



Sugar-Sweetened  
Beverage Product  
Panel of Experts  
Commission

**Sugar-Sweetened Beverage Product  
Panel of Experts Commission**  
**Thursday, May 16<sup>th</sup>, 2024, 6:00pm – 8:00pm**  
**Meeting Location:**  
South Berkeley Senior Center  
2939 Ellis Street, Berkeley, CA 94703  
P: 510-981-5350

## MEETING AGENDA

### Preliminary Matters

1. Roll Call
2. Introduction of new Commission members
3. Approval of Draft Minutes from 04/18/2024 regular meeting – **Attachment 1**

The public may comment virtually about any item **not** on the agenda. **Public comments are limited to two minutes per speaker.** Public comments regarding agenda items will be heard while the Commission is discussing the item.

### Presentations: TBD

### Discussion and Action Items

Public comments regarding agenda items will be heard while the Commission is discussing the item. Public comments are limited to two minutes per speaker.

1. **Subcommittee Reports**
2. **Discussion:** Funding Cycle, FY26-27, disbursement plan (18-month period)  
(Commissioner Hecht)
3. **Discussion:** Original ordinance language, non-supplant of funds (Commissioner Hecht)
4. **Action 1:** Add/Remove Subcommittees/ Members (Commissioner Hecht)
5. **Action 2:** For the good of the order (Commissioner Hecht)

### Information Items

1. Commission Work Plan – **Attachment 2**
2. Approved Meeting Minutes 03/21/2024 – **Attachment 3**
3. Commission Meeting Dates 2024 – **Attachment 4**
4. Subcommittee Roster 2024– **Attachment 5**
5. City Council Timeline 2024 – **Attachment 6**
6. Soda Tax Revenues – **Attachment 7**
7. SSB 2014 Ordinance – **Attachment 8**
8. SSB BMC 7.72 – **Attachment 9**
9. April 11<sup>th</sup>, 2023 SSB Resolution – **Attachment 10**
10. July 25 Annotated Agenda, HB Funded Program – **Attachment 11**

*A Vibrant and Healthy Berkeley for All*

1947 Center Street, 2<sup>nd</sup> Floor, Berkeley, CA 94704 Tel: 510.981.5300 TDD: 510.981.6903 Fax: 510.981.5395  
E-mail: [publichealth@ci.berkeley.ca.us](mailto:publichealth@ci.berkeley.ca.us) - <http://www.cityofberkeley.info/health/>

**CONFLICT OF INTEREST INFORMATION:** City commissioners, pursuant to Government Code section 1090, are responsible for recusing themselves from all commission discussions and actions in which they may have a conflict of interest. If your affiliation, paid or unpaid, with other agencies has changed since the last meeting of this commission, your ability to participate in commission activities may have changed. Individual guidance is available from the City Attorney's Office (CAO). Commissioners are encouraged to consult with the CAO if they have questions, concerns, or would like clarification about matters related to potential conflicts of interest.

**The CAO may be reached at:**

Email: [attorney@cityofberkeley.info](mailto:attorney@cityofberkeley.info)  
TEL: (510) 981-6950 TDD: (510) 981-6903, FAX: (510) 981-6960  
2180 Milvia Street 4th Floor, Berkeley, CA 94704 - Office Hours: Mon-Fri, 8am-5pm

**THERE IS NO MEETING IN AUGUST/DECEMBER.** Please visit the City of Berkeley's Commission webpage <http://www.cityofberkeley.info/commissions> for meeting details and updates.

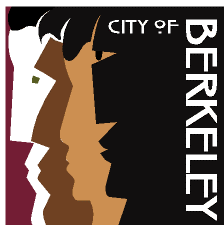
**AMERICAN DISABILITIES ACT DISCLAIMER:** This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

**SB 343 DISCLAIMER:**

Any writings or documents provided to a majority of the commission regarding any item on this agenda will be made available for public inspection at the Public Health Division located on 1947 Center Street, Berkeley, CA 94704.

**COMMUNICATION DISCLAIMER:**

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the commission secretary for further information.



## Sugar-Sweetened Beverage Product Panel of Experts Commission

Thursday, April 18<sup>th</sup>, 2024. 6:00 – 8:00 PM

### Meeting Location:

South Berkeley Senior Center  
2939 Ellis Street, Berkeley, CA 94703  
P: 510-981-5350

### DRAFT MEETING MINUTES

The meeting convened at 6:05pm.

#### ROLL CALL

**Present:** Commissioners Morales, Rodriguez, Mashama (6:20pm),  
Kao, Lopez, Crawford, Esonwune, Hecht.  
**Absent:** Commissioner Chan.  
**Excused:** None.  
**Staff present:** Roberto Terrones.

**COMMENTS FROM THE PUBLIC** None.

**PRESENTATION:** Lifelong Medical Care.

#### ACTION ON MINUTES

**Approval of Minutes - Moved to approve the draft minutes of the meeting on 02/15/2024.**

**M/S/C:** Commissioners Crawford/Lopez.

**Ayes:** Commissioners Morales, Rodriguez, Mashama, Kao, Lopez,  
Crawford, Hecht.

**Noes:** None.

**Abstain:** Commissioner Esonwune.

**Absent from vote:** Commissioner Chan.

**Recused:** None.

**Excused:** None.

#### **1. Motion to approve FY 2024 Commission Work Plan with edits.**

**M/S/C:** Commissioners Morales/Rodriguez.

*A Vibrant and Healthy Berkeley for All*

**Ayes:** Commissioners Morales, Rodriguez, Mashama, Kao, Lopez, Crawford, Esonwune, Hecht.  
**Noes:** None.  
**Abstain:** None.  
**Absent from vote:** Commissioner Chan.  
**Recused:** None.  
**Excused:** None.

**The meeting adjourned at 7:30pm.**

**NEXT MEETING:**

The next meeting is scheduled for **Thursday, May 16<sup>th</sup>, 2024**. Please check the SSBPPE Commission page on the City of Berkeley Commission webpage for updated information.

