The People of the City of Berkeley ordain as follows:

SECTION 1. Title.

This measure shall be known and may be cited as the "Sugar-Sweetened Beverage Product Distribution Tax."

SECTION 2. Findings and Purpose.

WHEREAS, the consumption of sugar-sweetened beverages ("SSB") in Berkeley is impacting the health of the people in Berkeley; and

WHEREAS, many studies demonstrate that high intake of SSB is associated with risk of Type 2 Diabetes, obesity, tooth decay, coronary heart disease, and other diet-related chronic disease; and

WHEREAS, billions of dollars have been spent by sugary beverage corporations, namely Coca-Cola and PepsiCo, in an ongoing massive marketing campaign, which particularly targets children and people of color; and

WHEREAS, Coca-Cola and PepsiCo were found to be the world's 1st and 2nd largest sources of plastic pollution, the health effects of which are only beginning to be understood; and

WHEREAS, an African American resident of Berkeley is 14 times more likely than a White resident to be hospitalized for Type 2 Diabetes; and

WHEREAS, 40% of 9th graders in Berkeley High School have either overweight or obesity; and

WHEREAS, in Berkeley, the proportion of Black (~45%) and Latinx children (~40%) that have overweight and obesity is over double that of white children; and

WHEREAS, in California, by the third grade, six in ten children (61%) have experienced tooth decay and one in five children (22%) have untreated tooth decay; and

WHEREAS, from 2016 to grant cycle FY2024-25, the City of Berkeley allocated over $11.9 million generated from the SSB distributor tax for grantmaking back into the community. Of this grantmaking, 48% ($5.7M) was allocated to BUSD and 52% ($6.2M) to community-based organizations for initiatives that prioritized populations that are intentionally targeted by the beverage industry and that disproportionately experience the worst health outcomes associated with SSB consumption; and

WHEREAS, the tax revenue has funded 77,890 health and dental screenings; 31,180 community workshops, classes, and events; 3,111 food assistance touchpoints, reaching 59,386 unduplicated community members; and

WHEREAS, the consumption of SSBs in Berkeley declined after the distributor tax was imposed and has been sustained over time; and

WHEREAS, on November 4, 2014, a broad base of Berkeley voters, led by the Berkeley Healthy Child Coalition, passed Measure D by a 75% majority and on November 5, 2024 its reauthorization with no sunset (Measure Z) passed by an 80% majority; and

WHEREAS, in 2021 the California Public Health Department released a report that a 2 cent per ounce state excise tax on sugary drinks would lead to a 7% reduction in Type 2 Diabetes incidence over one year and 13,900 cases of Type 2 Diabetes prevented; and

WHEREAS, in 2021 the California Public Health Department released a report that a 2 cent per ounce state excise tax on sugary drinks would lead to a reduction of 1,620,000 decayed, missing, and filled teeth and $135 million in healthcare savings over ten years; and

WHEREAS, in 2021 the California Public Health Department released a report that a 2 cent per ounce state excise tax on sugary drinks would save more than 1.8 billion dollars in health care costs; and

NOW THEREFORE, the People of the City of Berkeley desire to implement an increase in the sugar-sweetened beverage distributor tax from 1 cent per ounce to 2 cent per ounce, change this excise tax from a General Tax to a Special Tax, and dedicate the proceeds from such levy to fund specific projects to help prevent diet-related conditions like Type 2 Diabetes, heart disease, tooth decay, and obesity, to fund clean water access and healthier food and beverage environments, and to provide public health and nutrition education.

SECTION 3. Sugar-Sweetened Beverage Product Distribution Tax.

Title 7 of the Berkeley Municipal Code is hereby amended by adding Chapter 7.73 to read as follows:

7.73.010 Relationship to Chapter 7.72; Mutual Exclusivity.

A. The tax imposed by this Chapter is intended to replace, and not to supplement, the tax imposed by Chapter 7.72 of this Code.

B. During any period in which the tax imposed by this Chapter is being collected, the tax imposed by Chapter 7.72 shall be suspended as provided in Section 7.72.005.

