



AGENDA REPORT



TO: Honorable Mayor & City Council

FROM: Councilmember
Ramachandran,
Council District 4

SUBJECT: Healthy Checkout Ordinance

DATE: November 7, 2024

RECOMMENDATION

Councilmember Janani Ramachandran Recommends That The City Council Adopt the Following:

AN 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

EXECUTIVE SUMMARY

The Healthy Checkout Ordinance would require all grocery stores and other establishments in Oakland of 3,000 square feet or more in size which sell food products to remove food and beverage items with more than 5 grams of sugar, and instead place healthy options in designated checkout areas and within three feet of the point of sale.

The purpose of this ordinance is to discourage consumers from less healthy impulse buys and promote healthy choices, leading to more positive health outcomes for Oakland residents. Data shows that presenting potential customers with candy, sugary drinks, and other non-nutritious options as they are waiting in line encourages spur-of-the-moment purchases, leading to unhealthy choices (Crawford et al., 2007)¹ and that these, high sugar, high sodium foods adversely impact health, (increasing the risk of chronic health conditions (Rippe et al., 2016)². With this proposed change, more nutritious alternatives such as bottled water, fruit, vegetables, low-sugar bars, and nuts, as well as non-food items would instead be placed in designated checkout aisles and at the point of sale for customers' access. This would create an environment that supports customers' desire to make healthier purchases, as opposed to undermining planned purchases.

BACKGROUND

In today's society, unhealthy foods, including fast foods, sugary snacks, and sweetened beverages are readily available to consumers and dominate checkout aisles at most major retail stores and small mom-and-pop establishments alike. High levels of added sugar contribute to greater risk of dental cavities, type-2 diabetes, and heart disease. These health conditions affect communities of color at a

¹ <https://onlinelibrary.wiley.com/doi/full/10.1111/nbu.12572#nbu12572-bib-0013>

² <https://www.mdpi.com/2072-6643/8/11/697>

disproportionate rate (Hicklin, 2018)³. Many communities who are adversely affected by diabetes, obesity, and other health conditions also live in neighborhoods with more fast food and corner stores than stores selling produce and other nutritious items.

In addition, large companies pay for premium up-front space (including shelves at the cash register or in the checkout end-cap area) for their products to encourage last-minute purchases; however, many of these companies have healthier product lines that could be displayed to meet the requirements of this ordinance. For example, Coca-Cola owns Dasani, a bottled water brand and Minute Maid, a juice brand – hence, Coca-Cola’s bottled water and juices could be displayed at checkout instead of their soft drinks. Due to junk food items being placed at eye level and within easy reach, customers are often tempted to add last minute items to their cart while waiting to check out (Crawford et al., 2007)⁴.

A 2019 survey of 47 Oakland stores found that 85% of foods at checkout are unhealthy, and 80% of beverages sold at checkout are sugar-sweetened beverages. Furthermore, 53% of food sold at checkout is candy. Residents who were interviewed stated that there are few places to shop healthy that are also affordable.



Credit: Center for Science in the Public Interest

The data also showed major disparities in the healthfulness of products stocked at checkout across different parts of Oakland. In District 4, 50% of foods at checkout were unhealthy. In Districts 2 and 5, unhealthy foods made up over 90% of offerings.

The Healthy Options at Point of Sale (HOPS) Advocacy Project, in coordination with Bay Area Community Resources (BACR), has been advocating for healthier options at the check-out for several years, with notable legislative successes in other nearby jurisdictions.

HOPS Oakland is a youth-led Community Participatory Action Research project, composed of Oakland residents ages 14-24. The goal of the HOPS project is to increase positive health outcomes and health equity by increasing access to and availability of healthy foods through policies, systems and environmental change work.

³ <https://www.nih.gov/news-events/nih-research-matters/factors-contributing-higher-incidence-diabetes-black-americans>

⁴ <https://onlinelibrary.wiley.com/doi/full/10.1111/nbu.12572#nbu12572-bib-0013>

In 2019, the HOPS youth advocated conducted store surveys, to assess the nature of checkout and focus groups and interviews with Oakland residents to understand their thoughts on items sold at checkout. From this data, youth determined there was both a need and community interest in addressing the healthfulness of foods and beverages stocked at checkout. These findings led the youth advocates to consider what healthy checkout could look like in the City of Oakland and begin a campaign to educate and engage residents regarding healthy checkout.

