

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE O1

The City Council has placed before the voters the question whether to approve an ordinance enacting a permanent tax of one cent (\$0.01) per ounce on the distribution in Albany of sugar-sweetened beverages and the added-calorie sweeteners used to make them. The tax on added-calorie sweeteners would be calculated based on the number of ounces of sweetened beverage that would typically be produced using that sweetener. The tax would be payable by the distributor, not the customer. A full copy of the ordinance text is printed in these ballot materials.

Beverages

Sugar sweetened beverages whose distribution *would be* subject to the tax would include sugar-sweetened beverages, like soda, energy drinks, and presweetened tea, that contain at least 2 calories per fluid ounce.

Certain beverages *would not be* subject to the tax:

- Baby formula
- Beverages in which milk is the primary ingredient
- Liquids sold for use for weight reduction as a meal replacement
- Medical beverages (beverages used as oral nutritional therapy or oral rehydration electrolyte solution for infants and children),
- Beverages containing only natural fruit and vegetable juice
- Alcoholic beverages.

Added-calorie sweeteners

Added-calorie sweeteners *would include* any edible product that is perceived as sweet and adds calories, and is used to make sugar-sweetened beverages, including but not limited to sucrose, fructose, glucose, other sugars, and high fructose corn syrup.

Added-calorie sweeteners *would not include* natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

Applicability and exemptions

The tax *would* apply to:

- distribution of sugar-sweetened beverages to stores and restaurants;
- distribution of sweeteners to restaurants; and
- distribution of sweeteners to stores where they are used to make sugar-sweetened beverages for customers.

The tax *would not* apply to:

- distribution of sweeteners to food stores;
- distribution of sugar sweetened beverages or sweeteners to small retailers -- those with less than \$100,000 in annual gross receipts.

Expenditure of Tax Proceeds and Annual Audit

Because this measure does not legally restrict the use of tax revenue for any particular purposes, it is classified as a "general tax". The proposed Ordinance requires the City Council to conduct an annual process for soliciting advisory recommendations from a variety of organizations and individuals regarding expenditure of the tax proceeds. The City's independent auditors would provide an annual report reviewing the collection, management and expenditure of tax revenues.

Duration of Tax

The proposed ordinance does not contain an expiration date.

A "Yes" vote is a vote in favor of the tax. A "No" vote is a vote against the tax. This measure would be approved if a majority of the votes cast on it are "Yes" votes.

DATED: July 22, 2016

Craig Labadie, City Attorney