C. In the event a court of competent jurisdiction issues a final, non-appealable judgment holding that this Chapter is invalid or unenforceable in whole or in substantial part, the tax imposed by Chapter 7.72 shall automatically resume being collected as provided in Section 7.72.005, without the need for further voter approval or City Council action.

7.73.020 Excise tax.

A. In addition to any other taxes imposed by the City, the City hereby levies a special tax of two cents ($0.02) per fluid ounce on the privilege of Distributing Sugar-sweetened beverage products in the City. The tax imposed under this chapter shall be used solely for the purposes set forth herein. All proceeds generated by this chapter shall be deposited into the Sugar Sweetened Beverage Tax Account.

B. 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 Concentrates, the largest volume, in fluid ounces, of Sugar-sweetened beverages that could be produced from the Concentrate. In accordance with rules and regulations promulgated by the City pursuant to Section 7.73.050, the largest volume, in fluid ounces,

that would typically be produced from the Concentrate shall be determined based on the manufacturer's instructions or, if the Distributor uses the Concentrate to produce a Sugar-sweetened beverage, the regular practice of the Distributor.

C. 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 Berkeley 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.

D. Beginning on January 1, 2028, and annually thereafter, the tax rate shall be adjusted by the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-Hayward metropolitan area, as published by the U.S. Bureau of Labor Statistics, for the twelve-month period ending on December 31. In no event shall the tax rate be decreased below the initial rate of two cents ($0.02) per fluid ounce. In addition, no single annual adjustment shall exceed five percent.

7.73.030 Exemptions.

The tax imposed by this Chapter shall not apply:

A. To any Distributor that is not subject to taxation by the City under the laws of the United States or the State of California;

B. To any Distribution of a Sugar-sweetened beverage product to a Retailer with less than $100,000 in annual gross receipts, as defined in Section 9.04.025, in the most recent year;

C. To any Distribution of sweeteners that are sold separately from, and are not themselves, a Sugar-sweetened beverage product. Examples include, without limitation, bagged granulated sugar, a jar of molasses, a jug of maple syrup, or a container of honey; or

D. To any Distribution of Concentrates to a Food Products Store as defined in Section 23F.04.010, if the Food Products Store then offers the Concentrate for sale for later use by customers of that store. F

7.73.040 Definitions.

A. "Added caloric sweetener" means any monosaccharide or disaccharide sweetener that is suitable for human consumption, perceived as sweet when consumed, and adds calories to the diet if consumed, such as glucose, fructose, and sucrose. Examples include, without limitation, cane sugar, beet sugar, high-fructose corn syrup, and honey. For the purpose of this Chapter, Added caloric sweetener does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

B. "Alcoholic beverage" means any beverage subject to tax under Part 14 (commencing with Section 32001) of the California Revenue and Taxation Code, as that Part may be amended from time to time.

C. "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 for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" shall also mean a "medical food" as defined in Section 109971 of the California

Health and Safety Code, as that definition may be amended from time to time. "Beverage for medical use" shall not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.

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

E. "City" means the City of Berkeley, California.

F. "City Manager" means the City Manager of the City of Berkeley or his or her designee.

G. "Consumer" means a natural person who purchases a Sugar-sweetened beverage product in the City for a purpose other than resale in the ordinary course of business.

H. “Community-Based Organization” means a 501c3 non profit organization that serves the Berkeley community.

I. “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.

J. "Distribution" or "Distribute" means the transfer of title or possession (1) from one Business entity to another for consideration or (2) 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. "Distribution" or "Distribute" shall not mean the retail sale to a Consumer.

K. "Distributor" means any Person who Distributes Sugar-sweetened beverage products in the City.

L. “Grant” means a discretionary award of public funds made by and/or on behalf of the City of Berkeley for the purposes of providing public services or benefits, and not primarily for the acquisition of goods or services for the City.

M. “Grant Agreement” means a written contract executed by the City and a Grant recipient that prescribes the terms and conditions of a Grant.

N. "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.

O. "Person" means an individual, trust, firm, joint stock company, business concern, business trust, government, receiver, trustee, syndicate, social club, fraternal organization, estate, corporation, including, but not limited to, a limited liability company, and association or any other group or combination acting as a unit.

