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**Model Ordinance Regulating Sales of Sugar-Sweetened Beverages**

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## Introduction and Report

This Model Ordinance Regulating Sales of Sugar-Sweetened Beverages (Model Ordinance) draws on ChangeLab Solutions’ legal research and analysis, as well as the research and evidence base linking excessive consumption of sugar-sweetened beverages (SSBs) with overweight/obesity and chronic disease. This Model Ordinance provides a menu of potential policy interventions to increase healthy beverage options in all food establishments and reduce consumption of SSBs, complementing other policy and programmatic work designed to increase healthy food and beverage options.

This introduction and report summarizes our nonpartisan analysis of the research on these issues and the rationale for regulating certain aspects of retail sales of SSBs as a possible policy intervention. It is intended to be distributed broadly to the public for the purpose of educating and disseminating information. Our presentation of this Model Ordinance, including this introduction and report, is based on our independent and objective analysis of the relevant law, evidence, and available data and should enable readers to draw their own opinions and conclusions about the merits of this Model Ordinance.

## Correlation Between Sugar-Sweetened Beverages and Overweight/Obesity

More than two thirds of adults[[1]](#endnote-1) and nearly one third of youth aged two to nineteen years[[2]](#endnote-2) in the U.S. are overweight or obese. Over the last thirty years, obesity and overweight rates have soared in all age groups, particularly among children–more than doubling for preschoolers and more than tripling for children ages 6 to 11 and adolescents ages 12 to 19.[[3]](#endnote-3),[[4]](#endnote-4) After decades of steady increase, adult[[5]](#endnote-5) and childhood[[6]](#endnote-6) obesity rates appear to have leveled off, with no significant increase (or decrease) in recent years. Nonetheless, existing obesity rates are still staggeringly high, especially for low-income people and people of color. African-American and Latino adults have higher obesity and overweight rates than the overall U.S. population.[[7]](#endnote-7) Similarly, 21 percent of Latino children and adolescents and 24 percent of African-American children and adolescents are obese, while 14 percent of white children are obese.[[8]](#endnote-8) Variation in obesity rates across income is complex, but generally obesity rates decline as income increases for both adults and children.[[9]](#endnote-9),[[10]](#endnote-10)

The rise of overweight and obese over the last 30 years corresponds to increases in calorie consumption. American adults consume as much as 570 more calories per day on average than 30 years ago, an increase of over 30 percent.[[11]](#endnote-11) Children are also consuming more calories—on average about 108 more calories per day, an increase of approximately 6 percent.[[12]](#endnote-12) This increased calorie consumption has not been offset by increases in physical activity. In fact, less than half of adults[[13]](#endnote-13) and less than one third of adolescents[[14]](#endnote-14) in the U.S. meet physical activity guidelines of 150 minutes a week and an hour a day, respectively.[[15]](#endnote-15)

Many of these additional calories are coming from sugar-sweetened beverages.[[16]](#endnote-16) Sugar-sweetened beverages (“SSBs”) are beverages that have added caloric sweeteners of any kind, and include sweetened fruit juices, fruit drinks,[[17]](#endnote-17) carbonated sodas, sports drinks, energy drinks, and flavored milks.[[18]](#endnote-18) Between 1977 and 2001, energy intake from SSBs for all age groups increased 135 percent.[[19]](#endnote-19) While SSB consumption has decreased in recent years, particularly among children and adolescents,[[20]](#endnote-20) consumption rates remain high.

On any given day, roughly half of the American population over age two drinks at least one SSB and 25 percent consume at least 200 calories from SSBs.[[21]](#endnote-21) One study by the Centers for Disease Control found that 63 percent of high school students report consuming at least one SSB on a daily basis.[[22]](#endnote-22) In another study, 81 percent of children ages 6-11 consumed at least one SSB on the surveyed day. [[23]](#endnote-23)The most common SSBs consumed by children and adolescents were fruit drinks and non-diet carbonated soft drinks.[[24]](#endnote-24) The disparities in obesity rates by income and race and ethnicity are mirrored in SSB consumption. African-Americans and Mexican-Americans report consuming more SSB calories than whites for both sexes and most age groups.[[25]](#endnote-25) African-American children and adolescents are more likely to consume 500 or more calories a day from fruit drink SSBs than whites; and low-income children more likely to consume 500 or more calories a day from all SSBs than high-income children.[[26]](#endnote-26)

Close to 50 percent of SSB calories consumed by all ages are consumed outside of the home. Of these SSBs consumed out of the home, 43 percent are purchased in stores, 35 percent are purchased in restaurants (including fast-food), and over 20 percent are purchased in places like vending machines, street vendors, and cafeterias.[[27]](#endnote-27) SSBs are sold in a wide variety of retail establishments, not just by food retailers. One survey of over 1,000 retail stores in the U.S. whose primary merchandise was not food found that 20 percent sold SSBs, often in arms reach of the cash register.[[28]](#endnote-28),[[29]](#endnote-29)

While children and adolescents have lower out of home SSB consumption rates compared to adults, as much as 40 percent of the calories from SSBs and fruit juices consumed by children and adolescents are consumed outside of the home.[[30]](#endnote-30) Adolescents who live closer to food retailers are more likely to purchase and consume SSBs on a daily basis.[[31]](#endnote-31) This association holds true for a variety of retailers, including convenience stores, grocery stores, and restaurants (including fast food restaurants).[[32]](#endnote-32) Adolescents often make these purchases before and after school, both alone and while with friends.[[33]](#endnote-33) Not only teenagers are buying and consuming SSBs. A study of fourth through sixth grade students in a Philadelphia neighborhood who shopped at corner stores before and after school found that SSBs accounted for 88 percent of all beverages purchases and 16 percent of calories per purchase.[[34]](#endnote-34)

While living near any food retailer is associated with increased SSB consumption, research shows variations by retailer type in the association between residential proximity to food retailers and the prevalence obesity and overweight. Adolescents who live in neighborhoods with more chain super markets tend to have a lower body mass index and are less likely to be overweight, but adolescents who live in neighborhoods with more convenience stores tend to have higher a body mass index and are more likely to be overweight.[[35]](#endnote-35) Researchers have found conflicting results when examining the association between overweight or obese and school proximity to fast food restaurants.[[36]](#endnote-36)

These variations point to larger inequities in the food environment that create barriers to accessing healthy foods. The disparities in obesity rates and SSB consumption are again mirrored in access to healthy foods: low-income, African-American, and Hispanic neighborhoods have fewer chain supermarkets than middle-income and white neighborhoods[[37]](#endnote-37) but more convenience stores and small grocery stores.[[38]](#endnote-38) While all of these retail outlets sell SSBs and other unhealthy foods that contribute to obesity, supermarkets, particularly large chain stores, are more likely to offer healthful items, like fresh fruits and vegetables, and often at lower cost.[[39]](#endnote-39)

SSB consumption is consistently associated with long-term weight gain and increased obesity rates among adults, and children and adolescents.[[40]](#endnote-40),[[41]](#endnote-41),[[42]](#endnote-42),[[43]](#endnote-43) Conversely, intervention research suggests that reductions in SSB consumption are significantly associated with weight loss.[[44]](#endnote-44),[[45]](#endnote-45) Associations between soda consumption and overweight have been found in children as young as two years old; one study found that the odds of 2-year olds who consumed at least one soda a day being overweight increased more than three-fold compared to children who consumed no soda.[[46]](#endnote-46)