Respectfully Submitted, Roberto Terrones, Commission Secretary

**Minutes will be approved at the May 16<sup>th</sup>, 2024 regular meeting.**

**Sugar-Sweetened Beverage Product Panel of Experts Commission**  
**Proposed Work Plan –4/2024 – 3/2025**

Task	Activity	Actions Needed in Advance	2024									2025		
			April	May	June	July	Aug	Sept	October	November	December	January	February	Mar
1)	Conduct periodic commission	Distribution of agenda	X	X	X	X		X	X	X		X	X	X
2)	Discuss with fiscal about current revenues vs. projected revenues and discuss disbursement plan (quarterly)	Fiscal data requested and distributed		X				X		X			X	
3)	Annual grantee presentations to the commission	Grantees contacted and scheduled; Ask grantees to share how they disseminate re: SSB tax funds	X	X	X	X								X
4)	Discuss with city staff internal activities funded by soda tax (e.g.	Schedule staff for discussion		X	X	X								
5)	Discuss Epi research related to health as well as evaluation data from grantees including BUSD & YRBS.	Schedule staff for discussion Email request for health status report that incl. chronic disease data, dental caries, and any health behaviors related to sugar/diet)		X										
6)	Discuss city beverage procurement implementation.	Send communication to Council to obtain beverage procurement data; Roberto will help get request into right template		X	X									
7)	Discuss creation of a system to evaluate city beverage procurement	Obtain information of current beverage procurement data			X	X								
8)	Discuss status of healthy checkout policy implementation	Arrange meeting with public health nutrition staff/get update from nutritionist (Angelica)		X										
9)	Discuss numbers of stores assessed and outcomes by public health environmental department.	Arrange meeting with public health environmental health department			X	X								
10)	Create a plan for educating the public re soda tax success	Gather information on options for educating the public; add'l steps TBD, depending on \$			X	X								
11)	Write report for council, press, etc.	Gather data and information for report						X						
12)	Discuss fiscal data from the prior 12 months of tax revenue (to determine grant funds for 2025-26)	Fiscal data requested and distributed											Policy committee →council	
13)	Prepare new proposal guidelines for 2025-2026 (18 mo)	Distribute past proposal guidelines as a template						X			Nov 15: Issue new RFP	Dec 20: proposals due		
14)	Plan workshop for assisting with grant writing for community groups	Promote and coordinate meeting for potential grantees						X	X					
15)	Review and recommend proposals for funding	Distribute past review criteria and letters for funding										Resolution	Funding recs due to council	



## **Sugar-Sweetened Beverage Product Panel of Experts Commission**

Thursday, February 15<sup>th</sup>, 2024. 6:00 – 8:00 PM

### **Meeting Location:**

South Berkeley Senior Center  
2939 Ellis Street, Berkeley, CA 94703  
P: 510-981-5350

## **APPROVED MEETING MINUTES**

The meeting convened at 6:05pm.

### **ROLL CALL**

**Present:** Commissioners Morales, Rodriguez, Mashama, Kao, Lopez, Chan (6:17).  
**Absent:** Commissioner Esonwune.  
**Excused:** Commissioners Hecht, Crawford.  
**Staff present:** Roberto Terrones.

**COMMENTS FROM THE PUBLIC** None.

### **ACTION ON MINUTES**

**Approval of Minutes - Moved to approve the draft minutes of the meeting on 01/18/2024.**

**M/S/C:** Commissioners Rodriguez/Lopez.

**Ayes:** Commissioners Morales, Rodriguez, Mashama, Kao, Lopez, Chan.

**Noes:** None.

**Abstain:** None.

**Absent from vote:** Commissioner Esonwune.

**Recused:** None.

**Excused:** Commissioners Crawford, Hecht.

### **1. Motion to elect Commissioner Kenneth Hecht as Chair for the SSBPPE Commission.**

**M/S/C:** Commissioners Rodriguez/Chan.

*A Vibrant and Healthy Berkeley for All*

**Ayes:** Commissioners Morales, Rodriguez, Mashama, Kao, Lopez, Chan.  
**Noes:** None.  
**Abstain:** None.  
**Absent from vote:** Commissioner Esonwune.  
**Recused:** None.  
**Excused:** Commissioners Crawford, Hecht.

**2. Motion to elect Commissioner Janice Kao as Vice-Chair for the SSBPPE Commission.**

**Ayes:** Commissioners Morales, Rodriguez, Mashama, Kao, Lopez, Chan.  
**Noes:** None.  
**Abstain:** None.  
**Absent from vote:** Commissioner Esonwune.  
**Recused:** None.  
**Excused:** Commissioners Crawford, Hecht.

**3. Motion to add Commissioners Morales, Kao, Chan, and Mashama to the Media Subcommittee; Add Commissioners Lopez and Kao to the Prevention Strategies and Outcomes Subcommittee; Remove Commissioner Morales from the Sugary Drink Policy Subcommittee.**

**Ayes:** Commissioners Morales, Rodriguez, Mashama, Kao, Lopez, Chan.  
**Noes:** None.  
**Abstain:** None.  
**Absent from vote:** Commissioner Esonwune.  
**Recused:** None.  
**Excused:** Commissioners Crawford, Hecht.

**The meeting adjourned at 7:10pm.**

**NEXT MEETING:**

The next meeting is scheduled for **Thursday, March 21<sup>st</sup>, 2024**. Please check the SSBPPE Commission page on the City of Berkeley Commission webpage for updated information.

Respectfully Submitted, Roberto Terrones, Commission Secretary  
**Minutes were approved at the April 18<sup>th</sup>, 2024 regular meeting.**

## 2024 Commission Meeting Dates

Please complete this form and email it to the  
[Commission Inbox](#)

Name of Commission: Sugar-Sweetened Beverage Product Panel of Experts Commission

Commission Secretary: Roberto Terrones

### Please Note the Commission Meeting Dates for 2024 Below

Please fill in meeting date below. If no meeting for the month is scheduled please note as "No Meeting."

### 2024 Meeting Dates

Month	Meeting Day and Date	Time
<b>January 2024</b>	Thursday 1/18/2024	6:00 pm
<b>February 2024</b>	Thursday 2/15/2024	6:00 pm
<b>March 2024</b>	Thursday 3/21/2024	6:00 pm
<b>April 2024</b>	Thursday 4/18/2024	6:00 pm
<b>May 2024</b>	Thursday 5/16/2024	6:00 pm
<b>June 2024</b>	Thursday 6/20/2024	6:00 pm

Month	Meeting Day and Date	Time
<b>July 2024</b>	Thursday 7/18/2024	6:00 pm
<b>August 2024</b>	No Meeting	
<b>September 2024</b>	Thursday 9/19/2024	6:00 pm
<b>October 2024</b>	Thursday 10/17/2024	6:00 pm
<b>November 2024</b>	Thursday 11/21/2024	6:00 pm
<b>December 2024</b>	No Meeting	

[commission@cityofberkeley.info](mailto:commission@cityofberkeley.info)

City Clerk Department

Please contact our office at (510) 981-6908 with any questions.



## SSBPPE Subcommittee Roster

<b>Subcommittee</b>	<b>Subcommittee Description</b>	<b>Members</b>
Ad-hoc Work Plan	<i>Revision of 2024 Commission work plan.</i>	Xavier Morales Michael Rodriguez Pat Crawford Peace Esonwune
Media	<i>Give feedback on media materials that the Public Health Division disseminates to the public, prepare talking points for the media.</i>	Xavier Morales Janice Kao Michael Chan Themba Mashama
Prevention Strategies and Outcomes	<i>Review and revise requests for proposals, increase knowledge of the community, and evaluation.</i>	Pat Crawford Kenneth Hecht Vivian Lopez Janice Kao
Sugary Drinks Policy	<i>Recommend policies for the City Council.</i>	Pat Crawford Michael Rodriguez

