

# Roadmap and Tool Kit for a Healthy Checkout Ordinance



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### **About the Author**

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*The Center for Science in the Public Interest commissioned the writing of this report by Holly Scheider. Holly Scheider was a key advocate in Berkeley and was integral in the passing of the nation's first Healthy Checkout Ordinance in September 2020.*

### **Center for Science in the Public Interest**

The Center for Science in the Public Interest (CSPI) is America's food and health watchdog. We are a rigorous driver of food system change to support healthy eating, safe food, and the public's health. We transform the built food environment through leading-edge policy innovations grounded in meticulous research and powerful advocacy at the national, state, and local level. We galvanize allies to drive system-wide changes and healthier norms, leveraging the greatest benefits for people facing the greatest risk. CSPI is fiercely independent; we accept no government or corporate grants. Our work is supported by the hundreds of thousands of subscribers to our award-winning Nutrition Action Healthletter (NAH) and from foundations and individual donors.

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Roadmap and Tool Kit for a Healthy Checkout Ordinance is available online, free of charge at [www.cspinet.org/tkttk](http://www.cspinet.org/tkttk)

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## Introduction

The Center for Science in the Public Interest (CSPI) is a leading, independent authority on food and nutrition. Recognizing that consumers can only eat healthfully when healthy options are available, we work to improve the places where people buy and eat food. Healthy checkout is an example of one of our policy interventions to improve the food environment.

**Healthy Checkout refers to efforts to improve the nutrition in the food and beverage products sold in areas where shoppers stand in line to purchase their groceries.** It is a strategy that changes the shopping environment to make it easier for customers and their children to avoid both marketing and impulse purchases of sugary drinks and snacks high in sugar and salt.

**Grocery Stores are a Prime Place for Policy Change.** Grocery stores are Americans' top source for food and beverages, providing more than 60% of their daily calories.<sup>1</sup> Although grocery stores sell a wide range of healthy products, they are also the largest contributor of unhealthy food and beverages to the diet.<sup>2</sup> Seventy percent of the sugary beverages children consume come from food retail.<sup>3</sup> It is important to help children develop healthy eating habits young to reduce the risk of diabetes, dental cavities and heart disease. Forty percent of all children are predicted to develop diabetes and drinking 1-2 cans of soda per day can increase the risk of type 2 diabetes by 26%.<sup>4</sup>

**Healthy checkout works!** A study by the University of Cambridge analyzed purchasing data for common unhealthy checkout foods from 2013-2017 in nine U.K. supermarket chains.<sup>5</sup> The results of this research found that consumers purchased 17% fewer sweets, chocolate and potato chips at checkout.<sup>6</sup> One year later the decline in unhealthy purchases remained steady at 16%.<sup>7</sup>

**Benefits of enacting a law:** A law provides stores with the ability to renegotiate slotting contracts with the snack and beverage companies in which they pay for placement of their products<sup>8</sup> in prime locations in stores, especially checkout aisles. The law levels the playing field for large businesses and guarantees that customers will have the same experience in all stores. The legislation can also benefit communities by shifting norms and expectations related to the items stocked at checkout.

**What happened in Berkeley, CA?** The goal of the Berkeley campaign was to pass the first ordinance in the country to serve as a model that other jurisdictions could modify to meet the needs and potential opportunities in their specific communities. This roadmap tells the story of what occurred in Berkeley during three years of organizing, data collection, and advocacy. It highlights key questions to consider, steps to take, and resources you can tailor for your own community's needs.

## **First step: Complete a Readiness Assessment**

A Healthy Checkout Workshop was held in Oakland, CA, in October 2017, sponsored by CSPI in collaboration with [ChangeLab Solutions](#), a national organization that advances equitable laws and policies to ensure healthy lives, and [Public Health Advocates](#), a California-based organization who has changed the social, political, and economic systems that perpetuate racial, economic, and health disparities. The workshop brought together public health policy advocates from across the state to share examples of successful voluntary healthy checkout lane implementations, best practices for passing local nutrition policies, and strategies for passing healthy checkout policies.

A result of the workshop was agreement among health advocates to launch a campaign to enact the first local ordinance to require healthy checkout standards and lay the groundwork for subsequent local actions.

