# ­

Appendix B: Definitions

**Model Licensing Ordinance**

**for Healthy Food Retailers**

Developed by ChangeLab Solutions, a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

© 2012 ChangeLab Solution

July 2012

This appendix contains definitions related to Sugar-Sweetened Beverages (Part I) and Tobacco Products/Paraphernalia (Part II), which can be incorporated into the Model Licensing Ordinance for Healthy Food Retailers if you include restrictions on those products.

### I. Definitions Related to Sugar-Sweetened Beverages

If you include requirements or performance standards related to sales of Sugar-Sweetened Beverages (SSBs) in your ordinance, insert the following definitions in alphabetical order in **Section [XX.010]. Definitions:**

(--) “Beverage dispensing machine” means any device, including fountain machines, which mixes concentrate or syrup with any one or more other ingredients to create a Sugar-Sweetened Beverage and dispenses the resulting Sugar-Sweetened Beverage into an open container as a ready to drink beverage.

(--) “Bottle” means any closed or sealed container regardless of size or shape, including, without limitation, those made of glass, metal, paper or plastic or any other material or combination of materials.

(--) “Caloric Sweetener” means any caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, sucrose, fructose, glucose, other sugars, and fruit juice concentrates. For purposes of this definition, “caloric” means a substance which adds calories to the diet of a person who consumes that substance.

(--) “Fountain Drink” means a Sugar-Sweetened Beverage dispensed by a Beverage Dispensing Machine.

**COMMENT:** Include this definition of “Fountain Drink” only if you include the size limitations specific for Fountain Drinks in the Model Ordinance.

(--) “Non-Caloric Sweetener” means any non-caloric substance suitable for human consumption that humans perceive as sweet and includes, without limitation, aspartame, saccharin, stevia, and sucralose. For purposes of this definition, “non-caloric” means a substance that contains fewer than 5 calories per serving.

**Comment:** The Food and Drug Administration (FDA) regulates the use of terms like “no-calorie” or “calorie free” as nutrient content claims. This definition of “non-caloric” aligns with the FDA’s definition. 21 C.F.R. 101.60. See discussion of calorie content claims in section 101.60 of the following: [www.access.gpo.gov/nara/cfr/waisidx\_08/21cfr101\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/21cfr101_08.html)

(--) (1) “Sugar-Sweetened Beverage” means any nonalcoholic beverage, carbonated

 or noncarbonated, which is intended for human consumption and contains any added Caloric Sweetener. As used in this definition, “nonalcoholic beverage” means any beverage that contains less than one-half of one percent alcohol per volume.

**comment on definition of Sugar-Sweetened Beverage:** This definition should be included if you include substantive requirements related to Sugar-Sweetened Beverages in either Section [XX.020] or Section [XX.030].

If you include SSBs in your ordinance, you must also decide how broadly to define “sugar-sweetened beverage.” The definition in this Model Ordinance is intended to be very broad and include all beverages with any amount of added caloric sweetener. Some jurisdictions, for political or policy reasons, may want to exclude low-calorie beverages despite the fact that they contain added caloric sweetener, because they are seen as healthier alternatives to higher calorie beverages. If your jurisdiction would like to exclude lower calorie beverages from the restrictions, you can include the optional exclusion language below (subparagraph (--)(2)(D)) and establish a threshold amount of added caloric sweetener to qualify for the exclusion. Which option to include is a policy choice for your jurisdiction.

Note that this definition only applies to nonalcoholic beverages, which is also defined.

Subparagraph (2) lists some beverages that are not considered “sugar-sweetened beverages.” Which beverages to exclude is a policy decision; this list of exclusion can be modified at the discretion of the policymakers and public health professionals in your state.

Note also that the default definition of “sugar-sweetened beverage” includes all beverages with any amount of added caloric sweetener; it is not necessary to specifically exclude any beverage unless the beverage contains added caloric sweetener. For example, if you would like to exempt flavored milk from the restrictions, you would need to include language to effectuate that exemption, as well as amending the definition of Dairy Product in Section [XX.010]. On the other hand, plain water, coffee, or tea with no added caloric sweetener would not need to be included on the exemption list.