<b>2024</b>			<b>Thursday 12:00 PM</b>	<b>Thursday 12:00 PM</b>	<b>Monday 2:30 PM</b>	<b>Wednesday 11:00 AM</b>	<b>Thursday 5:00 PM</b>
<b>COUNCIL MEETING DATE</b>	<b>Reports Due to Dept. Director</b>	<b>Reports Due to CAO</b>	<b>Dept. Reports Due to Clerk Day 33</b>	<b>Agenda Committee Packet to Print Day 19</b>	<b>Agenda Committee Meeting Day 15</b>	<b>Final Agenda Meeting - (Print Agenda on wed.) Day 13</b>	<b>Council Agenda Delivery Day 12</b>
<b>Winter Recess [December 13, 2023 through January 15, 2024]</b>							
<b>Jan 16</b>	11/30	11/30	12/14	1/2 - Tue	1/4 - Thur	1/4 - Thur	1/5 - Fri
<b>Jan 30</b>	12/14	12/14	12/28	1/11	1/16 - Tue	1/17	1/18
<b>Feb 13</b>	12/28	12/28	1/11	1/25	1/29	1/31	2/1
<b>Feb 27</b>	1/11	1/11	1/25	2/8	2/13 - Tue	2/14	2/15
<b>Mar 12</b>	1/25	1/25	2/8	2/22	2/26	2/28	2/29
<b>Mar 19</b>	2/1	2/1	2/15	2/29	3/4	3/6	3/7
<b>Spring Recess [March 20 through April 15, 2024]</b>							
<b>Apr 16</b>	2/29	2/29	3/14	3/28	4/1	4/3	4/4
<b>May 7</b>	3/21	3/21	4/4	4/18	4/25 - Thur	4/25 - Thr	4/26 - Fri
<b>May 14</b>	3/28	3/28	4/11	4/25	5/1 - Wed	5/1	5/2
<b>May 21</b>	4/4	4/4	4/18	5/2	5/7 - Tue	5/8	5/9
<b>Jun 4</b>	4/18	4/18	5/2	5/16	5/21 - Tue	5/22	5/23
<b>Jun 25</b>	5/9	5/9	5/23	6/6	6/10	6/12	6/13
<b>Jul 9</b>	5/23	5/23	6/6	6/20	6/24	6/26	6/27
<b>Jul 23</b>	6/6	6/6	6/20	7/3 - Wed	7/8	7/10	7/11
<b>Jul 30</b>	6/13	6/13	6/27	7/11	7/15	7/17	7/18
<b>Summer Recess [July 31 through September 9, 2024]</b>							
<b>Sep 10</b>	7/25	7/25	8/8	8/22	8/26	8/28	8/29
<b>Sep 24</b>	8/8	8/8	8/22	9/5	9/9	9/11	9/12
<b>Oct 1</b>	8/15	8/15	8/29	9/12	9/16	9/18	9/19
<b>Oct 15</b>	8/29	8/29	9/12	9/26	9/30	10/2	10/3
<b>Oct 29</b>	9/12	9/12	9/26	10/10	10/15 - Tue	10/16	10/17
<b>Nov 12</b>	9/26	9/26	10/10	10/24	10/28	10/30	10/31
<b>Nov 19</b>	10/3	10/3	10/17	10/31	11/4	11/6	11/7
<b>Dec 3</b>	10/17	10/17	10/31	11/14	11/18	11/20	11/21
<b>Dec 10</b>	10/27	10/27	11/7	11/21	11/25	11/27	11/27 - Wed
<b>Winter Recess [December 11, 2024 through January 14, 2025]</b>							

VTO Affected Dates

Holiday Affected Dates

Religious Holiday Affected  
Date

Updated 11/30/2023

Reports not submitted by the deadlines listed will not be included on the agenda.



**City of Berkeley**  
**Soda Tax Revenue-FY 2024**  
**For the Months of July 2023 - June 2024**

Month	Amount
Jul-23	101,700.72
Aug-23	91,096.92
Sep-23	83,544.48
Oct-23	107,467.71
Nov-23	91,669.61
Dec-23	115,244.29
Jan-24	
Feb-24	
Mar-24	
Apr-24	
May-24	
Jun-24	
<b>Gross Revenue</b>	<b>\$ 590,723.73</b>

FY 2015	\$ 242,986.39
FY 2016	\$ 1,757,271.70
FY 2017	\$ 1,578,389.00
FY 2018	\$ 1,517,949.28
FY 2019	\$ 1,606,177.73
FY 2020	\$ 1,378,196.46
FY 2021	\$ 995,387.49
FY 2022	\$ 1,047,801.97
FY 2023	\$ 1,185,893.91
FY 2024	\$ 590,723.73
<b>Total</b>	<b>\$ 10,124,160.02</b>



**City of Berkeley**  
**Soda Tax Revenue-FY 2023**  
**For the Months of July 2022 - June 2023**

Month	Amount
Jul-22	87,266.75
Aug-22	111,958.35
Sep-22	102,437.52
Oct-22	109,608.63
Nov-22	130,922.69
Dec-22	110,144.14
Jan-23	89,059.62
Feb-23	72,471.10
Mar-23	79,178.87
Apr-23	68,623.65
May-23	131,815.51
Jun-23	92,407.08
<b>Gross Revenue</b>	<b>\$ 1,185,893.91</b>

FY 2015	\$ 242,986.39
FY 2016	\$ 1,757,271.70
FY 2017	\$ 1,578,389.00
FY 2018	\$ 1,517,949.28
FY 2019	\$ 1,606,177.73
FY 2020	\$ 1,378,196.46
FY 2021	\$ 995,387.49
FY 2022	\$ 1,047,801.97
FY 2023	\$ 1,185,893.91
<b>Total</b>	<b>\$ 10,124,160.02</b>



**City of Berkeley**  
**Soda Tax Revenue-FY 2022**  
**For the Months of July 2021 - June 2022**

<b>Month</b>	<b>Amount</b>
Jul-21	18,768.11
Aug-21	108,388.41
Sep-21	114,549.88
Oct-21	70,046.23
Nov-21	127,550.71
Dec-21	89,741.87
Jan-22	89,200.90
Feb-22	79,048.32
Mar-22	39,113.64
Apr-22	125,678.05
May-22	123,796.02
Jun-22	61,919.83
<b>Gross Revenue</b>	<b>\$ 1,047,801.97</b>

<b>FY 2015</b>	<b>\$ 242,986.39</b>
<b>FY 2016</b>	<b>\$ 1,757,271.70</b>
<b>FY 2017</b>	<b>\$ 1,578,389.00</b>
<b>FY 2018</b>	<b>\$ 1,517,949.28</b>
<b>FY 2019</b>	<b>\$ 1,606,177.73</b>
<b>FY 2020</b>	<b>\$ 1,378,196.46</b>
<b>FY 2021</b>	<b>\$ 995,387.49</b>
<b>FY 2022</b>	<b>\$ 1,047,801.97</b>
<b>Total</b>	<b>\$ 10,124,160.02</b>



**City of Berkeley**  
**Soda Tax Revenue-FY 2021**  
**For the Months of July 2020 - June 2021**

Month	Amount
Jul-20	77,220.73
Aug-20	76,953.28
Sep-20	108,071.92
Oct-20	87,711.55
Nov-20	102,421.10
Dec-20	95,662.70
Jan-21	77,603.05
Feb-21	65,012.74
Mar-21	67,203.07
Apr-21	83,326.81
May-21	75,985.70
Jun-21	78,214.84
<b>Gross Revenue</b>	<b>\$ 995,387.49</b>

