

RESOLUTION NO. NS-30,360

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ
(1) ORDERING AN ELECTION ON A MEASURE TO DETERMINE WHETHER THE CITY SHOULD IMPOSE A TAX OF TWO CENTS (\$0.02) PER FLUID OUNCE ON THE DISTRIBUTION OF SUGAR SWEETENED BEVERAGE PRODUCTS; (2) REQUESTING THAT THE SANTA CRUZ COUNTY CLERK/ELECTIONS DEPARTMENT CONDUCT THE ELECTION FOR SAID MEASURE; AND (3) REQUESTING CONSOLIDATION WITH THE NOVEMBER 5, 2024 GENERAL ELECTION

WHEREAS, in 2018 the City Council approved a ballot measure to place a one cent per ounce sugar-sweetened beverage tax on the ballot in November 2018; however, the City was forced to remove the item from the ballot when then Governor Jerry Brown signed the Keep Groceries Affordable Act into law; and

WHEREAS, the non-profit Cultiva La Salud and Councilmember Watkins sued the state, arguing that the penalties stipulated in the Act were unconstitutional. In the 2023 decision, *Cultiva La Salud v. State of California* (2023) 89 Cal.App.5th 868, the Third District Court of Appeal struck down the Act's penalty provision, finding that it "improperly uses the threat of crippling penalties to chill charter cities from exercising their constitutional rights." (*Id.* at 882); and

WHEREAS, the City Council Ad-Hoc Sugar-Sweetened Beverage Tax Committee was established in May of 2023 to evaluate the feasibility of placing a ballot measure for the November 2024 general election; and

WHEREAS, the City Council Ad Hoc Sugar-Sweetened Beverage Tax Committee has considered and reviewed the experience of other local jurisdictions in seeking to combat the negative health impacts of sugar sweetened beverages; and

WHEREAS, children and minority populations are disproportionately affected by the negative health effects associated with the consumption of sugary beverages. Locally, according to the Santa Cruz County United Way's 2019 Community Assessment Project: (a) only 47.1% of local 5th graders, 55.1% of local 7th graders, and 58.1% of local 9th graders are achieving physical fitness goals appropriate for their grade level; (b) 25% of local adults are obese and 36.7% are overweight; (c) 42.8% of local Latino adults are overweight and 33.5% are obese; and (d) 17% of local children 2-17 drink one or more sugar-sweetened beverages per day. (See Santa Cruz County Community Assessment Project: 2019 Comprehensive Report, https://www.unitedwaysc.org/sites/unitedwaysc/files/CAP25_FINAL_WEB_REV_1125B.pdf, Accessed 12 June 2024); and

WHEREAS, according to the 2022 Dignity Health Community Needs Assessment for Santa Cruz County, "Healthy weight is a significant issue in Santa Cruz County, with a larger proportion of children who are overweight for their age compared to all California children." Additionally, "expenditures on high sugar foods and beverages are trending upward" (See 2022

RESOLUTION NO. NS-30,360

Community Health Needs Assessment, <https://www.dignityhealth.org/content/dam/dignity-health/bay-area/pdfs/misc/dominican-chna-2022-1.pdf>, Accessed 12 June 2024); and

WHEREAS, research shows that sugar-sweetened beverages have potentially addictive properties among adolescents (See <https://www.sciencedirect.com/science/article/abs/pii/S0195666318301740>); and

WHEREAS, a new study by researchers at UC Berkeley—including those at UC Berkeley School of Public Health and the Department of Agricultural and Resource Economics—and elsewhere shows that after excise taxes were placed on sugary beverages, purchases declined dramatically and steadily across five American cities. The Study found that, on average, prices for sugar-sweetened drinks went up by 33.1% and purchases went down by 33% (“Evaluation of Changes in Prices and Purchases Following Implementation of Sugar-Sweetened Beverage Taxes Across the US.” Berkeley Public Health. 2024. <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2813506>, Accessed 23 May 2024);

WHEREAS, decreased consumption of sugary beverages is anticipated to have a positive impact on health and wellness in the City of Santa Cruz, given that studies have linked a sugary drink habit to an increased risk of type 2 diabetes, adult obesity, childhood obesity, as well as higher incidences of heart disease, liver disease and metabolic disorder; and