P. “Public Purpose” means a direct benefit conferred upon the residents of the City of Berkeley that is reasonably related to the City’s governmental responsibilities and does not consist primarily of private benefit.

Q. "Retailer" means any Person who serves Sugar-sweetened beverage products to a Consumer.

R. "Sugar-sweetened beverage" means any beverage intended for human consumption to which one or more Added caloric sweeteners has been added and that contains at least 2 calories per fluid ounce.

1. "Sugar-sweetened beverage" includes, but is not limited to all drinks and beverages commonly referred to as "soda," "pop," "cola," "soft drinks," "sports drinks," "energy drinks," "sweetened ice teas," or any other common names that are derivations thereof.

2. "Sugar-sweetened beverage" shall not include any of the following:

(a) Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other;

(b) Any beverage for medical use;

(c) Any liquid sold for use for weight reduction as a meal replacement;

(d) Any product commonly referred to as "infant formula" or "baby formula"; or

(e) Any alcoholic beverage.

S. "Sugar-sweetened beverage product" means a Sugar-sweetened beverage or Concentrate.

7.73.050 Duties, responsibilities and authority of the City Manager.

A. It shall be the duty of the City Manager to collect and receive all taxes imposed by this Chapter, and to keep an accurate record thereof.

B. The City Manager 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, including provisions for the reexamination and correction of returns and payments, and for reporting. Such rules and regulations may include, but are not limited to, the following:

1. The determination of the frequency with which a Distributor must calculate the tax. This determination shall not constitute an increase of the tax.

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

3. The determination of whether and how a Distributor must register with the City.

4. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another Distributor must report to the City the name of that Distributor.

5. The determination of whether and how a Distributor who receives, in the City, Sugar-sweetened beverage products from another distributor must report to the City the volume of Sugar-sweetened beverage products received from that Distributor.

6. The determination of what other documentation is required to be created or maintained by a Distributor.

C. The City Manager shall annually verify that the taxes owed under this Chapter have been properly applied, exempted, collected, and remitted.

D. The City Manager shall establish a Sugar Sweetened Beverage Tax Account, and all proceeds generated by this chapter shall be deposited by the City Manager into the Sugar Sweetened Beverage Tax Account. Such proceeds shall be used only for the specific purposes identified in section 7.73.070.

7.73.060 Collection.

A. The amount of any tax, penalty, and interest imposed under the provisions of this Chapter shall be deemed a debt to the City. Any Distributor owing money under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such amount.

B. In order to aid in the City's collection of taxes due under this Chapter, any Retailer that receives Sugar-sweetened beverage products from a Distributor shall, in accordance with rules and regulations promulgated by the City Manager pursuant to Section 7.73.040, either:

1. report to the City all such transactions, the volume in ounces of Sugar-sweetened beverage products received in each transaction, and the identity and contact information of the Distributor from whom the Sugar-sweetened beverage products were received; or

2. collect the tax that would be payable as a result of the transaction by the Distributor from whom the Sugar-sweetened beverage product was received and remit it to the City; or

3. provide to the City evidence that the Distributor from whom the Sugar-sweetened beverage products were received has registered as a Distributor with the City and that registration is current.

C. The City Council is authorized to have the taxes imposed by this Chapter collected by the County of Alameda 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 City Manager shall be given, as appropriate, to the County of Alameda or the California Board of Equalization, which may delegate such duties and responsibilities as necessary and as authorized by law.

D. All proceeds generated by this chapter shall be deposited by the City Manager into the Sugar Sweetened Beverage Tax Account. Such proceeds shall be used for the specific purposes identified in section 7.73.070.

