



BALLOT MEASURE SUBMITTAL FORM

Official Use Only: Date Stamp

RECEIVED
Alameda County

AUG 07 2024

Reg. of Voters

All fields with an * are required.

BALLOT MEASURE QUESTION	
Jurisdiction Name*: Berkeley	Election Date*: 11/5/2024
<p>Note: The information as it appears within the text box will be printed on the ballot and voter guide.</p> <p>Insert ballot question text here*:</p> <p>Shall the measure to remove the current January 1, 2027 expiration date and extend until ended by voters the general tax on the distribution of sugary drinks and sweeteners, paid by distributors at the rate of 1¢ per fluid ounce, previously approved by voters in 2014, with exceptions for small retailers, milk products, and baby formula, raising approximately \$1,150,000 per year for general government use, be adopted?</p>	
TYPE OF MEASURE*	PERCENTAGE NEEDED TO PASS*
<input checked="" type="checkbox"/> Regular Measure <input type="checkbox"/> Parcel Tax	<input checked="" type="checkbox"/> 50% + 1 <input type="checkbox"/> 66.6667% <input type="checkbox"/> 2/3
<input type="checkbox"/> Bond Measure <input type="checkbox"/> Charter Amendment	<input type="checkbox"/> Other: Click or tap here to enter text
FULL-TEXT OPTION*	
Full Text to be printed in the Voter Information Pamphlet:	
<input checked="" type="checkbox"/> YES (<i>note: must provide an MS Word file</i>)	
<input type="checkbox"/> NO – Do not print, but it's accessible at: Click or tap here to enter text	
AUTHORIZED REPRESENTATIVE/CONTACT PERSON*	
<i>(office use)</i>	
Print Name: [REDACTED]	Signature: [REDACTED]
Phone #: [REDACTED]	Email: [REDACTED]
CONTACT INFORMATION	
<i>(public use)</i>	
Phone #: (510) 981-6900	Email: elections@berkeleyca.gov
	Website: https://berkeleyca.gov/your-government/elections

All fields with an * are required.

Rev. 8/2022

AUG 07 2024

Reg. of Voters

RESOLUTION NO. 71,464-N.S.

SUBMITTING TO THE BERKELEY ELECTORATE AN ORDINANCE REAUTHORIZING THE GENERAL TAX ON THE DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS

WHEREAS, the Berkeley City Council has elected to submit to the voters at the November 5, 2024 General Municipal Election, a measure amending Chapter 7.72 of the Berkeley Municipal Code to reauthorize the general tax on the distribution of sugar-sweetened beverage products by extending the tax beyond its current expiration date of January 1, 2027 and instead authorizing the tax to remain in effect until repealed or modified by the voters; and

WHEREAS, the Council desires to submit this measure to be placed upon the ballot at the November 5, 2024 Statewide General Election, consistent with the Council's Resolution No. 71,289-N.S., adopted on May 7, 2024, calling for a General Municipal Election to be consolidated with said statewide election.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that this resolution is hereby adopted and a ballot measure amending Chapter 7.72 of the Berkeley Municipal Code to reauthorize the general tax on the distribution of sugar-sweetened beverage products shall be placed before the voters at the election on November 5, 2024.

BE IT FURTHER RESOLVED that the Board of Supervisors of Alameda County is hereby requested to include on the ballots and sample ballots the measure enumerated above to be voted on by the voters of the qualified electors of the City of Berkeley.

BE IT FURTHER RESOLVED that, pursuant to California Elections Code sections 10002 and 10403, this City Council does hereby call an election on Tuesday, November 5, 2024, and requests that the Alameda County Board of Supervisors consolidate said election with the Statewide General Election on that same date in the manner and schedule established by Resolution No. 71,289-N.S., adopted on May 7, 2024, and submit the Measure to the qualified voters of the City at said consolidated election.

BE IT FURTHER RESOLVED that the City Council acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.

