

**Multnomah County Children's Health and Education Fund
Paid For with a Distribution Tax on Sugary Drinks**

The people of Multnomah County, exercising their right to enact laws by citizen initiative, enact the following Ordinance to be made part of the Multnomah County Code.

Section 1. Findings

1. Rates of diabetes, heart disease, and tooth decay are high in Multnomah County. Children, low income communities and communities of color have been disproportionately affected.
2. While there is no single cause for the rise in these diseases, there is overwhelming evidence of the link between the consumption of sugary drinks and soda and the incidence of diabetes, heart disease, tooth decay and other health problems.
3. In addition to the human cost to those who suffer from these diseases, there is a public health and economic cost to the County associated with these diseases.

Section 2. Policy and Purpose of Tax

1. Based on the findings set forth above, the purpose of this Ordinance is to diminish the human and economic costs of diseases associated with the consumption of sugary drinks.
2. This ordinance imposes an excise tax on the privilege of conducting businesses that distribute sugary drinks and products used to make them. It is not a sales tax.
3. Certain drinks containing added sugar are exempted, including infant formula, milk products and natural fruit and vegetable juices.
4. Revenues collected through this tax on sugary drinks will be placed in a special fund to be designated as "The Children's Health and Education Fund." The money in this fund will be used to fund programs primarily serving children in low income communities and communities of color in Multnomah County that improve nutrition and access to healthy foods, increase physical activity and fitness, support early childhood education initiatives and improve children's general health and academic achievement. No more than 5% of the fund can be spent on administrative expenses associated with administering the fund. The fund shall be subject to an audit every other year.
5. This Ordinance creates a "Children's Health and Education Fund Advisory Committee" made up of experts and community members to (1) advise the County on the effectiveness of this excise tax in discouraging the distribution and consumption of sugary drinks, and (2) make recommendations regarding the funding of program designed to improve children's health and education.

Section 3. Definitions

Unless otherwise defined in this section, terms that are defined in Chapter 12 of the Multnomah County Code shall have the meanings provided therein.

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TIM SCOTT
DIRECTOR OF ELECTIONS

1. "Added Caloric Sweetener" means any substance or combination of substances that meets all of the following four criteria:
 - a. is suitable for human consumption;
 - b. adds calories to the diet if consumed;
 - c. is perceived as sweet when consumed; and
 - d. 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, or powder, whether or not frozen. "Added Caloric Sweetener" includes, without limitation, sucrose, fructose, glucose, other sugars, high fructose corn syrup, and flavored syrups.

2. "Alcoholic beverage" shall have the same meaning as set forth in ORS 471.001.
3. "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 not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.
4. "Business entity" includes, but is not limited to an individual, a natural person, proprietorship, partnership, limited partnership, family limited partnerships, joint venture (including tenants-in-common arrangements), association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business. This definition is intended to track the term "person" as used in Multnomah County Code, Chapter 12.
5. "County" means Multnomah County, Oregon.
6. "Tax Administrator" means the Chief Financial Officer of the County or his or her designees.
7. "Consumer" means an individual who purchases a sugar-sweetened beverage product in the County for a purpose other than resale or use in the ordinary course of business.
8. "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 Retailer, or between two or more employees or contractors. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.
9. "Distributor" means any Business Entity that distributes Sugar-Sweetened Beverage Products in the County. A business entity that transports Sugar-Sweetened Beverage Products purchased outside the County for the purposes of retail sale within the County shall be deemed a Distributor.
10. "Milk" means natural liquid milk, natural milk concentrate (whether or not reconstituted) or dehydrated natural milk (whether or not reconstituted), regardless of

animal source or butterfat content. For purposes of this definition, "Milk" includes flavored milk drinks containing no more than 40 grams of total sugar (naturally-occurring and from added Caloric Sweetener) per 12 ounces (3.3 grams of total sugar per ounce).

