

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

2

3 **Ordinance amending the Health Code to repeal the requirement that advertisements for**
4 **sugar-sweetened beverages include a warning about the potentially harmful health**
5 **effects of consuming such beverages.**

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.

11

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

13

14 Section 1. The Health Code is hereby amended by deleting Article 42, consisting of
15 Sections 4200, 4201, 4202, 4203, 4204, 4205, and 4206, as follows:

16

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

18 ~~**DIVISION I: SUGAR-SWEETENED BEVERAGE WARNING ORDINANCE**~~

19

20 ~~**SEC. 4200. TITLE.**~~

21 ~~*—Division I of this Article 42 shall be known as the "Sugar Sweetened Beverage Warning*~~
22 ~~*Ordinance."*~~

23 ~~**SEC. 4201. FINDINGS AND PURPOSE.**~~

24 ~~*—Human consumption of Sugar Sweetened Beverages (SSBs) is linked to a myriad of serious*~~
25 ~~*health problems including, but not limited to: weight gain, obesity, coronary heart disease, type 2*~~

1 *diabetes, tooth decay, and other health problems. According to the U.S. Department of Agriculture's*
2 *2015-2020 Dietary Guidelines for Americans promulgated by the Secretaries of Health and Human*
3 *Services and Agriculture pursuant to congressional command every five years (USDA Dietary*
4 *Guidelines), a healthy eating pattern limits added sugars to no more than 10% of total energy intake*
5 *per day. The American population consumes added sugars in excess of this recommended limit. Added*
6 *sugar accounts for about 13% of calories per day in the U.S. population, and SSBs are Americans'*
7 *single largest source of added sugar. SSBs account for 39% of all added sugar intake, with 25%*
8 *attributable to soda consumption alone. A single serving 20-ounce soda bottle exceeds the*
9 *recommended daily allowance of added sugars, as does even a 12-ounce can of soda for children.*

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

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

17 *—SSB consumption is particularly high among African Americans, Hispanics, and low-income*
18 *individuals—groups that also experience disproportionately high prevalence of obesity, and obesity-*
19 *related chronic diseases. In San Francisco, 46.4% of adults are obese or overweight, including 61.7%*
20 *of Hispanics and 51.3% of African Americans. Minority children in San Francisco likewise experience*
21 *comparatively higher rates of obesity. By fifth grade, 50% of Black/African American residents are*
22 *overweight or obese, as compared to 25% of White residents.*

23 *—The local health impact of type 2 diabetes falls disproportionately upon minorities and less*
24 *fortunate populations. For instance, hospitalization rates for uncontrolled type 2 diabetes and its*
25 *consequences are four to eight times higher in minority communities and communities with lower*

1 ~~educational attainment. And deaths attributable to type 2 diabetes in San Francisco are five times~~
2 ~~higher among African Americans.~~

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

10 ~~—The annual cost of being overweight and obese to California families, employers, the health~~
11 ~~care industry, and the government is estimated to be \$21 billion. A 2013 San Francisco Budget and~~
12 ~~Legislative Analyst report estimates that up to \$61.8 million in costs incurred by San Franciscans with~~
13 ~~obesity and diabetes are attributable to sugary beverage consumption.~~

14 ~~—SSBs are aggressively marketed, and SSB advertisements do not contain information about~~
15 ~~added sugar or health risks. The City's purpose in requiring warnings for SSBs is to advance its strong~~
16 ~~interest in promoting the health of all San Franciscans, including children and adolescents and~~
17 ~~members of disadvantaged communities who more often lack access to important health facts, by~~
18 ~~ensuring they receive information about the health risks of SSBs as they make beverage choices.~~
19 ~~Advertising warnings afford consumers the opportunity to consider health information while they also~~
20 ~~process other information about a product. This information can help consumers reduce calorie intake~~
21 ~~and improve diet and health, thereby reducing illnesses to which SSBs contribute and associated~~
22 ~~economic burdens.~~

23 **~~SEC. 4202. DEFINITIONS.~~**

24 ~~—“Advertiser” means any Person who is any of the following: (a) in the business of~~
25 ~~manufacturing, distributing, promoting, or selling Sugar-Sweetened Beverages, including without~~