7.73.070 Expenditure Plan.

A. Statement of Intent.

The singular goal of the tax expenditure plan is to invest in the health of the Berkeley community, especially the priority populations that are targeted by beverage industry practices and who collectively experience the worst health outcomes related to the overconsumption of sugary drinks. The priority populations are as follows: children and their families, with an emphasis on young children who are in the process of forming lifelong habits; children and young adults living in households with limited resources; and populations disproportionately experiencing health disparities related to sugar-sweetened beverage consumption and/or disproportionately targeted by the beverage industry's marketing. Priority recipients for funding are Berkeley-based community-based organizations that serve any or all of the above populations and employ the following strategies. Strategies that address the goals and objectives of this funding include:

1. Transforming the systems, policies, environments, structures, and norms that underlie sugary drink consumption.

2. Developing community capacity to improve health by transforming systems, policies, environments, structures, and norms through increasing leadership potential of community members and young people, especially those serving priority populations.

3. Supporting community programming designed to change norms toward consumption of healthy food and beverages, and referrals for primary care and dental services.

4. Impacting sugary drink marketing and retail environments (i.e. availability, promotion, price, placement in convenient stores, and advertising.) especially those that disproportionately target priority populations.

5. Improving access to, and the production of, healthy food and drinks for priority populations in Berkeley.

B. Purpose and Authority. The revenues generated by this Chapter shall be allocated by the City on an annual basis and with independent oversight provided by the Panel of Experts described in section 7.73.120 to ensure that expenditures are consistent with this section. The City may use funds permissibly by investment in transforming the systems, policies, environments, structures, and norms that underlie sugary drink consumption and improving access to healthy food and drinks for priority populations, including by issuing Grants to Community-Based Organizations, City agencies, and/or Berkeley Unified School District. This special tax is imposed under the City's constitutional authority as a charter city under Article XI, Section 5 of the California Constitution.

C. Permissible Projects. Except as provided for in section 7.73.070D1, funds from the Sugar Sweetened Beverage Tax Account shall be used exclusively for the following specific purposes:

1. To help fight Type 2 Diabetes, heart disease, tooth decay, and childhood obesity.

(a) Providing healthcare services, public health services, and health education to underserved residents, which includes but is not limited to, projects related to:

i. Providing multilingual obesity reduction and Type 2 Diabetes prevention program education and physical activity programming for low-income young children, families, and adults at risk for Type 2 Diabetes.

ii. Chronic Disease and Oral Health Prevention Projects, including prevention education, hypertension screenings, and dental treatments through community outreach including but not limited to at senior centers, barbershops, and supportive housing sites.

iii. Embed dental hygienists in primary care visits to provide oral health screening and preventive care to low-income residents.

iv. Implementing train-the-trainer nutrition and healthy beverage education programs with medical facility volunteers and staff to improve patient diets and reduce SSB consumption.

v. Providing culturally responsive SSB health awareness and prevention services to non-English speakers and communities, including to immigrants, refugees, and undocumented residents.

vi. Engaging youth interns to promote water and healthy food at Berkeley High School and in the surrounding community.

vii. Healthy living education programs serving low-income children and families.

viii. Community action research and/or advocacy projects to address Type 2 Diabetes, heart disease, and childhood obesity.

ix. Investment in community health clinics and community health worker services.

(b) Providing improved access to healthy foods and beverages to underserved communities, which includes but is not limited to, projects related to:

i. Community garden initiatives that provide no-cost and affordable produce distribution.

ii. Community garden initiatives that support at-home vegetable, herb, and fruit growing through workshops and no/low-cost gardening supply distribution.

iii. Healthy food pantries and direct food distribution.

iv. Fruit and vegetable incentive programs for CalFresh recipients.

v. Summer meals for children.

vi. Healthy free food and free meal delivery distribution services for seniors or disabled residents.

vii. Programs to improve nutritional quality of foods in childcare settings.

(c) Projects that reduce the marketing, availability and consumption of sugary drinks, which includes but is not limited to, projects related to:

i. Projects that reduce the marketing, availability, and consumption of sugary drinks in retail establishments, including vending machines.

ii. Projects to train and support community leaders, including adult residents and young organizers, to engage in campaigns to change systems, structures, environments resulting in improved norms for beverage consumption.

iii. Community action research and/or advocacy projects to develop interventions on SSB marketing, distribution, and placement.