<b>FY 2015</b>	<b>\$ 242,986.39</b>
<b>FY 2016</b>	<b>\$ 1,757,271.70</b>
<b>FY 2017</b>	<b>\$ 1,578,389.00</b>
<b>FY 2018</b>	<b>\$ 1,517,949.28</b>
<b>FY 2019</b>	<b>\$ 1,606,177.73</b>
<b>FY 2020</b>	<b>\$ 1,378,196.46</b>
<b>FY 2021</b>	<b>\$ 995,387.49</b>
<b>Total</b>	<b>\$ 9,076,358.05</b>



**City of Berkeley**  
**Soda Tax Revenue-FY 2020**  
**For the Months of July 2019 - June 2020**

Month	Amount
Jul-19	117,276.00
Aug-19	136,505.87
Sep-19	129,384.50
Oct-19	113,242.67
Nov-19	146,773.53
Dec-19	146,013.74
Jan-20	121,333.67
Feb-20	125,336.18
Mar-20	92,675.68
Apr-20	101,524.50
May-20	64,301.87
Jun-20	83,828.25
<b>Gross Revenue</b>	<b>\$ 1,378,196.46</b>
<b>Less: 2% Fees</b>	<b>\$ 27,563.93</b>
<b>Total Revenue</b>	<b>\$ 1,350,632.53</b>

FY 2015	\$ 242,986.39
FY 2016	1,757,271.70
FY 2017	1,578,389.00
FY 2018	1,517,949.28
FY 2019	1,606,177.73
FY 2020	1,378,196.46
<b>Total</b>	<b>\$ 8,080,970.56</b>



**City of Berkeley**  
**Soda Tax Revenue-FY 2019**  
**For the Months of July 2018 - June 2019**

<b>Month</b>	<b>Amount</b>
Jul-18	151,708.58
Aug-18	102,327.98
Sep-18	138,404.70
Oct-18	112,675.36
Nov-18	180,017.37
Dec-18	141,283.41
Jan-19	169,104.87
Feb-19	88,879.74
Mar-19	146,695.92
Apr-19	113,979.21
May-19	142,511.82
Jun-19	118,588.77
<b>Total</b>	<b>\$ 1,606,177.73</b>

<b>FY 2015</b>	<b>\$ 242,986.39</b>
<b>FY 2016</b>	<b>1,757,271.70</b>
<b>FY 2017</b>	<b>1,578,389.00</b>
<b>FY 2018</b>	<b>1,517,949.28</b>
<b>FY 2019</b>	<b>1,606,177.73</b>
<b>Total</b>	<b>\$ 6,702,774.10</b>



## ORDINANCE NO. 7,388–N.S.

IMPOSING A GENERAL TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED  
BEVERAGE PRODUCTS

BE IT ORDAINED by the People of the City of Berkeley as follows:

**Section 1. Findings**

- A. Our nation, our state, and our community face a major public health crisis.
- B. Diabetes, obesity, and tooth decay have been on the rise for decades. Although no group has escaped these epidemics, children as well as low income communities and communities of color have been and continue to be disproportionately affected.
- C. While there is no single cause for the rise in diabetes, obesity, and tooth decay, there is overwhelming evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay.
- D. Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value, but massive quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar.
- E. Before the 1950s, the standard soft-drink bottle was 6.5 ounces. In the 1950s, larger size containers were introduced, including the 12-ounce can, which became widely available in 1960. By the early 1990s, 20-ounce plastic bottles had become the norm.
- F. At the same time, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18. African American and Latino children are also aggressively targeted with advertisements to promote sugar-laden drinks.
- G. The resulting impact on consumption should not be surprising. The average American now drinks nearly 50 gallons of sugary drinks a year. The problem is especially acute with children in California. From 1989 to 2008, the percentage of children consuming sugary drinks increased from 79% to 91% and the percentage of total calories obtained from sugary drinks increased by 60% in children ages 6 to 11.
- H. This level of consumption has had tragic impacts on community health. Type 2 Diabetes – previously only seen among adults – is now increasing among children. If the current obesity trends are not reversed, it is predicted that one in three children and *nearly one-half* of Latino and African American children born in the year 2000 will develop type 2 diabetes in their lifetimes.
- I. An Asian resident of Berkeley is almost 3 times more likely than a white resident to have been diagnosed with diabetes, and an African American resident of Berkeley is 14 times more likely than a white resident to be hospitalized for diabetes.
- K. 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.
- N. Our community has not been immune to the challenge of unhealthy weight gain and obesity. In 2008-09, over 40% of Berkeley 9th graders were overweight or obese. These overweight and obese children have a much greater chance of being obese as adults, with all the health risks that entails.

- M. There are also economic costs. In 2006, for instance, overweight and obesity-related costs in California were estimated at almost \$21 billion.
- O. Tooth decay, while not as life threatening as diabetes or obesity, still has a meaningful impact, especially on children. In fact, tooth decay is the most common childhood disease, experienced by over 70% of California's 3rd graders. Children who frequently or excessively consume beverages high in sugar are at increased risk for dental cavities. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss in California.

## **Section 2. Purpose and Intent**

- A. Based on the findings set forth above, the purpose of this Ordinance is to diminish the human and economic costs of diseases associated with the consumption of sugary drinks by discouraging their distribution and consumption in Berkeley through a tax. Specifically, the purpose of this ordinance is to tax the distribution of sugary drinks and the products used to make them.
- B. This Ordinance is not intended for the purpose of regulation.
- C. This Ordinance does not authorize the conduct of any business or activity in the city, but merely provides for the taxation of distribution of specified products as it occurs.
- D. This Ordinance imposes a general tax on the distribution of sugar-sweetened beverages such as high-calorie, low-nutrition products, like soda, energy drinks, and heavily presweetened tea, as well as the added caloric sweeteners used to produce these sugar-sweetened beverages, such as the premade syrup used to make fountain drinks. Certain drinks containing sugar are exempted, including infant formula, milk products, and natural fruit and vegetable juice.
- E. This Ordinance provides for a small business exemption for Retailers who transport sugar-sweetened beverage products into the City themselves and then sell those products directly to consumers.
- F. This general tax will provide revenue to be available for the general governmental needs of the people of Berkeley.
- G. This Ordinance provides for a Sugar Sweetened Beverage Product Panel of Experts, composed of experts in the areas of public health, child nutrition, nutrition education, and food access programs. The Panel will make recommendations on how and to what extent the City should fund programs to further reduce the consumption of sugar-sweetened beverages in Berkeley and address the consequences of such consumption.

## **Section 3. New Berkeley Municipal Code Chapter 7.72**

That a new Chapter 7.72 is added to the Berkeley Municipal Code is to read as follows:

### **Chapter 7.72 Sugar-Sweetened Beverage Product Distribution Tax**

#### **Section 7.72.010 Excise Tax**

- A. In addition to any other taxes imposed by the City, the City hereby levies a tax of one cent (\$0.01) per fluid ounce on the privilege of Distributing Sugar-sweetened beverage products in the City.