11. "Milk alternatives" include but are not limited to non-dairy creamers or beverages primarily consisting of plant-based ingredients (e.g. soy, rice, or almond milk products), regardless of sugar content.
12. "Retailer" means any Business Entity that sells Sugar-Sweetened Beverage Products to a Consumer.
13. "Sugar-Sweetened Beverage" means any nonalcoholic beverage intended for human consumption that has one or more Added Caloric Sweeteners and contains more than 2 calories per ounce of beverage.
14. "Sugar-Sweetened Beverage" includes, but is not limited to, all added caloric drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "sweetened ice teas," "sweetened coffee drinks" or any other common names that are derivations thereof.
15. "Sugar-Sweetened Beverage" shall not include any of the following:
 - a. Milk
 - b. Milk Alternatives
 - c. Any beverage that contains only 100 percent natural fruit juice, natural vegetable juice, or combined natural fruit juice and natural vegetable juice, including natural fruit or vegetable juices diluted with water or carbonated water, so long as there is no other Added Caloric Sweetener.
 - d. Any product commonly known as "infant formula" or "baby formula," or any product whose purpose is infant rehydration.
 - e. Beverages for Medical Use
 - f. Any product designed as supplemental, meal replacement, or sole-source nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals
16. "Sugar-Sweetened Beverage Product" means a Sugar-Sweetened Beverage or Added Caloric Sweetener.
17. "Sugary Drink" means "Sugar-Sweetened Beverage Product."

Section 4. Excise Tax on Distribution of Sugary Drinks Imposed

1. The County hereby imposes an excise tax of one cent (\$0.01) per fluid ounce on the privilege of distributing Sugar-Sweetened Beverage Products in Multnomah County.
2. The County's jurisdiction over Distributors doing business in Multnomah County shall extend to all persons doing business in the county, as defined in Chapter 12 of the Multnomah County Code, subject to the exemptions set forth in that Chapter 12, §12.400.
3. For the purposes of this Chapter, the volume, in ounces, of a Sugar-Sweetened Beverage Product shall be calculated as follows:

- a. For a Sugar-Sweetened Beverage, the volume, in fluid ounces, of Sugar-Sweetened Beverages distributed to any Business in the County.
 - b. For Added Caloric Sweeteners, the largest volume, in fluid ounces, of Sugar-Sweetened Beverages that could be produced from the Added Caloric Sweeteners 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. For Added Caloric Sweeteners that may be used to flavor coffee, milk and other drinks, the tax shall be calculated assuming that the Added Caloric Sweetener is combined with carbonated water to make a soda drink (e.g. "Italian sodas.")
4. The tax shall be paid upon the first non-exempt distribution of a Sugar-Sweetened Beverage Product in the County. To the extent that there is a chain of Distribution within Multnomah County involving more than one Distributor, the tax shall be levied on the first Distributor subject to the jurisdiction of the County. 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.

Section 5. Exemptions

The tax imposed by this Chapter shall not apply:

1. To any Distributor that is not subject to taxation by the County under the laws of the United States or the State of Oregon;
2. To any Distribution of Added Caloric Sweeteners to a Retailer intended for sale for later use by Consumers (e.g. bags of sugar or other sweeteners in a grocery store).
3. To any Distribution of small-batch nonalcoholic Sugar-Sweetened Beverages produced in Multnomah County by a manufacturer licensed pursuant to ORS 635.027. The County shall determine the volume of production that qualifies for this small-batch exemption.

Section 6. Duties, Responsibilities and Authority of the Tax Administrator

1. It shall be the duty of the Tax Administrator or his or her designee to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.
2. The Board of County Commissioners and the Tax Administrator may prescribe, adopt, and enforce ordinances, rules and regulations relating to the administration and enforcement of this Sugary Drink Tax. Such rules and regulations may include, but are not limited to, the following:
 - a. The determination of whether and how a Distributor must register with the County;
 - b. Reporting requirements for Distributors and Retailers;
 - c. The schedule for payment of the tax;

- d. The process for determining deficiencies and refunds;
 - e. Enforcement procedures, including provisions authorizing the imposition of penalties and other sanctions for noncompliance; and
 - f. The procedures for challenging a determination relating to the amount of taxes owed.
3. Whenever any tax under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the County, it may be refunded to the payer.
 4. The Tax Administrator shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted.

Section 7. Collection

1. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the County. Any Distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the County for the recovery of such amount.
2. The Multnomah County Board of Commissioners may, but is not required to, contract with other public agencies, including the Oregon Department of Revenue (as authorized by ORS 306.620) or the Oregon Liquor Control Commission, to administer and collect the taxes owed under this Chapter. If the County Commissioners exercise this option, the duties and responsibilities of the Tax Administrator shall be given, as appropriate, to the contracted public agency, which may delegate such duties and responsibilities as necessary and as authorized by law.

