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**CITY OF SANTA FE, NEW MEXICO**

**ORDINANCE NO. 2017-4**

**AN ORDINANCE**

**CREATING A DEDICATED CITY OF SANTA FE FUND TO SUPPORT EARLY CHILDHOOD EDUCATION BY CREATING A NEW SECTION 18-20 SFCC 1987 TO ESTABLISH A SUGAR-SWEETENED BEVERAGE TAX IN THE AMOUNT OF TWO CENTS (\$.02) PER FLUID OUNCE, PURSUANT TO ARTICLE 10, § 6(D) OF THE NEW MEXICO CONSTITUTION, AND § 3-18-2(D) NMSA 1978.**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

**Section 1. A new Section 18-20 SFCC 1987 is ordained to read:**

**18-20 [NEW MATERIAL] SUGAR-SWEETENED BEVERAGE TAX**

**18-20.1 [NEW MATERIAL] Short Title.** This Section may be cited as the Sugar-Sweetened Beverage Tax Ordinance.

**18-20.2 [NEW MATERIAL] Legislative Finding.**

A. An excise tax on the distribution of sugar-sweetened beverages is intended to protect the health, safety, and well-being of all residents of the city of Santa Fe.

B. The American Heart Association recommends that men consume no more than nine (9) teaspoons of sugar per day, and women consume no more than six (6) teaspoons per day.

C. The average twenty-ounce (20oz) can of soda contains sixteen (16) teaspoons of sugar.

D. Nearly half of all added sugars consumed come from sugary drinks such as soft drinks, energy drinks, fruit drinks, sweetened tea and coffee, and sports drinks, which offer little

1 or no nutritional value.

2 E. Consuming one sugar-sweetened beverage a day increases the risk for childhood  
3 obesity by fifty-five percent (55%), increases the risk of developing type two diabetes by twenty-  
4 five percent (25%), and increases the likelihood of death from cardiovascular disease by thirty  
5 percent (30%).

6 F. The average New Mexican consumed thirty-four (34) gallons of soda in 2016.

7 G. New Mexico ranks 32<sup>nd</sup> in the nation for adult obesity, with a rate of nearly  
8 twenty-nine percent (29%).

9 H. The obesity rate has increased every year, except one, since 1990; and

10 I. Studies have linked sugar consumption to obesity, heart disease, cancer, diabetes,  
11 hypertension, high triglycerides and insulin resistance, accelerated ageing process, and cognitive  
12 decline.

13 J. Chronic diseases such as heart disease, cancer and diabetes are among the  
14 leading causes of death and disability in the city of Santa Fe, the state of New Mexico and the  
15 United States.

16 K. In Santa Fe county nearly one in five adults is obese, and one in three adolescents  
17 12-19 years old is overweight or obese; and in New Mexico, more than one in three third-grade  
18 and one in four kindergarten students is overweight or obese.

19 L. Total direct medical expenses for diagnosed and undiagnosed diabetes,  
20 prediabetes and gestational diabetes in New Mexico was estimated at \$1.6 billion in 2012.

21 M. In a state struggling with rapidly declining revenues, an increase in health care  
22 costs due to rising rates of preventable disease saddles the city and state with another financial  
23 burden it cannot afford.

24 N. Taxing sugar-sweetened beverages can benefit community health through at least  
25 three mechanisms – directly reducing harms to health from consumption, raising revenue for

1 community investments, and saving money on expenditures from prevented illnesses.

2 O. The National Institute for Early Education Research concluded that New Mexico  
3 pre-kindergarten produced statistically significant positive impacts in language, literacy, and  
4 mathematics, the three content areas most critical to later academic success.

5 P. An estimated nine hundred and sixty-six (966) three (3) and four (4) year olds  
6 living within the geographic boundaries of the Santa Fe Public Schools district have unmet need  
7 for high-quality pre-kindergarten; seventy-two percent (72%) of these children are Hispanic and  
8 over fifty-five percent (55%) live in households with income below two-hundred percent (200%)  
9 of the federal poverty level.

10 Q. A 2016 evaluation of New Mexico pre-kindergarten by the New Mexico  
11 Legislative Finance Committee found that the educational benefits arising directly from improved  
12 standardized test scores were sufficient to offset the entire cost of half-day pre-kindergarten for 4-  
13 year olds.