WHEREAS, the City Council accepts the Ad Hoc Committee’s recommendation for placement of a tax measure on the ballot for the November 5, 2024 General Election, for the voters to determine whether to levy a tax of two cents (\$0.02) per fluid ounce on the distribution of sugar sweetened beverage products in the city for unrestricted general revenue purposes, in order to promote community health & wellness, and sustain vital city services - such as support for parks, beaches, and open spaces; programs for youth, seniors, and working families; and facilities for community activities - and establish a community oversight panel, with all funds to be used locally; and

WHEREAS, pursuant to Elections Code Section 10002, the governing body of any city may by resolution request the Board of Supervisors of the county to permit the county elections official to render specified services to the city relating to the conduct of an election; and

WHEREAS, the resolution of the City Council of the City of Santa Cruz shall specify the services requested; and

WHEREAS, pursuant to Elections Code Section 10002, the city shall reimburse the county in full for the services performed upon presentation of a bill to the city; and

WHEREAS, pursuant to Elections Code Section 10400, “whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated . . . upon the order of the governing body or bodies or officer or officers calling the elections”; and

RESOLUTION NO. NS-30,360

WHEREAS, pursuant to Elections Code Section 10400, such election for cities and special districts may be either completely or partially consolidated; and

WHEREAS, pursuant to Elections Code Section 10403, “whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board” requesting the consolidation, setting “forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot”, and acknowledging “that the consolidation election will be held and conducted in the manner prescribed in Section 10418.” (Elections Code § 10403(a).) Upon such request, the Board of Supervisors may order the consolidation; and

WHEREAS, pursuant to Elections Code Section 10418, “if consolidated, the consolidated election shall be held and conducted, election boards appointed, voting precincts designated, candidates nominated, ballots printed, polls opened and closed, voter challenges determined, ballots counted and returned, returns canvassed, results declared, certificates of election issued, recounts conducted, election contests presented, and all other proceedings incidental to and connected with the election shall be regulated and done in accordance with the provisions of law regulating the statewide or special election, or the election held pursuant to Section 1302 or 1303, as applicable”; and

WHEREAS, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

WHEREAS, various district, county, state and other political subdivision elections may be or have been called to be held on November 5, 2024; and

NOW THEREFORE, BE IT RESOLVED AND ORDERED that the City Council of the City of Santa Cruz hereby orders an election to be called and consolidated with any and all elections also called to be held on November 5, 2024 insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the City of Santa Cruz and requests the Board of Supervisors of the County of Santa Cruz to order such consolidation under Elections Code Sections 10401, 10403, and 10418; and

BE IT FURTHER RESOLVED AND ORDERED that the City Council hereby requests the Board of Supervisors to permit the Santa Cruz County Elections Department to provide any and all services necessary for conducting the election and agrees to pay for said services; and

BE IT FURTHER RESOLVED AND ORDERED that the Santa Cruz County Elections Department shall conduct the election for the attached measure(s) to be voted on at the November 5, 2024 election; and

RESOLUTION NO. NS-30,360

BE IT FURTHER RESOLVED AND ORDERED THAT the Santa Cruz County Elections Department is requested to print the attached measure text exactly as filed or indicated on the filed document in the County Voter Information Guide for the November 5, 2024 election. Cost of printing and distribution of the measure text will be paid for by the city; and

BE IT FURTHER RESOLVED AND ORDERED THAT pursuant to its right, title, and authority under Section 3 of Article XI of the California Constitution and Sections 1415(a)(2) and 9255(b)(1) of the California Elections Code, the City Council hereby calls an election to be held in the City of Santa Cruz on Tuesday, November 5, 2024 for the purpose of submitting to the voters the following measure (and such other questions as the City Council may hereafter order to be presented to the voters):

Measure “___” Sugar-Sweetened Beverage Distribution Tax Ordinance (see Exhibit A for full text)