Section 8. The Children's Health Fund

1. The proceeds from this tax on sugary drinks, after deducting the reasonable costs of administering and collecting the tax, shall be placed in a special fund to be designated as the "Children's Health and Education Fund."
2. Money in the Children's Health and Education Fund shall be dedicated to the funding of programs primarily serving children in low income communities and communities of color that:
 - a. Increase physical activity and physical fitness of children in Multnomah County;
 - b. Improve the nutrition of children in Multnomah County;
 - c. Improve the dental health of children in Multnomah County;
 - d. Reduce health disparities of children in Multnomah County;
 - e. Support early childhood education initiatives.
3. No more than 5% of the fund may be spent on expenses associated with administering the fund.
4. The fund shall be subject to a performance audit every other year.

Section 9. The Children's Health and Education Fund Advisory Committee

1. There shall be established the Children's Health Fund Advisory Committee ("Committee") to (1) advise the County on the effectiveness of this sugary drink tax in discouraging the distribution and consumption of sugar-sweetened beverages, and (2) make recommendations regarding the funding of programs designed to improve children's health in Multnomah County.
2. The Committee shall be made up of 15 members who are residents of Multnomah County. Members will be recruited and recommended by the designated organizations and appointed by the Board of County Commissioners. In the event a designated organization ceases to exist or changes mission, the Board of County Commissioners may either designate a different organization with a similar mission to make recommendations or directly appoint members who will fill the role for the designated vacant seat.
3. The Board shall appoint members of the Committee based on the recommendations from the following designated organizations:
 - a. The Regional Health Equity Coalition (RHEC) will recommend members for seats one through five. RHEC-recommended committee members shall be community members who represent and have expertise working in underserved communities that are heavily impacted by diabetes, heart disease, dental decay or other chronic diseases linked to soda consumption. At least two appointees shall be individuals who are involved in the Multnomah County Community Health Improvement Plan (often referred to as "the Multnomah County CHIP").
 - b. All Hands Raised will recommend three individuals with expertise in school health for seats six through nine. Seat six will be an individual with a focus on early childhood education; seats seven and eight will be individuals with a focus on K-12 education. At least two of these three members will have primary worksites east of I-205.
 - c. The Multnomah County Youth Commission will recommend members for seats nine and ten who are 18 years of age or younger at the commencement of the initial term and at the commencement of any succeeding term.
 - d. The Oregon Hunger-Relief Task Force shall recommend an individual with expertise in hunger, food security and nutrition for seat eleven.
 - e. The Multnomah County Health Department shall recommend members to fill seats twelve through fifteen. Seats twelve and thirteen shall be county or state public health department staff with expertise in nutrition, physical activity, and/or dental health. Seats fourteen and fifteen shall be other individuals with expertise researching or evaluating public health programs related to diabetes, heart disease, and sugary drink consumption, community-based youth food and nutrition programs, school-based food and nutrition programs, or early childhood nutrition.
4. Members shall serve two-year terms. The County Chair shall have discretion to stagger terms of appointment as necessary to ensure rotating terms and continuity. No member may serve more than two consecutive two-year terms.

5. Members of the Committee shall serve without pay, but may be reimbursed for actual expenses.
6. The Committee shall:
 - a. Evaluate and analyze the impact of the tax on beverage prices, consumer purchasing behavior and health outcomes.
 - b. Align the Children's Health and Education Fund investments with the Multnomah County Community Health Improvement Plan.
 - c. Make funding recommendations to the County Board of Commissioners, consistent with the priorities required by this measure and the Committee's strategic plan, based on a transparent grant application and review process.
 - d. Monitor performance of programs receiving funds from the Children's Health Fund. This includes identifying key data, as well as outcome goals to ensure accountability and effectiveness of funded programs in improving children's health.

Section 10. Performance Audit

The Multnomah County Auditor shall conduct a performance audit every other year. The results of the audit shall be made publicly available on the Multnomah County website as well as any website for the Children's Health Fund.

Section 11. Operative Date

This ordinance shall become operative on January 1, 2017, except the County will not impose or collect the tax until January 1, 2018.

Section 12. Severability

If any part, section or provision of this Ordinance, or tax imposed pursuant to this Ordinance is found unconstitutional, illegal or invalid, such a finding will affect only that part, section or provision of the Ordinance and the remaining parts, sections or provisions shall remain in full force and effect.