

# Sugar Reduction Law and Policy Toolkit



FOOD LAW  
*and* POLICY CLINIC  
HARVARD LAW SCHOOL

April 2022

## Authors

The lead authors of this report are **Joseph S. Beckmann**, *Clinical Fellow of the Food Law and Policy Clinic at Harvard Law School*, **Emily M. Broad Leib**, *Clinical Professor of Law and Director of the Food Law and Policy Clinic at Harvard Law School*, **Molly Cohen**, *Clinical Instructor of the Food Law and Policy Clinic at Harvard Law School*, **Regan Plekenpol**, *Program Coordinator of the Food Law and Policy Clinic at Harvard Law School*, **Melissa Shapiro**, *Clinical Instructor of the Food Law and Policy Clinic at Harvard Law School*, and **Kristin Sukys**, *Policy Analyst of the Health Law and Policy Clinic at Harvard Law School*. Finally, the following Food Law and Policy Clinic Students and Interns at Harvard Law School contributed additional research, writing, and editing support: **Jack Becker**, **Kaixin Fan**, **Zach Fuchs**, **Nadia Haile**, **Tianhao He**, **Mike Hornzell**, **Owen Hosseinzadeh**, **Kayla Blaker**, **Maggie McGovern**, **Jessica Nelson**, **Jasmine Nguyen**, **Gray Norton**, **Simone Wahnschafft**, and **Jung Hyuk “Joseph” Yim**.

## Acknowledgements

This report would not have been possible without the assistance and partnership of the various individuals with whom we conducted technical assistance through this project including **Sarah Downer**, **Erika Dunyak**, **Katie Garfield**, **Nicole Negowetti**, and all staff of the Harvard Law School Center for Health Law and Policy Innovation and Food Law and Policy Clinic. We would also like to thank **Christina Roberto**, *PhD, Mitchel J. Blatt and Margo Krody Blatt Presidential Associate Professor of Health Policy, University of Pennsylvania Perelman School of Medicine; Director, PEACH lab, Associate Director of CHIBE*, and **Xavier Morales**, *PhD, MRP, Executive Director, The Praxis Project*, whose expertise and insight helped inform this report. Lastly, we would like to thank all of our partner sites where we conducted technical assistance, whose on-the-ground knowledge and experiences in the sugar reduction space were vital in developing the policy solutions found in this report.



## About the Harvard Law School Food Law and Policy Clinic (FLPC)

FLPC serves partner organizations and communities in the U.S. and around the world by providing guidance on cutting-edge food system issues while engaging law students in the practice of food law and policy. FLPC is committed to advancing a cross-sector, multi-disciplinary, and inclusive approach to its work, building partnerships with academic institutions, government agencies, non-profit organizations, private sector actors, and civil society with expertise in public health, the environment, and the economy. FLPC's work focuses on increasing access to healthy foods, supporting sustainable and equitable food production, reducing waste of healthy, wholesome food, and promoting community-led food system change.



## About the Approaches to Reducing Consumption of Sugar (ARCS) initiative

In 2018, FLPC, in collaboration with the Center for Health Law and Policy Innovation's Health Law and Policy Clinic, launched the Approaches to Reducing Consumption of Sugar (ARCS) initiative to identify locally supported policies that will reduce sugar consumption and build capacity for policy change. The ARCS project specifically aims to (1) support community-led policy change through direct pro bono technical assistance (TA) to community organizations, food policy councils, and local, state, and tribal government entities across the U.S.; (2) advance advocacy and policy change at the federal level; and (3) deliver resources that will help promote healthier food environments on a broader scale in the form of a virtual webinar series and a sugar reduction policy toolkit.

Made possible with support from Arnold Ventures.

Report design by Najeema Holas-Huggins.

Suggested Citation: JOSEPH S. BECKMANN ET AL., HARV. L. SCH. FOOD L. & POL'Y CLINIC (FLPC), SUGAR REDUCTION POLICY TOOLKIT (2022), <https://chlpi.org/wp-content/uploads/2022/04/ARCS-Toolkit.pdf>.

# Table of Contents

- INTRODUCTION.....1
  - Purpose of this Toolkit.....1
  - Intended Audience and How to Use this Toolkit.....1
  - What’s Inside.....2
  
- UNDERSTANDING THE ISSUE.....4
  - The Scoop on Sugar.....4
  - Food Apartheid.....4
  - Costs of Excess Sugar Consumption.....5
  - Insufficient Law and Policy Responses to Address these Issues.....6
  
- GENERAL LEGAL SETTING: PATHWAYS TO SUCCESS AND ROADBLOCKS TO KEEP  
IN MIND CONCERNING SUGAR REDUCTION LAWS AND POLICIES.....11
  - The Interplay between Federal, State, Local, and Tribal Law.....11
  - How Local Governments Get the Authority to Act.....13
  - Other Checks on State and Local Government: Preemption and State General Laws.....15
  - How Federal, State, and Local Law Affects Food Law and Policy.....17
  - Partnering with State and Local Governments and Agencies.....19
  - Roadblocks to Sugar Reduction Law and Policy Initiatives.....22
  
- SUGAR REDUCTION LAW AND POLICY SOLUTIONS.....30
  - Sugar-Sweetened Beverage (SSB) Tax.....30
  - Warning Labels on Products.....51
  - Healthy Default Policy.....61
  - Healthy Retail Policy.....67
  - Healthy Procurement Policy.....76
  - Public Awareness Campaigns.....85
  
- OTHER CONSIDERATIONS AND CONCLUSION.....92
  - Other Considerations.....92
    - Portion Size Limits.....92
    - Food Service Guidelines.....93
    - Joint Efforts in Opposition To and To Repeal State Preemption Laws.....94
    - Encourage Law and Policy Innovation through Coalition Building.....94
  - Conclusion.....95
  
- ADDITIONAL RESOURCES.....98



# INTRODUCTION

Sugar consumption in the United States is insidious and ubiquitous. With each teaspoon of added sugar formulated into products, hidden in sweetened beverages, and the predatory nature of industry advertising that goes essentially unchecked, comes myriad bitter consequences, such as rising rates of children and adults with obesity,<sup>1</sup> a surge in preventable diet-related chronic disease,<sup>2</sup> and an unsustainable economic burden on the healthcare system.<sup>3</sup> The call for a system redesign is apparent, as 70% of people in the United States report concern about dietary sugar, sounding particular alarm around sugar-sweetened beverages (SSBs).<sup>4</sup> Advocates and lawmakers are increasing attention to policy solutions and building cross-sectoral coalitions<sup>5</sup> aiming to minimize dangerous and unchecked sugar consumption (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule).

The Harvard Law School Food Law and Policy Clinic (FLPC) joined the effort to advance healthy food access and improved nutritional outcomes through the initiative *Approaches to Reducing the Consumption of Sugar (ARCS)*. During this three-year effort to foster collaborative environments and problem-solve the issue of excess sugar consumption, FLPC conducted legal research into applicable federal, state, and local laws and developed strategies for community-supported policy change. In addition, FLPC offered technical assistance (TA) to community organizations, food policy councils, and local and state government entities in eight locations across the United States as they worked to implement innovative sugar reduction policies. In these TA sites, FLPC:

- Bolstered coalition-building by encouraging engagement with relevant cross-sectoral stakeholders and partners;
- Strengthened peer-to-peer learning across sites as well as with other stakeholders through a [webinar series](#) that focused on the most equitable and effective policy options to reduce consumption of food and beverages high in added sugar; and
- Enhanced local knowledge, invested in capacity building through on-site and virtual trainings on policy advocacy strategies, and delivered memoranda and reports on policy strategies of interest to partner organizations.

FLPC developed the **Sugar Reduction Law and Policy Toolkit** (Toolkit) as a compilation of the findings gleaned from this research and peer-to-peer learning over the last three years.

## Purpose of this Toolkit

- Provide an overview of sugar consumption in the United States and its deleterious effects on society.
- Discuss the principle legal, political, economic, and societal barriers to the implementation of sugar reduction policies.
- Offer a comprehensive overview—including analysis of efficacy, equity, and feasibility—of six promising sugar reduction policy solutions.
- Analyze potential benefits of each policy option through real-world case studies.

## Intended Audience and How to Use this Toolkit

This Toolkit will serve a wide range of interested actors—from nonprofits and grassroots organizations to government agencies and officials—in enacting change in sugar reduction policy. This document serves as a reference for exploring different sugar reduction policy issue areas and levers for policy change. To maximize the use of this Toolkit, we recommend following these steps:

- Make a realistic appraisal of how the solutions, examples, and methods contained in this Toolkit may fit within your context. This Toolkit aims to provide an overview that is broad enough to be applicable to most states and localities; however, the feasibility of the below-described solutions depends on a variety of case-specific factors. Potential roadblocks are discussed in detail in Section II, and will be referenced throughout the Law and Policy Solutions section of this Toolkit. Ensure that selected policy strategies fit within the target community’s legal structures, priorities, and resources.
- Use this Toolkit piece-by-piece. This Toolkit covers a variety of food policy issues, and is not necessarily intended to be read cover-to-cover. By design, each section can be read independently and provides a complete summary of a particular sugar reduction policy solution. Points of overlapping information are noted so the reader can jump between sections to get a more complete perspective.
- Read, digest, and explore. This Toolkit provides a strong foundation for learning about the legal, political, economic, and social factors that shape state and local sugar reduction policy. However, it is in no way comprehensive. As such, an Additional Resources section at the end of this Toolkit references other resources that may be useful for advocates.

## What’s Inside



**Section I: Understanding the Issue** highlights sugar consumption trends and the consequences on health outcomes in the United States. Due to a dearth of policies to modulate excess sugar intake, the U.S. population suffers from increases in diet-related disease and corresponding socioeconomic costs, the burden of which falls disproportionately and inequitably on BIPOC (Black, Indigenous, and People of Color) communities. The predatory nature of the food and beverage industries to maintain and increase private profits serves as a major contributor to these adverse dietary trends relevant to sugar consumption.



**Section II: General Legal Setting: Pathways to Success and Roadblocks to Keep in Mind Concerning Sugar Reduction Laws or Policies** overviews various designs of sugar reduction laws or policies and regulations that may be implemented at the state or local level. In addition to information pertinent to drafting laws to reduce sugar consumption, this section suggests government agencies that may serve as important partners and stakeholders for policy change. Finally, this section directly addresses the legal, political, economic, and social barriers and roadblocks that may inhibit successful implementation of sugar reduction policies.



**Section III: Sugar Reduction Law and Policy Solutions** outlines six recommended policy solutions for regulating consumption of excess sugar. Each solution is described in detail, with an emphasis on the policy’s highlights and any potential barriers that might limit successful implementation. Real-world case studies complement each policy solution to elucidate the mechanics of implemented policies at the state or local level. The recommended policy solutions discussed are:

1. Sugar-Sweetened Beverage (SSB) Taxes,
2. Warning Labels on Products,
3. Healthy Default Policy,
4. Healthy Retail Policy,
5. Healthy Procurement Policy, and
6. Public Awareness Campaigns



**Section IV: Other Considerations and Conclusion** provides more examples of proposed or attempted policy solutions that may not have extensive data but pose innovative concepts worth considering when addressing sugar reduction policy solutions. This section concludes with a summary of findings within the Toolkit and an additional resources for further reading on the topic of sugar reduction law and policy solutions.



**Section V: Additional Resources** provides a variety of available resources that can serve as supplemental information to further your objective in implementing such sugar reduction laws or policies.





# UNDERSTANDING THE ISSUE

## The Scoop on Sugar

When it comes to consumption of added sugar,<sup>6</sup> the United States takes the cake.<sup>7</sup> An adult living in the United States consumes an average of 77 grams of sugar per day—or 17 teaspoons—which annualizes to a whopping 60 pounds of added sugar.<sup>8</sup> For visual reference, this equates to 10 bowling balls of sugar per person, per year.<sup>9</sup> Meanwhile, public health experts such as the **World Health Organization (WHO)**,<sup>10</sup> and the **American Heart Association (AHA)**,<sup>11</sup> recommend keeping sugar intake to less than 5% of daily calories<sup>12</sup>—closer to 10 teaspoons per day—requiring almost a 50% reduction.<sup>13</sup>

Sugar provides very little nutritional value, but creates a cascade of adverse health effects. Each increase in gram of sugar above public health guidelines results in increased risk for unfavorable health outcomes, such as Type II diabetes, metabolic syndrome (MetS),<sup>14</sup> cardiovascular disease (CVD), liver disease, and certain cancers.<sup>15</sup> Due in large part to food and beverage and sugar industry efforts to increase their sales through added sugar, obfuscating research, pricing strategies, paid product placement, and promotion, sugar became ubiquitous in the Standard American Diet.<sup>16</sup> This is exacerbated due to the persistence of a lack of access to clean water in many communities, resulting in community members resorting to sugar-sweetened beverages (SSBs) for hydration. Consequently, the United States entered the throes of an obesity epidemic; approximately one in three adults, and one in four children living in the United States have obesity.<sup>17</sup> The increasing weight of the average individual living in the United States is also increasing susceptibility to diet-related disease; currently, one in five adults living in the United States (22.9%) aged 20 and older have MetS,<sup>18</sup> one in ten adults living in the United States have diabetes,<sup>19</sup> and one in every four deaths is caused by heart disease.<sup>20</sup> Myriad studies confirm the causal link between weight gain and added sugar consumption.<sup>21</sup> According to one study, a 1% rise in SSB consumption results in an estimated 48 additional overweight adults and 2.3 additional adults with obesity per 100 people.<sup>22</sup> Beyond long-term chronic illness outcomes, individuals that are obese or diabetic also have worse outcomes for alternative health risks due to impaired immune function.<sup>23</sup> For example, individuals with obesity that contracted COVID-19 had triple the risk of hospitalization.<sup>24</sup> Such high prevalence of costly diet-related disease—and consequent vulnerability of individuals to future epidemics, pandemics, and infectious disease—indicates that sensible policy around sugar consumption is warranted and required to protect public health (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule).<sup>25</sup>

Yet, despite mounting pressure to decrease consumption, the food and beverage industries continue to center the use of sugar and the promotion of products high in sugar, thus contributing to sugar remaining a mainstay in the Standard American Diet,<sup>26</sup> found most abundantly in SSBs and sweet snacks and desserts. Specifically, SSBs account for 24% and sweet snacks and desserts account for 19% of sugar consumption sources.<sup>27</sup> In addition to taste, food and beverage companies frequently add sugar to pre-packaged and processed foods as a preservative, increasing shelf life and, therefore, cost effectiveness for manufacturers and consumers alike.<sup>28</sup> With this increased shelf life and cost effectiveness, sugar-laden products are more easily accessible than healthy foods across grocery stores, convenience stores, and other retail outlets.

## Food Apartheid

Beyond personal food preferences, many pernicious socio-economic factors drive heightened sugar consumption, particularly among communities that are historically marginalized, under-invested, and have a high percentage of families with low income. Consequently, the health and financial burden of diet-related chronic illness disproportionately affects BIPOC communities. Institutionalized racial disparities feed social injustices, including lack of access to healthy food choices, lack of drinkable water at the tap, and lack of nutrition education.<sup>29</sup> About 24 million people living in the United States

live in communities with low access, called, in some cases, food deserts or areas of “food apartheid,” in which it is difficult—if not impossible—to access affordable, healthy food.<sup>30</sup> For example, according to the **The Food Trust**,—a regional and national nonprofit leader in developing new strategies to prevent childhood obesity and other diet-related diseases—Black families are 2.5 times and Latino families are 1.4 times more likely than white families to live in areas without access to a full-service grocery store.<sup>31</sup> White neighborhoods have an average of four times as many supermarkets as predominantly Black communities.<sup>32</sup> “Food apartheid” is a more accurate term for these regions than the commonly-used “food desert” because it makes clear that inequitable access to nutrition is not a natural phenomenon but, rather, by design. Human-created systems of segregation relegate certain groups to food opulence and prevent others from accessing healthy and culturally appropriate foods. Also, malicious and predatory marketing by the food and beverage industries further target communities with low access and with a high percentage of families with low income, such as by intentionally discounting sugar-sweetened soft drinks and ultra-processed foods on the days when Supplemental Nutrition Assistance Program (SNAP)—formerly known as the Food Stamp Program—benefits are issued and advertising high-sugar fruit juices as healthy and affordable sources of nutrition for children.<sup>33</sup>

While sugar consumption is too high among all groups, certain demographic groups consume more added sugar on average, particularly non-Hispanic Black populations.<sup>34</sup> The noxious effects of these consumption patterns are not race-neutral; while incidences of Type 2 diabetes, obesity, and heart disease are on the rise in all populations, the greatest increases occur among people of color, especially African Americans and Indigenous Americans. According to the National Health and Nutrition Examination Survey (NHANES)—a program of studies designed to assess the health and nutritional status of adults and children in the United States—data from 2016, almost half of Black and Hispanic populations were obese compared to only 38% of white populations. Further, Black women are twice as likely to be severely obese,<sup>35</sup> at a rate of 16%, as almost every other racial and gender group and Hispanic men are twice as likely to be diagnosed with diabetes as white women are.<sup>36</sup> Cardiovascular outcomes are also worse among populations of color; research indicates that the incidence of hypertension among Black populations is 42%, compared to 29% in white non-Hispanic and Hispanic populations.

## Costs of Excess Sugar Consumption

Beyond jeopardizing public health outcomes, diet-related diseases have significant direct and indirect implications on the economy.<sup>37</sup> The estimated healthcare costs dedicated to addressing issues closely tied to excess sugar consumption in the United States hover between 30–40 percent of all health expenditure.<sup>38</sup> The CDC reports that a combined \$826 billion is spent on health care costs and loss of productivity from obesity (\$147 billion), diabetes (\$327 billion), and cardiovascular disease (\$352 billion).<sup>39</sup> Indirect costs exist in the form of absenteeism, presenteeism,<sup>40</sup> inability to work, reduced productivity, and premature mortality.<sup>41</sup> Earlier than expected death rates cost the economy billions of dollars, both through healthcare costs and productivity losses, with fewer participants to contribute to overall economic growth.<sup>42</sup>

Meanwhile, research shows that increasing access to healthier diets and decreasing added sugar consumption yields economic benefits.<sup>43</sup> Cost effectiveness studies on sugar reduction policies, from labelling to taxation, demonstrate immense potential healthcare cost savings in averted morbidity and mortality.<sup>44</sup> For example, a Tufts University Friedman School of Nutrition Science and Policy-led study examined the effectiveness of a penny-per-ounce SSB tax at the national level.<sup>45</sup> The study concluded that a national SSB tax would have wide-ranging effects on individuals depending on their healthcare insurance status, on the food and beverage industries, and on government, but also estimated a \$31 billion net health care costs savings and \$61.9 billion in social costs savings.<sup>46</sup> As indicated by the

projected success of just one of these policy interventions, implementing a variety of policy solutions to reduce sugar consumption promises to be both cost effective and beneficial for public health and equity.

## Insufficient Law and Policy Responses to Address these Issues

Yet, despite such pervasive public concern, policymakers at all levels have not adopted sufficient responses to address the trends illustrated above. For example, a recent Government Accountability Office report found that the federal government's efforts to address diet-related disease were fragmented and lacked sustained government-wide leadership and strategy.<sup>47</sup> On the state and local level, a variety of legal, political, economic, and social barriers prevent policy responses from effectively reducing sugar consumption, including first amendment concerns, preemption, as well as economic costs and impacts on small businesses.

A key roadblock to implementing policies to reduce sugar consumption (e.g., warning labels on products), is the concern about litigation against sugar reduction policies. For example, in jurisdictions that have enacted policies requiring sugar-warning labels for products with added sugar (see Warning Labels on Products section of this Toolkit for more detail), many of these policies have been challenged in court by the food and beverage and sugar industries based on claims they violate the first amendment. While the constitutionality of these warning labels is an open question, the potential for litigation likely creates a chilling effect, making jurisdictions unlikely to enact these policies and risk litigation. Similarly, jurisdictions that have enacted SSB taxes, (see Sugar-Sweetened Beverage (SSB) Taxes section of this Toolkit for more detail) have almost all faced litigation on claims that the law was arbitrary and capricious or that it violated rules against double taxation. While those policies have generally been upheld, the time and cost of litigation has a chilling effect on future legislation. These challenges and best practices for avoiding litigation are discussed in sections below.

Beyond fears of litigation, policymakers, and in particular local policymakers, may be limited in how they can regulate sugar, due to preemption, when a higher governmental authority (like the state) limits what a lower authority (like a local government) can regulate. In the sugar context, under the mounting pressures of industry, a number of state governments have enacted legislation that preempt municipal governments from passing SSB taxes,<sup>48</sup> even though SSB taxes are proven to reduce sugar consumption and can serve as a great source of revenue for municipalities to fund other community initiatives.<sup>49</sup>

Aside from legal roadblocks, policymakers face additional social and economic roadblocks. Even though most people know about their harms, sugar products are popular and increasing their cost or reducing access to them may be socially and politically unpopular.<sup>50</sup> Additionally, policies to address sugar consumption may be expensive, and may impose costs on businesses like small-scale retailers. For example, requiring stores stock healthier food items may increase costs for convenience stores who must pay for additional items and refrigeration (see Healthy Retail policy solution section of this Toolkit for more detail).<sup>51</sup>

Given the strength of the food and beverage and sugar lobby, policymakers will face pushback on many policies to reduce consumption of sugar. Large corporate players will push behind the scenes to kill or soften legislation and may even appeal to a higher level of government, like the state legislature, to preempt local attempts to regulate. To prevent governmental action, corporations may voluntarily commit to small initiatives to reduce sugar consumption (e.g., offering water or milk instead of soda with a children's meal), while keeping the bulk of their practices the same. To combat the food and beverage industry's and sugar industry's clout and ensure policymakers address sugar consumption, communities must organize, form strong coalitions, and mobilize to demand action and ensure governments address the pervasive and costly impacts of sugar.

## Endnotes

- <sup>1</sup> *Adult Obesity Facts*, CTNS. FOR DISEASE CONTROL & PREVENTION (CDC), <https://www.cdc.gov/obesity/data/adult.html> [https://perma.cc/9MWF-KE7S].
- <sup>2</sup> Sugarscience, *Too Much Can Make Us Sick*, U. CAL. S.F., <https://sugarscience.ucsf.edu/too-much-can-make-us-sick/#.YMIHWWWhKgdX> (last visited Apr. 14, 2022) [https://perma.cc/6JYQ-89BB].
- <sup>3</sup> Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2017*, 41(5) DIABETES CARE 917, 920-24 (2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5911784/> [https://perma.cc/A6WE-8LS3].
- <sup>4</sup> Cathy Siegner, *70% of US adults are concerned about sugar consumption, study finds*, FOOD DIVE (Dec. 13, 2018), <https://www.fooddive.com/news/70-of-us-adults-are-concerned-about-sugar-consumption-study-finds/543921/> [https://perma.cc/M38S-9GVS] (citing IPSOS, *WHAT THE FUTURE*, GENEPOP (2018), <https://www.ipsos.com/sites/default/files/What-The-Future-Food-2018.pdf> [https://perma.cc/C399-YKTE]).
- <sup>5</sup> For example, the American Heart Association Voices for Healthy Kids has launched a Sugary Drink Healthy Hydration Collaborative of academic and non-profit organizations, public health experts, and other sugar reduction policy advocates to collaborate and develop the most effective strategies to combat sugary drink consumption. See *We're calling for change. Will you add your voice?*, AM. HEART ASS'N (AHA) VOICES FOR HEALTHY KIDS, <https://voicesforhealthykids.org/about/who-we-are> (last visited Apr. 14, 2022) [https://perma.cc/98AG-ND78] [hereinafter AHA VOICES FOR HEALTHY KIDS].
- <sup>6</sup> While sugar is naturally occurring in certain foods—such as fruits and vegetables and certain dairy products—“added sugar” are sugars and syrups that are added to foods or beverages when they are processed or prepared. They may have many different names and some examples include brown sugar, cane juice, corn syrup, dextrose, fructose, fruit nectars, glucose, high-fructose corn syrup, honey, lactose, malt syrup, maltose, maple syrup, molasses, raw sugar, and sucrose. See *What are added sugars?*, CDC HEALTHY WEIGHT, NUTRITION, AND PHYSICAL ACTIVITY (Jan. 13, 2022), [https://www.cdc.gov/healthyweight/healthy\\_eating/sugar.html#:~:text=Added%20sugars%20are%20sugars%20and,milk%20are%20not%20added%20sugars](https://www.cdc.gov/healthyweight/healthy_eating/sugar.html#:~:text=Added%20sugars%20are%20sugars%20and,milk%20are%20not%20added%20sugars) [https://perma.cc/34MS-KY6F].
- <sup>7</sup> NAT'L HEALTH & NUTRITION EXAMINATION SURVEY (NHANES), *WHAT WE EAT IN AMERICA NHANES 2017-2018: NUTRIENT INTAKES FROM FOOD AND BEVERAGES: MEAN AMOUNTS CONSUMED PER INDIVIDUAL, BY GENDER AND AGE, IN THE UNITED STATES, 2017-2018*, U.S. DEP'T OF AGRIC. (USDA) AGRIC. RSCH. SERV. (2018), [https://www.ars.usda.gov/ARSUserFiles/80400530/pdf/1718/tables\\_1-56\\_2017-2018.pdf](https://www.ars.usda.gov/ARSUserFiles/80400530/pdf/1718/tables_1-56_2017-2018.pdf) [https://perma.cc/L42X-4YHA]; see generally Consumer Goods & Fast-Moving Consumer Goods (FMCG): Food & Nutrition, *Average per capita consumption of sugar as of 2016, by country (in grams)*, STATISTA (May 31, 2016), <https://www.statista.com/statistics/535219/global-sugar-per-capita-consumption-by-country/> [https://perma.cc/M2EC-3EQS].
- <sup>8</sup> *How much sugar is too much?*, AM. HEART ASS'N., <https://www.heart.org/en/healthy-living/healthy-eating/eat-smart/sugar/how-much-sugar-is-too-much> (last visited Feb. 6, 2021) [https://perma.cc/ZXJ2-47CV].
- <sup>9</sup> *Id.*
- <sup>10</sup> WORLD HEALTH ORG. (WHO), *GUIDELINE: SUGARS INTAKE FOR ADULTS AND CHILDREN* (2015), <https://www.who.int/publications/i/item/9789241549028> [https://perma.cc/S9GM-S8YM].
- <sup>11</sup> *How much sugar is too much?*, *supra* note 8.
- <sup>12</sup> The Centers for Disease Control and Prevention (CDC) follows the Dietary Guidelines for Americans 2020-2025 (DGA) recommendation on sugar of less than 10% of daily calories. See *Know Your Limit for Added Sugars*, CDC, (Jan. 13, 2022), [https://www.cdc.gov/healthyweight/healthy\\_eating/sugar.html](https://www.cdc.gov/healthyweight/healthy_eating/sugar.html) [https://perma.cc/9XEL-4K4V]; see *Get the Facts: Added Sugars*, CDC (Nov. 28, 2021), <https://www.cdc.gov/nutrition/data-statistics/know-your-limit-for-added-sugars.html> [https://perma.cc/BK4D-TTSF].
- <sup>13</sup> WHO, *GUIDELINE: SUGARS INTAKE FOR ADULTS AND CHILDREN*, *supra* note 10.
- <sup>14</sup> MetS is composed of five symptoms: large waist size, high triglycerides, high cholesterol, high blood pressure, and high blood sugar, which increases risk of fatal chronic conditions such as diabetes, heart disease, and liver disease. See generally Marc-Andre Cornier et al., *The Metabolic Syndrome*, 29(7) Endocrine Rev. 777 (Dec. 1, 2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5393149/> [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5393149/].
- <sup>15</sup> George A. Bray & Barry M. Popkin, *Dietary Sugar and Body Weight: Have We Reached a Crisis in the Epidemic of Obesity and Diabetes?: Health Be Damned! Pour on the Sugar*, 37(4) DIABETES CARE 950, (Mar. 08, 2014), [https://care.diabetesjournals.org/content/37/4/950?utm\\_source=TrendMD&utm\\_medium=cpc&utm\\_campaign=Diabetes\\_Care\\_TrendMD\\_0](https://care.diabetesjournals.org/content/37/4/950?utm_source=TrendMD&utm_medium=cpc&utm_campaign=Diabetes_Care_TrendMD_0) [https://perma.cc/8DPS-XGAF].
- <sup>16</sup> See, e.g., *Food Industry Obscure Added Sugar in Products by Marketing Them as Healthy, New Report Finds: Science Group Calls for Better Labeling and Other Reforms*, UNION CONCERNED SCIS. (May 6, 2014, updated Aug. 21, 2029), <https://www.ucsusa.org/about/news/food-industry-obscures-added-sugar-products> [https://perma.cc/Y2HT-36TN];

NAT'L ACAD. SCIS., ENG'G., & MED, HEALTH & MED. DIV., FOOD & NUTRITION BOARD, STRATEGIES TO LIMIT SUGAR-SWEETENED BEVERAGE CONSUMPTION IN YOUNG CHILDREN: PROCEEDINGS OF A WORKSHOP, CH. 6: THE ROLE OF INDUSTRY IN SUGAR-SWEETENED BEVERAGE CONSUMPTION (Nat'l Acad. Press Dec. 13, 2017); "Today's Western diet or SAD generally refers to a total diet pattern (with multicultural variations) that includes excess consumption of calories from refined carbohydrates, fatty meats, and added fats that lacks many nutrients found in whole grains, fruits, and vegetables. This dietary pattern, which also includes excess sodium intake, has been blamed for contributing to our current staggering levels of overweight and obesity as well as diet-related diseases and conditions such as type 2 diabetes mellitus, hypertension, and heart disease." David Grotto & Elisa Zied, *The Standard American Diet and Its Relationship to Health Status of Americans*, 25(6) NUTRITION IN CLINICAL PRAC. 603 (Dec. 2010), <https://aspensjournals.onlinelibrary.wiley.com/doi/full/10.1177/0884533610386234> (last visited Apr. 14, 2022).