To sustain vital City services such as improving/ maintaining neighborhood parks/ beaches/ open space, providing safe routes to schools, expanding community recreational/ youth/ senior programs, addressing crime/ public safety, improving bike/ pedestrian safety, and help fight diabetes, heart disease, and childhood obesity, shall City of Santa Cruz’s measure levying a two-cents per ounce tax for general governmental use on the wholesale distribution of sugar-sweetened beverages (e.g., sodas, energy drinks); generating \$1,300,000 annually, until ended by voters, be adopted?	Yes	
	No	

BE IT FURTHER RESOLVED AND ORDERED THAT the City Council of the City of Santa Cruz submits to the qualified electors said Ballot Measure Question as set forth above and designates and refers to said measure as the measure to be set forth on the ballots for use in said election. The full text of the measure is as set forth in the attached Exhibit A; and

BE IT FURTHER RESOLVED AND ORDERED THAT in accordance with the provisions of Section 9280 of the California Elections Code, the City Attorney is hereby directed to prepare an impartial analysis of this measure. In accordance with the provisions of Section 9212 of the California Elections Code, the Finance Director is hereby directed to prepare a fiscal impact statement of this measure.

RESOLUTION NO. NS-30,360

PASSED AND ADOPTED this 25th day of June 2024, by the following vote:

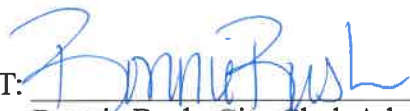
AYES: Councilmembers Newsome, Brown, Watkins, Brunner, Kalantari-Johnson;
Vice Mayor Golder; Mayor Keeley.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: 
Fred Keeley, Mayor

ATTEST: 
Bonnie Bush, City Clerk Administrator

RESOLUTION NO. NS-30,360
EXHIBIT A

BE IT ORDAINED by the electorate of the City of Santa Cruz that Section 3.38 of the Santa Cruz Municipal Code is hereby added as follows:

ORDINANCE NO. 2024-XX

AN ORDINANCE OF THE CITY OF SANTA CRUZ IMPOSING AN EXCISE TAX OF TWO CENTS (\$0.02) PER FLUID OUNCE ON THE DISTRIBUTION OF SUGAR-SWEETENED BEVERAGE PRODUCTS IN THE CITY OF SANTA CRUZ

Section 1. Chapter 3.38 – SUGAR-SWEETENED BEVERAGE DISTRIBUTION TAX is hereby added to Title 3 – REVENUE AND FINANCE of the City of Santa Cruz Municipal Code, to read as follows:

“Chapter 3.38 - SUGAR-SWEETENED BEVERAGE DISTRIBUTION TAX

3.38.005 - SHORT TITLE

This chapter shall be known as the "Sugar-Sweetened Beverage Distribution Tax Ordinance."

3.38.010 – PURPOSE OF THIS CHAPTER

The purpose of this chapter is to impose a general excise tax on the Distribution of Sugar-Sweetened Beverage Products to raise funds for unrestricted general revenue purposes, including, but not limited to, promoting community health & wellness, and sustaining vital City services. The excise tax imposed by this chapter is also expected to lead to decreased consumption of sugary beverages in the City of Santa Cruz, which is anticipated to have a positive impact on health and wellness in the City of Santa Cruz, given that sugary drinks are linked to various health conditions, including type 2 diabetes, adult obesity, childhood obesity, heart disease, liver disease, and metabolic disorder.

3.38.015 - COMMUNITY OVERSIGHT PANEL

There is hereby established a Community Oversight Panel:

1. A Community Oversight Panel shall report on the impact of the tax, review expenditures, and include recommendations on the use of future revenues to promote community health & wellness and general revenue purposes, as consistent with this chapter.
2. The Community Oversight Panel shall be comprised of 7 members in total. The Parks & Recreation Commission may select one person to be a part of the Community Oversight Panel, and the Council may select one City Councilmember to be a part of the Community Oversight Panel. The remaining members shall be recommended by the City Manager’s Office and ratified by the City Council, and shall, to the greatest extent possible, be comprised of community members representing categories that include: healthcare, dental, and/or

RESOLUTION NO. NS-30,360

wellness professional(s); representative(s) from the education industry; and representative(s) from youth organization(s).