SSB consumption has also been consistently found to be associated with an increased risk in adults of chronic diseases such as diabetes,[[47]](#endnote-47),[[48]](#endnote-48),[[49]](#endnote-49),[[50]](#endnote-50),[[51]](#endnote-51) metabolic syndrome,[[52]](#endnote-52) and heart disease.[[53]](#endnote-53),[[54]](#endnote-54) A recent study of youth with type 1 diabetes found that increased consumption of sugar-sweetened beverages was associated with increased risk of cardiovascular disease risk factors.[[55]](#endnote-55) SSB consumption in children is associated with dental caries,[[56]](#endnote-56),[[57]](#endnote-57) asthma,[[58]](#endnote-58) decreased milk consumption,[[59]](#endnote-59),[[60]](#endnote-60),[[61]](#endnote-61) and inadequate intake of nutrients, including calcium, iron, folate, magnesium, and vitamin A.[[62]](#endnote-62),[[63]](#endnote-63),[[64]](#endnote-64),[[65]](#endnote-65) Soda consumption in particular is also associated with lower bone mineral density[[66]](#endnote-66) and a higher risk of bone fracture among girls.[[67]](#endnote-67),[[68]](#endnote-68)

Some published research has not found associations between SSB consumption and adverse health outcome. A meta-analysis of 12 studies of SSB consumption and weight gain among children and adolescents found no significant association.[[69]](#endnote-69) Similarly, a risk analysis found no relationship between BMI and consumption of soda sold in vending machines in schools.[[70]](#endnote-70) Two studies analyzing different federal data sets also reported no negative association between SSB consumption (specifically soda) and calcium intake.[[71]](#endnote-71),[[72]](#endnote-72) Much of the published research reporting no adverse effect of SSB consumption on nutrition and health is funded by the beverage industry and has been refuted by subsequent research.[[73]](#endnote-73)

In spite of these health effects, over the past several decades, SSB portion sizes (in addition to overall consumption) have increased dramatically. A study examining American beverage consumption trends and causes concluded that average portion sizes for SSBs increased from 13.6 ounces to 21 ounces between 1977 and 1996.[[74]](#endnote-74) A “family size” bottle of Coke was 26 ounces in the 1950s; now a single-serving bottle of Coke is 20 ounces.[[75]](#endnote-75) With these large portion sizes, SSBs are the single largest source of added sugars in the American diet.[[76]](#endnote-76)

SSBs are also being marketed to the American public at an unprecedented rate, particularly to children and minorities. This marketing influences purchase requests, preferences, and consumption.[[77]](#endnote-77) According to a 2008 report from the Federal Trade Commission (FTC), the major beverage companies spent nearly half a billion dollars marketing carbonated beverages to children and adolescents in the U.S. in 2006.[[78]](#endnote-78) Companies spent an additional $147 million on marketing juice and noncarbonated drinks to children and adolescents. Beverage marketing accounted for 90 percent ($169 million) of food and beverage marketing in schools. And the beverage companies spent $101 million on television advertising that marketed carbonated soft drinks to youth, with most of that money focused on teenagers. In addition to these marketing channels, the companies used Internet marketing, celebrity endorsements, and in-store packaging to reach children and adolescents.

### Regulation of the Sale of Sugar-Sweetened Beverages as a Policy Solution to Promote Consumption of Healthier Beverages

ChangeLab Solutions has developed this Model Ordinance as one tool to help communities reduce the consumption of SSBs and increase the consumption of healthy beverages.

Health departments have traditionally focused on educating the public about healthy eating and on designing programs to increase access to healthy food and promote physical activity, rather than using regulatory approaches to combat obesity. Some believe that the educational and programmatic approach traditionally used to promote public health is the appropriate role for government to attempt to address the obesity epidemic; others prefer the use of incentives or grant programs that have no penalties. A comprehensive obesity prevention plan should include all of these strategies, as well as strategies to reduce the consumption of unhealthy foods and beverages. While programs are an important type of public health intervention, they may be more effective when supplemented with policies. Programs are resource-intensive, vulnerable to budget cuts, and have limited reach, whereas policies can reach more people with fewer public resources by changing the environmental factors that affect health and disease.

A panel of health experts convened by the Institute of Medicine (IOM), a widely respected nonpartisan organization, recently recommended a variety of strategies to “accelerate progress” in reducing U.S. obesity rates, including adopting policies and implementing practices to reduce the overconsumption of SSBs.[[79]](#endnote-79) This Model Ordinance includes several options that share those goals.

Policies that target specific products, however, can spark intense political debate. In September 2012, the New York City Board of Health enacted a rule prohibiting New York City’s food service establishments, including restaurants, bodegas, street carts, delis, fast-food franchises, and movie theaters, from selling sugar-sweetened beverages in any cup or container capable of holding more than 16 ounces.[[80]](#endnote-80) The National Association for the Advancement of Colored People (NAACP) and Hispanic Federation filed an amicus brief in support of a lawsuit by the American Beverage Association (and other trade groups) challenging the Board of Health’s authority to unilaterally ratify the soda rule. In the brief, the NAACP and Hispanic Federation assert that the soda rule “arbitrarily discriminates against citizens and small business owners in African-American and Hispanic communities” who have to compete with 7-Eleven and other convenience stores, which are excluded due to a loophole in the law.[[81]](#endnote-81) Also, these groups argued that the ban is “a superficial and ineffective attempt” to address a complex health problem that disproportionately affects African Americans and Latinos.[[82]](#endnote-82) Suddenly, public health advocates have found themselves at odds with their longtime political allies on the issue of obesity prevention, an uncomfortable position for many in the public health community.

Policies that regulate sales of SSBs can implicate tensions between the government’s duty to protect individual liberty and its duty to promote and protect public health and wellbeing. Opponents of SSB-related policies often argue that the restrictions unnecessarily and excessively intrude on personal freedoms and are part of a broader paternalistic effort to legislate lifestyles.[[83]](#endnote-83),[[84]](#endnote-84),[[85]](#endnote-85) A common argument is that individuals should be left to exercise individual choice and responsibility when it comes to what they eat and drink. These policies are cast as creating a dangerous slippery slope: what personal liberty will be restricted next in the name of public health? Public health advocates counter that choices are not made in a vacuum but are influenced by the broader environment and collective action is needed to increase opportunities to make healthy choices.[[86]](#endnote-86)

No single strategy has been proven to reduce the consumption of SSBs. While the provisions proposed in the Model Ordinance are based on available research regarding consumer behavior, as outlined below, there is no meaningful data regarding their effectiveness with respect to SSBs and obesity. Because of this, the Model Ordinance includes an evaluation component to determine the effectiveness of any policy option a community pursues. Through meaningful evaluation, we will be able to determine which strategies are the most effective to supplement existing and future programmatic efforts.