- <sup>17</sup> Many studies report communities lack of clean drinking water leads to increased consumption of SSBs for hydration. See, e.g., Emily Mosites et al., *Lack of in-home piped water and reported consumption of sugar-sweetened beverages among adults in rural Alaska*, 23(5) PUB. HEALTH NUTRITION 861 (Apr. 1, 2020), [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7082197/#:~:text=Qualitative%20research%20has%20shown%20that,%20Sweetened%20beverages%20\(SSBs\).&text=SSBs%20are%20defined%20as%20any,tea%20and%20sports%20energy%20drinks.](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7082197/#:~:text=Qualitative%20research%20has%20shown%20that,%20Sweetened%20beverages%20(SSBs).&text=SSBs%20are%20defined%20as%20any,tea%20and%20sports%20energy%20drinks.) [<https://perma.cc/AL9T-MRAW>]; Heather Norman-Burgdolf et al., *Sugar-sweetened beverage consumption among adults in rural Appalachia*, 24 PREVENTATIVE MED. REPS. 101642 (Dec. 2021), <https://www.sciencedirect.com/science/article/pii/S2211335521003338> (last visited Apr. 22, 2022); Zoë Roller et al., DIG DEEP & U.S. WATER ALLIANCE, CLOSING THE WATER ACCESS GAP IN THE UNITED STATES: A NATIONAL ACTION PLAN (2019), [https://static1.squarespace.com/static/5e80f1a64ed7dc3408525fb9/t/6092ddcc499e1b6a6a07ba3a/1620237782228/Dig-Deep\\_Closing-the-Water-Access-Gap-in-the-United-States\\_DIGITAL\\_compressed.pdf](https://static1.squarespace.com/static/5e80f1a64ed7dc3408525fb9/t/6092ddcc499e1b6a6a07ba3a/1620237782228/Dig-Deep_Closing-the-Water-Access-Gap-in-the-United-States_DIGITAL_compressed.pdf) [<https://perma.cc/3BAU-LS9U>]; Laurel Morales, *Many Native Americans Can't Get Clean Water, Report Finds*, NAT'L PUB. RADIO (NPR) (Nov. 18, 2019), <https://www.npr.org/2019/11/18/779821510/many-native-americans-cant-get-clean-water-report-finds> [<https://perma.cc/RAD5-S4WE>]; Oscar Lopez & Andrew Jacobs, *In Town With Little Water, Coca-Cola Is Everywhere. So Is Diabetes*, N.Y. TIMES (July 14, 2018), <https://www.nytimes.com/2018/07/14/world/americas/mexico-coca-cola-diabetes.html> [<https://perma.cc/VZ6A-FTPU>]; Fabrizio Ferretti & Michele Mariani, *Sugar-sweetened beverage affordability and the prevalence of overweight and obesity in a cross section of countries*, 15 GLOBALIZATION & HEALTH 30 (Apr. 18, 2019), <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-019-0474-x> [<https://perma.cc/CVK2-E9K3>]; *Adult Obesity Facts*, *supra* note 1.
- <sup>18</sup> Sugarscience, *Too Much Can Make Us Sick*, *supra* note 2.
- <sup>19</sup> See *The Facts, Stats, and Impacts of Diabetes*, CDC (Jan. 24, 2022), <https://www.cdc.gov/diabetes/data/statistics-report/index.html> [<https://perma.cc/MGB3-YSYH>]; *National Diabetes Statistics Report*, CDC (Jan. 18, 2022), <https://www.cdc.gov/diabetes/library/features/diabetes-stat-report.html> [<https://perma.cc/W2EX-C8GU>].
- <sup>20</sup> *Heart Disease Facts*, CDC (Feb. 7, 2022), <https://www.cdc.gov/heartdisease/facts.htm> [<https://perma.cc/63LA-2G5T>].
- <sup>21</sup> See, e.g., Lisa Te Morenga et al., *Dietary sugars and body weight: systematic review and meta-analyses of randomised controlled trials and cohort studies*, BRITISH MED. J. (BMJ) 346:e7492 (Jan. 15, 2013), <https://www.bmj.com/content/346/bmj.e7492> [<https://perma.cc/D878-3GV4>]; Samir Faruque et al., *The Dose Makes the Poison: Sugar and Obesity in the United States – a Review*, 69(3) POLISH J. FOOD NUTRITION & SCIS. 219 (Jan. 14, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6959843/> [<https://perma.cc/6ZVL-P62T>]; Jean Welsh & William Dietz et al., *Sugar-Sweetened Beverage Consumption Is Associated With Weight Gain and Incidence of Type 2 Diabetes*, 23(4) CLINICAL DIABETES 150 (Oct. 1, 2005), <https://diabetesjournals.org/clinical/article/23/4/150/1623/Sugar-Sweetened-Beverage-Consumption-Is-Associated> [<https://perma.cc/V9RL-DJ5G>]; So-Yun Yi et al., *Added sugar intake is associated with pericardial adipose tissue volume*, 27(18) EUR. J. OF PREVENTATIVE CARDIOLOGY 2016 (June 28, 2020), <https://pubmed.ncbi.nlm.nih.gov/32594762/> [<https://perma.cc/5QFH-4L6Q>]; S.H.F. Vermunt et al., *Effects of sugar intake on body weight: a review*, 4(2) OBESITY REV. 91 (May 2003), <https://pubmed.ncbi.nlm.nih.gov/12760444/> [<https://perma.cc/4JMG-JD7L>].
- <sup>22</sup> Sanjay Basu et al., *Relationship of Soft Drink Consumption to Global Overweight, Obesity and Diabetes: A Cross-National Analysis of 75 Countries*, 103(11) AM. J. PUB. HEALTH 2071 (Nov. 2013), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2012.300974> [<https://perma.cc/F6AE-TTVZ>].
- <sup>23</sup> *COVID-19: People with Certain Medical Conditions*, CDC (Feb. 25, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> [<https://perma.cc/B5DF-7H5K>].
- <sup>24</sup> *Overweight & Obesity: Obesity, Race/Ethnicity, and COVID-19*, CDC (Feb. 17, 2022), <https://www.cdc.gov/obesity/data/obesity-and-covid-19.html> [<https://perma.cc/6RU5-PMVL>].
- <sup>25</sup> See generally Bill Frist, *Public Health And National Security: The Critical Role of Increased Federal Support*, 21 HEALTH AFFS. 6 (2002), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.21.6.117> [<https://perma.cc/LUA5-R8YD>].
- <sup>26</sup> Agriculture: Farming, *Sugar consumption in the United States from 2009/2010 to 2019/2020 (in million metric tons)*,

- STATISTA (May 27, 2021), <https://www.statista.com/statistics/249692/us-sugar-consumption/> [<https://perma.cc/J2WG-XUSE>].
- <sup>27</sup> USDA & U.S. DEP'T OF HEALTH & HUMAN SERV. (HHS), DIETARY GUIDELINES FOR AMERICANS 2020–2025: MAKE EVERY BITE COUNT WITH THE *DIETARY GUIDELINES* (9th Ed. Dec. 2020), [https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf) [<https://perma.cc/2GJY-5K63>]. The Center for Disease Control's National Center for Health Statistics determined that the main drivers of sugar consumption in the United States were: sugar-sweetened beverages (24%), desserts & sweet snacks (19%), coffee & tea (11%), candy & sugars (9%), sandwiches (7%), breakfast cereals & bars (7%), and higher fat milk & yogurt (4%).
- <sup>28</sup> *Sugars*, LOVE FOOD LOVE SCI., <https://www.ifst.org/lovefoodlovescience/resources/sugars> (last visited Apr., 14, 2022) [<https://perma.cc/LBU2-YQ4Q>].
- <sup>29</sup> Maya Feller, *Healthy Food Is a Right for Black People, Not a Privilege*, HEALTHLINE (Oct. 12, 2020), <https://www.healthline.com/health/nutrition/black-communities-need-access-to-healthy-food> [<https://perma.cc/A8ZM-VMWS>].
- <sup>30</sup> LEAH PENNIMAN, *FARMING WHILE BLACK: SOUL FIRE FARM'S PRACTICAL GUIDE TO LIBERATION ON THE LAND* (2018) (citing Michelle Ver Ploeg et al., *Access to Affordable and Nutritious Food: Measuring and Understanding Food Deserts and Their Consequences*, report to Congress for the USDA Economic Research Service (Collingdale, PA: Diane Publishing, 2009).
- <sup>31</sup> Amy Brown, *The Effort to Stamp Out Systemic Racism in the U.S. Food System Gains Momentum*, TRIPLE PUNDIT (Jul. 14, 2020), <https://www.triplepundit.com/story/2020/systemic-racism-food-system/120886> [<https://perma.cc/A6QK-XP6K>]; see also *The Grocery Gap*, FOOD TRUST, <http://thefoodtrust.org/administrative/hffi-impacts/the-grocery-gap> (last visited Apr. 14, 2022) [<https://perma.cc/JTD2-G5DF>].
- <sup>32</sup> K. Morland et al., *Neighborhood characteristics associated with the location of food stores and food service places*, 22(1) AM. J. PREVENTATIVE MED. 23 (Jan. 2002), <http://www.ncbi.nlm.nih.gov/pubmed/11777675> [<https://perma.cc/D27M-QVVD>].
- <sup>33</sup> Alyssa J. Moran & Christina A. Roberto, *Health Warning Labels Correct Parents' Misperceptions About Sugary Drink Options*, 55(2) AM. J. PREVENTATIVE MED. e19, 19 (2018), <https://pubmed.ncbi.nlm.nih.gov/29903567/#:~:text=Results%3A%20Parents%20viewed%20fruit%20drinks,for%20all%20beverages%20except%20soda> [<https://perma.cc/635Z-JUKB>].
- <sup>34</sup> *Get the Facts*, *supra* note 12; Note that the United States Health and Human Services (HHS) Centers for Disease Control and Prevention (CDC) National Center for Health Statistics (NCHS) uses a “revised race standards” that identifies five categories for data on race: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. These represent the minimum categories for data on race and ethnicity for Federal statistics, program administrative reporting, and civil rights compliance reporting. The minimum categories are defined as follows: American Indian or Alaska Native – A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliations or community attachment; Asian – A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam; Black or African American – A person having origins in any of the black racial groups of Africa; Native Hawaiian or Other Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and White – A person having origins in any of the original people of Europe, the Middle East, or North Africa. *National Health Interview Survey Glossary*, U.S. HEALTH & HUMAN SERV. (HHS) CTRS. FOR DISEASE CONTROL & PREVENTION (CDC), NAT'L CTR. FOR HEALTH STATS. (Nov. 6, 2015), [https://www.cdc.gov/nchs/nhis/rhoi/rhoi\\_glossary.htm#:~:text=Hispanic%20or%20Latino%20%E2%80%93%20A%20person,to%20%E2%80%9CHispanic%20or%20Latino.%E2%80%9D](https://www.cdc.gov/nchs/nhis/rhoi/rhoi_glossary.htm#:~:text=Hispanic%20or%20Latino%20%E2%80%93%20A%20person,to%20%E2%80%9CHispanic%20or%20Latino.%E2%80%9D) [<https://perma.cc/JN76-YVMJ>]. They define Hispanic or Latino as a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race Id.
- <sup>35</sup> Individuals with obesity have a Body Mass Index (BMI) of at least 40. See Healthy Weight, Nutrition, and Physical Activity, *Adult BMI Calculator*, CDC (Jan. 21, 2022), [https://www.cdc.gov/healthyweight/assessing/bmi/adult\\_bmi/english\\_bmi\\_calculator/bmi\\_calculator.html](https://www.cdc.gov/healthyweight/assessing/bmi/adult_bmi/english_bmi_calculator/bmi_calculator.html) [<https://perma.cc/8BVB-E4YA>].
- <sup>36</sup> Nat'l Ctr. for Health Stats., *Health, United States – Infographics*, CDC (Apr. 23, 2019), <https://www.cdc.gov/nchs/hus/spotlight/2019-heart-disease-disparities.htm> [<https://perma.cc/359X-9RZY>].
- <sup>37</sup> Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2017*, *supra* note 3.
- <sup>38</sup> GILES KEATING & STEFANO NATELLA, CREDIT SUISSE RSCH. INST., *SUGAR CONSUMPTION AT A CROSSROADS* (2013), [https://research-doc.credit-suisse.com/docView?language=ENG&source=ulg&format=PDF&document\\_id=1022457401&serialid=atRE31ByPkIjEXa/p3AypTovIGdxTK833tLZ1E7AwIQ=](https://research-doc.credit-suisse.com/docView?language=ENG&source=ulg&format=PDF&document_id=1022457401&serialid=atRE31ByPkIjEXa/p3AypTovIGdxTK833tLZ1E7AwIQ=) [<https://perma.cc/6TTK-6RPB>].
- <sup>39</sup> Eric A. Finkelstein et al., *Annual Medical Spending Attributable To Obesity: Payer-And Service-Specific Estimates*, 28(Supp.1) HEALTH AFFS. 822 (2009), <https://www.healthaffairs.org/doi/10.1377/hlthaff.28.5.w822> [<https://perma.cc/LHJ9-V7BB>]; Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2017*, *supra* note 3; Emelia J. Benjamin

et al., *Heart Disease and Stroke Statistics—2018 Update: A Report From the American Heart Association*, 137(12) AM. HEART ASS'N (AHA) CIRCULATION 67 (Jan. 31, 2018), <https://www.ahajournals.org/doi/10.1161/CIR.0000000000000558> [<https://perma.cc/8HJZ-XCW8>]; see generally Nat'l Ctr. for Chronic Disease Prevention & Health Promotion (NCCDPHP), *Health and Economic Costs of Chronic Diseases*, CDC (Mar. 29, 2022), <https://www.cdc.gov/chronicdisease/about/costs/index.htm> [<https://perma.cc/N6QH-GVBN>].

<sup>40</sup> Presenteeism refers to the lost productivity that occurs when employees are not fully functioning in the workplace because of a physical or mental detraction of individuals such as illness or injury. See Paul Hemp, *Presenteeism: At Work—But Out of It*, HARV. BUS. REV. MAG. (Oct. 2004), <https://hbr.org/2004/10/presenteeism-at-work-but-out-of-it> [<https://perma.cc/W9UE-QWXS>].

<sup>41</sup> Am. Diabetes Ass'n, *Economic Costs of Diabetes in the U.S. in 2017*, *supra* note 3.

<sup>42</sup> *Id.* at 922.

<sup>43</sup> Rick A. Vreman, et. al., *Health and economic benefits of reducing sugar intake in the USA, including effects via non-alcoholic fatty liver disease: a microsimulation model*, BMJ OPEN 7:e013543 (Aug. 3, 2017), <https://bmjopen.bmj.com/content/bmjopen/7/8/e013543.full.pdf> [<https://perma.cc/X3ZN-RS9W>].

<sup>44</sup> Yue Huang et al., *Cost-Effectiveness of the US Food and Drug Administration Added Sugar Labeling Policy for Improving Diet and Health*, 139(23) AHA CIRCULATION 2613 (Apr. 15, 2019), <https://www.ahajournals.org/doi/10.1161/CIRCULATIONAHA.118.0367> [<https://perma.cc/WU9K-TRRJ>]; Michael W. Long et al., *Cost Effectiveness of a Sugar-Sweetened Beverage Excise Tax in the U.S.*, 49(1) Am. J. Preventative Med. 112 (2015), [https://choicesproject.org/wp-content/uploads/2015/06/AMEPRE\\_49\\_1-Long.pdf](https://choicesproject.org/wp-content/uploads/2015/06/AMEPRE_49_1-Long.pdf) [<https://perma.cc/VAB8-K4U3>].

<sup>45</sup> Huang et al., *supra* note 44.

<sup>46</sup> *Id.*

<sup>47</sup> U.S. GOV'T ACCOUNTABILITY OFF., CHRONIC HEALTH CONDITIONS: FEDERAL STRATEGY NEEDED TO COORDINATE DIET-RELATED EFFORTS 13 (2021), <https://www.gao.gov/assets/gao-21-593.pdf> [<https://perma.cc/38QJ-295E>].

<sup>48</sup> Emma Ryan, *California Just Banned Soda Taxes. What's Next?*, DIATRIBE FOUND., <https://diatribe.org/foundation/about-us/dialogue/california-just-banned-soda-taxes-whats-next> (last visited Apr. 14, 2022) [<https://perma.cc/HHT6-M45T>].

<sup>49</sup> See discussion *infra* Sugar-Sweetened Beverage Taxes section of this Toolkit, specifically the “How Should You Use the Revenue from the Tax?” and “Benefits through Revenue Generation” subsections.

<sup>50</sup> See, e.g., Richard V. Reeves, *Promote health equity by taxing sugary drinks and doubling support for community health centers*, BROOKINGS (Dec. 9, 2020), <https://www.brookings.edu/research/promote-health-equity-by-taxing-sugary-drinks-and-doubling-support-for-community-health-centers/> [<https://perma.cc/2MKG-ZV7V>]; Melissa Davey, *Sugar tax: why health experts want it but politicians and industry are resisting*, GUARDIAN (Jan 9, 2018), <https://www.theguardian.com/australia-news/2018/jan/10/sugar-tax-why-health-experts-want-it-but-politicians-and-industry-are-resisting> [<https://perma.cc/QHY5-VLNU>]; Kristine A. Madsen, *Sugar-Sweetened Beverage Taxes: A Political Battle*, 110(7) AM. J. PUB. HEALTH 929 (July 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7287546/> [<https://perma.cc/386U-HREA>]; Angela Carriedo et al., *The political economy of sugar-sweetened beverage taxation in Latin America: lessons from Mexico, Chile, and Colombia*, 17 GLOBALIZATION & HEALTH 5 (Jan. 5, 2021), <https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-020-00656-2> [<https://perma.cc/WTJ8-BQHE#citeas>]; Erin James, *The Politics of Taxes for Health: An Analysis of the Passage of the Sugar-Sweetened Beverage Tax in Mexico*, 6(1) HEALTH SYS. REFORM e1669122 (2020), <https://pubmed.ncbi.nlm.nih.gov/32043913/> [<https://perma.cc/HJ24-RNRK>]; *Pros and cons of a sugar tax*, SUGAR NUTRITION RES. CTR. (June 2, 2016), <https://www.sugarnutritionresource.org/news-articles/pros-and-cons-of-a-sugar-tax> [<https://perma.cc/TQX2-BLBG>].

<sup>51</sup> See discussion *infra* Health Retail section of this Toolkit.



# **GENERAL LEGAL SETTING:**

**PATHWAYS TO SUCCESS AND  
ROADBLOCKS TO KEEP IN  
MIND CONCERNING SUGAR  
REDUCTION LAWS AND  
POLICIES**



One of the first things that advocates will want to understand is the structure of their state and local governments and how it affects which types of sugar reduction policies sugar reduction policies are possible (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation or rule). This section explains (1) the breakdown between federal, state, and local authority, (2) how to determine a state or city government’s scope of authority, and (3) some of the state and local government agencies that will be relevant to sugar reduction policy work.

In this section . . .

- A. [The Interplay between Federal, State, Local, and Tribal Law](#)
- B. [How Local Governments Get the Authority to Act](#)
- C. [Other Checks on State and Local Government: Preemption and State General Laws](#)
- D. [How Federal, State, Local, and Tribal Law Affects Sugar Reduction Law and Policy](#)
- E. [How State and Local Governments are Organized](#)
- F. [Partnering with State and Local Government Agencies](#)
- G. [Roadblocks to Sugar Reduction Law and Policy Initiatives](#)

## The Interplay between Federal, State, Local, and Tribal Law

The United States is governed using a system of federalism. This means that both the federal and state governments have their own spheres of responsibility and authority. The United States Constitution limits the areas over which the federal government has authority, leaving certain areas of governance exclusively to the states. In the areas in which the federal government has authority, federal laws generally can override state laws; at the same time, if there is no applicable federal law, states are often free to act in that area.

The interplay between state and local governments works slightly differently. Local governments do not have any express authority under the United States Constitution. Local governments only have the power given to them by their state under its constitution or statutes. Thus, while all states have the same amount of authority under the federal government, the amount of authority that states give local governments varies from state to state and sometimes from locality to locality or city to city within the same state. Because there is so much variation, this Toolkit cannot lay out all the specific powers given to local governments in each state, but it will provide advocates with some tools to help identify different types of authority and understand the interplay between state and local governments.

To change a law or regulation, advocates must first identify whether it is a local, state, or federal law or regulation. Laws are the products of written statutes, passed by either the United States Congress or state legislatures. The legislatures create bills that, when passed by a vote, become statutory law. On the other hand, regulations are standards and rules adopted by administrative agencies that govern how laws will be enforced. Like laws, regulations are codified and published so that parties are on notice regarding what is and is not legal and regulations often have the same force as laws, since, without them, regulatory agencies would not be able to enforce laws.<sup>1</sup>

**State** governments have the authority to pass (and change) state laws and regulations. Legislation can directly create laws that people must follow, but it often authorizes an administrative agency to write regulations to carry out the purpose of that legislation.

Advocates should understand their state’s legislative process. For example, while in most states only legislators can introduce bills, twenty-one states have an initiative process (direct or indirect)

for statutes, which provides an additional mechanism for creating policy change rather than relying on elected representatives to introduce legislation.<sup>2</sup> In some states, such as **California**, citizens can propose legislation through the direct initiative process, and if they collect enough signatures from registered voters, the initiative will qualify for the ballot and become law if voters approve it.<sup>3</sup> Other states, such as **Maine**<sup>4</sup> and **Nevada**,<sup>5</sup> have an indirect initiative process that requires citizens to collect signatures for a proposed initiative then submit it to the legislature for action—if the legislature does not enact it, the initiative generally qualifies for the ballot.<sup>6</sup> Further, it is essential to know your state’s legislative calendar. In many states, the legislature only meets a few months each year. In some states, the legislature only meets a few months every other year.

As discussed above, legislation often just authorizes an *administrative agency* to pass rules and regulations to carry out the legislation’s purpose. An administrative agency is a “governmental body with the authority to implement and administer particular legislation.”<sup>7</sup> Many states have used this model for their state administrative agencies. It is very important for advocates to understand their state’s unique administrative rules to engage in effective advocacy with state administrative agencies.

One very important step an advocacy organization can take is to implement a *state legislative and regulatory monitoring system*—whereby an individual or a committee from the advocacy organization monitors relevant state legislative and regulatory activity, condenses the complex information, and reports the findings through a channel that is widely available. Setting up a website or blog and routinely reporting on the legislative and regulatory developments on topics of interest via email is a good way to engage the organization’s network as well as monitor proposed laws and regulations. As legislative and regulatory developments occur, archiving or labeling them by category will be especially helpful for future advocacy activities (e.g., reviewing the legislative or regulatory history to better inform the advocacy organization’s comments on a particular issue).

**Local** governments may pass laws and regulations when they are authorized by the state government to act within certain substantive areas. Often, localities can pass ordinances that impose more stringent requirements than state law. For example, local governments have made great strides in creating nutrition standards for vending machine foods on government property (see Healthy Procurement policy solution section of this Toolkit for more detail).<sup>8</sup> While **California** requires that 35% of vending machine food sold on government property must meet state nutrition standards,<sup>9</sup> the Californian cities of **Los Angeles**, **Monterey**, and **San Diego**, require that 100% of vending machine food sold on government property must meet the state standards.<sup>10</sup> Additionally, in some states that do not regulate nutrition standards for vending machine food sold on government property (like **Florida** and **Illinois**), local governments, such as **Palm Beach County, FL**, and **Chicago, IL**, have created their own nutrition standards for vending machine foods.<sup>11</sup>

If the policy you want to change is a state law or regulation, you should identify whether your local government has the power to pass a local law affecting how the state law or regulation is implemented. This may depend on how much power has been delegated by the state to your local government, a concept which is described in more detail later in this section. Sometimes local governments have the authority to impose stricter regulations than state rules, but if a state rule is controlling, it may bar, or “preempt,” local action on that issue. For example, in **Wyoming**, **Tennessee**, and **Florida**, state governments have preempted local government action with regard to urban beekeeping, meaning local governments do not have the authority to pass laws related to urban beekeeping.<sup>12</sup> If the law or regulation at issue was implemented at the state level, keep in mind that you can work with other advocates and stakeholders to affect change at the state level.

If the policy at issue is a federal law or regulation, as with regulations at the state level, you should identify whether your local government has the power to pass a local law affecting how that federal

law or regulation is implemented at the local level. Local governments sometimes have the authority to impose stricter regulations and laws than the ones at the federal level. It is difficult to affect change at the federal level, but it is not impossible. Local advocates would benefit from forming or joining coalitions of other advocates and stakeholders from around the country to affect change at the federal level.<sup>13</sup>

The interplay between Indigenous American tribal governments and state and federal government is slightly more complex. In the United States, Indigenous American tribes have tribal sovereignty, which encompasses “the ability to govern [themselves] and to protect and enhance the health, safety, and welfare of tribal citizens within tribal territory.”<sup>14</sup> Thus, a tribal group has “the right to form its own government, adjudicate legal cases within its borders, levy taxes within its borders, establish its membership, and decide its own future fate.”<sup>15</sup> State laws cannot override—or preempt—tribal law unless Congress has explicitly given a state the authority to override tribal law within a specific area.<sup>16</sup> However, federal laws can override tribal law. As the focus of this Toolkit is on local and state governments, its analysis of tribal government is limited. Those who are working in **Navajo Nation** should refer to FLPC’s 2015 toolkit, *Good Laws, Good Food: Putting Food Policy to Work in Navajo Nation*.<sup>17</sup> While the 2015 toolkit focuses on the Navajo Nation, some aspects of it may be relevant to native tribes that also have three branches of government (legislative/council, executive, and judicial), such as the **Cherokee Nation** and the **Choctaw Nation**.<sup>18</sup>

#### KEY TAKEAWAYS:

When advocates seek to change a policy, they must identify the level(s) of government most relevant to the issue in order to determine what kinds of changes are possible under the government’s authority, and consequently, how much time and resources they should devote to the topic.

## How Local Governments Get the Authority to Act

State laws play a significant role in local government:

- First, because local governments do not have any power except that given to them by the state, the state constitution or state legislation must explicitly give local governments authority to act before localities can act.
- Second, state laws can usually—but not always—preempt local governments from acting on specific issues. It depends on how states have granted authority to local governments.
- Third, at a minimum, all localities must generally follow statewide rules and regulations, but localities can exceed state rules and regulations when states give them the power to do so.

Advocates need to understand how their locality gets its authority and what types of powers it does or does not have. In order to conserve their energy to push for policy changes that are feasible for the city or county to enact, advocates should be aware of the restrictions their municipality faces with regard to its ability to enact certain laws or regulations.<sup>19</sup>

### Overview: Dillon’s Rule & Home Rule

In general, local governments have no inherent authority under the United States Constitution. States grant authority to local governments through one of two mechanisms: Dillon’s Rule or Home Rule. Generally, Dillon’s Rule gives local governments limited powers, while Home Rule provides local governments with broader powers. Yet, the specific authority that local governments derive from their state’s grant of authority varies greatly from state to state, and sometimes even from locality to locality. When determining if a state follows Dillon’s Rule or Home Rule, advocates should be sure to

understand how their state’s grant of authority affects the specific sugar reduction policy issue or area they seek to address.

## 1. Dillon’s Rule

States that operate under Dillon’s Rule generally provide a narrow grant of power to local governments. In 1872, Judge John Dillon of the Iowa Supreme Court determined that local governments are simply extensions of state governments thus establishing Dillon’s Rule.<sup>20</sup> Dillon’s Rule holds that local governments only have powers expressly given to them by the state. Specifically, such powers must be:

- “First, those granted in express words;
- Second, those necessarily or fairly implied in, or incident to, the powers expressly granted; and
- Third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable.”<sup>21</sup>

In a Dillon’s Rule state, if the power in question is not expressly authorized by a state statute or the state constitution, or cannot be implied directly from another authorized power, it is presumed that a local government does not have that power.<sup>22</sup> States that are considered Dillon’s Rule states generally depend on the state legislature to pass legislation—so called *enabling statutes*—that give localities the authority to take on certain sugar reduction policy issues. An enabling statute is a “law that permits what was previously prohibited or that creates new powers.”<sup>23</sup> For example, **Maryland**, a Dillon’s Rule state, passed enabling legislation in 2014 authorizing **Maryland counties** and the **City of Baltimore** to pass tax credits for urban agriculture.<sup>24</sup>

## 2. Home Rule

Home Rule is a broad grant of power from the state to municipalities. Home Rule allows municipalities to handle local matters independently without the need for special legislation by the state, as long as the municipal laws do not conflict with state laws. States with Home Rule delegate authority to municipalities through either the state constitution or a statute.<sup>25</sup> Home Rule powers are shaped by the specific language of that delegation or its interpretation by state courts.<sup>26</sup> While most states now have some form of Home Rule authority,<sup>27</sup> the particular form varies greatly from state to state.<sup>28</sup>

The majority of Home Rule states also give municipalities permission to enact a *Home Rule Charter*, the local government’s “organizational plan or framework, analogous to a constitution,” which is created by the locality and adopted by popular vote.<sup>29</sup> A *Home Rule Charter* may allow a local government to make and enforce laws in specified areas, such as local police and sanitation,<sup>30</sup> or it may give a local government broad authority to make laws over any local matter that is not expressly preempted by state law.<sup>31</sup> When it is unclear what constitutes a “local matter,” the state legislature (if Home Rule was granted through legislation) or a state court (if Home Rule was granted through the state constitution) interprets the exact scope of the local government’s power.<sup>32</sup> Unlike Dillon’s Rule, under Home Rule, when authorization is vague, many states assume that municipalities have power, unless it is explicitly denied.<sup>33</sup> However, advocates should be aware that, even when a state constitution has provided broad Home Rule authority, supplemental state statutes might further define this authority.<sup>34</sup>

Not only do states allow varying amounts of power depending on the particular area of the law, but they can also distinguish between the levels of local government. The powers delegated to counties may not be the same as those delegated to cities.<sup>35</sup> Further, states such as **Arizona**, **Missouri**, and **Delaware**, require a minimum population size before a municipality can create a *Home Rule Charter*.<sup>36</sup> This means that certain cities are granted Home Rule authority while others are not.

### 3. Dillon's Rule and Home Rule Mixed

Dillon's Rule and Home Rule are not exclusive. This means states can follow Dillon's Rule while still allowing some Home Rule authority, and vice versa. In some states, such as **Massachusetts**, individual municipalities seeking Home Rule authority on specific issues must file a Home Rule petition with the state legislature asking for the authority.<sup>37</sup> Under the Home Rule petition process, the state decides whether to grant the municipality's petition through special legislation. If it does, then the municipality's authority must adhere to the requirements in the special legislation. If the state rejects the petition, then the municipality has no authority to act on the issue.<sup>38</sup> Further, while it may appear that localities in Dillon's Rule states have less power, this is not necessarily true. **North Carolina**, for example, follows Dillon's Rule, yet local governments have powers that are the same—and sometimes greater than—local government powers in Home Rule states.<sup>39</sup> The particulars of how authority is delegated in enabling statutes or under a state constitution can be just as important as the Dillon's Rule/Home Rule distinction.

#### KEY TAKEAWAYS:

- A locality only has the authority that has been given to it by the state, through either broad Home Rule authority or an express grant of authority in a state enabling statute.
- If a state is not a Home Rule state, advocates need to determine the types of authority and the areas of law that have been given to local governments via enabling statutes.
- Even if a state is considered a Home Rule state, there may still be certain areas where Home Rule does not apply. Advocates must determine
  - If a specific locality has Home Rule authority,
  - If Home Rule applies to the area of law advocates are seeking to change, and
  - The scope of the Home Rule power as it relates to that area of law.
- Since the delegation of power to localities differs from state to state and even locality to locality or city to city, and varies depending on the area of law, advocates should remember that the powers granted to a local government might not mirror the powers of local governments in another state or even in other localities of the same state.
- The possibility of state preemption always exists. Unless there is something in a state's constitution that says otherwise, the state can usually pass legislation to preempt local regulations at any time before or after the local government passes the regulations. Whether or not the state preemption will be upheld may be up to interpretation by courts.

## Other Checks on State and Local Government: Preemption and State General Laws

State and local governments are subject to higher levels of government passing laws that prevent them from acting on a particular issue. States can further constrain local government authority by passing general state laws that affect localities.

### 1. Preemption

Higher levels of government retain the power to block lower levels of government from acting on certain issues through preemption. Preemption occurs when a higher level of government (e.g., a state government) passes a law that establishes that it has exclusive authority over an issue, barring the possibility of a lower level of government (e.g., a local government) acting on that issue. For example, if

a state legislature passed a law declaring that only the state could regulate lemonade stands, it would preempt local governments from regulating lemonade stands in their areas. These types of laws often are instigated by successful lobbying efforts of the food and beverage and sugar industries to protect their interests as a means to curb sugar reduction policy enactment.<sup>40</sup>

It is also important to note that federal law can preempt state law and thereby preempt local law. The federal government has the power to preempt state and local governments from imposing laws and regulations in areas in which the federal government constitutionally has the given authority to act. Advocates must keep this preemption authority in mind when proposing state legislation.

As an example of the interplay between state and federal government, in 2008, **California** passed a menu labeling law that required chain restaurants of a certain size to include calorie and other nutritional information on their menus and display boards.<sup>41</sup> At that time, the **Nutrition Labeling and Education Act of 1990 (NLEA)**—a federal law that requires nutrition facts panels for foods and regulates health claims on food labels—did not preempt states from taking this kind of action. Therefore, California was able to impose the additional menu labeling requirements.<sup>42</sup> A few years later, in the **Patient Protection and Affordable Care Act of 2010**, the United States Congress included provisions to require the same kind of menu labeling for chain restaurants on a national scale.<sup>43</sup> Now that the United States Congress has passed a law on this issue, states are preempted from regulating menu labeling at the chain restaurants that fall under the federal law,<sup>44</sup> though they can still require menu labeling at other types of restaurants within the state. California’s lead on menu labeling is a good example of how policy change at the state level (in an area not preempted by the United States Congress) can lead to national policy change, but it also shows how federal rules can preempt state rules.

With regard to federal and state preemption, it is important to remember that states have broad regulatory powers and that the federal government is limited to only those powers enumerated in the United States Constitution. For example, state legislatures have the authority to protect and promote the state population’s public health, safety, and welfare.<sup>45</sup> Concerning federal powers, the United States Constitution’s Commerce Clause provides the United States Congress the power to regulate economic activities between a variety of entities including between citizens of different states and goods and services that flow across the country, including activities related to the food environment.<sup>46</sup> As such, it is the federal power that is likely most relevant to sugar reduction policies and the food system.<sup>47</sup> Federal preemption can only occur if the United States Congress has constitutional authority to act, leaving states with ample regulatory freedom and flexibility.

Preemption can serve as a major impediment to local food policy initiatives, including sugar reduction policies, as briefly reflected in these examples and discussed in greater detail in the Sugar-Sweetened Beverage (SSB) Tax policy solutions section later in this Toolkit:

- **Arizona**,<sup>48</sup> **California**,<sup>49</sup> **Michigan**,<sup>50</sup> and **Washington State**,<sup>51</sup> have passed laws preempting local SSB tax laws or policies, and **Illinois**, **New Mexico**, **Oregon**, and **Pennsylvania**, have made *unsuccessful* attempts to preempt local SSB taxes.<sup>52</sup> The **California** statute exempted the cities that had existing local SSB taxes (**Albany (NY)**, **Berkeley (CA)**, **Oakland (CA)**, and **San Francisco (CA)**), and the **Washington** statute permitted **Seattle**’s existing sugar sweetened beverage tax to remain in effect.<sup>53</sup> However, state preemption laws must comply with a local government’s constitutionally granted Home Rule authority—otherwise they are subject to legal challenges.<sup>54</sup> It is important to note that a portion of the **California** statute was struck down in October 2021 when the Sacramento County Superior Court ruled that the penalty provision within the California statute preemption statute violated California’s state constitution because it “severely penalizes a charter city for validly regulating its ‘municipal affairs’” via “financial coercion.” It is important to note the food and beverage and sugar industries played a pivotal

role in these campaigns for state preemption by developing front groups and trade associations, lobbying key policymakers, inserting preemptive language into other legislations, and issuing legal threats and challenges to advocacy groups and policymakers.<sup>55</sup> More information on this case and the lobbying efforts of the food and beverage and sugar industries, can be found in the Sugar-Sweetened Beverage (SSB) Tax policy solution section of this Toolkit.

