



Office of the City Manager

INFORMATION CALENDAR  
November 28, 2023

To: Honorable Mayor and Members of the City Council  
From: Lisa Warhuus, Director, Health, Housing and Community Services  
Submitted by: Janice Chin, Public Health Division Manager  
Subject: Healthy Checkout Ordinance Update

INTRODUCTION

On March 9, 2020, the Health, Life Enrichment, Equity, and Community Policy Committee adopted the action to send the Healthy Checkout Ordinance item to City Council. The Healthy Checkout Ordinance was passed by City Council on September 22, 2020, adding Chapter 9.82 to the Berkeley Municipal Code “Healthy Checkout”. The ordinance came into effect March 1, 2021, with enforcement pursuant to 9.82.040 to commence no sooner than January 1, 2022.

Pursuant to 9.82.030, the Department of Health, Housing, and Community Services’ Public Health Division (HHCS/PH) was directed to conduct a bi-annual review of qualifying food and beverage categories, with a 120- day phase-in period if any changes were made. This information report provides an update on implementation to date.

CURRENT SITUATION AND ITS EFFECTS

The ordinance requires “Large Retail Stores” over 2,500 square feet in size, that sell at least 25 linear feet of food, to follow the requirements for Healthy Checkout as written in Sec 9.82.030 of the ordinance. Each large retail store shall 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 below 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.

Since the Healthy Check out Ordinance came into effect, HHCS has responded to questions submitted by community members, established a protocol for the biannual review, and conducted all the biannual reviews.

Healthy Check Out ordinance implementation takes place within the context of Healthy Berkeley program implementation. The Healthy Berkeley program was initiated with the passage of the Sugar Sweetened Beverage tax. Tax revenues are used to support health prevention and promotion activities discouraging the consumption of sugar-sweetened beverages and addressing their health impacts. The Sugar Sweetened Beverage Panel of Experts Commission advises Council on use of the tax revenues and program implementation.

HHCS/PH completed bi-annual reviews of the qualifying food and beverage categories on:

- July 8, 2022
- January 13, 2023
- July 6, 2023

To date, HHCS/PH has not recommended any changes to Sec 9.82.030 A-C. Until HHCS completed inspections of all subject businesses and provided technical assistance in July 2023, there was minimal information for the impacted businesses beyond inquiries from the public to inform additional or adjusted clarifying language to the ordinance. The additional information provided from the completed inspections will be included in the next bi-annual review scheduled for January 12, 2024.

Starting in July 2023 City staff conducted site visits of checkout areas of stores subject to the Healthy Check Out Ordinance, assessed compliance, and offered technical assistance. Assessments of all twenty-three (23) businesses that were subject to the requirements of the Ordinance were completed in the months of July 2023 and August 2023. One (1) of the businesses was no longer operating at the time of the inspection.

- 50% (11) of the businesses were in compliance
- 50% (11) of the businesses were out of compliance
- 14% (3) of the businesses that were out of compliance were significantly out of compliance

All businesses that were out of compliance were provided with technical assistance and information regarding the requirements of the Ordinance. HHCS' Environmental Health Division (HHCS/EH) will conduct follow-up activities with the 3 facilities identified as being significantly out of compliance and possible enforcement action if those facilities continue to be out of compliance with the ordinance.

Staff will be exploring the possibility of adding an informational section around the Healthy Checkout ordinance on the City website for easy access to information around requirements, resources, as well as email links to submit questions/ inquires.

## BACKGROUND

In an effort to further diminish the human and economic costs of diseases associated with the consumption of sugary drinks by discouraging their distribution and consumption in Berkeley, HHCS staff have worked on the additional following initiatives under Healthy Berkeley:

- Implemented a new service providing one-on-one nutrition education for community members with high blood pressure readings, known diabetes, or risk for developing diabetes.
- Implemented programmatic enhancements with community partners that are either Healthy Berkeley funded agencies and/or work with Berkeley communities vulnerable to health disparities. Examples of this include (but not limited to):
  - Regular nutrition education activities are now conducted with older adults at South Berkeley Senior Center,
  - Referral pathways from LifeLong Medical's Heart 2 Heart screening program have been established to provide nutrition consultation for clients at risk for hypertension or heart disease;
  - One-on-one nutrition consultations have been initiated with African-American pregnant/ parenting women participating in the Berkeley Black Infant Health Program
  - Nutrition education outreach and resources are being provided for Latinx Day Laborers in partnership with the Multicultural Institute.

In its September 2020 Council report, the Health, Life Enrichment, Equity, and Community Policy Committee supported the ordinance as a strategy to create healthier food environments, including addressing:

- Health impacts of sugar and sodium consumption and related diseases.
- Consumers making healthier purchases and reducing impulse purchasing that may happen at checkout areas
- Research and initiatives in other states and countries supporting policy change for healthier food environments and the grocery/store checkout area as an ideal place to begin changing norms around healthy snacks and drinks.
- Outreach and focus groups with diverse Berkeley communities voicing support for healthy checkout options in grocery stores, and families and individuals being susceptible to impulse purchasing.

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no environmental sustainability and climate impacts as the result of activities conducted by HHCS/PH and to support this Ordinance.

## POSSIBLE FUTURE ACTION

No action is requested at this time.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

None.

CONTACT PERSON

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Ron Torres, Division Manager, HHCS-Environmental Health Division, 510-981-5261

Attachments:

1: Ordinance No, 7,734 0 N.S.

2: Item 16 – Healthy Checkout – Agenda September 22, 2020

## 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.

  
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Jesse Arreguin, Mayor

ATTEST:   
\_\_\_\_\_  
Mark Numainville, City Clerk

Date signed: October 20, 2020



Kate Harrison  
Councilmember District 4

# 16

ACTION CALENDAR  
September 22, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison and Sophie Hahn  
Subject: Healthy Checkout Ordinance

RECOMMENDATION

1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.
3. Refer to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending funding allocations, and to work with City staff to develop protocols for, implementation, education, and enforcement.

POLICY COMMITTEE RECOMMENDATION

On March 9, 2020, the Health, Life Enrichment, Equity and Community adopted the following action: M/S/C (Hahn/Kesarwani) to send the item, as revised, back to the City Council with a Positive Recommendation. Vote: All Ayes with Bartlett absent.

FINANCIAL IMPLICATIONS

1. Implementation of the ordinance would require staff time to educate the approximately 25 stores about what is required of them to comply with the ordinance. The Center for Science in the Public Interest has created a suggested list of products that meet the criteria of the ordinance. Healthy Berkeley funded programs Bay Area Community Resources and Community Health Education Institute are both funded for FY 21 to work with stores, including with store education and monitoring. Community partners could assist with implementation. Additionally, the City Council approved a budget recommendation from the Sugar Sweetened Beverage Product Panel of Experts in May 2019, which includes additional funding for FY 20 and 21. The total recommended budget for the City of Berkeley Public Health Division (PHD) is \$427,500 per fiscal year. In Fiscal Years 2016-17, 2017-18 and 2018-19, the City Council has voted to allocate \$225,000 per fiscal year to the PHD for the administration and evaluation of the Healthy Berkeley Program. This represents an increase of \$202,500 per year in Fiscal Years 2019-20 and 2020-21.
2. Enforcement should be focused primarily on positive education and secondarily on traditional enforcement. Enforcement of the ordinance may be incorporated



into the regular inspections of food retailers conducted by the City. Spot checks of items sold in each aisle is sufficient to monitor compliance.

## **BACKGROUND**

Today's food landscape plays a large role in determining what people purchase and consume. Unhealthy food and beverages are promoted and placed repeatedly throughout retail stores. Cheap, ready-to-eat foods high in salt, saturated fat, and added sugars dominate checkout aisles, where shoppers are more likely to make impulse purchases and where parents struggle with their children over demands to buy treats at the end of a shopping trip.

This ordinance would require all stores over 2,500 square feet in size that sell at least 25 linear feet of food to follow the requirements for Healthy Checkout, as written in the ordinance, the specifics of which are to be determined in the policy committee process. This would impact approximately 25 stores in Berkeley, including Safeway, Whole Foods, CVS, Walgreens, Berkeley Bowl, and Monterey Market.