Restaurants and Other Retail Outlets

This Model Ordinance contains a wide array of options to regulate retail sales of SSBs, and depending on the strategy chosen, it could apply to restaurants, other retail outlets, and any businesses that offer fountain drinks for sale. For any of the options you decide to include in your ordinance, you must carefully consider what businesses will be impacted and ensure that the provisions you pursue accomplish your intended result.

Availability of Water

One provision in the Model Ordinance would require that any retail food establishment that sells fountain drinks make noncarbonated water equally available at either (1) a cost-per-ounce that is equal to or less than that of the SSBs, or (2) the actual cost to the retailer of the container, lid, and straw. Water also must be sold in containers and sizes similar to those for SSBs, and in a manner that is equally convenient. Studies show that consumers tend to choose the usual or default option.[[87]](#endnote-87) Changing the default option, such as by making water at least as affordable and accessible as SSBs, can be successful in changing consumer behavior with respect to the purchase of foods and beverages.[[88]](#endnote-88)

Limiting Access for Children

Another provision of the Model Ordinance would prohibit the sale of SSBs as part of a children’s meal at retail food establishments. As of August 2008, 93 percent of children’s meals at the 25 largest chain restaurants failed to meet a set of nutrition standards developed by a panel of nutrition experts and based in large part on key recommendations from the *Dietary Guidelines for Americans*.[[89]](#endnote-89) On average, children consume nearly twice as many calories from a restaurant meal (770) as they do from a home-cooked meal (420).[[90]](#endnote-90) Adding SSBs to these meals adds calories and sugar that may contribute to obesity and health problems. This provision would not prohibit the purchase of SSBs during the same transaction in which a children’s meal is purchased, as long as such beverages are not provided at a discount or provided as part of the children’s meal.

Limiting Portion Sizes

Another option in the Model Ordinance would establish a maximum portion size for fountain drinks, bottle/canned beverages, or both, as one way to limit consumption of SSBs. People who are given larger portions tend to eat more, without recognizing that they are doing so. Those who are served larger portion sizes of food eat approximately 20 percent to 50 percent more, without reducing intake at subsequent meals to compensate for the increased consumption.[[91]](#endnote-91) In one study, people eating soup from self-refilling bowls ate 73 percent more, without perceiving that they had eaten more or feeling fuller.[[92]](#endnote-92) Similarly, people who are served beverages that are 50 percent larger consume 20 percent (women) to 33 percent (men) more calories from the beverages, without decreasing the amount of food they’re eating.[[93]](#endnote-93) Serving a larger portion size of beverages means that people will drink more of the beverages; for SSBs, this results in significantly increased caloric intake at meals.[[94]](#endnote-94) Thus, limiting portion sizes may reduce the consumption of SSBs and thus decrease overall caloric intake. While the Model Ordinance would limit the size of each individual portion sold, it would not limit the total quantity of SSBs that may be purchased if a consumer wanted to purchase more than one beverage.

As noted above, this policy has been adopted in one U.S. jurisdiction, New York City, where a portion size cap was enacted by the Board of Health. As of [month], 2013, New York City’s regulation had been overturned by two courts as beyond the authority of the Board of Health. New York City has indicated it will appeal the lower courts’ ruling to the state’s highest court, but regardless of the result of that lawsuit, legislative bodies in other communities (as well as Boards of Health with appropriate authority) can still pursue this type of strategy.

Proportional Pricing

The U.S. food industry frequently uses “value” marketing – a technique that increases profits by encouraging the consumer to spend a little extra money to purchase a larger portion size in order to get “a deal.”[[95]](#endnote-95) However, for the consumer, the true cost of value marketing is a substantial increase in calories and saturated fat.[[96]](#endnote-96) Large-sized packages, containers, and restaurant portions suggest that it is more appropriate, typical, reasonable, and normal to consume more food and beverages than smaller packages, containers, and restaurant portions would suggest.[[97]](#endnote-97) Instead, proportional pricing, in which the price of goods is based solely on the quantity sold, leads consumers to exercise portion control by selecting and consuming more reasonable portions of unhealthy food and beverages.[[98]](#endnote-98)

The Model Ordinance also includes an alternative provision to establish a minimum price-per-ounce for SSBs. Increasing food prices creates a financial incentive for consumers to avoid unhealthy foods; as a result, both individual consumers and population groups decrease their purchases of such foods.[[99]](#endnote-99)Strategies to increase the price of unhealthy items (which effectively lowers the price of healthy foods relative to unhealthy foods) have proven effective at altering the type of food that consumers purchase.[[100]](#endnote-100) Public health research indicates that a 10 percent increase in SSB prices will lead to an 8 percent to 10 percent reduction in SSB purchases.[[101]](#endnote-101)

### Implementing and Enforcing This Model Ordinance

When considering how to implement any type of regulation that governs retail sales of a consumer product, it is important to assess the existing regulatory environment for all food retailers in the community and to determine how new regulations will fit within the existing regulatory framework. For example, in many jurisdictions there are existing regulatory systems that can be amended to include some components of this Model Ordinance. Many retail food establishments are already subject to local licensing requirements, for example, and provisions of the Model Ordinance could be incorporated into, and efficiently implemented and enforced through, the existing licensing requirements.

In addition, several government agencies may be involved in implementing and enforcing the requirements of this Model Ordinance. Among other things, the local government will be responsible for providing retailer education and outreach, monitoring compliance, and enforcing violations. This may include several agencies; deciding which agencies will handle which tasks, and working with those agencies early in the policy adoption process, will be critical to the success of the policy. Some of these duties are already handled by various government agencies that implement and enforce other laws, such as licensing laws, and some will require the creation of new processes. Finally, it is critical to the success of any policy to educate and reach out to the businesses affected by this ordinance. The Model Ordinance includes several educational/outreach components; those can be tailored to suit the conditions in your community.

### Legal Issues

To determine whether your community can implement the Model Ordinance, it is important to review both state and local law.

Police Power

The police power is the primary source of authority for non-federal health-related statutes, regulations, and ordinances. “Police power” is the term used to describe the power of government to regulate private conduct to protect and further the public’s health, safety, or general welfare. In many states, local governments have considerable discretion when enacting regulations, including those affecting business operations. [[102]](#endnote-102) Whether a local government has the power to regulate retailers – and to implement this Model Ordinance – is usually determined by state law. In addition, many states have empowered Boards of Health to adopt certain regulations to protect the public health. Because local government police power, and the authority granted to local Boards of Health, varies considerably, it is important to review state law to determine whether your city or county can implement the Model Ordinance.

State Retail Food Laws

In most communities, state law regulates the health and sanitation requirements for food retailers. To help improve food safety nationwide, the U.S. Food and Drug Administration (FDA) has developed a model Food Code that sets forth sanitation and food-handling requirements for restaurants and other food establishments.[[103]](#endnote-103) Forty-nine states and three U.S. territories have adopted some form of the model Food Code to regulate food retail sales.[[104]](#endnote-104) Some states have adopted the model Food Code without alteration; other states have made changes. Because state law varies, before a community enacts any of the provisions of this Model Ordinance, it is also important to review the state retail food code to determine whether state law permits its enactment and whether all of the proposed requirements for food retailers are permissible.

