

RESOLUTION NO. 65-12

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA SUBMITTING TO THE VOTERS AT THE NOVEMBER 6, 2012 GENERAL ELECTION A BALLOT MEASURE IMPOSING A GENERAL BUSINESS LICENSE FEE MEASURED BY THE SERVING, PROVIDING, OR TRADING OF SUGAR-SWEETENED BEVERAGES IN THE CITY

WHEREAS, the City of Richmond imposes business license fees upon businesses in the City; and

WHEREAS, business license fees are imposed to raise revenue and not for regulation and constitute a general tax; and

WHEREAS, the ordinance attached hereto as Exhibit "A" and incorporated herein by reference (the "Ordinance") would impose an additional business license fee measured by the serving, providing, or trading of sugar-sweetened beverages; and

WHEREAS, Elections Code Section 9222 authorizes the City Council to submit an ordinance directly to the voters; and

WHEREAS, by its Resolution No.65-12, the City Council has called a general municipal election for November 6, 2012 (the "Election") and requested the assistance of the county elections office in the conduct of the Election; and

WHEREAS, the Election is a regularly scheduled general election for members of the City Council; and

WHEREAS, the City Council wishes to submit the Ordinance to the voters at the Election;

NOW THEREFORE, BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA, AS FOLLOWS:

1. The City Council proposes to impose the general tax set forth in the Ordinance. The proposed type of tax, the rate of the tax, and the method of collection of the tax are as set forth in the Ordinance.
2. Pursuant to Elections Code Section 9222, the City Council hereby submits the Ordinance to the voters at the Election and orders the following question to be submitted to the voters at the Election:

"Shall an ordinance be adopted to impose a business license fee of one (1) cent per ounce of sugar-sweetened beverage served, provided, or traded by businesses in the City?"

This question requires the approval of a majority of those casting votes.

3. In all particulars not recited in this Resolution, the Election shall be held and conducted as provided by law applicable to a general tax measure.
4. That notice of the time and place of holding the Election is hereby given and the City Clerk is authorized, instructed, and directed to provide such other notice as may be required by law.
5. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions of the City.
6. The City Council directs the City Clerk to file a certified copy of this Resolution with the Registrar of Voters of Contra Costa County.

BY ORDER OF THE CITY COUNCIL OF THE CITY OF RICHMOND

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held on May 15, 2012, by the following vote:

AYES: Councilmembers Beckles, Butt, Ritterman, Vice Mayor Rogers, and Mayor McLaughlin.

NOES: Councilmembers Bates and Booze.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of Resolution No. 65-12, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on May 15, 2012.

**AN ORDINANCE OF THE CITY OF RICHMOND IMPOSING A GENERAL
BUSINESS LICENSE FEE MEASURED BY THE SERVING, PROVIDING, OR
TRADING OF SUGAR-SWEETENED BEVERAGES**

WHEREAS, sugar-sweetened beverages, such as caloric sodas, energy drinks, sports drinks and caloric teas are significant contributors to obesity, overweight and tooth decay; and

WHEREAS, the Contra Costa Health Services estimates that 52% of children attending Richmond Schools are overweight or obese, of whom 34% are obese; and

WHEREAS, the Contra Costa Health Services estimates that 58% of adult Richmond residents are overweight or obese, of whom 24% suffer from obesity; and

WHEREAS, obesity and overweight significantly increase the risk of type 2 diabetes, coronary heart disease, stroke, hypertension, nonalcoholic fatty liver disease, gallbladder disease, osteoarthritis (degeneration of cartilage and bone of joints), sleep apnea and other breathing problems, some forms of cancer (breast, colorectal, endometrial, and kidney), complications of pregnancy, and menstrual irregularities; and

WHEREAS, high rates of obesity, especially among school-age children threaten the health of the City's residents; and

WHEREAS, Contra Costa Health Services predicts that, without intervention, 42% of children currently residing in Richmond will be obese as adults; and

WHEREAS, this public health emergency demands increased and improved community facilities and services designed to encourage or enable exercise and good nutrition; and

WHEREAS, the City relies on general fund revenues to provide these community facilities and services; and

WHEREAS, the People of the City of Richmond desire that the City provide more facilities and services than are possible with existing City revenues and resources; and

WHEREAS, Article II, Section 1 of the Charter of the City of Richmond empowers the City to levy and collect taxes and assessments, impose license fees for revenue or regulation, and provide all means for raising revenue necessary for City services; and

WHEREAS, for general revenue purposes, and in recognition of the fact that the adverse health impacts of sugar-sweetened beverages contribute to the need for City facilities and services, the People of the City of Richmond desire to impose a business license fee upon businesses that serve, provide, or trade in sugar-sweetened beverages.

