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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2017-3

INTRODUCED BY:

Mayor Javier M. Gonzales

Councilor Peter N. Ives

AN ORDINANCE

CREATING A NEW SECTION 18-20 SFCC 1987 TO ESTABLISH A SUGAR-SWEETENED BEVERAGES TAX FOR THE PURPOSE OF SUPPORTING EARLY CHILDHOOD EDUCATION FOR CITY OF SANTA FE RESIDENTS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. A new Section 18-20 SFCC 1987 is ordained to read:

18-20 [NEW MATERIAL] SUGAR-SWEETENED BEVERAGES TAX

18-20.1 [NEW MATERIAL] Short Title. This Section may be cited as the Sugar-Sweetened Beverages Tax Ordinance.

18-20.2 [NEW MATERIAL] Legislative Finding.

A. An excise tax on the distribution of sugar-sweetened beverages is intended to protect the health, safety, and well-being of all residents of the city of Santa Fe.

B. The American Heart Association recommends that men consume no more than nine (9) teaspoons of sugar per day, and women consume no more than six (6) teaspoons per day.

C. The average twenty-ounce (20oz) can of soda contains sixteen (16) teaspoons of

1 sugar.

2 D. Nearly half of all added sugars consumed come from sugary drinks such as soft
3 drinks, energy drinks, fruit drinks, sweetened tea and coffee, and sports drinks, which offer little
4 or no nutritional value.

5 E. Consuming one sugar-sweetened beverage a day increases the risk for childhood
6 obesity by fifty-five percent (55%), increases the risk of developing type two diabetes by twenty-
7 five percent (25%), and increases the likelihood of death from cardiovascular disease by thirty
8 percent (30%).

9 F. The average New Mexican consumed thirty-four (34) gallons of soda in 2016.

10 G. New Mexico ranks 32nd in the nation for adult obesity, with a rate of nearly
11 twenty-nine percent (29%).

12 H. The obesity rate has increased every year, except one, since 1990; and

13 I. Studies have linked sugar consumption to obesity, heart disease, cancer, diabetes,
14 hypertension, high triglycerides and insulin resistance, accelerated ageing process, and cognitive
15 decline.

16 J. Chronic diseases such as heart disease, cancer and diabetes are among the
17 leading causes of death and disability in the city of Santa Fe, the state of New Mexico and the
18 United States.

19 K. In Santa Fe county nearly one in five adults is obese, and one in three adolescents
20 12-19 years old is overweight or obese; and in New Mexico, more than one in three third-grade
21 and one in four kindergarten students is overweight or obese.

22 L. Total direct medical expenses for diagnosed and undiagnosed diabetes,
23 prediabetes and gestational diabetes in New Mexico was estimated at \$1.6 billion in 2012.

24 M. In a state struggling with rapidly declining revenues, an increase in health care
25 costs due to rising rates of preventable disease saddles the city and state with another financial

1 burden it cannot afford.

2 N. Taxing sugar-sweetened beverages can benefit community health through at least
3 three mechanisms – directly reducing harms to health from consumption, raising revenue for
4 community investments, and saving money on expenditures from prevented illnesses.

5 O. The National Institute for Early Education Research concluded that New Mexico
6 pre-kindergarten produced statistically significant positive impacts in language, literacy, and
7 mathematics, the three content areas most critical to later academic success.

8 P. An estimated nine hundred and sixty-six (966) three (3-) and four (4-)year olds
9 living within the boundaries of the city of Santa Fe have unmet need for high-quality pre-
10 kindergarten; seventy-two percent (72%) of these children are Hispanic and over fifty-five
11 percent (55%) live in households with income below two-hundred percent (200%) of the federal
12 poverty level.

13 Q. A 2016 evaluation of New Mexico pre-kindergarten by the New Mexico
14 Legislative Finance Committee found that the educational benefits arising directly from improved
15 standardized test scores were sufficient to offset the entire cost of half-day pre-kindergarten for 4-
16 year olds.

17 **18-20.3 [NEW MATERIAL] Authority.** Section 18-20 SFCC 1987 establishes a
18 sugar-sweetened beverage excise tax and is adopted pursuant to the home rule powers granted to
19 the city of Santa Fe in Article 10, § 6(D) of the Constitution of New Mexico and NMSA 1978, §
20 3-18-2(D).

21 **18-20.4 [NEW MATERIAL] Purpose.** The purpose of this Section is to establish a
22 sugar-sweetened beverage tax in the amount of two cents (\$0.02) per fluid ounce of sugar-
23 sweetened beverage products that are distributed in the city. Tax revenues will be dedicated to
24 fund early childhood development programs for city of Santa Fe residents.