- B. For the purposes of this Chapter, the volume, in ounces, of a Sugar-sweetened beverage product shall be calculated as follows:
1. For a Sugar-sweetened beverage, the volume, in fluid ounces, of Sugar-sweetened beverages distributed to any person in the course of business in the City.
  2. For Added caloric sweeteners, the largest volume, in fluid ounces, of Sugar-sweetened beverages that could be produced from the Added caloric sweeteners. In accordance with rules and regulations promulgated by the City pursuant to Section 7.72.040, the largest volume, in fluid ounces, that would typically be produced from the Added caloric sweeteners shall be determined based on the manufacturer's instructions or, if the Distributor uses the Added caloric sweeteners to produce a Sugar-sweetened beverage, the regular practice of the Distributor.
- C. The tax shall be paid upon the first non-exempt Distribution of a Sugar-sweetened beverage product in the City. To the extent that there is a chain of Distribution within Berkeley involving more than one Distributor, the tax shall be levied on the first Distributor subject to the jurisdiction of the City. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent Distributions and by subsequent Distributors, provided that the Distribution of Sugar-sweetened beverage products may not be taxed more than once in the chain of commerce.

#### **Section 7.72.020 Exemptions**

The tax imposed by this Chapter shall not apply:

- A. To any Distributor that is not subject to taxation by the City under the laws of the United States or the State of California;
- B. To any Distribution of a Sugar-sweetened beverage product to a Retailer with less than \$100,000 in annual gross receipts, as defined in Section 9.04.025, in the most recent year;
- C. To any Distribution of Natural or common sweeteners; or
- D. To any Distribution of Added caloric sweeteners to a Food Products Store as defined in Section 23F.04.010, if the Food Products Store then offers the Added caloric sweetener for sale for later use by customers of that store.

#### **Section 7.72.030 Definitions**

- A. "Added caloric sweetener" means any substance or combination of substances that meets all of the following four criteria:
1. Is suitable for human consumption;
  2. Adds calories to the diet if consumed;
  3. Is perceived as sweet when consumed; and
  4. Is used for making, mixing, or compounding Sugar-sweetened beverages by combining the substance or substances with one or more other ingredients including, without limitation, water, ice, powder, coffee, tea, fruit juice, vegetable juice, or carbonation or other gas.

An Added caloric sweetener may take any form, including but not limited to a liquid, syrup, and powder, whether or not frozen. "Added caloric sweetener" includes, without limitation, sucrose, fructose, glucose, other sugars, and high fructose corn syrup, but does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

- B. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code, as that Part may be amended from time to time.
- C. "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 for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" shall also mean a "medical food" as defined in Section 109971 of the California Health and Safety Code, as that definition may be amended from time to time. "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.
- D. "Business Entity" means any Person except for a natural person.
- E. "City" means the City of Berkeley, California.
- F. "City Manager" means the City Manager of the City of Berkeley or his or her designee.
- G. "Consumer" means a natural person who purchases a Sugar-sweetened beverage product in the City for a purpose other than resale in the ordinary course of business.
- H. "Distribution" or "Distribute" means the transfer of title or possession (1) from one Business entity to another for consideration or (2) within a single Business entity, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.
- I. "Distributor" means any Person who Distributes Sugar-sweetened beverage products in the City.
- J. "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.
- K. "Natural or common sweetener" means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.
- L. "Person" means an individual, trust, firm, joint stock company, business concern, business trust, government, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a, limited liability company, and association or any other group or combination acting as a unit.
- M. "Retailer" means any Person who serves Sugar-sweetened beverage products to a Consumer.
- N. "Simple syrup" means a mixture of water and one or more Natural or common sweeteners without any additional ingredients.
- O. "Sugar-sweetened beverage" means any beverage intended for human consumption to which one or more Added caloric sweeteners has been added and that contains at least 2 calories per fluid ounce.
  - 1. "Sugar-sweetened beverage" includes, but is 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 common names that are derivations thereof.

2. "Sugar-sweetened beverage" shall not include any of the following:
  - a. Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;
  - b. Any beverage for medical use;
  - c. Any liquid sold for use for weight reduction as a meal replacement;
  - d. Any product commonly referred to as "infant formula" or "baby formula"; or
  - e. Any alcoholic beverage.

P. "Sugar-sweetened beverage product" means a Sugar-sweetened beverage or Added caloric sweetener.

#### **Section 7.72.040 Duties, Responsibilities and Authority of the City Manager**

A. It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.

B. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the reexamination and correction of returns and payments, and for reporting. Such rules and regulations may include, but are not limited to, the following:

1. The determination of the frequency with which a Distributor must calculate the tax. This determination shall not constitute an increase of the tax.
2. The determination of the frequency with which a Distributor must pay the tax. This determination shall not constitute an increase of the tax.
3. The determination of whether and how a Distributor must register with the City.
4. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another Distributor must report to the City the name of that Distributor.
5. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another distributor must report to the City the volume of Sugar-sweetened beverage products received from that Distributor.
6. The determination of what other documentation is required to be created or maintained by a Distributor.

C. The City Manager shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted.

#### **Section 7.72.050 Collection**

A. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the City. Any Distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount.

B. In order to aid in the City's collection of taxes due under this Chapter, any Retailer that receives Sugar-sweetened beverage products from a Distributor shall, in accordance with rules and regulations promulgated by the City Manager pursuant to Section 7.72.040, either:

1. report to the City all such transactions, the volume in ounces of Sugar-sweetened beverage products received in each transaction, and the identity and contact information of the Distributor from whom the Sugar-sweetened beverage products were received; or
  2. collect the tax that would be payable as a result of the transaction by the Distributor from whom the Sugar-sweetened beverage product was received and remit it to the City; or
  3. provide to the City evidence that the Distributor from whom the Sugar-sweetened beverage products were received has registered as a Distributor with the City and that registration is current.
- C. The City Council is authorized to have the taxes imposed by this Chapter collected by the County of Alameda or the California Board of Equalization in conjunction with the collection of other taxes for the City. If the City Council exercises this authorization, the duties and responsibilities of the City Manager shall be given, as appropriate, to the County of Alameda or the California Board of Equalization, which may delegate such duties and responsibilities as necessary and as authorized by law.

**Section 7.72.060 Refunds**

Whenever any tax under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as provided in Chapter 7.20 of the Berkeley Municipal Code.

**Section 7.72.070 Enforcement**

Except as otherwise provided by this Chapter or by rule or regulation promulgated by the City Manager, the tax imposed by this Chapter shall be administered in the same manner as taxes imposed pursuant to Chapter 9.04 and, without limitation, shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in Chapter 9.04.

**Section 7.72.080 Not a Sales and Use Tax**

The tax imposed by this Chapter is a tax upon the privilege of conducting business, specifically, Distributing Sugar sweetened beverage products within the City of Berkeley. It is not a sales, use, or other excise tax on the sale, consumption or use of Sugar-sweetened beverage products.

