestimate, since heart disease, the leading killer, is often a result of DM2); DM2 reduces the lifespan of San Franciscans by eight to ten years.

As recently as 2010, nearly a third of children and adolescents in San Francisco were obese or overweight; and in San Francisco, 46.4% of adults are obese or overweight, including 61.7% of Hispanics and 51.3% of African Americans. Nationally, childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years; in 2010, more than one-third of children and adolescents were overweight or obese. Every additional sugary beverage consumed daily can increase a child's risk for obesity by 60%; and one or two sugary beverages per day increases the risk of Type II diabetes by 26%.

Sugary beverages, including sweetened alcoholic drinks, represent nearly 50% of added sugar in the American diet, and, on average, 11% of daily calories consumed by children in the U.S.

Seven percent of San Franciscans are diagnosed with diabetes, and it is estimated that the City and County of San Francisco pays over \$87 million for direct and indirect diabetes care costs.

This Article 8 is intended to discourage the distribution and consumption of sugar-sweetened beverages in San Francisco by taxing their distribution. Mexico, where an average of 163 liters of sugar-sweetened beverages are consumed per person each year, enacted an excise tax on sugary drinks, with the result that the purchase of taxed sugar sweetened beverages declined by 12% generally and by 17% among low-income Mexicans. The Mexico data indicate that, when people cut back on SSBs, to a significant extent they choose lower-caloric or non-caloric alternatives. This body of research demonstrates that taxation can provide a powerful incentive for individuals to reduce their consumption of SSBs, which in turn will reduce obesity and DM2.

The City of Berkeley became the first city in the United States to follow in Mexico's footsteps, by passing a one-cent-per-ounce general tax on distributors of SSBs within the city limits. It is estimated that the City of Berkeley, which began implementing the tax in March 2015, will collect at least \$1.2 million from the tax annually.

(Added by Proposition V, 11/8/2016)

SEC. 552. DEFINITIONS.

Unless otherwise defined in this Article 8, terms that are defined in Article 6 of the Business and Tax Regulations Code shall have the meanings provided therein. For purposes of this Article, the following definitions shall apply.

“Beverage for Medical Use” means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness. “Beverage for Medical Use” also means a “medical food” as defined in Section 109971 of the California Health and Safety Code. “Beverage for Medical Use” shall not include beverages commonly referred to as “sports drinks,” or any other similar names.

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

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

“Caloric Sweetener” means any substance or combination of substances that is suitable for human consumption, that humans perceive as sweet, and that adds calories to the diet of any human who consumes it. “Caloric Sweetener” includes, but is not limited to, sucrose, fructose, glucose, other sugars, and high fructose corn syrup.

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

“Distribution” includes:

(a) The transfer in the City, for consideration, of physical possession of Sugar- Sweetened Beverages, Syrup, or Powder by any person other than a common carrier. “Distribution” also includes the transfer of physical possession in the City by any person other than a common carrier, without consideration, for promotional or any other commercial purpose.

(b) The possession, storage, ownership, or control in the City, by any person other than a common carrier, of Sugar-Sweetened Beverages, Syrup, or Powder for resale in the ordinary course of business, obtained by means of a transfer of physical possession outside the City or from a common carrier in the City.

“Distribution” does not include:

(a) The return of any Sugar-Sweetened Beverages, Syrup, or Powder to a person, if that person refunds the entire amount paid in cash or credit.

(b) A retail sale or use.

“Distributor” means any person engaged in the business of Distribution of Bottled Sugar- Sweetened Beverages, Syrup, or Powder. A Distributor does not include a common carrier. Where a common carrier obtains physical possession of Sugar-Sweetened Beverages, Syrup, or Powder outside the City and transfers physical possession of the Sugar-Sweetened Beverages, Syrup, or Powder in the City, the transferee of the Sugar-Sweetened Beverages, Syrup, or Powder is a Distributor.

“Milk Product” means: (a) any beverage whose principal ingredient by weight is natural liquid milk secreted by an animal. “Milk” includes natural milk concentrate and dehydrated natural milk, whether or not reconstituted; and (b) any plant-based substance or combination of substances in which (1) water and (2) grains, nuts, legumes, or seeds constitute the two greatest ingredients by volume. For purposes of this definition, “Milk Product” includes, but is not limited to, soy milk, almond milk, rice milk, coconut milk, hemp milk, oat milk, hazelnut milk, or flax milk;

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

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

“Nonalcoholic Beverage” means any beverage that is not subject to tax under California Revenue and Taxation Code sections 32001 *et seq.* as “beer, wine or distilled spirits.”

“Powder” means any solid mixture, containing one or more Caloric Sweeteners as an ingredient, intended to be used in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Powder with one or more other ingredients.

