

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDINANCE NO. 8130

(Sugar Sweetened Beverage Product Distribution Tax)

AN ORDINANCE SUBMITTING TO THE ELECTORS OF THE CITY OF BOULDER AT THE SPECIAL MUNICIPAL COORDINATED ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, THE QUESTION OF AUTHORIZING THE CITY COUNCIL TO IMPOSE AN EXCISE TAX OF 2 CENTS PER OUNCE ON THE DISTRIBUTION OF DRINKS WITH ADDED SUGAR, AND SWEETENERS USED TO PRODUCE SUCH DRINKS, EXEMPTING: (1) SWEETENERS SOLD SEPARATELY TO THE CONSUMER AT A GROCERY STORE; (2) MILK PRODUCTS; (3) BABY FORMULA; (4) ALCOHOL; AND (5) DRINKS TAKEN FOR MEDICAL REASONS, TAXING THE FIRST DISTRIBUTOR ON ANY CHAIN OF DISTRIBUTION; AND REQUIRING THE CITY TO PUBLISH A REPORT DETAILING REVENUE COLLECTED AND THE TYPE AND AMOUNT OF EXPENDITURES MADE AS A RESULT OF THE TAX; GIVING APPROVAL FOR THE COLLECTION, RETENTION AND EXPENDITURE OF THE FULL TAX PROCEEDS AND ANY RELATED EARNINGS, NOTWITHSTANDING ANY STATE REVENUE OR EXPENDITURE LIMITATION; AND SETTING FORTH THE EFFECTIVE DATE, BALLOT TITLE, ADDING A NEW CHAPTER 3-16, "SUGAR SWEETENED BEVERAGE PRODUCT DISTRIBUTION TAX," B.R.C. 1981, ALL EFFECTIVE JULY 1, 2017 AND SETTING FORTH RELATED DETAILS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. A special municipal coordinated election will be held in the City of Boulder, County of Boulder and State of Colorado, on Tuesday, November 8, 2016.

Section 2. At that election, there shall be submitted to the electors of the City of Boulder entitled by law to vote the issue of a sales and use tax increase as described in the ballot issue title in this ordinance.

1 SHALL THE FULL PROCEEDS OF SUCH TAXES AT SUCH
2 RATES AND ANY EARNINGS THEREON BE COLLECTED,
3 RETAINED, AND SPENT, AS A VOTER-APPROVED
4 REVENUE CHANGE WITHOUT LIMITATION OR
5 CONDITION, AND WITHOUT LIMITING THE COLLECTION,
6 RETENTION, OR SPENDING OF ANY OTHER REVENUES
7 OR FUNDS BY THE CITY OF BOULDER UNDER ARTICLE X
8 SECTION 20 OF THE COLORADO CONSTITUTION OR ANY
9 OTHER LAW?

10 FOR THE ISSUE _____ AGAINST THE ISSUE _____

11 Section 4. If this ballot issue is approved by the voters, the City Council further amends
12 the Boulder Revised Code, effective on July 1, 2017, to add a new Chapter 3-16 as follows:

13 **Chapter 16 Sugar Sweetened Beverage Product Distribution Tax**

14 **Section 3-16-1 Findings and Purpose**

- 15 (a) An excise tax on the distribution of sugar-sweetened beverages is intended to protect the
16 health, safety, and well-being of all in the City of Boulder.
- 17 (b) Whereas consuming one sugar-sweetened beverage a day increases the risk for childhood
18 obesity by 55%.
- 19 (c) Whereas consuming one sugar-sweetened beverage a day increases the risk of developing
20 type two diabetes by 25%.
- 21 (d) Whereas consuming one sugar-sweetened beverage a day increases the likelihood of death
22 from cardiovascular disease by 30%.

23 **Section 3-16-2 Imposition and Rate of Tax**

- 24 (a) Excise tax. There is levied and shall be paid and collected an excise tax of two cents
25 (\$0.02) per fluid ounce of sugar-sweetened beverage products that are distributed in the
26 city.
- 27 (b) For purposes of calculating the tax imposed under this chapter, the volume, in fluid
28 ounces, of a sugar-sweetened beverage product shall be:
 - (1) For a bottled sugar-sweetened beverage the tax shall be calculated on the volume, in
fluid ounces, of sugar-sweetened beverages distributed to any person in the course
of business in the city.
 - (2) For a sugar-sweetened beverage made from syrups and powders 'the tax shall be
calculated on the largest volume of fluid ounces of sugar-sweetened beverages that

1 could be produced from syrup or powder upon the initial distribution of syrup or
2 powder.

3 **Section 3-16-3 Distributor Liable for Tax**

4 Each distributor of sugar-sweetened beverage products shall pay the tax imposed in subsection 3-
5 16-2 on each non-exempt distribution of a sugar-sweetened beverage product, except that if there
6 is a chain of distribution within the City of Boulder involving more than one distributor, the tax
7 shall be levied on the first distributor subject to the jurisdiction of the city, unless the tax is not
8 paid by the first distributor for any reason, it shall be levied on subsequent distributors, provided
9 that the distribution of sugar-sweetened beverage products may not be taxed more than once in
10 the chain of commerce.

