

ORDINANCE NO. NS-300.908

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
RENAMING CHAPTER XXII AND AMENDING AND ADDING SECTIONS
TO CHAPTER XXII OF DIVISION A18
OF THE SANTA CLARA COUNTY ORDINANCE CODE RELATING TO
BEVERAGES IN RESTAURANT MEALS FOR CHILDREN**

Summary

This Ordinance amends Chapter XXII of Division A18 of the Ordinance Code to ensure that a healthy beverage is the only beverage offered in a children's meal sold or offered for sale at a restaurant in any unincorporated part of the County and to make conforming changes for beverages offered with incentive items.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

SECTION 1. The County hereby finds and declares as follows:

- 1) The County desires to promote healthy meal options for children and families and contribute to building a healthier community.
- 2) The County believes that limiting the sugary beverages offered with children's meals will contribute to the overall health and wellbeing of the County.
- 3) An important goal of the County is to foster an active and healthy lifestyle and implement innovative and evidence-based policy, system, and environmental approaches to social problems.
- 4) Families often have limited time to obtain and prepare healthy food, making dining out an appealing and sometimes necessary option.
- 5) A study in 2017 of U.S. fast food and full service restaurant chains that offered children's meals found that nearly eighty percent (80%) of drink choices offered in kids' meals were

sugar-sweetened beverages and that there has been an increase in calories coming from beverages in kids' meals between 2012 and 2015.

- 6) A study in 2015 of 2-18 year old children across the U.S. found that eighteen percent (18%) of their total daily calories came from beverages and sixty percent (60%) of their total daily calories from added sugar came from beverages.
- 7) According to the 2013-14 California Healthy Kids Survey, of middle and high school students in Santa Clara County that drank a sweetened fruit drink, sports drink, or energy drink one or more times in the previous 24 hours, a higher percentage of Latino (63%) and African American (69%) students consumed sweetened drinks than the student population overall (56%).
- 8) Evidence suggests that consumption of sugar-sweetened beverages is linked to weight gain, obesity, coronary heart disease, type 2 diabetes, tooth decay, and other health problems.
- 9) Childhood and adult obesity and overweight are widespread in the County of Santa Clara. In 2013-2014, twenty-five percent (25%) of adolescents and fifty-four percent (54%) of adults in the County were overweight or obese. Nearly one in four 7th, 9th, and 11th graders in the County was either obese (10.4%) or overweight (14.3%) in 2007-2008, while one in three toddlers ages 2 to 5 years old in the Santa Clara County Child Health and Disability Prevention Program (CHDP) was either obese (17.2%) or overweight (16.2%) in 2007.
- 10) According to the 2013-14 California Healthy Kids Survey, African American and Latino middle and high school students in Santa Clara County experience health inequities including higher rates of overweight and obesity (31% and 37%, respectively) when compared to their White and Asian/Pacific Islander peers (18% and 19% respectively).
- 11) Obesity-related health conditions have significant economic costs, with a study commissioned by the California Center for Public Health Advocacy estimating that the total annual health care costs attributed to overweight and obesity-related health conditions in 2006 in the County were in excess of \$420 million.
- 12) Obesity, overweight, and unhealthy eating habits pose a serious risk to the health and welfare of children and adolescents. Children and adolescents who are obese or overweight have an increased risk of being obese or overweight as adults, increasing their chances of experiencing chronic health conditions later in life. During childhood and adolescence, obese and overweight individuals are already more likely than their peers to exhibit risk factors for heart disease (including

elevated cholesterol levels, triglyceride levels, and blood pressure); risk factors for cancer; and impaired glucose tolerance, a precursor for development of Type 2 diabetes. In recent years, Type 2 diabetes in children and adolescents has risen dramatically in conjunction with increases in obesity and overweight. The Institute of Medicine has stated that the prevalence of obesity among children is so great that it may reduce the life expectancy of the current generation of children and diminish the overall quality of their lives.