BE IT FURTHER RESOLVED that the City of Berkeley hereby requests that the Alameda County Board of Supervisors permit the Registrar of Voters of Alameda County to perform services in connection with said election at the request of the City Clerk. These services to include all necessary services related to official ballot creation, sample ballot and voter information pamphlet preparation, vote-by-mail, polling places, poll workers, voter registration, voting machines, canvass operations, and any and all other services necessary for the conduct of the consolidated election.

BE IT FURTHER RESOLVED that the full text of the measure shall be printed in the Voter Information Pamphlet mailed to all voters in the City of Berkeley.

BE IT FURTHER RESOLVED that the above enumerated measure requires a simple majority vote threshold for passage.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Berkeley, the Government Code, and the Elections Code of the State of California.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to obtain printing, supplies and services as required.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to enter into any contracts necessary for election consulting services, temporary employment services, printing services, and any such other supplies and services as may be required by the statutes of the State of California and the Charter of the City of Berkeley for the conduct of the November General Municipal Election.

BE IT FURTHER RESOLVED that the City will reimburse the Registrar of Voters for the costs associated with placing the measure on the ballot.

BE IT FURTHER RESOLVED that said proposed Ordinance measure shall appear and be printed upon the ballots to be used at said election as follows:

CITY OF BERKELEY GENERAL TAX ORDINANCE MEASURE	
Shall the measure to remove the current January 1, 2027 expiration date and extend until ended by voters the general tax on the distribution of sugary drinks and sweeteners, paid by distributors at the rate of 1¢ per fluid ounce, previously approved by voters in 2014, with exceptions for small retailers, milk products, and baby formula, raising approximately \$1,150,000 per year for general government use, be adopted?	YES
	NO

BE IT FURTHER RESOLVED that the text of the measure be shown as Exhibit A, attached hereto and made a part hereof.

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of this resolution to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure to the existing law and the operation of the measure, and transmit the impartial analysis to the City Clerk.

BE IT FURTHER RESOLVED that arguments for and against, not to exceed 300 words in length, may be filed consistent with Election Code Section 9282 requirements. The City Council, or any members of the City Council authorized by the City Council, may file a direct argument for the measure.

BE IT FURTHER RESOLVED that pursuant to Elections Code Section 9285 (b), the City Council hereby adopts the provisions of Elections Code Section 9285 (a) providing for the filing of rebuttal arguments for city ballot measures.

BE IT FURTHER RESOLVED that the measure, impartial analysis, any arguments for and against, and any rebuttal arguments filed under the authority of the Elections Code shall be available for public examination in the City Clerk's office pursuant to Elections Code Section 9295 for 10 calendar days, a period that shall begin immediately following the last filing deadline for the submission of such materials.

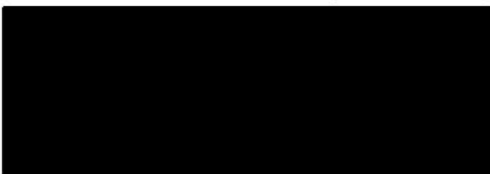
BE IT FURTHER RESOLVED that the City Clerk is hereby directed to file a certified copy of this resolution with the Alameda County Board of Supervisors and the Alameda County Registrar of Voters.

The foregoing Resolution was adopted by the Berkeley City Council on July 30, 2024 by the following vote:

Ayes: Bartlett, Hahn, Humbert, Kesarwani, Lunaparra, Taplin, Tregub, Wengraf, and Arreguin.

Noes: None.

Absent: None.



Jesse Arreguin, Mayor

Attest:



Mark Numainville, City Clerk

ORDINANCE NO. _____

REAUTHORIZING AND EXTENDING THE GENERAL TAX ON THE
DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS

BE IT ORDAINED by the People of the City of Berkeley as follows:

Section 1. Findings.