### **Overview of the steps to pass the Berkeley Healthy Checkout ordinance:**

1. Assess community readiness and assemble the leadership team
2. Collect store data and community opinions
3. Strategize and communicate to gather community support
4. Draft ordinance language
5. Council process:
  - a. Meeting with Council members
  - b. Subcommittee review: including data collection and discussion with retailers
  - c. Gather products from stores that would meet criteria

## **Is your community ready to enact a healthy checkout ordinance?**

The Healthy Checkout campaign is the latest step in Berkeley's history of nutrition policy. In 2014, Berkeley voters passed the first sugary drink tax in the nation to address loss of funding for the school gardens. The tax initiative created a new program called [Healthy Berkeley](#) that funds local community organizations and the school district to provide nutrition education, garden and cooking classes, and policy, systems, and environmental strategies such as the healthy checkout ordinance.

At the start of the Berkeley Healthy Checkout Ordinance (HCO) campaign, advocates completed a SWOT analysis to identify the Strengths, Weaknesses, Opportunities and Threats. The SWOT is [here](#). On balance, it was determined that Berkeley would be a good place to start.

## **How to decide if your community is ready? Consider these questions:**

1. What is your capacity and experience with passing policy? What is the history of organizing around health in your community?
2. What community support and partners do you have? Who would be an appropriate backbone organization?
3. What relationships do you have with your elected leadership? What are the prospects for a champion?
4. Do you have any relationships with local retailers that will support an ordinance?
5. Recognize that it will take time to research, organize, develop ordinance language and then implement. Do you have the resources—funding, people and time—to do this?

**TIP 1**

## **Keep your work QUIET**

If industry groups get wind of your effort before it is passed, you will have opposition, likely local retailers and the Chamber of Commerce who will be mobilized by the big corporations. How will your elected officials respond to opposition from businesses? Remember to keep all your work quiet as long as possible and to be selective in which businesses you talk to in advance.

**Where to start:** A good place to start is assembling a leadership team of stakeholders to co-create a vision for the campaign. The vision will be revisited throughout the campaign as you build the case for the ordinance with your community and assess the political will of your elected officials.

### **Assemble your leadership team**

The Berkeley leadership team consisted of community members who are parents, health researchers, and advocates. Many were involved in the sugary drink tax campaign. There were also representatives of organizations funded by the Healthy Berkeley program, such as Head Start, a local health clinic, and community education programs.

### **Criteria to consider for a leadership team:**

1. Stakeholders: advocates who will collect data, generate community engagement, write letters of support, and attend hearings.
2. Community members: parents of young children, teachers, and health professionals who will organize in their communities to support the campaign.
3. Key influencers: natural leaders in your community and/or people with connections to your elected officials.
4. Allies: people with limited time who will help the campaign at key points such as attending a brainstorming session and/or outreach to decision makers.

## **Berkeley's Vision**

The leadership team hoped to pass an ordinance that would limit what is sold in checkout aisles to:

- Simple, whole and healthy foods such as fruits, vegetables, cheese, yogurt, and nuts/seeds
- Drinks such as water, milk, and juice with no added sweeteners (caloric or artificial).

Although the team held onto this vision, they also incorporated community feedback from both customers and retailers as well as practical considerations.

## **Part 1: Data Collection**

Youth Leadership Model: [Bay Area Community Resources](#) (BACR) was the lead organization for the Berkeley Healthy Checkout ordinance. BACR recruited and trained a team of young community advocates; this team included high school and college students as well as young adults in their 20s and early 30s who have young children. Advocates collected store data and conducted focus groups and interviews with key informants (including retail managers). BACR also collected petition signatures, met with city council members, gathered letters of support, and testified at Council meetings.

All data collection tools are linked at the end of this section.