- 13) Childhood obesity and overweight have serious economic costs. Nationally, the annual costs of providing inpatient treatment to children diagnosed with obesity increased from \$125.9 million in 2001 to \$237.6 million in 2005. In addition to inpatient treatment, an estimated \$14.1 billion is spent nationally in prescription drug, emergency room, and outpatient visit expenses each year as a result of childhood obesity and overweight. As children and adolescents in the County become adults, their high rates of obesity and overweight are likely to contribute to the already high economic costs of healthcare (\$420 million in 2006) and loss of productivity (\$496 million in 2006) associated with adult obesity in the County.
- 14) The food that children and adolescents consume at restaurants has a significant impact on their risk of developing obesity, overweight, or other related health risks. Families increasingly dine in restaurants on a regular basis, with 133 million Americans purchasing food at restaurants every day. The food and beverages that restaurants typically serve to children and adolescents often fail to meet accepted nutritional recommendations. Research shows that consumption of fast food, sugar-sweetened beverages, and other restaurant offerings by children and adolescents is frequently associated with overeating, poor nutrition, and weight gain.
- 15) Restaurants encourage children and adolescents to choose specific menu items by linking them with free toys and other incentive items. The Federal Trade Commission (FTC) estimated that ten restaurant chains surveyed spent \$360 million in 2006 to acquire toys distributed with children's meals, and that toys accounted for the fast food industry's second highest category of child-directed promotional expenditures, after television advertising. The FTC reported that in 2006 fast food restaurants sold more than 1.2 billion meals with toys to children under 12, accounting for 20% of all child traffic. In 2009, the FTC reported that fast food restaurants sold more 1 billion meals with toys to children under 12, accounting for 18% of all child traffic.

- 16) Research analyzing children's meals at major restaurant chains found that many exceed the recommended caloric limits for children and that 10 of the 12 high-calorie meals in the study came with toys.
- 17) Toys, games, trading cards, admission tickets, and other items given out by restaurants tend to be particularly appealing to children and adolescents. Digital incentives like computer games and online media similarly appeal to youth.
- 18) Targeting children and adolescents for particular purchases has an effect on what they eat. Research shows that parents frequently make purchases based on requests made by children, particularly for items that are geared toward children. Additionally, children and adolescents ages 4-17 years have increasing discretionary income that is frequently spent on restaurant food. The Institute of Medicine concluded that advertising affects not only the food and beverage preferences of children ages 2-12 years, but also the requests they make and what they eat.
- 19) The FTC has recommended that companies adopt nutrition-based standards for food and beverages targeted at children. However, as of March 2010, 35 of 45 major national restaurant chains surveyed had no policies or extremely vague policies on this issue, and the remaining 10 restaurant chains were found to have key weaknesses in their policies or the nutritional criteria used.

SECTION 2. Chapter XXII of Division A18 of the Ordinance Code of the County of Santa Clara relating to toys and other incentives with restaurant foods is hereby amended to be titled as follows:

CHAPTER XXII. TOYS AND OTHER INCENTIVES WITH RESTAURANT FOOD HEALTHY RESTAURANT MEALS FOR CHILDREN

SECTION 3. Section A18-350 of Division A18 of the Ordinance Code of the County of Santa Clara relating to findings and intent is hereby amended to be titled and to read as follows (additions in underline; deletions in ~~strike through~~):

Sec. A18-350. Intent ~~Findings and intent.~~

~~The Board of Supervisors of the County of Santa Clara does hereby find the following:~~

~~(a) Childhood obesity and overweight are widespread in the County of Santa Clara. Nearly one in four 7th, 9th, and 11th graders in the County was either obese~~

(10.4%) or overweight (14.3%) in 2007–2008, while one in three toddlers ages 2–5 years old in the Santa Clara County Child Health and Disability Prevention Program (CHDP) was either obese (17.2%) or overweight (16.2%) in 2007.

(b) — Obesity, overweight, and unhealthy eating habits pose a serious risk to the health and welfare of children and adolescents. Children and adolescents who are obese or overweight have an increased risk of being obese or overweight as adults, increasing their chances of experiencing chronic health conditions later in life. During childhood and adolescence, obese and overweight individuals are already more likely than their peers to exhibit risk factors for heart disease (including elevated cholesterol levels, triglyceride levels, and blood pressure); risk factors for cancer; and impaired glucose tolerance, a precursor for development of Type 2 diabetes. In recent years, Type 2 diabetes in children and adolescents has risen dramatically in conjunction with increases in obesity and overweight. The Institute of Medicine has stated that the prevalence of obesity among children is so great that it may reduce the life expectancy of the current generation of children and diminish the overall quality of their lives.