**Section 7.72.090 Sugar-Sweetened Beverage Product Panel of Experts**

- A. There shall be established the Sugar-Sweetened Beverage Product Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption.
- B. An officer or employee of the City designated by the City Manager shall serve as secretary of the Panel.
- C. In accordance with Chapter 2.04, the Panel shall be composed of nine members appointed by the City Council.
- D. Terms shall expire and vacancies shall be filled in accordance with the provisions of Section 2.04.030 through 2.04.145 of this Code.
- E. Each member of the Panel must:

1. Have experience in community-based youth food and nutrition programs; or
  2. Have experience in school-based food and nutrition programs and be referred by the Berkeley Unified School District; or
  3. Have experience in early childhood nutrition education; or
  4. Have experience in researching public health issues or evaluating public health programs related to diabetes, obesity, and sugary drink consumption; or
  5. Be a licensed medical practitioner.
- F. In accordance with Section 3.02.040, members of the Panel may be reappointed but shall not serve more than eight consecutive years.
- G. The Panel shall, by majority vote, do each of the following:
1. Annually appoint one of its members as chair and one of its members as vice-chair;
  2. Approve bylaws to facilitate the proper functioning of the Panel;
  3. Establish a regular time and place of meeting. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded, kept, and maintained; and
  4. Publish an annual report that includes the following:
    - a. recommendations on how to allocate the City's general funds to reduce the consumption of sugar sweetened beverages in Berkeley and to address the results of such consumption;
    - b. information, if available, concerning the impact of this Chapter on the public health of the residents of the City; and
    - c. any additional information that the Panel deems appropriate.
- H. Within 15 days of receipt of the publication of the Panel's annual report, the City Manager shall cause the report to be published on the City's Internet website and to be transmitted to the City Council and the Governing Board of the Berkeley Unified School District.
- I. The City Council shall consider, but need not follow, the Panel's recommendations and shall annually inform the Panel as to the extent to which it has implemented the Panel's recommendations.

**Section 7.72.100 Increase Appropriations Limits**

Pursuant to California Constitution article XIIB, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this tax for each of the four fiscal years from 2015-16 through 2018-19.

**Section 7.72.110 Amendment**

The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section 7.72.020.B.

**Section 4. Duration.**

This Ordinance shall be effective on January 1, 2015. The last effective date of this Ordinance shall be December 31, 2026, and it shall terminate as of January 1, 2027.

**Section 5. Severability.**

The People of the City of Berkeley hereby declare that they would have adopted each section, sentence, clause, phrase, word, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, words, or portions of this Ordinance, or any application thereof, be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable. If any section, sentence, clause, phrase, word, or portion of this Ordinance, or any application thereof in any circumstance, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, words, or portions of this Ordinance, and applications thereof, shall nonetheless remain in full force and effect.

**Section 6. Municipal Affair.**

- A. The People of the City of Berkeley hereby declare that the taxation of the privilege of distributing sugar-sweetened beverage products and that the public health impact of sugar-sweetened beverage products separately and together constitute municipal affairs.
- B. The People of the City of Berkeley hereby further declare their desire for this measure to coexist with any similar tax adopted at the county or state levels.

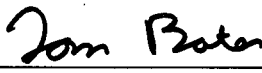
**Section 7. California Environmental Quality Act Requirements.**

This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation Public Resources Code section 21065, CEQA Guidelines section 15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment and pursuant to Public Resources Code section 21080, subdivision (b)(8) and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

The foregoing is a true and correct copy of Ordinance No. 7,388-N.S., and the same was approved by a vote of the electorate of the City of Berkeley on November 4, 2014.

At a regular meeting of the Council of the City of Berkeley held on December 16, 2014 the final adoption of this Ordinance was approved by the following vote:

- Ayes: Anderson, Arreguin, Capitelli, Droste, Maio, Moore, Worthington and Bates.
- Noes: None.
- Absent: Wengraf.

  
\_\_\_\_\_  
Tom Bates, Mayor

ATTEST:   
\_\_\_\_\_  
Mark Numainville, CMC, City Clerk

Date signed: December 18, 2014



## Chapter 7.72

### SUGAR-SWEETENED BEVERAGE PRODUCT DISTRIBUTION TAX

Sections:

- 7.72.010**    **Excise tax.**
- 7.72.020**    **Exemptions.**
- 7.72.030**    **Definitions.**
- 7.72.040**    **Duties, responsibilities and authority of the City Manager.**
- 7.72.050**    **Collection.**
- 7.72.060**    **Refunds.**
- 7.72.070**    **Enforcement.**
- 7.72.080**    **Not a sales and use tax.**
- 7.72.090**    **Sugar-Sweetened Beverage Product Panel of Experts.**
- 7.72.100**    **Increase appropriations limits.**
- 7.72.110**    **Amendment.**

**Code reviser's note:** Section 4 of Ord. [7388-NS](#) provides, "This Ordinance shall be effective on January 1, 2015. The last effective date of this Ordinance shall be December 31, 2026, and it shall terminate as of January 1, 2027."

#### **7.72.010    Excise tax.**

- A. In addition to any other taxes imposed by the City, the City hereby levies a tax of one cent (\$0.01) per fluid ounce on the privilege of Distributing Sugar-sweetened beverage products in the City.
- B. For the purposes of this Chapter, the volume, in ounces, of a Sugar-sweetened beverage product shall be calculated as follows:
  - 1. For a Sugar-sweetened beverage, the volume, in fluid ounces, of Sugar-sweetened beverages distributed to any person in the course of business in the City.
  - 2. For Added caloric sweeteners, the largest volume, in fluid ounces, of Sugar-sweetened beverages that could be produced from the Added caloric sweeteners. In accordance with rules and regulations promulgated by the City pursuant to Section [7.72.040](#), the largest volume, in fluid ounces, that would typically be produced from the Added caloric sweeteners shall be determined based on the manufacturer's instructions or, if the Distributor uses the Added caloric sweeteners to produce a Sugar-sweetened beverage, the regular practice of the Distributor.
- C. The tax shall be paid upon the first nonexempt Distribution of a Sugar-sweetened beverage product in the City. To the extent that there is a chain of Distribution within Berkeley involving more than one Distributor, the tax

shall be levied on the first Distributor subject to the jurisdiction of the City. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent Distributions and by subsequent Distributors; provided, that the Distribution of Sugar-sweetened beverage products may not be taxed more than once in the chain of commerce. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.020 Exemptions.**

The tax imposed by this Chapter shall not apply:

- A. To any Distributor that is not subject to taxation by the City under the laws of the United States or the State of California;
- B. To any Distribution of a Sugar-sweetened beverage product to a Retailer with less than \$100,000 in annual gross receipts, as defined in Section [9.04.025](#), in the most recent year;
- C. To any Distribution of Natural or common sweeteners; or
- D. To any Distribution of Added caloric sweeteners to a Food Products Store as defined in Section 23F.04.010, if the Food Products Store then offers the Added caloric sweetener for sale for later use by customers of that store. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.030 Definitions.**

- A. "Added caloric sweetener" means any substance or combination of substances that meets all of the following four criteria:
  - 1. Is suitable for human consumption;
  - 2. Adds calories to the diet if consumed;
  - 3. Is perceived as sweet when consumed; and
  - 4. Is used for making, mixing, or compounding Sugar-sweetened beverages by combining the substance or substances with one or more other ingredients including, without limitation, water, ice, powder, coffee, tea, fruit juice, vegetable juice, or carbonation or other gas.

An Added caloric sweetener may take any form, including but not limited to a liquid, syrup, and powder, whether or not frozen. "Added caloric sweetener" includes, without limitation, sucrose, fructose, glucose, other sugars, and high fructose corn syrup, but does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

- B. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing with Section [32001](#)) of the California Revenue and Taxation Code, as that Part may be amended from time to time.