- In **Mississippi**, the state legislature passed a bill that required the state to issue all regulations related to food nutrition labeling or consumer incentive items (e.g., fast food toys) at food service operations—prohibiting local governance on the issue.<sup>56</sup> Such state preemption would bar local ordinances like the **San Francisco, CA**, ban on giving away toys with meals that do not meet certain nutrition standards, such as fast-food children’s meals.<sup>57</sup>
- In **Cleveland, OH**, after the city passed an ordinance banning restaurants from using trans-fat, the Ohio state Senate quickly added an amendment to the state budget preempting local municipalities from regulating the ingredients used by fast food eateries.<sup>58</sup> However, a state court held that this preemption was unconstitutional under the Ohio state constitution.<sup>59</sup>

Local advocates should confer with state-level advocates when proposing controversial laws to gauge the likelihood of the state passing preemption legislation. Advocates should follow any proposed public health bills that they support through the entire legislative process to ensure that state legislators do not add preemption clauses at the last minute.<sup>60</sup> Additionally, for extra protection when pursuing state legislation, sugar reduction advocates can also ask for a clause in the law, that expressly permits localities to pass ordinances concerning a particular issue that go beyond state laws.<sup>61</sup> Such a “non-preemption clause” preserves local authority to pass stronger laws on an issue, prevents state laws from explicitly overriding restrictive local regulations, and avoids the future possibility of courts interpreting the state law as implicitly preemptive.<sup>62</sup>

## 2. State Laws of General Impact

In addition to states affecting localities through preemption, state laws will always have some effect on localities, and advocates should be aware of state laws that have general impact. For example, when a state sets a state sales tax, everyone in that state must comply with the tax, and any changes must occur at the state level. Therefore, local governments cannot amend or eliminate the state sales tax. However, local governments may be able to implement additional local taxes with the authority given to them by state governments.

## How Federal, State, and Local Law Affects Food Law and Policy

As described above, federal, state, and local governments all have distinct powers. However, a range of rules at each level of government may control a certain policy area. The following table provides a few examples and briefly describes each level of government’s role in these food policy areas. It is important to note that the table is merely an introduction, and as such, oversimplifies the complexity of many of these rules. Additionally, as noted above in How Local Governments Get the Authority to Act section, the degree to which local governments are authorized to play a role in these policies varies tremendously depending on how much power the state gives to local governments. To learn more about what role a specific local government plays in these issues, if any, advocates should talk to the local government, local partners, or an attorney.

## ROLE OF VARIOUS LEVELS OF GOVERNMENT IN FOOD LAW AND POLICY

ISSUE	FEDERAL LEVEL	STATE LEVEL	LOCAL LEVEL
<b>FOOD LABELING</b>	<p>The federal government regulates ingredient and nutrition labeling for all packaged foods that travel in interstate commerce (<i>i.e.</i>, go across state lines).<sup>63</sup> Federal law also regulates calorie labeling of chain, retail, food establishments, and chain vending machine operators.<sup>64</sup></p>	<p>States are preempted from enacting calorie labeling laws for packaged foods or chain restaurants/vending machines, as these are regulated by federal law. However, states may, in limited areas, require additional label information<sup>65</sup> (if it is not covered by applicable federal laws), and may regulate labeling for non-chain restaurants.<sup>66</sup></p>	<p>If allowed under state law, local governments can pass some food labeling rules for foods not covered under federal law. For example, local governments can regulate labeling for non-chain restaurants or for items other than calories (see, <i>e.g.</i>, <b>New York City sodium rule</b>).<sup>67</sup></p>
<b>FOOD PROCUREMENT - LOCAL PREFERENCE</b>	<p>Food purchased using federal dollars, such as meals under the <b>National School Lunch Program (NSLP)</b>, must follow federal procurement guidelines. Federal law authorizes schools using NSLP dollars to prefer food grown locally.<sup>68</sup> Programs using state or local dollars do not need to follow federal rules.</p>	<p>State agencies or institutions using state funds must follow state procurement guidelines. An increasing number of states have tailored their procurement regulations to encourage local purchasing by state agencies/institutions.<sup>69</sup> When using federal money, federal rules still apply.</p>	<p>Local agencies, schools, and institutions may prefer local food when spending federal funds, as authorized under federal law.<sup>70</sup> When using state or local funds, they may give preference to local food if authorized under the relevant state or local authority.</p>
<b>NUTRITION GUIDELINES FOR SCHOOL MEALS</b>	<p>The <b>Healthy Hunger-Free Kids Act of 2010</b> created nutrition standards for school meals (<i>i.e.</i>, increasing intake of fruits and vegetables) and established a <b>Smart Snacks Rule</b> for food and beverage products sold outside of school meals. The Smart Snack Rule requires significantly reduced SSB offerings and reduced sugar and calorie content in snack foods.<sup>71</sup></p>	<p>The federal standards are the floor, but states can implement higher school nutrition standards if they choose. For example, <b>Massachusetts</b> enacted standards that limit calories from sugars to no more than 35% of the total meal and require school cafeterias to provide access to nutrition information for non-prepackaged competitive foods and beverages.<sup>72</sup></p>	<p>Local governments can also elect to enforce additional nutrition standards for school meals. For example, <b>New York City public schools</b> adopted <b>Meatless Mondays</b>, a movement promoting meat-free meals once a week for better health and climate impacts. The program offers all-vegetarian breakfast and lunch menus every Monday.<sup>73</sup></p>
<b>FOOD ASSISTANCE BENEFITS</b>	<p>Most food assistance programs, like <b>Supplemental Nutrition Assistance Program (SNAP)</b>, or <b>Special Supplemental Nutrition Program For Women, Infants, and Children (WIC)</b>, are authorized and funded at the federal level, though states may contribute funds for program administration or to increase the amount of benefits available to participants.<sup>74</sup></p>	<p>State governments are responsible for administering food assistance programs in terms of authorizing participants and, in the case of <b>WIC</b>, authorizing vendors.<sup>75</sup> States sometimes contribute additional funds to the programs.</p>	<p>Local governments generally do not play a role in administering food assistance programs, but ten states delegate <b>SNAP</b> administration to counties, which often grant local funds to the program.<sup>76</sup> Local governments can encourage their residents to participate in the often-underutilized programs, or provide incentives to those who purchase healthy options with their benefits.<sup>77</sup></p>

## Partnering with State and Local Governments and Agencies

The next steps in maximizing your coalition's advocacy outcomes are to understand the makeup of your state and local governments and to develop relationships with government officials. Having a good sense of the structural and political operation of your state and local governments will enable your coalition to be more effective in developing and targeting proposals for improving your state's sugar reduction policies. It is also important to keep in mind that achieving policy change often takes time. Educating state and local government officials about sugar reduction policy and developing these relationships can yield significant positive returns over time.

At the state level, advocates should identify state legislative committees with a potential interest in sugar reduction policies and foster relationships with the legislators who sit on those committees, and, even more importantly, network with their legislative staff. Specific committee names may vary from state to state, but generally, committees that focus on agriculture, education, economic development, public health and welfare, and revenue, are good places to identify legislators with whom to start the conversation. Legislative staff likely will be more regularly accessible than the legislators, and can help secure meetings with the legislators at the appropriate time.

It is also key to understand how the local government is structured to determine with which officials to collaborate at the local level. Many people in the United States live in an area that is incorporated as a city, town, or village, though those in areas that are more rural generally live in an unincorporated area of the county. Cities are usually governed by a city council, while the county government normally serves as the local government body for those living in unincorporated areas of a county. Note that city and county governments have different names in different places, including "city council," "county council," "board of directors," "board of supervisors," "board of aldermen," among others. Cities, and possibly counties, will also have an elected or appointed executive, like a mayor.

Of the roughly 3,031 county governments and about 19,495 municipal governments in the United States, there are also dozens of joint city-county governments in which cities and their surrounding counties have consolidated government functions.<sup>78</sup> The city of **Jacksonville, FL**, for example, consolidated with its surrounding county in 1968, creating a governing body for the whole county with the exception of a few small communities that remain independent.<sup>79</sup> One unique example of regional governance is **Metro**, the elected regional government of the greater **Portland, OR**, area; it serves three counties and twenty-four cities.<sup>80</sup> Metro manages regional transit, helps control urban sprawl in rural areas, and is responsible for other food policy like composting.<sup>81</sup> Advocates should start by determining whether the relevant local governmental body is a city council, county government, or some sort of consolidated city-county government.

Importantly, state and local governments have agencies that administer laws and create their own policies and programs. Advocates should seek to develop close relationships with these agencies and their officials as they can play a significant role in shaping the local food system, which includes sugar reduction policy initiatives. To begin, your coalition should determine which of the various state and local departments and agencies are relevant to your sugar reduction policy goals and seek to partner with those entities.

State and local governments may choose an advisory role to your coalition, rather than being directly involved in partnership. In such circumstances, advocates should look to state or local governments for assistance on structuring the legislation/ordinance, determining under which agency the legislation/ordinance would best be housed, and ensuring that the state or local government would not be in opposition of the passage of such legislation/ordinance.

## 1. State Agencies Relevant to Sugar Reduction Laws and Policies

While specific responsibilities and titles can vary from state to state, there are generally four state departments that may have the most influence on sugar reduction policies: (1) the Department of Public Health; (2) Department of Education; (3) Department of Human Services; and (4) Department of Agriculture. Once you have a firm grasp on each department's role in establishing or enforcing food-related policies in your state, you should work to create relationships with people inside those departments. It is important to recognize that your state may have a similar agency to one of those listed below that is operating under a different name. Your state may also split up duties of the agencies differently than what is laid out here, but this list can be used as a good starting point for identifying the types of agencies that are relevant to your work:

### The Department of Public Health (DPH)

The DPH aims to protect and promote the health of the citizens of the state. Public health may include well-being, safety, disaster preparedness, preventive healthcare, safe water, food safety, food monitoring, among several other areas. State DPHs may administer certain types of federal food assistance programs for people experiencing poverty (particularly through administering the federal **Special Supplemental Nutrition Program For Women, Infants, and Children (WIC)**), regulate restaurants' health and safety standards, and oversee other food permitting and inspection issues (such as cottage food operations, home kitchens, and mobile vending operations).<sup>82</sup> Additionally, the **California Department of Public Health** promotes the **Rethink Your Drink Program** to encourage people to choose alternatives to SSBs, like water.<sup>83</sup>

### The Department of Education (DOE)

The DOE sets education curriculum standards, supports the state's public schools, and helps administer food and nutrition programs for the state's schools.<sup>84</sup> In some states, such as **Florida**, the DOE will work with the Department of Agriculture (DOA) to administer school meals through programs like farm to school and may be able to eliminate or minimize the access to SSBs or other sugary foods.<sup>85</sup> The DOE also has authority over the educational curriculum, which means the DOE can make health and nutrition classes a mandatory part of the state curriculum.

### The Department of Human Services (DHS)

The DHS aims to assist a state's economically disadvantaged citizens through financial, employment, protective and rehabilitative services.<sup>86</sup> This department is usually in charge of administering the **Supplemental Nutrition Assistance Program (SNAP)** and, in some states, may oversee other federal food assistance programs, such as the **Child and Adult Care Food Program** or the **Summer Food Service Program**.

### The Department of Agriculture (DOA)

The DOA, sometimes referred to as the Department of Food and Agriculture, is the agency most advocates first think of when identifying where food policies are promulgated. Some typical goals of a DOA include supporting farmers in the state, overseeing food safety in certain settings (such as retail establishments), promoting the state's agriculture and food products, regulating farmers' markets, and promoting environmentally sustainable agricultural practices. Some states' DOAs focus entirely on agriculture, while others take a broader approach to promoting a state's agricultural economy, including conserving natural resources, combating deceptive business practices, providing consumer information, supporting rural communities, and fostering healthy lifestyles, among other aims. For example, the **New York State Department of Agriculture and Markets** regulates supermarkets, grocers, and convenience stores.<sup>87</sup>

## 2. Local Agencies Relevant to Sugar Reduction Laws and Policies

Relevant local agencies and officials include boards of health and health departments, economic development agencies, and community development corporations. Additionally, some states and municipalities have food policy councils. Cities also have food policy directors/coordinators, positions dedicated to working on food policy, who would be important partners to include in any sugar reduction policy advocacy. In addition, there are various government-affiliated or private, local institutions, such as prisons, hospitals, schools, and universities, which can have a considerable effect on local food system economics.

### Boards of Health and Health Departments

Boards of Health comprise elected or appointed officials who are responsible for ensuring the provision of adequate public health services in their communities. There are approximately 2,800 such agencies across the country.<sup>88</sup> These boards assess their communities' health needs in order to develop policies and programs to meet those needs.<sup>89</sup> Health departments then implement these policies and programs.<sup>90</sup> The different roles assigned to boards of health and health departments vary from place to place, so it is important to research how they operate in your locality.<sup>91</sup>

As rates of obesity and associated diet-related diseases increase, local boards of health and health departments are becoming increasingly interested in improving access to healthy foods and physical activity and reducing sugar consumption.<sup>92</sup> Over 100 state and local health departments and agencies have collaborated in the **National Salt and Sugar Reduction Initiative (NSSRI)** to raise awareness of the public health benefits of reducing salt and sugar intake.<sup>93</sup> In **Boulder County, CO**, the **Boulder County Board of Health** collaborated with local nonprofits and government agencies to lead a campaign to reduce SSB consumption.<sup>94</sup> The Boulder County Board of Health also unanimously passed a resolution that it would not take any in-kind or cash donations from the food and beverage and sugar industries.<sup>95</sup>

**Economic Development Agencies and Community Development Corporations** These agencies assist businesses in all stages of development, from start-up to international expansion. Economic development agencies are a great tool for budding and established food enterprises and farms.<sup>96</sup> While each state has at least one statewide economic development agency, there are often several local-level agencies.<sup>97</sup> Community development corporations (CDC) take a more community-based approach and focus their resources on particular neighborhoods. CDCs might be particularly involved in organizing farmer's markets and other food access solutions. In the Lower Ninth Ward of **New Orleans, LA**, the **Sankofa CDC** has implemented several food access initiatives, including mobile markets, fresh food markets, and increased SNAP benefits for fresh produce.<sup>98</sup> These groups can be important allies in developing the local food economy and increasing access to healthy food options.

### Food Policy Councils

In response to increasing interest in and concern about the food system, citizens and communities have come together via state and local food policy councils with the intent to strengthen state and local food systems. A food policy council provides a unique forum for diverse stakeholders to address the common concerns about food policies that arise in their city, county, or state, including topics such as food security, farm policy, food regulations, environmental impacts, health, and nutrition. Food policy councils may be government created/run and can exist at both the state and local level. Stakeholders include a range of people invested in the food system, such as farmers, city, and state officials, non-profit organizations, chefs, food distributors, food justice advocates, educators, health professionals, and concerned citizens. With the lack of government agencies (at any level) devoted to the sole task of regulating and improving food policy, food policy councils

have emerged as innovative and much-needed mechanisms to identify and advocate for food system change.

### **Food Policy Directors**

While many government agencies shape policy that would affect sugar reduction initiatives, there is no single “food agency” at the federal, state, or local level. The lack of coordination among agencies engaged with these types of policies within the food system often slows progress. To combat this lack of coordination, several local governments have created the position of “food policy director,” housed in a local agency or the mayor’s office. Food policy directors are responsible for coordinating and implementing comprehensive food policies for their localities. Food policy directors can be key allies because they are uniquely positioned to draw attention to food policy issues and convene key government actors.<sup>99</sup>

Several cities, including **Baltimore (MD), New York City (NY), New Haven (CT), Boston (MA), Madison (WI), Washington, D.C., and San Francisco (CA)**, have added food policy directors to their municipal administrations.<sup>100</sup> The creation of such positions within local government supports a strategic, comprehensive, and long-term approach to food system planning and conveys the government’s commitment to food policy. Advocates should strive to work with their local food policy director and encourage their local government to establish the position if it does not already exist.

### **3. Other Potential Partners**

In addition to state and local agencies, advocates can also find valuable allies for state and local sugar reduction policies in national advocacy organizations. For instance, the **American Heart Association (AHA) Voices for Healthy Kids** is dedicated to ensuring that all children grow up with access to healthy, affordable foods, safe drinking water, and family-friendly places for physical activity.<sup>101</sup> This organization has affected over 250 million people in the United States by building coalitions and leading advocacy towards sugar reduction policy advocacy. Other organizations specializing in sugar reduction advocacy that have launched national initiatives include **ChangeLab Solutions**,<sup>102</sup> **The Praxis Project**,<sup>103</sup> **Healthy Food America**,<sup>104</sup> and **Center for Science in the Public Interest (CSPI)**,<sup>105</sup> among others.

## **Roadblocks to Sugar Reduction Law and Policy Initiatives**

Sugar reduction policies may face considerable roadblocks to enactment. In particular, sugar reduction policy may face the “nanny state” critique and advocates should also consider the costs of policy implementation. These issues will be discussed in turn.

### **1. Paternalism and the “Nanny State” Critique**

One roadblock that sugar reduction policies can face is the “nanny state” critique. This critique is ultimately “a call for the state to be agnostic about the health of citizens allowing market forces to dominate.”<sup>106</sup> That is, corporations and society may argue that it is better to let individuals dictate their respective decisions rather than obliging decisions by laws or regulations forced upon them. This, in turn, causes the government to be hesitant to act. Since governments may be reluctant to adopt or enact policies for fear of this critique, they will be less inclined to work with advocates.

In sugar reduction policy development, the “nanny state” critique can arise at any point. Often, as was the case in response to the **New York City, NY, soda portion cap rule**—a proposed limit on soft drink size intended to prohibit the sale of many SSBs more than 16 fluid ounces in volume—the

public has a reflexive response to being told what to do.<sup>107</sup> For more information on the soda portion cap in New York City and other portion size limits, see the Other Considerations, Conclusion, and Additional Resources section of this Toolkit. Thus, organizations and governments that have an interest in adopting sugar reduction policies may face public scrutiny on the development of such policies, particularly when engaging the public in conversations about the design and implementation of such policies. Advocates should be prepared for this critique with data that demonstrate why a government intervention is necessary, such as reasons why the government could help address the issue more effectively.

## 2. Cost of Implementation

The economic considerations of policy implementation are critical to consider when advocates propose implementing sugar reduction policy solutions. These costs can create a considerable problem for the implementation of sugar reduction policy solutions. For example, policy implementation costs related to an SSB tax include tax collection and fund administration. Additionally, the food and beverage industries may incur costs to reformulate their products or create new products that are not subject to the SSB tax.<sup>108</sup> Advocates should highlight the benefits of whatever sugar reduction policy they are implementing as an effective counter to increased costs.

Advocates also should be prepared for the argument that sugar reduction policies will result in regional job losses in the food and beverage industries.<sup>109</sup> For example, this argument has been raised in opposition to SSB taxes. However, research has shown no negative effects of SSB taxes on employment including no unemployment claims being observed within the first several years of implementing the tax.<sup>110</sup> Rather, a study in **Philadelphia, PA**, showed a trend towards greater total spending at smaller stores following the implementation of the Philadelphia SSB tax, which may be an argument in support of implementation of sugar reduction policies.<sup>111</sup>

## 3. Corporate Influence

Corporate influence of organizations with a stake in the food and beverage and sugar industries may pose a significant barrier to sugar reduction policy implementation through paid research and lobbying efforts. Industry-sponsored research can and has been effectively used to cast doubt on the hazards of sugar, often promoting fat as the primary cause of diet-related diseases such as chronic heart disease.<sup>112</sup> For instance, the discovery of internal sugar industry documents suggest that several decades of research into the role of nutrition and heart disease may have been largely shaped by the sugar industry.<sup>113</sup> In 2015, it was discovered that a major beverage company provided financial and logistical support to a nonprofit organization, the Global Energy Balance Network, which promotes the argument that weight-management focuses too much on what is consumed rather than on exercise.<sup>114</sup> Moreover, the trade association of the makers of leading candy brands funded a study that found that children who eat candy tend to weigh less than those who do not.<sup>115</sup> These “deflection strategies” parallel how the tobacco industry funded research that created doubt about whether smoking causes lung cancer.<sup>116</sup>

Lobbying efforts or involvement of the food and beverage and sugary industries in policy design discussions can also impact the effectiveness or overall structure of sugar reduction policies. A 2016 study revealed that between 2011 and 2015, the leading beverage brands sponsored ninety-five national health organizations that focused on combating the obesity epidemic, and during that same period the companies lobbied against twenty-nine public health bills that targeted soda consumption reduction and healthier nutrition overall.<sup>117</sup> For example, in response to the **Washington state** ballot initiative to preempt local SSB taxes, one beverage company alone spent almost \$10 million—half the money collected in support of the measure—to ensure it would pass, which it did.<sup>118</sup> In 2016, the American Beverage Association contributed \$10.6 million to lobby Philadelphia lawmakers and

convince the public to oppose **Philadelphia, PA's SSB tax**. Despite the beverage lobby spending five times more than the tax's supporters, the SSB tax prevailed.<sup>119</sup>

While these challenges pose considerable hurdles in implementing sugar reduction policies, they can be overcome. In the subsequent section, many of the challenges that are specific to particular sugar reduction policies will be discussed in turn. Included in the description of the most common challenges will be an inclusion of suggested strategies to overcome these challenges, using real-world examples where applicable.



## Endnotes

- <sup>1</sup> Christopher Coble, *What's the Difference Between Laws and Regulations*, FINDLAW (Oct. 23, 2015), <https://www.findlaw.com/legalblogs/law-and-life/whats-the-difference-between-laws-and-regulations/> [https://perma.cc/6G3A-TXBZ].
- <sup>2</sup> *Initiative and Referendum States*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx> (last visited Apr. 14, 2022) [https://perma.cc/B8PX-YE28].
- <sup>3</sup> CAL. CONST. art. 2, § 8; *see also Initiative and Referendum Overview and Resources*, NAT'L CONF. STATE LEGISLATURES (Jan. 4, 2022), <https://www.ncsl.org/research/elections-and-campaigns/initiative-referendum-and-recall-overview.aspx> [https://perma.cc/G557-2MGL].
- <sup>4</sup> ME. CONST. art. 4, pt. III, §§ 18-20, 22.
- <sup>5</sup> NEV. CONST. art. 19, § 2(3).
- <sup>6</sup> *Initiative and Referendum Overview and Resources*, *supra* note 3.
- <sup>7</sup> *Administrative Agency*, BLACK'S LAW DICTIONARY (9th ed. 2009).
- <sup>8</sup> *See, e.g.*, NYC HEALTH, NEW YORK CITY FOOD STANDARDS, FOOD VENDING MACHINES (n.d.), <https://www1.nyc.gov/assets/doh/downloads/pdf/cardio/cardio-vending-machines-standards.pdf> [https://perma.cc/SB6W-XCSE] (requiring that snack food in city vending machines contain no more than 200 calories, 7 grams of fat, and 10 grams of sugar); *see also* CTR. SCI. PUB. INT. (CSPI), EXAMPLES OF POLICIES TO INCREASE ACCESS TO HEALTHIER FOOD CHOICES FOR PUBLIC PLACES: NATIONAL, STATE, AND LOCAL FOOD AND NUTRITION GUIDELINES (2017), [https://cspinet.org/sites/default/files/attachment/examples2\\_0.pdf](https://cspinet.org/sites/default/files/attachment/examples2_0.pdf) [https://perma.cc/7R5A-MR8S].
- <sup>9</sup> CAL. GOV. CODE § 11005.4 (2015).
- <sup>10</sup> Los Angeles County Board of Supervisors, County of Los Angeles Vending Machine Nutrition Policy 3.155 (2006), <http://countypolicy.co.la.ca.us/BOSPolicyFrame.htm> [https://perma.cc/AG3L-FVPU]; County of Monterey, "Healthy" Vending Machine Policy, <https://www.co.monterey.ca.us/cao/Healthy%20Vending%20Machine%20Policy.pdf> [https://perma.cc/XTT5-8YD4]; County of San Diego, Board of Supervisors Policy, <http://www.sandiegocounty.gov/cob/docs/policy/K-14.pdf> [https://perma.cc/7556-R54N].
- <sup>11</sup> CSPI, EXAMPLES OF POLICES TO INCREASE ACCESS TO HEALTHIER FOOD, *supra* note 8 at 4–13.
- <sup>12</sup> Jaime Bouvier, *How Cities are Responding to the Urban Agriculture Movement with Micro-Livestock Ordinances*, 47 URBAN LAW. 85, 110 (Oct. 28, 2015), [https://papers.ssrn.com/sol3/papers2.cfm?abstract\\_id=2681319](https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2681319) [https://perma.cc/P9JN-JY7K].
- <sup>13</sup> *See e.g.*, *Healthier Communities for All Through Equitable Laws & Policies*, CHANGELAB SOLS., <https://www.changelabsolutions.org/> (last visited Apr. 14, 2022) [https://perma.cc/DT4Z-9PT2] [hereinafter CHANGELAB SOLS.]; *What We Are Fighting For*, PRAXIS PROJECT, <https://www.thepraxisproject.org/> (last visited Apr. 14, 2022) [https://perma.cc/2MPP-4XLZ] [hereinafter PRAXIS PROJECT]; *Let's Make Our Food Healthier*, HEALTHY FOOD AM., <https://www.healthyfoodamerica.org/> (last visited Apr. 14, 2022) [https://perma.cc/Y3EZ-AZSA] [hereinafter HEALTHY FOOD AM.]; *Eating Healthy*, CSPI, <https://www.cspinet.org/eating-healthy> (last visited Apr. 14, 2022) [https://perma.cc/9XC6-XLKA] [hereinafter CSPI].
- <sup>14</sup> NAT'L CONG. AM. INDIANS (NCAI), TRIBAL NATIONS & THE UNITED STATES 23 (2020), [https://www.ncai.org/tribalnations/introduction/Indian\\_Country\\_101\\_Updated\\_February\\_2019.pdf](https://www.ncai.org/tribalnations/introduction/Indian_Country_101_Updated_February_2019.pdf) [https://perma.cc/R36H-AJBH]. While tribes exist without legal action by the United States government, to create the government-to-government relationship between the federal government and the tribe, the tribe must complete the official federal acknowledgment process. *Preserve Tribal Existence*, NATIVE AM. RIGHTS FUND (NARF), <http://www.narf.org/our-work/preservation-tribal-existence> (last visited Apr. 14, 2022) [https://perma.cc/A5XL-ZS8C].
- <sup>15</sup> *Answers to Frequently Asked Questions about Native Peoples*, NARF, <http://www.narf.org/pubs/misc/faqs.html> [https://perma.cc/2KP7-ZP6G] (last visited Apr. 14, 2022). While tribes exist without legal action by the United States government, in order to create the government-to-government relationship between the federal government and the tribe, the tribe must complete the official federal acknowledgment process. *Preserve Tribal Existence*, *supra* note 14.
- <sup>16</sup> *An Issue of Sovereignty*, NAT'L CONF. STATE LEGIS. (Jan. 2013), <http://www.ncsl.org/research/state-tribal-institute/an-issue-of-sovereignty.aspx> [https://perma.cc/Y4BQ-UZYK].
- <sup>17</sup> FLPC, CMTY. OUTREACH & PATIENT EMPOWERMENT (COPE), & NAVAJO NATION, GOOD LAWS, GOOD FOOD: PUTTING FOOD POLICY TO WORK IN THE NAVAJO NATION (May 2015), <http://www.chlpi.org/wp-content/uploads/2013/12/Navajo-Food-Policy-Toolkit-May-2015.pdf> [https://perma.cc/YPL6-T83B].
- <sup>18</sup> *See, e.g.*, *Our Government*, CHEROKEE NATION, (May 13, 2019), <https://www.cherokee.org/our-government/> [https://perma.cc/6ZJM-3JF3]; *Government*, CHOCTAW NATION, <https://www.choctawnation.com/government> (last visited Apr. 14, 2022) [https://perma.cc/9LNR-RWG6]; *see also* NCAI, TRIBAL NATIONS & THE UNITED STATES, *supra* note 14.
- <sup>19</sup> Note that when the city acts as a business or creates private corporations to provide some of its services, these private entities are not as vulnerable to state oversight of their decisions. *See, e.g.*, *Mun. Bldg. Auth. of Iron Cnty. v. Lowder*, 711 P.2d 273 (Utah 1985).
- <sup>20</sup> Hugh Spitzer, 'Home Rule' vs. 'Dillon's Rule' for Washington Cities, 38 Seattle U. L. Rev. 809, 813 (2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2595265](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2595265) [https://perma.cc/MNC4-69D6]; *Clinton v. Cedar Rapids & M. R. R. Co.*, 24 Iowa 455 (1868).
- <sup>21</sup> John F. Dillon, Treatise on the Law of Municipal Corporations, § 55, 101 (1st ed. 1872).
- <sup>22</sup> Spitzer, 'Home Rule' vs. 'Dillon's Rule' for Washington Cities, *supra* note 20; *Clinton v. Cedar Rapids & M. R. R. Co.*, 24 Iowa 455 (1868) (quoting John F. Dillon, *Treatise on the Law of Municipal Corporations*, §§ 93, 136 (1st ed. 1872)).
- <sup>23</sup> *Statute*, BLACK'S LAW DICTIONARY (10th ed. 2014).
- <sup>24</sup> MD. CODE, TAX-PROP. § 9-253 (2014).
- <sup>25</sup> HOWARD LEE MCBAIN, THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE 658 (1916).
- <sup>26</sup> Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, POP. GOV'T 15, 16 (2006), <http://www.ioag.unc.edu/pubs/electronicversions/pg/pgfal06/article2.pdf> [https://perma.cc/WYK7-JNRC].

<sup>27</sup> *Id.*

<sup>28</sup> See SAMUEL B. STONE, IND. U. SCH. PUB. & ENV'T AFFS., HOME RULE IN THE MIDWEST, IND. U. PUB. POL'Y INST. 10-C27 4 (July 2010), [http://policyinstitute.iu.edu/uploads/PublicationFiles/PC\\_HmRules\\_Web.pdf](http://policyinstitute.iu.edu/uploads/PublicationFiles/PC_HmRules_Web.pdf) [<https://perma.cc/5LVL-M5RN>].

<sup>29</sup> *Charter*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>30</sup> IOWA CONST. art. II, § 38A (allows a local government to “make and enforce local police, sanitary and other regulations as are not in conflict with [the municipality’s] charter or with the [state’s] general laws.”).

<sup>31</sup> N.M. CONST. art X, § 6D (provides authority over any local matter that is “not expressly denied by [the state’s] general law or [the municipality’s] charter.”).

<sup>32</sup> See *McCrorry Corp. v. Fowler*, 570 A.2d 834 (Md. 1990) (holding that if a policy had significant impacts on the rest of the state, then it was not a purely local matter and thus could not fall under Home Rule powers); see also *New Mexicans for Free Enter. v. City of Santa Fe*, 126 P.3d 1149 (N.M. Ct. App. 2005) (holding that as long as the local policy was reasonably related to delegated police powers, local policy could be stronger than the state’s policy, and the state policy would need explicit preemption to override the local policy); *Johnson v. Bradley*, 841 P.2d 990 (Cal. 1992) (holding that for purely local matters, local policy could be different from the state policy).

<sup>33</sup> Spitzer, ‘Home Rule’ vs. ‘Dillon’s Rule’ for Washington Cities, *supra* note 20 at 822.; *Clinton v. Cedar Rapids & M. R. R. Co.*, 24 Iowa 455 (1868).

<sup>34</sup> MCBAIN, THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE, *supra* note 25.

<sup>35</sup> See DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (2001).

<sup>36</sup> *Id.*

<sup>37</sup> DAVID J. BARRON ET AL., RAPPAPORT INST. FOR GREATER BOSTON, DISPELLING THE MYTH OF HOME RULE: LOCAL POWER IN GREATER BOSTON 12–17 (2004), [https://www.hks.harvard.edu/sites/default/files/centers/rappaport/files/home\\_rule.pdf](https://www.hks.harvard.edu/sites/default/files/centers/rappaport/files/home_rule.pdf) [<https://perma.cc/Y7BT-AXCE>].

<sup>38</sup> *Id.* at 13.

<sup>39</sup> Bluestein, *Do North Carolina Local Governments Need Home Rule?*, *supra* note 26 at 17.

<sup>40</sup> Note that in the federal government context, sometimes preemption is “express,” meaning that the law clearly states that states cannot act, but sometimes preemption can be “implied” based on the content of what the federal government is regulating. Concerning state preemption of local rules, the balance of how readily preemption will be presumed is dependent on what type of Home Rule powers the state gives to localities. Sam Bloch, *How big food companies are using the gun and tobacco industry playbook to thwart bold public health laws*, COUNTER (Dec. 6, 2018), <https://thecounter.org/big-food-preemption-laws-gun-tobacco-playbook/> [<https://perma.cc/DZG7-ZZTB>]; Rob Waters, *Soda And Fast Food Lobbyists Push State Preemption Laws To Prevent Local Regulation*, FORBES (Jun. 21, 2017), <https://www.forbes.com/sites/robwaters/2017/06/21/soda-and-fast-food-lobbyists-push-state-preemption-laws-to-prevent-local-regulation/?sh=70390cf9745d> [<https://perma.cc/DA5J-BXZD>].

<sup>41</sup> S.B. 1420, 2008 Leg. Sess. (Cal. 2008).

<sup>42</sup> Nutrition Labeling and Education Act of 1990, Pub. L. No. 201-535, 104 Stat. 2353 (1990).

<sup>43</sup> Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 4205, 124 Stat. 119 (2010) (codified at 21 U.S.C. § 343(q)(5)(H) (2012)).

<sup>44</sup> The law includes chain restaurants with twenty or more locations doing business under the same name and selling similar food items. *Id.*

<sup>45</sup> *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

<sup>46</sup> U.S. CONST., art. I, § 8, cl. 3; see also *Jacobson v. Massachusetts*, 197 U.S. 11, *supra* note 45.

<sup>47</sup> See Jennifer L. Pomeranz & Kelly D. Brownell, *Portion Sizes and Beyond—Government’s Legal Authority to Regulate Food-Industry Practices*, 367 NEW ENG. J. MED. 1383 (2012).

<sup>48</sup> ARIZ. REV. STAT. ANN. § 42-6015 (2018).

<sup>49</sup> CAL. REV. & TAX CODE § 7284.12 (2018).

<sup>50</sup> MICH. COMP. LAWS § 123.713 (2017).