“Sugar-Sweetened Beverage” means any Nonalcoholic Beverage intended for human consumption that contains added Caloric Sweetener and contains more than 25 calories per 12 fluid ounces of beverage, including but not limited to all drinks and beverages commonly referred to as “soda,” “pop,” “cola,” “soft drinks,” “sports drinks,” “energy drinks,” “sweetened ice teas,” or any other similar names. “Sugar-Sweetened Beverage” does not include:

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

(b) Any Beverage for Medical Use.

(c) Any beverage designed as supplemental, meal replacement, or sole-source nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals (this exclusion does not include beverages commonly referred to as “sports drinks,” or any other similar names, which are defined as Sugar-Sweetened Beverages).

(d) Any Milk Product.

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

“Sugary Drinks Distributor Tax” or “Tax” means the general excise tax imposed under Section 553.

“Syrup” means any liquid mixture, containing one or more Caloric Sweeteners as an ingredient, intended to be used, or actually used, in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Syrup with one or more other ingredients.

(Added by Proposition V, 11/8/2016)

SEC. 553. IMPOSITION OF TAX; DEPOSIT OF PROCEEDS.

(a) Effective January 1, 2018, for the privilege of engaging in the business of making an initial Distribution within the City of a Bottled Sugar-Sweetened Beverage, Syrup, or Powder, the City imposes a Sugary Drinks Distributor Tax, which shall be a general excise tax, on the Distributor making the initial Distribution of a Bottled Sugar-Sweetened Beverage, Syrup, or Powder in the City.

(b) The Tax shall be calculated as follows:

(1) One cent (\$0.01) per fluid ounce of a Bottled Sugar-Sweetened Beverage upon the initial Distribution within the City of the Bottled Sugar-Sweetened Beverage; and

(2) One cent (\$0.01) per fluid ounce of a Sugar-Sweetened Beverage that could be produced from Syrup or Powder upon the initial Distribution of Syrup or Powder. The Tax for Syrups and Powders shall be calculated using the largest volume of Sugar-Sweetened Beverage that would typically be produced by the amount of Syrup or Powder based on the manufacturer’s instructions or, if the Distributor uses the Syrup or Powder to produce a Sugar-Sweetened Beverage, the regular practice of the Distributor.

(c) The Tax is a general tax. Proceeds of the Tax are to be deposited in the General Fund.

(Added by Proposition V, 11/8/2016)

SEC. 554. REGISTRATION OF DISTRIBUTORS; DOCUMENTATION; ADMINISTRATION.

(a) Each Distributor shall register with the Tax Collector according to rules and regulations of the Tax Collector, but no earlier than 30 days after the effective date of Article 8.

(b) Each Distributor shall keep and preserve all such records as the Tax Collector may require for the purpose of ascertaining compliance with Article 8.

(c) Except as otherwise provided under Article 8, the Tax shall be administered pursuant to Article 6 of the Business and Tax Regulations Code.

(Added by Proposition V, 11/8/2016)

SEC. 555. CREDITS AND REFUNDS.

The Tax Collector shall refund or credit to a Distributor the Tax that is paid with respect to the initial Distribution of a Bottled Sugar- Sweetened Beverage, Syrup, or Powder: (a) that is shipped to a point outside the City for Distribution outside the City; or (b) on which the Tax has already been paid by another Person; or (c) that has been returned to the Person who Distributed it and for which the entire purchase price has been refunded in cash or credit.

(Added by Proposition V, 11/8/2016)

SEC. 556. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.

(a) The Department of Public Health shall provide to the Tax Collector technical assistance to identify Bottled Sugar-Sweetened Beverages, Syrups, and Powders subject to the Tax.

(b) All City Departments shall provide technical assistance to the Tax Collector to identify Distributors of Bottled Sugar-Sweetened Beverages, Syrups, and Powders.

(Added by Proposition V, 11/8/2016)

SEC. 557. MUNICIPAL AFFAIR.

The People of the City and County of San Francisco hereby declare that the taxation of the distribution of Sugar-Sweetened Beverages, Syrups and Powders, and that the public health impact of Sugar-Sweetened Beverages, separately and together constitute municipal affairs. The People of the City and County of San Francisco hereby further declare their desire for this measure to coexist with any similar tax adopted at the local or state levels.

(Added by Proposition V, 11/8/2016)

SEC. 558. NOT A SALES AND USE TAX.

The tax imposed by this measure is a general excise tax on the privilege of conducting business within the City and County of San Francisco. It is not a sales tax or use tax or other excise tax on the sale, consumption, or use of sugar-sweetened beverages.

(Added by Proposition V, 11/8/2016)

SEC. 559. SEVERABILITY.

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The voters hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

(Added by Proposition V, 11/8/2016)

SEC. 560. AMENDMENT.

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

(Added by Proposition V, 11/8/2016)