14 **18-20.3 [NEW MATERIAL] Authority.** Section 18-20 SFCC 1987 establishes a  
15 sugar-sweetened beverage excise tax and is adopted pursuant to the home rule powers granted to  
16 the city of Santa Fe in Article 10, § 6(D) of the Constitution of New Mexico and NMSA 1978, §  
17 3-18-2(D).

18 **18-20.4 [NEW MATERIAL] Purpose.** The purpose of this Section is to establish a  
19 sugar-sweetened beverage tax in the amount of two cents (\$0.02) per fluid ounce of sugar-  
20 sweetened beverage products that are distributed in the city. Tax revenues will be dedicated to  
21 fund early childhood development programs for residents residing within the geographic  
22 boundaries of the Santa Fe Public Schools district, with priority given to city of Santa Fe  
23 residents based upon the availability of funds.

24 **18-20.5 [NEW MATERIAL] Imposition and Rate of Sugar-Sweetened Beverage**  
25 **Tax.**

1           A.     *Excise tax.* There is imposed on each and every distributor in the city an excise  
2 tax of two cents (\$0.02) per fluid ounce of sugar-sweetened beverage products that are distributed  
3 in the city.

4           B.     For purposes of calculating the tax imposed under this chapter, the volume, in  
5 fluid ounces, of a sugar-sweetened beverage product shall be:

6                   1.     For bottled sugar-sweetened beverage products, the volume, in fluid  
7 ounces, of sugar-sweetened beverages distributed to any person in the course of business in the  
8 city.

9                   2.     For concentrates, the largest volume of sugar-sweetened beverage that  
10 would typically be produced by the amount of concentrate based on the manufacturer's  
11 instructions or, if the distributor uses the concentrate to produce a sugar-sweetened beverage, the  
12 regular practice of the distributor.

13           **18-20.6 [NEW MATERIAL] Distributor Liable for Tax.**

14           A.     The tax imposed in subsection 18-20.5 shall be paid upon the first non-exempt  
15 distribution of a sugar-sweetened beverage product in the city. The distribution of sugar-  
16 sweetened beverage products may not be taxed more than once in the chain of commerce.

17           B.     Any distributions not subject to taxation by the city under the laws of the United  
18 States or the state of New Mexico are exempt from the sugar-sweetened beverages tax.

19           **18-20.7 [NEW MATERIAL] Definitions.**

20           *Beverage for Medical Use* means a beverage suitable for human consumption and  
21 manufactured for use as a:

22                   A.     Oral nutritional therapy for persons who cannot absorb or metabolize caloric or  
23 dietary nutrients from usual food or beverages, or

24                   B.     Oral rehydration electrolyte solution formulated to prevent or treat dehydration  
25 due to illness, or

1 C. Any beverage that meets statutory definition of “medical food” under Orphan  
2 Drug Act 21 U.S.C. 360ee(b)(3), as amended.

3 *Beverage for Medical Use* shall not include drinks commonly referred to as “sports drinks” or any  
4 other common names that are derivations thereof.

5 *Bottled Sugar-Sweetened Beverage* means any sugar-sweetened beverage contained in a  
6 bottle or any other closed package that is ready for consumption without further processing,

7 *Caloric Sweetener* means a substance or combination of substances suitable for human  
8 consumption that adds calories to and is perceived as sweet to humans when consumed,  
9 including, but not limited to sucrose, dextrose, fructose, glucose, other mono and disaccharides;  
10 corn syrup or high-fructose corn syrup; or any other caloric sweetener designated by the city  
11 manager.

12 *Concentrate* means a syrup, powder, frozen or gel mixture, or other product containing  
13 one or more caloric sweeteners as an ingredient, intended to be used in making, mixing, or  
14 compounding a sugar-sweetened beverage by combining the concentrate with one or more other  
15 ingredients.

16 *Consumer* means a natural person who purchases a sugar-sweetened beverage product in  
17 the city for a purpose other than resale in the ordinary course of business.

18 *Distribution* or *Distribute* means supply to a retailer, acquisition by a retailer, delivery to  
19 a retailer, or transport into the City by a retailer for purpose of holding out for retail sale within  
20 the city any sugar-sweetened beverage product. *Distribution* or *Distribute* shall not mean the  
21 retail sale to a consumer.