3. The Community Oversight Panel will transmit its annual report and recommendations to the City Council.

3.38.020- DEFINITIONS

Except where the context otherwise requires, the following definitions govern the construction of this chapter:

"Alcoholic Beverage" means any beverage that is subject to taxation as an Alcoholic beverage under California Revenue and Taxation Code, Sections 32001 et seq., as may be amended from time to time.

"Beverage for Medical Use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution formulated to prevent or treat dehydration due to illness. "Beverage for Medical Use" also means a "medical food" as defined in Section 109971 of the California Health and Safety Code. "Beverage for Medical Use" shall not include beverages commonly referred to as "sports drinks" or any other common names that are derivations thereof.

"Business Entity" means any Person except for a natural person.

"City" means the City of Santa Cruz, California.

"Community Oversight Panel" means the Sugar-Sweetened Beverage Distribution Tax Community Oversight Panel described in this chapter.

"Concentrate" means a syrup, powder, frozen or gel mixture, or other product containing one or more sweeteners as an ingredient, intended to be used in making, mixing, or compounding a sweetened beverage by combining the concentrate with one or more other ingredients. Concentrate does not include Natural or Common Sweeteners.

"Consumer" or "Consumers" means a natural person or persons who purchase a Sugar-Sweetened Beverage Product(s) in the City for a purpose other than resale in the ordinary course of business.

"Distribution", "Distribute" or "Distributing" means the transfer of title, ownership, or possession other than by a common carrier: (a) from one Business Entity to another for consideration; or (b) within a single Business Entity, such as by a wholesale or warehousing unit to a retail outlet or between two or more employees or contractors of said Business Entity. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.

"Distributor" means any Person who engages in the business of Distribution of Sugar-

RESOLUTION NO. NS-30,360

Sweetened Beverage Product(s) within the City.

"General Tax" means any tax imposed for unrestricted general governmental purposes.

"Milk Product" means: (a) any beverage in which natural milk secreted by an animal is the primary and first ingredient in the product ingredient list; and (b) any plant-based substance or combination of substances in which (i) water and (ii) grains, nuts, legumes, or seeds, constitute the first two ingredients in the product ingredient list. For purposes of this definition, "Milk Product" includes concentrate and dehydrated forms, whether or not reconstituted. For purposes of this definition, "Milk Product" includes, but is not limited to, soy milk, almond milk, rice milk, coconut milk, hemp milk, oat milk, hazelnut milk, flax milk.

"Natural Fruit Juice" means the original liquid resulting from the pressing of fruit, and includes natural fruit juice concentrate, and dehydrated natural fruit juice.

"Natural Vegetable Juice" means the original liquid resulting from the pressing of vegetables, and includes natural vegetable juice concentrate, and dehydrated natural vegetable juice.

"Natural or Common Sweetener" means: a sweetening agent on its own and independent of any Sugar-Sweetened Beverage Product, including but not limited to, granulated white sugar, brown sugar, honey, molasses, xylem sap of maple trees, agave nectar, or corn syrup.

"Nonalcoholic Beverage" means any beverage that is not subject to tax under California Revenue and Taxation Code sections 32001 et seq.

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

"Retailer" means any Person who serves a Sugar-Sweetened Beverage Product(s) to Consumer(s) for payment.

"Small Business" means any Person with less than \$500,000 in annual gross receipts in the most recent calendar year that distributes, sells, serves or provides Sugar-Sweetened Beverage Product(s) directly to final Consumers.

"Sugar-Sweetened Beverage" means any nonalcoholic beverage prepared in any form intended for human consumption to which one or more Caloric Sweeteners has been added and that contains 40 or more calories per 12 fluid ounces of beverage including, but not limited to, drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "slushies," "sweetened ice teas and coffees," or any other common names that are derivations thereof.

"Sugar-Sweetened Beverage Distribution Tax" or "Tax" is the general excise tax imposed under Section 3.38.030.

RESOLUTION NO. NS-30,360

"Sugar-Sweetened Beverage Product(s)" means a Sugar-Sweetened Beverage and/or a Concentrate.

"Tax Administrator" means the Director of Finance for the City of Santa Cruz or a designee of the Director of Finance.