2. To fund clean water access.

(a) Projects that improve access to tap water, which includes but is not limited to, projects related to:

i. Installing water hydration and refill stations in community-accessible places for public consumption, including but not limited to schools, parks, and libraries.

ii. Community action research and/or advocacy projects to develop strategies to increase water access and consumption.

(b) Projects that promote the consumption of water, which includes but is not limited to, projects related to:

i. Training youth and young adult Water Ambassadors to advocate for water bottle filling station installations to promote water consumption among Berkeley youth.

ii. Projects that collaborate with youth and adult sports leagues to provide norms change toward healthier hydration through parent/participant education and material infrastructure development.

iii. Peer health education and counter-media messaging to promote water and reduce SSB use among youth.

3. To provide health and nutrition education.

(a) Urban Farming and Gardening Initiatives, which includes but is not limited to, projects related to:

i. Berkeley Unified School District-wide Cooking and Gardening program, weaving garden-based learning into student life, including after-school nutrition and cooking curricula and family engagement nights.

ii. Community farm programming, including outdoor classroom and cooking facilities, hands on learning workshops, spaces to grow one's food, and distribution of supplies for home growing of vegetables, fruits, and herbs.

(b) Nutrition and Cooking Education, which includes but is not limited to, projects related to:

i. Train-the-trainer nutrition education programs with community medical facility staff and volunteers to support behavior change around healthy food and beverages.

ii. Training youth and community educators to provide nutrition education.

iii. Hands-on cooking and nutrition classes for kids, teens, families, and seniors.

iv. Recruit and train youth educators to lead workshops and social media campaigns promoting healthy alternatives to SSBs for children and youth ages 6–24.

v. Provide culturally and linguistically appropriate SSB awareness workshops and health events for uninsured/underinsured, non-English speaking residents such as Latino immigrants and day laborers.

(c) Art Projects that Promote Health and Nutrition, which includes but is not limited to, projects related to:

i. Art contests and exhibits to engage youth and community in SSB prevention, water promotion, and nutrition education.

ii. Public mural projects that counter beverage industry marketing by focusing on healthy lifestyle images and environments.

4. All specific projects listed within this subdivision may be funded through the provision of Grants to Community-Based Organizations, City departments, and/or Berkeley Unified School District.

D. Distribution of Funds.

1. Implementation Costs. In addition to the purposes set forth in this section, the City of Berkeley may allocate no more than fifteen percent (15%) of the funds raised by this chapter to pay for reasonable expenses incurred which relate to the planning and ongoing implementation of the tax. Such payments include, but are not limited to, the Finance Department's staffing and management costs related to the Sugar Sweetened Beverage Tax Account, costs necessary to review and approve Grants, for the City's staffing necessary for the operation of the Panel of Experts described in section 7.73.120, and for other purposes necessary for the planning and ongoing implementation of this chapter. These expenses shall be accounted for, and such accounted amount allocated to the City, up to the maximum amount set forth herein, shall be removed from the Sugar Sweetened Beverage Tax Account prior to distribution for the permissible projects and/or grants described in this section.

2. Community Grants. No less than forty-two and one-half percent (42.5%) of the funds raised by this chapter shall be allocated as Grants to Community-Based Organizations or City departments to accomplish the specific purposes set forth in this section.

3. Grants and Payments to Berkeley Unified School District. No less than forty-two and one-half percent (42.5%) of the funds raised by this chapter may be allocated as Grants to Berkeley Unified School District to accomplish the specific purposes set forth in this section, including projects to reduce the consumption of sugar-sweetened beverages, through the implementation and enhancement of the Berkeley Unified School District cooking and gardening programs.

7.73.080 Grant Issuance and Limitations.

A. Issuance. The City of Berkeley may use money allocated from the Sugar Sweetened Beverage Tax Account to issue competitive Grants in compliance with this Chapter to Community-Based Organizations, City agencies, and/or the Berkeley Unified School District. Such Grants shall be issued based on an application process developed by the City Manager and the Panel of Experts described in section 7.73.120. Grants shall be approved by the City Council based on recommendations from the Panel of Experts, and shall be issued specifically to accomplish one or more of the specific purposes set forth in this chapter. Grants shall be distributed by the Department of Health, Housing, and Community Services' Public Health Division.