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Proposed Legislative Changes

The proposed ordinance would require food retail stores over 3000 square feet to stock healthier foods, beverages, gum and mints in checkout queues and within three feet of the point-of-sale, or the location where a retail transaction is completed. Recommendations are based on the National Alliance for Nutrition and Activity (NANA) Model Nutrition Standards for grab-and-go foods and beverage and set minimum nutrition standards for these products including:

- Foods with no more than 5 grams added sugar and no more than 200 mg sodium per serving
- Beverages with no more than 5 grams added sugar
- Gum and mints with no added sugar

However, it would not prevent retailers from placing these items (candy, soda, etc.) in the regular aisle throughout the store for purchase. Customers would not be denied the opportunity to purchase unhealthy items if they so choose; rather, the enticement of these sugary products would not be placed at the final point of sale.

The primary enforcement mechanism would be through customer civil action. Customers will first be able to go through a complaint process with stores, and then may elect to pursue legal action in small claims court, if the complaint is not addressed within a specified period of time.

Customers seeking restitution for damages may bring an action against the offending establishment in small claims court for a penalty of up to \$1,000 per violation, with a maximum of one violation per store in a 30-day period. The court must find that the establishment failed to correct a violation after written notice provided by the customer witnessing the violation, and an opportunity to correct the violation within 30 business days.

Additionally, retail stores regularly out of compliance may be referred to the City Attorney as the designated body to respond to any violations of the law, once the ordinance has gone into effect.

This ordinance proposes to build in a 6-month window for implementation, during which time community partners including BACS will provide proactive outreach to all businesses who may be affected by this ordinance to offer education and resources to facilitate necessary changes.

City Council will have the option to periodically review qualifying food and beverage categories in this ordinance, and amend the ordinance if necessary to align with up-to-date nutrition advice.

Application in Other Jurisdictions

City of Berkeley – In October 2020, the Berkeley City Council adopted the first Healthy Checkout Ordinance, 7,734-N.S., setting minimum nutrition standards for products stocked in store checkouts. Berkeley’s population is approximately 117,214, and 23 retail stores meet the ordinance’s health checkout requirements. The City of Berkeley’s Healthy Checkout Ordinance was enacted on January 1, 2021, and implemented on July 1, 2021. The ordinance applies to stores larger than 2,500 square feet and prohibits stores from selling food items that contain more than five grams of added sugars or 200 milligrams of sodium per serving or beverages with any added sugar or sweeteners in designated queuing areas and within three feet of a cash register. It also requires that gum and mints stocked at checkout be free of added sugar. The area of store impacted was determined in collaboration with retailers to give specific definition, particularly for stores without checkout queues. There were partnerships made with local stores including, leading up to the ordinance passage in Berkeley. For example, Mr. Ruesta, owner of Mi Tierra Foods, noted that the store “wants to support the health of the community and knows that supporting healthy food environments is essential to public health.” (Ruesta, 2019)⁵.

City of Perris – In February 2023, the Perris City Council (Riverside County) unanimously passed the Healthy Checkout Ordinance 1433. The ordinance is specific to retailers larger than 2,500 square feet and requires grocers to provide healthy food and beverage items as the “default” option at checkout aisles. The ordinance required foods and drinks within six feet of the register with more than 200 calories or high in saturated fats, sodium, or sugar to be replaced with healthier options like nuts, fruit, or other food or beverages lower in calories, saturated fats, sodium, and sugar. All retailers in Perris must submit a self-certification form, which ensures their compliance with the ordinance, with the understanding that they will be subject to further enforcement if there are findings of non-compliance.

ANALYSIS AND POLICY ALTERNATIVES

This new policy applies to stores over 3000 square feet. As of May 2024, this policy would apply to 73 stores in Oakland. If results are successful, the model can be replicated in smaller stores in future legislation.

Healthy retail ordinances have the potential to positively impact public health by encouraging healthier purchases and reducing impulse buying. A study published in the Journal of the American Medical Association (JAMA) in August 2024 showed that Berkeley’s Healthy Checkout Ordinance has reduced the percentage of unhealthy foods at checkout from 30% to 6% for candy, 11% to 5% for sugar-sweetened beverages, and 7% to 3% for other sweets (Falbe, 2024)⁶. Moreover, the study found that the percentage of healthy foods stocked at checkout increased from 6% to 20%, and unsweetened beverages increased from 4% to 19%.