### ***Health Impacts of Sugar and Sodium Consumption and Related Disease Disparities***

Impulse buying at checkout contributes to the high levels of sugar consumption in American diets. There has been much research and media attention<sup>1</sup> about the health impacts of excessive added sugar intake, including elevated risk of tooth decay, heart disease, and Type 2 diabetes.<sup>2</sup> The adverse health effects of added sugar consumption further entrench health disparities, burdening people of color more than white populations. Currently, Type 2 diabetes is on the rise across the country; one in three children and one of two children of color will be diagnosed in their lifetime.<sup>3</sup>

Diets that are high in sodium are linked to high blood pressure, heart disease, and stroke,<sup>4</sup> all of which disproportionately affect African Americans and communities of color.<sup>5</sup>

### ***Health Equity and Inequity***

Berkeley also has health disparities in diet-related disease. In 2014, African American residents were four times more likely than White residents to be diagnosed with diabetes and 14 times more likely to be hospitalized due to its effects.<sup>6</sup> This gap has decreased since 2014, but the disparity continues to exist.<sup>7</sup> Rates of hospitalization for heart disease and high blood pressure are also significantly higher among African-American residents than White and Latino residents.<sup>5</sup>

On a national scale, racial and ethnic minorities experience diet-related disparities – diets high in fat and salt and low in fruits, vegetables, and whole grains.<sup>8</sup> These diet-related disparities lead to additional health disparities including heart disease and diabetes, as discussed above. Providing more nutritious options will benefit people of all backgrounds, but it will disproportionately benefit low-income communities and communities of color who are most affected by nutrition-related health issues.

### ***Checkout Areas of Grocery Stores Contribute to the Problem***

Consumers are trying to make healthier purchases. A 2019 report found that 73 percent of shoppers are concerned about the nutritional content of their food.<sup>9,10</sup>

Despite consumer desire to select healthier foods, unhealthy foods are prevalent in checkout areas in a wide variety of retail stores. A national study of 8,600 stores – including supermarkets, convenience stores, drug stores, and dollar stores – found that 88 percent display candy at checkout and one-third (34 percent) sell sugar-sweetened beverages.<sup>11</sup> Only 24 percent of stores sell water at checkout, and only 13 percent sell fresh fruits or vegetables at checkout.<sup>8</sup> Almost all supermarkets (91 percent) display candy and 85 percent sell soda and other sugary drinks at checkout.<sup>8</sup>

In 2018, a Berkeley-based youth group assessed a sample of 35 Berkeley stores including Walgreens, Safeway, Trader Joes, Target, Berkeley Bowl, Dollar Tree and others. Data was collected from 16,404 facings, which are the display of a single product on the shelf (not including the items stacked behind it). They found that 69 percent of beverages and 81 percent of foods sold in the checkout area of surveyed stores were considered unhealthy using the National Alliance for Nutrition and Activity Model Nutrition Standards for Checkout.<sup>12</sup>

Research shows that food choices are strongly affected by the environments in which they are made. The aim of placing food and beverages at checkout is to induce unplanned purchases; thus, unhealthy checkout options undermine consumers' efforts to purchase healthier foods.<sup>13</sup> The placement of snacks near the register increases the likelihood that people purchase those foods.<sup>14</sup> In addition, most of the candy, soda, and chips in checkout aisles are placed at eye-level and within reach of children, undermining parents' efforts to feed their children well.<sup>15</sup>

Three-quarters of parents report that it is hard to shop at grocery stores because unhealthy food is so prevalent.<sup>16</sup> Healthy checkout aisles provide all families more opportunities to say yes to their kids.

### ***Grocery Stores are a Prime Place for Policy Change***

Grocery stores are Americans' top source for food and beverages, providing more than 60 percent of calories.<sup>17</sup> Ninety percent of Supplemental Nutritional Assistance Program (SNAP) dollars are redeemed at supermarkets and grocery stores.<sup>18</sup> Though grocery stores sell a wide range of healthy products, they are also the largest contributor of unhealthy food and beverages to the diet. Seventy percent of the sugary beverages children consume come from food retail.<sup>19</sup>

Sugary drinks are promoted repeatedly throughout stores; appearing in as many as 25 different places in a single grocery store.<sup>20</sup> At checkout, these drinks make up 60% of beverage offerings.<sup>21</sup>

Healthy Checkout also provides an opportunity for grocery stores. When United Kingdom grocery stores provided healthier options at checkout, consumers responded positively and provided a "responsible" branding opportunity for those stores.<sup>22</sup>

Consumers want healthier options, and stores can use this fact to their advantage.

For all these reasons, grocery store checkout lanes are an ideal place to begin changing norms around healthy snacks and drinks.

### ***Strategies to Reduce Sugar Consumption in Berkeley***

In 2014, Berkeley became the first city in the country to tax the distribution of sugar sweetened beverages. In the last five years, the City created the Healthy Berkeley program which supports the Berkeley Unified School District garden education program as well as community programs that educate residents about nutrition and are changing norms around beverage choice.

This ordinance is another effort to create a healthy food environment that would support families by providing them the ability to avoid high-calorie, low-nutrient food and beverages when they do their grocery and other shopping. Individuals and families who want to purchase sugary drinks, candy, chips, and other sweet and salty snacks will be able to find them in their respective aisles in the center of stores. By changing checkout norms, shoppers and their children face less temptation to consume sugary foods and there is less reinforcement of these unhealthy choices.

### ***Berkeley Residents are Demanding Checkout Changes***

In 2018, Berkeley-based youth advocates conducted four focus groups where adults and adolescents unanimously supported removing unhealthy food and beverages from grocery store checkout lanes and requiring stores to have healthy checkout aisles. Participants suggested retailers stock checkout with water, fruit juice, coffee, and tea. They also requested that gum, mints and healthy snacks be available. Using the National Alliance for Nutrition and Activity standards as a guide, this ordinance aims to create checkout aisles where beverages with no added sugars or artificial sweeteners, such as 100% juice and water are considered healthy beverages, and where healthy snacks are predominantly fruits, nuts, and vegetables.

In order to streamline implementation and enforcement, the proposed Healthy Checkout Ordinance restricts added sugars and sodium for food products sold at checkout.

### ***Outreach and Focus Groups***

The Center for Science in the Public Interest performed four focus group studies in 2019 regarding the proposed Healthy Checkout Ordinance. The focus groups were intentionally diverse but focused on youth and health advocates. The four focus groups were 1) Berkeley High School students 2) Latinx women in South Berkeley, conducted in Spanish 3) African-American women, hosted by Healthy Black Families and 4) North and Northwest Berkeley residents, hosted by Urban Adamah. From the focus groups, advocates learned that half reported feeling stress at checkout, there was unanimous support for healthy checkout options in grocery stores, and parents and children are susceptible to impulse purchases.

There were also nine interviews conducted with a dentist, a Community Health Commissioner, two non-profit leaders, four local retail managers, and one store owner.

100% of the retailers were interested in making healthier changes and 50% of the managers were interested in supporting the ordinance directly. All retailers also stated that straightforward guidelines would help with implementation.

The City has also begun some outreach, with positive results. Healthy Checkout was recently polled in the Berkeley Considers engagement portal, where over 95% of respondents were in favor. Over 100 people responded to the question.

### ***Healthy Checkout Reduces Impulse Buying of Sugary Snacks and Drinks***

A recent study by the University of Cambridge analyzed purchasing data for common unhealthy checkout foods from 2013-2017 in nine U.K. supermarket chains. They found that consumers purchased 17 percent fewer sweets, chocolate and potato chips. One year later the decline in unhealthy purchases remained steady at 16 percent.<sup>1</sup>

The Healthy Checkout Ordinance will create a level playing field for customers and retailers and support consistent, healthy snacking norms for shoppers and families.

### ***Providing Alternatives at Checkout in Berkeley: Ordinance Elements***

The attached ordinance (Attachment 1):

- limits food and beverage products sold at the checkout area;
- applies to approximately 25 stores in Berkeley that are over 2,500 square feet (see attached) and have more than 25 linear feet of food for sale; and
- allows only beverages with no added sugars and no artificial sweeteners and food items with limited calories, added sugars, and sodium to be sold in the checkout area.

These limitations allow for healthy alternatives to proliferate in checkout areas. Stores will continue to sell food items in their checkout areas, and limiting the salt and added sugars will lead to stores selling fruits, vegetables, seeds, nuts, water, milk, and other healthier options.

The attached ordinance still has some unanswered questions that will require input from public health advocates, City staff, food retailers, and the policy committee. Those questions are:

- how to define healthy food, and what parameters are most appropriate;
- date of implementation;
- appropriate definition of “checkout area”. The attached draft ordinance includes the definition of “checkout area” as defined in AB 765, but that definition may not appropriately reflect the needs of all large retail stores in Berkeley.

### **RATIONALE FOR RECOMMENDATION**

Requiring the approximately 25 stores to follow the requirements for Healthy Checkout would eliminate the encouragement of unplanned purchases of unhealthy foods and beverages. Such a change would thus contribute to healthy norms and reduce the consumption of sugary drinks and unhealthy foods in the City of Berkeley.

### ALTERNATIVES CONSIDERED

In February 2019, Assemblymember Buffy Wicks introduced AB 765, a bill which would implement Healthy Checkout statewide. However, as the bill has not advanced from committee since April, progress at the state level is not guaranteed.

In the United Kingdom, many grocery stores have voluntarily undertaken a healthy checkout initiative.<sup>22</sup> However, without clear standards for what constitutes “healthy” or enforcement, the voluntary model is too modest to draw conclusions about long-term health impacts. In addition, the interviews with retailers indicated that voluntary compliance without straightforward guidelines would be more difficult to follow.