22 *Distributor* means any person who distributes sugar-sweetened beverage products into  
23 the city, and whose gross receipts, as reported to the New Mexico taxation and revenue  
24 department, is greater than one hundred thousand dollars (\$100,000) annually.

25 *Milk* means natural fluid milk, regardless of animal source or butterfat content; natural

1 milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content; or  
2 dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat  
3 content; and plant-based milk substitutes that are marketed as milk, such as but not limited to, soy  
4 milk, coconut milk, rice milk and almond milk.

5 *Natural Common Sweetener* means: granulated white sugar, brown sugar, honey,  
6 molasses, xylem sap of maple trees, or agave nectar.

7 *Person* means any natural person, partnership, cooperative association, limited liability  
8 company, corporation, personal representative, receiver, trustee, assignee, or any other legal  
9 entity.

10 *Powder* means any solid mixture, containing one or more caloric sweetener(s) as an  
11 ingredient, intended to be used in making, mixing, or compounding a sugar-sweetened beverage  
12 by combining the powder with one or more other ingredients.

13 *Retail sale*: means sale to a person for use or consumption, and not for resale.

14 *Retailer of Sugar-Sweetened Beverage Products* means a person who sells or otherwise  
15 dispenses a sugar-sweetened beverage to the public.

16 *Simple Syrup* means a mixture of water and one or more natural or common sweeteners  
17 without any additional ingredients.

18 *Sugar-Sweetened Beverage* means any beverage intended for human consumption which  
19 contains one or more caloric sweeteners in excess of ten (10) grams per eight (8) liquid ounces  
20 whether in bottles, prepared from concentrates, served as a fountain beverage, or in any other  
21 form.

22 A. *Sugar-Sweetened Beverage* includes all drinks and beverages commonly referred  
23 to as soda, pop, cola, soft drinks, sports drinks, energy drinks, sugar-sweetened ice teas, and other  
24 products with added caloric sweeteners including but not limited to juice with added caloric  
25 sweetener, flavored water, and non-alcoholic mix beverages that may or may not be mixed with

1 alcohol or any other common names that are derivations thereof.

2 B. *Sugar-Sweetened Beverage* does not include any of the following:

3 1. Any beverage in which natural milk is the primary ingredient, i.e., the  
4 ingredient listed first in the product ingredient list; or in which water and grains, nuts,  
5 legumes, or seeds constitute the first two ingredients in the product ingredient list;

6 2. Any Beverage for Medical Use;

7 3. Any liquid sold for use a meal replacement for weight reduction or other  
8 purposes;

9 4. Any product commonly referred to as infant formula or baby formula;

10 5. Any alcoholic beverage;

11 6. Any beverage consisting of one hundred percent (100%) natural fruit or  
12 vegetable juice with no added caloric sweetener. For purposes of this paragraph, natural  
13 fruit juice and natural vegetable juice mean the original liquid resulting from the pressing  
14 of fruits or vegetables; or

15 7. Sweetened medication such as cough syrup, liquid pain relievers, fever  
16 reducers, and similar products.

17 *Sugar-Sweetened Beverage Product* means a bottled sugar-sweetened beverage or a  
18 Concentrate for the preparation of a sugar-sweetened beverage.

19 *Syrup* means any liquid or frozen mixture containing one or more caloric sweeteners as  
20 an ingredient intended to be used in making, mixing, or compounding a sugar-sweetened  
21 beverage by combining the syrup with one or more other ingredients.

22 **18-20.8 [NEW MATERIAL] Duties, Responsibilities and Authority of the City**  
23 **Manager and Finance Director.**

24 A. The finance director is authorized to collect and receive all taxes imposed by this  
25 chapter, and to keep an accurate record thereof.

1           B.     The city manager shall develop a registration system whereby distributors of  
2 sugar-sweetened beverages must register with the city prior to distributing any sugar-sweetened  
3 beverages.

4           C.     The city manager shall annually verify that the taxes owed under this section  
5 have been properly applied, exempted, collected, and remitted.