### **Questions to Consider:**

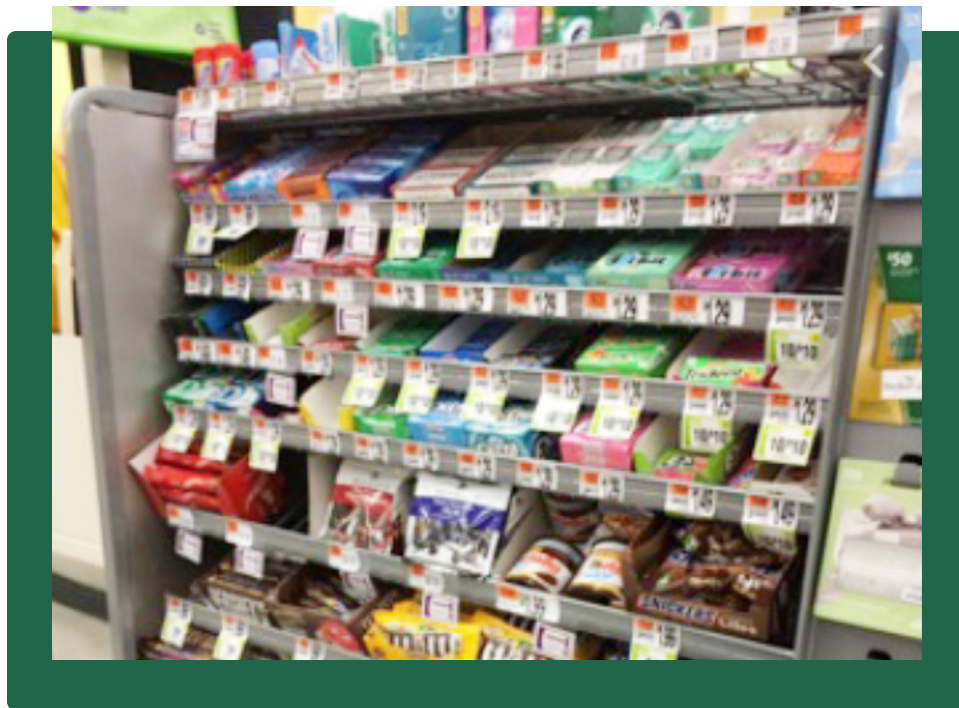
- ✔ What data is needed to accomplish your policy goal?
- ✔ Which stores are most important to survey and why?
- ✔ What demographic groups in your community are most important to listen to?
- ✔ How do you gather data in a way that represents your community and makes your case that healthy checkout is important to your community?
- ✔ When conducting focus groups, consider the balance of educating people about checkout aisles and listening to their concerns and hopes.



### **Store Data Collection Instrument**

BACR collected data on 16,404 items or facings in 35 stores including: 14 grocery stores, 11 drug stores, 3 Dollar Stores, 1 Target, 2 convenience stores, and 4 stores that only sold food in checkout aisles. The advocates selected these stores because they wanted a sampling of stores across Berkeley, including stores that are known to sell foods at checkout. It took approximately an hour to conduct the data collection or surveys in each store. Surveys were done on paper and thus required an additional 10 hours of data entry.

Each of the below slots that features a product is a “facing.” Note that there are 2 slots with the same product in the picture and each slot counts as a facing.



### **Data Collection Recommendations**

BACR advocates conducted data collection in pairs. In larger stores, they surveyed the checkout aisles without asking the store management. They selected empty aisles if possible (as long as these aisles were representative of the checkout aisles in general). It is important to survey multiple aisles per store in order to

document at least one of each type of checkout: standard checkout, express, and self-checkout. Taking pictures while carrying out this survey is necessary because it can be challenging to collect all of the necessary information in large stores and the photos can confirm the written information. In smaller stores, advocates introduced themselves to the clerk or manager and explained that they were collecting data for a project to determine what products are sold at checkout. They used this [guide for decision making](#) in stores as well as this [data codebook](#) to help categorize types of stores, check out design, and location of the stores. [The National Alliance for Nutrition and Activity \(NANA\)](#), a coalition that advocates national policies and programs to promote healthy eating and physical activity, [has set standards for checkout](#) which were used to categorize food and beverage products.

**TIP 3**

### **Choosing which stores to survey**

- Survey stores in each council / board members district.
- Survey stores in different areas of the jurisdiction - commercial, residential, under resourced, wealthy, and different sub-communities.
- If you are clear that you want to target a specific type of store, you can limit your survey.

### **Focus Groups:**

BACR recruited focus groups participants from pre-existing workgroups. Since many of the participants were familiar with each other, they tended to be more open in sharing their opinions. Although this is not a neutral way to collect data, it does facilitate learning about local concerns and establishes trust with community members.

Each focus group had 6-12 participants and included more women than men because they do more of the grocery shopping for their families. These groups also represented different neighborhoods of the city as well as different city council districts.

BACR had funding to conduct five focus groups and recruited the following groups:

- 🌱 parents of young children;
- 🌱 high school and college students—mostly youth of color;
- 🌱 Latinx parents;
- 🌱 African American parents; and,
- 🌱 volunteers from a local community garden who self-report as “very health conscious.”

The advocacy team developed the questions and guidelines with input from CSPI. The questions were the same for each group. Most of the focus groups were also recorded to help accurately record responses. Participants were assured that their answers were confidential and were asked permission to record for clarification of notes.

BACR opened the focus group by saying that this community-led project was gathering opinions and attitudes around food and the checkout aisles of stores. *“Your answers will help us better understand the food landscape here in Berkeley and identify ways in which we can support the health of the community.”* Participants were asked about their experiences and feelings regarding checkout areas as well as what food and drinks they would like to see in checkout aisles. At the end of the focus group, BACR discussed the store survey data as well as the project goal of passing a healthy checkout ordinance. Participants were also invited to collect signatures and attend City Council hearings.

