

MULTNOMAH CHILDREN’S HEALTH AND EDUCATION ACT

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. 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.
4. Early Childhood Education has been found to improve academic achievement, health outcomes and work-related success.

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 in Multnomah County, as well as improve children’s health and educational success.
2. 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 and early literacy initiatives and improve children’s general health and educational achievement. No more than 5% of the funds collected can be spent on expenses associated with administering and evaluating the fund. The fund shall be subject to an audit every other year.
3. 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.
4. Certain drinks containing added sugar are exempted, including infant formula, milk products and natural fruit and vegetable juices.
5. This ordinance creates a “Children’s Health and Education Fund Advisory Committee” consisting 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 programs 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.

1. "Alcoholic beverage" shall have the same meaning as set forth in ORS 471.001.
2. "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as a:
 - a. Oral nutritional therapy for persons who cannot absorb or metabolize caloric or dietary nutrients from usual food or beverages;
 - b. Oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness; or
 - c. Any beverage that meets statutory definition of "medical food" under Orphan Drug Act 21 U.S.C. 360ee(b)(3), as amended."Beverage for Medical Use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.
3. "Bottled Sugar-Sweetened Beverage" means any sugar-sweetened beverage contained in a bottle, can, or any other closed container that is ready for consumption without further processing such as, without limitation, dilution or carbonation.
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. "Caloric sweetener" means a substance or combination of substances suitable for human consumption that adds calories to and is perceived as sweet to humans when consumed, including, but not limited to sucrose, dextrose, fructose, glucose, other mono and disaccharides; corn syrup; and high-fructose corn syrup. "Caloric Sweetener" excludes Non-Caloric Sweeteners.
6. "Concentrate" means a syrup, powder, frozen or gel mixture, or other product containing one or more caloric sweeteners as an ingredient, intended to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the concentrate with one or more other ingredients, including but not limited to water, ice, gases, coffee, tea, fruit juice and vegetable juice.
7. "County" means Multnomah County, Oregon.

8. "Tax administrator" means the Chief Financial Officer of the County or designees.
9. "Consumer" means a natural person who purchases a sugar-sweetened beverage product in the County for a purpose other than resale or use in the ordinary course of business.
10. "Distribution" or "distribute" means supply to a retailer, acquisition by a retailer, delivery to a retailer, or transport into the County by a retailer for purpose of holding out for retail sale within the County any sugar-sweetened beverage product. Distribution or Distribute shall not mean the retail sale to a consumer.
11. "Distributor" means any business entity that distributes sugar-sweetened beverage products in the County, whether or not that entity also sells sugar-sweetened beverage products to consumers. 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.
12. "Early childhood education" means programs primarily serving children from birth to age five that are designed to prepare children to be successful in school.
13. "Early literacy initiatives" mean programs providing at-risk children and their families with the access, support, resources and instruction they need to establish a strong foundation of literacy. Programs may target students in pre-kindergarten through grade five, and may be conducted before, during or after school, or during the summer.
14. "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, and shall include any beverage in which natural milk is the primary ingredient, i.e., the ingredient listed first in the product ingredient list.
15. "Milk alternatives" include but are not limited to non-dairy creamers or beverages marketed as alternatives to milk but primarily consisting of plant-based ingredients (such as but not limited to soy, coconut, rice or almond milk products), regardless of sugar content (i.e., any beverage in which water and grains, nuts, legumes, or seeds constitute the first two ingredients in the product ingredient list).
16. "Natural or Common Sweetener" means granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, or agave nectar.
17. "Powder" means any solid mixture, containing one or more Caloric Sweetener(s) as an ingredient, which is intended to be used in making, mixing, or compounding a Sugar-Sweetened Beverage by combining the Powder with any one or more other ingredients.

18. "Retail sale" means sale to a consumer for use or consumption, and not for resale.
19. "Retailer" means any business entity that sells or otherwise dispenses a sugar-sweetened beverage product to a consumer.
20. "Sale" means the transfer of title or possession for valuable consideration regardless of the manner by which the transfer is completed.
21. "Sugar-sweetened beverage" means any nonalcoholic beverage intended for human consumption that has one or more added caloric sweeteners and contains more than six (6) grams of sugar per eight (8) ounce serving, using FDA labeling guidelines.
 - a. "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.
 - b. "Sugar-sweetened beverage" shall not include any of the following:
 - (1) Milk;
 - (2) Milk alternatives;
 - (3) Any beverage sweetened solely with non-caloric sweeteners, commonly referred to as "diet" drinks;
 - (4) 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;
 - (5) Any product commonly known as "infant formula" or "baby formula," or any product whose purpose is infant rehydration;
 - (6) Any Beverage for Medical Use;
 - (7) Any product designed as supplemental, meal replacement or sole-source nutrition that includes proteins, carbohydrates and multiple vitamins and minerals; or
 - (8) Sweetened medication such as cough syrup, liquid pain relievers, fever reducers, and similar products.
22. "Sugar-sweetened beverage product" means a bottled sugar-sweetened beverage or a concentrate for the preparation of a sugar-sweetened beverage.
23. "Sugary drink" means "sugar-sweetened beverage product."
24. "Syrup" means any liquid or frozen mixture containing one or more caloric sweeteners as an ingredient intended to be used in making, mixing, or compounding a sugar-sweetened beverage by combining the syrup with one or more other ingredients.