B. Conflicts of Interest. No Public elected official, Public employee, or appointed official shall participate in the making, awarding, or administration of a Grant where prohibited by Government Code section 1090 or the Political Reform Act (Government Code section 87100 et seq.).

C. Open Meetings. All Grants shall be recommended and/or approved in an open and public meeting pursuant to the Ralph M. Brown Act (Government Code section 54950 et seq.) based on reports produced by the Panel of Experts described in section 7.73.120 analyzing Grant applications.

1. Panel of Experts' recommendations related to any Grant award shall include:

(a) Statement of Public Purpose;

(b) Proposed scope of services;

(c) Proposed performance measures;

(d) Proposed Grant amount;

(e) Identification of any known conflicts of interest; and

(f) Confirmation of compliance with eligibility requirements.

2. All Grant awards shall be publicly posted on a City of Berkeley website within thirty (30) days of approval and retained online for not less than five (5) years.

D. No Grant funds shall be disbursed without an executed Grant Agreement. Each Grant Agreement shall include:

1. Description of public purpose;
2. Scope of work, budget, and eligible use of funds;
3. Prohibitions described in this section;
4. Reporting requirements and performance metrics;
5. Right of City inspection and audit;
6. Insurance and indemnification requirements, where appropriate;
7. Clawback and termination provisions; and
8. Record retention requirements.

E. Limitations. Grant funds shall not be used for:

1. Support of or opposition to any political party, candidate, ballot measure, or campaign activity;
2. Lobbying activities beyond those permitted for federal tax-exempt entities;
3. Purposes not authorized by the Grant Agreement.

7.73.090 Refunds.

Whenever any tax under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the City, it may be refunded only as provided in Chapter 7.20 of the Berkeley Municipal Code.

7.73.100 Enforcement.

Except as otherwise provided by this Chapter or by rule or regulation promulgated by the City Manager, the tax imposed by this Chapter shall be administered in the same manner as taxes imposed pursuant to Chapter 9.04 and, without limitation, shall be subject to the same delinquency penalties, appeals processes and other enforcement provisions set forth in Chapter 9.04.

7.73.110 Not a sales and use tax.

The tax imposed by this Chapter is a tax upon the privilege of conducting business, specifically, Distributing Sugar sweetened beverage products within the City of Berkeley. It is not a sales, use, or other excise tax on the sale, consumption or use of Sugar-sweetened beverage products.

7.73.120 Sugar-Sweetened Beverage Product Panel of Experts.

A. There shall be established the Sugar-Sweetened Beverage Product Panel of Experts to make recommendations on how and to what extent the City should establish and/or fund programs to reduce the consumption of sugar-sweetened beverages in Berkeley and to address the effects of such consumption, including by developing and issuing Requests for Proposals, and analyzing and making recommendations to the City Council for the issuance of Grants. The Panel's recommendations related to the issuance of Grants and funding of Berkeley Unified School District projects shall be provided as a package to the Council for approval on at least an annual basis.

B. An officer or employee of the City designated by the City Manager shall serve as secretary of the Panel. The City shall be responsible for providing sufficient staff to the Panel for its operations, including its grantmaking functions.

C. In accordance with Chapter 2.04, the Panel shall be composed of nine members appointed by the City Council.

D. Terms shall expire and vacancies shall be filled in accordance with the provisions of Section 2.04.030 through 2.04.145 of this Code.

E. Each member of the Panel must:

1. Have experience in community-based youth food and nutrition programs; or

2. Have experience in school-based food and nutrition programs and be referred by the Berkeley Unified School District; or

3. Have experience in early childhood nutrition education; or

4. Have experience in researching public health issues or evaluating public health programs related to Type 2 Diabetes, obesity, and sugary drink consumption; or

5. Be a licensed medical practitioner.

F. In accordance with Section 3.02.040, members of the Panel may be reappointed but shall not serve more than eight consecutive years.