Regulatory Takings

The Fifth Amendment to the U.S. Constitution (and similar provisions in state constitutions) prohibits the government from taking private property without just compensation. Although this often applies to physical seizures of property – when, for example, the government needs to use the underlying land to build a road or some other structure to benefit the public – regulations that impact business operations may also constitute a “regulatory taking” in violation of the federal constitution or a state constitution. Opponents of this Model Ordinance may claim that regulating what a private business can do on its property constitutes a “regulatory taking” that is unlawful unless the government provides compensation to the affected businesses.

Regulatory actions will usually be deemed a taking if the government requires an owner to suffer a permanent physical invasion of his or her property or if the regulations completely deprive an owner of all economically beneficial use of the property.[[105]](#endnote-105) This Model Ordinance does neither. In the absence of these two conditions, courts will evaluate regulatory takings claims by looking at the regulation’s impact on the claimant, the extent to which the regulation interferes with investment-backed expectations, and the character of the government action.[[106]](#endnote-106) Extensive analyses of the takings doctrine, as applied to this and other policies, can be found on our website at: www.changelabsolutions.org/publications/limits-government-power-over-private-property. ChangeLab Solutions offers both an analysis of the federal takings doctrine and a state-by-state analysis.

Antitrust

Antitrust laws are intended to encourage free competition in the marketplace by prohibiting collusion between private parties.[[107]](#endnote-107) Any law that requires, encourages, or facilitates collusion between private parties in the establishment of product prices may conflict with antitrust laws. However, antitrust laws do not prohibit laws that have an incidental effect on competition if the goal of such laws is something other than generating monopoly profits.[[108]](#endnote-108) The pricing provisions of the Model Ordinance are intended to prevent value pricing, not to foster collusion between any retailers in the setting of prices.

### Developing an Ordinance

The language in the Model Ordinance is designed to be tailored to the needs of an individual community. The language written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the ordinance; the areas left blank represent policy decisions for your community. The “Comments” sections provide additional information and explanation. In considering which options to choose, the community should balance public health benefits against practical and political considerations in the particular jurisdiction. One reason we include a variety of options is to stimulate broad thinking about the types of provisions a community might wish to explore, even beyond those described in the model.

### Conclusion

Regulating sales of SSBs is potentially a very effective strategy to increase the availability of healthy beverages and decrease the consumption of unhealthy beverages, particularly among low-income and minority populations. For governments looking for ways to improve efficiencies, regulating sales of SSBs through business licensing may not add significantly to the overall implementation and enforcement burden for the local government. As a policy approach, the regulation of retail sales can also effectively complement existing and future programs to form part of a comprehensive obesity prevention strategy in communities.

## Model Ordinance Regulating Sales of Sugar-Sweetened Beverages

### AN ORDINANCE OF THE [*CITY/COUNTY*] OF [ \_\_\_\_ ]

### REGULATING SALES OF SUGAR-SWEETENED BEVERAGES

The [*City Council of the City/Board of Supervisors of the County*] of [ \_\_\_\_ ] does ordain as follows:

**COMMENT:** This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

**SECTION I. See APPENDIX A: Findings.**

**COMMENT on Findings:** A draft ordinance based on this model legislation should include “findings” of fact that support the purposes of the legislation. The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. The findings contain factual information supporting the need for the law – in this case, documenting how prevalent the consumption of sugary drinks is and how sales practices lead to higher consumption rates. A list of findings supporting this model legislation appears in “Appendix A: Findings.” Communities may select findings from that list to insert here, along with additional findings addressing the specific conditions in the particular community.

**SECTION II.** The [ \_\_\_\_ ] Municipal Code is hereby amended to add a new Chapter [XX] to read as follows:

**Sec. [XX.010]. Legislative Purpose.** The purpose of this chapter is to regulate retail sales of Sugar-Sweetened Beverages, to promote the consumption of healthy beverages by ensuring that healthy options are available and accessible, and to reduce incentives to purchase and

consume excessively large Sugar-Sweetened Beverages. [*Purpose statement can be tailored to specific policy options included*.]

**COMMENT on Definitions:** The following section includes definitions that are necessary to implement and enforce all of the policy options contained in the following sections [XX.030 to XX.080] of this Model Ordinance. You should include only the definitions that are relevant to the policy option(s) your community decides to pursue.

**Sec. [XX.020]. Definitions.** The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section:

(\_\_) “Caloric Sweetener” means any substance containing calories, suitable for human consumption, that humans perceive as sweet, and includes, without limitation, sucrose, fructose, glucose, other sugars, and fruit juice concentrates. “Caloric Sweetener” excludes Non-Caloric Sweeteners.

(\_\_) “Children’s Meal” means any combination of food or beverages sold for a single price that is primarily marketed to, intended for, or sold to children [*12 years of age or younger*] as determined by:

(1) A statement by the Food Establishment or its parent company about the intended consumer of the meal, including a label on the meal packaging, menu, or menu board; or

(2) Whether the meal is represented in its packaging, display, promotion, or advertising for consumption by children [*12 years of age or younger*]; or

(3) Whether the meal is commonly recognized by consumers as being intended for consumption by a child [*12 years of age or younger*].

**comment on definition of “Children’s Meal”:** Include this definition only if you include the language in Section [XX.040] regarding SSBs and Children’s Meals.

The factors used to determine whether a meal is a Children’s Meal (i.e., primarily marketed and sold to children) are drawn from the definition of “Children’s Product” in the federal Consumer Product Safety Improvement Act of 2008, 15 U.S.C. § 2057c. The definition of “Children’s Product,” a “consumer product designed or intended primarily for children 12 years of age or younger,” enumerates factors to use in determining whether a product falls within the definition. The factors to be considered are:

1.A statement by a manufacturer about the intended use of such product, including

a label on suchproduct if such a statement is reasonable.

2. Whether the product is represented in its packaging, display, promotion, or

advertising as appropriate for use by children 12 years of age or younger.

3. Whether the product is commonly recognized by consumers as being intended

for use by a child 12 years of age or younger.

4. The Age Determination Guidelines issued by the Consumer Product Safety

Commission staff in September 2002, and any successor to such guidelines. (15 U.S.C. 2057c)

(\_\_) “Consumer” means a person who purchases a beverage for consumption and not for resale.

(\_\_) “Container” means any individual receptacle, such as a bottle, box, can, cup, glass, or pouch, which is intended or used for holding a beverage.

(\_\_) “Container Volume” means the total capacity of a Container regardless of the actual volume of liquid in the Container or the presence of ice.

(\_\_) “Cost-Per-Ounce” means the total price before taxes that is paid by a Consumer for a beverage after all discounts and promotions are applied, divided by the total volume of the beverage in U.S. fluid ounces. [*For the purposes of this chapter, if free or discounted items are obtained conditioned on the purchase of the beverage, the normal value of those items shall be subtracted from the total price paid for the beverage when calculating the Cost-Per-Ounce, and if a beverage is “free” conditioned on the purchase of other items, then the Cost-Per-Ounce of the beverage is zero dollars ($0).*]

(\_\_) “Food Establishment” [*or the term used in the state Food Retail Code*] means any [food establishment as defined in Section \_\_\_\_ of the State of \_\_\_\_ Food Retail Code, as that code may be amended from time to time.]

