

## Judge strikes down NYC sugary-drinks size rule (Update)

March 11 2013, by Jennifer Peltz

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(AP)—A judge struck down New York City's pioneering ban on big sugary drinks Monday just hours before it was supposed to take effect, handing a defeat to health-minded Mayor Michael Bloomberg and creating confusion for restaurants that had already ordered smaller cups and changed their menus.

State Supreme Court Justice Milton Tingling said the 16-ounce (half liter) limit on sodas and other sweet drinks arbitrarily applies to only some sugary beverages and some places that sell them.

"The loopholes in this rule effectively defeat the stated purpose of this rule," Tingling wrote in a victory for the beverage industry, restaurants and other business groups that called the rule unfair and wrong-headed.

Bloomberg, who has championed the ban as a novel measure for fighting obesity, vowed to appeal the decision.

"We believe the judge is totally in error in how he interpreted the law, and we are confident we will win on appeal," Bloomberg said. He added: "One of the cases we will make is that people are dying every day. This is not a joke. Five thousand people die of obesity every day in America."

For now, though, the ruling it means the ax won't fall Tuesday on supersized sodas, sweetened teas and other high-sugar beverages in restaurants, movie theaters, corner delis and sports arenas.

The drinks limit follows other efforts by the Bloomberg has made to improve New Yorkers' eating habits, from compelling chain restaurants to post calorie counts on their menus to barring artificial trans fats in restaurant food to prodding food manufacturers to use less salt. The city has successfully defended some of those initiatives in court.

The big drinks ban—the first of its kind in the U.S.—has sparked reaction from city streets to late-night talk shows, celebrated by some as a bold attempt to improve people's health and derided by others as another "nanny state" law from Bloomberg during his 11 years in office.



In this March 8, 2013 file photo, a Coca-Cola poster about the city's anticipated beverage ban is displayed at a pizza shop at New York's Penn Station. New York City's groundbreaking limit on the size of sugar-laden drinks has been struck

down by a judge shortly before it was set to take effect. The restriction was supposed to start Tuesday, March 12, 2013. The rule prohibits selling non-diet soda and some other sugary beverages in containers bigger than 16 ounces. It applies at places ranging from pizzerias to sports stadiums, though not at supermarkets or convenience stores. (AP Photo/Bebeto Matthews)

Because of the limits of city authority and exemptions made for other reasons, the ban on supersized beverages doesn't cover alcoholic drinks or many lattes and other milk-based concoctions, and it doesn't apply at supermarkets or many convenience stores.

In defending the rule, city officials point to the city's rising obesity rate—about 24 percent of adults, up from 18 percent in 2002—and to studies tying sugary drinks to weight gain. Care for obesity-related illnesses costs government health programs about \$2.8 billion a year in New York City alone, according to city Health Commissioner Dr. Thomas Farley.

Critics said the measure is too limited to have a meaningful effect on New Yorkers' waistlines. And they said it would take a bite out of business for the establishments that had to comply, while other places would still be free to sell sugary drinks in 2-liter bottles and supersized cups.

"The court ruling provides a sigh of relief to New Yorkers and thousands of small businesses in New York City that would have been harmed by this arbitrary and unpopular ban," the American Beverage Association and other opponents said, adding that the organization is open to other "solutions that will have a meaningful and lasting impact."

Beverage makers had expected to spend about \$600,000 changing bottles

and labels, movie theater owners feared losing soda sales that account for 10 percent of their profits, and delis and restaurants would have had to change inventory, reprint menus and make other adjustments, according to court papers.

The city had said that while restaurant inspectors would start enforcing the soda size rule in March, they wouldn't seek fines—\$200 for a violation—until June.



In this March 8, 2013 file photo, customers at Brother Jimmy's BBQ call cheers with 24-ounce, left, and 16-ounce beverages, in New York. New York City's groundbreaking limit on the size of sugar-laden drinks has been struck down by a judge shortly before it was set to take effect. The restriction was supposed to start Tuesday, March 12, 2013. The rule prohibits selling non-diet soda and some other sugary beverages in containers bigger than 16 ounces. It applies at places ranging from pizzerias to sports stadiums, though not at supermarkets or

convenience stores. (AP Photo/Bebeto Matthews)

In striking down the rule, Tingling further said that the Board of Health went beyond its authority when it approved the size limit in September. The rule strayed into territory that should belong to the elected City Council, not the board appointed by Bloomberg, Tingling wrote.

Some restaurants had already ordered and started using smaller glasses for full-sugar soda, while others began experimenting with freshly squeezed juices as alternatives to soda for children's parties. Dunkin' Donuts shops have been telling customers they will have to sweeten and flavor their own coffee. Coca-Cola has printed posters explaining the rules.

The ruling "serves as a major blow to Mayor Michael Bloomberg's incessant finger-wagging," said J. Justin Wilson at the Center for Consumer Freedom, created by restaurants and food companies. "The court confirmed what most New Yorkers already know: They don't need a government regulator to dictate their diet choices. New Yorkers should celebrate this victory by taking a big gulp of freedom."

Jose Perez, a fifth-grade special education teacher in Manhattan who was getting a hot dog and can of soda from a street vendor, called the ruling "dead-on."

"Really, I think it's just big government getting in the way of people's rights," he said. "I think it's up to the person. If they want to have a giant soda, that's their business."

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