

THE **CrossFit** JOURNAL

SUGAR SCIENCE SOLID

BY ANDRÉA MARIA CECIL

City of San Francisco cites science in asking court to dismiss American Beverage Association lawsuit challenging sugary-beverage ordinances.



On Sept. 8, San Francisco filed a legal response to the American Beverage Association's July 24 lawsuit challenging two city ordinances that target sugary beverages.

The way Jim O'Hara sees it, it's just like the lyrics of that 1960s song: "I fought the law and the law won."

"Big Soda can't fight the science. The science is clear and Big Soda's gonna lose," said the director of health promotion policy at the [Center for Science in the Public Interest](#), a consumer-advocate organization based in Washington, D.C.

That's the position of the City and County of San Francisco, which on Sept. 8 asked the U.S. District Court for the Northern District of California to dismiss the American Beverage Association's [July 24 lawsuit](#) that said two of the city's ordinances should be "struck down": [Ordinance No. 100-15](#) and [Ordinance No. 98-15](#).

Ordinance No. 100-15 requires ads for sugar-sweetened beverages to include health-warning language: "WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay. This is a message from the City and County of San Francisco." The ordinance takes effect June 25, 2016.

Ordinance No. 98-15 prohibits advertising of sugar-sweetened beverages on municipal property. However, the city is not enforcing the ordinance on advisement from the City Attorney's office, according to letters written by Port of San Francisco Executive Director Monique Moyer and City Administrator Naomi M. Kelly. The letters were sent to department heads.

"Recent developments in the law, including a Supreme Court decision issued after the Board of Supervisors adopted this ordinance, led the City Attorney's Office to reevaluate the legal issues raised by the ordinance," both letters read.

The City Attorney's office declined to comment further.

Joining the ABA's [civil action](#) are the California Retailers Association and the California State Outdoor Advertising Association.

In its response to the ABA complaint, San Francisco dismissed the association's statements that sought to link nutrition scientists' often-changing stances on various foods with science that proves the dangers of drinking too many sugar-sweetened beverages.



The Coca-Cola Company is among the dozens of beverage makers the American Beverage Association represents.

Among the city's denials: the ABA's claim that sugar-sweetened beverages include nutrition labels that allow consumers to make informed choices.

"The City denies that the nutritional labeling information provided on beverage labels satisfy the aim of providing consumers with sufficient information to make fully informed beverage choices," the city wrote in its answer to the complaint.

In drafting these ordinances, San Francisco officials relied on scientific data from such institutions as the University of California, San Francisco, noted Jeff Cretan, legislative aide to Scott Wiener—a member of the city's Board of Supervisors and author of the health-warning language—in an email.

"Nothing on the beverage label describes the scientific link between consumption of sugar-sweetened beverages and diseases like type 2 diabetes, which has been proven by scientific research. Like with tobacco warnings, these warnings

will give consumers the information they need to make informed choices about what they consume."

In the legal response, the city also noted that despite nutrition scientists' changing views on such foods as grains, dietary fat, high-cholesterol fare, salt, margarine, pasta, white potatoes, eggs, nuts and iceberg lettuce, none have suggested Americans increase their consumption of sugar-sweetened beverages or changed their longstanding view that significant numbers of Americans over-consume sugar-sweetened beverages.

San Francisco, did, however, make one concession.

"The City admits that nutrition scientists debate how bad added sugar is for most Americans. For example, nutrition scientists debate whether it is bad simply as a source of empty calories with no nutritional value that contributes to poor health, or whether it is uniquely bad."



One of San Francisco's ordinances in question requires a health warning on ads for sugar-sweetened beverages. It goes into effect next year.

The ABA stood by its initial complaint.

"We believe the law is on our side and are eager for the merits of the complaint to be heard by the Court," outside ABA spokeswoman Kelley Kaufman wrote in an email on Sept. 9. "As stated when the complaint was filed, we are challenging the San Francisco ordinances because they are discriminatory, deceptive and unconstitutional."

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—Jim O'Hara

The ABA et al. claim the ordinances violate the First and 14th Amendments of the U.S. Constitution. The First Amendment guarantees multiple freedoms, including speech, while the 14th Amendment speaks to "equal protection of the laws."

When it comes to the ABA's misleading scientific claims, though, the data is "overwhelming" that sugary beverages increase the risk of obesity, diabetes, fatty liver disease and chronic liver disease, among other metabolic derangements, said Richard Johnson, professor of renal diseases and hypertension at the University of Colorado Denver's Anschutz Medical Campus in Aurora.

Johnson went on to call the clinical evidence "incontrovertible."

"If you drink a super gulp in three minutes, (you are) taking in 60 grams of sugar ... it may be that it's the same as eating 25 apples, but you don't eat 25 apples in three minutes, right?"

So the problem with sugar-sweetened beverages isn't only the amount of sugar, Johnson noted, but the speed of ingestion.