<sup>51</sup> WASH. REV. CODE § 82.84 (2018).

<sup>52</sup> Eric Crosbie & Jennifer L. Pomeranz et al., *State Preemption: An Emerging Threat to Local Sugar-Sweetened Beverage Taxation*, AM. PUB. HEALTH ASS’N (AJPH) (Mar. 10, 2021), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2020.306062> [<https://perma.cc/KBT2-RHEL>] 678–79.

<sup>53</sup> CAL. REV. & TAX CODE § 7284.12(f); Initiative 1634 Prohibit Local Taxes on Groceries Measure (2018).

<sup>54</sup> See, e.g., Tentative Ruling on Petition for Writ of Mandate, *Cultiva La Salud v. California*, No. 34-2020-80003458 (Cal. Super. Ct. Oct. 1, 2021) available at <https://www.changelabsolutions.org/sites/default/files/2021-10/Sugary%20Drinks%20Tax%20Court%20Deciscion%202021.pdf> [<https://perma.cc/9DVQ-WY9Y>] (holding that the provision of the California statute that prevented municipalities from enacting SSB taxes violated the state’s constitution because it interfered with a local government’s constitutionally granted Home Rule authority).

<sup>55</sup> See CAL. REV. & TAX CODE § 7284.12(a); see also Tentative Ruling on Petition for Writ of Mandate, *Cultiva La Salud v. California*, No. 34-2020-80003458, 4 (Cal. Super. Ct. Oct. 1, 2021), available at <https://www.changelabsolutions.org/sites/default/files/2021-10/Sugary%20Drinks%20Tax%20Court%20Deciscion%202021.pdf> [<https://perma.cc/9DVQ-WY9Y>]; *New Lawsuit Challenges California Preemption Law*, CHANGELAB SOLS. (Aug. 10, 2020), <https://www.changelabsolutions.org/news/ca-preemption-lawsuit> [<https://perma.cc/NG4P-5BSD>]; see also *Food and beverage tax preemption conflicts between state and local government*, BALLOTEDIA (May 6, 2021), [https://ballotpedia.org/Food\\_and\\_beverage\\_tax\\_preemption\\_conflicts\\_between\\_state\\_and\\_local\\_governments](https://ballotpedia.org/Food_and_beverage_tax_preemption_conflicts_between_state_and_local_governments) [<https://perma.cc/H5KL-H6PE>]; *Ruling in CA Sugary Drink Tax Preemption Lawsuit*, CHANGELAB SOLS. (Oct. 12, 2021), <https://www>.

changelabsolutions.org/news/ruling-california-sugary-drink-tax-preemption [https://perma.cc/RSH9-88F6]. Crosbie & Pomeranz et al., *State Preemption*, *supra* note 52.

56 MISS. CODE ANN. § 75-29-901 (2013).

57 S.F., CAL., HEALTH CODE 8-471.4 (2010).

58 *Foods Containing Industrially-Produced Trans Fat Restricted*, Cleveland Codified Ordinances § 241.42 (2012); OHIO REV. CODE ANN. § 3717.53 (2014).

59 *City of Cleveland v. State of Ohio*, 989 N.E.2d 1072 (Ohio Ct. App. 2013).

60 *Impact of Preemptive Laws on Public Health*, AM. PUB. HEALTH ASS'N (2015), <http://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2016/01/11/11/08/impact-of-preemptive-laws-on-public-health> [https://perma.cc/42SR-BMAT].

61 *Id.*

62 Mark Pertschuk et al., *Assessing the impact of federal and state preemption in public health: a framework for decision makers*, 19(3) J. PUB. HEALTH MGMT. PRAC. 213, 213–14, 216 (2012), <https://pubmed.ncbi.nlm.nih.gov/22759986/> [https://perma.cc/XV2P-8QVR].

63 21 U.S.C. §§ 341, 343(q), 343-1.

64 21 U.S.C. § 343(q)(5)(H).

65 *See e.g.*, ALASKA STAT. § 17.20.040(a)(12) (2005) (requiring the labeling of farm-raised seafood products).

66 BRETON PERMESLY & SUZANNE TRIGG, AM. BAR ASS'N 39TH ANNUAL FORUM ON FRANCHISING, MENU LABELING – “CHEESE FRIES FOR 700 CALORIES, PLEASE,” (Nov. 2016), <https://www.americanbar.org/content/dam/aba/images/franchising/annual16/course-materials-16/w14-menu-labeling.pdf> [https://perma.cc/R53X-KS6X].

67 Press Release: New York City Dep't of Health and Mental Hygiene, NYC Health Commissioner's Statement on Sodium Warning Rule Court Decision (May 26, 2015), <https://www1.nyc.gov/assets/doh/downloads/pdf/press/stmt-sodium-rule-05262016.pdf> [https://perma.cc/P957-GQDE]; *see also* CSPI, CAL. ENDOWMENT, SOUTH LOS ANGELES NEIGHBORHOOD MERCADO PIONEERS SMART MENU LABELING AMONG NON-CHAIN RESTAURANTS (July 28, 2016), [https://cspinet.org/sites/default/files/attachment/southlosangeles\\_menulabeling.pdf](https://cspinet.org/sites/default/files/attachment/southlosangeles_menulabeling.pdf) [https://perma.cc/R2ZK-DFG8].

68 7 C.F.R. 210.21(g) (2016).

69 As of 2015, at least 37 states had passed legislation allowing purchasing preferences for in-state agricultural products. Alli Condra et al., FLPC, INCREASING LOCAL FOOD PROCUREMENT BY MASSACHUSETTS STATE AGENCIES 51–53 (2015), [http://www.chlpi.org/wp-content/uploads/2013/12/Increasing-Local-Procurement-by-Massachusetts-State-Agencies\\_FINAL\\_FULL-REPORT.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Increasing-Local-Procurement-by-Massachusetts-State-Agencies_FINAL_FULL-REPORT.pdf) [https://perma.cc/M9PS-TLE9].

70 7 C.F.R. 210.21(g) (2016).

71 *School Breakfast Program: Healthy Hunger-Free Kids Act*, USDA FOOD & NUTRITION SERV., (Nov. 20, 2013), <https://www.fns.usda.gov/cn/healthy-hunger-free-kids-act> [https://perma.cc/MB9Q-BHH6].

72 MASS. DEP'T PUB. HEALTH ET AL., HEALTHY STUDENTS, HEALTHY SCHOOLS: REVISED GUIDANCE FOR IMPLEMENTING THE MASSACHUSETTS SCHOOL NUTRITION STANDARDS FOR COMPETITIVE FOOD & BEVERAGES 8, 12 (2012), <https://www.mass.gov/doc/healthy-students-healthy-schools-guidance-for-implementing-massachusetts-school-nutrition/download#:~:text=Sugar%20No%20more%20than%2035,%2C%20per%208%2Dounce%20serving> [https://perma.cc/PW5Y-HD73].

73 Press Release, The City of New York, Mayor de Blasio, Chancellor Carranza, and Brooklyn Borough President Adams Announce Citywide Meatless Mondays (March 11, 2019), <https://www1.nyc.gov/office-of-the-mayor/news/135-19/mayor-de-blasio-chancellor-carranza-brooklyn-borough-president-adams-citywide#0> [https://perma.cc/QL7V-EFEB].

74 *See* RANDY ALISON AUSSENBERG & KARA CLIFFORD BILLINGS, CONG. RSCH. SERV., R46488, USDA DOMESTIC FOOD ASSISTANCE PROGRAMS: FY2020 APPROPRIATIONS (2020), <https://crsreports.congress.gov/product/pdf/R/R46488#:~:text=The%20domestic%20food%20assistance%20funding,approximately%20%245.2%20billion%20from%20FY2019> (last visited Apr. 14, 2022); *see also* CTR. BUDGET & POL'Y PRIORITIES, POLICY BASICS: THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) (2019), <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-foodstamps.pdf> [https://perma.cc/4VQ8-WZR8] [hereinafter POLICY BASICS: SNAP].

75 *See* POLICY BASICS: SNAP, *supra* note 74 at 2; *WIC and Retail Grocery Stores*, USDA FOOD & NUTRITION SERV., (Dec. 28, 2012), <https://www.fns.usda.gov/wic/wic-retail-store-fact-sheet> [https://perma.cc/YE29-D2X3].

76 California, Colorado, Minnesota, New Jersey, New York, North Carolina, North Dakota, Ohio, Virginia, and Wisconsin delegate SNAP administration to county governments. NAT'L ASS'N CNTYS., UNDERSTANDING THE COUNTY ROLE IN THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: THE IMPORTANT ROLE OF SNAP AS PART OF OUR NATION'S SAFETY-NET 6, 15 (2019), <https://www.naco.org/sites/default/files/attachments/NACo%20SNAP%20101%20Presentation.pdf> [https://perma.cc/SKR3-3X6M].

77 *See Gus Schumacher Nutrition Incentive Program*, USDA FOOD & NUTRITION SERV. (Nov. 4, 2021), <https://www.fns.usda.gov/snap/gusnip-grant-program> [https://perma.cc/SU78-PPGH].

78 *See* U.S. CENSUS BUREAU, 2017 CENSUS OF GOVERNMENTS – ORGANIZATION, TABLE 2. LOCAL GOVERNMENTS BY TYPE AND STATE: 2017, CG1700ORG02 (2017), <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html> [https://perma.cc/L7ZU-YWBH]; *Cities 101: Consolidations*, NAT'L LEAGUE CTYS. (Dec. 14, 2016), <http://www.nlc.org/resource/cities-101-consolidations> [https://perma.cc/9UX5-L6FN].

79 *Government*, City of Jacksonville, Fla., <http://www.coj.net/About-Jacksonville/Government.aspx> (last visited Apr. 14, 2022) [https://perma.cc/93YS-JGGG].

80 *What is Metro?*, METRO, <https://www.oregonmetro.gov/regional-leadership/what-metro> (last visited Apr. 14, 2022) [https://perma.cc/HZ6N-X8EH].

81 *Id.*

82 *See, e.g.*, *Mississippi State Department of Health*, MISS. STATE DEP'T HEALTH, <http://msdh.ms.gov/> (last visited Apr. 14, 2022) [https://

- perma.cc/76MU-YHUU]; Louisiana Department of Health, LA. DEP'T HEALTH, <http://new.dhh.louisiana.gov/> (last visited Apr. 14, 2022) [<http://new.dhh.louisiana.gov/>]; Utah Department of Health, UTAH DEP'T HEALTH, <https://health.utah.gov/> (last visited Apr. 14, 2022) [<https://perma.cc/YD7P-Q6FU>].
- <sup>83</sup> *Rethink Your Drink, CDPH Rethink Your Drink Resources*, U. CAL. S.F. CAL. ORAL HEALTH TECH. ASSISTANCE CTR. (2022), <https://oralhealthsupport.ucsf.edu/taxonomy/term/1051> [<https://perma.cc/B2G7-SZKX>].
- <sup>84</sup> See, e.g., *Food & Nutrition Programs*, PA. DEP'T EDUC., <https://www.education.pa.gov/Teachers%20-%20Administrators/Food-Nutrition/programs/Pages/default.aspx> (last visited Apr. 14, 2022) [<https://perma.cc/5AWG-ZZTP>].
- <sup>85</sup> See, e.g., *Division of Food, Nutrition and Wellness*, FLA. DEP'T AGRIC. & CONSUMER SERV., <http://www.freshfromflorida.com/divisions/fnw/> (last visited Apr. 14, 2022) [<https://perma.cc/4EQF-GVW5>].
- <sup>86</sup> See, e.g., *Frequently Asked Questions*, TENN. DEP'T HUMAN SERVS., <https://www.tn.gov/humanservices/need-help-/dhs-faqs.html> (last visited Apr. 14, 2022) [<https://perma.cc/EM98-QEZQ>].
- <sup>87</sup> *Food Business Licensing*, N.Y. DEP'T AGRIC. & MKTS., <https://agriculture.ny.gov/food-business-licensing> (last visited Apr. 14, 2022) [<https://perma.cc/S9YX-2UYE>] (relating to the SSB portion size limit ordinance).
- <sup>88</sup> See *Boards of Health*, MASS. ASS'N HEALTH BOARDS (MAHB), <http://www.mahb.org/boards-of-health/> [<https://perma.cc/ZWL4-UTX9>] (last visited Sept. 9, 2021).
- <sup>89</sup> Andy Baker-White, *Local Boards of Health and Their Role in the Community*, NETWORK FOR PUB. HEALTH L. (May 4, 2011), [https://www.networkforphl.org/the\\_network\\_blog/2011/05/04/29/local\\_boards\\_of\\_health\\_and\\_their\\_role\\_in\\_the\\_community](https://www.networkforphl.org/the_network_blog/2011/05/04/29/local_boards_of_health_and_their_role_in_the_community) [<https://perma.cc/2SRC-39X6>].
- <sup>90</sup> See generally, JENNIFER L. POMERANZ, *FOOD LAW FOR PUBLIC HEALTH* 13 (2016).
- <sup>91</sup> See generally, *Id.*
- <sup>92</sup> See generally, *Id.*
- <sup>93</sup> Among other state and local agencies, the Arizona Department of Health Services, the Chicago Department of Public Health, the Indiana State Department of Health, the Oklahoma City-County Health Department, and the South Dakota Department of Health have committed to the NSSRI. See *National Salt and Sugar Initiative (NSSRI)*, N.Y.C. HEALTH (Feb. 2022), <https://www1.nyc.gov/assets/doh/downloads/pdf/cardio/nsri-partners.pdf> [<https://perma.cc/FNU8-ETJT>].
- <sup>94</sup> See *Sugary Drinks: Health Impacts of Sugary Drinks*, BOULDER CNTY., COLO. PUB. HEALTH, <https://www.bouldercounty.org/families/pregnancy/health-impacts-of-sugary-drinks-english/#:~:text=Sugary%20Drinks%20Are%20Harmful&text=They%20may%20also%20contain%20empty,2%20diabetes%20and%20heart%20disease> (last visited Apr. 15, 2022) [<https://perma.cc/ABU7-8Z2V>].
- <sup>95</sup> *Opportunity for a Healthy Life—Sugar-Sweetened Beverages: The Boulder County Public Health Position*, BOULDER CNTY., COLO. PUB. HEALTH, <https://assets.bouldercounty.org/wp-content/uploads/bcphssbposition.pdf> (last visited Sept. 9, 2021) [<https://perma.cc/835S-4VSZ>]; Vance Winkel, *Boulder County Board of Health to prohibit use of beverage industry funding*, LONGMONT TIMES-CALL (Jan. 12, 2016), [http://www.timescall.com/business/ci\\_29372790/boulder-county-board-health-prohibit-use-beverage-industry](http://www.timescall.com/business/ci_29372790/boulder-county-board-health-prohibit-use-beverage-industry) [<https://perma.cc/JR3N-AJ8D>].
- <sup>96</sup> See e.g., *Agricultural Financing Overview*, VT. ECON. DEV. AUTH., <https://www.veda.org/financing-options/vermont-agricultural-financing> (last visited Apr. 15, 2022) [<https://perma.cc/MSQ8-RCTJ>].
- <sup>97</sup> *Economic Development Agencies*, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/starting-business/learn-about-business-laws/contact-government-agency/economic-development-agencies> (last visited Apr. 15, 2022) [<https://perma.cc/M2NW-5UYY>].
- <sup>98</sup> *Food Access*, SANKOFA, <http://sankofanola.org/food-access/> (last visited Apr. 15, 2022) [<https://perma.cc/3LTM-JERZ>].
- <sup>99</sup> Press Release, Gov't D.C., Exec. Office Mayor, Mayor Bowser Appoints New Food Policy Director (Aug. 17, 2018), <https://mayor.dc.gov/release/mayor-bowser-appoints-new-food-policy-director> [<https://perma.cc/NY3J-B3WJ>].
- <sup>100</sup> See, e.g., *Staff*, BALT. OFF. SUSTAINABILITY, <http://www.baltimoresustainability.org/about/staff/> (last visited Feb. 17, 2017) [<https://perma.cc/8XNL-8WTZ>] (Baltimore also employs two “food access planners”); *NYC Food Policy*, N.Y.C. Food Pol’y, <https://www1.nyc.gov/site/foodpolicy/index.page> (last visited Apr. 15, 2022) [<https://perma.cc/M4G6-7TFJ>]; *New Haven appoints municipal food policy director, a first of its kind in Connecticut*, NEW HAVEN REGISTER (Apr. 21, 2016), <http://www.nhregister.com/general-news/20160421/new-haven-appoints-municipal-food-policy-director-a-first-of-its-kind-in-connecticut> [<https://perma.cc/UPZ5-RRKW>]; *Mayor Walsh Announces New Director of the Office of Food Initiatives*, CTY. OF BOS. (Aug. 1, 2016), <https://www.boston.gov/news/mayor-walsh-announces-new-director-office-food-initiatives> [<https://perma.cc/QEN7-SXNJ>]; *George Reistad Named Madison’s Food Policy Coordinator*, CTY. OF MADISON (Aug. 4, 2016), <https://www.cityofmadison.com/news/george-reistad-named-madisons-food-policy-coordinator> [<https://perma.cc/2FC7-CEED>]; *Food Policy*, DC.GOV: OFF. OF PLANNING, <https://planning.dc.gov/page/food-policy> (last visited Apr. 15, 2022) [<https://perma.cc/Y4NW-LTQZ>]; *San Francisco Food: San Francisco Healthy and Sustainable Food Policy*, CTY. & CNTY. OF S.F., <http://sfgov.org/sffood/san-francisco-healthy-and-sustainable-food-policy> (last visited Apr. 15, 2022) [<https://perma.cc/UJQ9-3LW5>].
- <sup>101</sup> *We’re calling for change. Will you add your voice?*, AM. HEART ASS’N (AHA) VOICES FOR HEALTHY KIDS, <https://voicesforhealthykids.org/about/who-we-are> (last visited Apr. 14, 2022) [<https://perma.cc/98AG-ND78>].
- <sup>102</sup> CHANGELAB SOLS., *supra* note 13.
- <sup>103</sup> PRAXIS PROJECT, *supra* note 13.
- <sup>104</sup> HEALTHY FOOD AM., *supra* note 13.
- <sup>105</sup> CSPI, *supra* note 13.
- <sup>106</sup> R. S. Magnusson, *Case studies in nanny state name-calling: what can we learn?*, 129(8) PUB. HEALTH 1074 (Jul. 2, 2015), <https://pubmed.ncbi.nlm.nih.gov/26074167/> [<https://perma.cc/9ZHU-5ZRW>].
- <sup>107</sup> Sarah Conly, *Opinion: Three Cheers for the Nanny State*, N.Y. Times (Mar. 24, 2013), <https://www.nytimes.com/2013/03/25/opinion/three-cheers-for-the-nanny-state.html> [<https://perma.cc/7E2Y-FKQ3>].

- <sup>108</sup> Yujin Lee et al., *Health Impact and Cost-Effectiveness of Volume, Tiered, and Absolute Sugar Content Sugar-Sweetened Beverage Tax Policies in the United States*, 142(6) AHA CIRCULATION 523, 523–34 (Aug. 11, 2020), <https://www.ahajournals.org/doi/full/10.1161/CIRCULATIONAHA.119.042956> [<https://perma.cc/9JHP-2SXB>].
- <sup>109</sup> Jeff Niederdeppe et al., *News coverage of sugar-sweetened beverage taxes: pro- and antitax arguments in public discourse*, 103(6) AM. J. PUB. HEALTH e92 (Apr. 18, 2013), <https://pubmed.ncbi.nlm.nih.gov/23597354/> [<https://perma.cc/NZ5Q-MGJM>].
- <sup>110</sup> Lisa M. Powell et al., *Employment Impact of Sugar-Sweetened Beverage Taxes*, 104(4) AM. J. PUB. HEALTH 672 675–76 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4025719/> [<https://perma.cc/SFZ2-KR9R>]; Christina A. Roberto, Sara N. Bleich, & Hannah G. Lawman et al., *Unemployment claims in Philadelphia one year after implementation of the sweetened beverage tax*, 14(3) PLOS ONE e0213218 (2019), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0213218#:~:text=Results%20showed%20that%20filings%20for,implementation%20of%20the%20beverage%20tax> [<https://perma.cc/5P89-FTW2>]; Samantha Marinello et al., *The impact of the Philadelphia beverage tax on employment: a synthetic control analysis*, 40 ECON. & HUM. BIOLOGY 100939 (Jan. 2021), <https://pubmed.ncbi.nlm.nih.gov/33232891/> [<https://perma.cc/A58G-N9BK>]; Carlos M. Guerrero-López et al., *Employment changes associated with the introduction of taxes on sugar-sweetened beverages and nonessential energy-dense food in Mexico*, 105 PREVENTIVE MED. S43 (2017), <https://pubmed.ncbi.nlm.nih.gov/28890354/> [<https://perma.cc/2M5Q-LWFQ>].
- <sup>111</sup> Christina Roberto & Sara N. Bleich et al., *The Association of a Sweetened Beverage Tax With Changes In Beverage Prices And Purchases At Independent Stores*, 39(7) HEALTH AFFS. 1130, 1136 (July 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01058> [<https://perma.cc/3AAR-QLJZ>].
- <sup>112</sup> Cristin E. Kearns et al., *Sugar Industry and Coronary Heart Disease Research: A Historical Analysis of Internal Industry Documents*, 176(11) J. AM. MED. ASS'N INTERNAL MED. 1680 (Nov. 2016), <https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2548255> [<https://perma.cc/D6KJ-UU7F>].
- <sup>113</sup> *Id.*; See Anahad O'Connor, *How the Sugar Industry Shifted Blame to Fat*, N.Y. TIMES (Sept. 12, 2016), <https://www.nytimes.com/2016/09/13/well/eat/how-the-sugar-industry-shifted-blame-to-fat.html> [<https://perma.cc/D2JF-XNYL>].
- <sup>114</sup> Anahad O'Connor, *Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad Diets*, N.Y. TIMES (Aug. 9, 2015), <https://well.blogs.nytimes.com/2015/08/09/coca-cola-funds-scientists-who-shift-blame-for-obesity-away-from-bad-diets/> [<https://perma.cc/9JPN-NB9B>].
- <sup>115</sup> Candice Choi, *AP Exclusive: How candy makers shape nutrition science*, ASSOCIATED PRESS (AP) (Jun. 2, 2016), <https://apnews.com/article/science-nutrition-healthy-eating-archive-only-on-ap-f9483d554430445fa6566bb0aaa293d1> (last visited Apr. 15, 2022) (Noting that limitations in the study existed, which included that the findings were based on participant recall and that correlation is not causation).
- <sup>116</sup> Fancie Diep, *How Sugar Lobbying Influenced U.S. Government-Funded Research*, PAC. STANDARD (updated May 3, 2017), <https://psmag.com/news/the-not-so-sweet-side-to-the-sugar-industry> [<https://perma.cc/5XTJ-TMZ9>] (citing STANTON A. GLANTZ ET AL., THE CIGARETTE PAPERS (U. Cal. Press 1998)).
- <sup>117</sup> Daniel G. Aaron & Michael B. Siegel, *Sponsorship of National Health Organizations by Two Major Soda Companies*, 52(1) AM. J. PREVENTATIVE MED. 20 (Oct. 10, 2016), <https://pubmed.ncbi.nlm.nih.gov/27745783/#:~:text=Conclusions%3A%20There%20is%20surprisingly%20pervasive,to%20improving%20the%20public's%20health.> [<https://perma.cc/8YAA-ZZJ6>].
- <sup>118</sup> Liz Szabo, *Big Soda And The Ballot: Soda Industry Takes Cues From Tobacco To Combat Taxes*, NAT'L PUB. RADIO (NPR) (Nov. 5, 2018), <https://www.npr.org/sections/thesalt/2018/11/05/664435761/big-soda-and-the-ballot-soda-industry-takes-cues-from-tobacco-to-combat-taxes> [<https://perma.cc/R2VH-R3YF>].
- <sup>119</sup> Holly Otterbein, *The Beverage Lobby Spent \$10.6 Million to Kill the Soda Tax — and Failed, Politics*, PHILA. MAG. (Aug. 2, 2016), <https://www.phillymag.com/citifed/2016/08/02/soda-tax-spending-lobbying/> [<https://perma.cc/UUS9-CJEF>]. Hugh Spitzer, *'Home Rule' vs. 'Dillon's Rule' for Washington Cities*, 38 SEATTLE U. L. REV. 809, 810 (2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2595265](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2595265) [<https://perma.cc/MNC4-69D6>].



# SUGAR REDUCTION LAW AND POLICY POLICY SOLUTIONS

The solutions discussed in this section include:

1. Sugar-Sweetened Beverage (SSB) Tax,
2. Warning Labels on Products,
3. Healthy Default Policy,
4. Healthy Retail Policy,
5. Healthy Procurement Policy, and
6. Public Awareness Campaigns



# Sugar-Sweetened Beverage (SSB) Tax

## What is an SSB Tax?

A sugar-sweetened beverage (SSB) tax, also known as a soda tax, sugary drink tax, or sweetened beverage tax, is a tax designed to educate about the need to reduce consumption of drinks with added sugar and incentivize consumers to reduce their purchases. These taxes are levied on corporations who distribute sugary beverages such as sodas, energy drinks, sports drinks, fruit-flavored drinks, sweetened teas, and sweetened coffee drinks.<sup>1</sup> SSB taxes are often developed to decrease healthcare costs by reducing the frequency of diseases linked with excess sugar consumption, such as cardiovascular disease, Type 2 diabetes, hypertension, and other comorbidities associated with obesity.<sup>2</sup> SSB taxes have also been used to raise money to fund community programs<sup>3</sup> ranging from health promotion programs<sup>4</sup> to universal pre-K and recreation centers.<sup>5</sup>

SSB taxes can be in the form of sales taxes, which increases the amount a consumer pays for a beverage at the checkout counter. More often,—as is the case with all such taxes passed in the United States to date—SSB taxes are excise taxes collected from SSB distributors. Price increases due to excise taxes ultimately flow to consumers, since distributors will normally charge stores higher prices for SSBs if an excise tax is implemented, and stores will then increase the price of these beverages for consumers.<sup>6</sup> SSB taxes can also take different forms as (1) a volumetric tax, which is levied on each ounce of sugary beverages sold, regardless of sugar content; (2) a sugar content tax, which is levied on each gram of sugar over a minimum threshold; or (3) a tiered tax, which sorts sugary drinks into different tiers according to their sugar concentrations and taxes products with high sugar concentrations at a higher rate. SSB taxes may vary in additional characteristics such as the definition of an SSB, the tax rate, and the allocation of revenues.

SSB taxes may be levied by national governments, states, tribal regions, counties, cities, and local municipalities, among others. As of the start of 2021, there were over 45 SSB taxes internationally.<sup>7</sup> This includes multiple cities in the United States such as **Albany (NY)**, **Berkeley (CA)**, **Boulder (CO)**, **Oakland (CA)**, **Philadelphia (PA)**, **San Francisco (CA)**, and **Seattle (WA)**.<sup>8</sup> SSBs are also included under taxed foods in the **Navajo Nation's Healthy Diné Nation Act**.<sup>9</sup> While no states have enacted an SSB tax to date, multiple states are considering SSB tax legislation. In 2021 alone, legislators in **Connecticut**, **Hawaii**, **Massachusetts**, **New York**, **Rhode Island**, **Washington**, and **Vermont**, all proposed statewide SSB taxes.<sup>10</sup>

## How are SSB Taxes Designed?

There are a wide range of considerations in designing an effective SSB tax. The variety of choices can make the policymaking process complicated, but carefully considering each option is vital to making a locality-appropriate SSB tax. Importantly, when designing an SSB tax, policymakers and advocates should engage with people who will be most affected by the tax from the beginning. Without community leader involvement, particularly those from BIPOC communities that stand to be most affected by the tax, the beverage industry may drive a wedge between these leaders and those seeking to implement

the tax. Inviting community leaders to the table will improve the likelihood of community buy-in and increase the overall advocacy in favor of the tax that they will have played a role in drafting. Also, as much as possible, the design of taxes should be written in a clear, concise, and comprehensible fashion such that it can be understood by policymakers, advocates, and community members alike. The design choices discussed in this section interface with the benefits and barriers of SSB taxes discussed in the subsequent sections.<sup>11</sup>

## What Type of Tax Should You Adopt?

An initial consideration for SSB taxes is what type of tax to enact. There are generally two types of SSB taxes to consider: sales (*ad valorem*) taxes and excise taxes.<sup>12</sup> A sales tax is levied on consumers based on the dollar amount of an SSB. An excise tax is a tax levied further up the supply chain, meaning that manufacturers, distributors, or retailers are the taxed entities, instead of consumers.

Most current SSB taxes are excise taxes, which, unlike a sales tax, is seen on the price tag prior to the point of sale.<sup>13</sup> Sales taxes are not applied until a consumer selects the item for purchase and is checking out, which limits its effectiveness as consumers do not see the higher price when they are selecting the product off the shelf.<sup>14</sup> Excise taxes are normally passed through the supply chain to increase an item's shelf price.<sup>15</sup> This means that a consumer would see the tax-related price increase when selecting a product. With a sales tax, a consumer may see a price tag of \$2.00 while shopping, and then that price could rise to \$2.50 only once they were checking out. With an excise tax, the consumer would see the taxed price of \$2.50 while making their shopping decision. Sales taxes are generally considered to have less impact on consumer behavior in the SSB context for this reason. In addition, sales taxes may face additional legal challenges, such as the issue of with double taxation discussed later in this section.<sup>16</sup>

## Who Should Pay the Tax?

Another point of consideration when designing an SSB tax is determining who should pay the tax. Selecting the payer of an SSB tax is linked to the choice between a sales tax and an excise tax. Specifically, sales taxes target consumers while excise taxes target manufacturers, distributors, and/or retailers. Most SSB excise taxes passed since 2014 tax distributors.<sup>17</sup> This decision is related to jurisdictional limits. A state, city, or other entity may only make a tax that applies within its boundaries, or the area in which it has jurisdiction. Jurisdictional limitations can pose minor complications resulting from the availability of SSBs for sale through online platforms and neighboring stores outside of the taxed jurisdiction.<sup>18</sup> Despite these concerns, studies of citywide SSB taxes have still noted impact on consumer choices at brick-and-mortar grocery stores and other retailers.<sup>19</sup>

The city should thoughtfully define the taxpayer in the legislation itself. In levying an SSB tax on distributors, other cities clearly distinguish between distributors and retailers by stating that distributors “generally do [ ] not conduct [ ] retail sale[s] to a consumer,”<sup>20</sup> while retailers include “any person engaged in the business of selling [SSBs] for retail sale within the state, including but not limited to restaurants; retail stores; street vendors; owners and operators of vending machines; and distributors who engage in retail sales.”<sup>21</sup>

An SSB tax could also exempt certain categories of businesses that would otherwise be a designated taxpayer. For example, in response to fears that its tax would disproportionately harm small businesses, **Oakland, CA**, does not levy its SSB tax against distributors that generate less than \$100,000 in yearly gross sales.<sup>22</sup> Similarly, **Seattle, WA's SSB tax** exempts manufacturers who are also distributors with total gross sales of less than \$2 million.<sup>23</sup> Protections for small businesses or other

entities can help garner support for a tax and prevent inadvertent deterrence for certain beverages. However, it can also give rise to potential legal challenges, such as uniformity. Uniformity Doctrine, which is covered later in this section,<sup>24</sup> involves the principle that there must be similar taxation applied across similar categories.<sup>25</sup>

## How Should You Define the Taxed Good?

An SSB tax needs to define key terms related to the tax, namely, what constitutes a “sugar-sweetened beverage.” Definitions should indicate the scope of the tax and whether there are any beverages not subject to the tax. The definitions should also help avoid ambiguity and be easily understood by policymakers, advocates, and community members, thus ensuring that a tax is implemented as intended. The following are key terms that an SSB tax should define and recommendations for how each term may be defined. This is an illustrative list, but is not meant to be all-inclusive:

**“Sugar-Sweetened Beverage” or “Sugary Drink”**— “means any beverage intended for human consumption to which one or more caloric sweeteners has been added and that contains [at least] 25 or more calories per 12 fluid ounces of beverage. Sugar-Sweetened Beverage includes, but is not limited to, drinks and beverages commonly referred to as “soda,” “pop,” “cola,” “soft drinks,” “sports drinks,” “energy drinks,” “slushies,” “sweetened ice teas,” or any other common names that are derivations thereof.”<sup>26</sup>

Any list of examples should emphasize that the list is not comprehensive of all beverages covered. Clearly defining the category of taxable drinks will help ensure that the tax is appropriately inclusive, and it will also help ensure that the tax does not conflict with any other tax policies currently in effect. Again, when setting these thresholds for caloric sweeteners or sugary quantity in beverages that would be considered SSBs under these proposed definitions, it is most beneficial for policymakers to engage the input of community leaders to increase the policy’s support and ultimate effectiveness.

**“Added Caloric Sweetener” and “Added Sweetener”**— “means a substance or combination of substances suitable for human consumption that adds calories to and is perceived as sweet to



humans when consumed, including, but not limited to sucrose, dextrose, fructose, glucose, other mono and disaccharides; corn syrup or high-fructose corn syrup; or any other caloric sweetener designated by the city manager.”<sup>27</sup>

This definition may also contain a list of examples of added caloric sweeteners and a list of example substances (e.g., liquid, syrup, powder, among others) to which these caloric sweeteners may be added.<sup>28</sup> You should decide whether you want to include drinks that do not contain added calories from sugar, often referred to as diet drinks, within the scope of the tax. Observational studies suggest that drinking artificially-sweetened soft drinks are associated with greater risk of premature death and is linked to increased cancer risk,<sup>29</sup> so including them in the tax may help to promote greater public health. However, studies on the overall effects of artificial sweeteners on health and metabolism are still considered inconclusive.<sup>30</sup> Including diet sodas could also increase revenue, as demonstrated by the SSB tax in **Philadelphia, PA**, which includes diet drinks and raised \$167.1 million in two and a half years.<sup>31</sup> To tax diet beverages, the city or state can define “added sweetener” to include “any form of artificial sugar substitute, including [but not limited to] stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame.”<sup>32</sup>

**“Exemptions”**— You may elect to carve out certain exemptions to ensure that the tax is specifically focused on harmful beverages. This can help prevent pushback against the tax.