25 **18-20.5 [NEW MATERIAL] Imposition and Rate of Sugar-Sweetened Beverage**

1 **Tax.**

2 A. *Excise tax.* There is imposed on each and every distributor in the city an excise
3 tax of two cents (\$0.02) per fluid ounce of sugar-sweetened beverage products that are distributed
4 in the city.

5 B. For purposes of calculating the tax imposed under this chapter, the volume, in
6 fluid ounces, of a sugar-sweetened beverage product shall be:

7 1. For bottled sugar-sweetened beverage products, the volume, in fluid
8 ounces, of sugar-sweetened beverages distributed to any person in the course of business in the
9 city.

10 2. For concentrates, the largest volume of sugar-sweetened beverage that
11 would typically be produced by the amount of concentrate based on the manufacturer's
12 instructions or, if the distributor uses the concentrate to produce a sugar-sweetened beverage, the
13 regular practice of the distributor.

14 **18-20.6 [NEW MATERIAL] Distributor Liable for Tax.**

15 A. The tax imposed in subsection 18-20.5 shall be paid upon the first non-exempt
16 distribution of a sugar-sweetened beverage product in the city. If there is a chain of distribution
17 within the city of Santa Fe involving more than one distributor, the tax shall be levied on the first
18 distributor subject to the jurisdiction of the city. If the tax is not paid by the first distributor for
19 any reason, it shall be levied on subsequent distributors, provided that the distribution of sugar-
20 sweetened beverage products may not be taxed more than once in the chain of commerce.

21 B. Any distributions not subject to taxation by the city under the laws of the United
22 States or the state of New Mexico are exempt from the sugar-sweetened beverages tax.

23 **18-20.7 [NEW MATERIAL] Definitions.**

24 *Beverage for Medical Use* means a beverage suitable for human consumption and
25 manufactured for use as a:

1 A. Oral nutritional therapy for persons who cannot absorb or metabolize caloric or
2 dietary nutrients from usual food or beverages, or

3 B. Oral rehydration electrolyte solution formulated to prevent or treat dehydration
4 due to illness, or

5 C. Any beverage that meets statutory definition of “medical food” under Orphan
6 Drug Act 21 U.S.C. 360ee(b)(3), as amended.

7 *Beverage for Medical Use* shall not include drinks commonly referred to as “sports drinks” or any
8 other common names that are derivations thereof.

9 *Bottled Sugar-Sweetened Beverage* means any sugar-sweetened beverage contained in a
10 bottle or any other closed package that is ready for consumption without further processing,

11 *Caloric Sweetener* means a substance or combination of substances suitable for human
12 consumption that adds calories to and is perceived as sweet to humans when consumed,
13 including, but not limited to sucrose, dextrose, fructose, glucose, other mono and disaccharides;
14 corn syrup or high-fructose corn syrup; or any other caloric sweetener designated by the city
15 manager.

16 *Concentrate* means a syrup, powder, frozen or gel mixture, or other product containing
17 one or more caloric sweeteners as an ingredient, intended to be used in making, mixing, or
18 compounding a sugar-sweetened beverage by combining the concentrate with one or more other
19 ingredients.

20 *Consumer* means a natural person who purchases a sugar- sweetened beverage product in
21 the city for a purpose other than resale in the ordinary course of business.

22 *Distribution or Distribute* means supply to a retailer, acquisition by a retailer, delivery to
23 a retailer, or transport into the City by a retailer for purpose of holding out for retail sale within
24 City any sugar-sweetened beverage product. *Distribution or Distribute* shall not mean the retail
25 sale to a consumer.

1 *Distributor* means any person who distribute sugar- sweetened beverage products into the
2 city.

3 *Milk* means natural fluid milk, regardless of animal source or butterfat content; natural
4 milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or
5 dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat
6 content; and plant-based milk substitutes that are marketed as milk, such as but not limited to, soy
7 milk, coconut milk, rice milk and almond milk.

8 *Natural Common Sweetener* means: granulated white sugar, brown sugar, honey,
9 molasses, xylem sap of maple trees, or agave nectar.

10 *Person* means any natural person, partnership, cooperative association, limited liability
11 company, corporation, personal representative, receiver, trustee, assignee, or any other legal
12 entity.

13 *Powder* means any sold mixture, containing one or more caloric sweetener(s) as an
14 ingredient, intended to be used in making, mixing, or compounding a sugar-sweetened beverage
15 by combining the powder with one or more other ingredients.

16 *Retail sale:* means sale to a person for use or consumption, and not for resale.

