



Written by [Raven Clabough](#) on October 16, 2012

Soda Industry Sues NYC Over Supersized Soda Ban

In September, New York City became the first to approve a ban that prohibits the sale of sugary drinks over 16 ounces in restaurants, movie theaters, and stadiums. However, the soda industry is prepared to fight and has filed a [lawsuit](#) against the ban.

The Board of Health approved the ban last month, which is set to take effect in March of 2013. The ban does not apply to diet sodas, fruit juices, dairy drinks, or even alcoholic beverages. Likewise, it does not apply to drinks sold in grocery stores. Establishments that do not comply with the ban could face fines of \$200.



The suit was filed by the American soft-drink industry, and several New York restaurant and business groups.

“For the first time, they’re telling New Yorkers how much of certain safe and lawful beverages they can drink,” said Caroline Starke, a spokeswoman for the business groups.

The *New York Times* reports, “The suit, filed in State Supreme Court in Manhattan, contends that the Board of Health did not have the authority to ratify the new rules unilaterally.”

The 61-page filing asserts that soda restrictions are a type of de facto legislation by “executive fiat” and should therefore be considered by the City Council. The filing states that the rules approved by the Department of Health signify “a dramatic departure” from the traditional role of the health department.

“This case is not about obesity in New York City,” the plaintiffs wrote in the opening sentence of the suit. “This case is about the Board of Health, appointed by the mayor, bypassing the proper legislative process for governing the city.”

The suit also claims that the soda restriction “burdens consumers and unfairly harms small businesses at a time when we can ill afford it.”

Time magazine online [notes](#):

The soda makers and sellers say the city is being a nanny-like nag to consumers and imposing an unfair, uneven burden on businesses. Manufacturers will have to get new bottles, and eateries will lose sales to competitors that aren’t covered by the rule, they say. A customer who couldn’t buy a 20-ounce soda at a pizzeria would be able to get a Big Gulp at a 7-Eleven, for instance, as convenience stores are under different regulations.

The mayor’s office rejects the arguments made in the lawsuit, calling the lawsuit “baseless.”

“The Board of Health absolutely has the authority to regulate matters affecting health, and the obesity crisis killing nearly 6,000 New Yorkers a year — and impacting the lives of thousands more — unquestionably falls under its purview,” Marc La Vorgna, chief spokesman for the mayor, wrote in a statement.



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The lawsuit comes as no surprise, as the beverage industry staged a fierce campaign [opposing](#) the ban before it was approved by the Health Department.

Coca-Cola released a statement asserting that the company has already been addressing obesity by placing calorie counts on the front of its products. "The people of New York City are much smarter than the New York City Health Department believes," the statement said. "New Yorkers expect and deserve better than this. They can make their own choices about the beverages they purchase."

Grassroots libertarian group Liberty HQ organized a march on City Hall against the ban, featuring City Councilman Dan Halloran. At the march, Councilman Halloran took the stage and said, "To talk about this as a health issue is absolutely a distraction; we're not banning beer in the same size are we? But we know that beer has more calories per cup. We're certainly not looking to do it in 7-11, because another agency regulates that and the city can't do it by fiat. We have a mayor that is just missing the boat about liberty."

Other opponents of the ban include Eliot Hoff, spokesman for New Yorkers for Beverage Choices, a group of individuals and businesses who are opposed to the regulations. Hoff contends that this issue, like many others, is not about health but about freedom. He states, "The people of New York can make their own decisions about what they eat or drink."

According to La Vorgna, however, the lawsuit will likely go the way of other initiatives launched by industry groups against bans similar to the supersized soda ban, such as the smoking ban or the requirement to post calorie counts on restaurant menus.

"This predictable, yet baseless, lawsuit fortunately will help put an even greater spotlight on the obesity epidemic, the only preventable public health issue getting worse in America. Industry tried to stop the city's smoking ban. Industry sued the city to stop calorie counts. Not only did those efforts fail, but our policies have been adopted in cities and states across the country," La Vorgna wrote.

According to the *New York Times*, however, if the courts were to rule in favor of the soda industry and force the supersized soda issue to be handled by the City Council, the ban may in fact fail. The *Times* writes:

There are indications the soft-drink industry might fare better with legislators than with a board of mayoral appointees. The industry once persuaded lawmakers in Albany to reject a proposed soda tax, and in New York City it has several allies on the Council, where some members had circulated a petition urging the Board of Health to reject the mayor's plan. The Council speaker, Christine C. Quinn, has also expressed hesitation about the size limits.

Meanwhile, New York City is not the only one targeting soda products. In Richmond, California, voters will be deciding whether to approve a penny-per-ounce tax on sugary drinks in November.



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