““Sugar-sweetened beverage” shall not include any of the following: Any beverage in which milk is the primary ingredient, i.e., the ingredient constituting a greater volume of the product than any other; any beverage for medical use; any liquid sold for use for weight reduction as a meal replacement; any product commonly referred to as “infant formula” or “baby formula” or any alcoholic beverage.”<sup>33</sup>

You should consider the benefits and detriments of not taxing flavored milks or waters, which are especially contentious beverages under an SSB tax.<sup>34</sup> You may consider excluding flavored milks or waters from its definition of an SSB as this may improve the likelihood that the bill will pass and there is limited research regarding the benefits of including these items under the definition of an SSB.

Because it is difficult to predict all the issues that may arise once the tax is enacted, it may be helpful to add a provision that authorizes the tax administrator to issue supplementary rules to provide clarity. However, this flexibility may incentivize groups to seek exemption from the tax after it has been enacted.

## How Should You Calculate the Tax?

There are three main types of tax base for SSBs: volumetric, sugar content, and tiered. These different methods of calculating tax impact how much revenue is generated.

A volume-based or volumetric tax base levies the tax on each ounce of beverage sold, regardless of sugar content. For example, **Boulder, CO**, taxes SSBs at two cents per ounce.<sup>35</sup> A volumetric approach is the most straightforward tax base and is easy to administer.<sup>36</sup> At the same time, the fact that the tax does not proportionately penalize higher sugar concentrations may be considered a drawback. For example, an ordinance with a volumetric tax base would tax a 16-ounce high-sugar soda and a 16-ounce reduced-sugar sports drink at the same rate. Still, volumetric tax bases are the most popular option among municipalities that have already adopted SSB taxes, including **Seattle (WA)**, **Albany (NY)**, **Berkeley (CA)**, **Boulder (CO)**, **Oakland (CA)**, **Philadelphia (PA)**, and **San Francisco (CA)**.<sup>37</sup>

A tax rate based on sugar content is levied on each gram of sugar over a minimum threshold. This option taxes per gram or teaspoon of sugar rather than by total volume. This directly reflects the

amount of sugar in a beverage, and it can incentivize the beverage industry to produce beverages with less sugar. However, a sugar content tax is more difficult to administer and has not been employed in the United States, though it has been employed internationally.<sup>38</sup>

A tiered tax combines the two previous approaches by both taxing according to volume and taxing products with high sugar concentrations at a higher rate. This involves sorting SSBs into tiers of low sugar, medium sugar, and high sugar. This is feasible, but it may be difficult to administer. While no United States jurisdiction has adopted a tiered tax base, tiered tax base policies have been adopted in the **United Kingdom, Ireland, and Portugal**, have all adopted tiered tax bases,<sup>39</sup> and a statewide SSB tax proposed in the **Massachusetts** legislature features a tiered model.<sup>40</sup> The Massachusetts bill proposes taxing 12-ounce beverages containing 30 grams of sugars or more at twice the rate as that for beverages with between 7.5 and 30 grams of sugar per 12 ounces.<sup>41</sup>

## What Should the Tax Rate Be?

The tax rate is the dollar amount levied in an SSB tax. All current SSB taxes in the United States tax between 1 cent and 2 cents per ounce.<sup>42</sup> For example, **Philadelphia, PA**, adopted a 1.5 cent per ounce tax rate and **Seattle, WA**, adopted a 1.75 cent per ounce tax rate.<sup>43</sup> This is consistent with recommendations from experts, who have found that for every 10% increase in price, consumption may be reduced by 12%.<sup>44</sup>

It would be helpful to research how sugary drinks are actually sold in a jurisdiction. This can help determine the impact of particular tax bases and rates. Area retailers can provide details about the sizes and sugar content of the most frequently purchased drinks, which can help predict a tax's impact on revenue and consumer behavior. Engagement with small retailers can also garner support, and including them in the drafting stage of a bill can help reinforce this support.

## How Should You Use the Revenue from the Tax?

Revenue generation is a significant advantage of SSB taxes over other sugar reduction policy interventions (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule).<sup>45</sup> As such, policymakers and advocates should carefully consider how to use this revenue, ensuring that community and equity are a central focus of the investment of this revenue.<sup>46</sup> The allocation of that revenue may be leveraged to lobby support for the tax and mitigate potential opposition. It can also be used to support other policy objectives. When designing an SSB tax, revenue can be designated for a general fund or earmarked for a specific purpose.<sup>47</sup> A state and local government can allocate tax revenue as part of the drafting stage or could allocate the tax revenues each year.

States and local governments should consider the political benefit of predetermining revenue allocation before enacting the tax. Approximately half of the SSB taxes in force in the United States have earmarked funds for a prescribed purpose.<sup>48</sup> In some cases, this approach has helped garner public support for the tax. This was the case in **Philadelphia, PA**, where the 2016 citywide excise tax on SSBs was specifically proposed to fund the city's Pre-K expansion and Community Schools program and to pay specific debt obligations.<sup>49</sup> **Seattle, WA**'s revenue allocation includes programs that address equity, such as the Seattle Colleges 13th Year Promise Scholarship program and preschool programs "that seek to reduce the disparities in outcomes for children and families based on race, gender, or other socioeconomic factors[.]"<sup>50</sup> It is important to remember that while prescribing the allocation of tax revenue may give the tax legal and political support, it does limit the flexibility of the government to use the revenue for other purposes in the future.

Instead of explicitly designating revenue within the SSB tax bill, states or local governments could create an advisory board to advise the governor or mayor on how the tax revenues should be appropriated each fiscal year.<sup>51</sup> For example, **Seattle, WA's SSB tax ordinance** also established the **Sweetened Beverage Tax Community Advisory Board** to advise and make recommendations to the mayor and the city council on programs and services supported by the tax revenue.<sup>52</sup> Most municipal SSB taxes include a community advisory board or create a non-legislative body to make recommendations about the allocation of revenue generated from the tax.<sup>53</sup> This can help ensure greater stakeholder engagement and potentially diversify the revenue allocation recommendations. This is especially important since communities with a high percentage of families with low incomes are expected to disproportionately reduce their spending on SSBs more than price-flexible communities, are more economically burdened by the tax,<sup>54</sup> and are disproportionately affected by the conditions associated with overconsumption of SSBs.<sup>55</sup> Having representation for these communities is important from both an SSB tax support perspective and a health equity perspective.

## Are There Additional Elements to Consider?

SSB taxes have an array of additional elements, many of which may be similar to other taxes or other laws or policies. Within an SSB tax bill, policymakers should include an evidence-based statement of purpose and intent that detail the health impact of SSB consumption and proven benefits of taxing SSBs.<sup>56</sup> This provides an opportunity to discuss the motivations of the implementing government and the intended use of the SSB tax. It can also be used to garner support for the tax.

SSB taxes should also include a severability clause to help the tax withstand legal challenges.<sup>57</sup> This clause ensures that if any section of the tax is found invalid, the remaining sections will likely be allowed to stand on their own. Without a severability clause, if any portion of the enacting legislation is found invalid or unconstitutional, the whole tax could be struck down.<sup>58</sup> For example, if an SSB tax with a severability clause also contained a provision which exempted a certain category of distributor from tax liability, and that provision was challenged and struck down, only that provision would be removed from the statute. Including a severability clause in the SSB tax is a minimal-effort approach that could prove beneficial.

An inflation clause can help the tax remain effective through fluctuations in the price of sugary drinks. It would be helpful to include such a provision to ensure that the tax continues to deter SSB consumption and raise revenue despite fluctuations in the price of SSBs. Without accounting for inflation, the inflation-adjusted price of SSBs with the tax may decrease and result in increased consumption.<sup>59</sup> This is not relevant for sales taxes, since sales taxes are based on the price of an SSB (which would likely rise with inflation).<sup>60</sup>

Sunset clauses, which allow the tax to expire after a certain date, can help assuage any uncertainty surrounding the potential efficacy or unintended consequences of an SSB tax.<sup>61</sup> If a tax does not achieve its intended goals or has unintended negative consequences, then it could automatically expire with the sunset clause. If the tax proves to be effective, then the legislature could vote to extend the tax either temporarily, with a new sunset clause, or indefinitely.

Enforcement of the tax can be managed by a department of health or a department of revenue/taxes, depending on the structure of the government implementing the tax. **Hawaii's** bill, for example, relies primarily on the Hawaii Department of Health to enforce the bill, but it also involves the Hawaii Department of Budget and Finance to implement its revenue fund.<sup>62</sup> **Albany, NY**, takes a different approach, assigning enforcement responsibility to the City Manager.<sup>63</sup> While a department of health may have the competency to evaluate the sugar content of SSBs, a department of revenue/taxes may

have expertise in collecting taxes. Some combination of both departments can be the best option. Legislators should consider their government’s structure when deciding between enforcers.

The penalties for non-compliance with the SSB tax can also vary. Some jurisdictions levying SSB taxes do not impose penalties beyond what their respective tax codes already provide, but others have added specific penalties for SSB taxes.<sup>64</sup> Examples of potential penalties include: revocation of a business license (either on a first, second, or third offense); an additional percentage of the delinquent tax, plus the delinquent tax, plus interest; a flat fine (for example, \$1,000) for each instance of non-compliance; a fine that escalates with each instance of non-compliance; or having the unpaid tax constitute a lien on tangible property.<sup>65</sup>

The cost and capacity of city departments to manage the ordinance is also an important consideration. Thus, you should consider whether you can allocate revenue generated from the tax to help administer and enforce it. For example, in **Berkeley, CA**, 10% of the revenue generated from the tax is allocated to the Public Health Department to help administer or enforce the tax.<sup>66</sup> The tax collection is then subcontracted by Berkeley to a private company who takes a small percentage.<sup>67</sup>

## What are the Advantages of SSB Taxes?

### ***Benefits through Consumer Behavior Change***

SSB taxes provide benefits through consumer behavior change. By increasing the prices of SSBs, consumers are likely to reduce their overall consumption of such beverages.<sup>68</sup> This is because community investment into consumer education, and ensuring healthy beverages—like water—are always available, can lead to behavior change. For example, in **Seattle, WA**, the volume of taxed beverages sold decreased by 22% in the first year after the implementation of its SSB tax, and there was no significant increase in SSB sales in the 2-mile border area of Seattle relative to its comparison site.<sup>69</sup> In **Philadelphia, PA**, one year after the implementation of the SSB tax, consumption of SSBs decreased by 26.6% after accounting for increases of SSB sales in nearby jurisdictions.<sup>70</sup>

SSB taxes are likely to continue to be effective in reducing SSB consumption several years after the introduction of the tax, as demonstrated by evidence in **Berkeley, CA**, the first city in the United States to enact an SSB tax. A study surveying diverse neighborhoods in Berkeley three years after the implementation of the city’s SSB tax found that respondents’ consumption of sugary drinks declined by 52.5%.<sup>71</sup> Further, advocates in Berkeley, have stated that raising consciousness and making sure healthy choices and infrastructure are available via the SSB tax has increased the effectiveness of reducing the overall consumption of SSBs.<sup>72</sup>

### ***Benefits through Product Reformulation***

An additional benefit of SSB taxes is that they may incentivize beverage companies to reformulate their products to contain less sugar. For example, the **United Kingdom** has a tiered tax that divides SSBs into categories of beverages containing high-, middle-, and low-sugar content and levies higher taxes on those with higher sugar content.<sup>73</sup> This drove manufacturers to reformulate their sodas by decreasing the average sugar content from 4.4 g/100 ml in 2015 to 2.9 g/100 ml in 2018.<sup>74</sup> Similarly, in the first year after the implementation of a tiered SSB tax, **Portugal** saw significant reformulation of products by the beverage industry.<sup>75</sup> It is important to note that the incentive to reformulate SSBs does not exist if the SSB tax is purely based on the volume of the drink, but only if the SSB tax takes into account the sugar content in drinks, through either taxing per gram of sugar or sorting SSBs into tiers according to sugar content and taxing different tiers at different rates.<sup>76</sup>

## Benefits through Revenue Generation

A significant advantage of SSB taxes over other sugar reduction policy interventions is revenue generation. Revenue can be used to support health-related or unrelated policy objectives. For example, SSB taxes can be used to raise revenue for healthier food in schools, access to healthy food for communities with a high percentage of families with low income, or education campaigns.<sup>77</sup> The allocation of that revenue may be leveraged to lobby support for the tax and to mitigate potential opposition. For example, funding the **Berkeley Unified School District’s Gardening and Cooking Program** was part of the initial campaign to pass **Berkeley, CA’s SSB tax**.<sup>78</sup> As another example, the **City of Boulder (CO)**, dedicated tax revenues to first fulfill the “administrative cost of the tax, and [then], for health promotion, general wellness programs and chronic disease prevention in the City of Boulder that improve health equity . . . .”<sup>79</sup> A breakdown of the revenue generated after one year across seven cities and how the revenue was allocated is included below:<sup>80</sup>

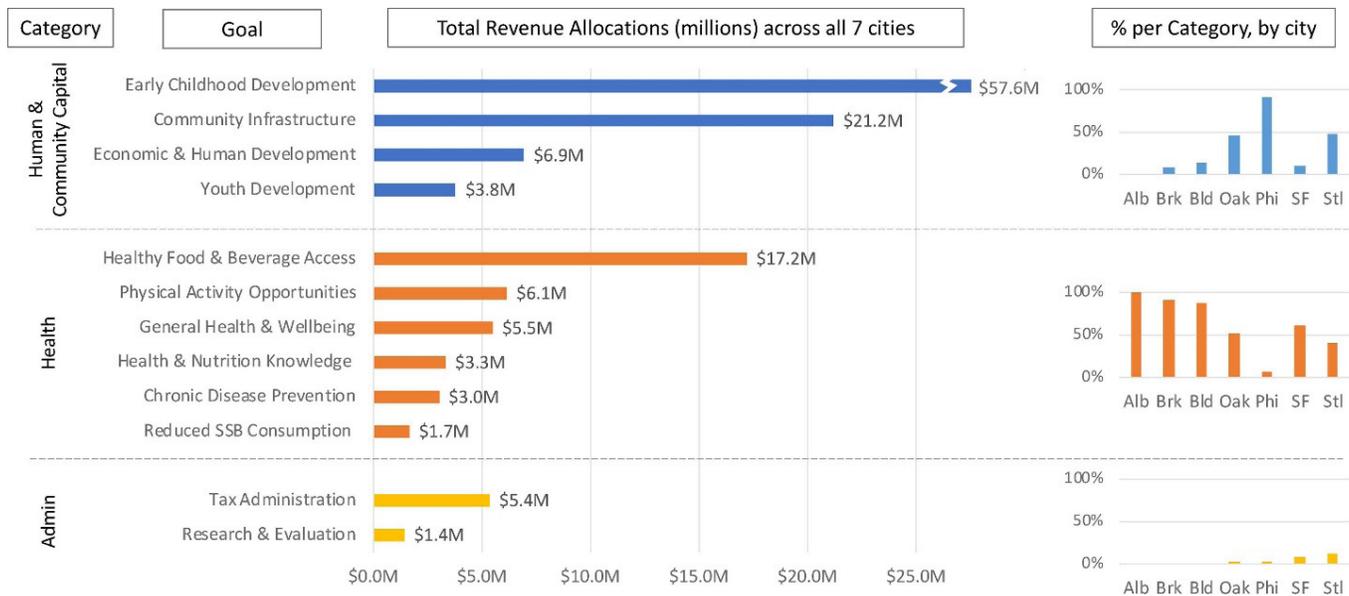


Chart shows total SSB tax revenue allocations by goal category, overall, and by city. Dollar amounts represent SSB tax revenue allocations for **Seattle, WA** (2018), **Boulder, CO** (2019), **Albany, NY** (fiscal year 2019–20), **Oakland, CA** and **San Francisco, CA** (fiscal year 2019–20), and **Berkeley, CA** and **Philadelphia, PA** (fiscal year 2020–21). In San Francisco, revenue allocations exclude \$3.36 M, 22% of total tax revenues that must support preexisting voter-mandated budget obligations. James Krieger et al., *How sugar-sweetened beverage tax revenues are being used in the United States*, 23 PREVENTIVE MED. REPS. 101388 (Apr. 30, 2021), <https://pubmed.ncbi.nlm.nih.gov/34040929/#:~:text=SSB%20tax%20revenues%20are%20supporting,resulting%20from%20lower%20SSB%20consumption.> [<https://perma.cc/SB8Z-3TBC>] (describing how revenues from SSB excise taxes in seven United States cities are being allocated, who is benefiting from these investments, and whether allocations are consistent with the original intent of tax legislation).

## What are the Most Common Barriers to Implementing an SSB Tax?

While SSB taxes are likely to face considerable barriers, these barriers are not insurmountable. In this section, the most common barriers to implementation will be discussed. Many of these barriers are related to the design choices discussed earlier.<sup>81</sup>

### Legal Barriers

Adopting an SSB tax, especially on the local level, may be legally challenging for the following reasons:

- A local government may not have the legal authority to implement an SSB tax.
- A state may preempt a local municipality from implementing an SSB tax.

- Opponents may challenge the legality of an SSB tax in courts on various grounds such as: violation of tax uniformity, double taxation, the rights or legitimate expectations of companies, infringement on individual consumer rights, or failure to observe due process.

This section will describe these legal barriers, how advocates and policymakers could determine the extent to which these legal barriers are applicable to them, and what they can do to overcome these barriers.

## 1. Potential Lack of Legal Authority

The potential lack of legal authority is a unique issue to local governments. States, by contrast, have the power to impose statewide SSB taxes, with the exception of taxes that are clearly forbidden by the United States Constitution.<sup>82</sup> The federal government also has the authority to pass a national SSB tax.

Unlike states, a local municipality (e.g., a city or county) needs to consider whether it has legal authority to implement a tax.<sup>83</sup> As described in the General Legal Setting, local government can take action only when its state constitution or state legislature authorizes it to do so.<sup>84</sup> Whether a local government has authority depends on whether a state is a Home Rule or Dillon’s Rule state. For more information on how states grant authority under Home Rule or Dillon’s Rule, please refer to the General Legal Setting section of this Toolkit.

However, the inquiry should not stop at the determination that the city is in a Home Rule state, because the state may explicitly carve out taxation as an area where Home Rule does not apply and the local government must thus seek an explicit grant of authority from the state before imposing taxes or certain types of taxes.<sup>85</sup> For instance, **Massachusetts** is a Home Rule state; however, Massachusetts municipalities do not have Home Rule authority over taxation and must petition the state legislature for special legislation in order to impose a local SSB tax.<sup>86</sup> As another example, in **Connecticut**, the Connecticut general statutes expressly permit municipalities to levy *only* property taxes (subject to certain conditions), while also noting that “[n]o provision of this chapter shall be deemed to empower any municipality to levy or collect any tax not authorized by the general statutes . . . .”<sup>87</sup> In such situations, even though the state is a Home Rule state, municipalities will not be able to adopt an SSB tax without legislation at the state level. The process of getting special legislation from the state legislature may vary. Municipalities in **Massachusetts**, for example, can obtain special legislation from the state legislature through the *Home Rule petition* process, whereby the municipality first approves the petition and then requests its delegation at the state legislature to introduce the bill for consideration.<sup>88</sup>

When considering implementing an SSB tax, a locality can look to the state constitution to identify whether it has specific delegated legal authority to implement such a tax. Additionally, localities should note that they generally cannot create another sales tax on top of a state sales tax, so often, excise taxes are the best option.

## 2. Preemption by the State

Similar to local authority consideration, preemption at the state or federal level is an important consideration. Preemption is the term used when a higher level of government limits or eliminates the power of a lower level of government to regulate a specific issue.<sup>89</sup> For example, a local government may have the general authority to impose excise taxes, but the state legislature can pass a law preempting this authority for SSB taxes.<sup>90</sup> As of 2021, the industry has succeeded in lobbying for preemption against local SSB taxes four states—**California, Michigan, Washington, and Arizona**,<sup>91</sup>—although as explained below, a portion of the **California** preemption law has been held unconstitutional by the Sacramento County Superior Court.<sup>92</sup>

In situations where a state has preempted local municipalities from levying SSB taxes, advocates have two recourses: legal and political.

From a legal perspective, advocates can challenge the constitutionality of the state's SSB tax preemption law. For instance, advocates in **California** had preliminary success in challenging California's SSB tax preemption law in court. In 2018, the beverage industry funded a statewide signature-gathering campaign that forced the California state legislature and governor into passing a preemption law, the **Keep Groceries Affordable Act of 2018**,<sup>93</sup> which prohibits local governments from imposing new SSB taxes until 2031.<sup>94</sup> Had the California legislature and governor not capitulated to the beverage industry-coerced preemption, the beverage industry threatened to place a measure on the state ballot that would require any local taxes to exceed a legislative threshold of 66% of the votes in order to pass.<sup>95</sup> This would effectively prohibit the generation of local taxes that would support schools, emergency services, roads, and health care.<sup>96</sup> At the time, four localities in California already had enacted SSB taxes,<sup>97</sup> and the Act provides that if the local government already imposed an SSB tax on or before January 1, 2018, the local government could continue to levy and collect the tax, but it cannot increase it.<sup>98</sup> The Act also includes a penalty provision, which would effectively deprive a charter city—a city in which the governing system is defined by the city's own charter document rather than solely be general law<sup>99</sup>—of all of its sales and use tax revenue, if the city, through its Home Rule authority, enacts a new SSB tax or increases the rate of an existing SSB tax.<sup>100</sup> In response, **Cultiva La Salud**—an organization dedicated to equity in the San Joaquin Valley, CA—and **Martine Watkins**, a resident of Santa Cruz, CA, with the support of **ChangeLab Solutions** and the **American Heart Association (AHA)**, filed a lawsuit in the state court challenging the constitutionality of the penalty provision.<sup>101</sup> In October 2021, the Sacramento County Superior Court ruled that the penalty provision violated the California constitution because it “severely penalizes a charter city for validly regulating its ‘municipal affairs’ via ‘financial coercion.’”<sup>102</sup> While the court does not strike down the underlying prohibition of new local SSB taxes, the ruling is still considered a victory by advocates in California, as they do not need to fear financial consequences when considering implementing new SSB taxes in charter cities.<sup>103</sup> For local municipalities in other states that have already enacted or are considering SSB taxes, this lawsuit also demonstrates that legal challenges are a viable option to remove barriers related to preemption.

From a political perspective, municipalities can work collectively to pressure state legislators to repeal the preemption or adopt a statewide SSB tax. For example, six cities and three counties in California have either adopted resolutions or written a letter supporting Assembly Bill 1163, a bill introduced in the California state legislature in February 2021, which, if passed, would repeal the current preemption law and restore municipalities' power to impose SSB taxes.<sup>104</sup> Unfortunately, Assembly Bill 1163 expired with no action before the deadline for the legislative year.<sup>105</sup> However, it is important to note that such a bill is not necessarily needed since the penalty provision of the California's SSB tax was struck down as it now enables charter cities to enact SSB taxes.

### **3. Legal Challenges on Grounds of Violation of Tax Uniformity, Double Taxation, and Other Potential Challenges**

Even if a municipality has authority and is not preempted from adopting an SSB tax, the municipality might face other legal challenges brought by food and beverage industry groups in courts. Such challenges can also occur at the state level, but are more common at the local level. While there are other legal challenges that could arise from implementing an SSB tax, food and beverage industries have most commonly challenged the legality of local SSB taxes on the grounds that, (1) the SSB tax violates the Uniformity Doctrine under state constitutional law; and/or (2) the SSB tax constitutes double taxation in violation of state law. So far, the industry attempts have been unsuccessful, however, advocates and policymakers should be aware of this litigation risk.

## **Uniformity Doctrine**

Food and beverage industry groups have challenged the legality of local SSB taxes with claims that SSB taxes violate state constitutional requirements for tax uniformity. Tax uniformity refers to the idea that products, services, and uses that fall into the same general category must be taxed similarly, meaning that the mode of assessment and the rate of taxation must be the same or uniform.<sup>106</sup> Forty-four states have express requirements for tax uniformity in their constitutions, and the requirements apply either to property taxes only or to both property and non-property taxes (including sales and excise taxes).<sup>107</sup> In states that do not have express tax uniformity requirements in their constitutions or where uniformity requirements apply only to property taxes but not non-property taxes such as excise or sales taxes, courts are still likely to require taxes to be reasonable, a similar standard to the express uniformity requirement.<sup>108</sup>

In order to evaluate whether a proposed SSB tax would meet the requirements for tax uniformity, advocates need to locate the relevant provision in the state constitution and proceed from there. Below are two illustrative cases on this issue:

In *Illinois Retail Merchants Association et al. v. Cook County Department of Revenue*, retailers alleged that **Cook County (IL)**'s **SSB tax ordinance** violated the Illinois state constitution's tax uniformity requirements because, (1) the county taxed ready-to-drink beverages but exempted made-to-order beverages, a distinction with no real or substantial difference; and (2) the tax bore no reasonable relationship to the objective of the legislation.<sup>109</sup> The Circuit Court of Illinois rejected both arguments and held that the SSB tax did not violate tax uniformity.<sup>110</sup> Regarding the first argument, the court reasoned that the decision to tax only ready-to-drink beverages but not made-to-order drinks could be based on "a real and substantial difference," because the former are more widely consumed and because it is administratively burdensome to tax the latter.<sup>111</sup> With respect to the second argument, the court found that the legislative findings explaining the adverse health consequences of SSB consumption were "sufficient grounds to find that the tax will deter some level of consumption of such sweetened beverages and will promote public health," which was the purpose of the legislation.<sup>112</sup> The court rejected the industry argument that because the county did not tax all SSBs, the tax classification was inconsistent with the purpose of the ordinance.<sup>113</sup> The court noted that while this "may be a reasonable objection, perfect rationality is not required."<sup>114</sup> What was required was "[a] minimum standard of reasonableness," which was satisfied here.<sup>115</sup>

In 2016, the **Philadelphia City Council (PA)** enacted an **SSB tax ordinance**, which imposed a 1.5 cents per ounce tax on most SSBs sold within the Philadelphia city limits.<sup>116</sup> A group of retailers, consumers, distributors, producers, and trade associations filed suit against the city and the commissioner of the Philadelphia Department of Revenue, challenging the legality and constitutionality of the tax.<sup>117</sup> In *Williams v. Philadelphia*, the plaintiffs alleged, among other things, that the SSB tax was duplicative of a sales tax already imposed (discussed below), and that the tax violated the Uniformity Clause of Article 8, Section 1 of the Pennsylvania state constitution because it was non-uniform and created unequal burdens at the retail price and distributor levels, created an unreasonable class of distributor taxpayers, and imposed an unequal burden across all retailers and consumers.<sup>118</sup> In 2016, the trial court dismissed the Uniformity Clause argument, noting that the, "manner and measure of calculating the tax is uniformly applied to distributors," because it levies a 1.5 cent per fluid ounce tax on SSBs distributed in the city.<sup>119</sup> As a result, all distributors are subject to the same tax calculation formula.<sup>120</sup> The state appellate court (the Commonwealth Court of Pennsylvania) affirmed the trial court decision.<sup>121</sup> The Pennsylvania Supreme Court did not address this question on appeal.<sup>122</sup>

## **Double Taxation**

Double taxation is another means by which SSB taxes may face a legal challenge. In *Williams v. Philadelphia*, the plaintiffs claimed, among other claims, that **Philadelphia (PA)**'s **SSB tax** is duplicative

of the sales tax imposed by the state and thus violates the double taxation prohibition in Pennsylvania's Sterling Act.<sup>123</sup> Specifically, Pennsylvania's Sterling Act authorizes cities to impose taxes on a wide range of subjects, but it prohibits cities from taxing anything "which is now or may hereafter become subject to a State tax or license fee."<sup>124</sup> The Pennsylvania Supreme Court, affirming the holding of the courts below, ruled that Philadelphia's SSB tax did not violate this prohibition on double taxation.<sup>125</sup> The court reasoned that the city's SSB tax was applicable to distributor/dealer-level transactions independent of whether any retail sale actually occurs, was on a per-fluid-ounce basis, and was payable generally by the distributor, and in limited circumstances by dealers, but never by the end consumer.<sup>126</sup> In comparison, the court noted that the state's sales tax was upon "sales at retail," measured by purchase price, and payable by consumers.<sup>127</sup> The differences between Philadelphia's SSB tax and Pennsylvania's sales tax in "subjects, measures, and payers" persuaded the court that Philadelphia's SSB tax was not impermissibly duplicative of the state sales tax.<sup>128</sup>

Advocates working on the local level, first need to determine whether the states they are working in have a law similar to Pennsylvania's Sterling Act. For advocates in states that do have a similar prohibition on double taxation, it is important to consider in the design stage how the local SSB tax could be differentiated from the state sales tax on SSBs. For example, choosing excise tax over sales tax as the type of SSB tax would help reduce the risk of potential double taxation if the state already imposes a sales tax.

### **Other Potential Legal Challenges**

At the state or local level, it is possible that other legal challenges may arise that should be noted. For example, in both **Philadelphia, PA**, and **Cook County, IL**, the beverage industry challenged the SSB taxes on the basis of how they interacted with federal laws. For example, it was alleged that the tax violated a federal law mandating that a tax cannot be collected on Supplemental Nutrition Assistance Program (SNAP) purchases at the point of sale.<sup>129</sup> The results of these challenges in Philadelphia are discussed below:

In *Williams v. Philadelphia*, the trial court dismissed this count holding that the tax was not implicitly preempted by Section 2013(a) of the federal Food Stamp Act (now known as SNAP), its regulations, and Section 204(46) of the Tax Code. Specifically, the court stated that the scope of SNAP is limited to the "purchase [of] food from retail food stores," and that the SSB tax is not a sales tax on the consumer, but rather a tax on the distributor.<sup>130</sup> As such, the incidence of the tax is assessed by examining the statute's intended taxpayer, and not the economic impact of the tax.<sup>131</sup> This means that the tax is not collected upon "purchases" at "retail" made with food stamps, but only upon non-retail, distributor-level transactions.<sup>132</sup> As such, since the incidence of the tax is not on the consumer and the tax is not paid using SNAP benefits, the tax is not preempted.

Should policymakers look to enact an SSB tax, it is imperative they consider the abovementioned legal challenges to increase the efficacy of the policy. It is also recommended that you seek out legal counsel on other potential legal arguments that could be lobbied against your particular measure.

### ***Political Barriers***

In addition to legal barriers, advocates and policymakers may face political opposition to SSB tax proposals. Industry and other opposition often argue that SSB taxes, (1) are regressive; (2) are paternalistic; (3) are ineffective because of substitution and leakage; and (4) have a negative impact on the local economy. This section will outline how advocates could counter each of these arguments.

#### **1. Responding to Claims that SSB Taxes are Regressive**

Some argue that SSB taxes are regressive, as in, the tax burden falls disproportionately on groups

with lower income.<sup>133</sup> The argument typically is that households with low income spend a higher proportion of their income on SSBs; thus, the price increases on SSBs may place a larger burden on these households.<sup>134</sup> In fact, this has become a contentious point in debates about SSB taxes both in communities in the United States and internationally.<sup>135</sup>

While concerns about potential regressive outcomes are certainly valid, real-world and modeling evidence both suggest that SSB taxes would not disproportionately burden households with low income, because consumers with low income are more price-responsive and thus are expected to reduce their spending on SSBs.<sup>136</sup> A study in **Mexico** found that two years after implementing its SSB tax, households with low income reduced their SSB purchasing by 24%, more than three times the reduction of SSB purchasing among households with high income,<sup>137</sup> suggesting that the tax would not disproportionately burden households with low income.<sup>138</sup> Furthermore, health conditions that are associated with overconsumption of SSBs disproportionately affect communities with a high percentage of families with low income.<sup>139</sup> As such, these communities stand to experience more health-related benefits from the implementation of an SSB tax. Further, revenue generated from SSB taxes can be used for causes that specifically benefit communities with a high percentage of families with low income, such as improving education campaigns in neighborhoods to provide these individuals with the resources necessary to choose healthier food and beverage options, expanding access to safe drinking water, and/or providing healthier foods in schools. For example, **San Francisco, CA**, used revenue generated from its SSB tax to fund installation of water stations in public schools.<sup>140</sup> Also, community advisory boards can establish programs to directly address these equity considerations, such as the **City of Boulder (CO)**'s **Health Equity Advisory Committee (HEAC)**, which established the **Health Equity Fund** to allocate SSB tax revenue to non-profit organizations, agencies, or institutions that have programs which benefit community members experiencing health disparities.<sup>141</sup>

## 2. Responding to Claims that SSB Taxes are Paternalistic

Opponents of SSB taxes often claim that these taxes are paternalistic.<sup>142</sup> They argue that the government should intervene only to prevent harm to others, and because SSB consumption presents no third-party harm, SSB taxes, an intrusion upon individuals' ability to make autonomous choices, are unjustifiable.<sup>143</sup>

In response to this type of argument, advocates and policymakers could point out that overconsumption of sugar does have negative effects on others. Health conditions associated with excess consumption of sugar cause not only personal suffering, but also high healthcare costs that will be borne by others in society. The highly individualistic focus of the paternalism argument does not accurately reflect the high social costs of overconsumption of sugar.