6           D.     The finance director is authorized to enforce this section and shall prescribe,  
7 adopt, and enforce rules and regulations, which the governing body may review and adopt  
8 relating to the administration and enforcement of this section, including provisions for the  
9 reexamination and correction of returns and payments, and for reporting. Such rules and  
10 regulations shall include, but are not limited to, the following:

11                   1.     The determination of the frequency with which a distributor must  
12 calculate and report on the tax. This determination shall not constitute an increase of the  
13 tax.

14                   2.     The determination of the frequency with which a distributor must pay the  
15 tax. This determination shall not constitute an increase of the tax.

16                   3.     The determination of the manner in which a distributor must register  
17 with the city.

18                   4.     The determination of whether and how a distributor who receives, in the  
19 city, sugar-sweetened beverage products from another distributor must report to the city  
20 the name of that distributor.

21                   5.     The determination of whether and how a distributor who receives, in the  
22 city, sugar-sweetened beverage products from another distributor must report to the city  
23 the volume of sugar-sweetened beverage products received from that distributor.

24                   6.     The determination of what other documentation is required to be created  
25 or maintained by a distributor of sugar-sweetened beverage products.



1 E. The city manager shall each year prepare or cause to be prepared a report of  
2 revenue and expenses, and deliver the findings to the to the governing body and share them with  
3 the public.

4 **18-20.9 [NEW MATERIAL] Collection.**

5 A. The amount of any tax, penalty, and interest imposed under the provisions of this  
6 section shall be deemed a debt to the city. Any distributor owing money under the provisions of  
7 this section shall be liable in an action brought in the name of the city for the recovery of such  
8 amount.

9 B. In order to aid in the city's collection of taxes due under this chapter, any retailer  
10 of sugar-sweetened beverage products that receives sugar-sweetened beverage products from a  
11 distributor, in accordance with rules and regulations promulgated by the city manager pursuant to  
12 Section 18-20.6, shall, upon request, provide to the city evidence that the distributor from whom  
13 the sugar-sweetened beverage products were received has registered as a distributor with the city.

14 **18-20.10 [NEW MATERIAL] Refunds.**

15 A. A person who believes that an amount of tax has been paid by that person in  
16 excess of that for which the person was liable, may claim a refund by directing to the city  
17 manager, within one-hundred and eighty (180) day of payment, a written claim for refund. A  
18 refund claim shall include:

- 19 (1) the taxpayer's name, address and identification number;  
20 (2) the sum of money claimed;  
21 (3) the period for which overpayment was made; and  
22 (5) a brief statement of the facts and the law on which the claim is based, which may  
23 be referred to as the "basis for the refund".

24 B. The city manager or delegate may allow the claim in whole or in part or may  
25 deny the claim. If the claim is denied in whole or in part in writing, no claim may be refiled with

1 respect to that which was denied, but the person, within ninety days after either the mailing or  
2 delivery of the denial of all or any part of the claim, may elect to appeal the decision of the city  
3 manager by commencing a civil action in the district court for Santa Fe county by filing a  
4 complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate by  
5 the city alleging that on account thereof the city is indebted to the plaintiff in the amount stated  
6 and demanding the refund to the plaintiff of that amount and reciting the facts of the claim for  
7 refund.

8 **18-20.11 [NEW MATERIAL] Enforcement.** Except as otherwise provided by this  
9 Section or by rule or regulation promulgated by the city manager or designee, the tax imposed by  
10 this Section shall be administered in the same manner as taxes imposed pursuant to SFCC  
11 Chapter 18 and, without limitation, shall be subject to the same delinquency penalties, and other  
12 enforcement provisions set forth in Chapter 18, section 11, SFCC 1987.

13 **18-20.12 [NEW MATERIAL] Not a Sales or Use Tax.** The tax imposed herein shall be  
14 in addition to any license fee or tax imposed or levied under any other law, statute, or ordinance  
15 where imposed or levied by the city, state, or other governmental entity or political subdivision.

16 **18-20.13 [NEW MATERIAL] Use of Revenues.**

17 A. After subtracting funds needed to administer the collection of revenues and other  
18 costs associated with the tax, including the cost of a special election and to evaluate the program,  
19 the revenues generated from the tax shall be deposited into a non-reverting fund to support an  
20 early childhood education program providing pre-kindergarten services for three (3) and four (4)  
21 year olds who reside in the Santa Fe Public Schools district, with priority given to city of Santa  
22 Fe residents based upon the availability of funds. Tax revenues may be used to fund capital  
23 investments related to early childhood education. In no event shall such administrative costs  
24 exceed 5% of revenues in any tax year. In furtherance of such purpose, the city is authorized to  
25 enter into any grant or funding agreement, or contract with any eligible public or private body. In

1 addition, the city may accept grants or other donations.