- A. Responding to the major public health crisis of increased rates of diabetes, obesity, and tooth decay, particularly in low-income communities and communities of color, connected to the consumption of sugary beverages, on November 4, 2014, the voters of the City of Berkeley passed Measure D, which added Chapter 7.72 to the Berkeley Municipal Code and imposed a general tax on the distribution of sugary beverages at a rate of 1 cent per fluid ounce.
- B. Since its adoption, Measure D has measurably reduced the consumption of sugary beverages in the City of Berkeley, as compared to neighboring cities that have not imposed a tax on the distribution of sugary beverages. For example, a report by the Berkeley Food Institute of the University of California found that three years after the passage of Measure D residents of the City of Berkeley were drinking half the amount of soda and consuming 29 percent more water than before Measure D.
- C. Measure D will terminate on January 1, 2027, unless reauthorized by the People of the City of Berkeley.

Section 2. Reauthorization.

- A. The general tax imposed on the distribution of sugary beverages in the City of Berkeley at the rate of 1 cent per fluid ounce, which was imposed by Ordinance No. 7,388-N.S. (Imposing a General Tax on the Distribution of Sugar-Sweetened Beverage Products) and codified as Chapter 7.72 of the Berkeley Municipal Code, is hereby reauthorized beyond December 31, 2026, its last effective date.
- B. The second sentence of section 4 of Ordinance No. 7,388-N.S., which states that “[t]he last effective date of this Ordinance shall be December 31, 2026, and it shall terminate as of January 1, 2027” is hereby deleted and replaced with the following sentence: “This Ordinance shall be effective until repealed or modified by the voters of the City of Berkeley.”

Section 3. Code Amendment. Chapter 7.72 of the Berkeley Municipal Code is hereby amended as follows (additions denoted by underlined text and deletions denoted by ~~strike through~~):

Chapter 7.72

SUGAR-SWEETENED BEVERAGE PRODUCT DISTRIBUTION TAX

Sections:

- 7.72.010 Excise tax.
- 7.72.020 Exemptions.
- 7.72.030 Definitions.
- 7.72.040 Duties, responsibilities and authority of the City Manager.
- 7.72.050 Collection.
- 7.72.060 Refunds.
- 7.72.070 Enforcement.
- 7.72.080 Not a sales and use tax.
- 7.72.090 Sugar-Sweetened Beverage Product Panel of Experts.
- 7.72.100 Increase appropriations limits.
- 7.72.110 Amendment.
- 7.72.120 Duration.

~~Code reviser's note: Section 4 of Ord. 7388 NS provides, "This Ordinance shall be effective on January 1, 2015. The last effective date of this Ordinance shall be December 31, 2026, and it shall terminate as of January 1, 2027."~~

7.72.010 Excise tax.

A. In addition to any other taxes imposed by the City, the City hereby levies a tax of one cent (\$0.01) per fluid ounce on the privilege of Distributing Sugar-sweetened beverage products in the City.

B. For the purposes of this Chapter, the volume, in ounces, of a Sugar-sweetened beverage product shall be calculated as follows:

1. For a Sugar-sweetened beverage, the volume, in fluid ounces, of Sugar-sweetened beverages distributed to any person in the course of business in the City.

2. For Added caloric sweeteners, the largest volume, in fluid ounces, of Sugar-sweetened beverages that could be produced from the Added caloric sweeteners. In accordance with rules and regulations promulgated by the City pursuant to Section 7.72.040, the largest volume, in fluid ounces, that would typically be produced from the Added caloric sweeteners shall be determined based on the manufacturer's instructions or, if the Distributor uses the Added caloric sweeteners to produce a Sugar-sweetened beverage, the regular practice of the Distributor.

C. The tax shall be paid upon the first nonexempt Distribution of a Sugar-sweetened beverage product in the City. To the extent that there is a chain of Distribution within Berkeley involving more than one Distributor, the tax shall be levied on the first Distributor subject to the jurisdiction of the City. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent Distributions and by subsequent Distributors; provided, that the Distribution of Sugar-sweetened beverage products may not be taxed more than once in the chain of commerce.