Additionally, support from the communities affected by an SSB tax will help diminish concerns about paternalism. To develop community support, advocates must foster dialogue with community leaders, particularly those likely to be most impacted by an SSB tax and who stand to benefit most from programs funded by revenue raised from an SSB tax (BIPOC communities and communities with a high percentage of families with low income). Further, advocates must work towards addressing community concerns before enacting a law or policy that does not garner widespread support. Moreover, in the implementation stage, it is important to make sure the SSB tax benefits the communities most in need as promised and continues to have the support of the communities affected. This is especially important given that taxes force industry to internalize costs that they otherwise foist onto the public and through which they make an extreme profit at the public's expense. For example, the SSB tax ordinances of **Oakland, CA**, established the **Sugar Sweetened Beverage Community Advisory Board**, which leveraged its network to obtain input from marginalized communities and recommend equitable allocation of tax revenues.<sup>144</sup> Other municipalities that have created community advisory boards include **Berkeley (CA)**, **San Francisco (CA)**, and **Seattle (WA)**.

### 3. Responding to Claims that SSB Taxes Cause Substitution and Leakage

Another barrier to implementing SSB taxes is the notion that they are an ineffective policy solution to reducing sugar consumption. This notion stems partly from the belief that consumers will substitute taxed products with other unhealthy foods that are not taxed. However, studies in **Philadelphia, PA**, showed that one year and two years after the implementation of its SSB tax, there was no substitution toward unhealthy foods.<sup>145</sup>

Also, many argue that SSB taxes will be ineffective because of cross-border shopping or “leakage.”<sup>146</sup> The concept of “leakage” refers to the notion that consumers will go to communities where there is no tax levied on their desired SSB products rather than avoid purchasing these products. Studies have shown that although cross-border shopping does exist, the amount of cross-border shopping is less than the reduced sales of SSBs in the target city, and the net effect of the local SSB tax is a decrease of SSB consumption by residents of the city.<sup>147</sup> For example, within the first year of the implementation of **Philadelphia, PA’s SSB tax**, sales of taxed beverages in Philadelphia decreased by 1.261 billion ounces compared to the year before, and leakage only offset 24.4% of the decrease, resulting in a 38% overall decrease in SSB consumption among Philadelphia residents.<sup>148</sup> Additionally, the concern regarding leakage is even more reason to enact a federal- or state-level SSB tax.

### 4. Responding to Claims that SSB Taxes Harm Local Economy

Opponents of SSB taxes often challenge the policy on the grounds that SSB taxes will have negative effects on the local economy. The argument is that SSB taxes may result in retailers, distributors, and restaurants that sell SSBs having smaller profit margins or reduced sales, which in turn could result in layoffs.<sup>149</sup>

However, empirical studies have shown no negative effects of SSB taxes on employment. In **Philadelphia, PA**, no change in unemployment claims was observed within one year of the implementation of its SSB tax,<sup>150</sup> and no job losses were observed within 2.5 years of implementation.<sup>151</sup> Similarly, a study in **Mexico** revealed no employment losses resulting from Mexico’s nationwide SSB tax.<sup>152</sup> Even further, other studies demonstrated that in both **Illinois** and **California**, a close-to-zero net change in employment occurred in both states, and they even saw a minor increase of jobs following the implementation of their respective SSB taxes.<sup>153</sup> Moreover, while the effect of SSB taxes on overall store revenues is unknown,<sup>154</sup> a study in **Philadelphia, PA**, shows a trend toward greater total spending at small stores after the implementation of Philadelphia’s SSB tax, which could suggest that small stores would maintain sufficient revenues to avoid layoffs.<sup>155</sup>

The implementation of an SSB tax at the state or local level presents substantial societal and economic benefits that has proven to improve community health. Policymakers and advocates must first determine whether or not they have the legal authority to implement such a tax. They should also carefully consider the design of the tax including what type of tax to implement, who should pay for the tax, how to define the taxed good, how to calculate the tax, what the tax rate should be, and how to use the revenue generated from the tax. Crucial to advocacy in favor of SSB taxes is developing strategic responses to claims that such taxes are regressive, paternalistic, and can cause substitution and leakage or harm the local economy. Equally as important is garnering community participation and support in SSB tax advocacy from its inception. By doing so, state or local governments and advocates are going to increase the likelihood of successful implementation of such a tax.

## Endnotes

- <sup>1</sup> *Taxing Sugary Drinks*, HEALTHY FOOD AM., [https://www.healthyfoodamerica.org/taxing\\_sugary\\_drinks](https://www.healthyfoodamerica.org/taxing_sugary_drinks) (last visited Apr. 15, 2022) [<https://perma.cc/YRH8-ED78>].
- <sup>2</sup> CHANGELAB SOLS., SUGARY DRINK STRATEGY PLAYBOOK: REDUCING SUGARY DRINKS TO PROMOTE COMMUNITY HEALTH AND EQUITY 52 (2018), [https://www.changelabsolutions.org/sites/default/files/Sugary\\_Drink\\_Playbook\\_FINAL\\_20180906.pdf](https://www.changelabsolutions.org/sites/default/files/Sugary_Drink_Playbook_FINAL_20180906.pdf), [<https://perma.cc/4HAV-TTQX>] [hereinafter CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK].
- <sup>3</sup> *Id.*
- <sup>4</sup> BOULDER, COLO., REV. CODE § 3-16-1(a) (2021).
- <sup>5</sup> HEALTHY FOOD AM., POLICY SNAPSHOT: SUGARY DRINK TAX FACT SHEET, [https://d3n8a8pro7vhmx.cloudfront.net/healthyfoodamerica/pages/34/attachments/original/1470257382/TaxSugaryDrinks\\_FINAL.pdf?1470257382](https://d3n8a8pro7vhmx.cloudfront.net/healthyfoodamerica/pages/34/attachments/original/1470257382/TaxSugaryDrinks_FINAL.pdf?1470257382) (last visited Apr. 14, 2022) [<https://perma.cc/4L9B-JYDS>].
- <sup>6</sup> Lisa M. Powell et al., *A Review and Meta-analysis of Tax Pass-through of Local Sugar-Sweetened Beverage Taxes in the United States*, 120 POL’Y, PRAC. & PREVENTION RSCH. CTR. 1 (July 2021), [https://p3rc.uic.edu/wp-content/uploads/sites/561/2021/09/Rvw-Meta-Anal-Tax-PssThrhg-SSB-Taxes\\_Rsrch-Brf-No.-120\\_Jul-2021.pdf](https://p3rc.uic.edu/wp-content/uploads/sites/561/2021/09/Rvw-Meta-Anal-Tax-PssThrhg-SSB-Taxes_Rsrch-Brf-No.-120_Jul-2021.pdf) [<https://perma.cc/N586-QHAW>] (analyzing 22 empirical studies and finding that on average, businesses in U.S. cities that have SSB taxes in place pass on 70% of the taxes to consumers).
- <sup>7</sup> Barry M. Pompkin & Shu Wen Ng, *Sugar-Sweetened Beverage Taxes: Lessons to Date and the Future of Taxation*, 18(1) PLOS MED. e1003412 (Jan. 7, 2021), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1003412> [<https://perma.cc/BM7C-CEDL>].
- <sup>8</sup> CITY OF ALBANY, N.Y., ORD. No. 2016-02 (2016); BERKELEY, CAL., MUN. CODE, ch. 7.72 (2021); BOULDER, COL., MUN. CODE tit. 3, ch. 16 (2021); OAKLAND, CAL., MUN. CODE, ch. 4.52 (2021); PHILA., PA., REV. CODE, ch. 9-4100 (2021); S.F., CAL., BUS. & TAX REG. CODE art. 8 (2021); SEATTLE, WASH., MUN. CODE ch. 5.53 (2021).
- <sup>9</sup> NAVAJO NATION CODE ANN. tit. 24, §§ 1001–1024 (2021).
- <sup>10</sup> See An Act Imposing a Tax on Sugar-Sweetened Beverages, H.B. No. 5184, Conn. Gen. Assemb., Reg. Sess. (Conn. 2021); Relating to Sugar-Sweetened Beverages, H.B. 994, S.B. 1148, 2021 Legis., 31st Sess. (Haw., 2021); H.2972, 192nd Gen. Ct. Sec. 1, § 2 (Mass. 2021); Relates to Imposing an Excise Tax on Sugary Drinks, S.4602, A.9925, NYS Sen., Sess. (N.Y. 2021); Relating to Taxation -- Sugary Drinks Tax, S.0327, 2021 Legis., Jan. Sess. (R.I., 2021); An Act Relating to the Imposition of an Excise Tax on Sugar-Sweetened Beverages, H.37, Legis., Reg. Sess. (Vt., 2021); An Act Relating to Funding Public Health Services and Health Equity Initiatives Through a Statewide Sweetened Beverage Tax, S.0338.7, Legis., Reg. Sess. (Wash. 2021).
- <sup>11</sup> See discussion *infra* “What are the Most Common Barriers to Implementing an SSB Tax?” Section.
- <sup>12</sup> CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2 at 53.
- <sup>13</sup> See Jacob Goldin, *Sales Tax Not Included: Designing Commodity Taxes for Inattentive Consumers*, 122 YALE L. J. 258, 287 (2013), [https://www.yalelawjournal.org/pdf/1109\\_c4srqkvk.pdf](https://www.yalelawjournal.org/pdf/1109_c4srqkvk.pdf) [<https://perma.cc/BN2Z-P725>].
- <sup>14</sup> *Id.*
- <sup>15</sup> See Julian Ponce et al., *Retailer Perspectives on Sugar-Sweetened Beverage Taxes in the California Bay Area* 19 PREVENTIVE MED. REP. 1, 5 (2020), <https://pubmed.ncbi.nlm.nih.gov/32612904/> [<https://perma.cc/H87H-24UC>]. Note that the “pass through” rate is often discussed in the context of SSB taxes as a means to communicate the extent to which a consumer will notice the tax in the final price of the product. This language has also been critiqued as “misstat[ing] the intent of the tax and lead[ing] to misunderstanding whereby customers believe they are paying the tax directly.” *Id.*
- <sup>16</sup> See *infra* discussion of Double Taxation.
- <sup>17</sup> See *Taxing Sugary Drinks*, *supra* note 1.
- <sup>18</sup> Researchers have not extensively studied efforts by consumers or retailers to circumvent municipal SSB taxes through online procurement. It is unclear whether this may hinder the potential impact of an SSB tax on consumption.
- <sup>19</sup> See Ponce et al., *supra* note 15.
- <sup>20</sup> See *e.g.*, OAKLAND, CAL., MUN. CODE, *supra* note 8 at ch. 4.52.020; COOK CNTY., ILL., ORD. 16-5931 (Nov. 10, 2016).
- <sup>21</sup> PHILA., PA., REV. CODE, *supra* note 8 at § 1-19-4101.
- <sup>22</sup> OAKLAND, CAL., MUN. CODE, *supra* note 8 at ch. 4.52.030 § (C)(1)-(3).
- <sup>23</sup> SEATTLE, WASH., MUN. CODE, *supra* note 8 at § 5.53.050(A).
- <sup>24</sup> See *infra* discussion of the Uniformity Doctrine.
- <sup>25</sup> The Uniformity Doctrine was one of the legal theories at issue in the litigation challenging the legality of Philadelphia’s SSB- tax. See *Williams v. City of Philadelphia*, 164 A.3d 576 (Pa. Commw. Ct. 2017), *aff’d*, 188 A.3d 421 (Penn. 2018) [hereinafter *Williams v. City of Philadelphia* SSB Tax cases].
- <sup>26</sup> OAKLAND, CAL., MUN. CODE, *supra* note 8 at ch. 4.52.020 (Q)1-2.

- <sup>27</sup> BOULDER, COLO., REV. CODE, *supra* note 4 at § 3-16-4.
- <sup>28</sup> BERKELEY, CAL., MUN. CODE, *supra* note 8 at ch. 7.72 § 030 (2021); BOULDER, COLO., REV. CODE, *supra* note 4; COOK CNTY., ILL., ORD. 16-5931, *supra* note 20 at art. XXIV, § 74-851.
- <sup>29</sup> See, e.g., Amy Mullee, et al., *Association Between Soft Drink Consumption and Mortality in 10 European Countries*, 179(11) J. AM. MED. ASS'N (JAMA) INTERNAL MED. 1479 (Sept. 3, 2019), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2749350> [<https://perma.cc/QC5W-CDG6>]; but see, John C. Peters et al., *The effects of water and non-nutritive sweetened beverages on weight loss and weight maintenance: a randomized clinical trial*, 24(2) OBESITY 297 (2016), [https://pubmed.ncbi.nlm.nih.gov/26708700/#:~:text=Results%3A%20NNS%20and%20water%20treatments,P%20%3C%200.001%20for%20difference](https://pubmed.ncbi.nlm.nih.gov/26708700/#:~:text=Results%3A%20NNS%20and%20water%20treatments,P%20%3C%200.001%20for%20difference).)). [<https://perma.cc/JP68-5PSQ>].
- <sup>30</sup> Samar Y. Ahmad, James K. Friel, & Dylan S. Mackay, *Effect of Sucralose and Aspartame on Glucose Metabolism and Gut Hormones*, 78(9) NUTRITION REVIEWS 725, 725–726 (Sept. 1, 2020), <https://pubmed.ncbi.nlm.nih.gov/32065635/> [<https://perma.cc/7MAU-W2XG>].
- <sup>31</sup> *Data Release: Beverage Tax Revenue and Expenditures*, PHILA. OFF. OF CONTROLLER (June 6, 2019), <https://controller.phila.gov/philadelphia-audits/data-release-beverage-tax/> [<https://perma.cc/A8LZ-LVZ8>].
- <sup>32</sup> See, e.g., PHILA., PA., REV. CODE, *supra* note 8 at § 1-19-4101(3)(a)(.2).
- <sup>33</sup> BERKELEY, CAL., MUN. CODE, *supra* note 8 at ch. 7.72 § 030(O)(2)(a-e).
- <sup>34</sup> See, e.g., Lisa M. Powell et al., *Evaluation of Changes in Grams of Sugar Sold After the Implementation of the Seattle Sweetened Beverage Tax*, 4 JAMA HEALTH POL'Y 1 (2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2785907> [<https://perma.cc/QG6G-RCKK>]; NORTON FRANCIS ET AL., URBAN INST.: STATE & LOCAL FIN. INITIATIVE, RESEARCH REPORT: THE PROS AND CONS OF TAXING SWEETENED BEVERAGES BASED ON SUGAR CONTENT (2016), <https://www.urban.org/sites/default/files/publication/86541/2001024-the-pros-and-cons-of-taxing-sweetened-beverages-based-on-sugar-content.pdf> [<https://perma.cc/VL6J-LW2D>].
- <sup>35</sup> BOULDER, COLO., REV. CODE, *supra* note 4 at § 3-16-2(a).
- <sup>36</sup> See Sara N. Bleich & Michael W. Long, *Simple Is Better for Local Beverage Tax Policy Diffusion*, 142 AM. HEART ASS'N (AHA) CIRCULATION 535, 537 (Aug. 10, 2020), <https://www.ahajournals.org/doi/10.1161/CIRCULATIONAHA.120.048336> [<https://perma.cc/LZS5-W7E5>].
- <sup>37</sup> SEATTLE, WASH., MUN. CODE, *supra* note 8 at ch. 5.53; CITY OF ALBANY, N.Y., ORD. No. 2016-02, *supra* note 8; BERKELEY, CAL., MUN. CODE, *supra* note 8 at ch. 7.72; BOULDER, COL., MUN. CODE, *supra* note 8 at tit. 3, ch. 16; OAKLAND, CAL., MUN. CODE, *supra* note 8 at ch. 4.52; PHILA., PA., REV. CODE, *supra* note 8 at ch. 19-4100; S.F., CAL., BUS. & TAX REG. CODE, *supra* note 8.
- <sup>38</sup> South Africa, Sri Lanka, and Mauritius employ sugar content taxes. Yujin Lee et al., *Health Impact and Cost-Effectiveness of Volume, Tiered, and Absolute Sugar Content Sugar-Sweetened Beverage Tax Policies in the United States*, 142(6) AHA CIRCULATION 523, 524 (2020), <https://www.ahajournals.org/doi/10.1161/CIRCULATIONAHA.120.048336> (last visited Apr. 15, 2022).
- <sup>39</sup> *Id.*
- <sup>40</sup> Bill H.2972, 192nd Gen. Ct. Commonwealth Mass., (Mass. 2021); Bill S.1914, 192nd Gen. Ct. Commonwealth Mass., (Mass. 2021).
- <sup>41</sup> Bill H.2972, 192nd Gen. Ct. Commonwealth Mass., (Mass. 2021); Bill S.1914, 192nd Gen. Ct. Commonwealth Mass., (Mass. 2021).
- <sup>42</sup> See *Taxing Sugary Drinks*, *supra* note 1.
- <sup>43</sup> *Id.*
- <sup>44</sup> See Lisa M. Powell et al., *Assessing the Potential Effectiveness of Food and Beverage Taxes and Subsidies for Improving Public Health: A Systematic Review of Prices, Demand and Body Weight Outcomes*, 14(2) OBESITY REV. 110, 113 (Feb. 1, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3556391/> [<https://perma.cc/LY9E-PT2Q>].
- <sup>45</sup> See, e.g., *Data Release: Beverage Tax Revenue and Expenditures*, *supra* note 31.
- <sup>46</sup> CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2.
- <sup>47</sup> Advocates note that the vulnerability of a general fund tax is that the beverage industry may generate furor in opposition as they lead the public to question whether the revenue will be used to “fill potholes.” That is why Berkeley, CA (and Oakland and San Francisco) included the advisory board to oversee the investment side of the ordinance, holding the city accountable to the voters’ intent of the tax. See Stakeholder interviews with sugar reduction policy advocates, Cambridge, Massachusetts (Apr. 22, 2022). Notes on file with authors.
- <sup>48</sup> See *Policy Profiles*, HEALTHY FOOD AM., [https://www.healthyfoodamerica.org/policy\\_profiles](https://www.healthyfoodamerica.org/policy_profiles) (last visited Jan. 6, 2022) [<https://perma.cc/NV7K-MA4X>] (showing profiles where the SSB tax revenue is earmarked in cities including Seattle,

Boulder, Santa Fe, and Philadelphia).

- <sup>49</sup> *Data Release: Beverage Tax Revenue and Expenditures*, *supra* note 31.
- <sup>50</sup> SEATTLE, WASH., MUN. CODE, *supra* note 8 at § 5.53.055 (A)(2).
- <sup>51</sup> BOSTON CITY CHARTER, § 48 (2007).
- <sup>52</sup> *Id.*; see also *Sweetened Beverage Tax Community Advisory Board: About Us*, SEATTLE (2022), <https://www.seattle.gov/sweetened-beverage-tax-community-advisory-board#:~:text=The%20Sweetened%20Beverage%20Tax%20Community,supported%20by%20the%20tax%20revenue.> [<https://perma.cc/PC2E-A9LS>].
- <sup>53</sup> See *Policy Profiles*, HEALTHY FOOD AM., *supra* note 48.
- <sup>54</sup> Libby Hattersley et al., *Health, Nutrition, and Population Knowledge Brief: Countering Common Arguments Against Taxes on Sugary Drinks 1*, WORLD BANK GRP. (2020), <https://openknowledge.worldbank.org/bitstream/handle/10986/34361/Countering-Common-Arguments-Against-Taxes-on-Sugary-Drinks.pdf?sequence=1&isAllowed=y> [<https://perma.cc/K9FY-U84J>].
- <sup>55</sup> CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2 at 57.
- <sup>56</sup> See, e.g., Navajo Nation Council Res. CN-54-14, 22nd Council, 4th Year (2014).
- <sup>57</sup> San Francisco’s severability clause, for example, reads, “If any provision of this measure, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this measure are severable. The voters hereby declare that this measure, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.” S.F., CAL., BUS. & TAX REG. CODE, *supra* note 8 at § 559.
- <sup>58</sup> See JONATHAN F. MITCHELL, NAT’ CONF. STATE LEGIS., INSULATING STATE LEGISLATION FROM CONSTITUTIONAL CHALLENGE, [http://www.ncsl.org/documents/lss/Insulating\\_Worksheets.pdf](http://www.ncsl.org/documents/lss/Insulating_Worksheets.pdf) (last visited Dec. 3, 2021) [<https://perma.cc/R7LK-RT92>].
- <sup>59</sup> Frank J. Chaloupka, Lisa M. Powell, & Kenneth E. Warner, *The Use of Excise Taxes to Reduce Tobacco, Alcohol, and Sugary Beverage Consumption*, 40 ANN. REV. PUB. HEALTH 187, 195–196 (Apr. 2019), <https://www.annualreviews.org/doi/abs/10.1146/annurev-publhealth-040218-043816> [<https://perma.cc/3744-9REH>].
- <sup>60</sup> Jamie F. Chriqui, *A Typology of Beverage Taxation: Multiple Approaches for Obesity Prevention and Obesity Prevention-Related Revenue Generation*, 34(3) J. PUB. HEALTH POL’Y 403, 409 (Aug. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3730238/> [<https://perma.cc/W6JB-QFQM>].
- <sup>61</sup> See Jacob E. Gersen, *Temporary Legislation*, 74(1) U. CHI. L. REV. 247, 251 (2007), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5400&context=uclrev> [<https://perma.cc/NQL3-XUWC>]. The Navajo Nation’s sunset clause reads, “This tax shall be reviewed at the end of the calendar year 2020 for extension by the Navajo Nation Council.” NAVAJO NATION CODE ANN., *supra* note 9 at § 1003.
- <sup>62</sup> See *Relating to Sugar-Sweetened Beverages*, H.B. 994, S.B. 1148, 2021 Legis., 31st Sess. (Hawaii, 2021).
- <sup>63</sup> CITY OF ALBANY, N.Y., ORD. No. 2016-02, *supra* note 8 at § 4-13.5.
- <sup>64</sup> COOK CNTY., ILL., ORD. 16-5931, *supra* note 20 at art. XXIV, § 74-857; BOULDER, COLO., REV. CODE, *supra* note 4 at § 3-16-9; SEATTLE, WASH., MUN. CODE, *supra* note 8 at § 5.55.230 (A).
- <sup>65</sup> COOK CNTY., ILL., ORD. 16-5931, *supra* note 20 at art. XXIV, § 74-857; BOULDER, COLO., REV. CODE, *supra* note 4 at § 3-16-9; SEATTLE, WASH., MUN. CODE, *supra* note 8 at § 5.55.230 (A).
- <sup>66</sup> BERKELEY, CAL., MUN. CODE, *supra* note 8; see also Stakeholder interviews with sugar reduction policy advocates, *supra* note 47.
- <sup>67</sup> BERKELEY, CAL., MUN. CODE, *supra* note 8; see also Stakeholder interviews with sugar reduction policy advocates, *supra* note 47.
- <sup>68</sup> See, e.g., Lisa M. Powell et al., *The Impact of a Sweetened Beverage Tax on Beverage Volume Sold in Cook County, Illinois, and Its Border Area*, 172(6) ANNALS INTERNAL MED. 390 (Mar. 17, 2020), <https://pubmed.ncbi.nlm.nih.gov/32092766/> [<https://perma.cc/2XHS-C7CC>] [hereinafter Powell et al., *Impact of SSB Tax in Cook County*]; Lisa M. Powell & Julien Leider, *The Impact of Seattle’s Sweetened Beverage Tax on Beverage Prices and Volume Sold*, 37 ECON. & HUMAN BIOLOGY 100856 (Jan. 21, 2020), <https://pubmed.ncbi.nlm.nih.gov/32070906/> [<https://perma.cc/AW53-VNSU>] [hereinafter Powell & Leider, *Impact of SSB Tax in Seattle*]; Christina A. Roberto et al., *Association of a Beverage Tax on Sugar-Sweetened and Artificially Sweetened Beverages With Changes in Beverage Prices and Sales at Chain Retailers in a Large Urban Setting*, 321(18) JAMA 1799, 1805 (May 14, 2019), <https://pubmed.ncbi.nlm.nih.gov/31087022/> [<https://perma.cc/4WXF-LHBU>] [hereinafter Roberto et al., *Association of Beverage Tax on SSBs*]; Matthew M. Lee et al., *Sugar-Sweetened Beverage Consumption 3 Years after the Berkeley, California, Sugar-Sweetened Beverage Tax*, 109(4) AM. J. PUB. HEALTH 637 (Apr. 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6417561/#:~:text=The%20persistent%20declines%20in%20SSB,with%20high%20initial%20SSB%20consumption.> [<https://perma.cc/3XVJ-U776>] [hereinafter Lee et al., *SSB Consumption 3 years after Berkeley SSB Tax*]; but see John Cawley et al., *Oakland’s sugar-sweetened beverage*

- tax: impacts on prices, purchases and consumption by adults and children, 37 ECON. & HUMAN BIOLOGY 100865 (2020), <https://pubmed.ncbi.nlm.nih.gov/32126505/> [<https://perma.cc/2RWV-LRJT>] (finding that in Oakland, there was not statistically significant decrease of SSB consumption after the implementation of the SSB tax).
- <sup>69</sup> Powell & Leider, *Impact of SSB Tax in Seattle*, *supra* note 68.
- <sup>70</sup> Roberto et al., *Association of Beverage Tax on SSBs*, *supra* note 68 at 1805.
- <sup>71</sup> Lee et al., *SSB Consumption 3 years after Berkeley SSB Tax*, *supra* note 68.
- <sup>72</sup> Stakeholder interviews with sugar reduction policy advocates, *supra* note 47.
- <sup>73</sup> Drinks that have a total sugar content of 8g per 100ml or more are taxed at £0.24/L, and drinks that have a total sugar content of 5g or more and less than 8g per 100ml are taxed at £0.18/L. Drinks with less than 5g sugar per 100ml are not taxed. See *Guidance: Check if your drink is liable for the Soft Drinks Industry Levy*, H.M. REVENUE & CUSTOMS (Apr. 3, 2018), <https://www.gov.uk/guidance/check-if-your-drink-is-liable-for-the-soft-drinks-industry-levy> [<https://perma.cc/Q8GW-BPFM>].
- <sup>74</sup> L. K. Bandy et al., *Reductions in sugar sales from soft drinks in the UK from 2015 to 2018*, 18 BIOMED CENT. (BMC) MED. 20 3 (Jan. 13, 2020), <https://bmccmedicine.biomedcentral.com/articles/10.1186/s12916-019-1477-4> [<https://perma.cc/TR6Y-K6T2>].
- <sup>75</sup> Francisco Goiana-da-Silva et al., *The future of the sweetened beverages tax in Portugal*, 3(12) LANCET PUB. HEALTH e562 (2018), <https://pubmed.ncbi.nlm.nih.gov/30522681/> [<https://perma.cc/JY95-5A5G>].
- <sup>76</sup> See discussion *supra* “How Should You Calculate the Tax?”.
- <sup>77</sup> *Taxing Sugary Drinks*, *supra* note 1. For example, for fiscal year 2020–21, San Francisco allocated \$11,190,000 of SSB tax revenue in total to various programs. Of the total funding, \$2,955,000 went to community-based organizations for (a) health education, (b) physical activity opportunities, (c) healthy eating/food security, (d) water promotion, and (e) community-based participatory research. \$1,500,000 was allocated to (a) improve the quality of school meals, (b) support nutrition education, and (c) support student-led efforts to decrease consumption of sugar-sweetened beverages, and increase awareness among students. \$1,000,000 went to Healthy Eating Vouchers, which improve food security and access to healthy foods. SODA TAX ALLOCATION - FY 2019–20 AND FY 2020–21, [https://www.sfdph.org/dph/files/SDDTAC/FINAL%20BUDGET%20RECOMMENDATIONS\\_APPROVED%20AND%20MODIFIED%20BY%20MO\\_BOS.pdf](https://www.sfdph.org/dph/files/SDDTAC/FINAL%20BUDGET%20RECOMMENDATIONS_APPROVED%20AND%20MODIFIED%20BY%20MO_BOS.pdf) (last visited Dec. 3, 2021) [<https://perma.cc/QL4-G6F3>].
- <sup>78</sup> SYDNEY BENNET ET AL., PRAXIS PROJECT & GOLDMAN SCH. PUB. POL’Y U. CAL. BERKELEY, & BERKELEY FOOD INST., BAY AREA SUGAR-SWEETENED BEVERAGE TAXES: AN EVALUATION OF COMMUNITY INVESTMENTS 3 (2019), [https://food.berkeley.edu/wp-content/uploads/2019/05/GSPP-Soda-Tax-Evaluation-Final-Draft\\_withdate.pdf](https://food.berkeley.edu/wp-content/uploads/2019/05/GSPP-Soda-Tax-Evaluation-Final-Draft_withdate.pdf) [<https://perma.cc/G36A-J8U5>] [hereinafter BENNET ET AL., BAY AREA SSB TAXES].
- <sup>79</sup> BOULDER, COLO., REV. CODE, *supra* note 4 at § 3-16-1(a).
- <sup>80</sup> James Krieger et al., *How sugar-sweetened beverage tax revenues are being used in the United States*, 23 PREVENTIVE MED. REPS. 101388 (Apr. 30, 2021), <https://pubmed.ncbi.nlm.nih.gov/34040929/#:~:text=SSB%20tax%20revenues%20are%20supporting,resulting%20from%20lower%20SSB%20consumption.> [<https://perma.cc/SB8Z-3TBC>].
- <sup>81</sup> See discussion *supra* “How Are SSB Taxes Designed?”.
- <sup>82</sup> *McCulloch v. Maryland*, 17 U.S. 316 (1819); see also Jennifer L. Pomeranz, *The Potential for Federal Preemption of State and Local Sugar-Sweetened Beverage Taxes*, 53(5) AM. J. PREVENTIVE MED. 740, 741 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5657520/> [<https://perma.cc/RQ4B-FVTM>].
- <sup>83</sup> HARV. L. SCH. FOOD L. & POL’Y CLINIC (FLPC) & JOHNS HOPKINS CTR. FOR LIVABLE FUTURE, GOOD LAWS, GOOD FOOD: PUTTING LOCAL FOOD POLICY TO WORK FOR OUR COMMUNITIES 8 (2d ed., Sept. 2017), [https://chlpi.org/wp-content/uploads/2013/12/good-food-good-laws\\_toolkit-10.23.2017.pdf](https://chlpi.org/wp-content/uploads/2013/12/good-food-good-laws_toolkit-10.23.2017.pdf) [<https://perma.cc/D32V-Y2HT>] [hereinafter FLPC, GOOD LAWS, GOOD FOOD TOOLKIT].
- <sup>84</sup> *Id.*
- <sup>85</sup> FLPC, GOOD LAWS, GOOD FOOD TOOLKIT, *supra* note 83 at 9.
- <sup>86</sup> MASS. CONST. art. LXXXIX (amended 1966) (amending Mass. Const. amend. art. II, § 2); see also DAVID J. BARRON ET AL., RAPPAPORT INST. FOR GREATER BOSTON, DISPELLING THE MYTH OF HOME RULE: LOCAL POWER IN GREATER BOSTON 13–14 (2004), [https://www.hks.harvard.edu/sites/default/files/centers/rappaport/files/home\\_rule.pdf](https://www.hks.harvard.edu/sites/default/files/centers/rappaport/files/home_rule.pdf) [<https://perma.cc/Y7BT-AXCE>].
- <sup>87</sup> CONN. GEN. STAT. § 7-192(a).
- <sup>88</sup> MASS. CONST. art. LXXXIX, *supra* note 86 at § 8.
- <sup>89</sup> FUNDAMENTALS OF PREEMPTION, CHANGELAB SOLS. (2019), [https://www.changelabsolutions.org/sites/default/files/2019-07/Fundamentals\\_of\\_Preemption\\_FINAL\\_20190621.pdf](https://www.changelabsolutions.org/sites/default/files/2019-07/Fundamentals_of_Preemption_FINAL_20190621.pdf) [<https://perma.cc/VX8Q-PMRZ>].
- <sup>90</sup> *Id.*
- <sup>91</sup> Eric Crosbie & Jennifer L. Pomeranz et al., *State Preemption: An Emerging Threat to Local Sugar-Sweetened Beverage Taxation*, 111(4) AM. J. PUB. HEALTH 677 678 (Apr. 2021), <https://doi.org/10.2105/AJPH.2020.306062> [<https://perma.cc/>].

cc/6MKQ-TYGJ].

<sup>92</sup> *Cultiva La Salud v. California*, No. 34-2020-80003458 (Cal. Super. Ct. Oct. 1, 2021).

<sup>93</sup> Local Government: Taxation: Prohibition: Groceries, 2018 Cal. Legis. Serv. Ch. 61 (A.B. 1838) (2018).

<sup>94</sup> CAL. REV. & TAX. CODE § 7284.12(a); see also Tentative Ruling on Petition for Writ of Mandate, *Cultiva La Salud v. California*, No. 34-2020-80003458, 4 (Cal. Super. Ct. Oct. 1, 2021), available at <https://www.changelabsolutions.org/sites/default/files/2021-10/Sugary%20Drinks%20Tax%20Court%20Deciscion%202021.pdf> [<https://perma.cc/9DVQ-WY9Y>].

<sup>95</sup> See generally Crosbie & Pomeranz et al., *State Preemption*, *supra* note 91; see also Stakeholder interviews with sugar reduction policy advocates, *supra* note 47.

