

SFGATE

Judge upholds SF's pioneering law on sugary beverage ads

By [Bob Egelko](#)

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San Francisco's first-in-the-nation law requiring display ads for sugary drinks to carry warnings of increased risks of obesity, diabetes and tooth decay can take effect in July as scheduled, a federal judge ruled Tuesday in rejecting a challenge by the beverage industry.

"The warning required by the city ordinance is factual and accurate," and is a "legitimate action to protect public health and safety," said U.S. District Judge [Edward Chen](#), who turned aside industry arguments that the advertising message is misleading and violates free speech.

The [American Beverage Association](#), the [California Retailers Association](#) and the [California State Outdoor Advertising Association](#) sought the injunction against the requirement.

The ordinance, passed unanimously by the [Board of Supervisors](#) last year and due to take effect July 25, requires publicly displayed advertising for sugar-sweetened beverages to display a warning label that takes up 20 percent of their advertising space, attributing the message to the city. It doesn't apply to ads in newspapers, magazines, television, menus or product labels.

Beverage industry lawyers argued that the city was unfairly singling out their products and implying that they were more dangerous than high-calorie foods like cheeseburgers or pizzas, which carry no warnings. They contended the labeling would chill freedom of expression, and they submitted declarations by PepsiCo and other soda companies saying they would stop advertising in San Francisco if the ordinance took effect.

But Chen said the city is not preventing the companies from speaking, but simply requiring them to disclose accurate information about their products. He said there was ample scientific evidence that sugar-sweetened beverages are "a significant source of calories" that contribute to health problems.

Chen said the city also provided evidence that African Americans, Latinos and low-income people were "particularly affected by added sugars in their diets" and also had high rates of obesity and related chronic diseases.

Advertisers' claims that they would pull out of San Francisco are of "questionable credibility," Chen said. Like tobacco companies, which continue to make profits despite

having to place government-mandated warnings on their packages, beverage companies will still reap financial benefits from advertising, he said. He also noted that pharmaceutical firms still broadcast advertising despite warnings about side effects that take up almost as much time as the ad messages.

In November, San Francisco voters are likely to consider a penny-per-ounce tax on sugared drinks.

Tuesday's ruling is one of the first legal setbacks for the beverage industry, which has sued successfully over restrictions on beverage sizes and sales, said Dr. [John Maa](#), a board member of the [American Heart Association](#) of the Greater Bay Area and a supporter of the ordinance.

"We believe there will be a wave of similar legislation across the country, and we believe this will improve the health of America," Maa said.

Supervisor [Scott Wiener](#), who carried the ordinance, praised the ruling and said the warnings "will provide the clear information people need to make informed decisions about what they are choosing to drink."

The American Beverage Association said it was disappointed by the ruling. San Francisco is "unfairly discriminating against one particular category of products, based on one ingredient found in many other products," the association said.

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