### **Key Findings from Community Focus Groups:**

- 🌱 Half of participants reported feeling stress at checkout. In this context, stress refers to feelings of anxiousness or being overwhelmed.
- 🌱 100% supported healthy checkout in grocery stores.
- 🌱 100% wanted checkout to be stocked with fresh and dried fruit, vegetables, dried meats, and gum.
- 🌱 Students wanted energy, nutrition and granola bars, and grab-and-go foods.

- ✔ Many were concerned that products continue to be affordable and in the same price range as existing checkout items.
- ✔ Although all participants wanted healthier snacks, they did not necessarily want the healthiest snacks. There was still a lot of demand for healthier processed snacks.
- ✔ Berkeley has a culture of health, emphasizing the importance of community resources like public parks and proactive policies
- ✔ Most of the population has easy access to healthy foods, but a smaller portion of the population does not.
- ✔ Parents and children are susceptible to marketing and impulse buys.
- ✔ Some suggested offering tastings in stores to increase purchase of new healthy foods.

### **Key Informant Interviews:**

Key informant interviews are an opportunity to hear from experts whose thoughts and experiences can offer direction and support to the project. BACR interviewed local retailers in addition to other stakeholders. The local retailer interviews provided insight into their thoughts on healthy check out and helped to build relationships by listening to their concerns and answering questions.

**TIP 5**

### **Lessons learned in approaching retailers**

- It worked best to approach store managers and owners with respect and foster a relationship with them as customers and neighbors.
- When talking directly with the local store owners, it is critical to understand that they are concerned about keeping their businesses successful and it is tough to compete with big corporations like Target and Safeway.
- Show that research organizations care about their concerns.
- It can be helpful to reassure retailers that they will get support with implementation, including identifying healthy snacks to sell and training for staff.
- Remind stores that healthy checkout is popular with customers.
- Straightforward guidelines will help with implementation.
- A fact sheet such as [this one](#) can help retailers consider the benefit to consumers and their business

## **Links to Resources for Gathering Data for Healthy Checkout:**

Note: the below resources from BACR use the acronym HOPS (Healthy Options at Point of Sale) which is the name the advocates use for the project.

- ✔ [CSPI Checkout Aisle Survey Instrument](#)
- ✔ [Berkeley Store Survey Form](#)
- ✔ [Store Survey Decision Rules](#)
- ✔ [Code book](#) for store surveys
- ✔ [Focus Group Questions](#)
- ✔ [BACR Focus Group Guidelines](#)
- ✔ [Key Informant Interview Questions](#) for stakeholders and store managers/owners
- ✔ [Guide to conducting Key Informant Interviews](#)

- 🌱 [BACR Retailer Factsheet](#)
- 🌱 [Berkeley store checkout data spreadsheet](#)
- 🌱 [Berkeley Community Data Summary: factsheet](#)

## Part 2: Strategy to gather and communicate community support

Building support with community members and decisions makers was the next step in the campaign. We started by asking our leadership team and allies to help us develop a list of community influencers and create a strategy to engage them in the campaign. We had two groups, one in English and one in Spanish.

To accomplish this, we held a brainstorming session where we asked the following questions:

1. What individuals or organizations in the community would be likely allies in the efforts for a healthy checkout law?
2. What individuals or organizations would be likely to oppose a healthy checkout law?
3. Based on the experience of folks in the room, which council member(s) would be best to approach to sponsor this law?
4. What actions will it take to convince the identified council member(s) to partner with us in this effort?
5. Is there anything else we should consider in a strategic plan?