11 **Section 3-16-4 Definitions**

12 For the purposes of this Chapter 16, unless the context otherwise requires:

13 "Beverage for Medical Use" means a beverage suitable for human consumption and
14 manufactured for use as a:

- 15 (1) Source of necessary nutrition due to a medical condition, or
- 16 (2) For use as an oral rehydration electrolyte solution for infants and children
17 formulated to prevent or treat dehydration due to illness.

18 "Beverage for Medical Use" shall not include drinks commonly referred to as "Sports Drinks" or
19 any other common names that are derivations thereof.

20 "Bottled Sugar-Sweetened Beverage" means any sugar-sweetened beverage contained in a bottle
21 that is ready for consumption without further processing, such as, and without limitation, dilution
22 or carbonation.

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

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

"Distribution" or "Distribute" means the transfer of title or possession:

- (1) From one business entity to another for consideration, or
- (2) Within a single business entity, such as by a wholesale or warehousing unit to a
retail outlet or between two or more employees or contractors.

"Distribution" or "Distribute" shall not mean the retail sale to a consumer.

"Distributor" means any person who distributes sugar-sweetened beverage products in the city.

1 "Milk Products" means natural fluid milk, regardless of animal source or butterfat content,
2 natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat
3 content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source
4 or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy
5 milk, coconut milk, rice milk and almond milk.

5 "Powder" means any solid mixture, containing one or more caloric sweetener as an ingredient,
6 intended to be used in making, mixing, or compounding a sugar-sweetened beverage by
7 combining the powder with one or more ingredients.

7 "Retailer of Sugar-Sweetened Beverage Products" means a person, other than a distributor,
8 manufacturer, or wholesaler who receives, stores, mixes, compounds, or manufactures a sugar-
9 sweetened beverage and sells or otherwise dispenses the sugar-sweetened beverage to the
10 ultimate consumer.

10 "Simple Syrup" means a mixture of water and one or more natural or common sweeteners
11 without any additional ingredients.

11 "Sugar-Sweetened Beverage" means any non-alcoholic beverage which contains at least 5 grams
12 of caloric sweetener per 12 fluid ounces.

13 (1) "Sugar-Sweetened Beverage" includes all drinks and beverages commonly referred
14 to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks,"
15 "sweetened ice teas," "sweetened coffees," or any other common names that are
16 derivations thereof.

16 (2) "Sugar-Sweetened Beverage" does not include any of the following:

17 i. Any beverage in which milk is the primary ingredient, i.e., the ingredient
18 constituting a greater volume of the product than any other;

18 ii. Any beverage for medical use;

19 iii. Any liquid sold for use for weight reduction as a meal replacement;

20 iv. Any product commonly referred to as "infant formula" or "baby formula;"

21 v. Any alcoholic beverage;

22 vi. Any beverage consisting of one hundred (100) percent natural fruit or vegetable
23 juice with no added caloric sweetener for purposes of this paragraph, "natural
24 fruit juice" and "natural vegetable juice" mean the original liquid resulting from
25 the pressing of fruits or vegetables; or

26 vii. Sweetened medication such as cough syrup, liquid pain relievers, fever
27 reducers, and similar products.

27 "Sugar-Sweetened Beverage Product" means a bottled sugar-sweetened beverage or a sugar-
28 sweetened beverage made from the dilution of syrup or powder.

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

4 **Section 3-16-5 Exemptions**

5 The tax imposed by this chapter shall not apply:

- 6 (a) To any distribution of syrups and powders sold directly to a consumer and intended for
7 personal use by a consumer that are not already pre-mixed into a sugar-sweetened
8 beverage product such as granulated sugar, honey, agave and similar products.
- 9 (b) To any milk product.
- 10 (c) To infant formula.
- 11 (d) To any alcoholic beverage.
- 12 (e) To any beverage for medical use.

13 **Section 3-16-6 Duties, Responsibilities and Authority of the City Manager**

- 14 (a) The city manager is authorized to collect and receive all taxes imposed by this chapter,
15 and to keep an accurate record thereof.
- 16 (b) The city manager shall develop a registration system whereby distributors of sugar-
17 sweetened beverages must register with the city prior to distributing any sugar-sweetened
18 beverages.
- 19 (c) The city manager shall annually verify that the taxes owed under this chapter have been
20 properly applied, exempted, collected, and remitted.
- 21 (d) The city manager is authorized to enforce this chapter and may prescribe, adopt, and
22 enforce rules and regulations relating to the administration and enforcement of this
23 chapter, including provisions for the reexamination and correction of returns and
24 payments, and for reporting. Such rules and regulations shall include, but are not limited
25 to, the following:
 - 26 (1) The determination of the frequency with which a distributor must calculate the tax.
27 This determination shall not constitute an increase of the tax.
 - 28 (2) The determination of the frequency with which a distributor must pay the tax. This
determination shall not constitute an increase of the tax.
 - (3) The determination of the manner in which a distributor must register with the city.
 - (4) The determination of whether and how a distributor who receives, in the city, sugar-
sweetened beverage products from another distributor must report to the city the
name of that distributor.