- C. "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 for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" shall also mean a "medical food" as defined in Section [109971](#) of the California Health and Safety Code, as that definition may be amended from time to time. "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.
- D. "Business Entity" means any Person except for a natural person.
- E. "City" means the City of Berkeley, California.
- F. "City Manager" means the City Manager of the City of Berkeley or his or her designee.
- G. "Consumer" means a natural person who purchases a Sugar-sweetened beverage product in the City for a purpose other than resale in the ordinary course of business.
- H. "Distribution" or "Distribute" means the transfer of title or possession (1) from one Business entity to another for consideration or (2) within a single Business entity, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.
- I. "Distributor" means any Person who Distributes Sugar-sweetened beverage products in the City.
- J. "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.
- K. "Natural or common sweetener" means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.
- L. "Person" means an individual, trust, firm, joint stock company, business concern, business trust, government, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a limited liability company, and association or any other group or combination acting as a unit.
- M. "Retailer" means any Person who serves Sugar-sweetened beverage products to a Consumer.
- N. "Simple syrup" means a mixture of water and one or more Natural or common sweeteners without any additional ingredients.
- O. "Sugar-sweetened beverage" means any beverage intended for human consumption to which one or more Added caloric sweeteners has been added and that contains at least 2 calories per fluid ounce.

1. "Sugar-sweetened beverage" includes, but is 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 common names that are derivations thereof.
2. "Sugar-sweetened beverage" shall not include any of the following:
  - (a) Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;
  - (b) Any beverage for medical use;
  - (c) Any liquid sold for use for weight reduction as a meal replacement;
  - (d) Any product commonly referred to as "infant formula" or "baby formula"; or
  - (e) Any alcoholic beverage.

P. "Sugar-sweetened beverage product" means a Sugar-sweetened beverage or Added caloric sweetener. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.040 Duties, responsibilities and authority of the City Manager.**

- A. It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.
- B. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the reexamination and correction of returns and payments, and for reporting. Such rules and regulations may include, but are not limited to, the following:
  1. The determination of the frequency with which a Distributor must calculate the tax. This determination shall not constitute an increase of the tax.
  2. The determination of the frequency with which a Distributor must pay the tax. This determination shall not constitute an increase of the tax.
  3. The determination of whether and how a Distributor must register with the City.
  4. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another Distributor must report to the City the name of that Distributor.
  5. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another distributor must report to the City the volume of Sugar-sweetened beverage products received from that Distributor.

6. The determination of what other documentation is required to be created or maintained by a Distributor.
- C. The City Manager shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.050 Collection.**

- A. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the City. Any Distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount.
- B. In order to aid in the City's collection of taxes due under this Chapter, any Retailer that receives Sugar-sweetened beverage products from a Distributor shall, in accordance with rules and regulations promulgated by the City Manager pursuant to Section [7.72.040](#), either:
1. report to the City all such transactions, the volume in ounces of Sugar-sweetened beverage products received in each transaction, and the identity and contact information of the Distributor from whom the Sugar-sweetened beverage products were received; or
  2. collect the tax that would be payable as a result of the transaction by the Distributor from whom the Sugar-sweetened beverage product was received and remit it to the City; or
  3. provide to the City evidence that the Distributor from whom the Sugar-sweetened beverage products were received has registered as a Distributor with the City and that registration is current.
- C. The City Council is authorized to have the taxes imposed by this Chapter collected by the County of Alameda or the California Board of Equalization in conjunction with the collection of other taxes for the City. If the City Council exercises this authorization, the duties and responsibilities of the City Manager shall be given, as appropriate, to the County of Alameda or the California Board of Equalization, which may delegate such duties and responsibilities as necessary and as authorized by law. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.060 Refunds.**

Whenever any tax under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as provided in Chapter [7.20](#) of the Berkeley Municipal Code. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.070 Enforcement.**

Except as otherwise provided by this Chapter or by rule or regulation promulgated by the City Manager, the tax imposed by this Chapter shall be administered in the same manner as taxes imposed pursuant to Chapter [9.04](#) and, without limitation, shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in Chapter [9.04](#). (Ord. 7388-NS § 3 (part), 2014)

### **7.72.080 Not a sales and use tax.**

The tax imposed by this Chapter is a tax upon the privilege of conducting business, specifically, Distributing Sugar sweetened beverage products within the City of Berkeley. It is not a sales, use, or other excise tax on the sale, consumption or use of Sugar-sweetened beverage products. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.090 Sugar-Sweetened Beverage Product Panel of Experts.**

- A. There shall be established the Sugar-Sweetened Beverage Product Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption.
- B. An officer or employee of the City designated by the City Manager shall serve as secretary of the Panel.
- C. In accordance with Chapter [2.04](#), the Panel shall be composed of nine members appointed by the City Council.
- D. Terms shall expire and vacancies shall be filled in accordance with the provisions of Section [2.04.030](#) through [2.04.145](#) of this Code.
- E. Each member of the Panel must:
  - 1. Have experience in community-based youth food and nutrition programs; or
  - 2. Have experience in school-based food and nutrition programs and be referred by the Berkeley Unified School District; or
  - 3. Have experience in early childhood nutrition education; or
  - 4. Have experience in researching public health issues or evaluating public health programs related to diabetes, obesity, and sugary drink consumption; or
  - 5. Be a licensed medical practitioner.
- F. In accordance with Section [3.02.040](#), members of the Panel may be reappointed but shall not serve more than eight consecutive years.

- G. The Panel shall, by majority vote, do each of the following:
1. Annually appoint one of its members as chair and one of its members as vice-chair;
  2. Approve bylaws to facilitate the proper functioning of the Panel;
  3. *Establish a regular time and place of meeting.* All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded, kept, and maintained; and
  4. Publish an annual report that includes the following:
    - (a) recommendations on how to allocate the City's general funds to reduce the consumption of sugar sweetened beverages in Berkeley and to address the results of such consumption;
    - (b) information, if available, concerning the impact of this Chapter on the public health of the residents of the City; and
    - (c) any additional information that the Panel deems appropriate.
- H. Within 15 days of receipt of the publication of the Panel's annual report, the City Manager shall cause the report to be published on the City's Internet website and to be transmitted to the City Council and the Governing Board of the Berkeley Unified School District.
- I. The City Council shall consider, but need not follow, the Panel's recommendations and shall annually inform the Panel as to the extent to which it has implemented the Panel's recommendations. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.100 Increase appropriations limits.**

Pursuant to California Constitution article [XIIIB](#), the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this tax for each of the four fiscal years from 2015-16 through 2018-19. (Ord. 7388-NS § 3 (part), 2014)

### **7.72.110 Amendment.**

The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section [7.72.020.B](#). (Ord. 7388-NS § 3 (part), 2014)

**The Berkeley Municipal Code is current through Ordinance 7897-NS, passed February 13, 2024.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.berkeleyca.gov](http://www.berkeleyca.gov)

[Hosted by Code Publishing Company, A General Code Company.](#)



## RESOLUTION NO. 70,765-N.S.

## ALLOCATION: \$2 MILLION TOTAL FOR SUGAR-SWEETENED BEVERAGE CONSUMPTION AND REDUCTION GRANT PROGRAM IN FY2024 AND FY2025

WHEREAS, the consumption of sugar-sweetened beverages (“SSB”) in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, in FY2022 and FY2023, the City Council awarded a total of \$2,662,506 by Resolution #66,969-NS upon the recommendation of the SSBPPE Commission to demonstrate the City’s long-term commitment to decreasing the consumption of SSB and mitigate the harmful impacts of SSB on the population of Berkeley; and

