



## OAKLAND CITY COUNCIL

### ORDINANCE NO. \_\_\_\_\_ C.M.S.

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ORDINANCE PROHIBITING RETAIL STORES LARGER THAN 3,000 SQUARE FEET THAT CARRY GROCERIES FROM DISPLAYING FOOD OR BEVERAGES HIGH IN ADDED SUGARS OR SODIUM CONTENT WITHIN 3 FEET OF CHECK-OUT AREAS

**WHEREAS**, diets with an excess of added sugars and sodium are correlated to chronic health issues including diabetes, high blood pressure, and stroke; and

**WHEREAS**, environments in which food choices are made strongly affect those choices. The placement of unhealthy foods and beverages near a register increases the likelihood that consumers will purchase those options, thus undermining consumer health choices and public health initiatives; and

**WHEREAS**, 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 and beverages; and

**WHEREAS**, clear disparities exist within Oakland communities where in some of the most vulnerable parts of our city, unhealthy foods make up 90% of foods in checkout areas, and

**WHEREAS**, other jurisdictions in California, including the City of Berkeley, have implemented a healthy checkout requirement and have seen a significant reduction in the percentage of unhealthy foods at checkout; and

**WHEREAS**, the retail environment plays a crucial role in shaping health outcomes, and access to healthy food reduces the risks of chronic conditions including obesity, diabetes, and heart disease; and

**WHEREAS**, retailers will have a six months period from passage of this ordinance until implementation, during which time community organizations including Bay Area Community Resources and Healthy Options at Point of Sale (HOPS) Advocacy Project will provide extensive outreach to all affected retailers and offer education about the ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals:** The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council's decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

**SECTION 2. Addition of Chapter 8.72 to the Oakland Municipal Code.** Oakland Municipal Code 8.72 is hereby adopted as set forth in its entirety:

**8.72.010 - Purpose.**

The purpose of this Chapter is to support families by offering them healthy food and beverage items at checkout aisles and the choice to avoid food and beverages high in added sugars and sodium and low in nutrients when they do their grocery shopping. This Ordinance shall be known as the "Healthy Check-outs Ordinance."

**8.72.020 - 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. "Added sugars" does not include low and no-calorie sweeteners.
- B. "Checkout Area" means any area that is accessible to a customer of a Large Retail Store that is either:
  - 1. Within a 3-foot distance of any Register; or
  - 2. 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.
- C. "Checkout Endcap" means a product display placed at an endpoint of an area designated primarily for or utilized primarily by customers to wait in line to make a purchase.
- D. "Large Retail Store" means a commercial establishment selling goods to the public with a total floor area over 3000 square feet and selling 25 linear feet or more of food.
- E. "Low-and No-Calorie Sweeteners" mean sweeteners with few to no calories.
- 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. "Customer" means any person who is patronizing a Large Retail Store, as defined herein in this ordinance, for the purpose making a purchase of goods or services.

### **8.72.030 - 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 comply with the following qualifying food and beverage categories:

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

### **8.72.040 - Enforcement.**

Any Customer who witnesses a violation of this chapter may bring an action in small claims court against the violator and seek a civil penalty of up to \$1,000 for each violation, up to one violation per 30-day period. The Court may award civil penalties only if the Plaintiff demonstrates that the Defendant failed to correct the violation after written notice provided by the person witnessing the violation and a 30-day opportunity to cure the violation. Said notice shall describe the violation with sufficient particularity to allow the violator to identify the condition in need of correction.

The City may inspect covered Large Retail Stores at any time when they are open to the public for purposes of ensuring compliance with this chapter.

The City Attorney may file an action and seek all available remedies under Chapter 1.10 against any Large Retail Store that repeatedly and willfully violates this chapter.

**SECTION 3. Administrative Regulations.** The City Administrator is authorized to develop notices, forms, and other materials and to establish any regulations to aid in administration or enforcement of this Chapter, but the lack of such regulations shall not delay or otherwise impede application or enforcement of any provision of this Chapter.

**SECTION 4. California Environmental Quality Act (CEQA) Compliance.** The legislation contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no possibility that it: (1) may have a significant effect on the environment and/or (2) would result in any physical changes to the environment. As a result, this action is exempt from the CEQA pursuant to the following CEQA Guidelines, taken together and each as a separate and independent basis: Section 15301 (existing facilities), Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), and Section 15061(b)(3) (no significant environmental impact).

**SECTION 5. No Conflict with Federal or State Law.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

**SECTION 6. Periodic Review.** The City Council may periodically review qualifying food and beverage categories in 8.72.030(A) – (C), and update such categories by Ordinance to align with current nutrition advice given by authoritative scientific organizations.

**SECTION 7. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 8. Correction of Errors.** The City Council hereby authorizes the City Attorney to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the Amendments in the Oakland Municipal Planning Code.

**SECTION 9. Effective Date.** This Ordinance shall become effective six months after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –  
ABSENT –  
ABSTENTION

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: \_\_\_\_\_

## **NOTICE AND DIGEST**

### **ORDINANCE TITLE (Indent half inch both sides and justified)**

#### **ORDINANCE PROHIBITING RETAIL STORES LARGER THAN 3,000 SQUARE FEET THAT CARRY GROCERIES FROM DISPLAYING FOOD OR BEVERAGES HIGH IN ADDED SUGARS OR SODIUM CONTENT WITHIN 3 FEET OF CHECK-OUT AREAS**

This ordinance requires retail stores larger than 3,000 square feet that carry groceries to ensure that customers can access healthy food and beverage options at the checkout aisle, by limiting the edible items that can be placed within three feet of check-out areas to only low sugar and sodium content items. The ordinance allows enforcement by any customer who witnesses a violation and authorizes an award of civil penalties up to \$1000 per violation.