17 *Retailer of Sugar-Sweetened Beverage Products* means a person who sells or otherwise
18 dispenses a sugar-sweetened beverage to the public.

19 *Simple Syrup* means a mixture of water and one or more natural or common sweeteners
20 without any additional ingredients.

21 *Sugar-Sweetened Beverage* means any beverage intended for human consumption which
22 contains one or more caloric sweeteners whether in bottles, prepared from concentrates, served as
23 a fountain beverage, or in any other form.

24 A. *Sugar-Sweetened Beverage* includes all drinks and beverages commonly referred
25 to as soda, pop, cola, soft drinks, sports drinks, energy drinks, sugar-sweetened ice teas, and other

1 products with added caloric sweeteners including but not limited to juice with added caloric
2 sweetener, flavored water, and non-alcoholic mix beverages that may or may not be mixed with
3 alcohol or any other common names that are derivations thereof.

4 B. *Sugar-Sweetened Beverage* does not include any of the following:

5 1. Any beverage in which natural milk is the primary ingredient, i.e., the
6 ingredient listed first in the product ingredient list; or in which water and grains, nuts,
7 legumes, or seeds constitute the first two ingredients in the product ingredient list;

8 2. Any Beverage for Medical Use;

9 3. Any liquid sold for use a meal replacement for weight reduction or other
10 purposes;

11 4. Any product commonly referred to as infant formula or baby formula;

12 5. Any alcoholic beverage;

13 6. Any beverage consisting of one hundred percent (100%) natural fruit or
14 vegetable juice with no added caloric sweetener. For purposes of this paragraph, natural
15 fruit juice and natural vegetable juice mean the original liquid resulting from the pressing
16 of fruits or vegetables; or

17 7. Sweetened medication such as cough syrup, liquid pain relievers, fever
18 reducers, and similar products.

19 *Sugar-Sweetened Beverage Product* means a bottled sugar-sweetened beverage or a
20 Concentrate for the preparation of a sugar-sweetened beverage.

21 *Syrup* means any liquid or frozen mixture containing one or more caloric sweeteners as
22 an ingredient intended to be used in making, mixing, or compounding a sugar-sweetened
23 beverage by combining the syrup with one or more other ingredients.

24 **18-20.8 [NEW MATERIAL] Duties, Responsibilities and Authority of the City**
25 **Manager.**

1 A. The city manager is authorized to collect and receive all taxes imposed by this
2 chapter, and to keep an accurate record thereof.

3 B. The city manager shall develop a registration system whereby distributors of
4 sugar-sweetened beverages must register with the city prior to distributing any sugar-sweetened
5 beverages.

6 C. The city manager shall annually verify that the taxes owed under this section
7 have been properly applied, exempted, collected, and remitted.

8 D. The city manager is authorized to enforce this section and may prescribe, adopt,
9 and enforce rules and regulations relating to the administration and enforcement of this section,
10 including provisions for the reexamination and correction of returns and payments, and for
11 reporting. Such rules and regulations shall include, but are not limited to, the following:

12 1. The determination of the frequency with which a distributor must
13 calculate and report on the tax. This determination shall not constitute an increase of the
14 tax.

15 2. The determination of the frequency with which a distributor must pay the
16 tax. This determination shall not constitute an increase of the tax.

17 3. The determination of the manner in which a distributor must register
18 with the city.

19 4. The determination of whether and how a distributor who receives, in the
20 city, sugar-sweetened beverage products from another distributor must report to the city
21 the name of that distributor.

22 5. The determination of whether and how a distributor who receives, in the
23 city, sugar-sweetened beverage products from another distributor must report to the city
24 the volume of sugar-sweetened beverage products received from that distributor.

25 6. The determination of what other documentation is required to be created

1 or maintained by a distributor of sugar-sweetened beverage products.

2 E. The city manager shall each year prepare or cause to be prepared a report of
3 revenue and expenses, and deliver the findings to the to the city council and share them with the
4 public.

5 **18-20.9 [NEW MATERIAL] Collection.**

6 A. The amount of any tax, penalty, and interest imposed under the provisions of this
7 section shall be deemed a debt to the city. Any distributor owing money under the provisions of
8 this section shall be liable in an action brought in the name of the city for the recovery of such
9 amount.

10 B. In order to aid in the city's collection of taxes due under this chapter, any retailer
11 of sugar-sweetened beverage products that receives sugar-sweetened beverage products, in
12 accordance with rules and regulations promulgated by the city manager or designee pursuant to
13 Section 18-20.8, shall be prepared to provide to the city evidence that the tax has been paid on the
14 sugar-sweetened beverage products.