<sup>96</sup> See Stakeholder interviews with sugar reduction policy advocates, *supra* note 47.

<sup>97</sup> The four localities are: Berkeley, San Francisco, Albany, and Oakland. See Memorandum from Vice Mayor Jordan to Albany City Council Members, CTY. ALBANY, CAL. (Feb. 24, 2021), <https://www.albanycal.org/home/showpublisheddocument/47061/637497606193230000> [<https://perma.cc/QM5R-XMDS>].

<sup>98</sup> CAL. REV. & TAX. CODE, *supra* note 94 at § 7284.12(b); see also H. [§ 334A] (*New Soda and Other Groceries*, 9 Witkin, Summary 11th Tax § 334A (2021)).

<sup>99</sup> See, e.g., *Charter Cities*, LEAGUE OF CAL. CITIES, <https://www.calcities.org/home/resources/charter-cities> (last visited Apr. 13, 2022) [<https://perma.cc/6SYY-WS8T>]; INFORMATION FROM THE NONPARTISAN CALIFORNIA LEAGUE OF CITIES, LEAGUE CAL. CITIES, <https://www.costamesaca.gov/home/showdocument?id=6015> (last visited Apr. 13, 2022) [<https://perma.cc/F6EB-8Y59>].

<sup>100</sup> CAL. REV. & TAX. CODE, *supra* note 94 at § 7284.12(f); see also Tentative Ruling on Petition for Writ of Mandate, *Cultiva La Salud v. California*, *supra* note 94 at 5.

<sup>101</sup> *New Lawsuit Challenges California Preemption Law*, CHANGELAB SOLS. (Aug. 10, 2020), <https://www.changelabsolutions.org/news/ca-preemption-lawsuit> [<https://perma.cc/NG4P-5BSD>]; see also *Food and beverage tax preemption conflicts between state and local government*, BALLOTPEDIA (May 6, 2021), [https://ballotpedia.org/Food\\_and\\_beverage\\_tax\\_preemption\\_conflicts\\_between\\_state\\_and\\_local\\_governments](https://ballotpedia.org/Food_and_beverage_tax_preemption_conflicts_between_state_and_local_governments) [<https://perma.cc/H5KL-H6PE>].

<sup>102</sup> Tentative Ruling on Petition for Writ of Mandate, *Cultiva La Salud v. California*, *supra* note 94 at 10.

<sup>103</sup> *Ruling in CA Sugary Drink Tax Preemption Lawsuit*, CHANGELAB SOLS. (Oct. 12, 2021), <https://www.changelabsolutions.org/news/ruling-california-sugary-drink-tax-preemption> [<https://perma.cc/RSH9-88F6>].

<sup>104</sup> A.B. 1163, 2021-2022 Leg., Reg. Sess. (Cal. 2021); *Assemblymember Nazarian Moves to Stop Soda Industry's "Extortion" of California Lawmakers and Bring New Revenue and Health Equity to California Cities*, ASSEMBLYMEMBER ADRIN NAZARIAN DIST. 46 (Feb. 18, 2021), <https://a46.asmdc.org/press-releases/20210218-assemblymember-nazarian-moves-stop-soda-industrys-extortion-california> [<https://perma.cc/28YB-3WBC>].

<sup>105</sup> *As Deadline Passes to Hear Assembly Bill 1163, Public Health Groups Condemn Big Soda's "Extortion" and "Gaming" of Legislature*, PRAXIS PROJECT (May 17, 2021), <https://www.thepraxisproject.org/announcements/2021/5/17/as-deadline-passes-ab1163-pr> [<https://perma.cc/JM6W-MLDZ>].

<sup>106</sup> PUB. HEALTH L. CTR. AT MITCHELL HAMLIN SCH. OF L., STATE UNIFORMITY DOCTRINES AND SUGARY DRINK TAXES: ISSUE BRIEF I (2017), <https://publichealthlawcenter.org/sites/default/files/resources/State-Uniformity-Sugary-Drink-Taxes-2017.pdf> [<https://perma.cc/CWC9-9T3V>].

<sup>107</sup> *Id.* at 4, 7.

<sup>108</sup> *Id.* at 12–13.

<sup>109</sup> *Illinois Retail Merchants Ass'n v. The Cook County Dept. of Revenue*, No. 17 L 50596, 2017 WL 3318078, \*4 (Ill. Cir. Ct. July 28, 2017) [hereinafter *Cook County SSB Tax Lawsuit*].

<sup>110</sup> *Id.* at \*5–9.

<sup>111</sup> *Id.* at \*6–8.

<sup>112</sup> *Id.* at \*8.

<sup>113</sup> *Id.* at \*8–9.

<sup>114</sup> *Id.* at \*9.

<sup>115</sup> *Id.* at \*9.

<sup>116</sup> *Philadelphia Beverage Tax Ordinance*, City Council Bill No. 160176 (Phila. 2016).

<sup>117</sup> *Williams v. City of Philadelphia SSB Tax cases*, *supra* note 25.

<sup>118</sup> *Id.* at 595.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 584.

- 124 53 PA. STAT. ANN. § 15971.
- 125 *Williams v. City of Philadelphia* SSB Tax cases, *supra* note 25 at 584.
- 126 *Id.* at 534.
- 127 *Id.*
- 128 *Id.* at 434–35.
- 129 See CHANGELAB SOLS. & HEALTHY FOOD AM., A LEGAL AND PRACTICAL GUIDE FOR DESIGNING SUGARY DRINK TAXES (2d ed. 2019), [https://www.changelabsolutions.org/sites/default/files/Sugary\\_Drinks-TAX-GUIDE\\_FINAL\\_20190114.pdf](https://www.changelabsolutions.org/sites/default/files/Sugary_Drinks-TAX-GUIDE_FINAL_20190114.pdf) [<https://perma.cc/6PCD-WNRC>] (citing *Illinois Retail Merchants Ass’n v. The Cook Cty. Dep’t of Revenue*, No. 17 L 50596, 2017 WL 3318078 (Ill.Cir.Ct. July 28, 2017)); see also *Williams v. City of Philadelphia* SSB Tax cases, *supra* note 25.
- 130 *Id.* at 534.
- 131 *Id.*
- 132 *Id.*
- 133 Hattersley et al., *supra* note 54.
- 134 *Id.*
- 135 See, e.g., *Sugary Drink Taxes Regressive, Progressive or Both: Analyzing the economic impacts of taxes in Philadelphia, Seattle and San Francisco*, CTR. FOR PUB. HEALTH & NUTRITION, SCH. OF PUB. HEALTH, U. WASH., [https://nutr.uw.edu/cphn\\_project/sugary-drink-taxes-regressive-progressive-or-both-analyzing-the-economic-impacts-of-taxes-in-philadelphia-seattle-and-san-francisco/](https://nutr.uw.edu/cphn_project/sugary-drink-taxes-regressive-progressive-or-both-analyzing-the-economic-impacts-of-taxes-in-philadelphia-seattle-and-san-francisco/) (last visited Apr. 15, 2022) [<https://perma.cc/6X9G-RC8B>]; Kai-Erh Kao et al., *The Health and Financial Impacts of a Sugary Drink Tax Across Different Income Groups in Canada*, 38 ECON. & HUM. BIOLOGY 100869 (Aug. 2020), <https://pubmed.ncbi.nlm.nih.gov/32442926/> [<https://perma.cc/89JA-VSFN>].
- 136 Jennifer Falbe, *The Ethics of Excise Taxes on Sugar-Sweetened Beverages*, 225 PHYSIOLOGY & BEHAV. 113105 3 (Oct. 15, 2020), <https://pubmed.ncbi.nlm.nih.gov/32712210/> [<https://perma.cc/9T8W-TLHP>]; see also Hattersley et al., *supra* note 54 at 2 (suggesting that real-world evidence from the U.S. is lacking).
- 137 M. Arantxa Colchero et al., *In Mexico, Evidence of Sustained Consumer Response Two Years after Implementing a Sugar-Sweetened Beverage Tax*, 36(3) HEALTH AFFS. 564, 569 (2017), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2016.1231> [<https://perma.cc/9QTV-XEK2>].
- 138 Falbe, *The Ethics of Excise Taxes on Sugar-Sweetened Beverages*, *supra* note 136 at 3.
- 139 CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2 at 57.
- 140 BENNET ET AL., BAY AREA SSB TAXES, *supra* note 78 at 25.
- 141 *Sugar Sweetened Beverage Tax*, CTY. BOULDER, <https://bouldercolorado.gov/services/sugar-sweetened-beverage-tax> (last visited Apr. 19, 2020) [<https://perma.cc/AMA2-XL5R>]; see also *Health Equity Fund*, CTY. BOULDER, [https://bouldercolorado.gov/services/health-equity-fund?\\_ga=2.10702196.1727994621.1650399882-747597375.1650048963](https://bouldercolorado.gov/services/health-equity-fund?_ga=2.10702196.1727994621.1650399882-747597375.1650048963) [<https://perma.cc/93TY-NNCY>].
- 142 Francisco Goiana-da-Silva et al., *The Ethics of Taxing Sugar-Sweetened Beverages to Improve Public Health*, 8 FRONTIER PUB. HEALTH 110 (Apr. 16, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7179756/> [<https://perma.cc/U58N-E3WB>].
- 143 *Id.*
- 144 Yuka Asada et al., *Oakland’s Sugar-Sweetened Beverage Tax: Honoring the “Spirit” of the Ordinance Toward Equitable Implementation*, 5(1) HEALTH EQUITY 35, 37–38 (2021), <https://pubmed.ncbi.nlm.nih.gov/33681687/> [<https://perma.cc/8VG2-MTG7>].
- 145 Laura A. Gibson et al., *No Evidence of Food or Alcohol Substitution in Response to a Sweetened Beverage Tax*, 60(2) AM. J. PREVENTIVE MED. e49 (2019), [https://pubmed.ncbi.nlm.nih.gov/33349471/#:~:text=Supermarket%20analyses%20showed%20substitution%20to,%2C%2015%25%20at%20post\).](https://pubmed.ncbi.nlm.nih.gov/33349471/#:~:text=Supermarket%20analyses%20showed%20substitution%20to,%2C%2015%25%20at%20post).) [<https://perma.cc/5R4J-HXXK>]; Sara N. Bleich et al., *Association of a Sweetened Beverage Tax with Purchases of Beverages and High-Sugar Foods at Independent Stores in Philadelphia*, 4(6) JAMA NETWORK OPEN e2113527 (June 15, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2780957#:~:text=One%20year%20after%20Philadelphia’s%201.5,per%20purchase%20declined%20by%2039%25.> [<https://perma.cc/DG53-G5XT>].
- 146 Hattersley et al., *supra* note 54 at 2.
- 147 See Hunt Allcott et al., *Should We Tax Sugar-Sweetened Beverages? An Overview of Theory and Evidence*, 33 J. ECON. PERSP. 202, 220 (2019).
- 148 Roberto et al., *Association of Beverage Tax on SSBs*, *supra* note 68 at 1805.
- 149 Hattersley et al., *supra* note 54 at 2.
- 150 Christina A. Roberto, Sara N. Bleich, & Hannah G. Lawman et al., *Unemployment claims in Philadelphia one year after implementation of the sweetened beverage tax*, 14(3) PLOS ONE e0213218 (2019), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0213218#:~:text=Results%20showed%20that%20filings%20for,implementation%20of%20the%20beverage%20tax> [<https://perma.cc/5P89-FTW2>].

- <sup>151</sup> Samantha Marinello et al., *The impact of the Philadelphia beverage tax on employment: a synthetic control analysis*, 40 *ECON. & HUM. BIOLOGY* 100939 (Jan. 2021), <https://pubmed.ncbi.nlm.nih.gov/33232891/> [<https://perma.cc/A58G-N9BK>].
- <sup>152</sup> Carlos M. Guerrero-López et al., *Employment changes associated with the introduction of taxes on sugar-sweetened beverages and nonessential energy-dense food in Mexico*, 105 *PREVENTIVE MED.* S43 (2017), <https://pubmed.ncbi.nlm.nih.gov/28890354/> [<https://perma.cc/2M5Q-LWFQ>].
- <sup>153</sup> Lisa M. Powell et al., *Employment Impact of Sugar-Sweetened Beverage Taxes*, 104(4) *AM. J. PUB. HEALTH* 672 (Apr. 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4025719/> [<https://perma.cc/J6NK-W98M>].
- <sup>154</sup> Kristine A. Madsen, James Krieger, & Xavier Morales, *Sugar-sweetened beverage taxes: Emerging evidence on a new public health policy*, 321(18) *JAMA* 1777, 1778 (May 14, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6822675/#:~:text=In%20conclusion%2C%20current%20evidence%20suggests,needs%20and%20address%20health%20inequities.> [<https://perma.cc/3LFB-N48U>].
- <sup>155</sup> Christina Roberto & Sara N. Bleich et al., *The Association of a Sweetened Beverage Tax With Changes In Beverage Prices And Purchases At Independent Stores*, 39(7) *HEALTH AFFS.* 1130, 1136 (July 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01058> [<https://perma.cc/3AAR-QLJZ>].



# WARNING LABELS ON PRODUCTS

## What are Warning Labels?

**W**arning labels are a downstream policy solution to address overconsumption of sugar, which enhance consumer attention to nutrition information of sugary foods and beverages.<sup>1</sup> Warning labels on products are pictorial, icons and/or worded labels on food packaging, in advertisements, and eatery menus that alert the user about risks associated with consuming said product. They may show an image—such as with sodium warning labels<sup>2</sup> (pictured)—and/or include the words such as “warning,” “safety warning,” “high in,” or “excess,” and can be used to warn consumers about high sugar content in a given food. Governments can require that actors in the food system, like manufacturers or retailers, include warning labels on foods where an added ingredient exceeds a scientifically determined threshold, which can be set at the equivalent or in excess of the recommended daily amount.<sup>3</sup> For example, in **San Francisco, CA**, lawmakers enacted a law requiring sugary drink advertisements to include a warning label that stated “WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay. This is a message from the City and County of San Francisco.”<sup>4</sup> As another example (pictured), the **Pan American Health Organization (PAHO)** and the **World Health Organization (WHO)** developed the **front-of-package warning label (FOPWL)** in the Caribbean that is designed as a simple and effective tool to inform the public about products that can harm health and help guide purchasing decisions through stop sign icons.<sup>5</sup>



N.Y.C., N.Y., 24 R.C.N.Y. § 81.49, Sodium warning (2015). This icon requires **New York City, NY**, food service establishments that are part of a chain operating 15 or more locations and offer substantially the same menu items at each location to post a salt shaker icon next to any food item or combination meal containing 2,300 mg or more of salt and the following language explaining the icon’s meaning: “the sodium (salt) content of this item is higher than the total daily recommended limit (2300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.” 24 R.C.N.Y. § 81.49 (b)(2).

**PAHO** and **WHO FOPWL** in the Caribbean. *Front-of-package warning labeling (FOPWL) in the Caribbean*, PAN AM. HEALTH ORG. (PAHO) & WORLD HEALTH ORG. (WHO), <https://www.paho.org/en/front-package-warning-labeling-fopwl-caribbean> (last visited Apr. 15, 2022) [<https://perma.cc/DJR9-ZU7X>].



Warning labels serve a dual purpose: first, the labels alert consumers to health risks,<sup>6</sup> which may discourage purchasing; and second, warning labels may encourage manufacturers to reformulate their products to be healthier, to avoid having to apply the label.<sup>7</sup> Warning labels can also promote consumer awareness and autonomy by allowing the consumer to make choices on consuming products based on more product information.

Emotions such as disgust, fear, and discomfort all influence a consumer's purchasing decisions<sup>8</sup> and warning labels on products leverage this relationship with pictorial warning labels eliciting a stronger emotional response.<sup>9</sup> Research from tobacco warning labels show that they work to elicit thoughts about the risks of smoking and increase intentions to quit smoking.<sup>10</sup> Based on this evidence, it is likely that warning labels may help people reduce consumption of sugary drinks, however, for a warning label to be successful, the public must be open to accepting the message, and so it may be helpful to couple warning labels with public awareness campaigns to amplify the message.<sup>11</sup>

Outside of the United States, warning labels on food and beverage packages and advertising have emerged as a popular strategy to reduce sugar consumption.<sup>12</sup> For instance, **Chile** requires black warning labels shaped like stop signs for packaged food and drinks exceeding limits for sugar, salt, saturated fat, or calories.<sup>13</sup> These labels are printed clearly and visibly at the front of the packaged food. Since implementation of Chile's law, studies have shown that purchases of sugar-sweetened beverages (SSBs) declined by 22.8 mL per capita per day or 23.7%, the largest reduction found from a single standalone policy, even greater than impacts of SSB taxes (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule).<sup>14</sup> Due to the success of Chile's law, a flood of countries have introduced or implemented their own labeling regulations, emulating Chile's.<sup>15</sup>

## What are the Advantages of Warning Labels on Products?

Sugar-related warning labels on products are effective in reducing overall sugar consumption by both influencing and informing consumer behavior.<sup>16</sup> Research shows that parents are 33% less likely to buy an SSB for their children if it has a warning label.<sup>17</sup> Specifically, graphics with health effect labels showed the largest impact at dissuading consumers from choosing to purchase SSBs,<sup>18</sup> and influenced consumers to select water over fruit-flavored drinks, sweetened teas, and flavored milk.<sup>19</sup>

Research suggests that consumers want to know when the food they consume is detrimental to their health,<sup>20</sup> and warning labels can promote awareness particularly in instances of hidden added sugars. Many consumers are not aware how detrimental overconsumption of added sugar is to their health.<sup>21</sup> Fewer understand how much added sugar is in the products they purchase and consume,<sup>22</sup> particularly in everyday products that are not commonly thought of as sweet, such as bread or milk.<sup>23</sup> Even consumers that are cognizant of sugar and want to eat healthy, may find it difficult given the food and beverage industry's advertising practices designed to confuse consumers regarding sugar content in certain SSBs, such as fruit beverages for children.<sup>24</sup> In particularly pernicious examples, the food and beverage industries have even collaborated with health organization to promote high-sugar food items.<sup>25</sup> Warning labels can help draw attention to high sugar content in foods where it is not expected, and can help counter industry obfuscation and misinformation around what food is healthy. Providing consumers with some clarity on the actual health risks of products can help consumers make better, more informed decisions.<sup>26</sup>

Warning icons may be most successful in communicating information to individuals with lower levels of literacy.<sup>27</sup> Countries that display pictorial warnings report fewer disparities in comprehension of the labels across educational levels.<sup>28</sup> A common warning label design is the black octagonal stop sign found in **Chile, Mexico, Peru, and Uruguay** (pictured above at the beginning of the Warning Labels on Products section).<sup>29</sup> Another design—also pictured above at the beginning of the Warning Labels on Products section—is the triangular warning icon from **New York City, NY's sodium warning label**.<sup>30</sup> No consensus exists as to what warning label design is best. Nevertheless, studies on the effectiveness of these designs indicate that stop signs *are likely* the most effective at deterring consumers from purchasing foods that contain high quantities of ingredients like sugar and sodium,<sup>31</sup> perhaps because

the stop sign design mirrors a road stop sign, which is both familiar to consumers and associated with a warning.<sup>32</sup>

## What are the Most Common Barriers to Implementing Warning Labels on Products?

While warning label policies may face barriers in the United States, these barriers are surmountable. This section discusses the most common barriers to implementation, including First Amendment challenges, which may tie up warning label laws or policies in years of litigation, and poor design, which may reduce the label's effectiveness.

### First Amendment Challenges

Warning labels on products may face legal hurdles under the United States Constitution. Examining previous attempts at implementing warning label advertisements, provides perspective on some of the legal challenges sugar-based warning labels may face. Warning labels often result in First Amendment claims and litigation, as product manufacturers allege these labels violate their free speech protections.<sup>33</sup> Commercial speech, including communication such as advertising, is protected under the First Amendment.<sup>34</sup> When policies mandate warning labels, these labels are considered compelled speech because the government is forcing entities to support a certain expression, rather than allowing them to freely market their products.<sup>35</sup> Compelling speech is permissible in many cases, including warning labels, subject to a test applied by the courts. Governments adopting a warning label or other compelled speech must convince the court that, (1) the text of the warning is "factual" and "uncontroversial"; (2) that it is "reasonably related to the State's interest"; and (3) that the warning requirement is not "unduly burdensome" or "unjustified" (these parameters are often called the *Zauderer* test. See endnote for further details).<sup>36</sup> While these parameters may seem straightforward, recent commercial speech jurisprudence indicates that warning labels, particularly those in the public health space, face an uncertain outcome in court.<sup>37</sup>

**San Francisco, CA's** attempts to require a warning label for beverages high in added sugar serves as a useful example of some of the potential legal hurdles governments may face when implementing such policies. In 2015, San Francisco became the first United States jurisdiction to require a warning label for advertisements of SSBs, requiring that such advertisements contain the statement:

**"WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay. This is a message from the City and County of San Francisco."**<sup>38</sup>

The ordinance required that the warning label occupy at least 20% of the advertisement, be set off within a contrasting rectangular border, and be applied to any advertisement that promotes or markets a SSB for sale or use.<sup>39</sup> In response to the ordinance, the American Beverage Association, the California Retailers Association, and the California State Outdoor Advertising Association sued the city, claiming the required warning label violated their First Amendment free-speech rights by compelling them to include this information.<sup>40</sup>

The case highlights the First Amendment difficulties governments face when enacting labeling requirements, no matter how well intentioned the policy may be.<sup>41</sup> Ultimately, after hearing the case *en banc*, the Ninth Circuit Court of Appeals held that the size of the warning label (20% of the whole advertisement size) was "unduly burdensome."<sup>42</sup> The Ninth Circuit did not address the other elements of the *Zauderer* test, such as whether the compelled speech was purely factual and uncontroversial and whether it is reasonably related to government interest. The concurring opinions of the judges, which did address these points, were mixed and the judges disagreed heavily as to whether the ordinance would

succeed, and the law in this area remains unclear.<sup>43</sup> San Francisco is no longer pursuing an SSB warning label, and this case may have a chilling impact on other jurisdictions' efforts.

**New York City, NY's** successful **warning label for sodium** provides additional insight into label implementation and its potential legal challenges. In 2016, New York City had greater success in adopting a warning label rule—though this intervention applied to sodium, rather than sugar.<sup>44</sup> To reduce residents' consumption of sodium, New York City was the first city to require a saltshaker icon next to menu items or combo meals that contain 2,300 milligrams (mg) of sodium or more, at restaurants with 15 or more locations in the country.<sup>45</sup> This policy hit a roadblock when the National Restaurant Association challenged it in state court.<sup>46</sup> The court applied the same *Zauderer* test as the aforementioned San Francisco warning label case and upheld the constitutionality of the law, finding the labeling policy was the least restrictive way to provide consumers health risk information and that New York City had a reasonable interest in preventing residents' consumption of sodium.<sup>47</sup> Based on this legal victory, other cities, like **Philadelphia, PA**, have passed their own **sodium warning ordinances**.<sup>48</sup>

Though the First Amendment certainly creates a barrier for warning labels on products, policymakers and advocates can overcome these barriers through strategic efforts. For example, to meet the "factual" and "uncontroversial" requirement, legislators should include a thorough description of the scientific consensus around the health impacts of sugar within the policy, as well as the government's interest in reducing the consumption of sugar.<sup>49</sup> Additionally, the label should be as factual as possible and the label size should be well reasoned with documentation to avoid being considered "unduly burdensome." Also, rather than requiring a warning statement as in **San Francisco, CA**, jurisdictions may consider warning icons on products, as in **New York City, NY**. Policymakers should select thresholds for labels that mirror health and safety warnings long established as permissible on other products, as seen by recommended daily limit guidelines on certain ingredients of foods such as sodium—note that the 2,300 mg sodium warning label in New York City is the daily recommended limit—trans-fats, alcohol consumption, and added sugars.<sup>50</sup>

If jurisdictions are too concerned about litigation to pursue a mandatory label, they can experiment with voluntary forms of labeling as compelled speech is only a barrier when the government requires an entity to speak. For example, governments can work with retailers to create voluntary shelf sections where foods are labeled as "high in sugar." Compelled speech only becomes a barrier when the government is requiring the entity to speak. For more details on this and other ideas, see the Healthy Retail Section.

## Issues in Design of the Law or Policy

Another barrier to warning labels is poorly designed labels and ineffective placement. A confusing label design can lead consumers to make ill-informed decisions or to disregard the label.<sup>51</sup> Size, color, and font of the warning text and the label's placement are all important considerations when developing a warning label.<sup>52</sup> Certain characteristics evince more urgency and attention than others.<sup>53</sup> For instance, research shows that warning labels on products are more effective than warning labels on advertisements at impacting consumer behavior.<sup>54</sup> Additionally, icons and graphics, as seen on tobacco products, are more impactful than text-based health warning labels on consumer behavior and have the added benefit of being accessible to those with low literacy, reducing disparities in access.<sup>55</sup> That said, icons and graphics are often harder to get through First Amendment cases as evidenced by graphic tobacco warning labels being struck down on such grounds.<sup>56</sup>

## Case Studies on Warning Labels

### California

In 2014, a bill was introduced in California, requiring warning labels on SSBs stating: "STATE OF CALIFORNIA SAFETY WARNING: Drinking beverages with added sugar(s) contributes to obesity,

diabetes and tooth decay.”<sup>57</sup> The bill garnered support from organizations like the **American Association of Pediatrics, American Heart Association (AHA), California Dental Association**, among others.<sup>58</sup> The bill passed the California state senate, but died in California state assembly committee after a few members abstained,<sup>59</sup> potentially due to heavy industry lobbying.<sup>60</sup> In 2015, the bill was reintroduced but again died in committee.<sup>61</sup>

### **New York**

In 2015, legislators in the State of New York introduced a bill requiring SSBs packages to be marked with a warning label stating: “SAFETY WARNING: Drinking beverages with added sugar contributes to obesity, diabetes and tooth decay.”<sup>62</sup> This bill was similar to California’s proposed requirement, including defining SSBs as, “any sweetened nonalcoholic beverage, carbonated or noncarbonated, sold for human consumption that has added caloric sweeteners and which contains seventy-five calories or more per twelve fluid ounces.”<sup>63</sup> This definition excluded any beverage that contained 100% natural fruit juice or natural vegetable juice with no added caloric sweeteners, any product manufactured as a “dietary aid,” oral electrolyte solution, infant formula, milk products, and alcoholic beverages.<sup>64</sup> Ultimately, this bill died in committee.

### **New York City, NY**

In 2020, the **New York City Council** passed INT-1326B, **The Sweet Truth Act**, which requires the New York City Department of Health and Mental Hygiene (DOHMH) to issue a rule that requires added sugar notifications on certain prepackaged food items at particular establishments.<sup>65</sup> Such a regulation must designate an icon to be displayed in a clear and conspicuous manner on menus, menu boards, and the prepackaged food items themselves if the food items contain more than a specified level of added sugar.<sup>66</sup> While the legislation does not define the level of added sugar to trigger the notice requirement, it notes that the threshold could include 100% of the daily-recommended amount for added sugars. The legislation also requires DOHMH to conduct a public outreach campaign to educate establishments about the requirements within three months of promulgating the regulations. Departments will have a year after the regulations are issued to comply.<sup>67</sup> As of April 2022, DOHMH has not issued draft regulations.

### **Philadelphia, PA**

In 2020, the city of Philadelphia enacted a sodium warning law similar New York City’s (described above). Restaurant chains of 15 or more locations nationwide are required to place sodium-warning labels on menu items containing 2,300 mg of sodium or more.<sup>68</sup> Philadelphia’s law requires a warning symbol and a written warning (“SODIUM WARNING”) next to each menu item. In addition to the symbol, restaurants must place a sodium warning statement somewhere on the menu so that it is visible to the customer when ordering.<sup>69</sup> The statement must read: “SODIUM WARNING: Sodium content higher than daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.”<sup>70</sup>

### **Baltimore, MD**

In 2016, Baltimore unsuccessfully introduced a citywide warning label for SSBs that was very similar to San Francisco’s ordinance. The **Sugar-Sweetened Beverages - Warning Bill**, required warning labels that indicated health risks associated with SSBs be placed on menus, at points of purchase, or on the SSB containers themselves.<sup>71</sup> The proposed health notice would state: “Warning: Drinking Beverages with added sugar contributes to tooth decay, obesity, and diabetes. This message is from the Baltimore city health department.” Violators of the ordinance could face fines up to \$1,000. The ordinance failed to get out of committee.<sup>72</sup>

## MENU LABELING:

Menu labeling policies require restaurants and other food service establishments to disclose calorie count and other nutrition information to consumers on menus and menu boards. Similar to other nutritional labeling initiatives such as the federal Nutrition Facts Label, front of package labels, and warning labels, menu labeling aims to empower consumer choice within prepared-food environments and nudge restaurants to reformulate products or replace them with healthier options. Recent federal legislation and regulation requires disclosures of calorie counts and nutrition information by food service establishments and other prepared-food retailers, as well as vending machines.<sup>73</sup>

Following the passage of the 1990 Nutrition Labeling and Education Act (NLEA),<sup>74</sup> which established a uniform and mandatory Nutrition Facts Label on most food packages, scientists,<sup>75</sup> advocacy groups,<sup>76</sup> and professional associations,<sup>77</sup> began pushing for similar nutrition information to be available to customers at restaurants.<sup>78</sup> Because of this advocacy, legislative interest in menu labeling grew at the local, state, and federal levels simultaneously throughout the early 2000s, resulting in the enactment of several laws at the state and local level.<sup>79</sup>

To address this patchwork of policies, **The Patient Protection and Affordable Care Act (ACA)** directed the Food and Drug Administration (FDA) to develop uniform national standards for menu labeling at chain restaurants and other similar food retail establishments with 20 or more locations.<sup>80</sup> In 2014, FDA published a final menu-labeling rule requiring covered establishments to:

- Disclose calorie information adjacent to standard menu items on menus and menu boards;
- Post signage that informs customers of suggested daily caloric intake, with additional nutrition information available upon request; and
- Have additional written information on the premises that includes total calories, total fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, total sugars, fiber, and protein for standard menu items.<sup>81</sup>

The final federal menu-labeling rule explicitly preempts any state or locality from enacting requirements that are not identical to the federal menu-labeling rule except those which apply to restaurants or similar food retail establishments that are not part of a chain with 20 or more locations nationwide and so are not covered by the federal menu labeling rule.<sup>82</sup> This means that states and localities can require other information or require information at additional locations if they are not under the purview of the menu labeling rule.