(c) — Childhood obesity and overweight have serious economic costs. Nationally, the annual costs of providing inpatient treatment to children diagnosed with obesity increased from \$125.9 million in 2001 to \$237.6 million in 2005. In addition to inpatient treatment, an estimated \$14.1 billion is spent nationally in prescription drug, emergency room, and outpatient visit expenses each year as a result of childhood obesity and overweight. As children and adolescents in the County become adults, their high rates of obesity and overweight are likely to contribute to the already high economic costs of healthcare (\$420 million in 2006) and loss of productivity (\$496 million in 2006) associated with adult obesity in the County.

(d) — The food that children and adolescents consume at restaurants has a significant impact on their risk of developing obesity, overweight, or other related health risks. Families increasingly dine in restaurants on a regular basis, with 133 million Americans purchasing food at restaurants every day. The food and beverages that restaurants typically serve to children and adolescents often fail to meet accepted nutritional recommendations. Research shows that consumption of fast food, sugar-sweetened beverages, and other restaurant offerings by children and adolescents is frequently associated with overeating, poor nutrition, and weight gain.

(e) — Restaurants encourage children and adolescents to choose specific menu items by linking them with free toys and other incentive items. The Federal Trade Commission (FTC) estimated that ten restaurant chains surveyed spent \$360 million in 2006 to acquire toys distributed with children's meals, and that toys accounted for the fast food industry's second highest category of child-directed promotional expenditures, after television advertising. The FTC reported that in 2006 fast food restaurants sold

~~more than 1.2 billion meals with toys to children under 12, accounting for 20% of all child traffic.~~

~~(f) — Research analyzing children’s meals at major restaurant chains found that many exceed the recommended caloric limits for children and that 10 of the 12 high-calorie meals in the study came with toys.~~

~~(g) — Toys, games, trading cards, admission tickets, and other items given out by restaurants tend to be particularly appealing to children and adolescents. Digital incentives like computer games and online media similarly appeal to youth.~~

~~(h) — Targeting children and adolescents for particular purchases has an effect on what they eat. Research shows that parents frequently make purchases based on requests made by children, particularly for items that are geared toward children. Additionally, children and adolescents ages 4—17 years have increasing discretionary income that is frequently spent on restaurant food. The Institute of Medicine concluded that advertising affects not only the food and beverage preferences of children ages 2—12 years, but also the requests they make and what they eat.~~

~~(i) — The FTC recommends that companies adopt nutrition-based standards for food and beverages targeted at children. However, as of March 2010, 35 of 45 major national restaurant chains surveyed had no policies or extremely vague policies on this issue, and the remaining 10 restaurant chains were found to have key weaknesses in their policies or the nutritional criteria used.~~

The intent of this chapter is to improve the health of children and adolescents in the County by promoting healthy children’s meals and setting healthy nutritional standards for children’s meals accompanied by toys or other incentive items. ~~These standards~~ This chapter will support families seeking healthy eating choices for their children by promoting healthy options when beverages are included or offered in children’s meals and permitting restaurants to offer toys and other incentive items only in conjunction with foods meeting specified nutritional criteria. This chapter imposes no requirement for the labeling of food or beverages.

SECTION 4. Section A18-351 of Division A18 of the Ordinance Code of the County of Santa Clara relating to definitions is hereby amended to read as follows (additions in underline; deletions in ~~striketrough~~):

Sec. A18-351. Definitions.