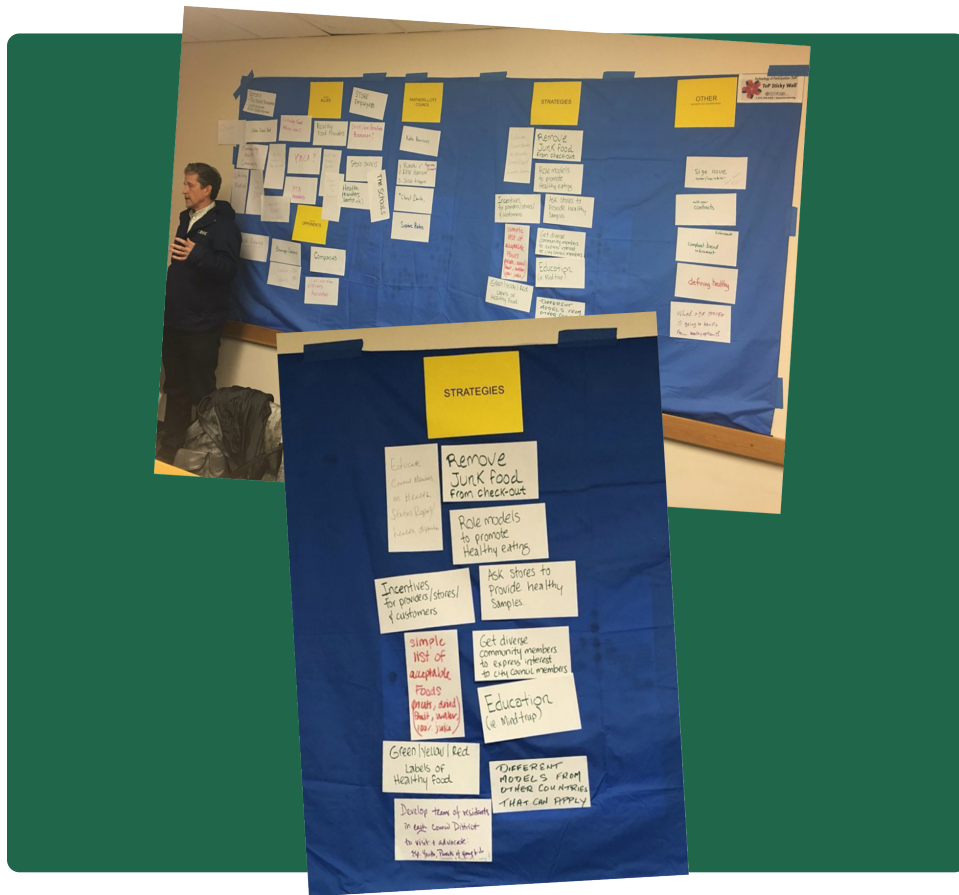
### TIP 6

#### Strategy Brainstorm Meeting and Tools

A brainstorming meeting can be critical to pulling together a strategy chart that identifies the steps you will take to recruit community supporters as well as City Council or County Board champions.

The Mid-West Academy has created tools that are widely used in local policy campaigns:

- [Mid-West Academy Strategy Chart form](#)
- [Decision Maker Matrix worksheet](#)
- Training on how to use the Decision Maker Matrix and Circle of Influence is [here](#).



## Berkeley Strategy meeting using these tools:

### Tactics

**Petitions:** Led by the youth advocates and adult advisors, our community partners helped collect nearly 900 signatures on a petition from the Farmers Market, transit hubs, local stores, and the University of California Berkeley campus.

**Community presentations:** The advocates made presentations at local groups such as the Berkeley Food Policy Council, local NAACP chapter, Berkeley Dental Society, and Parent Teacher Associations (PTA).

**Survey:** The Berkeley City Council selected healthy checkout as a topic for a citywide poll called Berkeley Considers. BACR advocates and our partners promoted the online survey and together we generated 97 out of 102 responses in support of a healthy checkout ordinance.

**Letters of Support:** BACR advocates and allies gathered 20 letters of support from influential community organizations, residents, and regional advocates.

**Social media:** Early in the campaign, advocates shared articles, favorite recipes and messages about healthy snacks on Facebook. The key to social media is to build a following that will later support the campaign with letters and testimony.

### **Part 3: Draft Ordinance Language**

Drafting the legal language was a long and interactive process. We started with the model ordinance drafted by [Changelab Solutions](#) and the language in the state bill, [CA AB765](#), which focused only on beverages. (Unfortunately, the state bill was withdrawn.)

There were four clear decisions that the Berkeley leadership needed to make:

- 1) Define criteria for “qualifying stores” which are covered in the ordinance;
- 2) How to define checkout aisles;
- 3) What nutritional/food requirements to include; and,
- 4) How would the ordinance be enforced and who would do it.

#### **1) Store criteria definition:**

From the beginning, we focused on large grocery and drug stores, in part because studies show that most food purchases are made in large grocery stores.<sup>9</sup> We fine-tuned the definition after we gathered data on a wide variety of stores. It was key to consult with the Environmental Health Department (EHD) at the City of Berkeley<sup>10</sup> to learn how they enforce health and safety laws through inspections and how they categorize stores.

Based on the EHD input and the City Council’s concerns for small retailers, we agreed to start with large retailers meeting this definition:

*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. Page 1 - Ordinance No. 7,734-N.S.*



## 2) Definition of Checkout Aisles:

We started with the definition on page 5 of the [model ordinance](#):

“Checkout area” means any area that is accessible to a customer of the Retail Store that is

1. within [ six ] feet of any Register; or
2. in an area where the Retail Store directs customers to wait in line to make a purchase.