7.72.020 Exemptions.

The tax imposed by this Chapter shall not apply:

- A. To any Distributor that is not subject to taxation by the City under the laws of the United States or the State of California;
- B. To any Distribution of a Sugar-sweetened beverage product to a Retailer with less than \$100,000 in annual gross receipts, as defined in Section 9.04.025, in the most recent year;
- C. To any Distribution of Natural or common sweeteners; or
- D. To any Distribution of Added caloric sweeteners to a Food Products Store as defined in Section 23F.04.010, if the Food Products Store then offers the Added caloric sweetener for sale for later use by customers of that store.

7.72.030 Definitions.

- A. "Added caloric sweetener" means any substance or combination of substances that meets all of the following four criteria:

1. Is suitable for human consumption;
2. Adds calories to the diet if consumed;
3. Is perceived as sweet when consumed; and
4. Is used for making, mixing, or compounding Sugar-sweetened beverages by combining the substance or substances with one or more other ingredients including, without limitation, water, ice, powder, coffee, tea, fruit juice, vegetable juice, or carbonation or other gas.

An Added caloric sweetener may take any form, including but not limited to a liquid, syrup, and powder, whether or not frozen. "Added caloric sweetener" includes, without limitation, sucrose, fructose, glucose, other sugars, and high fructose corn syrup, but does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

B. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code, as that Part may be amended from time to time.

C. "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" shall also mean a "medical food" as defined in Section 109971 of the California Health and Safety Code, as that definition may be amended from time to time. "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.

D. "Business Entity" means any Person except for a natural person.

E. "City" means the City of Berkeley, California.

F. "City Manager" means the City Manager of the City of Berkeley or his or her designee.

G. "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.

H. "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.

I. "Distributor" means any Person who Distributes Sugar-sweetened beverage products in the City.

J. "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.

K. "Natural or common sweetener" means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.

L. "Person" means an individual, trust, firm, joint stock company, business concern, business trust, government, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a limited liability company, and association or any other group or combination acting as a unit.

M. "Retailer" means any Person who serves Sugar-sweetened beverage products to a Consumer.

N. "Simple syrup" means a mixture of water and one or more Natural or common sweeteners without any additional ingredients.

O. "Sugar-sweetened beverage" means any beverage intended for human consumption to which one or more Added caloric sweeteners has been added and that contains at least 2 calories per fluid ounce.

1. "Sugar-sweetened beverage" includes, but is not limited to all drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "sweetened ice teas," or any other common names that are derivations thereof.
2. "Sugar-sweetened beverage" shall not include any of the following:

- (a) Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;
- (b) Any beverage for medical use;
- (c) Any liquid sold for use for weight reduction as a meal replacement;
- (d) Any product commonly referred to as "infant formula" or "baby formula"; or
- (e) Any alcoholic beverage.

P. "Sugar-sweetened beverage product" means a Sugar-sweetened beverage or Added caloric sweetener.

7.72.040 Duties, responsibilities and authority of the City Manager.

A. It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.

B. The City Manager is hereby charged with the enforcement of this Chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Chapter, including provisions for the reexamination and correction of returns and payments, and for reporting. Such rules and regulations may include, but are not limited to, the following:

1. The determination of the frequency with which a Distributor must calculate the tax. This determination shall not constitute an increase of the tax.
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 whether and how 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.
5. 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 volume of Sugar-sweetened beverage products received from that Distributor.

6. The determination of what other documentation is required to be created or maintained by a Distributor.

C. The City Manager shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted.

7.72.050 Collection.

A. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the City. Any Distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount.

B. In order to aid in the City's collection of taxes due under this Chapter, any Retailer that receives Sugar-sweetened beverage products from a Distributor shall, in accordance with rules and regulations promulgated by the City Manager pursuant to Section 7.72.040, either:

1. report to the City all such transactions, the volume in ounces of Sugar-sweetened beverage products received in each transaction, and the identity and contact information of the Distributor from whom the Sugar-sweetened beverage products were received; or
2. collect the tax that would be payable as a result of the transaction by the Distributor from whom the Sugar-sweetened beverage product was received and remit it to the City; or
3. provide to the City evidence that the Distributor from whom the Sugar-sweetened beverage products were received has registered as a Distributor with the City and that registration is current.