25. "Low-income" means those living in a household with income less than 185% of the federal poverty level.

Section 4. Excise Tax on Distribution of Sugary Drinks Imposed

1. The County hereby imposes an excise tax of one and a half cent (\$0.015) 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 bottled sugar-sweetened beverage, the volume, in fluid ounces, of sugar-sweetened beverages distributed to any business in the County.
 - b. For concentrates, the largest volume, in fluid ounces, of sugar-sweetened beverages that would typically be produced by the amount of concentrate, based on the manufacturer's instructions or, if the distributor uses the concentrate to produce a sugar-sweetened beverage, the volume produced by the regular practice of the distributor as reasonably determined by the Tax Administrator. For added caloric sweeteners that may be used to flavor coffee, milk and other drinks, the tax shall be calculated assuming the concentrate is combined with carbonated water to make a soda drink (e.g. "Italian sodas") as reasonably determined by the Tax Administrator.
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 natural or common sweeteners or concentrates to a retailer intended for sale for later use by consumers (e.g. bags of sugar or lemonade powder for sale in a grocery store).

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 excise tax on the distribution of sugary drinks. 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 and Education 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 initiatives primarily serving children in low-income families and communities of color in Multnomah County that:
 - a. Expand access to early childhood education and early literacy initiatives;
 - b. Increase physical activity and physical fitness of children;
 - c. Improve the nutrition of children;
 - d. Improve the dental health of children; and
 - e. Reduce health disparities of children.
3. No more than 5% of the fund may be spent on expenses associated with administering the fund and evaluating its effectiveness. One half of the remaining funds shall be used to support early childhood education and early literacy initiatives. The other half shall be used to support children’s health initiatives, as described in subsection 2 of this section.
4. The fund shall be subject to a performance audit every other year.
5. The fund shall provide fair and equitable distribution of benefits among its intended beneficiaries.

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

1. There shall be established the Children’s Health and Education Fund Advisory Committee (“Committee”) to: (1) advise the County on the effectiveness of this sugary drink tax in reducing the consumption of sugar-sweetened beverages, and (2) make recommendations regarding the funding of programs designed to improve children’s health and education in Multnomah County.
2. The Committee shall be made up of nine members who are residents of Multnomah County. Members shall be appointed by the Chair and approved by the Board of County Commissioners.
3. The Board shall appoint members of the Committee based on the following background and expertise. Members may fit more than one criteria:
 - a. The Committee shall represent the diversity of Multnomah County’s low-income children and families. At least one member shall be from each County District, and two members shall be residents living east of SE 82nd Avenue.
 - b. At least two members shall be involved in, or have significant knowledge of the Multnomah County Community Health Improvement Plan.
 - c. At least two members shall have expertise in initiatives to improve children’s health, one of which shall have expertise in nutrition.
 - d. At least two members shall have expertise in initiatives to improve early childhood education or early literacy.
 - e. At least two members shall be parents.
 - f. At least two members shall have experience in a program that primarily serves low-income families and people of color. At least one of these members shall experience in addressing poverty.

- g. One member shall be appointed by the Multnomah County Public Health Advisory Board.
- 4. Members shall serve three-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 three-year terms.
- 5. 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 and the Early Learning Multnomah strategic plan.
 - c. Make funding recommendations to the Board of County Commissioners, consistent with the priorities required by this ordinance and the Committee’s strategic plan, based on a transparent grant application and review process when funds are distributed to community organizations. The committee shall request community input before making funding recommendations.
 - d. Monitor performance of programs receiving funds from the Children's Health and Education Fund. This includes: (1) identifying key data and outcome goals; (2) ensuring the funded programs are reaching children in low-income communities and communities of color; and (3) evaluating and ensuring accountability and effectiveness of funded programs.

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 and Education Fund.

Section 11. Operative Date

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