3.38.025 - EXEMPTIONS

"Sugar-Sweetened Beverage" and "Sugar-Sweetened Beverage Product" shall not include:

- 1) any beverage that contains less than 40 calories per 12 fluid ounces of beverage;
- 2) any beverage sold for consumption by infants, which is commonly referred to as "infant formula" or "baby formula," or oral rehydration fluids for children;
- 3) any beverage for medical use;
- 4) any beverage designed as supplemental, meal replacement, or sole-source nutrition that includes proteins, carbohydrates, and multiple vitamins and minerals;
- 5) Milk Products;
- 6) 100 percent natural fruit or vegetable juice or combination thereof with no added caloric sweetener (e.g., sugar, corn syrup);
- 7) Any Concentrate that the Consumer directly purchases as a Concentrate and then may combine with other ingredients to create a Sugar Sweetened Beverage;
- 8) Sweetened medication such as cough syrup, liquid pain relievers, fever reducers, and similar products;
- 9) Natural or Common Sweeteners, or
- 10) Any alcoholic beverage.

The Tax shall not apply to:

1. Any Distributor that is not subject to taxation by the City under the laws of the United States or the State of California.
2. The Distribution of any Sugar-Sweetened Beverage Product to a Small Business as defined in this chapter.

3.38.030 - EXCISE TAX

In addition to any other taxes imposed by the City, the City hereby levies a General Tax of two cents (\$0.02) per fluid ounce on the Distribution of Sugar-Sweetened Beverage Products in the City.

For the purposes of this chapter, the volume, in ounces, of a Sugar-Sweetened Beverage Product shall be calculated as follows:

1. For a Sugar-Sweetened Beverage, the volume, in fluid ounces, of Sugar-Sweetened Beverages distributed to any Person in the course of business in the City.
2. For Sugar-Sweetened Beverage Products that are Concentrates, the tax shall be calculated using the largest volume, in fluid ounces, of Sugar-Sweetened Beverage that

RESOLUTION NO. NS-30,360

could be produced from the Concentrate. In accordance with rules and regulations promulgated by the City pursuant to Section 3.38.040, the largest volume, in fluid ounces, that would typically be produced from the Concentrates shall be determined based on the manufacturer's instructions or, if the Distributor uses that Concentrate to produce a Sugar-Sweetened Beverage, the regular practice of the Distributor.

3. The Tax shall be paid upon the first nonexempt Distribution of a Sugar-Sweetened Beverage Product in the City. To the extent that there is a chain of Distribution within Santa Cruz involving more than one Distributor, the tax shall be levied on the first Distributor subject to the jurisdiction of the City. 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.

3.38.040 - ADMINISTRATION OF TAX

It shall be the duty of the Tax Administrator to collect and receive all taxes imposed by this chapter, and to keep an accurate record thereof.

The Tax Administrator is hereby charged with the enforcement of this chapter, except as otherwise provided herein, and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter. Such rules and regulations shall include, but are not limited to:

1. Clarification regarding the inclusion or exclusion of particular products.
2. The calculation of tax for concentrates based on manufacturer's instructions or industry practice and the designation of caloric sweeteners.
3. The reexamination and correction of returns and payments, and for reporting.
4. Prescribing the methods, frequency, and schedules for the calculation, collection and payment of the tax.
5. The manner and form in which a Distributor must register with the City, and report and remit the tax.
6. How a Distributor or a Retailer who receives, in the City, Sugar-Sweetened Beverage Product(s) from a Distributor must report to the City the name of that Distributor and the volume of Sugar-Sweetened Beverage Product(s).
7. The documentation to be created or maintained by a Distributor or a Retailer.
8. The administrative process and procedures for any Person against whom a determination is made by the Tax Administrator under this chapter or any Person directly interested in such determination, shall follow to dispute or otherwise challenge a determination, and the form, manner and time within which a determination may be disputed or challenged.

Adoption and implementation by the Tax Administrator of rules and regulations authorized by this Section shall not constitute a new or increased tax requiring approval by the voters of the City.

The Tax Administrator shall annually verify that the taxes owed under this chapter have been

RESOLUTION NO. NS-30,360

properly applied, exempted, collected and remitted.