15 C. Any retailer receiving sugar sweetened beverage products upon which the tax has
16 not been paid will be liable for the amount of the tax.

17 **18-20.10 [NEW MATERIAL] Refunds.**

18 A. A person who believes that an amount of tax has been paid by that person in excess of
19 that for which the person was liable, may claim a refund by directing to the city manager, within
20 one-hundred and eighty (180) day of payment, a written claim for refund. A refund claim shall
21 include:

22 (1) the taxpayer's name, address and identification number;

23 (2) the sum of money claimed;

24 (3) the period for which overpayment was made; and

25 (5) a brief statement of the facts and the law on which the claim is based, which may be

1 referred to as the “basis for the refund”.

2 B. The city manager or delegate may allow the claim in whole or in part or may deny the
3 claim. If the claim is denied in whole or in part in writing, no claim may be refiled with respect
4 to that which was denied, but the person, within ninety days after either the mailing or delivery of
5 the denial of all or any part of the claim, may elect to appeal the decision of the city manager by
6 commencing a civil action in the district court for Santa Fe county by filing a complaint setting
7 forth the circumstance of the claimed overpayment, denied credit or rebate by the city alleging
8 that on account thereof the city is indebted to the plaintiff in the amount stated and demanding the
9 refund to the plaintiff of that amount and reciting the facts of the claim for refund.

10 **18-20.11 [NEW MATERIAL] Enforcement.** Except as otherwise provided by
11 this Section or by rule or regulation promulgated by the city manager or designee, the tax
12 imposed by this Section shall be administered in the same manner as taxes imposed pursuant to
13 SFCC Chapter 18 and, without limitation, shall be subject to the same delinquency penalties, and
14 other enforcement provisions set forth in Chapter 18, sections 11, SFCC 1987.

15 **18-20.12 [NEW MATERIAL] Not a Sales or Use Tax.** The tax imposed herein shall be
16 in addition to any license fee or tax imposed or levied under any other law, statute, or ordinance
17 where imposed or levied by the city, state, or other governmental entity or political subdivision.

18 **18-20.13 [NEW MATERIAL] Use of Revenues.**

19 A. After subtracting funds needed to administer the collection of revenues and other
20 costs associated with the tax, the revenues generated from the tax shall be deposited into a non-
21 reverting fund to support an early childhood education program providing pre-kindergarten
22 services for three (3-) and four (4-) year olds who reside in the city of Santa Fe. In furtherance of
23 such purpose, the city is authorized to enter into any grant or funding agreement, or contract with
24 any eligible public or private body. In addition, the city may accept grants or other donations or
25 may allocate city funds to support the fund.

1 B. In the event the early childhood education program is discontinued for any
2 reason, amounts remaining in the non-reverting fund shall be used for other early childhood
3 programs for city of Santa Fe residents under the age of three (3).

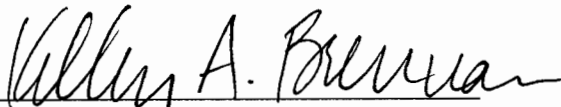
4 **18-20.14 [NEW MATERIAL] Severability.** If any subsection, sentence, clause, phrase
5 or portion of this section is for any reason held invalid or unconstitutional by any court of
6 competent jurisdiction, such portion shall be deemed a separate, distinct and independent
7 provision and such holding shall not affect the validity of the remaining portions of this section.

8 **18-20.15 [NEW MATERIAL]. Early Childhood Education Commission.** The
9 governing body shall establish an early childhood education commission, which shall report
10 annually to the governing body on the progress of the city's voluntary pre-kindergarten program.

11 **18-20.16 [NEW MATERIAL] Program Evaluation.** After the program has operated
12 for five (5) years, the commission will report to the governing body on the effectiveness of the
13 program, recommending any changes deemed necessary or prudent to improve program
14 performance, including but not limited to whether the tax base should be enlarged, narrowed or
15 maintained as it is. In the event the program is terminated, for any reason, the tax will no longer
16 be assessed commencing ninety (90) days after the termination date.

17 **18-20.17 [NEW MATERIAL] Effective Date.** The provisions of Section 18-20 SFCC
18 1987 shall go into effect on the first of the month in the sixth month after an election is held and a
19 simple majority of the qualified electors of the city of Santa Fe voting on the question vote in
20 favor of imposing the sugar-sweetened beverages tax.

21
22 APPROVED AS TO FORM:

23 
24 _____
25 KELLEY A. BRENNAN, CITY ATTORNEY

M/Legislation/Bills 2017/Sugar-Sweetened Beverages Tax