**COMMENT on definition of “Food Establishment”:** Each state has a Food Retail Code, based on the U.S. Food and Drug Administration’s Model Food Code, which regulates the health and sanitation practices for all places where food is sold, including restaurants, retail food stores, vending operations, and food service operations in institutions such as hospitals. The Model Food Code refers to food retailers collectively as “Food Establishments.” Many states use this term; others may use a different term. Use the appropriate term and statutory reference for your state. Alternatively, an existing local licensing system may include a definition of food retailers that makes more sense to incorporate in this context.

If you use the definition of Food Establishment as defined in a Food Retail Code, it’s important to confirm that your definition encompasses all of the retail locations (restaurants and stores) that you intend to regulate. For example, the term “Food Establishment” in the Model Food Code exempts several types of establishments, including those that sell only prepackaged foods that are not potentially hazardous. (The complete definition from the Model Food Code can be located at: *www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/default.htm; see Section 1-2-1.10.)*

As a matter of policy, you do not want to inadvertently exempt any businesses you intend to regulate; in addition, treating similarly situated businesses differently may violate the constitutional right to equal protection.

While, for consistency, it’s often preferable to use a definition that has been established elsewhere in state or local law, you could also create a new definition to encompass all the types of establishments that sell SSBs. For example:

“Sugar-Sweetened Beverage Retailer” means any retail establishment that sells, offers, or provides a Sugar-Sweetened Beverage to a consumer.

(\_\_) “Nonalcoholic Beverage” means any beverage that contains less than one-half of one (.05) percent alcohol per volume.

(\_\_) “Non-Caloric Sweetener” means any substance that contains fewer than five (5) calories per serving, suitable for human consumption, that humans perceive as sweet, and includes, without limitation, aspartame, saccharin, stevia, and sucralose.

**COMMENT on definition of “Non-Caloric Sweetener”:**   
The Food and Drug Administration (FDA) regulates the use of terms like “no-calorie” and “calorie free” as nutrient content claims. This definition of “Non-Caloric Sweetener” aligns with the FDA’s definition. (21 C.F.R. 101.60.) For a discussion of calorie content claims, see section 101.60 of the following: [*www.access.gpo.gov/nara/cfr/waisidx\_08/21cfr101\_08.html*](http://www.access.gpo.gov/nara/cfr/waisidx_08/21cfr101_08.html)*.*

(\_\_) “Person” means any natural person, partnership, cooperative association, limited liability company, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(\_\_) “Sealed Container” means a Container holding a beverage, which is closed or sealed by a manufacturer or distributor before it arrives at the Food Establishment.

(\_\_) “Sugar-Sweetened Beverage” and “SSB” mean:

**COMMENT on definition of “Sugar-Sweetened Beverage”:**

The following definition is very broad and intended to include all beverages containing any amount of added Caloric Sweetener, with specific and limited exceptions. The definition can be tailored to meet community needs; which beverages to include is a policy decision and depends in part on which specific retail regulations are contained in your ordinance.

Subparagraph (2) lists some beverages that are exempt from the regulation. Which beverages to exclude is a policy decision; this list of exemptions can be modified at the discretion of policymakers and public health professionals. Although the comprehensive definition below is similar to the definitions that have been included in proposed tax legislation, it’s important to think critically about the types of beverages to include once you determine your overall policy goal. For example, if your strategy is aimed at reducing portion sizes, you might tailor your definition to include only those beverages that are typically sold in large single-serving portions.

The default definition of Sugar-Sweetened Beverage includes all beverages with any amount of added Caloric Sweetener; it is not necessary to specifically exempt beverages that do not contain added Caloric Sweetener. For example, plain water, coffee, or tea, with no added Caloric Sweetener do not need to be included in the exemption list. On the other hand, if you would like to exempt flavored milk, you would need to include language to effectuate that exemption (see below).

This definition only applies to nonalcoholic beverages, which is defined. As an alternative to the definition included, the term “nonalcoholic beverages” could be defined to mean those beverages that are not subject to taxation under the State’s alcoholic beverage tax, if applicable.

Some jurisdictions may prefer to include a specific list of beverage types subject to regulation. For a comprehensive list of the types of beverages that may merit regulation, see Healthy Eating Research’s *Recommendations for Healthier Beverages*, released in March 2013 and available at: [*www.healthyeatingresearch.org/images/stories/comissioned\_papers/her\_beverage\_recommendations.pdf*](http://www.healthyeatingresearch.org/images/stories/comissioned_papers/her_beverage_recommendations.pdf)*.*

1. Any Nonalcoholic Beverage, carbonate or noncarbonated, which contains any added Caloric Sweetener.

**COMMENT on milk with added Caloric Sweetener:**Some jurisdictions may wish to exempt milk with added Caloric Sweetener, such as chocolate or strawberry milk, in order to be in line with school policies or for other reasons.

Many public schools serve these milks to students as part of the National School Lunch program. Under the Healthy, Hunger-Free Kids Act of 2010, the U.S. Department of Agriculture (USDA) updated the meal patterns and nutrition standards for the National School Lunch and School Breakfast Programs, including the fluid milk requirements. The USDA allows school to offer unflavored or flavored fat-free milk and unflavored low-fat (one-percent milk fat or less).[1]

The public health community is divided over whether flavored milk has a net positive impact on health. Research funded by the dairy industry suggests that flavored milk consumption among children is associated with greater calcium intake and lower consumption of other sugar-sweetened beverages, as compared with children who do not drink flavored milk.[2] On the other hand, the Institute of Medicine recently found that most Americans, except girls between the ages 9-18, obtain sufficient calcium and vitamin D (both found in milk) from their diets. This same IOM study indicated that more calcium and vitamin D consumption is not necessarily better and cautioned against over-consumption of the nutrients.[3] This guidance, combined with a growing concern about overconsumption of added sugars and calories, leads some in the public health community to argue against encouraging flavored milk consumption, especially among children.

Flavored milks are Sugar-Sweetened Beverages, which are as a whole linked to weight gain and chronic disease. Due to the lack of independent research clearly demonstrating a net positive health impact of flavored milk consumption, this model treats flavored milk as a

sugar-sweetened beverage that is subject to the tax. As a matter of policy, you may wish to include an exemption for flavored milk, and if so, consider the following definitions:

“Milk” means any beverage whose principal ingredient by weight is natural liquid milk, which is secreted by an animal and consumed by humans. For purposes of this definition, “milk” includes natural milk concentrate and dehydrated natural milk, whether or not reconstituted.

“Milk substitute” means a plant-based beverage in which the principal ingredients by weight are (i) water and (ii) grains, nuts, legumes, or seeds. For purposes of this definition, “milk substitutes” include but are not limited to soy milk, almond milk, rice milk, coconut milk, hemp milk, oat milk, hazelnut milk, flax milk.

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[1] *See* National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010, 78 Fed. Reg. 39068 (Interim Final Rule, June 28, 2013) (to be codified at 7 CFR 210.11).

[2] Johnson RK, Frary C, and Wang MQ. “The Nutritional Consequences of Flavored-Milk Consumption by School-Aged Children and Adolescents in the United States.” Journal of the American Dietetic Association, 102(6): 853–856, 2002.