2 B. In the event the early childhood education program is discontinued for any  
3 reason, amounts remaining in the non-reverting fund shall be used for other early childhood  
4 programs for residents residing within the geographic boundaries of the Santa Fe school district  
5 under the age of three (3).

6 **18-20.14 [NEW MATERIAL] Severability.** If any subsection, sentence, clause, phrase  
7 or portion of this section is for any reason held invalid or unconstitutional by any court of  
8 competent jurisdiction, such portion shall be deemed a separate, distinct and independent  
9 provision and such holding shall not affect the validity of the remaining portions of this section.

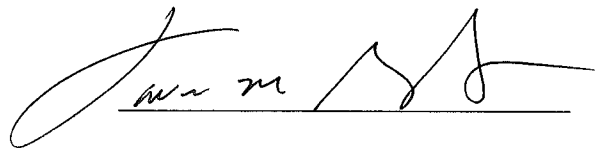
10 **18-20.15 [NEW MATERIAL] Early Childhood Education Commission.** The  
11 governing body shall establish an early childhood education commission, which shall ensure that  
12 the program benefits the neediest populations and that the funds are allocated equitably through a  
13 graduated co-pay formula. Should additional facilities or capital investments in existing facilities  
14 be needed to achieve that requirement, tax revenues may be used to fund those capital  
15 investments. The early childhood education commission shall report annually to the governing  
16 body on the progress of the city's early childhood education program, including absenteeism, and  
17 sugar-sweetened beverage tax health impacts.

18 **18-20.16 [NEW MATERIAL] Program Evaluation.** Pre-program data shall be  
19 collected regarding number of children from different socio-economic groups receiving early  
20 childhood education, kindergarten readiness levels, and third grade reading levels. Baseline sales  
21 levels of sugar-sweetened beverages in low-income areas shall be collected from vendors within  
22 those areas and rates of sugar-sweetened beverage consumption at schools. The same data will be  
23 collected and reported each year after program implementation. Additionally a health impact  
24 analysis shall be conducted starting as soon as possible, including full involvement from the  
25 neediest community members, which shall be used to guide review and improvement of the

1 program. Such programs take at least a year to conduct in order to fully integrate community  
2 members into the process. The data and progress on recommendations from that report shall be  
3 monitored, updated and reported on annually. After the program has operated for five (5) years,  
4 the commission will report to the governing body on the effectiveness of the program,  
5 recommending any changes deemed necessary or prudent to improve program performance. In  
6 the event the program is terminated, for any reason, the tax will no longer be assessed  
7 commencing ninety (90) days after the termination date.

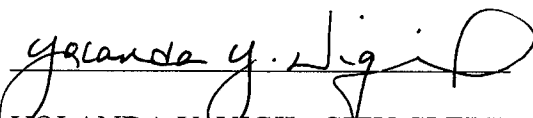
8 **18-20.17 [NEW MATERIAL] Effective Date.** The provisions of Section 18-20 SFCC  
9 1987 shall go into effect on the first of the month in the sixth month after an election is held and a  
10 simple majority of the qualified electors of the city of Santa Fe voting on the question vote in  
11 favor of imposing the sugar-sweetened beverage tax.

12 PASSED APPROVED and ADOPTED this 8<sup>th</sup> day of March, 2017.

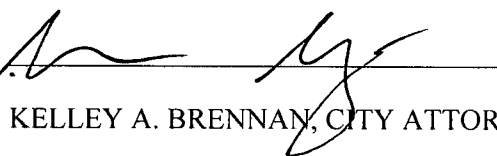
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14 JAVIER M. GONZALES, MAYOR

15 ATTEST:

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18   
19 YOLANDA Y. VIGIL, CITY CLERK

20 APPROVED AS TO FORM:

21  
22   
23 KELLEY A. BRENNAN, CITY ATTORNEY

24 *M/Legislation/Ordinances 2017/2017-4 Sugar-Sweetened Beverages Tax*