WHEREAS, many studies demonstrate that high intake of SSB is associated with risk of Type 2 Diabetes, obesity, tooth decay, and coronary heart disease; and

WHEREAS, the above conditions are all demonstrated to increase both the severity of COVID19 related illness and risk of death; and

WHEREAS Latinx and Black communities are disproportionately affected by COVID-19; and

WHEREAS, hundreds of millions of dollars have been spent in an ongoing massive marketing campaign, which particularly targets children and people of color; and

WHEREAS, an African American resident of Berkeley is 14 times more likely than a White resident to be hospitalized for diabetes; and

WHEREAS, 40% of 9<sup>th</sup> graders in Berkeley High School are either overweight or obese; and

WHEREAS, tooth decay is the most common childhood disease, experienced by over 70% of California’s 3rd graders; and

WHEREAS, in 2012, a U.S. national research team estimated levying a penny-per-ounce tax on sweetened beverages would prevent nearly 100,000 cases of heart disease, 8,000 strokes, and 26,000 deaths over the next decade and 240,000 cases of diabetes per year nationwide.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to allocate \$2 million from the General Fund to be disbursed in two (2) installments of \$1 million in FY24 and \$1 million in FY25 and invested as follows:

1. Allocate up to \$712,000 to Berkeley Unified School District (BUSD) through a grant proposal to reduce the consumption of sugar-sweetened beverages (SSBs) through the implementation and enhancement of the BUSD cooking and gardening programs for the period, July 1, 2023 to June 30, 2025; and
2. Allocate at least \$712,000 through a RFP process managed by the Public Health Division for grants to community-based organizations consistent with the SSBPPE Commission's goals to reduce the consumption of SSB and to address the effects of SSB consumption for the period, July 1, 2023 to June 30, 2025; and
3. For the period, July 1, 2023 to June 30, 2025, direct the City Manager to allocate \$125,000 to fund Finance Department costs and \$451,000 to HHCS/PHD for staffing, operating and consulting costs to coordinate and monitor the grant process, manage resulting contracts awarded, support activities aligned with the goal of the sugary beverage tax, including the Healthy Retail Checkout ordinance, and provide an annual presentation to the SSBPPE Commission that includes process and outcome data and updates on Finance Department fees related to the sugary drink tax for the SSBPPE Commission to inform the development of the Commission's annual report.
4. Carryover any sugary drink tax revenue received in excess of \$2 million during FY2024 and FY2025 to be awarded for related services in FY2025 – FY2027.

BE IT FURTHER RESOLVED that an additional amount of \$35,590 in FY24 and in FY25 is authorized.

BE IT FURTHER RESOLVED that any additional revenues beyond the projected amounts will be prioritized for grants.

A records signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

The foregoing Resolution was adopted by the Berkeley City Council on April 11, 2023 by the following vote:

Ayes: Bartlett, Hahn, Harrison, Humbert, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
 \_\_\_\_\_  
 Jesse Arreguin, Mayor

Attest:   
 \_\_\_\_\_  
 Mark Numainville, City Clerk

## Consent Calendar

**Public Comment on Consent Calendar and Information Items Only:** 26 speakers.

**Action:** M/S/C (Arreguin/Hahn) to adopt the Consent Calendar in one motion except as indicated.

**Vote:** Ayes – Kesarwani, Taplin, Bartlett, Hahn, Wengraf, Robinson, Humbert, Arreguin; Noes – None; Abstain – None; Absent – Harrison.

Recess 8:37 p.m. – 9:00 p.m.

**Urgent Item: Grant Allocation: Approve Healthy Berkeley Funding Recommendation for Programs to Reduce Consumption of Sugar-Sweetened Beverages (SSBs) for FY24 and FY25 Grant Cycle**

**From: Sugar-Sweetened Beverage Product Panel of Experts Commission**

**Recommendation:** Approve the SSBPPE Commission's recommendations and adopt eight (8) Resolutions authorizing the City Manager or her designee to enter into contracts with the Berkeley Unified School District (BUSD) and the Community-Based Organizations (CBOs) listed below to distribute a total of \$1,495,180 for FY 2024 and FY 2025 according to the following schedule:

1. \$705,056.05 total grant to Berkeley Unified School District to implement the Gardening and Cooking Program for FY 2024 and FY 2025 to be disbursed as follows: \$352,528.03 in FY 2024 and \$352,528.02 in FY 2025.
2. \$85,864.90 total grant to Bay Area Community Resources to implement the Healthy Options at Point of Sale program to be disbursed as follows: \$42,932.45 in FY 2024 and \$42,932.45 in FY 2025.
3. \$106,150.00 total grant to Berkeley Youth Alternatives to implement the Urban Agriculture and Team Nutrition Program to be disbursed as follows: \$53,075.00 in FY 2024 and \$53,075.00 in FY 2025.
4. \$100,378.30 total grant to Ecology Center to implement the For Thirst, Water First! program to be disbursed as follows: \$50,189.15 in FY 2024 and \$50,189.15 in FY 2025.
5. \$130,433.05 total grant to Lifelong Medical Care to implement the Healthy Berkeley, Chronic Disease and Oral Health Prevention program to be disbursed as follows: \$65,216.53 in FY 2024 and \$65,216.52 in FY 2025.
6. \$55,000.00 total grant to Multicultural Institute to implement the Life Skills/Day Laborer Program: Health Activity program to be disbursed as follows: \$27,500.00 in FY 2024 and \$27,500.00 in FY 2025.
7. \$96,923.20 total grant to YMCA of the East Bay to implement the YMCA Healthy Me! program to be disbursed as follows: \$48,461.60 in FY 2024 and \$48,461.60 in FY 2025.
8. \$215,374.50 total grant to Healthy Black Families to implement the Thirsty for Change! (T4C) program to be disbursed as follows: \$107,687.25 in FY 2024 and \$107,687.25 in FY 2025.
9. The Commission recommends that indirect or administrative expenses not exceed 10% of the program budget for any entity and that the funds awarded not be used to supplant any other source of funding.
10. The Commission recommends that City Council authorize the City Manager to authorize advances for BUSD and the selected community agencies receiving funds in

## Consent Calendar

FY 2024 and FY 2025. The advances are to be equivalent to 25% of the agency's allocation.

**Financial Implications:** See report

Contact: Roberto Terrones, Commission Secretary, (510) 981-5400

**Action:** Approved the recommendation and adopted Resolution No. 70,965–N.S. (BUSD), Resolution No. 70,966–N.S. (BACR), Resolution No. 70,967–N.S. (BYA), Resolution No. 70,968–N.S. (EC), Resolution No. 70,969–N.S. (LMC), Resolution No. 70,970–N.S. (MI), Resolution No. 70,971–N.S. (YMCA), and Resolution No. 70,972–N.S. (HBF).

### **Urgent Item: Excused Absence for Councilmember Kate Harrison**

**From: Mayor Arreguin (Author)**

**Recommendation:** Excuse Councilmember Kate Harrison from the July 25, 2023 Council meeting as a result of illness.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, (510) 981-7100

**Action:** Approved recommendation.