3.38.050 - COLLECTION OF TAX AND REGISTRATION OF DISTRIBUTORS

Every Person engaged in or about to engage in business as a Distributor in the City shall immediately register with the City in the manner and form determined by the Tax Administrator. Persons engaged in such business must be registered no later than thirty (30) days after the date the tax imposed by this chapter becomes effective on May 1, 2025, but such privilege of such registration after the date of imposition of such tax shall not relieve any Person from the obligation or payment or collection of tax on and after the date of imposition thereof, regardless of registration.

In order to aid in the collection of taxes due to the City under this chapter, any Distributor or Retailer that distributes, receives or sells Sugar-Sweetened Beverage Product(s) shall provide information to the City regarding the Distribution of these products in accordance with rules and regulations adopted by the Tax Administrator.

The City Council is authorized to have the taxes imposed by this chapter collected by the County of Santa Cruz or the California Board of Equalization in conjunction with the collection of other taxes for the City. If the City Council exercises this authorization, the duties and responsibilities of the Tax Administrator shall be given, as appropriate, to the County of Santa Cruz or the California Board of Equalization, which may delegate such duties and responsibilities as necessary and as authorized by law.

3.38.055 - PENALTIES AND INTEREST

Any Distributor who fails to file a tax return and pay any amount of tax required to be collected and paid to the City within the time required by the rules and regulations established by the Tax Administrator shall pay a penalty of ten (10) percent of the tax, in addition to the tax, plus interest, computed on the amount of delinquent tax, inclusive of penalties, at the rate of one and one-half (1.5) percent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the City and until the date of payment.

If the Tax Administrator determines that any tax found to be due under this chapter or the delinquent filing of a tax return is due to fraud, intentional disregard or an intent to evade this part or authorized rules and regulations, a penalty of fifteen (15) percent shall be added thereto in addition to any other penalties which may be imposed.

3.38.060 - TAX DEEMED DEBT TO CITY

The amount of any tax, penalties and interest imposed by the provisions of this chapter shall be deemed a debt to the city and any Person carrying on any business taxable under this chapter without first having paid such tax shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed

RESOLUTION NO. NS-30,360

on such Person and for any and all cost recovery, including attorneys' fees in the enforcement of this chapter.

3.38.070 - CREDITS AND REFUNDS

Any tax under this chapter that has been paid more than once or has been erroneously or illegally collected or received by the City shall be refunded as determined by the Tax Administrator.

Any tax under this chapter that has been returned to the Distributor within six (6) months of the initial Distribution and for which the entire purchase price has been refunded in cash or credit shall be refunded as determined by the Tax Administrator.

Claims must be filed with the Tax Administrator and determined in accordance with the rules and regulations to be established by the Tax Administrator, within one year from the date of payment of the tax to the City. No refund shall be paid under this section unless claimant establishes entitlement thereto by written documentation.

3.38.080 - EXAMINATION OF BOOKS, RECORDS, WITNESSES - CONFIDENTIALITY OF INFORMATION - PENALTY

It shall be the duty of a Distributor liable for the payment to the City of the tax imposed by this chapter to keep and preserve, for a period of four years, all records, complete and accurate, as may be necessary to determine the amount of such tax, interest, penalties and enforcement charges as the Distributor may be liable for payment to the City.

The Tax Administrator shall have the power to audit and examine all books and records of every Person liable for the payment to the City of the tax imposed by this chapter, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the gross receipts of Persons engaged in Distribution in the City for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions hereof, and for the purpose of verifying any statements or any item thereof when filed by any Person pursuant to the provisions of this chapter. If such Person, after written demand by the Tax administrator, refuses to make available for audit, examination or verification such books, records or other evidence as the Tax Administrator requests, the Tax Administrator may, after full consideration of all information within his or her knowledge concerning the business and activities of the Person, make an assessment in the manner provided in this chapter of any taxes estimated to be due.

Every Person subject to the provisions of this chapter is directed and required to furnish to the Tax Administrator or duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations. The Tax Administrator is authorized to examine a Person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the tax or, if applicable, registration fees, due under this chapter. In order to ascertain the tax due under this chapter, the Tax Administrator may compel, by administrative subpoena, the production of relevant books, papers and records

and the attendance of all Persons as parties or witnesses.

