



Office of the City Manager

CONSENT CALENDAR

April 4, 2017

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services

Subject: Referral Response: Healthy Default Beverages with Children's Meals;  
Adding BMC Chapter 12.72

RECOMMENDATION

Adopt first reading of an Ordinance adding Berkeley Municipal Code (BMC) Chapter 12.72 to require that any food vendor that sells a children's meal with a beverage included shall make the default beverage offered with the children's meal either water or milk, with no added sweeteners.

FISCAL IMPACTS OF RECOMMENDATION

One-time use of staff time to update the BMC and to create implementation materials. On-going cost of staff time for enforcement. This is estimated to be approximately 40 hours/year of field inspector time and staff time to respond to complaints and inquiries. Environmental Health Division enforcement cost may be recovered through existing or amended fee ordinance.

CURRENT SITUATION AND ITS EFFECTS

On May 10, 2016, City Council approved on consent the staff companion report as follows<sup>1</sup>:

36b. Companion Report: Healthy Default Beverages with Children's Meals

From: City Manager

Recommendation: Direct the City Manager to develop specific ordinance language, prepared in consultation with the City Attorney's Office that requires food vendors who offer children's meals to provide healthy default beverages, and a cost estimate for implementation for Council's consideration.

Financial Implications: See report

Contact: Paul Buddenhagen, Housing and Community Services, 981-5400

Action: Item 36b moved to Consent Calendar. Revised to include the direction that the commission recommendation be used as guidance for staff and that the process be complaint driven.

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<sup>1</sup> [http://www.cityofberkeley.info/Clerk/City\\_Council/2016/05\\_May/City\\_Council\\_05-10-2016\\_-\\_Meeting\\_Info.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2016/05_May/City_Council_05-10-2016_-_Meeting_Info.aspx)

**Action:** M/S/C (Bates/Moore) to adopt the consent calendar in one motion except as indicated.

**Vote:** All Ayes.

#### BACKGROUND

This ordinance amendment proposed by the Community Health Commission aims to reduce concerning levels of childhood obesity and foster healthy habits by requiring that all food vendors with children's meals offer healthy beverages as default options. It is consistent with the purpose of the City Council's recently adopted sugar-sweetened beverages tax: to reduce the consumption of sugary beverages and the related health effects including obesity, diabetes, tooth decay, and heart disease.

#### ENVIRONMENTAL SUSTAINABILITY

These recommendations have no specific environmental sustainability impacts.

#### RATIONALE FOR RECOMMENDATION

According to the City of Berkeley's 2013 Health Status Report, in 2008-2009, 30% of children in Berkeley were overweight. This statistic represents a public health challenge that the City of Berkeley has tried to address via the sugar-sweetened beverage tax and other health initiatives. Research has demonstrated a clear link between the consumption of sugary beverages and higher rates of obesity and diet-related health problems and poor oral health. Replacing consumption of sugary beverages with healthier options that contain no or low amounts of sugar and calories is a key public health priority.

#### ALTERNATIVE ACTIONS CONSIDERED

Status quo does not promote healthy beverage consumption and therefore does not address this public health priority.

#### CONTACT PERSON

Kelly Wallace, Interim Division Manager, Public Health Division, 981-5107

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

HEALTHY DEFAULT BEVERAGES OFFERED WITH CHILDREN'S MEALS; ADDING  
BERKELEY MUNICIPAL CODE CHAPTER 12.72

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

**Section 1.** Legislative findings:

The City Council hereby finds that:

A. The City Council hereby finds that:

1. Our nation, our state, and our community face a major public health crisis.
2. 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 are disproportionately affected.
3. 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.
4. Sugary drinks such as soft drinks, energy drinks, sweetened teas, and sport drinks offer little or no nutritional value and large quantities of added sugar. A single 20-ounce bottle of soda, for instance, typically contains the equivalent of approximately 16 teaspoons of sugar.
5. Hundreds of millions of dollars have been spent in marketing campaigns for sugary drinks, particularly targeting children and people of color. In 2006 alone, nearly \$600 million was spent in advertising to children under 18.
6. 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.
7. This level of consumption has significant impacts on community health. Type 2 Diabetes – previously only seen among adults – is now increasing among children. If 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.
8. 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.
9. 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.
10. There are also economic costs. In 2006, for instance, overweight and obesity-related costs in California were estimated at almost \$21 billion.
11. 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. That Berkeley Municipal Code Chapter 12.72 is hereby added to read as follows:

**12.72.010 Definitions.**

The following terms shall have the following meanings:

- A. "Children's Meal" means a combination of food items, or food item(s) and a beverage, sold together at a single price, primarily intended for consumption by children.
- B. "Default Beverage" means the beverage automatically included or offered as part of a Children's Meal, absent a specific request by the purchaser of the Children's Meal for an alternative beverage.
- C. "Food Vendor" means any food facility as defined by California Health and Safety Code Section 113789 permitted by the Division of Environmental Health.
- D. "Milk Substitute" means a non-dairy plant-based drink served in place of milk, including but not limited to soy milk, almond milk, or rice milk.

**12.72.020 Default Beverages In Children's Meals.**

- A. A Food Vendor that sells a Children's Meal that includes a beverage shall make the Default Beverage offered with the Children's Meal one of the following:
  - 1. Water, sparkling water, or flavored water, with no added natural or artificial sweeteners; or
  - 2. Milk or a Milk Substitute, with no added natural or artificial sweeteners.
- B. Nothing in this Section prohibits a Food Vendor's ability to sell, or a customer's ability to purchase, a substitute or alternative beverage instead of the Default Beverage offered with a Children's Meal, at an additional cost, if requested by the purchaser of the Children's Meal.

**12.72.030 Enforcement.**

Compliance with this Chapter shall be administered by the Environmental Health Division. The Environmental Health Division may require a Food Vendor to provide such information as may be necessary to determine Food Vendor's compliance with this Chapter.

**12.72.040 Violation- Penalty.**

- A. Every person who violates any provision of this Chapter shall be guilty of an infraction and, upon conviction, such person shall be punishable as set forth in Chapter 1.20 of this Code.
- B. Every person who violates any provision of this chapter may be subject to administrative citations pursuant to Chapter 1.28 of this Code.

C. Remedies and penalties under this chapter are cumulative and not exclusive.

**12.72.050 Fees.**

A. The City Council may establish by resolution the fees that shall be charged to enforce the provisions of this chapter.

B. This section shall not limit the Environmental Health Division from recovering all cost associated with implementing this chapter or investigating complaints pursuant to fee resolution.

Section 3. Effective date.

The Ordinance will take effect on July 1, 2017.

Section 4. Posting. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