1 (5) The determination of whether and how a distributor who receives, in the city, sugar-
2 sweetened beverage products from another distributor must report to the city the
3 volume of sugar-sweetened beverage products received from that distributor.

4 (6) The determination of what other documentation is required to be created or
5 maintained by a distributor of sugar-sweetened beverage products.

6 **Section 3-16-7 Collection**

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

11 (b) In order to aid in the city's collection of taxes due under this chapter, any retailer of sugar-
12 sweetened beverage products that receives sugar-sweetened beverage products from a
13 distributor, in accordance with rules and regulations promulgated by the city manager
14 pursuant to section 3-16-6, shall provide to the city evidence that the distributor from
15 whom the sugar-sweetened beverage products were received has registered as a distributor
16 with the city and that registration is current.

17 **Section 3-16-8 Refunds**

18 Whenever any tax under this chapter has been paid more than once or has been erroneously or
19 illegally collected or received by the city, it may be refunded only as provided in Chapter 3-2-23
20 of the Boulder Municipal Code.

21 **Section 3-16-9 Enforcement**

22 Except as otherwise provided by this chapter or by rule or regulation promulgated by the city
23 manager, the tax imposed by this Chapter shall be administered in the same manner as taxes
24 imposed pursuant to Chapter 3-2-2 and, without limitation, shall be subject to the same
25 delinquency penal ties, appeals processes and other enforcement provisions set forth in chapter
26 3-2- 22.

27 **Section 3-16-10 Not a Sales and Use Tax**

28 The tax imposed by this Chapter is a tax upon the privilege of conducting business, specifically,
distributing sugar-sweetened beverage products within the City of Boulder. It is not a sales, use,
or other excise tax on the sale, consumption or use of sugar-sweetened beverage products. The
tax imposed herein shall be in addition to any license fee or tax imposed or levied under any
other law, statute or ordinance where imposed or levied by the city, state, or other governmental
entity or political subdivision.

29 **Section 3-16-11 Dedicated Revenues**

The revenues from this excise tax shall be designated for the administrative cost of the tax, and
once that obligation has been fulfilled, used for health promotion, general wellness programs and

1 chronic disease prevention in the City of Boulder that improve health equity, such as access to
2 safe and clean drinking water, healthy foods, nutrition and food education, physical activity, and
3 other health programs especially for residents with low income and those most affected by
4 chronic disease linked to sugary drink consumption. In order to ensure that funds are allocated
5 appropriately as directed in this Chapter, the city shall accurately track and record all revenues
6 collected from the excise tax promulgated in Chapter 3-16-2 and accurately track and record all
7 administrative costs as detailed in Chapter 3-16-6. The city council shall annually publish a
8 public report on the city's website detailing the amount of revenue collected as a result of the tax
9 and the type and amount of expenditures made as a result of the tax levied in Chapter 3-16-2.

7 **Section 3-16-12 Enactment**

8 If a majority of all the votes cast at the election on the issue submitted shall be for the issue, the
9 issue shall be deemed to have passed and shall be effective July 1, 2017.

10 **Section 3-16-13 Severability**

11 The people of the City of Boulder hereby declare that they would have adopted each section,
12 sentence, clause, phrase, word, or portion of this ordinance, irrespective of the fact that any one
13 or more sections, sentences, clauses, phrases, words, or portions of this ordinance, or any
14 application thereof, be declared invalid or unenforceable and, to that end, the provisions of this
15 ordinance are severable. If any section, sentence, clause, phrase, word, or portion of this
16 ordinance, or any application thereof in any circumstance, is for any reason held to be invalid or
17 unenforceable by a court of competent jurisdiction, the remaining sections, sentences, clauses,
18 phrases, words, or portions of this ordinance, and applications thereof, shall nonetheless remain
19 in full force and effect.

17 **Section 3-16-14 Municipal Affair**

18 The people of the City of Boulder hereby declare that the taxation of the privilege of distributing
19 sugar-sweetened beverage products and that the public health impact of sugar-sweetened
20 beverage products separately and together constitute municipal affairs. The people of the City of
21 Boulder hereby further declare their desire for this measure to coexist with any similar tax
22 adopted at the county or state levels.

23 Section 5. If this ballot issue is approved by the voters, the City Council may adopt
24 amendments to the Boulder Revised Code to further implement this excise tax and such other
25 amendments to the Boulder Revised Code as may be necessary to implement the intent and
26 purpose of this ordinance.
27
28