### CONTACT PERSON

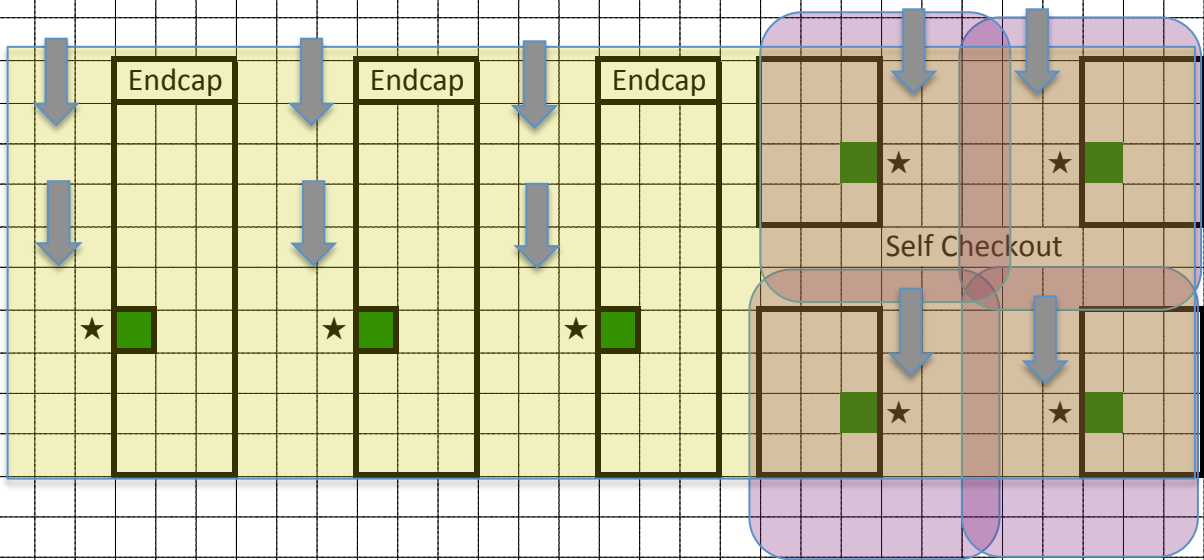
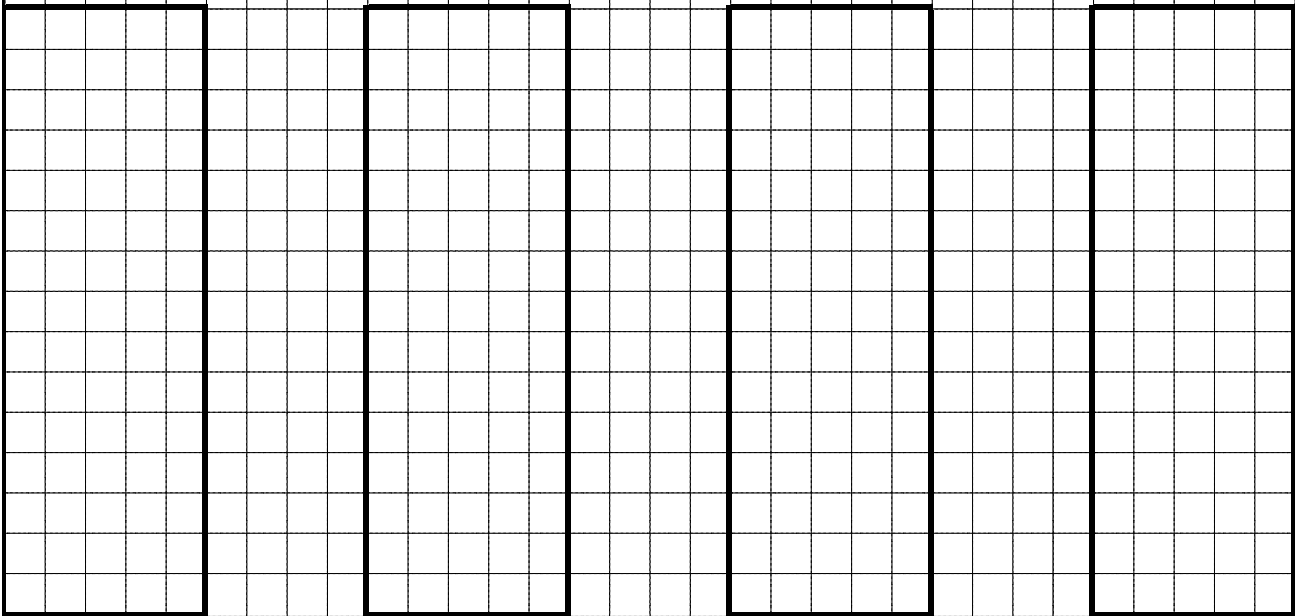
Kate Harrison, District 4

### ATTACHMENTS:

- 1: Draft Ordinance
- 2: [Checkout Areas Diagram](#)
- 3: [Retailer Factsheet](#)
- 4: [Sample Healthy Checkout Stock Items](#)

- <sup>1</sup> Brody, JE. The Downside of Having a Sweet Tooth. *The New York Times*. July 22, 2019. <https://www.nytimes.com/2019/07/22/well/eat/the-downside-of-having-a-sweet-tooth.html>.
- <sup>2</sup> U.S. Department of Health and Human Services and U.S. Department of Agriculture. *2015–2020 Dietary Guidelines for Americans 8th Edition*. Washington, DC; HHS and USDA, 2015.
- <sup>3</sup> *Lancet Diabetes Endocrinol*. 2014 Nov;2(11):867-74. doi: 10.1016/S2213-8587(14)70161-5. Epub 2014 Aug 12.
- <sup>4</sup> <https://www.hsph.harvard.edu/nutritionsource/salt-and-sodium/>
- <sup>5</sup> <https://www.cdc.gov/mmwr/volumes/67/ss/ss6705a1.htm>
- <sup>6</sup> City of Berkeley. *Health Status Report 2014*. Berkeley, CA; 2014.
- <sup>7</sup> City of Berkeley. *Health Status Report 2018*. Berkeley, CA; 2018.
- <sup>8</sup> Satia, Jessie A. *Diet-Related Disparities: Understanding the Problem and Accelerating Solutions*. J. Am Diet Assoc. 2009 April.
- <sup>9</sup> Food Marketing Institute. *The Power of Health and Well-Being in Food Retail*. Arlington, VA: FMI; 2019.
- <sup>10</sup> International Food Information Council Foundation. *2019 Food & Health Survey*. Washington, D.C.: IFIC; 2019.
- <sup>11</sup> Barker D, Quinn C, Rimkus L, Zenk S, Chaloupka F. *Availability of Healthy Food Products at Check-out Nationwide, 2010-2012*. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago; 2015.
- <sup>12</sup> The Center for Science in the Public Interest. *Model Nutrition Standards for Checkout*. <https://cspinet.org/protecting-our-health/nutrition/model-nutrition-standards-checkout>.
- <sup>13</sup> Center for Science in the Public Interest. *Temptation at Checkout: The Power of Point-of-Sale Retail Food Marketing*. Washington, D.C.: CSPI; 2015.
- <sup>14</sup> Kerr J, Sallis JF, Bromby E, Glanz K. Assessing Reliability and Validity of the GroPromo Audit Tool for Evaluation of Grocery Store Marketing and Promotional Environments. *J Nutr Educ Behav*. 2012;44(6):597-603. doi:10.1016/j.jneb.2012.04.017.
- <sup>15</sup> Horsley JA, Absalom KA, Akiens EM, Dunk RJ, Ferguson AM. The Proportion of Unhealthy Foodstuffs Children Are Exposed to at the Checkout of Convenience Supermarkets. *Public Health Nutr*. 2014;17(11):2453-2458.
- <sup>16</sup> Caravan ORC International. *Checkout Polling: Online Survey of 1,024 adults*. Princeton, NJ; 2016.
- <sup>17</sup> Mancino L, Guthrie J. *Supermarkets, Schools, and Social Gatherings: Where Supplemental Nutrition Assistance Program and Other U.S. Households Acquire their Foods Correlates with Nutritional Quality*. Washington, DC: U.S. Department of Agriculture Economic Research Center; 2018.
- <sup>18</sup> U.S. Department of Agriculture Food and Nutrition Service. *2015 SNAP Retailer Management Year-End Summary*. Washington, D.C.: USDA; 2015.
- <sup>19</sup> Poti JM, Slining MM, Popkin BM, Kenan WR. Where are kids getting their empty calories? Stores, schools, and fast food restaurants each play an important role in empty calorie intake among US children in 2009-2010. *J Acad Nutr Diet*. 2014;114(6):908-917. doi: 10.1016/j.jand.2013.08.012.
- <sup>20</sup> Cohen DA, Bogart L, Castro G, Rossi AD, Williamson S, Han B. Beverage marketing in retail outlets and The Balance Calories Initiative. *Prev Med*. 2018;115:1-7.
- <sup>21</sup> Fielding-Singh P, Almy J, Wootan MG. *Sugar Overload: Retail Checkout Promotes Obesity*. Washington, DC: Center for Science in the Public Interest, 2014.
- <sup>22</sup> Winkler, Lise L, et al. *Substituting Sugar Confectionary with Fruit and Healthy Snacks at Checkout – A Win-Win Strategy for Consumers and Food Stores?* BMC Public Health. 2016