(2) Notwithstanding paragraph (1), the term “Sugar-Sweetened Beverage” does not include:

(A) Beverages consisting of [100] percent natural fruit or vegetable juice with no added Caloric Sweetener. For purposes of this paragraph, “natural fruit juice” and “natural vegetable juice” mean the original liquid resulting from the pressing of fruits or vegetables, or the liquid resulting from the dilution of dehydrated natural fruit juice or natural vegetable juice;

**comment:** The percentage of natural juice required to exempt beverages from regulation is a matter of policy. Jurisdictions should note the following when deciding whether to exempt diluted juice beverages:

\* Many diluted juice beverages do not contain any vitamins or minerals that

 would make the beverage healthier. These beverages use the juice as a

 caloric sweetener.

\* Diluted juice beverages may contain added caloric sweetener, in addition

 to water and other ingredients. If some diluted beverages are exempt,

 jurisdictions should carefully consider whether diluted juice beverages with

 caloric sweetener should be restricted.

See FDA discussion of “juice” requirements in the context of food labeling. 21 C.F.R. 101.30. See part 101.30 of the following: [www.access.gpo.gov/nara/cfr/waisidx\_08/21cfr101\_08.html](http://www.access.gpo.gov/nara/cfr/waisidx_08/21cfr101_08.html).

(B) Dietary aids, which means liquid products manufactured for use as:

(1) An oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages;

(2) A source of necessary nutrition used due to a medical condition; or

(3) An oral electrolyte solution for infants and children formulated to prevent dehydration due to illness; and

(C) Infant formula. [; and]

[(D) Beverages with any added Caloric Sweetener, which contain less than

[4.2 grams] of total Caloric Sweetener per eight (8) ounces of

 beverage.]

**COMMENT:** The optional language in subparagraph (D) would exempt from the definition of “sugar-sweetened beverage" any beverage containing less than a threshold amount of sugar. The threshold amount used in this model, 4.2 grams of added caloric sweetener per 8 ounces, is intended to be the equivalent of one teaspoon of white granular sugar per 8 ounces. If you decide to use this exemption, the exact threshold amount is a policy decision for your jurisdiction.

For beverages without any naturally occurring sugars, the threshold amount will consist solely of added sugars. For beverages that contain naturally occurring sugars as well as added sugars, the threshold amount will be measured based on the total amount of sugar (whether naturally occurring or added) in the beverage.

**Exempting Milk with Added Caloric Sweetener**

The definition of “Dairy Products” in section [XX.010] specifically excludes beverages with added Caloric Sweetener, such as chocolate or strawberry milk. Therefore, Food Retailers may not stock these items to comply with the minimum stocking requirements for Dairy Products. Many public schools serve these milks to students as part of the National School Lunch program. Some states and municipalities want to incentivize residents, especially children, to drink these beverages in lieu of other Sugar-Sweetened Beverages. Whether to exclude these beverages from the definition of “Sugar-Sweetened Beverage” is a policy decision. For more information and resources on this issue, please see the definition of “Sugar-Sweetened Beverage” in our Model Sugar-Sweetened Beverage Tax Legislation: <http://changelabsolutions.org/publications/sugar-sweetened-beverage-taxes-model-legislation>.

### II. Definitions Related to Tobacco Products and Tobacco Paraphernalia

If you include requirements or performance standards related to sales of Tobacco Products and Tobacco Paraphernalia in your ordinance, insert the following definitions in alphabetical order in **Section [XX.010]. Definitions:**

(--) “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the Smoking, preparation, storing, or consumption of Tobacco Products.

(--) “Tobacco Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the U.S. Food and Drug Administration for use in treating nicotine or tobacco dependence.

**COMMENT:** This definition is written broadly to include nontraditional tobacco and nicotine products such as nicotine gel and nicotine lollipops, but without interfering with the FDA’s mission of approving products intended to benefit public health, such as nicotine patches and other nicotine cessation products.

If you would like to include additional definitions related to tobacco products or tobacco paraphernalia, please refer to ChangeLab Solutions’ Model California Ordinance Requiring a Tobacco Retailer License, available at: [www.changelabsolutions.org/publications/model-TRL-Ordinance](http://www.changelabsolutions.org/publications/model-TRL-Ordinance).

This tool was developed with support from the Centers for Disease Control and Prevention. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Centers for Disease Control and Prevention.