Similar efforts in other countries have also proven to have positive public health outcomes. To address obesity and corresponding metabolic disease, the United Kingdom has implemented restrictions on less healthy food items, which are no longer permitted within two meters of designated queuing area or point

⁵ Ruesta, J. (2019, February 17). Letter of Support. Berkeley, California; Mi Tierra.

⁶ <https://doi.org/10.1001/jamanetworkopen.2024.21731>

of sale (Department of Health and Social Care, 2021)⁷. The restrictions also disallow the placement of less healthy foods in prime locations such as aisle end caps. The regulations come following years of research throughout Europe supporting strong, consistent policy for healthy foods at checkout.

In the year following the implementation of these healthy checkout policies, there was a 15% decrease in the purchase of less healthy items like chocolate, candy, and chips that were previously stocked at checkout (UKCRC Centre for Diet and Activity Research, 2020)⁸. A corresponding study by Dutch researchers found that when implementing healthy checkout, the complete substitution of less healthy snacks with healthier alternatives is most effective at reducing less healthy purchases (Huitink et al., 2020)⁹.

In Oakland, the alternative would be having no “healthy checkout” policy, meaning that stores will continue the practice of luring customers with sugary and unhealthy snacks and beverages as they are checking out at the cash register. This will result in a continuation of adverse health outcomes for Oaklanders, as the data above indicates, and will put marginalized communities at an even higher risk for developing long-term conditions like diabetes and heart disease. Not enacting the requirement to encourage more nutritious options continues the harmful practice of stocking unhealthy options at the final point of sale – despite a strong community-drive interest in wanting to change this status quo.

Affected stores can benefit from the proposed Healthy Checkout Ordinance in several ways. These include the fact that retailers lose revenue when fresh produce is not purchased and goes to waste. Displaying fresh produce at checkout can help reduce loss (Cernansky, 2017; Fulton, 2010). Additionally, many stores have seen an increase in sales for produce and healthy snacks when these items were moved to the checkout area – resulting in increased profits. Moreover, many customers, especially of the younger generation, are seeking healthier snack alternatives with fewer ingredients – in one study, 80% of youth surveyed said they would prefer stores offer healthier items at checkout (Caravan ORC International, 2016).

FISCAL IMPACT

This ordinance would have no fiscal impact to the city initially - outreach and education will be led by BACR and the HOPS advocacy group. In the event of a complaint or lawsuit, there would be a cost associated with the city attorney’s office dedicating staff time to respond and send out violation notices to businesses in violation of the ordinance. However, due to BACR’s outreach and engagement plan with affected businesses, we do not anticipate frequent legal action. BACR is committed to providing comprehensive education and technical assistance with business owners and managers to ensure understanding of new requirements and support compliance.

PUBLIC OUTREACH / INTEREST

The HOPS advocacy group will provide outreach to affected stores once enacted to ensure understanding of the ordinance’s requirements and support implementation.

⁷ <https://www.gov.uk/government/news/promotions-of-unhealthy-foods-restricted-from-october-2022>

⁸ www.cedar.iph.cam.ac.uk/resources/evidence/eb-19-checking-out-checkout-food/

⁹ Huitink M, Poelman MP, Seidell JC, Kuijper LD, Hoekstra T, Dijkstra C. Can healthy checkout counters improve food purchases? Two real-life experiments in Dutch supermarkets. *International Journal of Environmental Research and Public Health*. 2020;17(22):8611.

BACR will provide outreach to all businesses with storefronts over 3,000 square feet which would be affected by this ordinance. In order to set up the program for success, there will be a 6-month grace period after the date of passage to allow time for establishments to understand the new rule and purpose. Customers will not be allowed to bring suits against stores during this 6-month period. During this time, BACR advocates will send an email informational packet to businesses, followed by a phone call with the store manager and in-person visit. Staff will be available for questions if there are any gray areas as far as which products are subject to be relocated and what constitutes appropriate products for placement in the checkout area.

BACR will also offer a no-impact inspection once changes to the checkout area have been made, to provide feedback on items not in compliance. In addition, informational materials will be provided for customers upon request to further clarify the program.

