



Office of the City Manager

INFORMATION CALENDAR
February 8, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services
Subject: Healthy Checkout Ordinance Protocols

INTRODUCTION

On September 22, 2020, the City Council approved the adoption of the Healthy Checkout Ordinance 7,734-N.S. in which applicable retail stores would be required to meet standards in Sec 9.82.030 A-C in all checkout areas. The City's Public Health Division was identified to conduct biannual reviews of qualifying food and beverage categories and Environmental Health was identified to conduct enforcement of the ordinance.

CURRENT SITUATION AND ITS EFFECTS

The Public Health Division has developed a process to conduct a biannual review of the qualifying food and beverage categories that will begin on July 2022, seven months after enforcement of the ordinance began on January 1, 2022. This biannual review will be conducted by a City staff member with an educational background and professional experience in the field of nutrition. Categories will be based on nationally accepted nutrition standards and references. The Public Health Division developed forms to document the review, and the results will be provided to the Council biannually as an Information Item.

The Environmental Health Division developed a procedure for enforcement that is aligned with the Division's regular inspections of businesses considered "Large Retail Stores" (defined as commercial establishments selling goods to the public with a total floor area over 2,500 square feet and selling 25 linear feet or more of food). Inspections associated with the Healthy Checkout Ordinance will be conducted as part of the subject facility's routine inspection schedule beginning in January 2022. Responses to complaints of noncompliance will occur as soon as practical, typically within five (5) business days or longer, depending on Division priorities at the time the complaint is received. Inspections will follow standard inspection procedures and follow issuance of administrative citation(s), when applicable, according to Chapter 1.28 of the Berkeley Municipal Code. A fee study will be conducted by the Division to determine the actual personnel and resource costs for these unfunded additional activities.

BACKGROUND

The City of Berkeley recognizes the negative health impacts associated with diets that include an excess of added sugars and sodium, and that placement of unhealthy snacks near a register can entice increased consumption. For this reason, the Healthy Checkout Ordinance No. 7,734-N.S. was approved and went into effect on March 1, 2021 with enforcement commencing on January 1, 2022.

Berkeley funded community-based organizations, Bay Area Community Resources (BACR) and Community Health Education Institute (CHEI), led informational and educational activities with twenty-five (25) retail businesses that fall under the defined criteria of “Large Retail Store” to support their understanding and compliance of the Healthy Checkout Ordinance prior to enforcement going in to effect on January 1, 2022.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental sustainability and climate impacts.

POSSIBLE FUTURE ACTION

Regular informational items will be submitted to City Council to keep Councilmembers updated on the activities associated with the Healthy Checkout Ordinance.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

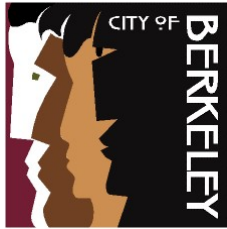
This Ordinance requires staff resources that are not funded, which impacts staff time and Division budgets.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, (510) 981-5121

Attachments:

- 1: Protocol for Biannual Review, Healthy Checkout Ordinance 7,734-N.S.
- 2: Protocol for Enforcement of Healthy Checkout Ordinance
- 3: Ordinance No. 7,734-N.S; Healthy Checkout



Health, Housing and
Community Services Department
Office of the Director

Attachment 1

MEMORANDUM

To: Dee Williams-Ridley, City Manager

From: Lisa Warhuus, PhD, Director

Date:

Subject: Proposed Protocol for Enforcement of Healthy Check-Out Ordinance by Environmental Health Division Field Staff

Effective January 1, 2022, the City of Berkeley's Environmental Health Division (EHD) will begin conducting inspections at qualifying food facilities (i.e. retail food markets with greater than 2500 sq. ft. of floor sales) for compliance with the City of Berkeley's "Healthy Check-Out" (HCO) ordinance. These inspections will be conducted as part of the subject facility's regular routine inspection.

In addition, EHD staff will respond to and investigate complaints of noncompliance with the HCO ordinance as soon as practical, typically within five (5) business days or longer, depending on EHD priorities at the time the complaint is received. (**Note:** Violations of the HCO ordinance are not assigned the same priority as other more 'acute' health and safety issues such as foodborne illness-related complaints and/or COVID-related complaints.)

