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

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

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

Section 1. The Health Code is hereby amended by adding Article 42, Division I, consisting of Sections 4200 through 4206, to read as follows:

ARTICLE 42: SUGAR-SWEETENED BEVERAGES

DIVISION I: Sugar-Sweetened Beverage Warning Ordinance

SEC. 4200. TITLE.

Division I of this Article 42 shall be known as the "Sugar-Sweetened Beverage Warning Ordinance."

SEC. 4201. FINDINGS AND PURPOSE.

Human consumption of Sugar-Sweetened Beverages (SSBs) is linked to a myriad of serious health problems including, but not limited to: weight gain, obesity, coronary heart disease, diabetes, 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
biochemistry that can lead to obesity, insulin resistance, hypertension, dyslipidemia (high cholesterol), and visceral fat. SSBs are linked to excess weight and obesity, which are putting more Americans on the path to MetS. Heavy added sugar consumption may itself be a direct cause of MetS by increasing the risk for hypertension, dyslipidemia, and visceral fat. While most people with MetS are obese, normal-weight individuals can acquire the syndrome as well, given poor dietary habits. Heavy consumption of sugary drinks has been linked to MetS through a variety of biological pathways, and is therefore a risk factor in chronic disease.

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

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

The American Heart Association reports that about one in three teen or younger children in the United States are overweight or obese and that childhood obesity is now the number one health concern among American parents, ahead of drug abuse and smoking. Obese children suffer more often from sleep apnea, asthma, joint problems, fatty liver disease, gallstones, and acid reflux (heartburn).
Obese children are more likely to become obese adults, further increasing their risks for higher rates of type 2 diabetes, heart disease, and some cancers later in life. Profound mental health and quality of life impacts are seen in children with severe obesity. Obese children are more prone to low self-esteem, negative body image, and depression. As of 2010, nearly one-third of children and adolescents in San Francisco were either obese or overweight. Among adults, consumption of SSBs is associated with a risk of weight gain and obesity, cardiovascular disease, a significantly higher risk of stroke, high blood pressure, type 2 diabetes, dental erosion, and the risk of pancreatic cancer. The 2015 USDA Report concludes that the consumption of added sugars negatively impacts obesity, type 2 diabetes, cardiovascular diseases and dental caries, and “strong evidence supports reducing added sugar intake to reduce health risks.” (See also, USDA, Report of the Dietary Guidelines Advisory Committee on Dietary Guidelines for Americans, 2010.) In 2011-2012, 41.8% of adults in San Francisco were either obese or overweight.

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

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

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

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

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

Research shows that lifestyle interventions are more cost-effective than medications in 
preventing or delaying type 2 diabetes. The American Heart Association reports that U.S. food labels 
do not distinguish between sugars that naturally occur in foods and added sugars, making it difficult 
for consumers to know the amount of added sugars that are in food or beverages. And food producers
and distributors do not typically communicate this information to consumers, in advertisements or otherwise. Yet sugar-sweetened beverages are aggressively marketed, without providing such basic information to consumers, be they children, adolescents, young adults, or others. According to the 2015 USDA Report, young adults are among the largest consumers of sugar-sweetened beverages and are the direct targets of marketing for sugar-sweetened beverages.

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

SEC. 4202. DEFINITIONS.

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

“Base Product” means the same as Powder.

“Beverage Dispensing Machine” means an automated device that mixes Concentrate with one or more other ingredients and dispenses the resulting mixture into an open container as a ready-to-drink beverage.
“Caloric Substance” means a substance that adds calories to the diet of a person who consumes that substance.

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

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

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

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

(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.

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

(d) Medical Food.

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

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

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

“Milk” means natural liquid milk, natural milk concentrate or dehydrated natural milk (whether or not reconstituted), regardless of animal source or butterfat content. For purposes of this definition, “Milk” includes flavored milk containing no more than 40 grams of total sugar (naturally-occurring and from added Caloric Sweetener) per 12 ounces.
“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 Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code.

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

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

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

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

“SSB Ad” means any advertisement, including, without limitation, any logo, that identifies, promotes, or markets a Sugar-Sweetened Beverage for sale or use that is any of the following: (a) on paper, poster, or a billboard; (b) in or on a stadium, arena, transit shelter, or any other structure; (c) in or on a bus, car, train, pedicab, or any other vehicle; or (d) on a wall, or any other surface or material. Notwithstanding the foregoing sentence, “SSB Ad” does not include the following:
(a) any advertisement that is in any newspaper, magazine, periodical, advertisement circular or other publication, or on television, the internet, or other electronic 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 sugar-sweetened beverage, 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 sugar-sweetened beverage 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 display, representation, or other information identifying, promoting, or marketing a sugar-sweetened beverage; 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 1 (Ordinance No. 100-15) (the
“Operative Date”), which is one year after the effective date of this Division, 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”):

"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."

(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 word “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 20%
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 20% 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) This Division I does not apply to any action by an Advertiser regarding (1) any sign, excluding any general advertising sign unless it satisfies (2) below, permitted by the City before the Operative Date; (2) any general advertising sign permitted by the City before the Operative Date that includes an SSB Ad, if the SSB Ad has not been substantially changed for a period of 50 or more years before the 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 (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

Supervisors Wiener; Mar, Cohen, Avalos
BOARD OF SUPERVISORS
that the SSB Ad was created was before December 31, 1985. For purposes of this Division I, "general advertising sign" shall have the meaning provided in Section 602.7 of the Planning Code (General Advertising 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. SSB Ad posted anywhere before the Operative Date.

SEC. 4204. PENALTIES AND ENFORCEMENT.

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

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

(c) City departments shall cooperate with the Director in the enforcement of this Division I.

SEC. 4205. SEVERABILITY.

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

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

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

Section 2. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

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

By:
Robert A. Bryan
Deputy City Attorney

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

June 01, 2015 Land Use and Transportation Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

June 01, 2015 Land Use and Transportation Committee - RECOMMENDED AS AMENDED

June 09, 2015 Board of Supervisors - PASSED, ON FIRST READING
   Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang,
          Wiener and Yee

June 16, 2015 Board of Supervisors - FINALLY PASSED
   Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang,
          Wiener and Yee

File No. 150245

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 6/16/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

Date Approved