We found that there are several types of checkout aisles:

1. The **typical grocery store checkout aisle can have** products on shelves across from and above the conveyor belt and cash register. Sometimes there are end caps at the entry to the checkout aisle as well.
2. Typical **convenience / corner** store layout does not have a designated “aisle” but rather one or two registers where people pay. Products are located on shelves and endcaps nearby but not in “aisles.”
3. A **“snaking” designated area to line up to checkout at a row of registers**. These “snaking” aisles are bordered by shelving with food and beverages for sale.

We documented all of these checkout aisle options in this [presentation](#). Additionally, we created this [fact sheet](#) that diagrams each style for Council discussion.

Berkeley City Council Members raised a concern about grocery stores that are very crowded at certain times such that checkout lines can extend beyond the “designated” checkout area into the regular grocery aisles. We did not want this ordinance to apply to the regular grocery stores aisles and so we used the phrase “designated primarily for” to clarify this distinction.

We also ran into concerns from the owner of one of the smaller local stores when we measured the distance from his registers. Although this retailer had piloted healthy checkout earlier in the year, it was clear that even a 6-foot distance from the registers was going to be a challenge. He felt it put him at a disadvantage because there was a similar but slightly smaller store on the same block that was not

going to be required to comply with the ordinance. In addition, two other qualifying local stores (over 2500 square feet) are set up like corner stores. In order to help these stores to meet the intent of the law but not be overly burdensome, we lowered the distance from the register to 3 feet for this type of checkout area.

After much discussion and verification in stores, we arrived at this definition for the checkout area that addresses all configurations and concerns:

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.

### **3) Criteria for healthy products that are allowed to be sold in the designated checkout areas:**

Establishing a definition for what food and beverages could be sold in checkout required a lot of research and discussion. We started with a prescriptive approach that provided a simple list of food categories. Our original vision was to allow only unprocessed foods and unsweetened beverages, making the ordinance easy to enforce. However, feedback from community focus groups told us that customers wanted healthier processed snacks, just with less sugar and salt so we compromised by including low sugar energy, granola and nutrition bars and products with whole grains.

An alternative approach, requested by the City Council Health Policy Committee, is a regulatory approach which sets nutrition guidelines for what products can be sold, such as:

- A. Beverages with no added sugars and no artificial sweeteners.
- B. Food items with no more than 5 grams of added sugars, and 230 milligrams of sodium per labeled serving.

The argument for the regulatory approach is that it gives stores maximum flexibility. On the other hand, it requires both stores and enforcement staff to be highly attentive to food labels.

Language for both a prescriptive and regulatory approach are detailed in this [document](#).

In the end, with the help of a basket of healthy options purchased from the stores themselves, we settled on a combined approach that led with nutrition guidelines but included a list of categories that allowed us to steer the product choice in the direction we envisioned.

### **Berkeley Healthy Checkout Ordinance final language re: what can be sold:**

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.

**TIP 8**

### **Consider your political strategy when discussing what to include in the ordinance**

- Start with your vision but then consider what you have the political will to enact.
- Listen to your community. This is why we included bars and other healthy but processed foods. Remember that your elected officials are responding to community demand so you need a base of support.
- Listen to local retailers and try to get them on your side. It is difficult to find retailers that will openly support this ordinance; however, you can show them that you want to work with them and gain their neutrality (keep them from opposing the ordinance). This is how we ended up using a 3-foot checkout area for smaller stores.
- Be strategic. Include some things that you are willing to give up. For us it was the inclusion of diet drinks, which ended up staying in despite objections from the American Beverage Association. Be flexible around the definition of checkout aisle. We moved from 6-8 feet to 3 feet to help smaller, locally owned retailers.

#### **4. Enforcement:**

Enforcement is a critical element to consider in a healthy checkout ordinance. In collaboration with city council leaders, identifying which department (if applicable) will oversee the enforcement of the policy is essential to an equitable implementation. Please note, additional trainings and resources may need to be provided.