In situations where EHD inspectors identify and document a violation(s) of the HCO ordinance and/or other compliance issues related to the HCO ordinance, EHD staff will document the violation(s) on the official inspection form for that facility. If the violation(s) cannot be corrected during the course of the routine inspection, EHD inspectors will apply the same criteria used in determining whether a follow-up inspection is necessary.

Follow-up inspections are chargeable inspections (currently billed at \$170/hr. or fraction thereof), and are a useful enforcement tool in achieving compliance in most instances. However, if additional follow-up inspections are necessary to correct violations of the HCO ordinance, facilities will continue to be charged for any additional follow-up inspections. If compliance with the HCO ordinance still cannot be achieved after multiple follow-up inspections, EHD staff may consider elevating enforcement efforts,

A Vibrant and Healthy Berkeley for All

Subject Proposed Protocol for Enforcement of Healthy Check-Out Ordinance by EHD Field Staff

Date:

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which includes the issuance of an administrative citation(s), per Chapter 1.28 of the Berkeley Municipal Code (BMC) with the associated penalties/fines:

\$100 for the first violation

\$200 for the second violation

\$500 for the third and subsequent violations

Community members with general inquiries about the HCO ordinance, or those wishing to report a violation(s) of the HCO ordinance may contact EHD either via telephone:

510.981.5310, or via the general Environmental Health email inbox:

envhealth@cityofberkeley.info .



Health, Housing and
Community Services Department

Healthy Checkout Ordinance 7,734 – N.S.
PROTOCOL FOR BI-ANNUAL REVIEW

Public Health (PH) Division staff shall review on a bi-annual basis the qualifying food and beverage categories listed in Section 9.82.030. of Ordinance No. 7,734-N.S. “Healthy Checkout”.

PH Division staff will refer to/cite professional sources on nutrition standards, guidance for healthy food and beverage categories, and/or healthy checkout toolkits in the review.

PH Division staff will mark each category item as NO CHANGE or CHANGE based on alignment with the most up to date Dietary Guidelines for Americans to assess if ordinance definitions and categories are supported by the guidelines.

If a category section is marked as “NO CHANGE,” PH Division staff has completed review of that section. If a category section is marked as “CHANGE”, PH Division staff will complete and attach “Attachment A”, providing: (a) reason/justification for the change, and (b) recommended language for the change

After completion of the Bi-Annual Review form and Attachment A (if applicable), PH Division staff shall sign, date and route through to HHCS Department Director.

If there are no changes, an informational item will be submitted to City Council.

If the review proposes changes, the HHCS Department will submit a council report to City Council for approval of the proposed changes to the Ordinance.

Results of the Bi-Annual Review will be made available online within 2 weeks of submission and/or approval by City Council.

The next Bi-Annual Review will be scheduled 6 months from the last completed review date.

BI-ANNUAL REVIEW ROUTING
Review and/or sign document(s) and pass along to:

- PH Staff Reviewer: _____ Date: _____
- PH Senior Manager: _____ Date: _____
- PH Division Manager: _____ Date: _____
- EH Division Manager.: _____ Date: _____
- HHCS Department Director: _____ Date: _____

BI-ANNUAL REVIEW RESULTS
Chapter 9.82.030 of Ordinance No. 7,734-N.S.

DATE: _____

Qualifying Food and Beverage Categories	Mark if noted as No Change or Change*
A. Beverage Must have no added sugars or artificial sweeteners	
B. Food Items Added Sugars – no more than 5 grams per labeled serving	
Sodium – no more than 200 milligrams per labeled serving	
C. Food item categories	
Chewing Gum or mints with no added sugars	
Fruit	
Vegetables	
Nuts	
Seeds	
Legumes	
Yogurt	
Cheese	
Whole Grains	

**For all recommended changes, INCLUDE ATTACHMENT A (Documentation for Change)*

Completed by Public Health Division staff:

Name: _____

Classification: _____

Signature and Date: _____

***ATTACHMENT A- Documentation for Proposed Change(s)**

CATEGORY (as it is currently approved in Ordinance No. 7,734-N.S.):

RECOMMENDED CHANGE:
Justification for change (include reference):
Recommended language for change:

ORDINANCE NO. 7,734-N.S.

