

## Appeals court: NYC's big-soda ban unconstitutional (Update)

July 30 2013, by David B. Caruso

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In this March 12, 2013 file photo, New York City Mayor Michael Bloomberg looks at a 64oz cup, as Lucky's Cafe owner Greg Anagnostopoulos, left, stands behind him. An appeals court ruled Tuesday, July 30, 2013 that New York City's Board of Health exceeded its legal authority and acted unconstitutionally when it tried to put a size limit on soft drinks served in city restaurants. (AP Photo/Seth Wenig, File)

New York City's crackdown on big, sugary sodas is staying on hold. New York's effort to cap soda portions has drawn national attention, including from diet companies lauding it as a groundbreaking step in America's war on extra weight and late-night TV hosts ribbing Bloomberg as a nutrition nanny.

A mid-level state appeals court ruled Tuesday that the city's Board of Health exceeded its legal authority when it voted last year to put a size limit on soft drinks served in restaurants, theaters, stadiums, sidewalk food carts and many other places.

The ban, which would have stopped the sale of many high-calorie beverages in containers bigger than 16 ounces (454 grams), had been lauded by some health experts as an overdue attack on one of the primary contributors to a U.S. obesity epidemic.

But in a unanimous opinion, the four-judge panel of the state Supreme Court Appellate Division said that the health board was acting too much like a legislature when it created the limit. It said parts of the new rules were clearly political or economic considerations, rather than health concerns.

The judges wrote that while the board had the power to ban "inherently harmful" foodstuffs from being served to the public, sweetened beverages didn't fall into that category. Since soda consumption is not necessarily harmful when done in moderation, it "cannot be classified as a health hazard per se," the court wrote.

Mayor Michael Bloomberg, the driving force behind the regulation, promised a quick appeal.

"Today's decision is a temporary setback, and we plan to appeal this decision as we continue the fight against the obesity epidemic," he said in a statement.

The American Beverage Association, which had been among the groups challenging the rule, applauded the court ruling, which was the second to find that the Board of Health had overstepped its authority. A similar lower court ruling in March kept the regulation from taking effect.

The drinks limit follows other Bloomberg efforts to nudge New Yorkers into better diets. His administration has forced chain restaurants to post calorie counts on menus, barred artificial trans fats from restaurant fare and challenged food manufacturers to use less salt.

Bloomberg and city Health Commissioner Thomas Farley saw soft drinks as a sensible next front in a necessary fight: reining in an obesity rate that rose from 18 to 24 percent of adults in the city within a decade. Studies have tied heavy consumption of sugary drinks to weight gain.

"We have a responsibility, as human beings, to do something, to save each other. ... So while other people will wring their hands over the problem of sugary drinks, in New York City, we're doing something about it," Bloomberg said at a news conference after the measure was struck down in March.

Critics said the city went too far in imposing a serving size limit.

"For the first time, this agency is telling the public how much of a safe and lawful beverage it can drink," Richard Bress, a lawyer for the coalition of groups that challenged the regulation, told the appeals court at a hearing in June. "This is the government coercing lifestyle decisions."

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Citation: Appeals court: NYC's big-soda ban unconstitutional (Update) (2013, July 30) retrieved 26 April 2024 from <https://medicalxpress.com/news/2013-07-appeals-court-nyc-big-soda.html>

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