Traditional Large Grocery Store Layout w/ Self Checkout - 3' Point of Sale, 3' Checkout Area

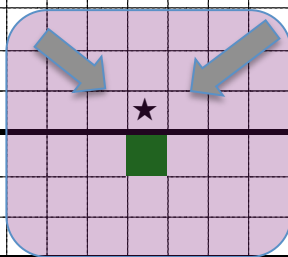
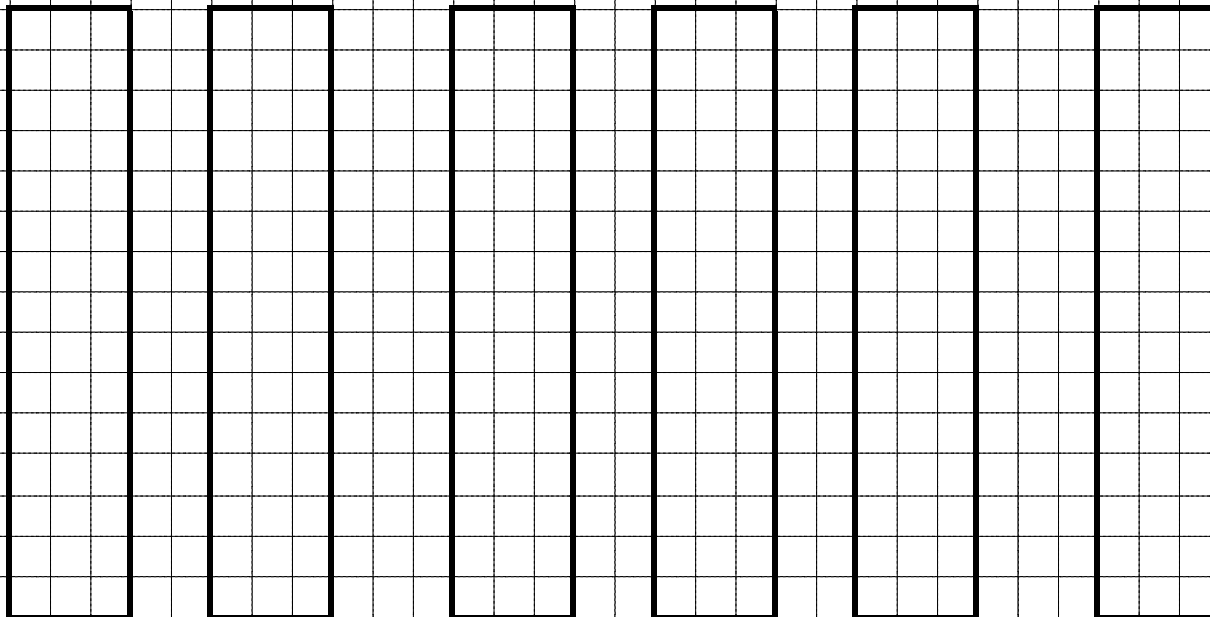


■ Point of Sale


■ 3 foot radius from point of sale

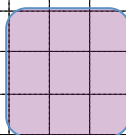
■ designated checkout area

### Traditional Convenience/Corner Store Layout - 3' Point of Sale, 3' Checkout Area



Checkout Counter

 Point of Sale

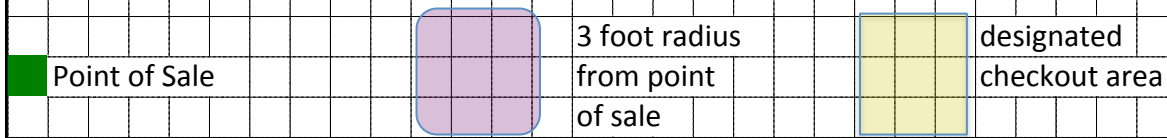
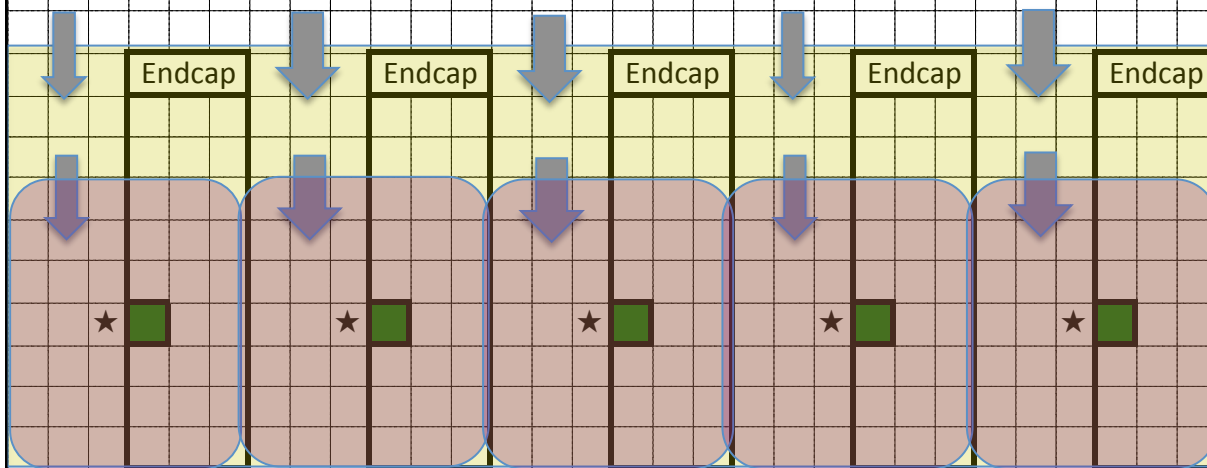
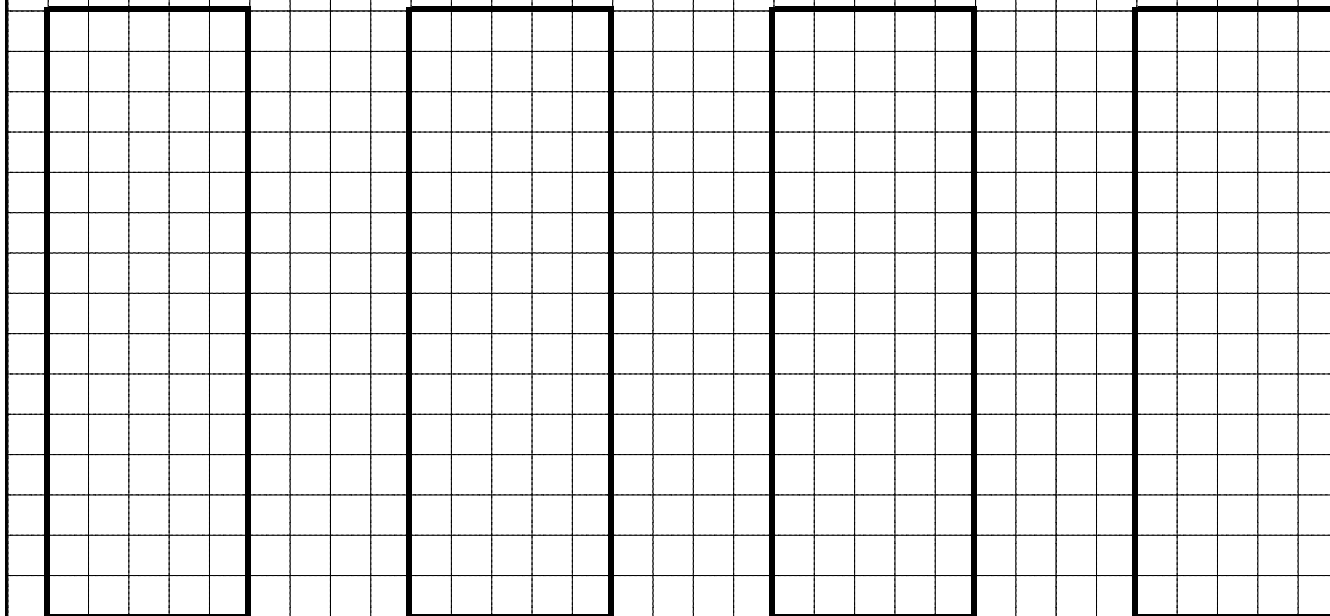