[3] Institute of Medicine, Food and Nutrition Board. Dietary Reference Intakes: Calcium, Vitamin D. Washington DC: National Academies Press, 2010.

1. Exceptions. “Sugar-Sweetened Beverage” and “SSB” do not include:
2. A beverage consisting of one hundred (100) percent natural fruit or vegetable juice with no added Caloric Sweetener. For purposes of this paragraph, “natural fruit juice” and “natural vegetable juice” mean the original liquid resulting from the pressing of fruits or vegetables, or the liquid resulting from the dilution of dehydrated or concentrated natural fruit juice or natural vegetable juice;

**COMMENT on juices:**Whether to exempt diluted juices from regulation is a matter of policy. Jurisdictions should note the following when deciding whether to exempt diluted juice beverages:

* + Many diluted juice beverages do not contain any vitamins or minerals that would make the beverage healthier. These beverages use the juice as a Caloric Sweetener.
  + Diluted juice beverages may contain added Caloric Sweetener in addition to water and other ingredients. If some diluted beverages are exempt, jurisdictions should carefully consider whether diluted juice beverages with Caloric Sweetener should be regulated.[1]

If diluted juice is exempted from the definition of Sugar-Sweetened Beverage, please note that those beverages will be exempted from all regulation under this ordinance; in addition, for consistency, you might also consider excluding fruit juice concentrate from the definition of Caloric Sweetener.

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[1] See the FDA’s food labeling regulations pertaining to beverages containing fruit or vegetable juice (21 C.F.R. 101.30), available at: [*www.gpo.gov/fdsys/pkg/CFR-2008-title21-vol1/content-detail.html*](http://www.gpo.gov/fdsys/pkg/CFR-2008-title21-vol1/content-detail.html)*.*

1. A dietary aid, which means a liquid product manufactured for use as:
2. An oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages;
3. A source of necessary nutrition used as a result of a medical condition; or

1. An oral electrolyte solution for infants and children formulated to prevent dehydration due to illness;
2. Infant formula; and
3. Sweetened Medication.

**COMMENT on threshold amount:**Some jurisdictions may want to exempt lower calorie beverages despite the fact that they contain caloric sweetener, because they are seen as a healthier alternative to higher calorie beverages.

If your community wants to exempt lower calorie beverages from regulation even though they do contain added Caloric Sweetener, the definition of Sugar-Sweetened Beverage can be amended to exclude beverages that fall under a threshold amount of added Caloric Sweetener. To do so, add the following to this list of exceptions:

(e) Beverages containing less than [\_\_\_] grams of added Caloric Sweetener per [\_\_] ounces of beverage.

If you decide to include such a threshold exemption, the exact threshold amount is a policy decision for your jurisdiction. A threshold amount of 4.2 grams of added caloric sweetener per 8 ounces would be the equivalent of one teaspoon of white granular sugar per 8 ounces. It is also important to consider practical and administrative issues if you use this exemption: will the businesses in your jurisdiction be able to administer the policy effectively and efficiently?

(\_\_) “Unsealed Container” means a Container into which a beverage is dispensed or poured at the Food Establishment, and includes, without limitation, glasses, cups and all Containers for fountain drinks.

**COMMENT on Sections [XX.030] through [XX.080]:** The following sections set forth various options regarding the accessibility of water and sales of SSBs; these sections are intended as a menu of options for consideration. A community may choose from among these options and include only those strategies that are appropriate for the community.

Some of these provisions only apply to restaurants, while others apply to any establishment offering SSBs from a fountain dispenser. Still other provisions apply to any retailer (restaurant or retail outlet) that sells any SSBs regardless of container type.

Once you determine which provisions you would like to include, additional thought must be given to where those restrictions will be applied (e.g., restaurants, other retail outlets that offer fountain drinks, and/or all retail outlets) and implemented.

**Sec. [XX.030]. Equally Available Water.** Every Food Establishment that sells or offers for sale a Sugar-Sweetened Beverage in an Unsealed Container shall provide noncarbonated water to a Consumer at a cost no greater than the Food Establishment’s actual cost of the Unsealed Container. The Food Establishment shall make noncarbonated water available to Consumers in the same sizes, comparable Unsealed Containers, and under the same conditions, including, without limitation, the same service and convenience as Sugar-Sweetened Beverages sold by the Food Establishment.

**COMMENT on Equally Available Water:** Section [XX.030] requires that water be available with the same service and convenience as SSBs and that it be offered for sale to a Consumer for the actual cost of the Container (including straw and lid, if applicable). Some communities may prefer water to be provided for free, while others may want to allow the retailer to receive a profit so that retailers do not suffer a dramatic decrease in revenue if their sales of SSBs decline. If you would like to allow businesses to sell water for the same price as SSBs, you can insert the following language in place of the first sentence:

“Every Food Establishment that sells a Sugar-Sweetened Beverage in an Unsealed Container shall provide noncarbonated water to a Consumer at a Cost-Per-Ounce that is equal to or less than the lowest Cost-Per-Ounce of any Sugar-Sweetened Beverage that the Food Establishment sells.”

For consumers who prefer water or who might be indifferent to beverage choices, this section ensures that the healthiest beverage choice is always an available option. For example: (1) if fountain-dispensed SSBs are delivered to Consumers in cups with ice, a lid, and a straw, then orders for water must also be delivered in cups with ice, a lid, and a straw; and (2) if Consumers ordering a self-service fountain-dispensed SSB are provided empty cups and access to ice, a straw, and a lid, then the same cup and related products must be provided to Consumers ordering water, and the water must be available through a similar type of dispenser as the SSBs.

This provision only applies to businesses that sell fountain drinks. If you want to apply this provision to businesses that sell SSBs only in bottled/sealed Containers, you can amend the language to do so. However, it may be difficult to determine the “actual cost” to the establishment of the bottle or can, so you will likely have to determine another maximum price point.

**Sec. [XX.040]. Sale of Sugar-Sweetened Beverages as Part of a Children’s Meal Prohibited.** No Food Establishment shall sell a Children’s Meal that includes a Sugar-Sweetened Beverage. A Food Establishment may sell a Sugar-Sweetened Beverage separately from a Children’s Meal but as part of the same transaction if no discount is provided for the beverage contingent upon purchasing the Children’s Meal.

**COMMENT on Prohibiting the Sale of SSBs as Part of a Children’s Meal:** Section [XX.040] would prohibit a Food Establishment from selling an SSB as part of a Children’s Meal, but it does not prohibit selling an SSB with food for children as long as the SSB is offered, priced, and accounted for separately.

Alternatively, this section could provide that an SSB can be provided with a Children’s Meal, but cannot be the default beverage offered with the meal, by using the following language:

“No Food Establishment shall sell a Children’s Meal that includes a Sugar-Sweetened Beverage as the sole beverage option or as the default beverage option offered with the Children’s Meal. A Food Establishment may provide a Sugar-Sweetened Beverage with a Children’s Meal only if the purchaser is given a choice of water and at least one other noncaloric beverage, in addition to a Sugar-Sweetened Beverage.”

**Sec. [XX.050]. Maximum Serving Size for Sugar-Sweetened Beverages in Unsealed Containers.**

(a) A Food Establishment may not sell, offer for sale or provide a Sugar-Sweetened Beverage in an Unsealed Container with a Container Volume greater than [*sixteen (16*)] fluid ounces.

