

Berkeley Healthy Checkout

Informational Packet July 2024

Information Included:

Healthy Checkout Small Store Data

Berkeley Healthy Checkout White Paper

Draft Ordinance



Healthy Checkout



SMALL STORE RESEARCH RESULTS

Across 15 stores in Berkeley

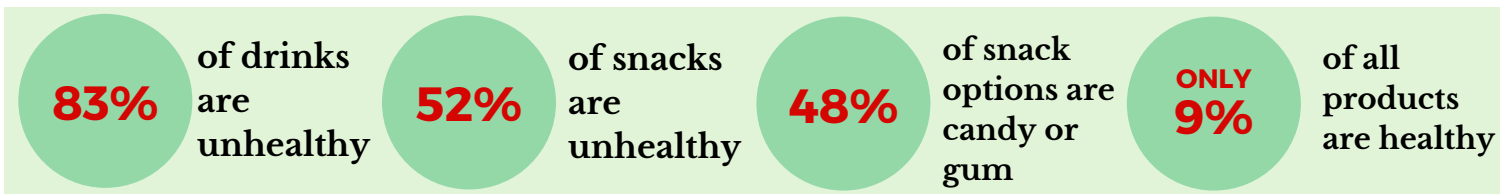
The City of Berkeley can expand its Healthy Checkout Ordinance to include small stores and further support the health of its residents!

BACKGROUND

Berkeley is often cited as one of the healthiest cities in the country, yet significant health disparities persist within families and residents, especially in communities of color. African American residents are more likely to deal with inequalities in the lived environment which heavily influence diet and health, including disproportionate marketing of sugary beverages to the youth and a lack of availability of healthy food. As issues like hypertension, heart disease and tooth decay continue to hurt families, families are forced to make hard decisions about what is more important: price or quality.

While the passing of the Healthy Checkout Ordinance addresses these issues in stores over 2500 sq ft, smaller, corner and convenience stores are currently exempt. This is a health equity issue for low-income families, who purchase twice as many of their calories from convenience stores than their non-SNAP eligible counterparts.

Currently at checkout in small stores...





Healthy Checkout



Most shoppers think that local food stores are a valuable resource in the community, and see merchants as agents who can take action to positively influence public health.

WHAT WAS SAID BEFORE HEALTHY CHECKOUT

Community members expressed concern over BHS youth stocking up on unhealthy snacks during their lunch break.

"It's hard to want that [healthy food] if you never ate like that and don't know if it's worth it to spend your money."
-Small store shopper

"The soda always catches my eye. But I always resist because I know it's a temptation, so I opt for healthier orange or apple juices from other markets instead, and I'm trying to get my kids to do the same too!" -Berkeley farmers market vendor

WHAT IS BEING SAID AFTER HEALTHY CHECKOUT

"I can get a healthier snack for my kid on the go if they change it..." -Berkeley resident

"Policy plays an important role in challenging someone's habits and standards - Berkeley has been able to take risks." - interviewee at Mi Tierra

"I appreciate it because having the choice to be exposed to things is really important, and it feels like we have less opportunity to stop being exposed to advertisements or products we are trying to avoid."
-Berkeley resident



Healthy Checkout Expansion

Berkeley, California

CURRENT SITUATION

On October 13th, 2020, the Berkeley City Council adopted the Healthy Checkout Ordinance, setting minimum nutrition standards for products stocked in store checkouts. This ordinance took effect on January 1, 2021. Enforcement pursuant to 9.82.040 began on July 1, 2021.

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 2,500 square feet and smaller in size that sell at least 25 linear feet of food to follow the requirements for Healthy Checkout, as written in the ordinance. This would impact approximately 55 stores in Berkeley, including Middle East Market, 7-Eleven, Mi Ranchito, Berkeley Natural Grocery, Alcatraz Market, and more.

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. Excessive added sugar intake is directly linked to adverse health impacts including elevated risk of tooth decay, heart disease, and Type 2 diabetes.^{1,2,3} 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 lifetime⁴ Diets that are high in sodium are linked to high blood pressure, heart disease, and stroke,⁵ all of which disproportionately affect African Americans and communities of color.⁶

Health Equity and Inequity

In California, over 10% of adults have diagnosed Type 2 Diabetes (T2D), a disease which drastically affects the quality of life of those affected.⁷ It is estimated that nearly one million additional adults throughout the state live with undiagnosed Type 2 Diabetes. People living with T2D have, on average, medical bills that are 2.5 times higher than individuals without T2D.⁷ It is estimated that the total cost of T2D in California is \$39.5 billion.⁷ These costs inequitably burden Black Californians as 17.5% live with T2D, compared with 13.2% of Latinos, 10.5% of Asians, and 9.2% of Whites in California.⁸

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.⁹ This gap has decreased since 2014, but the disparity continues to exist.¹⁰ Rates of hospitalization for heart disease and high blood pressure are also significantly higher among African American residents than White and Latino residents.⁶ 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.¹¹ 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 equitably benefit low-income communities and communities of color who are most affected by nutrition-related health issues.