1 ~~limitation, a Retailer, or (b) is an agent or contractor of a Person described in (a). The term~~
2 ~~“Advertiser” shall not include Persons generally in the business of placing, installing, or providing~~
3 ~~space for display of advertisements, nor shall it include the employees of a Person, including, without~~
4 ~~limitation, employees of agents or contractors, except that it shall include individuals acting as sole~~
5 ~~proprietors.~~

6 ~~—“Base Product” means the same as Powder.~~

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

10 ~~—“Calorie Substance” means a substance that adds calories to the diet of an individual who~~
11 ~~consumes that substance.~~

12 ~~—“Calorie Sweetener” means any Calorie Substance suitable for human consumption that~~
13 ~~humans perceive as sweet and includes, but is not limited to, sucrose, fructose, high fructose corn~~
14 ~~sugar, glucose, and other sugars.~~

15 ~~—“City” means the City and County of San Francisco.~~

16 ~~—“Concentrate” means a Syrup, Powder, or Base Product that is used for mixing,~~
17 ~~compounding, or making Sugar-Sweetened Beverages in a Beverage Dispensing Machine.~~

18 ~~Notwithstanding the foregoing sentence, “Concentrate” does not include the following:~~

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

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

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

24 ~~—(d) Medical Food.~~

25

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

3 ~~—"Director" means the Director of Health, or the Director's designated agents or~~
4 ~~representatives.~~

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

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

11 ~~"Natural Fruit Juice" means the original liquid resulting from the pressing of fruit, the liquid~~
12 ~~resulting from the complete reconstitution of natural fruit juice concentrate, or the liquid resulting from~~
13 ~~the complete restoration of water to dehydrated natural fruit juice.~~

14 ~~"Natural Vegetable Juice" means the original liquid resulting from the pressing of vegetables,~~
15 ~~the liquid resulting from the complete reconstitution of natural vegetable juice concentrate, or the~~
16 ~~liquid resulting from the complete restoration of water to dehydrated natural vegetable juice.~~

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

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

23 ~~"Powder" means a solid or liquid mixture of ingredients with added Calorie Sweetener used~~
24 ~~in making, mixing, or compounding Sugar Sweetened Beverages by mixing the Powder with any one or~~
25

1 ~~more other ingredients, including, without limitation, water, ice, Syrup, Simple Syrup, fruits,~~
2 ~~vegetables, fruit juice, vegetable juice, or carbonation or other gas.~~

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

6 ~~—"Simple Syrup" means a mixture of sugar and water.~~

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

12 ~~—(a) Any advertisement that is in any newspaper, magazine, periodical, advertisement~~
13 ~~circular, or other publication, or on television, the internet, or other electronic media;~~

14 ~~—(b) Containers or packages for Sugar-Sweetened Beverages.~~

15 ~~—(c) Any menus or handwritten listings or representations of foods and/or beverages that may~~
16 ~~be served or ordered for consumption in a Retailer's establishment.~~

17 ~~—(d) Any display or representation of or other information about, a Sugar-Sweetened~~
18 ~~Beverage, including, without limitation, any logo on a vehicle, if the vehicle is being used by any~~
19 ~~Person who is in the business of manufacturing, distributing, or selling the Sugar-Sweetened Beverage~~
20 ~~in the performance of such business.~~

21 ~~—(e) Any logo that occupies an area that is less than 36 square inches and is unaccompanied~~
22 ~~by any other display, representation, or other information identifying, promoting, or marketing a~~
23 ~~Sugar-Sweetened Beverage.~~

24 ~~—(f) Any shelf tag or shelf label that states the retail price, order code, description, or size of a~~
25 ~~product for sale.~~

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 ~~Calorie Sweeteners and contains more than 25 calories per 12 ounces of beverage. Notwithstanding the~~
4 ~~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~~
17 ~~persons who may have a limited ability to absorb or metabolize dietary nutrients from traditional food~~
18 ~~or 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.**~~

1 ~~—(a) Beginning on the operative date of the ordinance in File No. 191284 amending Sections~~
2 ~~4201-4204, any Advertiser who posts an SSB Ad, or causes an SSB Ad to be posted, in San Francisco~~
3 ~~shall place on the SSB Ad the following warning, in accordance with subsection 4203(c) below (the~~
4 ~~“Warning”):~~