For the purposes of this chapter, the following definitions shall apply:

- (a) ~~Restaurant is as defined in Section B11-53(x) of Division B11 of the County Ordinance Code.~~ Children's Meal means any combination of Single Food Items and/or beverages offered together for a single price and primarily intended for consumption by children.
- (b) Incentive Iitem means (1) any toy, game, trading card, admission ticket or other consumer product, whether physical or digital, but not including "Single Use Articles" as defined in California Health and Safety Code Section 113914 as of January 1, 2009, or (2) any coupon, voucher, ticket, token, code, or password redeemable for or granting digital or other access to ~~an item listed in (b)(1)~~ a toy, game, trading card, admission ticket or other consumer product.
- (c) ~~Single food item means the complete contents of any food offered for individual sale by a restaurant, not including beverages.~~ Meal means any combination of Single Food Items and/or beverages offered together for a single price.
- (d) ~~Meal means any combination of single food items and/or beverages offered together for a single price.~~ Restaurant is as defined in Section B11-53(x) of Division B11 of the County Ordinance Code.
- (e) Single Food Item means the complete contents of any food offered for individual sale by a Restaurant, not including beverages.

SECTION 5. Section A18-352 of Division A18 of the Ordinance Code of the County of Santa Clara relating to incentive items with restaurant food is hereby amended to read as follows (additions in underline; deletions in ~~strikethrough~~):

- (a) Single Ffood Iitems and Mmeals. A Rrestaurant may not provide an Incentive Item linked to the purchase of a Ssingle Ffood Item or Mmeal if it includes any of the following:
 - (1) Excessive calories. More than two hundred (200) calories for a Ssingle Ffood Item, or more than four hundred eighty-five (485) calories for a Mmeal;
 - (2) Excessive sodium. More than 480 mg of sodium for a Ssingle Ffood Item, or more than six hundred (600) mg of sodium for a Mmeal;
 - (3) Excessive fat. More than thirty-five percent (35%) of total calories from fat, except for fat contained in nuts, seeds, peanut butter or other nut butters, or an individually served or packaged egg, or individually served or packaged low-fat or reduced fat cheese;

- (4) *Excessive saturated fat.* More than ten percent (10%) of total calories from saturated fats, except for saturated fat contained in nuts, seeds, peanut butter or other nut butters, an individually served or packaged egg, or individually served or packaged low-fat or reduced fat cheese;
 - (5) *Trans fat.* More than 0.5 grams of trans fat;
 - (6) *Excessive sugars.* More than ten percent (10%) of calories from added caloric sweeteners; or
 - (7) A beverage that fails to meet the criteria below.
- (b) *Beverages.* A Restaurant may not provide an Incentive Item linked to the purchase of a beverage ~~if it includes any of the following~~ unless the beverage is:
- (1) ~~*Excessive calories.* More than one hundred twenty (120) calories; Water (whether carbonated or not, and whether flavored or not) that contains no added sweetener; or~~
 - (2) ~~*Excessive fat.* More than thirty five percent (35%) of total calories from fat; Dairy milk (whether flavored or not) that contains no added sweetener.~~
 - (3) ~~*Excessive sugars.* More than ten percent (10%) of calories from added caloric sweeteners;~~
 - (4) ~~*Added non nutritive sweeteners; or*~~
 - (5) ~~*Caffeine.*~~

SECTION 6. Sections A18-353 and A18-354 of Division A18 of the Ordinance Code of the County of Santa Clara relating to enforcement, statutory construction and severability are hereby renumbered as Sections A18-354 and A18-355, respectively.

SECTION 7. Section A18-355 of Division A18 of the Ordinance Code of the County of Santa Clara relating to effective date is hereby repealed.

SECTION 8. Section A18-353 of Division A18 of the Ordinance Code of the County of Santa Clara relating to beverages in children’s meals is hereby added to be numbered and titled and to read as follows:

Sec. A18-353. Beverages in Children’s Meals.

- (a) A Restaurant shall not sell, or offer to sell, as part of a Children’s Meal, any beverage other than:
 - (1) Water (whether carbonated or not, and whether flavored or not) that contains no added sweetener; or
 - (2) Dairy milk (whether flavored or not) that contains no added sweetener.
- (b) Nothing in this Section prohibits a Restaurant from selling or offering to sell, or a customer from purchasing or requesting to purchase, any beverage that is sold separate from a Children’s Meal.

SECTION 9. This ordinance shall become operable on the ninetieth (90th) day following final adoption of this ordinance.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

DAVE CORTESE, President
Board of Supervisors

ATTEST:

MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

JENNY S. LAM
Deputy County Counsel