G. The Panel shall, by majority vote, do each of the following:

1. Annually appoint one of its members as chair and one of its members as vice-chair;

2. Approve bylaws to facilitate the proper functioning of the Panel;

3. Establish a regular time and place of meeting, with a minimum of 4 meetings per fiscal year. All meetings shall be noticed as required by law and shall be scheduled in a way to allow for maximum input from the public. Minutes for each meeting shall be recorded, kept, and maintained; and

4. Develop and issue the Requests for Proposals for use of Grants

5. Review, analyze, and make recommendations to the City Council for the issuance of Grants to Community-Based Organizations, City agencies, and/or Berkeley Unified School District. Grants made from the Sugar Sweetened Beverage Tax Account shall be approved by the City Council, based on the recommendations of the Panel, to accomplish the specific purposes set forth in section 7.73.070.

6. Confirm that all Grant recipients comply as a permissible project

7. Publish an annual report that includes the following:

(a) recommendations on how to allocate the Sugar Sweetened Beverage Tax Account and the City's general funds to reduce the consumption of sugar sweetened beverages in Berkeley and to address the results of such consumption;

(b) recommendations for Grants for City Council approval, as well as updates on Grant Agreement executions;

(c) information, if available, concerning the impact of this Chapter on the public health of the residents of the City; and

(d) any additional information that the Panel deems appropriate.

H. Within 15 days of receipt of the publication of the Panel's annual report, the City Manager shall cause the report to be published on the City's Internet website and to be transmitted to the City Council and the Governing Board of the Berkeley Unified School District.

I. The Panel shall include in its recommendations the specific considerations related to permissible projects outlined in the expenditure plan. The City Council shall consider but need not follow, the Panel's recommendations, and shall include in all Council decisions related to the Panel recommendations, the specific considerations related to permissible projects outlined in the expenditure plan.

J. The Panel is permitted to make recommendations for multi-year Grants commitments, and, if approved by the City Council, funds from the Sugar Sweetened Beverage Tax Account may be encumbered for such purposes across fiscal years.

7.73.130 Increase appropriations limits.

Pursuant to California Constitution article XIIIB, the appropriation limit for the City is increased by the aggregate sum authorized to be levied by this tax for each of the four fiscal years from 2027-28 through 2030-31.

7.73.140 Amendment.

A. The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section 7.73.030B, and adjust the tax rate pursuant to the CPI rate, as described in section 7.73.020D. In addition, the City Council may amend technical, procedural and administrative provisions of this measure, including deadlines, error correction or conforming amendments required by changes to state law, provided that such amendments are consistent with and further the purposes of the measure, and allow for the continued collection and expenditure of funds in the manner set forth in the measure.

B. The City Council, without a vote of the people, may repeal this Chapter by ordinance if a court of competent jurisdiction has issued a final, non-appealable judgment holding this Chapter invalid or unenforceable in whole or in substantial part.

7.73.150 Duration.

The ordinance codified in this chapter shall be effective until repealed or modified by the voters of the City of Berkeley.

SECTION 4. Chapter 7.72 Suspended While Chapter 7.73 Is Operative.

Title 7 of the Berkeley Municipal Code is hereby amended by adding section 7.72.005 to read as follows:

7.72.005 Suspension During Operation of Chapter 7.73.

A. Notwithstanding any other provision of this Chapter, the tax imposed by this Chapter 7.72 shall not be collected, and no person shall be required to pay the tax imposed by this Chapter, during any period in which the tax imposed by Chapter 7.73 of this Code is being collected.

B. This Chapter shall remain in full force and effect during any period of suspension under subdivision (A), and the tax imposed by this Chapter shall automatically resume being collected if and when the tax imposed by Chapter 7.73 ceases to be collected for any reason, including but not limited to:

1. A final, non-appealable judgment of a court of competent jurisdiction holding that Chapter 7.73 is invalid or unenforceable;

2. Repeal of Chapter 7.73; or

3. Any other circumstance that causes the tax imposed by Chapter 7.73 to cease being collected.

C. For purposes of this Section, "final, non-appealable judgment" means a judgment as to which the time for all appeals has expired, or as to which all appeals have been exhausted.

SECTION 5. Chapter 7.72 May Be Repealed In Certain Circumstances.