C. The City Council is authorized to have the taxes imposed by this Chapter collected by the County of Alameda or the California Board of Equalization in conjunction with the collection of other taxes for the City. If the City Council exercises this authorization, the duties and responsibilities of the City Manager shall be given, as appropriate, to the County of Alameda or the California Board of Equalization, which may delegate such duties and responsibilities as necessary and as authorized by law.

7.72.060 Refunds.

Whenever any tax under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as provided in Chapter 7.20 of the Berkeley Municipal Code.

7.72.070 Enforcement.

Except as otherwise provided by this Chapter or by rule or regulation promulgated by the City Manager, the tax imposed by this Chapter shall be administered in the same manner as taxes imposed pursuant to Chapter 9.04 and, without limitation, shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in Chapter 9.04.

7.72.080 Not a sales and use tax.

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 Berkeley. It is not a sales, use, or other excise tax on the sale, consumption or use of Sugar-sweetened beverage products.

7.72.090 Sugar-Sweetened Beverage Product Panel of Experts.

- A. There shall be established the Sugar-Sweetened Beverage Product Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption.
- B. An officer or employee of the City designated by the City Manager shall serve as secretary of the Panel.
- C. In accordance with Chapter 2.04, the Panel shall be composed of nine members appointed by the City Council.
- D. Terms shall expire and vacancies shall be filled in accordance with the provisions of Section 2.04.030 through 2.04.145 of this Code.

- E. Each member of the Panel must:
1. Have experience in community-based youth food and nutrition programs; or
 2. Have experience in school-based food and nutrition programs and be referred by the Berkeley Unified School District; or
 3. Have experience in early childhood nutrition education; or
 4. Have experience in researching public health issues or evaluating public health programs related to diabetes, obesity, and sugary drink consumption; or
 5. Be a licensed medical practitioner.
- F. In accordance with Section 3.02.040, members of the Panel may be reappointed but shall not serve more than eight consecutive years.
- G. The Panel shall, by majority vote, do each of the following:
1. Annually appoint one of its members as chair and one of its members as vice-chair;
 2. Approve bylaws to facilitate the proper functioning of the Panel;
 3. *Establish a regular time and place of meeting.* All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded, kept, and maintained; and
 4. Publish an annual report that includes the following:
 - (a) recommendations on how to allocate the City's general funds to reduce the consumption of sugar sweetened beverages in Berkeley and to address the results of such consumption;
 - (b) information, if available, concerning the impact of this Chapter on the public health of the residents of the City; and
 - (c) any additional information that the Panel deems appropriate.
- H. Within 15 days of receipt of the publication of the Panel's annual report, the City Manager shall cause the report to be published on the City's Internet website and to be

transmitted to the City Council and the Governing Board of the Berkeley Unified School District.

I. The City Council shall consider, but need not follow, the Panel's recommendations and shall annually inform the Panel as to the extent to which it has implemented the Panel's recommendations.

7.72.100 Increase appropriations limits.

Pursuant to California Constitution article XIII B, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this tax for each of the four fiscal years from 20~~24~~25-~~24~~26 through 20~~24~~28-~~24~~29.

7.72.110 Amendment.

The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section 7.72.020.B.

7.72.120 Duration.

This Ordinance shall be effective until repealed or modified by the voters of the City of Berkeley.

Section 4. Amendment, repeal, and reenactment. The City Council may repeal this ordinance, or amend it in any manner that does not result in an increase in the tax imposed herein, or add or modify exemptions, without further voter approval. If the City Council repeals this ordinance, it may subsequently reenact it without voter approval, as long as the reenacted ordinance does not result in an increase in the tax imposed herein.

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

Section 6. General Tax; Simple Majority Vote Requirement. This Ordinance imposes a general tax and shall be effective if approved by a simple majority of the voters voting thereon.