(b) A Food Establishment may not sell, offer for sale or provide to any Consumer an Unsealed Container for self-service with a Container Volume greater than [*sixteen (16*)] fluid ounces. For purposes of this section, “self-service” means that the Container is filled with a beverage by the Consumer.

**COMMENT on Maximum Serving Size for SSBs in Unsealed Containers:** Section [XX.050] would address fountain drinks and drinks served in open glasses or cups. The volume limit is the same as that for sealed SSBs in Sec. [XX.060] but does not need to be; this is a policy decision. In September 2012, the New York City Board of Health considered and adopted this type of regulation, the first jurisdiction in the United States to do so. The New York City Board of Health resolution is available at: [*www.nyc.gov/html/doh/downloads/pdf/notice/2012/amend-food-establishments.pdf*](http://www.nyc.gov/html/doh/downloads/pdf/notice/2012/amend-food-establishments.pdf)*.*

**Sec. [XX.060]. Maximum Serving Size for Sugar-Sweetened Beverages in Sealed Containers.** No Food Establishment shall sell a Sugar-Sweetened Beverage in a Sealed Container holding a Container Volume of more than [*sixteen (16)*] fluid ounces.

**COMMENT on Maximum Service Size for SSBs in Sealed Containers:** Section [XX.060] would limit the portion size of bottled SSBs offered for sale; no sealed SSB could exceed 16 ounces. Some communities may want to focus on limiting the portion sizes and refills of SSBs sold in Unsealed Containers (i.e., at restaurants or at food establishments serving fountain drinks). If so, a municipality would include only the language in Section [XX.050].

Some municipalities may want to allow for the sales of larger bottles (2 liters or more) that are clearly intended to be consumed by more than one Consumer or by one Consumer over an extended period of time. If so, a municipality could change the language to the following:

“No Food Establishment shall sell a Sugar-Sweetened Beverage in a Sealed Container holding a Container Volume of more than [*sixteen (16)*] ounces, except for a Sugar-Sweetened Beverage in a Sealed Container that has a Container Volume of greater than [*sixty-seven (6*7)] ounces.”

**Sec. [XX.070]. Free or Discounted Refills for Sugar-Sweetened Beverages Prohibited.** No Food Establishment shall knowingly provide to a Consumer a free or discounted refill of a Sugar-Sweetened Beverage.

**Sec. [XX.080]. Cost-Per-Ounce Pricing for Sugar-Sweetened Beverages.** No Food Establishment that offers a Sugar-Sweetened Beverage for sale in more than one size Container shall charge a lower Cost-Per-Ounce for any size Container of Sugar-Sweetened Beverage than the Food Establishment charges for the identical Sugar-Sweetened Beverage in the smallest Container offered for sale.

**COMMENT on Cost-Per-Ounce Pricing:** Section [XX.080] would reduce one financial incentive for a Consumer to purchase a larger size serving of an SSB. Extremely large servings (for example, the large sizes at movie theaters and liter-sized bottles) are often much cheaper per ounce than smaller sizes, and there is little overall difference in sales price between a large size and a small size. This provision requires uniformity in per-ounce pricing; whatever the price-per-ounce for the smallest size sold, the larger sizes must be offered at the same price-per-ounce.

[*Alternative provision to Section [XX.080]:* **Sec. [XX.085]. Minimum Price for Sugar-Sweetened Beverages.** No Food Establishment shall sell a Sugar-Sweetened Beverage in any Container at a Cost-Per-Ounce that is less than [*six (6)*] cents.]

**COMMENT on Minimum Price:** This alternative Section [XX.085] would establish an absolute minimum price for all SSBs. Adjust the minimum price to a value appropriate for your community considering the objective of reducing obesity. A value of 6¢ means that a 12-ounce beverage will cost no less than $0.72, whereas a value of 8¢ makes the minimum cost of the same drink almost a dollar (i.e., $0.96).

**Sec. [XX.090]. Evaluation.**

The [*Department of Health/other government agency*] shall develop criteria and components for an evaluation and assessment of the impact that the requirements and prohibitions imposed by this chapter have on sales, purchases, and consumption of Sugar-Sweetened Beverages. The evaluation shall seek to determine the impact of this chapter on consumer purchasing and consumption behavior and on health outcomes.

**Sec. [XX.100]. Implementation and Enforcement.**

**COMMENT on Implementation and Enforcement:** A draft ordinance based on this model is not completewithout implementation and enforcement provisions. Realistic and meaningful enforcement is essential. An unenforceable law or a law with trivial penalties that are easily absorbed as the “cost of doing [illegal] business” can be worse than no law at all because an unenforced – or unenforceable – law undermines the legitimacy of a municipality’s laws in general.

This section and the following sections contain sample language you can adapt for a draft ordinance. Before including any clause, though, it is essential to research state and local law to determine whether and how these sample clauses may be used in a particular jurisdiction.

It may be possible to implement the substantive provisions of the ordinance through an existing regulatory system, such as business licensing for Food Establishments. Alternatively, your community may want to institute a new regulatory business licensing system in order to implement and enforce the substantive requirements imposed.

(a) The [*enforcing* *agency, department, or official*] shall implement, administer, and enforce this chapter. The [\_\_\_\_\_\_\_\_\_\_\_] is hereby authorized to issue all rules and regulations consistent with this chapter and shall have all necessary powers to carry out the purpose of this chapter. The [\_\_\_\_\_\_\_\_\_\_\_] shall have all necessary powers to enforce this chapter.

(b) The following classes of employees are authorized to issue citations for violation of this chapter: [*enumerate classes of employees*].

(c) The [*agency, department, or official*] shall develop and conduct a retailer outreach and education program designed to inform retailers about the requirements of this chapter and the link between Sugar-Sweetened Beverages and obesity. Any written materials and trainings developed pursuant to this subsection shall be offered in [language], in addition to English. Nothing in this section shall create a right of action in any licensee or other Person against the [*city/county*] or its agents.

**COMMENT on retailer outreach and education:** Subsection (c) requires the implementing agency to develop and implement a retailer outreach and education program. The model language can be modified to give more direction and less discretion to the agency, if desired. However, municipalities are wisely wary of placing mandatory requirements upon themselves: if a self-imposed mandatory requirement is not met, the municipality can sometimes be sued to force compliance. Subsection (c) provides that no one can sue the government for failure to conduct the education and outreach program. Note that regardless of what the agency does or does not do in regard to a program, the law remains in full force.

**Sec. [XX.110]. Violations.** Each beverage sold or offered for sale in violation of this chapter shall constitute a separate violation. Each day of a continuing violation of this chapter shall constitute a separate violation.

**Sec. [XX.120]. Civil Enforcement by Injunctive Relief.** The [*city attorney or county counsel*] is hereby authorized to bring an action for injunctive relief to enjoin a violation of this ordinance.

**Sec. [XX.130]. Civil Enforcement by Civil Penalties.**

(a) Any Person who violates this chapter may be liable for a civil penalty, not to exceed $[\_\_\_\_\_\_\_\_\_\_\_] per violation, and not to exceed $[\_\_\_\_\_\_\_\_\_\_\_] in total for each thirty (30) day period.