**BE IT ORDAINED BY THE PEOPLE OF THE CITY OF RICHMOND AS
FOLLOWS:**

Section 1. Code Amendment. Article VII of the Richmond Municipal Code is hereby amended to add a new Chapter 7.08 to read as follows:

CHAPTER 7.08 SUGAR-SWEETENED BEVERAGES

Section 7.08.010 Definitions

In addition to the definitions appearing in chapters 1.04 and 7.04 of this code, the following definitions shall apply to this chapter:

- (a) “Caloric sweetener” means any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, other sugars, and fruit juice concentrates. “Caloric sweetener” excludes non-caloric sweeteners. For purposes of this definition, “caloric” means a substance which adds calories to the diet of a person who consumes that substance.
- (b) “Consumer” means any person, including but not limited to a customer, employee or guest who purchases, receives or takes a sugar-sweetened beverage at a place within the city to consume it.
- (c) “Non-caloric sweetener” means any non-caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, aspartame, saccharin, stevia, and sucralose. “Non-caloric sweetener” excludes caloric sweeteners. For purposes of this definition, “non-caloric” means a substance which does not add calories to the diet of a person who consumes that substance.
- (d) “Sugar-sweetened beverage” means any nonalcoholic beverage, whether or not carbonated, intended for human consumption which contains any added caloric sweetener but excludes a beverage which would not be a sugar-sweetened beverage but for the fact that a consumer adds a caloric sweetener to it, whether or not that caloric sweetener is provided by the taxpayer. As used in this definition, “nonalcoholic beverage” means any beverage that contains less than one-half of one percent alcohol per volume.

Section 7.08.020 Additional License Fee

In addition to any other license fees imposed by the city, every person engaging in or conducting any business in the City shall pay a fee of one cent per ounce of sugar-sweetened beverage served, provided or traded by the person in the course of doing business in the city.

Section 7.08.030 Measurement of Activity

For the purposes of this chapter, a person serves, provides or trades a sugar-sweetened beverage when the person:

- (a) Serves a sugar-sweetened beverage to a consumer, including consumer self-service;
- (b) Dispenses or allows a consumer to dispense a sugar-sweetened beverage from a vending machine or similar device; or,
- (c) Permits a consumer to remove sugar-sweetened beverage from the premises of the business.

Section 7.08.040 Calculations of Volume of Sugar-Sweetened Beverages Served, Provided or Traded

- (a) A person subject to the fee imposed by section 7.08.020 may calculate the volume of sugar-sweetened beverages consumed, provided or traded during a reporting period as the

amount of sugar-sweetened beverages (or syrup, mix or similar product used for the creation of sugar-sweetened beverages) received by that person from any source in the course of business in the city, less the amount returned by the person to wholesalers or suppliers or otherwise removed from the city without being served, provided or traded.

- (b) A person who sells a sugar-sweetened beverage prepared from a syrup, mix, powder or similar base product shall report that use in terms of the volume of sugar-sweetened beverage that can be prepared from the syrup, mix, or similar product.

Section 7.08.050 Exceptions

The fee imposed by Section 7.08.020 shall not apply to:

- (a) Any person who is not subject to taxation by the City under the laws of the United States or the State of California.
- (b) Any person under the age of 18 with fewer than \$500 in annual gross receipts.
- (c) Any natural person who acquires sugar-sweetened beverages solely (i) for consumption at his or her residence, (ii) for his or her own consumption, or (iii) for the consumption of members of his or her immediate family.

Section 7.08.060 Collection

- (a) The fee imposed by section 7.08.020 shall be due and payable when and as provided in chapter 7.04 of this code for other business license taxes due from the taxpayer and shall be calculated based upon the volume of sugar-sweetened beverages served, provided or traded during a reporting period.
- (b) The city council may by ordinance require one or more businesses to calculate and pay the fee on a more frequent basis to ensure the effective enforcement of this chapter. Such an ordinance shall not constitute the increase of the tax.

Section 7.08.070 Enforcement

- (a) Except as otherwise provided by this chapter, the fee imposed by section 7.08.020 shall be administered as are fees imposed pursuant to chapter 7.04 and, without limitation, taxes imposed under section 7.08.020 shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in chapter 7.04.
- (b) The tax administrator may issue regulations interpreting this chapter to facilitate its enforcement.

Section 7.08.080 Use of Proceeds

The proceeds of the fee imposed by Section 7.08.020 shall be deposited in the City's general fund and shall be available for any lawful municipal purpose.

Section 7.08.090 Declaration of Purpose

This chapter is enacted solely to raise revenue for municipal purposes and is not intended for the purpose of regulation. It shall apply to all persons engaged in business in the city. Fees imposed by this chapter are general taxes for purposes of Article XIII C of the California Constitution.

This chapter does not authorize the conduct of any business or activity in the City, but merely provides for the taxation of such businesses or activities as occur.

Section 7.08.100 Not a Sales & Use Tax

The tax imposed by this Chapter is a tax upon the privilege of conducting business within the City. It is not a sales, use or other excise tax on the sale, consumption or use of sugar-sweetened beverages.

Section 2. Amendment of Ordinance. This Ordinance may be amended by the City Council without a vote of the people except that voter approval shall be required for either of the following: (i) as required by Article XIII C of the California Constitution, any amendment that increases the amount or rate of tax beyond the levels authorized by this Ordinance, or (ii) reduction of the tax rate below one-cent per ounce or significantly reducing the base of business activity to which the tax applies.

Section 3. Severability. If any section, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain in full force and effect. The People of the City of Richmond hereby declare that they would have adopted each section, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable and, to that end, the provisions of this Ordinance are severable.

Section 4. Majority Approval; Effective Date. This Ordinance shall be effective on January 1, 2013 if approved by a majority of the voters voting on the question.

Section 5. 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, subd. (b)(8) and CEQA Guidelines section 15273 as the approval of government revenues to fund existing services.

Section 6. Execution. The Mayor and City Clerk are authorized to execute this Ordinance where indicated below to give evidence of its adoption by the voters of the City.

I hereby certify that this Ordinance was adopted by a vote of the People of the City of Richmond on November 6, 2012.

Gayle McLaughlin

Mayor

ATTEST:

Diane Holmes
City Clerk