"I understand the defense of 'there are other things in the world that aren't good.' But you've got to start somewhere, and this is the one, by far, that is the worst. ... Frankly, there should be an attempt to eliminate soft drinks. Frankly. They're not doing anybody any good."

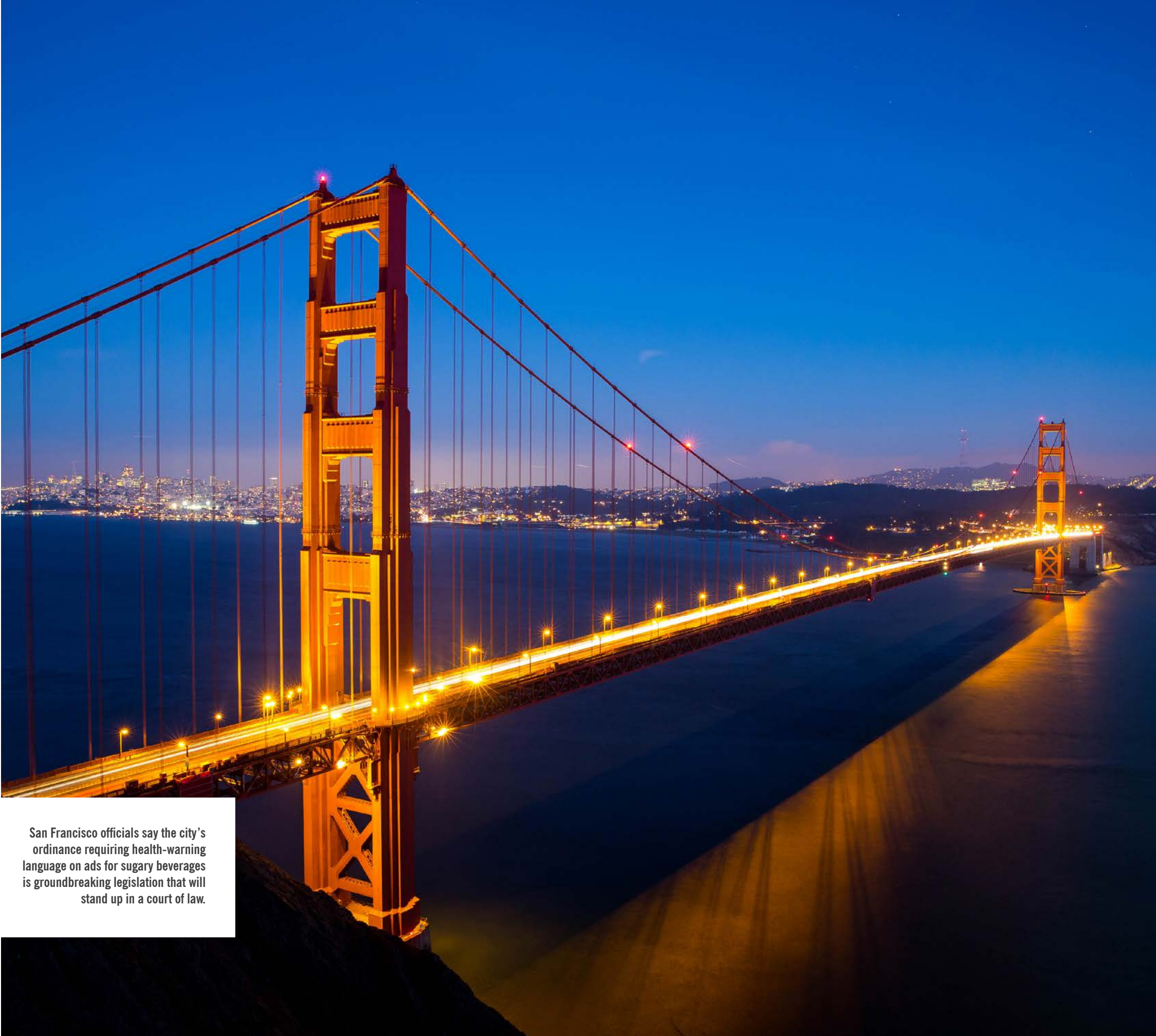
Despite Big Soda's seemingly endless resources, O'Hara said his organization believes San Francisco will be victorious against the ABA.

"Big Soda has had a pretty good winning record because they can outspend the community in the magnitude of 10 or 15 to 1," he said, alluding to his organization's Aug. 25 analysis **"Big Soda vs. Public Health,"** "but it is clear that the science is really reaching the public."

"The public understands that the sugar drinks are related to Type 2 diabetes, are related to obesity, to oral health," O'Hara continued, "and the public understands the link between sugar beverages and public health." ■

About the Author

Andréa Maria Cecil is assistant managing editor and head writer of the CrossFit Journal.



San Francisco officials say the city's ordinance requiring health-warning language on ads for sugary beverages is groundbreaking legislation that will stand up in a court of law.