(b) The [*city attorney or county counsel*] may bring a civil action to recover civil penalties for the violations of this chapter.

(c) Except as otherwise required by law, all monies received by the [*city or county*] in payment of civil penalties for violation of this chapter shall be deposited in [*specify a dedicated fund for public health issues or obesity specifically*] and used exclusively to [\_\_\_\_\_\_\_\_\_\_\_].

(d)The [*city attorney or county counsel*] also may seek recovery of the attorney’s fees and costs incurred in bringing a civil action pursuant to this section.

**Sec. [XX.140]. Administrative Enforcement and Penalties.**

(a) Any Person who violates any of the provisions of Section [\_\_\_\_\_\_\_\_\_\_\_] shall be subject to an administrative penalty, not to exceed $[\_\_\_\_\_\_\_\_\_\_\_] for each violation, and not to exceed $[\_\_\_\_\_\_\_\_\_\_\_] in total for each thirty (30) day period. Administrative penalties authorized by this section shall be assessed, enforced, and collected in accordance with Section [*specify section of local municipal code providing for administrative enforcement*].

(b) Where an officer or employee designated in Section [\_\_\_\_\_\_\_\_\_\_\_] determines that there has been a violation of any of the provisions of Section [\_\_\_\_\_\_\_\_\_\_\_], the officer or employee may issue an administrative citation to the Person responsible for the violation. For purposes of this section, the owner of the Food Establishment is the Person responsible if an officer, employee, or agent of the Food Establishment commits the violation.

**COMMENT on administrative citations:** Many jurisdictions already have an administrative citation provision in the municipal code. If so, a jurisdiction can tailor this section to conform to the existing provisions. If not, extend subsection (b) to include additional language outlining the citation requirements, such as:

“The citation shall inform the Person responsible of the date, time, place, and nature of the violation and the amount of the proposed penalty, and shall state that the penalty is due and payable to the [*treasurer*] within [\_\_\_\_\_\_\_\_\_\_\_] business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the Person responsible has the right, pursuant to Section [\_\_\_\_\_\_\_\_\_\_\_], to request administrative review of the citing officer’s or employee’s determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting administrative review.”

**Sec. [XX.150]. Criminal Enforcement.** Any Person who violates this chapter is guilty of a misdemeanor, punishable by a fine of not more than [\_\_\_\_\_\_\_\_\_\_\_] or by imprisonment in the [*city or county*] jail for a period of not more than [\_\_\_\_\_\_\_\_\_\_\_], or by both such fines and imprisonment.

**COMMENT on Criminal Enforcement:** If a community wishes to make the criminal sanction an infraction instead of a misdemeanor, substitute the following provision for language above:

“Any Person who violates this chapter is guilty of an infraction, punishable by a fine of not more than $[\_\_\_\_\_\_\_\_].”

**Sec. [XX.160]. Severability.** If any provision of this chapter, any rule or regulation made under this chapter, or the application of this chapter to any Person or circumstance is held invalid by any court of competent jurisdiction, the remainder of the chapter, rule, or regulation and the application of the provision to other Persons or circumstances shall not be affected. The invalidity of any section or sections or parts of any section of this chapter shall not affect the validity of the remainder of the chapter.

**SECTION III.** This ordinance and the legal requirements set forth herein shall take effect and be in force from and after [*date*].

**COMMENT on effective date:** It is wise and probably necessary to provide a reasonable time period between the ordinance adoption date and the date that the law takes effect so that retailers have sufficient time to comply.

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2. Ogden CL et al. “Prevalence of Obesity and Trends in Body Mass Index Among US Children and Adolescents, 1999-2010.” *Journal of the American Medical Association*, 307(5): 483-490, 2012. Available at: [*http://jama.jamanetwork.com/article.aspx?articleid=1104932*](http://jama.jamanetwork.com/article.aspx?articleid=1104932)*.* [↑](#endnote-ref-2)
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4. Ogden C & Carroll M. *Prevalence of Obesity among Children and Adolescents: United States, Trends 1963–1965 Through 2007–2008*. NCHS Health E-Stat, June 4, 2010, p. 5. Available at: [*www.cdc.gov/nchs/data/hestat/obesity\_child\_07\_08/obesity\_child\_07\_08.pdf*](http://www.cdc.gov/nchs/data/hestat/obesity_child_07_08/obesity_child_07_08.pdf)*.*  [↑](#endnote-ref-4)
5. Flegal et al., *supra* note 1, at 496. [↑](#endnote-ref-5)
6. Ogden et al., *supra* note 2, at 483. *See also*, Sekhobo J, et al. “Obesity Prevalence among Low-Income, Preschool-Aged Children — New York City and Los Angeles County, 2003–2011.” Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, Vol. 62, Jan. 18, 2013. Available at [*www.cdc.gov/mmwr/preview/mmwrhtml/mm6202a1.htm*](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6202a1.htm)*.* [↑](#endnote-ref-6)
7. Flegal, *supra* note 1. [↑](#endnote-ref-7)
8. Ogden, *supra* note 2. [↑](#endnote-ref-8)
9. Braveman PA et al. “Socioeconomic Disparities in Health in the United States: What the Patterns Tell Us.” *American Journal of Public Health* 100: S186-S196 (2010). Available at: [*http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2009.166082*](http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2009.166082)*.* [↑](#endnote-ref-9)
10. Wang Y and Beydoun MA. “The Obesity Epidemic in the United States—Gender, Age, Socioeconomic, Racial/Ethnic, and Geographic Characteristics: A Systematic Review and Meta-Regression Analysis.” *Epidemiologic Reviews* 29(1): 6-28 (2007). Available at: [*http://epirev.oxfordjournals.org/content/29/1/6.full.pdf+html*](http://epirev.oxfordjournals.org/content/29/1/6.full.pdf+html)*.* [↑](#endnote-ref-10)
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12. Duffey KJ and Popkin BM. “Causes of Increased Energy Intake Among Children in the U.S., 1977-2010.” American Journal of Preventive Medicine, 44(2): e1-e8, e3. Available at: [*www.ajpmonline.org/article/S0749-3797%2812%2900792-1/abstract*](http://www.ajpmonline.org/article/S0749-3797%2812%2900792-1/abstract)*.* *See also* Nielsen SJ, Siega-Riz AM, and Popkin BM. “Trends in Energy Intake in U.S. Between 1977 and 1996: Similar Shifts Seen Across Age Groups.” *Obesity Research*, 10(5): 370-378, 372-373, 2012. Available at: [*http://onlinelibrary.wiley.com/doi/10.1038/oby.2002.51/full*](http://onlinelibrary.wiley.com/doi/10.1038/oby.2002.51/full)*. See also* Ervin RB and Ogden CL. *Trends in Intake of Energy and Macronutrients in Children and Adolescents from 1999-2000 Through 2009-2010*. National Center for Health Statistics Data Brief, No. 113, February 2013, p.1-2. Available at: [*www.cdc.gov/nchs/data/databriefs/db113.pdf*](http://www.cdc.gov/nchs/data/databriefs/db113.pdf)*.* [↑](#endnote-ref-12)
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