3 foot radius  
from point  
of sale

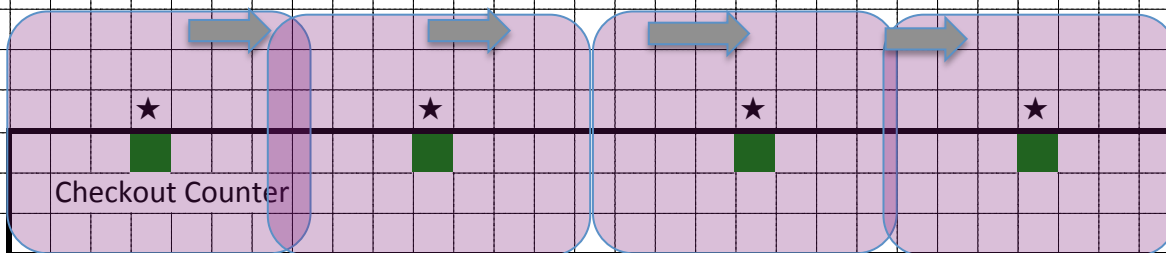
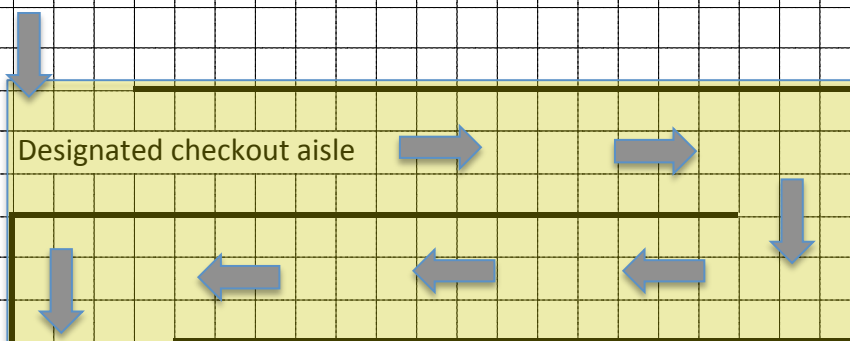
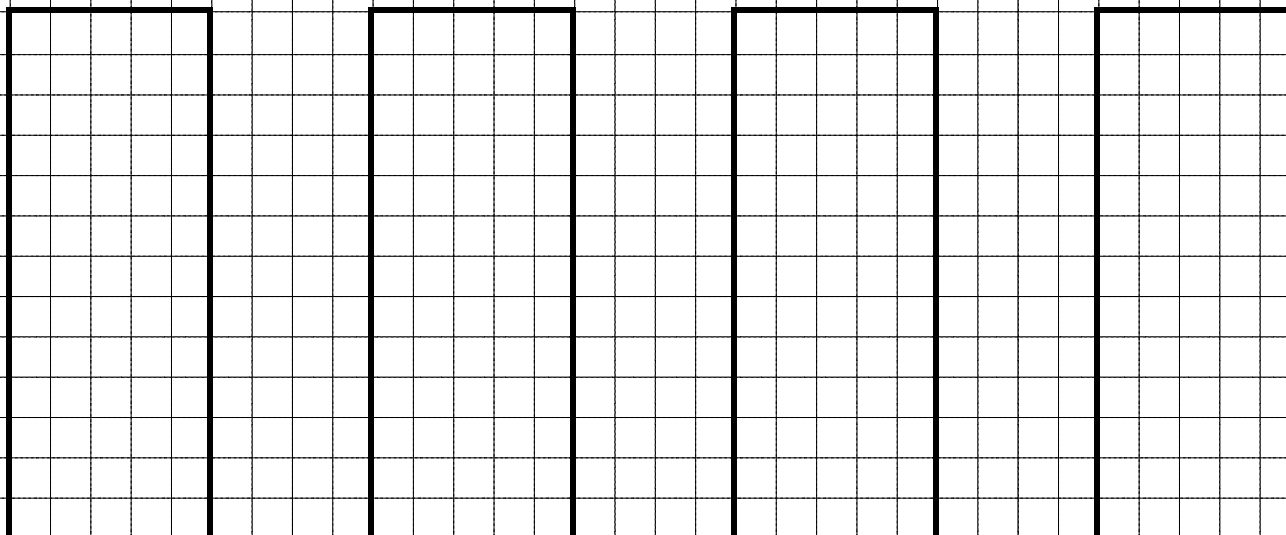
\*\*\*No designated  
checkout area



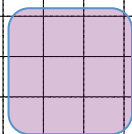
Traditional Large Grocery Store Layout - 3' Point of Sale, 3' Checkout Area



### Common Drug Store/Target Layout - 3' Point of Sale, 3' Checkout Area



Point of Sale



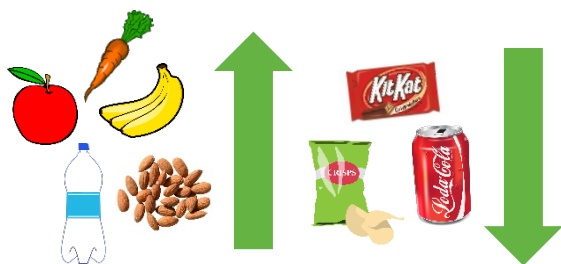
3 foot radius from point of sale



3 foot radius from designated checkout area



## Healthy Checkout: Good for Business, Good for Customers



### CONSUMER PREFERENCES ARE CHANGING

- Consumers are purchasing healthier, fresher food (Gasparro, 2017).
- 33% of shoppers are looking for low-sugar products, and 32% are looking for low sodium (FMI, 2017).
- **75% of people say that it is hard for parents to shop with children at grocery stores because there is so much junk food** (Caravan ORC International, 2016).

### BENEFITS TO BUSINESS

- Retailers lose money when fresh produce is not purchased and goes to waste. **Displaying fresh produce at checkout can help reduce loss** (Cernansky, 2017; Fulton, 2010).
- Researchers found that when the shelves near the checkout counter in a hospital cafeteria were **stocked with 75% healthy choices, as opposed to 25%, sales of healthy foods were boosted** (Van Kleef, 2012).
- Healthy checkout distinguishes businesses as **responsible retailers** and **strengthens customer loyalty** without reducing profits (Winkler, 2016).

# 49%

increase in sales of healthy items during the first three months that LiVe Well lanes were open at a grocery store in Utah (Cowley, 2017)

"I used to probably sell a case of bananas every three days, now it's pretty much two a day—two cases a day."

Romny Tejada, Owner, Romny Mini Mart  
on moving produce to the front of the store (Fulton, 2010)

"...some of the (healthy) items that sold up here weren't selling back in the aisles of the store. But we brought 'em up front and all of a sudden, our sales doubled, sometimes even tripled..."

Jim Oppe, Owner, Foodland  
(CDC, 2014)

## A COMPETITIVE EDGE FOR RETAILERS

- Millennials are looking for snacks that are less processed and have few ingredients (Fromm, 2010).
- Soda sales are declining. Retail sales of bottled water are projected to increase from \$13.1 billion in 2013 to \$17 billion in 2018 (Hennessey, 2014).
- Magazine sales account for about one-third of total checkout profits (MPA, 2009). **60% of customers buy magazines at checkout at least once a month.** Plus, 39% buy batteries or flashlights at least monthly (FMI, 2012).
- 78% of people say checkouts are [currently] stocked with a lot of foods and beverages they do not want to buy; **80% would prefer stores offer more healthy items at checkout** (Caravan ORC International, 2016).

The convenience chain 7-Eleven sells

# SEVEN TIMES

more **bananas** each year than Snickers, its top-selling candy bar (Horovitz, 2014)

## Retailer Success Stories

### ASSOCIATED FOOD STORES, UT:

- Associated Food Stores have LiVe Well Lanes in 43 stores. **These lanes have been visited more than 8 million times in their first three months, with more than 60,000 healthy items sold** (Cowley, 2017).

### HARMONS GROCERY, UT:

- Adding healthy checkout lanes improved their image in the community and allowed them to align their company's values and culture with that of health and wellness (email communication, August 2017).
- Certain items saw an increase in sales after being moved to the healthy checkout aisle: yogurt (47%), hardboiled eggs (56%), and dried fruit (144%) (email communication, August 2017).

### CANDY-FREE CHECKOUT IN THE U.K.

- Lidl eliminated candy from all checkout lanes across their 600 U.K. locations after finding that the **healthy pilot lanes received 20% more traffic than the candy-filled aisles** (Clark, 2014). Not long after, Tesco, Aldi, Boots, Waitrose, and Marks & Spencer also removed candy from their checkout aisles (Almy, 2015).

### RALEY'S, CA:

- As of 2016, all 120 locations sell better-for-you products at checkout, including granola bars and free fruit for kids (Minor, 2016).

"We're learning quickly that **our customers want more [healthy checkouts]**. We recognize the challenges for moms and dad who are going through those check stands and their children are quickly distracted by treats."