Title 7 of the Berkeley Municipal Code is hereby amended by revising Chapter 7.72 section 7.72.110 to read as follows:

7.72.110 Amendment.

A. The City Council, without a vote of the people, may, either permanently or temporarily, increase the dollar amount of the threshold for the small-business exemption in Section 7.72.020(B).

B. Notwithstanding any other provision of this Chapter or the Berkeley City Charter, the City Council may, without a vote of the people, repeal this Chapter by ordinance, provided that all of the following conditions are satisfied:

1. Chapter 7.73 of this Code, or a successor chapter imposing a special tax on the distribution of sugar-sweetened beverage products, has been in effect and continuously collected for a period of not less than ten (10) years;

2. No lawsuit or administrative proceeding challenging the validity or enforceability of Chapter 7.73 (or its successor) is pending in any court or before any administrative body; and

3. No court of competent jurisdiction has issued any judgment, whether or not final, holding Chapter 7.73 (or its successor) invalid or unenforceable in whole or in substantial part.

C. If the City Council repeals this Chapter pursuant to subdivision (B), but Chapter 7.73 (or its successor) is subsequently held invalid or unenforceable by a final, non-appealable judgment of a court of competent jurisdiction, the City Council may, without a vote of the people, reenact this Chapter by ordinance at the tax rate in effect immediately prior to its repeal.

SECTION 6. Effective Date and Operative Date.

This chapter shall be effective ten (10) days after certification by the City Council of the returns of the election indicating approval by a majority of the voters voting in the election of the measure enacting this chapter. The operative date for the excise tax imposed hereunder shall be on April 1, 2027.

SECTION 7. Termination.

The authority to levy the tax imposed by this measure shall not expire until repealed or modified by the voters of the City of Berkeley.

SECTION 8. Severability.

If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The People of the City of Berkeley hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional. The People of the City of Berkeley further declare their desire that this measure provide funding as described for to help fight Type 2 Diabetes, heart disease and childhood obesity by providing healthcare; clean water access; and health and nutrition education to low-income Berkeleyans; and that each of these vital City services are independently important of one another.

SECTION 9. Conflicting Measures.

This measure is intended to be comprehensive. It is the intent of the People of the City of Berkeley that, in the event this measure appears on the same ballot as one or more measures relating to the imposition of a sugar-sweetened beverage tax, the provisions of the other measure or measures shall be deemed in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures may be implemented only to the extent that those provisions are not in conflict with each provision of this measure. The provisions of a conflicting measure or measures shall be deemed in conflict with this measure if such conflicting measure or measures would institute, amend, raise, lower or in any way alter Berkeley's sugar-sweetened beverage tax. If this measure is approved by a majority of the voters, but does not receive a greater number of affirmative votes than any other measure or measures appearing on the same ballot regarding a sugar-sweetened beverage tax, then this measure shall take effect to the extent not in conflict with said other measure or measures.

SECTION 10. Amendment.

The City Council, without a vote of the people, may amend Chapters 7.72 and 7.73 as set forth in this measure, and may repeal Chapter 7.72 as set forth in this measure. The City Council may also amend technical, procedural and administrative provisions of this measure, including deadlines, error correction or conforming amendments required by changes to state law, provided that such amendments are consistent with and further the purposes of the measure, and allow for the continued collection and expenditure of funds in the manner set forth in the measure.

SECTION 11. Liberal Construction.

This measure is an exercise of the initiative power reserved to the People of the City of Berkeley to help fight Type 2 Diabetes, heart disease and childhood obesity by providing healthcare; clean water access; and health and nutrition education to low-income Berkeleyans; and shall be liberally construed to effectuate that purpose.

SECTION 12. Municipal Affair.

The People of the City of Berkeley hereby declare that, separately and together, the following purposes constitute municipal affairs: to help fight Type 2 Diabetes, heart disease and childhood obesity by providing healthcare; clean water access; and health and nutrition education to low-income Berkeleyans. The People of the City of Berkeley hereby further declare their desire for this measure to coexist with any similar tax measures adopted at the city, county or state levels.