Except for disclosures to agents, attorneys, or employees of the City necessary to the purpose of administering or enforcing the tax, or in compliance with a court order, or in connection with an appeal, hearing or court action, City employees shall maintain the confidentiality of all business and personal information and documents furnished to or obtained by the Tax Administrator in connection with the collection or administrative proceedings relating to the determination and assessment of taxes.

The refusal to submit to such examination or production by any employer or Person subject to the provisions of this chapter shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable state law.

3.38.085 - FAILURE TO COLLECT AND REPORT TAX – DETERMINATION OF TAX BY DIRECTOR OF FINANCE

If any Person shall fail or refuse to provide records for audit, or to collect the tax and to make, within the time provided any report and remittance of said tax or any portion thereof required by this chapter, the Tax Administrator shall have the discretion to make an estimate of the tax due based on the facts and information available.

As soon as Tax Administrator shall procure such facts and information upon which to base the assessment of any tax imposed by this chapter and payable by the Distributor who has failed or refused to provide any requested records, the Tax Administrator shall proceed to determine and assess against such Distributor the tax, interest and penalties provided for by this chapter.

In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Distributor so assessed at the last known place of address.

Such Distributor may within ten (10) days after the serving or mailing of such notice make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the Person for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five (5) days' written notice in the manner prescribed herein to the Person to show cause at a time and place fixed in the notice why the amount specified therein should not be fixed for such tax, interest and penalties. At such hearing the Distributor may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.

After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the Distributor in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen days unless an appeal is taken as provided in Section 3.38.090.

RESOLUTION NO. NS-30,360

3.38.090 - APPEAL

Any Distributor aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, owed under this chapter, may appeal to the city council in accordance with the provisions of Chapter 1.16 of the Santa Cruz Municipal Code.

3.38.100 - PENALTY FOR VIOLATIONS

Any Distributor violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment, as provided in Title 4 of this code, in addition to the penalties provided for in this chapter or elsewhere in this code.

Any Distributor who fails or refuses to register as required in this chapter, or to furnish any return required to be made or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as stated above, in addition to being subject to the other penalties provided for in this chapter or code, or elsewhere. Any Person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this chapter to be made is guilty of a misdemeanor and is punishable as stated above, in addition to the penalties provided for in this chapter or code, or elsewhere.

All remedies prescribed by this chapter or code, or any other provisions of law, and the use of one or more remedies by the City are cumulative, and shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

3.38.110 - COLLECTION DATE

Distributors shall start collecting the tax on May 1, 2025.

3.38.120 - UNRESTRICTED GENERAL REVENUE PURPOSES

All tax revenue collected and remitted to the City pursuant to this chapter shall be deposited in the City of Santa Cruz unrestricted general fund and can be spent for unrestricted general revenue purposes.

3.38.130 - NOT A SALES AND USE TAX

The tax imposed by this measure is a general excise tax on conducting business within the City of Santa Cruz. It is not a sales tax or use tax or other excise tax on the sale, consumption, or use of Sugar-Sweetened Beverage Product(s).

3.38.140 – SEVERABILITY

Should any provision of this chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this chapter or the application of this chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

3.38.150 AMENDMENT

This ordinance may only be amended by a vote of the people, if the amendment would result in the tax being imposed, extended, or increased in a manner not authorized by this ordinance as originally approved by the voters. The City Council of the City of Santa Cruz is hereby authorized to amend Chapter 3.38 of the Santa Cruz Municipal Code as adopted by this ordinance in any manner that does not increase the tax rates, or otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution.”

Section 2. EFFECTIVE DATE. This ordinance relates to the levying and collecting of a general excise tax, and shall take effect immediately if the ordinance is approved by a simple majority of voters voting on the question at the November 5, 2024 election. If approved by the voters, collection of the tax shall commence as specified in Section 3.38.110.

PASSED AND ADOPTED by a majority vote of the electorate of the City of Santa Cruz on November 5, 2024. Pursuant to Section 2, above, the ordinance became effective immediately upon such adoption.

Attest: _____
Bonnie Bush, City Clerk Administrator