Chelsea Minor, Director of PR & Public Affairs, Raley's (Pawlowski, 2015)

## What does Healthy Checkout Mean for Berkeley Retailers?

*At all hours during which the retail store is open to the public, only the following foods and beverages are allowed in all checkout areas*

### Beverages

**Water – carbonated with no added sugars**

**EX: Dasani Purified Water, FIJI Water, LaCroix Sparkling Water, Ayala's Herbal Water Sparkling, and Perrier Sparkling Natural Mineral Water**



**Coffee or tea – no added sugars**

**EX: Pure Leaf unsweetened Black Tea**



**100% fruit juice or juice combined with water – no added sugars**

**EX: Capri Sun 100% Juice, Minute Maid 100% apple juice, Mott's 100% Juice Fruit Punch, and Tropicana 100% Orange Juice**



**100% vegetable juice – with no added sugars and no more than 230 mg of sodium.**

**EX: V8 Low Sodium 100% Vegetable Juice, 5.5 fl oz or 11.5 fl oz**



**Dairy milk or calcium – no added sugars**

**EX: Nestlé Nesquik Chocolate LowFat Milk 100 Calories (No Sugar Added) and Soy Dream Enriched Vanilla Soymilk**



**Gum and Mints****No Added Sugars****EX: 5, Dentyne, Extra, Orbit, and Trident****Food Items****Bars with fruit, nuts, or seeds listed as the first two ingredients with no more than 5 grams added sugars per labeled serving****EX: Kashi Chewy Granola Bars, 1.2 oz and Chewy Chocolate Brownielicious Snack Bars****Fresh, canned, or otherwise hermetically sealed dried fruits, vegetables, or legumes with no more than 5 grams added sugars and 230 milligrams of sodium per labeled serving****Hummus and bean dips with no more than 5 grams added sugars and 230 milligrams of sodium per labeled serving****EX: Sabra Hummus (all varieties) and Fritos Bean Dip****Packages that contain one hundred percent nuts or seeds, nut butters, and snack mixes with fruit, nuts, or seeds listed as the first two ingredients, and with no more than 5 grams added sugars and 230 milligrams of sodium per labeled serving****Crackers with “whole” wheat or another “whole” grain or flour, including brown rice, oats, and legumes, listed as the first ingredient, with no more than 5 grams added sugars and 230 milligrams of sodium per labeled serving****EX: Lance Whole Grain Peanut Butter Cracker Sandwiches****Popcorn with no more than 5 grams added sugars and 230 milligrams of sodium per labeled serving****EX: Smartfood White Cheddar Cheese Flavored Popcorn or SkinnyPop Original Skinny Pack**

**Yogurt or cheese with no more than 5 grams added sugars per labeled serving**  
**EX: Horizon Organic Mozzarella String Cheese Stick**



**Checkout Area refers to any area that is accessible to a customer of the Large Retail Store that is either within a 3-foot distance of any register or designated primarily for or utilized primarily by customers to wait in line to make a purchase at a Register.**

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## Sample Healthy Checkout Stock

### **Chobani Clingstone Peach Less Sugar Greek Yogurt**

*Brand:* Chobani

*Parent Company:* Chobani Global Holdings, Inc.

*Added Sugar:* 5g

*Sodium:* 50mg



### **Siggi's Vanilla Skyr**

*Brand:* Siggi's

*Parent Company:* Lactalis

*Added Sugar:* 5g

*Sodium:* 55mg



### **Boom Chicka Pop Sea Salt Popcorn**

*Brand:* Angie's Boom Chicka Pop

*Parent Company:* Conagra Brands

*Added Sugar:* 0g

*Sodium:* 130mg



### **Blueberry Lavender Hemp Lärabar**

*Brand:* Lärabar

*Parent Company:* General Mills

*Added Sugar:* 0g

*Sodium:* 0mg



### **Blueberry Vanilla Cashew Kind Bar**

*Brand:* Kind

*Parent Company:* Mars

*Added Sugar:* 4g

*Sodium:* 20mg



**Vegan White Cheddar Hippeas**

*Brand:* Hippeas Organic Chickpea Snacks

*Parent Company:* Green Park Snacks Ltd.

*Added Sugar:* 1g

*Sodium:* 140mg

\*Not applicable if final legislation includes food categories

**Dried Chili Mango**

*Brand:* Peeled

*Parent Company:* Peel Snacks

*Added Sugar:* 0g

*Sodium:* 35mg

**Terra Original Chips**

*Brand:* Terra

*Parent Company:* Hain Celestial Group

*Added Sugar:* 0g

*Sodium:* 110mg

\*Not applicable if final legislation includes food categories

**Smart50 Sea Salt Popcorn**

*Brand:* Smartfood

*Parent Company:* PepsiCo

*Added Sugar:* 0g

*Sodium:* 150mg

**Kashi Peanut Peanut Butter Granola Bar**

*Brand:* Kashi

*Parent Company:* Kellogg's

*Added Sugar:* 5g

*Sodium:* 100mg



**Snak Club Yogurt Trail Mix**

*Brand:* Snak Club

*Parent Company:* Insignia Capital Group

*Added Sugar:* 3g

*Sodium:* 0mg



**Dry Roasted Pistachios**

*Brand:* Planters

*Parent Company:* Kraft-Heinz

*Added Sugar:* 0g

*Sodium:* 150mg



**No Sugar Added Organic Applesauce**

*Brand:* Mott's

*Parent Company:* Keurig Dr. Pepper

*Added Sugar:* 0g

*Sodium:* 5mg



**Diced Yellow Cling Peaches in 100% Fruit Juice**

*Brand:* Dole

*Parent Company:* Dole Food Company, Inc.

*Added Sugar:* 0g

*Sodium:* 5mg



**Toasted Coconut Almond Granola**

*Brand:* Bear Naked

*Parent Company:* Kellogg's

*Added Sugar:* 5g

*Sodium:* 10mg



**Trident Spearmint Gum**

Brand: Trident

Parent Company: Mondelez

Added Sugar: 0g

Sodium: 0 mg

**Skinny Pop Popcorn**

Brand: Skinny Pop

Parent Company: Amplify Snack Brands, Inc.

Added Sugar: 0g

Sodium: 75 mg

**Organic Mango Fruit Leather Buttons**

Brand: Trader Joe's

Parent Company: Aldi Nord

Added Sugar: 3g

Sodium: 0 mg

**Kids Organic Whole Grain Bites**

Brand: Quaker

Parent Company: PepsiCo

Added Sugar: 4g

Sodium: 55 mg

**New Zealand Apple Rings**

Brand: Trader Joe's

Parent Company: Aldi Nord

Added Sugar: 0g

Sodium: 0 mg



**Blue Diamond Whole Natural Almonds**

*Brand:* Blue Diamond

*Parent Company:* Co-op

*Added Sugar:* 0g

*Sodium:* 0 mg

**Almond Butter Chocolate Brownie Lärabar**

*Brand:* Lärabar

*Parent Company:* General Mills

*Added Sugar:* 2g

*Sodium:* 170 mg

**Mint Chip Brownie Lärabar**

*Brand:* Lärabar

*Parent Company:* General Mills

*Added Sugar:* 4g

*Sodium:* 0 mg

**Apple Mango Fruit Bar**

*Brand:* Trader Joe's

*Parent Company:* Aldi Nord

*Added Sugar:* 0g

*Sodium:* 20 mg

**Activated Smokey Barbeque Sprouted Seeds**

*Brand:* Living Intentions

*Parent Company:* N/A

*Added Sugar:* 0g

*Sodium:* 230 mg



### Tart Cherry and Apple Superfood Bites

Brand: Urban Foods

Parent Company: N/A

Added Sugar: 3g

Sodium: 0 mg



### Mesquite Barbeque Crunchy Broad Beans

Brand: Bada Bean Bada Boom

Parent Company: Enlightened

Added Sugar: 1g

Sodium: 150 mg



### Apple Mango Fruit Sauce Crushers

Brand: Trader Joe's

Parent Company: Aldi Nord

Added Sugar: 0g

Sodium: 10 mg



### Apple Cinnamon Crunchy Rice Rollers

Brand: Crunchy Rollers

Parent Company: General Mills

Added Sugar: 3g\*

Sodium: 0 mg

\*Estimate (contains 3g total sugar)



### Dasani Sparkling, Raspberry Lemonade

Brand: Dasani

Parent Company: Coca Cola

Added Sugar: 0g

Sodium: 35mg



**Bubly, Strawberry**

*Brand: Bubly*

*Parent Company: PepsiCo*

*Added Sugar: 0g*

*Sodium: 0g*



**Spindrift, Blackberry**

*Brand: Spindrift*

*Parent Company: VMG Partners*

*Added Sugar: 0g*

*Sodium: 0mg*



**La Colombe Pure Black Cold-Pressed Coffee**

*Brand: La Colombe*

*Parent Company: La Colombe*

*Added Sugar: 0g*

*Sodium: 25mg*



**Aquafina**

*Brand: Aquafina*

*Parent Company: PepsiCo*

*Added Sugar: 0g*

*Sodium: 0mg*



**Minute Maid 100% Orange Juice**

*Brand: Minute Maid*

*Parent Company: Coca-Cola*

*Added Sugar: 0g*

*Sodium: 25 mg*







Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
September 22, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Kate Harrison and Sophie Hahn  
Subject: Healthy Checkout Ordinance

RECOMMENDATION

1. Adopt an ordinance requiring stores over 2,500 square feet in size to sell more nutritious food and beverage options in their checkout areas.
2. Refer to the City Manager to determine funding and staffing needs to implement and enforce the ordinance and sources of funding to support this program.
3. Refer to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending funding allocations, and to work with City staff to develop protocols for, implementation, education, and enforcement.