Checkout Areas of Small 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.^{12,13} 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.¹⁴ Only 24 percent of stores sell water at checkout, and only 13 percent sell fresh fruits or vegetables at checkout.¹¹

In a national study, led by Jennifer Fable of UC Davis, one in three adults reported purchasing foods from the checkout aisle during their last shopping trip, with lower-income shoppers more likely to purchase from checkout than higher-income shoppers.¹⁵ Falbe's research indicates that healthy checkout policies have the potential to impact both nutrition and health equity.

In 2022, a Berkeley-based youth group assessed a sample of 15 small Berkeley stores including 7-Eleven, Derby Food Center, Shattuck Market, Mi Ranchito, South Berkeley Produce Market, and others. Data was collected from 1800 facings, which are the display of a single product on the shelf (not including the items stacked behind it). With 35 percent of food items consisting only of gum and mints, another 52 percent of foods offered at checkout were unhealthy, leaving only 13% of food items as nutritional options. 83 percent of beverages sold in the checkout area were considered unhealthy using the National Alliance for Nutrition and Activity Model Nutrition Standards for Checkout.¹⁶ Research shows that food choices are strongly affected by the environments in which they are made.¹⁷ 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.¹⁸ The placement of snacks near the register increases the likelihood that people purchase those foods.¹⁹ 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.²⁰ Three-quarters of parents report that it is hard to shop at grocery stores because unhealthy food is so prevalent.²¹ Healthy checkout aisles provide all families more opportunities to say yes to their kids.

Small Stores are a Prime Place for Policy Change

After grocery stores, Americans' greatest source of weekly calories is convenience, dollar, and other small stores.²² Grocery and convenience stores combined are the largest contributors of unhealthy food and beverages to the diet. Seventy percent of the sugary beverages children consume come from food retail.²³

While convenience and small stores stock a range of options (hot and cold prepared foods, packaged items, beverages), their inventories tend to feature high-calorie, low-nutrient items, such as fried foods, snacks, and packaged baked goods.²⁴ A study across California convenience stores found that soda and unhealthy foods took up 20 to 30 times more shelf

space than did produce.²⁵ Similar to supermarkets, food manufacturers pay slotting fees for prominent placement inside some convenience stores, including at checkout.²⁶

The USDA Economic Research Services research notes that individuals who rely on these smaller establishments have difficulty obtaining the quality and quantity of healthy food they need to meet dietary guidelines.²⁷ Families who receive SNAP benefits purchase almost twice their weekly food intake from convenience stores, dollar stores, and pharmacies than their higher-income counterparts.²⁸ With this there is a need to ensure access to healthier snacks at these stores.

Healthy Checkout also provides an opportunity for stores. When United Kingdom grocery stores provided healthier options at checkout, consumers responded positively and provided a "responsible" branding opportunity for those stores.²⁹ Consumers want healthier choices, and stores can use this fact to their advantage. Setting minimum nutrition standards for items stocked at checkout areas in convenience and other small stores is ideal for progressing and 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.

Then, in 2020, Berkeley became the first city in the country to pass a Healthy Checkout Ordinance. This ordinance was 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. However, the policy only affects large stores, and should be amended to create a healthier food environment in convenience and other small stores which are especially prevalent in low income communities in Berkeley. 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.

Berkeley Residents are Demanding Checkout Changes

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.

In 2022, Berkeley-based youth advocates conducted focus groups and surveys with 37 Berkleyans who shop at convenience and corner stores. Adults and adolescents surveyed unanimously supported removing unhealthy food and beverages from small store checkout lanes and requiring stores to have healthy checkout aisles. With the addition of healthier items

at checkout, many residents felt that overall community health will be positively impacted since, for many, convenience stores are a regularly tracked location and play a large role in what these residents consume. Interviewees especially cited concern over the disparity between accessible processed foods relative to healthier snacks for youth coming to small stores after school and for community members who have health conditions that require dietary restrictions.

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 in stores without unhealthy items at checkout. One year later the decline in unhealthy purchases remained steady at 16 percent.²

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: Amendment Elements

The amended ordinance (Attachment 1):

- limits food and beverage products sold at the checkout area;
- applies to approximately 55 stores in Berkeley that are 2,500 square feet and under 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 5 grams or less of added sugars and 200 milligrams or less of sodium per serving to be sold in the checkout area;
- allows only food items which fall under the following categories: chewing gum and mints with no added sugars, fruit, vegetables, nuts, seeds, legumes, yogurt or cheese, and whole grains.

These limitations allow for healthy alternatives to proliferate in checkout areas.

REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

In March 2015, the City of Berkeley implemented a Sugar-Sweetened Beverage (SSB) tax, often referred to as a soda tax. The tax imposes a fee on distributors of sugary drinks, including sodas, energy drinks, and certain fruit-flavored beverages. The goal of this tax is to reduce the consumption of sugary beverages, which are linked to health issues like diabetes and cardiovascular disease, while generating revenue for public health initiatives. Between 2015 and 2021, the tax generated \$9 million in revenue and within one year of implementation SSB purchasing dropped 10%.^{30,31}

Revenue generated from the SSB tax funds projects throughout the city that work to educate the community about the harmful impacts of SSBs, and implement systems and policy changes that reduce consumption of SSBs over time, and decrease the health risks among residents of Berkeley.

The City of Berkeley has an existing Healthy Checkout Ordinance that sets minimum nutrition standards for foods, beverages, gum and mints stocked at checkout. This ordinance currently applies only to stores greater than 2500 sqft.

ACTIONS/ALTERNATIVES CONSIDERED

In February 2019, Assemblymember Buffy Wicks introduced AB 765, a bill which would implement Healthy Checkout statewide. However, the bill did not advance from committee.³²

Following Berkeley's lead, in February 2023, the City of Perris passed a healthy checkout policy which similarly sets minimum nutrition standards for foods and beverages stocked at checkout.³³

Prior to 2022, in the United Kingdom (UK), many grocery stores had voluntarily undertaken healthy checkout initiatives.²⁹ A study of this initiative showed that the policies implemented between stores varied widely in their level of specificity and implementation. Among stores with clear, consistent policies, there were 20% fewer snacks at checkout that were considered less healthy than at stores without policies or with vague policies in place.³⁴ 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. As of October 1, 2022, the United Kingdom has a healthy retail policy in place that restricts unhealthy food placement near store entrances, at endcaps, or checkout aisles.³⁵

In 2022, Richmond youth proposed a healthy retail policy that included healthy checkout and advocated for an initiative to keep soda in the soda aisle. A study conducted across grocery stores in D.C. found that sodas are placed, on average, in 29 locations in one store.³⁶ A nationwide survey demonstrated that 58% of SNAP recipients will buy less sugary drinks if they are only located in the drink aisle, especially parents who shop with their children. 36% of respondents said they would even shop at a new store regularly if it kept soda in the soda aisle. Again, this number more than doubled for parents who shop with their kids. The same youth met with the Contra Costa County Board of Supervisors to advocate for healthy retail initiatives, including healthy checkout and a proposal to make condoms available in stores without clerk assistance.

CONSULTATION/OUTREACH OVERVIEW AND RESULTS

The Berkeley youth group interviewed three retailers in the community including two corner store managers and a food retailer/community kitchen owner, as well as a nutrition counselor. Retailers expressed that they could successfully implement the policy as long as they can stock a variety of perishable and non-perishable items at checkout, and set affordable price points, both of which are accounted for in the ordinance. Two retailers cited that because they already sell a substantial amount of healthy items at checkout and in the store, it won't require a big change to meet the proposed new standards.

RATIONALE FOR RECOMMENDATION

Expanding Healthy Checkout to stores under 2500 sq. ft. will greatly increase access to healthy snacks at checkout throughout Berkeley. Requiring the approximately 55 additional stores to follow the requirements for Healthy Checkout would eliminate the encouragement of unplanned purchases of unhealthy foods and beverages at smaller stores, many of which serve largely lower income communities and neighborhoods of color. In a USDA study, low income families got twice as many calories from corner and convenience stores than did their higher income counterparts.²⁸ Such a change would thus contribute to healthy norms and reduce the consumption of sugary drinks and unhealthy foods in the City of Berkeley.

IMPLEMENTATION, ADMINISTRATION AND ENFORCEMENT

Bay Area Community Resources is funded for FY23 and FY24 to provide technical assistance to stores 2500 square feet and under, including in-store education and penalty-free monitoring. Community partners could assist with implementation.

Enforcement should be focused primarily on positive education and secondarily on traditional enforcement. Enforcement of the amended ordinance may be conducted by the Environmental Health Division (EHD) and follow the same protocol as established in the Healthy Checkout Ordinance. This protocol currently states that EHD will inspect for compliance during routine inspections, and as needed in response to complaints. In instances where violations are present and cannot be corrected immediately, EHD can conduct a chargeable follow up inspection. For repeated violations after multiple follow up visits, retailers may be fined accordingly:

\$100 for the first violation

\$200 for the second violation

\$500 for the third and subsequent violations.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the action recommended in this report.

EVALUATION

Currently there are researchers from universities around the world looking at outcomes related to healthy retail, including the impacts of Berkeley's existing Healthy Checkout Ordinance.

FISCAL IMPACTS

Implementation of the amendment would require staff time to educate the approximately 55 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.

Bay Area Community Resources is funded for FY 23 and FY 24 to work with stores 2500 sq. ft. and under, including with store education and monitoring.

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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.~~ ~~January 1, 2022.~~ ~~July 1, 2025~~ ~~Jan. 1, 2025~~ Enforcement pursuant to 9.82.040 shall commence no sooner than

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.