

ORDINANCE NO. 7,560–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.

At a regular meeting of the Council of the City of Berkeley held on June 27, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