ADDING CHAPTER 9.82 TO THE BERKELEY MUNICIPAL CODE "HEALTHY CHECKOUT"

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Berkeley Municipal Code is amended to read as follows:

9.82.010. Findings and Purpose.

The City of Berkeley hereby finds and declares as follows:

- A. Diets with an excess of added sugars and sodium are correlated to chronic health issues including diabetes, high blood pressure, and stroke.
- B. Food choices are strongly affected by the environments in which they are made. The placement of unhealthy snacks near a register increases the likelihood that consumers will purchase those foods and drinks, thus undermining consumer health choices and public health initiatives.
- C. It is in the interest of the health, safety, and welfare of all who live, work, and do business in the City that large stores offer healthy options and do not actively encourage the purchase of unhealthy foods.
- D. This Chapter is consistent with the General Provisions of Environmental Health of the City (Berkeley Municipal Code 11.04).

9.82.020. Definitions.

- A. "Added Sugars" means sugars added during the processing of food and beverages, or are packaged as such, and include sugars (free, mono and disaccharides), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100 percent fruit or vegetable juice of the same type, as defined in Section 101.9 of Title 21 of the Code of Federal Regulations.
- B. "Artificial Sweetener" means sweeteners with few to no calories that have a higher intensity of sweetness per gram than sucrose.
- C. "Category List" means the list of foods and beverages which meet the standards of BMC 9.82.030.
- D. "Checkout Area" means any area that is accessible to a customer of the Large Retail Store that is either:
 - i. within a 3-foot distance of any Register; or
 - ii. designated primarily for or utilized primarily by customers to wait in line to make a purchase at a Register, up to and including the Checkout Endcap.
- E. "Checkout Endcap" means product displays placed at endpoints of areas designated primarily for or utilized primarily by customers to wait in line to make a purchase.
- F. "Register" means a device used for monetary transactions that calculates the sales of goods and displays the amount of sales for the customer.
- G. "Large Retail Store" means a commercial establishment selling goods to the public with a total floor area over 2,500 square feet and selling 25 linear feet or

more of food.

9.82.030. Healthy Checkout Areas.

Each Large Retail Store shall, at all hours during which the Large Retail Store is open to the public, ensure that all foods and beverages sold in all Checkout Areas meet the standards in Sec 9.82.030 A-C and comply with the list of qualifying food and beverage categories:

- A. Beverages with no added sugars and no artificial sweeteners.
- B. Food items with no more than 5 grams of added sugars, and 200 milligrams of sodium per labeled serving.
- C. Food items must be in the following categories: chewing gum and mints with no added sugars, fruit, vegetables, nuts, seeds, legumes, yogurt or cheese and whole grains.

City staff will provide technical assistance for implementation. Bi-annual review of qualifying food and beverage categories will be done by the Public Health Division. There will be a 120 day phase-in period if any changes are made.

9.82.040. Enforcement.

- A. The City is hereby authorized to issue all rules and regulations consistent with this ordinance, including, but not limited to, fees for re-inspection.
- B. Compliance with this Chapter shall be administered by the City during regular inspections of qualifying Large Retail Stores. The City may require a Large Retail Store to provide such information as may be necessary to determine the Large Retail Store's compliance with this Chapter.

9.82.050. Violation--Penalty.

- A. A Large Retail Store that violates any provision of this chapter may be subject to administrative citations pursuant to Chapter 1.28 of this Code.
- B. This section shall not limit the City from recovering all costs associated with implementing this chapter or investigating complaints pursuant to fee resolution.
- C. Remedies and penalties under this chapter are cumulative and not exclusive.

9.82.060. Effective Date.

This ordinance and the legal requirements set forth herein shall take effect and be in force March 1, 2021. Enforcement pursuant to 9.82.040 shall commence no sooner than January 1, 2022.

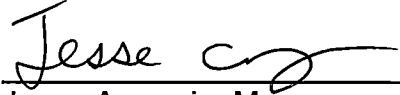
Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on September 22, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.
Noes: None.
Absent: None.

At a regular meeting of the Council of the City of Berkeley held on October 13, 2020, this Ordinance was adopted by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.
Noes: None.
Absent: None.



Jesse Arreguin, Mayor

ATTEST: 

Mark Numainville, City Clerk

Date signed: October 20, 2020