## **Part 4: Identify important messages to persuade legislators, counter opposition, and share with the media**

### **Key messages can be grouped into categories.**

#### **1. Why is a healthy checkout ordinance important? What is the goal?**

- a. According to the Centers for Disease Control, a healthy diet helps children grow and develop properly.<sup>11</sup> Likewise, adults who eat a healthy diet have been shown to live longer and have a lower risk of future life threatening illnesses such as heart disease, type 2 diabetes, and certain cancers.<sup>12</sup>
- b. We can change norms around what our communities eat and drink and re-define “treats.” With this Healthy Checkout ordinance, we have an opportunity to change the retail environment which is critical to change community norms and reduce diseases like diabetes.
- c. **We know that community members want this.** Youth advocates collected signatures from over 700 Berkeley residents asking for healthy checkout with another 200 signatures from Berkeley shoppers who live in nearby cities.
- d. If you are focusing on large stores: Grocery stores are Americans’ top source for food and beverages, providing more than 60% of calories.<sup>13</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>14</sup>

#### **2. This is a vital step to help our children create a lifetime of healthy habits:**

- a. This will reduce junk food marketing to kids: Make no mistake—these products are placed in checkout intentionally. It is paid marketing to create brand recognition and establish addiction within families and consumers.
- b. Parents don’t stand a chance in the checkout aisles with candy calling and soda singing to their kids.
- c. Healthy checkout aisles offer parents opportunities to say YES to their kids and to change what they consider to be a treat.

### **3. Why do we support an ordinance instead of voluntary efforts?**

An ordinance helps stores re-negotiate slotting contracts with companies that are paying to have certain products placed in the checkout aisle. An ordinance creates consistency for stores and customers, which reinforces changes in community norms. In addition, an ordinance is significantly easier to enforce.

### **4. Why not require healthy products to be sold but also allow typical snacks?**

The goal is to reduce marketing, especially to children, and to shift perceptions of what the community considers to be treats, not just to make healthy choices available. While requiring healthy options is a start, it does not reduce marketing or temptation.

### **5. How will this impact business?**

- a. What is good for customers, especially responding to consumer demand, is good for business and makes good policy.
- b. This ordinance does not prohibit stores from selling any product—only what they can slot in the checkout aisles.
- c. What about profits? The Food Trust found that the profit margin for 1 apple = same as 4 bags of chips.<sup>15</sup> The profit margin on protein bars is as high as 40-50%, compared with only 20% to 30% for most other packaged foods.<sup>16</sup>
- d. There are many healthier products from the same companies that can replace the restricted products in the checkout aisle. For example:
  - Coca Cola: sells both Coke (with 15.5 teaspoons of added sugar) and Minute Maid juice (with no added sugar) for \$1.99.
  - Mars: sells both Milky Way candy bars (\$1.69) with 8 teaspoons of added sugar and Kind bars (\$1.50), some have only 1 teaspoon of added sugar.
  - Remember that the American Heart Association recommends kids and women and consume no more than 6 teaspoons of added sugar total in a day. For men, the recommended limit is 9 teaspoons.

**Links to fact sheets that BACR and CSPI created to support Berkeley Healthy Checkout ordinance:**

[CSPI list of sample Healthy Checkout food and beverage stock](#)

[BACR Retailer Factsheet](#)

[CSPI Retailer Factsheet](#)

[Product price comparison](#)

[Talking points for Berkeley City Council public hearing](#)

[List of food and beverage products by corporation](#)

[Folder of all resources for public hearing](#)

## **Part 5: Council process**

Each City will have its own process for passing local laws. It is best to find out what the specific rules are for your jurisdiction. In Berkeley, once an ordinance is introduced, it is referred to a policy committee of the City Council. The original Healthy Checkout ordinance was sent to the Health Policy Committee and went through three meetings of discussion, December 2019 through March 2020, with follow up assignments in between. Revised language was sent to the full Council in September 2020 for a first reading. On October 13, 2020, there was a second reading of the Healthy Checkout ordinance: it was passed into law on the Consent Calendar.

### **Opposition:**

The only one voice of opposition at the first hearing was a letter sent by the Downtown Business District on behalf of businesses struggling due to COVID-19, including Walgreens, CVS and Target. The Council responded to their request for delay by postponing the enforcement date of the ordinance until January 2022.

Following the initial vote, the City Council did get letters from two industry groups asking for changes to the ordinance. The [American Beverage Association](#) (ABA) and [Snacking, Nutrition, Convenience or SNAC](#). The ABA requested that the ordinance allow artificially

sweetened beverages (ASB) or diet beverages to be sold in the checkout area and SNAC was largely concerned with allowing meat snacks such as jerky. You can see the ABA letter [here](#) and the SNAC letter [here](#). We wrote a [response](#), outlining the reasons for why the ordinance does not allow these products. More details and references are in the full [letter](#).