5 ~~—“SAN FRANCISCO GOVERNMENT WARNING: Drinking beverages with added sugar(s)~~
6 ~~can cause weight gain, which increases the risk of obesity and type 2 diabetes.”~~

7 ~~—Any SSB Ad not expressly exempt from this requirement under Section 4203(d) must meet this~~
8 ~~requirement, whether or not the SSB Ad was posted before, on, or after the operative date of the~~
9 ~~ordinance in File No. 191284 amending Sections 4201-4204.~~

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

21 ~~—(c) The Director shall adopt a translation of the Warning (“official translation”) into each of~~
22 ~~the languages spoken by a Substantial Number of Limited English Speaking Persons, as defined in~~
23 ~~Administrative Code Section 91.2 and certified by the Office of Civic Engagement and Immigrant~~
24 ~~Affairs (“OCEIA”) as of the effective date of the ordinance in File No. 191284, no later than 90 days~~
25 ~~after such date. Furthermore, the Director may at any time adopt official translations of the Warning in~~

1 additional languages as it deems appropriate. OCEIA shall support the Director to ensure that official
2 translations accord with generally-accepted professional standards. Any Advertiser who displays, or
3 causes display, of an SSB Ad the text of which is predominantly in a language for which the Director
4 adopted an official translation 180 days or more prior to the date of display, must use the official
5 translation of the Warning in that same language, in order to comply with Section 4203(a). The
6 Director may, after a publicly noticed hearing, adopt rules and regulations for the interpretation and
7 implementation of this Division I. The Director may also issue guidelines pertaining to implementation.

8 ~~—(d) This Division I does not apply to any action by an Advertiser regarding: any general~~
9 ~~advertising sign permitted by the City before the operative date of the ordinance in File No. 191284~~
10 ~~amending Sections 4201-4204 that includes an SSB Ad, if the SSB Ad has not been substantially~~
11 ~~changed for a period of 50 or more years before the that perative/ operative date and the Advertiser~~
12 ~~provides the Director, on the Director’s request, records or other information that substantiates the~~
13 ~~SSB Ad has not been substantially changed over the 50-year period.~~

14 ~~—For purposes of this Division I, “business sign,” “general advertising sign,” and “sign” shall~~
15 ~~have the meanings provided in Section 602 of the Planning Code (Business Sign, General Advertising~~
16 ~~Sign, Sign), as amended or renumbered from time to time.~~

17 **~~SEC. 4204. PENALTIES AND ENFORCEMENT.~~**

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

22 ~~—(b) Before imposing an administrative penalty, the Director must serve upon the Advertiser a~~
23 ~~notice of determination. The notice of determination shall include both the proposed administrative~~
24 ~~penalty and the alleged acts or failures to act that constitute the basis for the administrative penalty.~~
25 ~~The notice of determination shall inform the Advertiser that it has the right to request administrative~~

1 ~~review of the notice of determination within 15 days of the date of the notice. Each date on which the~~
2 ~~Director generates a notice of determination documenting a violation shall constitute a separate~~
3 ~~violation for purposes of administrative penalties.~~

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

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

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

24 ~~—(f) Once the administrative penalty amount becomes final after any administrative appeal or~~
25 ~~judicial review or upon expiration of time to take such appeal or seek such review, the amount of the~~

1 ~~administrative penalty shall be an obligation due and owing to the City and County of San Francisco~~
2 ~~and shall accrue interest at the rate of 10% per annum until paid.~~

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

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

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

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

23 ~~—(k) City departments shall cooperate with the Director and City Attorney's Office in the~~
24 ~~enforcement of this Division I.~~

25 ~~**SEC. 4205. SEVERABILITY.**~~



City and County of San Francisco
Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 210496

Date Passed: July 27, 2021

Ordinance amending the Health Code to repeal the requirement that advertisements for sugar-sweetened beverages include a warning about the potentially harmful health effects of consuming such beverages.

July 15, 2021 Government Audit and Oversight Committee - RECOMMENDED AS COMMITTEE REPORT

July 20, 2021 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

July 27, 2021 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Chan, Haney, Mandelman, Mar, Melgar, Peskin, Preston, Ronen, Safai, Stefani and Walton

File No. 210496

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 7/27/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

London N. Breed
Mayor

8/4/21

Date Approved