COORDINATION

This report was drafted in coordination with BACR and HOPS advocates, who provided much of the statistics and factual information regarding how the Healthy Checkout Ordinance would work, as well as successes from the existing program in Berkeley and other jurisdictions. Attorneys from the Center for Science in the Public Interest also reviewed the legislation and report for accuracy. The author also worked very closely with the Oakland City Attorney's office to develop this legislation.

SUSTAINABLE OPPORTUNITIES

Economic: Grocery stores generate revenue through slotting fees or "pay to stay" arrangements, where food and beverage companies pay for prime shelf placement or to keep their products stocked in high-visibility areas like checkout aisles. These fees allow retailers to prioritize products from companies willing to pay, often favoring large corporations over smaller brands. The large companies paying these slotting fees are the parent companies to brands that are healthy checkout compatible, including:

- Coca Cola, owner of Smartwater, Dasani, Minute Maid, Odwalla, Sweet Leaf Tea, and Green Mountain Coffee
- PepsiCo, parent company to Aquafina, Izze, Sabra Hummus, Quaker Oatmeal, Bare Snacks and has partnerships with Starbucks Bottle Beverages, Lipton and Dole.
- Mars: Seeds of Change, KIND bars, Pressed fruit bars by KIND
- Mondelez, parent company to Trident gum, Skinny Pop, Pirate's Booty, KRAVE, SoFit fruit/protein snacks

Other healthy checkout compatible, local or independent brands found at checkouts in the East Bay include Numi Tea, Nature's Bakery Fruit Bars, Organic Valley Newman's Own and Blue Diamond.

Because many large conglomerates such as PepsiCo own healthier brands like those listed above, this ordinance is not expected to have an impact on companies' profits or ability to display some of their products in the checkout area. In addition, as stores will still be able to sell "unhealthy" or sugary items throughout the store, overall product sales are not expected to decrease.

Environmental: The social determinants of health, defined as the conditions in the environments where people are born, live, learn, work, play, worship, and age, significantly influence individual and community well-being. The retail environment plays a crucial role in shaping health outcomes, as it

determines the availability and affordability of healthy or unhealthy food options. In communities where stores prioritize sugary snacks and processed foods, residents are more likely to face diet-related health issues like obesity, diabetes, and heart disease. By improving the retail landscape through policies like healthy checkout ordinances, communities can better support public health and reduce health disparities.

A healthy checkout ordinance can create a supportive retail environment that encourages healthier food and beverage choices by limiting the availability of unhealthy, impulse-buy items like sugary drinks and junk food at checkout counters. By replacing these products with nutritious options such as fresh fruits, nuts, and water, the ordinance reduces exposure to unhealthy foods, especially for children and families. This shift helps normalize healthier purchasing behaviors, supporting long-term public health outcomes and reducing the burden of diet-related diseases in the community. Additionally, it can align with broader efforts to promote healthy lifestyles and improve access to better food options for all consumers.

Race & Equity: Currently, there are major disparities in the healthfulness of foods stocked at checkout throughout Oakland. A healthy checkout ordinance can help ensure that marginalized communities, including Black, Indigenous, and residents of color, who are disproportionately affected by limited access to nutritious food options, have equal opportunities to make healthier choices. By replacing unhealthy snacks and sugary beverages at checkout areas with nutritious options, this ordinance can ensure that nutritious snacks are available through the City of Oakland and available to all residents. This shift to improve access to healthier foods may in the long run also help reduce the burden of diet-related health disparities like Type 2 diabetes and cardiovascular disease, which also affect Black residents and other residents of color at higher rates (Jones, 2022)¹⁰.

ACTION REQUESTED OF THE CITY COUNCIL

Councilmember Janani Ramachandran Recommends That The City Council Adopt

An 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

For questions regarding this report, please contact Councilmember Janani Ramachandran at 510-238-7004 or Ali Wohlgemuth, Associate Director with Bay Area Community Resources at 510-559-3019.

Respectfully submitted,

Councilmember Janani Ramachandran
District 4

¹⁰ <https://www.uab.edu/news/research/item/12675-black-adults-are-at-a-higher-risk-of-developing-diabetes-due-to-genetic-variations-and-social-health-determinants-research-shows>

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Attachments (#): *(If Applicable)*