**Keys to our success:**

- 1) We had two Council champions.
- 2) Advocates met with all Council Members individually in advance of the September hearing to talk about store surveys and community support and to answer questions.
- 3) Advocates built on the history of nutrition education and the sugary drink tax campaign, working with veterans of past efforts who have strong relationships to the Council.
- 4) Advocates made presentations to Council that included samples of healthy products that were purchased at the qualifying stores and that would be allowed in the checkout aisles under the ordinance. There were also unhealthy products that are currently being sold in checkout aisles with information on sugar content, pricing and profit margin. You can see this presentation [here](#) (minute 3:17:28). Fact sheets were included in the agenda packet and showed sample products that meet the criteria in the ordinance (the fact sheets are included in the appendix).
- 5) The industry groups that opposed this legislation did not weigh in until after the first hearing because we kept a low-profile with chain stores and in the press.
- 6) We pre-empted opposition with thoughtful, research-based messages, local data, and community support.



## Part 6: Opportunities to Expand in the Future

What Berkeley might do next to strengthen this effort: In future years, we might revisit and strengthen this ordinance. Here are some potential changes:

- ✔ Expand beyond the 3-foot radius checkout areas in smaller stores;
- ✔ Expand the definition of stores to include smaller stores;
- ✔ Add or remove food categories in the definition of healthy checkout; and,
- ✔ Expand to include endcaps of aisles or other areas of the store.

These actions will be based on any evaluation as well as feedback from customers, stores and the City staff who are enforcing the ordinance.

Berkeley City Council hopes that their actions will spark a movement and that other jurisdictions will follow suit with an ordinance that fits each community. In the same way that smoking indoors has become a distant memory in the U.S., we hope that one day buying junk food and drinks in checkout aisles will also be long gone.

Remember that there are a range of options for an ordinance. Start with the strongest ordinance you think is possible and then be willing to compromise. If you need to start with requiring a percentage of healthy products, or only restricting beverages - it is still a great start and a WIN!

## Citations

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- <sup>2</sup> *Report: People buy most of their junk food at the supermarket*— ScienceDaily. (n.d.). Retrieved July 26, 2021, from <https://www.sciencedaily.com/releases/2016/08/160809145248.htm>
- <sup>3</sup> Farley, T. A., Baker, E. T., Futrell, L., & Rice, J. C. (2010). The ubiquity of energy-dense snack foods: a national multicity study. *American Journal of Public Health*, 100(2), 306–311. <https://doi.org/10.2105/AJPH.2009.178681>
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- <sup>8</sup> Rivlin, G. (2016). *Rigged: Supermarket Shelves for Sale* (J. Almy & M. Wootan, Eds.). Center for Science in the Public Interest.
- <sup>9</sup> USDA ERS - *Supermarkets, Schools, and Social Gatherings: Where Supplemental Nutrition Assistance Program and Other U.S. Households Acquire Their Foods Correlates With Nutritional Quality*. (n.d.). Retrieved July 26, 2021, from <https://www.ers.usda.gov/amber-waves/2018/januaryfebruary/supermarkets-schools-and-social-gatherings-where-supplemental-nutrition-assistance-program-and-other-us-households-acquire-their-foods-correlates-with-nutritional-quality/>
- <sup>10</sup> In most jurisdictions, Environmental Health programs are housed at the County level; however, Berkeley is one of a few cities in the State that has its own health department.
- <sup>11</sup> *Poor Nutrition* | CDC. (n.d.). Retrieved July 26, 2021, from <https://www.cdc.gov/chronic-disease/resources/publications/factsheets/nutrition.htm>
- <sup>12</sup> *Poor Nutrition* | CDC. (n.d.). Retrieved July 26, 2021, from <https://www.cdc.gov/chronic-disease/resources/publications/factsheets/nutrition.htm>
- <sup>13</sup> USDA ERS - *Supermarkets, Schools, and Social Gatherings: Where Supplemental Nutrition Assistance Program and Other U.S. Households Acquire Their Foods Correlates With Nutritional Quality*. (n.d.). Retrieved July 26, 2021, from <https://www.ers.usda.gov/amber-waves/2018/januaryfebruary/supermarkets-schools-and-social-gatherings-where-supplemental-nutrition-assistance-program-and-other-us-households-acquire-their-foods-correlates-with-nutritional-quality/>
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- <sup>15</sup> [http://thefoodtrust.org/uploads/media\\_items/sell-healthy-guide-2016.original.pdf](http://thefoodtrust.org/uploads/media_items/sell-healthy-guide-2016.original.pdf) OR [https://drive.google.com/file/d/1g-JV2BsSymA6\\_gB\\_AS46AH3rLtz2\\_jX7/view?usp=sharing](https://drive.google.com/file/d/1g-JV2BsSymA6_gB_AS46AH3rLtz2_jX7/view?usp=sharing)
- <sup>16</sup> Wall Street Journal: [Snack Bars Push the Price Envelope](#), June 9, 2015 or [PDF](#)