



Office of the Mayor

CONSENT CALENDAR
May 12, 2020

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Rashi Kesarwani,
Councilmember Cheryl Davila, and Councilmember Kate Harrison

Subject: Repeal SB 872 – Prohibition on Sugar Sweetened Beverages Tax

RECOMMENDATION

Adopt a Resolution calling on the Governor and State Legislature to overturn SB 872, a 2018 law prohibiting new sugar sweetened beverage taxes until 2030. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymember Buffy Wicks.

BACKGROUND

On November 3, 2014, the City of Berkeley became the first city in the country to pass a tax on sugar sweetened beverages, with Measure D receiving over 76% of the vote. As a result of Berkeley's leadership, other California cities, including San Francisco, Oakland, and Albany, have passed similar measures. In response to the growing list of cities passing such voter-approved taxes, the American Beverage Association successfully lobbied the State Legislature to pass SB 872 in 2018. This law prohibits new taxes on any "groceries", broadly defined to mean any food or beverage intended for human consumption, except for alcohol, cannabis, and tobacco products. This definition included "carbonated and noncarbonated nonalcoholic beverages".

Arguments against the bill included concerns that cities, still recovering from the 2008 recession, would lose their ability to create new sources of revenue to balance their budgets. In 2020, cities and governments across the world are grappling with the economic uncertainty caused by COVID-19, with many cities scrambling to address plummeting sales tax revenues while millions file for unemployment. Additionally, protecting public health is paramount in the face of the ongoing COVID-19 crisis. According to the American Diabetes Association, people with diabetes are more likely to face serious symptoms and complications from the virus. Multiple studies have conclusively drawn links between the consumption of sugary beverages with an increased risk for diabetes.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of SB 872

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

CALLING UPON THE CALIFORNIA GOVERNOR AND STATE LEGISLATURE TO
OVERTURN SB 872

WHEREAS, Governor Jerry Brown and the State Legislature were essentially forced to enact a law, SB 872, temporarily prohibiting and preempting the ability of California cities of their right to enact popular sugary drink taxes, despite the fact they are proven tools for cities to improve public health and raise revenue. This was in exchange for preventing a more extreme attack by big business on governmental taxing authority; and

WHEREAS, the City of Seattle enacted a soda tax in 2018 and has been able to use that revenue this year to give Seattle families \$800 each to specifically fight COVID-19; and

WHEREAS, California voters who passed soda taxes in their cities before SB 872, including the City of Berkeley in 2014, have improved the health of their residents and given their cities millions of dollars in revenue available to stave off budget cuts due to the COVID-19 induced economic downturn; and

WHEREAS, a majority vote of the California Legislature and a signature by the Governor now would give California Cities one more tool to fight COVID-19 and;

WHEREAS, California cities need every single tool available in the war against COVID-19 and to give their residents the possibility of a healthier future; and

WHEREAS, the world has changed since COVID-19 and California can no longer afford to handcuff cities and prevent voters from using proven tools to improve health equity and public health and provide for safe, accessible and affordable drinking water.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby urges the California State Legislature and the Governor of California to overturn SB 872 and allow residents to choose whether they want a sugary drink tax in their city.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymember Buffy Wicks.

Senate Bill No. 872

CHAPTER 88

An act to add Section 7284.10 to Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as proposed by Assembly Bill 1838 of the 2017–18 Regular Session, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 9, 2018. Filed with Secretary of State July 9, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 872, Committee on Budget and Fiscal Review. Local government: taxation: prohibition: groceries.

Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions. The California Constitution also authorizes a charter city to levy local taxes to raise revenues for local purposes, subject to restrictions imposed by that city's charter or preemption in matters of statewide concern.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose a local sales and use tax in accordance with that law for tangible personal property sold at retail in the county or city, or purchased for storage, use, or other consumption in the county or city. That law requires the county or city to contract with the California Department of Tax and Fee Administration for the administration of the taxes and requires the department to transmit those taxes to the city or county.

AB 1838 of the 2017–18 Regular Session, if enacted, on and after the effective date of that measure and until January 1, 2031, would prohibit the imposition, increase, levy and collection, or enforcement by a local agency of any tax, fee, or other assessment on groceries, except as provided. That bill would allow a local agency to continue to levy and collect, enforce, or reauthorize any tax, fee, or other assessment on groceries imposed, extended, or increased on or before January 1, 2018. That bill would make inoperative on the effective date of that measure any tax, fee, or other assessment on groceries imposed by a local agency after January 1, 2018.

This bill would exclude cannabis from the definition of groceries, as defined for purposes of AB 1838 of the 2017–18 Regular Session, if that bill is enacted and becomes effective.

This bill would appropriate from the General Fund \$12,000 to the California Department of Tax and Fee Administration to notify affected governmental entities of the requirements of AB 1838 of the 2017–18 Regular Session on its Internet Web site.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7284.10 is added to Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as proposed by Assembly Bill 1838 of the 2017–18 Regular Session, to read:

7284.10. For the purposes of this chapter, all of the following definitions shall apply:

(a) “Alcoholic beverages” has the same meaning as that term is defined in Section 23004 of the Business and Professions Code.

(b) “Cannabis” has the same meaning as that term is defined in Section 26001 of the Business and Professions Code.

(c) “Cannabis products” has the same meaning as that term is defined in Section 26001 of the Business and Professions Code.

(d) “Cigarettes” has the same meaning as that term is defined in Section 30121.

(e) “Electronic cigarettes” has the same meaning as that term is defined in Section 30121.

(f) (1) “Groceries” means any raw or processed food or beverage including its packaging, wrapper, or container, or any ingredient thereof, intended for human consumption, including, but is not limited to, meat, poultry, fish, fruits, vegetables, grains, bread, milk, cheese and other dairy products, carbonated and noncarbonated nonalcoholic beverages, kombucha with less than 0.5 percent alcohol by volume, condiments, spices, cereals, seasonings, leavening agents, eggs, cocoa, teas, and coffees whether raw or processed, including its packaging, wrapper, or container.

(2) “Groceries” does not include alcoholic beverages, cannabis, cannabis products, cigarettes, tobacco products, and electronic cigarettes.

(g) “Local agency” has the same meaning as provided in Section 6252 of the Government Code, and includes the electorate of a local agency in exercising the initiative power.

(h) “Tax, fee, or other assessment on groceries” includes, but is not limited to, sales and use taxes, a gross receipts tax, business and occupation tax, business license tax, excise tax, privilege tax, surcharge, or any other similar levy, charge, or exaction of any kind on groceries or the manufacture, supply, distribution, sale, acquisition, possession, ownership, transfer, transportation, delivery, use, or consumption thereof.

(i) “Tobacco products” has the same meaning as that term is defined in Section 30121.

SEC. 2. The sum of twelve thousand dollars (\$12,000) is hereby appropriated from the General Fund to the California Department of Tax and Fee Administration to notify affected governmental entities of the

requirements of Chapter 1.8 (commencing with Section 7284.8) of Part 1.7 of Division 2 of the Revenue and Taxation Code, as added by Assembly Bill 1838 of the 2017–18 Regular Session, on its Internet Web site.

SEC. 3. This act shall become operative only if Assembly Bill 1838 of the 2017–18 Regular Session is enacted and becomes effective.

SEC. 4. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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