POLICY COMMITTEE RECOMMENDATION

On March 9, 2020, the Health, Life Enrichment, Equity & Community Committee adopted the following action: (Hahn/Kesarwani) to send the item to Council with a positive recommendation and the following amendments requested of the author: a. For the Council report, add a third recommendation to the item to request a referral to the Sugar Sweetened Beverage Product Panel of Experts to consider recommending allocations to support implementation, education & enforcement and to work with staff to develop protocols for the same. Additionally, under financial implications, include that enforcement of the ordinance should be focused on education and only secondarily, on traditional enforcement mechanisms. b. For the Ordinance: Under 9.82.030, strike the reference to chips and change 230 mg of sodium to 200 mg; under 9.82.060 include an effective date of January 1, 2021, and an enforcement and ongoing education date of July 1, 2021; and amend under definition 9.82.020, the defined term “Endcap” should become “Checkout Endcap” and substitutions made throughout; Checkout Endcap is defined as the product displays at the endpoints of areas designated or utilized primarily for waiting in line to make a purchase. Vote: Ayes – Kesarwani, Hahn; Noes – None; Abstain – None; Absent – Bartlett.

FINANCIAL IMPLICATIONS

1. Implementation of the ordinance would require staff time to educate the approximately 25 stores about what is required of them to comply with the ordinance. The Center for Science in the Public Interest has created a suggested list of products that meet the criteria of the ordinance. Healthy Berkeley funded

programs Bay Area Community Resources and Community Health Education Institute are both funded for FY 21 to work with stores, including with store education and monitoring. Community partners could assist with implementation. Additionally, the City Council approved a budget recommendation from the Sugar Sweetened Beverage Product Panel of Experts in May 2019, which includes additional funding for FY 20 and 21. The total recommended budget for the City of Berkeley Public Health Division (PHD) is \$427,500 per fiscal year. In Fiscal Years 2016-17, 2017-18 and 2018-19, the City Council has voted to allocate \$225,000 per fiscal year to the PHD for the administration and evaluation of the Healthy Berkeley Program. This represents an increase of \$202,500 per year in Fiscal Years 2019-20 and 2020-21.

2. Enforcement should be focused primarily on positive education and secondarily on traditional enforcement. Enforcement of the ordinance may be incorporated into the regular inspections of food retailers conducted by the City. Spot checks of items sold in each aisle is sufficient to monitor compliance.

### BACKGROUND

Today's food landscape plays a large role in determining what people purchase and consume. Unhealthy food and beverages are promoted and placed repeatedly throughout retail stores. Cheap, ready-to-eat foods high in salt, saturated fat, and added sugars dominate checkout aisles, where shoppers are more likely to make impulse purchases and where parents struggle with their children over demands to buy treats at the end of a shopping trip.

This ordinance would require all stores over 2,500 square feet in size that sell at least 25 linear feet of food to follow the requirements for Healthy Checkout, as written in the ordinance, the specifics of which are to be determined in the policy committee process. This would impact approximately 25 stores in Berkeley, including Safeway, Whole Foods, CVS, Walgreens, Berkeley Bowl, and Monterey Market.

### ***Health Impacts of Sugar and Sodium Consumption and Related Disease Disparities***

Impulse buying at checkout contributes to the high levels of sugar consumption in American diets. There has been much research and media attention<sup>1</sup> about the health impacts of excessive added sugar intake, including elevated risk of tooth decay, heart disease, and Type 2 diabetes.<sup>2</sup> The adverse health effects of added sugar consumption further entrench health disparities, burdening people of color more than white populations. Currently, Type 2 diabetes is on the rise across the country; one in three children and one of two children of color will be diagnosed in their lifetime.<sup>3</sup>

Diets that are high in sodium are linked to high blood pressure, heart disease, and stroke,<sup>4</sup> all of which disproportionately affect African Americans and communities of color.<sup>5</sup>

### ***Health Equity and Inequity***

Berkeley also has health disparities in diet-related disease. In 2014, African American residents were four times more likely than White residents to be diagnosed with

diabetes and 14 times more likely to be hospitalized due to its effects.<sup>6</sup> This gap has decreased since 2014, but the disparity continues to exist.<sup>7</sup> Rates of hospitalization for heart disease and high blood pressure are also significantly higher among African-American residents than White and Latino residents.<sup>5</sup>

On a national scale, racial and ethnic minorities experience diet-related disparities – diets high in fat and salt and low in fruits, vegetables, and whole grains.<sup>8</sup> These diet-related disparities lead to additional health disparities including heart disease and diabetes, as discussed above. Providing more nutritious options will benefit people of all backgrounds, but it will disproportionately benefit low-income communities and communities of color who are most affected by nutrition-related health issues.

### ***Checkout Areas of Grocery Stores Contribute to the Problem***

Consumers are trying to make healthier purchases. A 2019 report found that 73 percent of shoppers are concerned about the nutritional content of their food.<sup>9,10</sup>

Despite consumer desire to select healthier foods, unhealthy foods are prevalent in checkout areas in a wide variety of retail stores. A national study of 8,600 stores – including supermarkets, convenience stores, drug stores, and dollar stores – found that 88 percent display candy at checkout and one-third (34 percent) sell sugar-sweetened beverages.<sup>11</sup> Only 24 percent of stores sell water at checkout, and only 13 percent sell fresh fruits or vegetables at checkout.<sup>8</sup> Almost all supermarkets (91 percent) display candy and 85 percent sell soda and other sugary drinks at checkout.<sup>8</sup>

In 2018, a Berkeley-based youth group assessed a sample of 35 Berkeley stores including Walgreens, Safeway, Trader Joes, Target, Berkeley Bowl, Dollar Tree and others. Data was collected from 16,404 facings, which are the display of a single product on the shelf (not including the items stacked behind it). They found that 69 percent of beverages and 81 percent of foods sold in the checkout area of surveyed stores were considered unhealthy using the National Alliance for Nutrition and Activity Model Nutrition Standards for Checkout.<sup>12</sup>

Research shows that food choices are strongly affected by the environments in which they are made. The aim of placing food and beverages at checkout is to induce unplanned purchases; thus, unhealthy checkout options undermine consumers' efforts to purchase healthier foods.<sup>13</sup> The placement of snacks near the register increases the likelihood that people purchase those foods.<sup>14</sup> In addition, most of the candy, soda, and chips in checkout aisles are placed at eye-level and within reach of children, undermining parents' efforts to feed their children well.<sup>15</sup>

Three-quarters of parents report that it is hard to shop at grocery stores because unhealthy food is so prevalent.<sup>16</sup> Healthy checkout aisles provide all families more opportunities to say yes to their kids.

***Grocery Stores are a Prime Place for Policy Change***

Grocery stores are Americans' top source for food and beverages, providing more than 60 percent of calories.<sup>17</sup> Ninety percent of Supplemental Nutritional Assistance Program (SNAP) dollars are redeemed at supermarkets and grocery stores.<sup>18</sup> Though grocery stores sell a wide range of healthy products, they are also the largest contributor of unhealthy food and beverages to the diet. Seventy percent of the sugary beverages children consume come from food retail.<sup>19</sup>

Sugary drinks are promoted repeatedly throughout stores; appearing in as many as 25 different places in a single grocery store.<sup>20</sup> At checkout, these drinks make up 60% of beverage offerings.<sup>21</sup>

Healthy Checkout also provides an opportunity for grocery stores. When United Kingdom grocery stores provided healthier options at checkout, consumers responded positively and provided a "responsible" branding opportunity for those stores.<sup>22</sup> Consumers want healthier options, and stores can use this fact to their advantage.

For all these reasons, grocery store checkout lanes are an ideal place to begin changing norms around healthy snacks and drinks.

***Strategies to Reduce Sugar Consumption in Berkeley***

In 2014, Berkeley became the first city in the country to tax the distribution of sugar sweetened beverages. In the last five years, the City created the Healthy Berkeley program which supports the Berkeley Unified School District garden education program as well as community programs that educate residents about nutrition and are changing norms around beverage choice.

This ordinance is another effort to create a healthy food environment that would support families by providing them the ability to avoid high-calorie, low-nutrient food and beverages when they do their grocery and other shopping. Individuals and families who want to purchase sugary drinks, candy, chips, and other sweet and salty snacks will be able to find them in their respective aisles in the center of stores. By changing checkout norms, shoppers and their children face less temptation to consume sugary foods and there is less reinforcement of these unhealthy choices.

***Berkeley Residents are Demanding Checkout Changes***

In 2018, Berkeley-based youth advocates conducted four focus groups where adults and adolescents unanimously supported removing unhealthy food and beverages from grocery store checkout lanes and requiring stores to have healthy checkout aisles. Participants suggested retailers stock checkout with water, fruit juice, coffee, and tea. They also requested that gum, mints and healthy snacks be available. Using the National Alliance for Nutrition and Activity standards as a guide, this ordinance aims to create checkout aisles where beverages with no added sugars or artificial sweeteners, such as 100% juice and water are considered healthy beverages, and where healthy snacks are predominantly fruits, nuts, and vegetables.

In order to streamline implementation and enforcement, the proposed Healthy Checkout Ordinance restricts added sugars and sodium for food products sold at checkout.

### ***Outreach and Focus Groups***

The Center for Science in the Public Interest performed four focus group studies in 2019 regarding the proposed Healthy Checkout Ordinance. The focus groups were intentionally diverse but focused on youth and health advocates. The four focus groups were 1) Berkeley High School students 2) Latinx women in South Berkeley, conducted in Spanish 3) African-American women, hosted by Healthy Black Families and 4) North and Northwest Berkeley residents, hosted by Urban Adamah. From the focus groups, advocates learned that half reported feeling stress at checkout, there was unanimous support for healthy checkout options in grocery stores, and parents and children are susceptible to impulse purchases.

There were also nine interviews conducted with a dentist, a Community Health Commissioner, two non-profit leaders, four local retail managers, and one store owner. 100% of the retailers were interested in making healthier changes and 50% of the managers were interested in supporting the ordinance directly. All retailers also stated that straightforward guidelines would help with implementation.

The City has also begun some outreach, with positive results. Healthy Checkout was recently polled in the Berkeley Considers engagement portal, where over 95% of respondents were in favor. Over 100 people responded to the question.

### ***Healthy Checkout Reduces Impulse Buying of Sugary Snacks and Drinks***

A recent study by the University of Cambridge analyzed purchasing data for common unhealthy checkout foods from 2013-2017 in nine U.K. supermarket chains. They found that consumers purchased 17 percent fewer sweets, chocolate and potato chips. One year later the decline in unhealthy purchases remained steady at 16 percent.<sup>1</sup>

The Healthy Checkout Ordinance will create a level playing field for customers and retailers and support consistent, healthy snacking norms for shoppers and families.

### ***Providing Alternatives at Checkout in Berkeley: Ordinance Elements***

The attached ordinance (Attachment 1):

- limits food and beverage products sold at the checkout area;
- applies to approximately 25 stores in Berkeley that are over 2,500 square feet (see attached) and have more than 25 linear feet of food for sale; and
- allows only beverages with no added sugars and no artificial sweeteners and food items with limited calories, added sugars, and sodium to be sold in the checkout area.

These limitations allow for healthy alternatives to proliferate in checkout areas. Stores will continue to sell food items in their checkout areas, and limiting the salt and added

sugars will lead to stores selling fruits, vegetables, seeds, nuts, water, milk, and other healthier options.

The attached ordinance still has some unanswered questions that will require input from public health advocates, City staff, food retailers, and the policy committee. Those questions are:

- how to define healthy food, and what parameters are most appropriate;
- date of implementation;
- appropriate definition of “checkout area”. The attached draft ordinance includes the definition of “checkout area” as defined in AB 765, but that definition may not appropriately reflect the needs of all large retail stores in Berkeley.

#### RATIONALE FOR RECOMMENDATION

Requiring the approximately 25 stores to follow the requirements for Healthy Checkout would eliminate the encouragement of unplanned purchases of unhealthy foods and beverages. Such a change would thus contribute to healthy norms and reduce the consumption of sugary drinks and unhealthy foods in the City of Berkeley.

#### ALTERNATIVES CONSIDERED

In February 2019, Assemblymember Buffy Wicks introduced AB 765, a bill which would implement Healthy Checkout statewide. However, as the bill has not advanced from committee since April, progress at the state level is not guaranteed.

In the United Kingdom, many grocery stores have voluntarily undertaken a healthy checkout initiative.<sup>22</sup> However, without clear standards for what constitutes “healthy” or enforcement, the voluntary model is too modest to draw conclusions about long-term health impacts. In addition, the interviews with retailers indicated that voluntary compliance without straightforward guidelines would be more difficult to follow.

#### CONTACT PERSON

Kate Harrison, District 4

#### ATTACHMENTS:

1: Draft Ordinance

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- <sup>2</sup> U.S. Department of Health and Human Services and U.S. Department of Agriculture. *2015–2020 Dietary Guidelines for Americans 8th Edition*. Washington, DC; HHS and USDA, 2015.
- <sup>3</sup> *Lancet Diabetes Endocrinol*. 2014 Nov;2(11):867-74. doi: 10.1016/S2213-8587(14)70161-5. Epub 2014 Aug 12.
- <sup>4</sup> <https://www.hsph.harvard.edu/nutritionsource/salt-and-sodium/>
- <sup>5</sup> <https://www.cdc.gov/mmwr/volumes/67/ss/ss6705a1.htm>
- <sup>6</sup> City of Berkeley. *Health Status Report 2014*. Berkeley, CA; 2014.
- <sup>7</sup> City of Berkeley. *Health Status Report 2018*. Berkeley, CA; 2018.
- <sup>8</sup> Satia, Jessie A. *Diet-Related Disparities: Understanding the Problem and Accelerating Solutions*. J. Am Diet Assoc. 2009 April.
- <sup>9</sup> Food Marketing Institute. *The Power of Health and Well-Being in Food Retail*. Arlington, VA: FMI; 2019.
- <sup>10</sup> International Food Information Council Foundation. *2019 Food & Health Survey*. Washington, D.C.: IFIC; 2019.
- <sup>11</sup> Barker D, Quinn C, Rimkus L, Zenk S, Chaloupka F. *Availability of Healthy Food Products at Check-out Nationwide, 2010-2012*. Chicago, IL: Bridging the Gap Program, Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago; 2015.
- <sup>12</sup> The Center for Science in the Public Interest. *Model Nutrition Standards for Checkout*. <https://cspinet.org/protecting-our-health/nutrition/model-nutrition-standards-checkout>.
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- <sup>14</sup> Kerr J, Sallis JF, Bromby E, Glanz K. Assessing Reliability and Validity of the GroPromo Audit Tool for Evaluation of Grocery Store Marketing and Promotional Environments. *J Nutr Educ Behav*. 2012;44(6):597-603. doi:10.1016/j.jneb.2012.04.017.
- <sup>15</sup> Horsley JA, Absalom KA, Akiens EM, Dunk RJ, Ferguson AM. The Proportion of Unhealthy Foodstuffs Children Are Exposed to at the Checkout of Convenience Supermarkets. *Public Health Nutr*. 2014;17(11):2453-2458.
- <sup>16</sup> Caravan ORC International. *Checkout Polling: Online Survey of 1,024 adults*. Princeton, NJ; 2016.
- <sup>17</sup> Mancino L, Guthrie J. *Supermarkets, Schools, and Social Gatherings: Where Supplemental Nutrition Assistance Program and Other U.S. Households Acquire their Foods Correlates with Nutritional Quality*. Washington, DC: U.S. Department of Agriculture Economic Research Center; 2018.
- <sup>18</sup> U.S. Department of Agriculture Food and Nutrition Service. *2015 SNAP Retailer Management Year-End Summary*. Washington, D.C.: USDA; 2015.
- <sup>19</sup> Poti JM, Slining MM, Popkin BM, Kenan WR. Where are kids getting their empty calories? Stores, schools, and fast food restaurants each play an important role in empty calorie intake among US children in 2009-2010. *J Acad Nutr Diet*. 2014;114(6):908-917. doi: 10.1016/j.jand.2013.08.012.
- <sup>20</sup> Cohen DA, Bogart L, Castro G, Rossi AD, Williamson S, Han B. Beverage marketing in retail outlets and The Balance Calories Initiative. *Prev Med*. 2018;115:1-7.
- <sup>21</sup> Fielding-Singh P, Almy J, Wootan MG. *Sugar Overload: Retail Checkout Promotes Obesity*. Washington, DC: Center for Science in the Public Interest, 2014.
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ORDINANCE NO. -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 January 1, 2021. Enforcement pursuant to 9.82.040 shall commence no sooner than July 1, 2021.

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.