## ENDNOTES

- <sup>1</sup> Mark W. Becker et al., *Front of the Pack Labels Enhance Attention to Nutrition Information in Novel & Commercial Brands*, 56 *FOOD POL'Y* 76 78-88 (Oct. 1, 2015), [https://pubmed.ncbi.nlm.nih.gov/26417151/#:~:text=Results%3A%20We%20found%20empirical%20evidence,design%20characteristics%20of%20the%20FOP](https://pubmed.ncbi.nlm.nih.gov/26417151/#:~:text=Results%3A%20We%20found%20empirical%20evidence,design%20characteristics%20of%20the%20FOP.). [<https://perma.cc/ZT4M-LHLN>].
- <sup>2</sup> See, e.g., Allison Aubrey & Maria Godoy, *High-Sodium Warnings Hit New York City Menus*, NAT'L PUB. RADIO (NPR) (Dec. 1, 2015), <https://www.npr.org/sections/thesalt/2015/12/01/458031755/in-new-york-city-that-salty-combo-meal-now-comes-with-a-warning> [<https://perma.cc/52V4-59W9>] (referencing New York City Department of Health and Human Hygiene's salt shaker icon that appears next to items containing 2,300 mg or more of sodium).
- <sup>3</sup> See U.S. DEP'T AGRIC. (USDA) & U.S. DEP'T OF HEALTH & HUMAN SERV. (HHS), *DIETARY GUIDELINES FOR AMERICANS 2020–2025: MAKE EVERY BITE COUNT WITH THE DIETARY GUIDELINES* (9th Ed. Dec. 2020), [https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf) [<https://perma.cc/2GJY-5K63>]. The Dietary Guidelines for Americans purpose is to provide advice on what to eat and drink to meet nutrient needs, promote health, and prevent disease. *Id.* Included in these guidelines are recommended daily amounts of various nutrients, which are often used as a baseline from which warning label requirements are formed. *Id.*
- <sup>4</sup> CHANGELAB SOLS., *SUGARY DRINK STRATEGY PLAYBOOK: REDUCING SUGARY DRINKS TO PROMOTE COMMUNITY HEALTH AND EQUITY* 60 (2018), [https://www.changelabsolutions.org/sites/default/files/Sugary\\_Drink\\_Playbook\\_FINAL\\_20180906.pdf](https://www.changelabsolutions.org/sites/default/files/Sugary_Drink_Playbook_FINAL_20180906.pdf), [<https://perma.cc/4HAV-TTQX>] (citing San Francisco, Cal., Health Code § 4203). This law was challenged and by the American Beverage Association on the grounds that it violated their First Amendment rights. *Id.* In an *en banc* rehearing, the Ninth Circuit Court reversed the trial court decision and struck down the San Francisco ordinance only on the ground that the size of the warning label was unduly burdensome. See *Am. Beverage Assoc. v. City of San Francisco*, 916 F.3d 749, 753 (9th Cir. 2019) (En Banc). This case is discussed in further detail in the First Amendment Challenges subsection of the Warning Labels on Products section.
- <sup>5</sup> *Front-of-package warning labeling (FOPWL) in the Caribbean*, PAN AM. HEALTH ORG. (PAHO) & WORLD HEALTH ORG. (WHO), <https://www.paho.org/en/front-package-warning-labeling-fopwl-caribbean> (last visited Apr. 15, 2022) [<https://perma.cc/DJR9-ZU7X>].
- <sup>6</sup> See, e.g., S.B. 347 (Cal. 2019); S.B. 307 (Haw. 2017); S.B. 06435 (N.Y. 2016); H.B. 2798 (Wash. 2016).
- <sup>7</sup> See, e.g., Barry Popkin & Lindsey Smith Taillie, *In response to nutrition warning labels, manufacturers reformulate unhealthy foods*, U. N.C. CHAPEL HILL GLOB. FOOD RSCH. PROG. (July 28, 2020), <https://www.globalfoodresearchprogram.org/in-response-to-nutrition-warning-labels-manufacturers-reformulate-unhealthy-foods/> [<https://perma.cc/Y5PM-BYBC>] (referencing Marcela Reyes et al., *Changes in the amount of nutrient of packaged foods and beverages after the initial implementation of the Chilean Law of Food Labelling and Advertising: A nonexperimental prospective study*, 17(7) *PLOS MED.* e1003220 (July 28, 2020), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1003220> [<https://perma.cc/LE7H-5CL4>]); See also Gaston Ares et al., *Product reformulation in the context of nutritional warning labels: Exploration of consumer preferences towards food concepts in three food categories*, 107 *FOOD RES. INT.* 669 (Mar. 5, 2018), <https://pubmed.ncbi.nlm.nih.gov/29580533/> [<https://perma.cc/V667-5BFX>].
- <sup>8</sup> Emily Pechey et al., *Image-and-text health warning labels on alcohol and food: potential effectiveness and acceptability*, 20 *BMC HEALTH* 376, (2020), <https://doi.org/10.1186/s12889-020-8403-8> [<https://perma.cc/ZG9V-5WNT>] (referencing Daniel H. Rosenblatt et al., *Health warnings promote healthier dietary decision making: Effects of positive versus negative message framing and graphic versus text-based warnings*, 127 *SCI. DIRECT* 280 (Aug. 1, 2018), <https://doi.org/10.1016/j.appet.2018.05.006> (last visited Apr. 15, 2022)).
- <sup>9</sup> *Id.*
- <sup>10</sup> See, e.g., Daniel Romer et al., *Effects of Pictorial Warning Labels for Cigarettes and Quit-Efficacy on Emotional Responses, Smoking Satisfaction, and Cigarette Consumption*, 52(1) *ANNALS BEHAV. MED.* 53 (Jan. 5, 2018), [https://pubmed.ncbi.nlm.nih.gov/28488230/#:~:text=Conclusions%3A%20Pictorial%20warning%20labels%20proposed,self%20efficacy%20exhibiting%20some%20reduction](https://pubmed.ncbi.nlm.nih.gov/28488230/#:~:text=Conclusions%3A%20Pictorial%20warning%20labels%20proposed,self%20efficacy%20exhibiting%20some%20reduction.). [<https://perma.cc/KFR6-QE7Z>]; Seth M. Noar et al., *Pictorial Cigarette Pack Warnings Increase Some Risk Appraisals But Not Risk Beliefs: A Meta-Analysis*, 46(2-3) *HUMAN COMM'N RSCH.* 250 (Apr.-July 2020), <https://academic.oup.com/hcr/article-abstract/46/2-3/250/5670747?re-directedFrom=fulltext> [<https://perma.cc/XZF5-M56C>]; David R. Strong et al., *Effect of Graphic Warning Labels on Cigarette Packs on US Smokers' Cognitions and Smoking Behavior After 3 Months: A Randomized Clinical Trial*, *J. AM. MED. ASS'N (JAMA) NETWORK OPEN* (Aug. 4, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2782665#:~:text=Findings%20This%20randomized%20clinical%20trial,cigarette%20cessation%20or%20consumption%20levels> [<https://perma.cc/HX99-WZTW>]; Diane B. Francis et al., *Impact of tobacco-pack pictorial warnings on youth and young adults: A systematic review of experimental studies*, 17 *TOBACCO INDUCED DISEASES* 41 (May 15, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6662785/#:~:text=CONCLUSIONS,on%20>

- non%2Dcigarette%20tobacco%20products. [<https://perma.cc/JKB6-LLPT>].
- <sup>11</sup> Pechey et al., *Image-and-text health warning labels on alcohol and food*, *supra* note 8.
- <sup>12</sup> See LINDSEY SMITH TAILLIE ET AL., VITAL STRATEGIES & GLOB. FOOD RSCH. PROG. U. N.C. AT CHAPEL HILL, WHAT'S IN OUR FOOD? A GUIDE TO INTRODUCING EFFECTIVE FRONT-OF-PACKAGE NUTRIENT LABELS (2020), <https://www.vitalstrategies.org/wp-content/uploads/Whats-in-Our-Food-guide-to-introducing-front-of-package-labels.pdf>. [<https://perma.cc/Q5LN-QYJK>].
- <sup>13</sup> Ley 20.606, *Sobre la composición de los alimentos y su publicidad* (Law 20.606, on the nutritional composition of foods and their advertising).
- <sup>14</sup> See Lindsey Smith Taillie et al., *An evaluation of Chile's Law of Food Labeling and Advertising on sugar-sweetened beverage purchases from 2015 to 2017: A before-and-after study*, 17(2) PLOS MED e1003015 (Feb. 11, 2020), <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1003015> [<https://perma.cc/4QHF-39A5>] [hereinafter Taillie et al., *An evaluation of Chile's Law*].
- <sup>15</sup> See, e.g., Norma Oficial Mexicana, NOM-051-SCFI/SSA1-2010, Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados-Información comercial y sanitaria, Diario Oficial de la Federación [DOF] 27-03-2020 (Mex.).
- <sup>16</sup> See, e.g., Taillie, *An evaluation of Chile's Law*, *supra* note 14; Christina A. Roberto et al., *The Influence of Sugar-Sweetened Beverage Health Warning Labels on Parents' Choices*, 137(2) PEDIATRICS e20153185 (Feb. 1, 2016), <https://doi.org/10.1542/peds.2015-3185> [<https://perma.cc/NP3N-5XU9>].
- <sup>17</sup> Roberto, et al., *The Influence of Sugar-Sweetened Beverage Health Warning Labels on Parents' Choices*, *supra* note 16.
- <sup>18</sup> Ruopeng An et al., *Impact of Sugar-Sweetened Beverage Warning Labels on Consumer Behaviors: A Systematic Review and Meta-Analysis*, 60(1) AM. J. PREVENTATIVE MED. 115 (Oct. 12, 2020), [https://www.ajpmonline.org/article/S0749-3797\(20\)30321-4/fulltext](https://www.ajpmonline.org/article/S0749-3797(20)30321-4/fulltext) (last visited Apr. 15, 2022).
- <sup>19</sup> See Caroline Miller et al., *Warning labels and interpretive nutrition labels: Impact on substitution between sugar and artificially sweetened beverages, juice and water in a real-world selection task*, 169 APPETITE 105818 (Feb. 1, 2022), [https://pubmed.ncbi.nlm.nih.gov/34838869/#:~:text=100%25%20fruit%20juice%20selection%20decreased,and%20promoted%20substitution%20to%20water](https://pubmed.ncbi.nlm.nih.gov/34838869/#:~:text=100%25%20fruit%20juice%20selection%20decreased,and%20promoted%20substitution%20to%20water.). [<https://perma.cc/B2Q9-F2E6>]; Cindy W. Leung et al., *Warning Labels Reduce Sugar-Sweetened Beverage Intake among College Students*, 151(1) J. NUTRITION 179 (Jan. 2021), <https://academic.oup.com/jn/article/151/1/179/6007430> [<https://perma.cc/NLZ4-HTK7>].
- <sup>20</sup> CTR. FOR SCI. IN PUB. INTEREST (CSPI), NEW YORKERS SUPPORT ADDED SUGAR WARNINGS ON CHAIN RESTAURANT MENUS, [https://cspinet.org/sites/default/files/attachment/New%20York%20Poll\\_FINAL.pdf](https://cspinet.org/sites/default/files/attachment/New%20York%20Poll_FINAL.pdf) (last visited Apr. 15, 2022) [<https://perma.cc/RZL8-2F6R>].
- <sup>21</sup> Alyssa J. Moran & Christina A. Roberto, *Health Warning Labels Correct Parents' Misperceptions About Sugary Drink Options*, 55 AM. J. PREVENTATIVE MED. 19, 19 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6128141/> [<https://perma.cc/F2PU-W2Y5>].
- <sup>22</sup> *Id.*
- <sup>23</sup> Mary Katherine A. Schutt & Shannon Monnat, *The Sugar Industry Gets Rich and We Get Sick: Issue Brief #43*, Syracuse U. LERNER CTR. FOR PUB. HEALTH PROMOTION (Jan. 14, 2021), <https://surface.syr.edu/cgi/viewcontent.cgi?article=1110&context=lerner> [<https://perma.cc/B4XX-WTW4>].
- <sup>24</sup> Moran & Roberto, *Health Warning Labels Correct Parents' Misperceptions About Sugary Drink Options*, *supra* note 21.
- <sup>25</sup> Schutt & Monnat, *The Sugar Industry Gets Rich and We Get Sick*, *supra* note 23.
- <sup>26</sup> Moran & Roberto, *Health Warning Labels Correct Parents' Misperceptions About Sugary Drink Options*, *supra* note 21.
- <sup>27</sup> HARV. L. SCH. FOOD. L. & POL'Y CLINIC (FLPC), APPROACHES TO REDUCING CONSUMPTION OF SUGAR (ARCS) PROJECT TECHNICAL ASSISTANCE: ARCS POLICY REVIEW MEMORANDUM 19 (2020) (citing Jessica Reid et al., *Socioeconomic status and smoking in Canada, 1999–2006: Has there been any progress on disparities in tobacco use?*, 101(1) CAN. J. PUB. HEALTH 73 (Jan.–Feb. 2010), <https://doi.org/10.1007/bf03405567> [<https://perma.cc/GW4H-J4P8>]) [memorandum on file with authors].
- <sup>28</sup> *Id.* (citing M Siahpush et al., *Socioeconomic and country variations in knowledge of health risks of tobacco smoking and toxic constituents of smoke: results from the 2002 International Tobacco Control (ITC) Four Country Survey*, 15(Supp. 3) Tobacco Control iii65 (2006)), <https://pubmed.ncbi.nlm.nih.gov/16754949/> [<https://perma.cc/Q3R7-6GBN>].
- <sup>29</sup> See, e.g., Ley 20.606, *Sobre la composición de los alimentos y su publicidad* (Law 20.606, on the nutritional composition of foods and their advertising); see also *Front of Pack Label Regulations Maps: Countries with mandatory or voluntary interpretive labels on packaged foods and drinks*, U. N.C. CHAPEL HILL GLOB. FOOD RSCH. PROG., [https://www.globalfoodresearchprogram.org/wp-content/uploads/2018/11/FOP\\_Label\\_Regulations\\_maps.pdf](https://www.globalfoodresearchprogram.org/wp-content/uploads/2018/11/FOP_Label_Regulations_maps.pdf) (last visited Apr. 16, 2022) [<https://perma.cc/6LTZ-5K4K>] (showing other examples of mandatory or voluntary warning labels on foods).
- <sup>30</sup> N.Y.C. HEALTH, NEW SODIUM (SALT) WARNING RULE: WHAT FOOD SERVICE ESTABLISHMENTS NEED TO KNOW (Aug. 2016), <https://www1.nyc.gov/assets/doh/downloads/pdf/cardio/sodium-warning-rule.pdf> [<https://perma.cc/4A94-Q4ZM>]; See Aubrey & Godoy, *High-Sodium Warnings Hit New York City Menus*, *supra* note 2.

- 31 Robert Hamlin & Benjamin Hamlin, *An Experimental Comparison of the Impact of ‘Warning’ and ‘Health Star Rating’ FoP Labels on Adolescents’ Choice of Breakfast Cereals in New Zealand*, 12(6) NUTRIENTS 13 (June 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7352816/> [<https://perma.cc/THM7-T4KF>].
- 32 *Id.*
- 33 Jennifer L. Pomeranz, *Outstanding Questions In First Amendment Law Related to Food Labeling Disclosure Requirements For Health*, 34 HEALTH AFFS. 11 (Nov. 2015), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0616> [<https://perma.cc/PMP7-UPFY>].
- 34 U.S. CONST. amend. 1; *See Bigelow v. Virginia*, 421 U.S. 809 (1975); *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *but see Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985) (holding that at least in some contexts, the government may require “purely factual and uncontroversial” disclosures, as long as the requirement is “reasonably related” to a substantial governmental interest and not “unjustified or unduly burdensome.”).
- 35 *See, e.g., West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).
- 36 *See, e.g., National Institute of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018); *See also Zauderer v. Office of Disciplinary Counsel*, *supra* note 34.
- 37 Pomeranz, *Outstanding Questions In First Amendment Law Related to Food Labeling Disclosure Requirements For Health*, *supra* note 33.
- 38 S.F., CAL., HEALTH CODE § 4203.
- 39 *Id.*
- 40 *See Am. Beverage Ass’n v. City & Cty. of San Francisco*, 916 F.3d 749 (9th Cir. 2019) (En Banc).
- 41 *See Id.*
- 42 *Nat’l Rest. Ass’n v. N.Y.C. Dep’t Health & Mental Hygiene*, No. 654024/15, 2016 WL 751881 (N.Y. Sup. Ct. 2016).
- 43 *Id.*, *Nat’l Rest. Ass’n v. N.Y.C. Dep’t Health & Mental Hygiene*, 148 A.D.3d 169, 49 N.Y.S.3d 18 (2017), *aff’d*.
- 44 *Id.*
- 45 81 N.Y.C.R. § 81.46 (2016).
- 46 148 A.D.3d 169, 49 N.Y.S.3d 18 (2017), *supra* note 43.
- 47 *Id.*
- 48 *See, e.g., Eleanore Alexander et al., Sodium menu labelling: priorities for research and policy*, 24(6) PUB. HEALTH NUTRITION 1542 (Oct. 9, 2020), <https://pubmed.ncbi.nlm.nih.gov/33032669/> [<https://perma.cc/7Z9X-WDXJ>].
- 49 Letter from George A. Nilson, City Solicitor, City of Baltimore, to The Honorable President and Members of the Baltimore City Council, Baltimore City Council, The City of Baltimore (Jun. 2, 2016).
- 50 Jennifer L. Pomeranz et al., *Sugar-Sweetened Beverage Warning Policies in the Broader Legal Context: Health and Safety Warning Laws and the First Amendment*, 58(6) AM. J. PREVENTIVE MED. 783–788 (June 1, 2020), [https://www.ajpmonline.org/article/S0749-3797\(20\)30055-6/fulltext](https://www.ajpmonline.org/article/S0749-3797(20)30055-6/fulltext) [<https://perma.cc/Y7Z4-LM5H>].
- 51 Austin S. Adams & Judy Edworthy, *Quantifying and predicting the effects of basic text display variables on the perceived urgency of warning labels: Tradeoffs involving font size, border weight and colour*, 38(11) ERGONOMICS 2221, 2221 (Mar. 27, 2007), <https://www.tandfonline.com/doi/abs/10.1080/00140139508925264> [<https://perma.cc/U9JV-L5UR>].
- 52 *Id.*
- 53 *Id.*
- 54 Andrew A. Strasser, et al., *Graphic Warning Labels in Cigarette Advertisements: Recall and Viewing Patterns*, 43(1) AM. J. PREVENTATIVE MED. 41 (July 1, 2012), [https://www.ajpmonline.org/article/S0749-3797\(12\)00207-3/fulltext](https://www.ajpmonline.org/article/S0749-3797(12)00207-3/fulltext) (last visited Apr. 16, 2022).
- 55 *See Rizal Edy Halim, Warning Label Placement: The Difference Effect of Social Risk and Health Risk Consequences*, 22(2) EUR. RSCH STUDIES J. 282 (Nov. 4, 2019), <https://www.ersj.eu/journal/1439> [<https://perma.cc/6UJP-G35P>]; *see also Mary Ellen Wewers, Impact of Graphic vs. Text-Based Health Warning Labels*, U.S. FOOD & DRUG ADMIN. (FDA) (Sept. 1, 2012), <https://www.fda.gov/tobacco-products/research/impact-graphic-vs-text-based-health-warning-labels> [<https://perma.cc/7DB6-46W3>].
- 56 *See, e.g., Y. Tony Yang et al., New Graphic Tobacco Warnings and the First Amendment*, 6(4) JAMA ONCOLOGY 473 (Feb. 13, 2020), <https://jamanetwork.com/journals/jamaoncology/fullarticle/2761196?widget=personalizedcontent&previousarticle=187246> [<https://perma.cc/YVV7-V5NS>]; Gregory Curfman, *Graphic Cigarette Warning Labels, the First Amendment, and Public Right to Accurate Public Health Information: Graphic Cigarette Warning Labels Back Under Legal Scrutiny*, 2(9) JAMA HEALTH FORUM e21286 (Sept. 24, 2021), <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2784491> [<https://perma.cc/8UEC-C74N>].
- 57 S.B. 1000, 2013-14 Leg. (Cal. 2014).
- 58 S.B. 1000, 2013-14 Leg., Bill Analysis (Cal. 2014), [http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0951-1000/sb\\_1000\\_cfa\\_20140528\\_131714\\_sen\\_floor.html](http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0951-1000/sb_1000_cfa_20140528_131714_sen_floor.html) [<https://perma.cc/UKR9-74RA>].

- <sup>59</sup> S.B. 1000, 2013-14 Leg., Status (Cal. 2014); See Steve Holt, *California Soda Warning Label Bill Dies as Research Suggests Efficacy*, CIVIL EATS (Jan. 14, 2016), <https://civileats.com/2016/01/14/california-soda-warning-label-bill-dies-as-research-suggests-efficacy/> [<https://perma.cc/Z6F5-F9VR>].
- <sup>60</sup> JIM O'HARA, AVIVA MUSICUS, & ANGELA AMICO, CSPI, *BIG SODA VS. PUBLIC HEALTH: HOW THE INDUSTRY OPENS ITS CHECKBOOK TO DEFEAT HEALTH MEASURES 4* (Aug. 24, 2015), <https://www.cspinet.org/sites/default/files/media/documents/resource/big-soda-vs-public-health-report.pdf> [<https://perma.cc/5PP4-2WQS>]; See also Holt, *California Soda Warning Label Bill Dies as Research Suggests Efficacy*, *supra* note 59.
- <sup>61</sup> S.B. 203, 2015-16 Leg. (Cal. 2015).
- <sup>62</sup> A92329B, 2015-16 Leg. (N.Y. 2015).
- <sup>63</sup> *Id.*
- <sup>64</sup> *Id.*
- <sup>65</sup> N.Y.C. CTY. COUNCIL, INT-1326(B), *The Sweet Truth Act* (N.Y. 2019); SEE ALSO MARISSA SHELDON, *FOOD POLICY SNAPSHOT: "SWEET TRUTH Act" Requires High-Sugar Warnings on Menus at NYC Chain Restaurants*, HUNTER COLL. N.Y.C. FOOD POL'Y CTR. (Dec. 28, 2021), <https://www.nycfoodpolicy.org/food-policy-snapshot-nyc-sweet-truth-act/> [<https://perma.cc/86NT-655J>].
- <sup>66</sup> *The Sweet Truth Act*, *supra* note 65; see also Sheldon, *Food Policy Snapshot: "Sweet Truth Act"*, *supra* note 65.
- <sup>67</sup> *The Sweet Truth Act*, *supra* note 65; see also Sheldon, *Food Policy Snapshot: "Sweet Truth Act"*, *supra* note 65.
- <sup>68</sup> PHILA., PA., CODE § 6-310.
- <sup>69</sup> *Id.*
- <sup>70</sup> FOOD FIT PHILLY, *UNDERSTANDING PHILADELPHIA'S SODIUM WARNING LAW: WHAT CHAINS NEED TO KNOW* (2019), <http://foodfitphilly.org/wp-content/uploads/2019/09/Sodium-warning-label-admin-guidance-document-Sept-2019.pdf> [<https://perma.cc/EQ8W-KC2E>].
- <sup>71</sup> BALT., MD., CODE § 16-0617.
- <sup>72</sup> *Id.*
- <sup>73</sup> U.S. FDA, *FOOD LABELING; NUTRITION LABELING OF STANDARD MENU ITEMS IN RESTAURANTS AND SIMILAR RETAIL FOOD ESTABLISHMENTS: FINAL RULE*, 79 F.R. 71155 (Dec. 1, 2014).
- <sup>74</sup> *Nutrition Labeling and Education Act of 1990*, P.L. 101-535, 104 Stat. 2353 (1990).
- <sup>75</sup> U.S. OFF. SURGEON GEN., CTRS. FOR DISEASE CONTROL & PREVENTION (CDC) OFF. DISEASE PREVENTION & HEALTH PROMOTION & NAT'L INST. HEALTH (NIH), *THE SURGEON GENERAL'S CALL TO ACTION TO PREVENT AND DECREASE OVERWEIGHT AND OBESITY* (2001), <https://www.ncbi.nlm.nih.gov/books/NBK44206/> [<https://perma.cc/4JFV-HMVE>].
- <sup>76</sup> *Menu Labeling Timeline: Key milestones in CSPI's campaign to achieve menu labeling nationwide*, CSPI (2018), <https://cspinet.org/sites/default/files/menu-timeline-2.pdf> [<https://perma.cc/H2LF-X6NP>].
- <sup>77</sup> Jeffrey P. Koplan & Inst. Med. Comm. On Prevention of Obesity in Child. & Youth et al., *Preventing Childhood Obesity: Health in the Balance*, PREVENTING CHILDHOOD OBESITY (2005), <https://pubmed.ncbi.nlm.nih.gov/22379642/> [<https://perma.cc/XY75-2QX6>].
- <sup>78</sup> E. A. Wartella & Inst. Med. Comm. on Examination of Front-of-Package Nutrition Rating Sys. & Symbols, *Front-of-Package Nutrition Rating System and Symbols: Phase I*, NAT'L ACADS. PRESS (2010), <https://www.ncbi.nlm.nih.gov/books/NBK209859/> [<https://perma.cc/PHR4-J2G5>].
- <sup>79</sup> See, e.g., Washington D.C. menu labeling ordinance 2003 D.C. B15-0387 (2003)/B-16-049 (2005), proposed; N.Y.C., N.Y., HEALTH CODE tit. 24, § 81.50 (2008); CAL. HEALTH & SAFETY § 114094 (amended 2011).
- <sup>80</sup> Patient Protection and Affordable Care Act. Pub. L. No. 111-148, 124 Stat. 119 (2010).
- <sup>81</sup> U.S. FDA, *FOOD LABELING*, *supra* note 73 at § 27.
- <sup>82</sup> CHANGLAB SOLS., *WHAT CAN STATES AND LOCAL GOVERNMENTS DO ABOUT MENU LABELING?* (2018), [https://www.changelabsolutions.org/sites/default/files/MenuLabelingFS\\_20160323\\_Updated-20180510.pdf](https://www.changelabsolutions.org/sites/default/files/MenuLabelingFS_20160323_Updated-20180510.pdf) [<https://perma.cc/6ES2-JK8R>]; see U.S. FDA, *FOOD LABELING*, *supra* note 73 at § 27.



# HEALTHY DEFAULT POLICY

## What is a Healthy Default Policy?

A healthy default policy encourages individuals to consume healthier foods or beverages by providing people with preselected default food or beverage options that are healthier (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule).<sup>1</sup> Healthy default policies still allow consumers to request an item on the menu that is not the default, but they are designed to “nudge” consumers away from unhealthy foods and beverages like those high in added sugars. They are among the most widely used solutions to sugar reduction,<sup>2</sup> and they can be adopted voluntarily or mandated, for example through a government ordinance.<sup>3</sup> Voluntary or opt-in programs allow restaurants to decide whether or not they would like to serve healthy default beverages.<sup>4</sup> For instance, several of the leading fast-food chains have voluntarily implemented healthy default beverages by serving water, milk (low-fat, non-fat, or 1%), and 100% juices on children’s meals rather than SSBs.<sup>5</sup> In contrast, mandatory policies require all restaurants to comply with healthy default policies.<sup>6</sup>

Businesses and governments can utilize healthy default policies in a variety of environments, including fast-food meal selection, school lunch programs, and children’s meals at restaurants.<sup>7</sup> As noted above, a primary example of a healthy default policy is beverage selection on children’s meals. A local government ordinance can require restaurants within the locality to feature water, sparkling water, or milk with no added sweeteners as the default beverage that accompanies children’s meals, unless the customer specifically requests another drink.<sup>8</sup> Customers and policymakers generally favor healthy default policies as they do not ask individuals to reshape their behavior to something more health promoting, but rather preserve the decision-making capacity of the consumer and allow them to opt-out, while simultaneously “nudging” them towards the healthiest option.<sup>9</sup>

## What are the Advantages of Healthy Default Policies?

Healthy default is a well-founded model from a behavioral and psychological perspective, as the policy is designed to “nudge” choices in a direction beneficial to public health without limiting the options available to the consumer.<sup>10</sup> The policy takes advantage of the human tendency to accept pre-selected options, or defaults, while also allowing individuals to retain access to all choices, even those deemed less healthy. Studies show that after regularly exposing consumers to default options, consumers develop a pattern of behavior in favor of these default options.<sup>11</sup> These patterns in turn, can have a lasting impact on long-term health, especially for children and young adults.<sup>12</sup> Research also suggests that parents favor healthy default policies as they ease decision-making and reduce parent-child conflict at fast-food restaurants.<sup>13</sup>

Applying healthy defaults to fast-food and other food service environments has significant potential for health improvements, though it is important to note that data on healthy default policies are still

limited. Studies show that one-third of all children and adolescents aged 2-19 in the United States consume food from fast-food establishments on a given day.<sup>14</sup> Given the frequency of consumption, any program to improve the healthiness of food offered at fast-food establishments, including via healthy defaults, could have a large impact. As noted above, many fast-food chains and restaurants have already voluntarily adopted programs limiting sugary drinks in meals served to kids.<sup>15</sup> However, the implementation and efficacy of such voluntary actions have been mixed,<sup>16</sup> perhaps because fast-food restaurants may not update their in-person menu boards to reflect the healthy default. Healthy default policies will be strongest when they are required via government intervention through policy, rather than adopted as voluntary initiatives.

## What are the Most Common Barriers to Implementing Healthy Default Policies?

There are numerous legal, political, economic, and social roadblocks to overcome when implementing healthy default policies. It is useful to look at states and localities that have implemented healthy default policies to understand possible challenges to the policy. Several states, (**California, Hawaii,** and **Delaware**) and cities (**Philadelphia, PA, New York City, NY, Durham, NC, Lafayette, CO, Baltimore, MD,** and **Louisville, KY**) have enacted a healthy default policy.<sup>17</sup>

### Lack of Data

Healthy default policies are relatively recent innovations, developing and maturing along with the whole field of behavioral economics and “nudge-like” interventions in the last decade or so.<sup>18</sup> The newness of these policies means that there is limited data collection on their impact, and the data that has been collected has been mixed. For example, one study that simulated parents’ ordering choices for children’s beverages, found the healthy default policy led to reductions in calories ordered from unhealthy beverages, but the difference was not large enough to be statistically significant.<sup>19</sup>

### Legal Challenges to Healthy Default Policies

As a threshold legal question, cities must ensure that their proposed healthy default policy is not preempted by state or federal law. Preemption as a legal concept is discussed in detail in the General Legal Setting section of this Toolkit. In sum, if a state has adopted or prohibited healthy default policy, then the city or local municipality may be preempted from adopting and enforcing a duplicative or conflicting policy.<sup>20</sup> This is because, higher levels of government (*i.e.*, the state), can pass laws that prohibit lower levels of government from requiring anything more than or different from what the higher-level law requires or can forbid lower levels of government from passing certain laws.<sup>21</sup> For example, in **Mississippi**, the state legislature passed a bill that required the state to issue all regulations related to food nutrition labeling or consumer incentive items (*e.g.*, fast food toys) at food service operations—prohibiting local governance on the issue.<sup>22</sup>

A city or local municipality must also ensure it has the legal authority to adopt a healthy default policy. As noted in the General Legal Section of this Toolkit, local governments only have authorities that have been expressly delegated to them through the state. Accordingly, local governments must have authority over matters concerning public health to adopt healthy default options, which can be authorized via enumerated powers, Home Rule, and other mechanisms discussed in greater detail in the General Legal Settings section of this Toolkit.

### Issues in Design of Healthy Default Policies

Healthy default policies are only as strong as the ‘default’ option selected and the scope of its

implementation. Some currently implemented healthy default policies may be less effective because they include unhealthy options as part of the 'healthy default' or they do not cover a wide enough range of environments. For example, there is a discrepancy over whether to include flavored milk, flavored water, and fruit juices as healthy default options, given that these may be healthier than SSBs, but are still high in added sugars.<sup>23</sup> Including flavored milk and other beverages high in added sugars as "healthy default" options may dampen the effect of the policy. Similarly, many of these policies focus just on beverage-selection at fast-food restaurants, which are low hanging fruit, but also a relatively narrow environment. To increase the impact of healthy default policies, they should be applied more broadly to other environments where children eat such as community centers, sports facilities, and other restaurants.

## Issues with Restaurant Buy-In

Restaurants may be reluctant to support a healthy default policy. Restaurants may face obstacles implementing healthy default policies including changing their menus, their marketing, the types of products they sell, and their staff training and instructions to meet default requirements.<sup>24</sup> For example, one study found that few restaurant staff offered a default healthy beverage even when required by healthy default beverage policies.<sup>25</sup> Despite poor buy-in on the staff level shown by some research, evidence shows that there is likely no negative financial impact on restaurants in making children's meals healthier.<sup>26</sup> In fact, research suggests that restaurant chains that offered these options saw improved sales, increased servings, and more traffic.<sup>27</sup> Moreover, half a dozen large restaurant chains have demonstrated that this model is financially feasible, having already voluntarily committed to removing SSBs from being the default on children's menus.<sup>28</sup> Nevertheless, to dispel any concerns about increased operational costs or lower sales, policymakers introducing a citywide healthy default policy, could offer grants or incentives for restaurants to comply.

## Healthy Default Case Studies

### California

The state of California became the first state to pass a health default policy, S.B. 1192.<sup>29</sup> **The Healthy by Default Kids' Meals** law went into effect in January 1, 2019, requiring any restaurant that sells children's meals to serve default beverages such as water, unsweetened flavored water, sparkling water, unflavored milk, or a nondairy alternative that must not contain more than 130 calories per serving.<sup>30</sup> Violation is punishable by fines not to exceed \$500.<sup>31</sup> Preliminary research on the effectiveness of the policy suggests it was difficult to spread awareness of the implementation of the policy across the state.<sup>32</sup>

### Baltimore, MD

The city of Baltimore enacted the **Baltimore City Healthy Beverages for Children's Meals** bill in July 2018.<sup>33</sup> This law prevents soda or other sugary beverages from being the default beverage on children's meal menus across Baltimore. The law makes the default beverage choices on children's menus in food service facilities in Baltimore water, sparkling water, or flavored water with no added natural or artificial sweeteners, milk or non-dairy milk alternative, or 100% fruit juice or juice combined with water or sparkling water with no added natural or artificial sweeteners in a serving size of no more than 8 ounces. SSBs can still be ordered by request, giving consumers freedom of choice.

### Wilmington, DE

The city of Wilmington's healthy default policy went into effect in 2019.<sup>34</sup> This policy, **Ordinance 18-046**, requires restaurants to serve default beverages such as water, unsweetened flavored water, sparkling water, regular low-fat or fat-free milk or a nondairy alternative, or unsweetened fruit

juice.<sup>35</sup> The city of Wilmington also requires restaurants to display default beverages on children’s menu at their restaurant.<sup>36</sup> Restaurants that do not meet these set requirements face penalties.<sup>37</sup>

The policy was implemented without significant media coverage or education campaigns. As a result, many restaurant workers were unfamiliar with its requirements and still did not comply, as of two years after the policy was implemented.<sup>38</sup> These findings suggest communicating healthy beverage default policies to restaurant owners is an important step to ensuring its effectiveness.



## ENDNOTES

- <sup>1</sup> See Katharine L. Loeb et al., *The application of defaults to optimize parents' health-based choices for children*, 133 APPETITE 368 (2017), <https://pubmed.ncbi.nlm.nih.gov/28257942/> [<https://perma.cc/9A67-RNJJ>].
- <sup>2</sup> See generally Caitlin Schille, *The Power of Defaults*, HEALTH MAG. (Nov. 17, 2017), <https://healthy-magazines.com/the-power-of-defaults/> [<https://perma.cc/MD2W-SURD>].
- <sup>3</sup> See generally *Id.*
- <sup>4</sup> Phoebe Harpainter et al., *Voluntary Kids' Meal Beverage Standards: Are They Sufficient to Ensure Healthier Restaurant Practices and Consumer Choices?*, 17(15) INT'L J. ENV'T RSCH. PUB. HEALTH 5275 (Jul. 22, 2020), <https://pubmed.ncbi.nlm.nih.gov/32707838/> [<https://perma.cc/8Z6P-XFBR>].
- <sup>5</sup> *Id.*
- <sup>6</sup> *Id.*
- <sup>7</sup> See generally Schille, *The Power of Defaults*, *supra* note 2.
- <sup>8</sup> *California: Healthy Kid's Meals: How Local Action Can Spur Policy Change Across the Nation*, CHANGELAB SOLS. (Oct. 21, 2019), <https://www.changelabsolutions.org/story/healthy-kids-meals-policy-change-across-nation> [<https://perma.cc/7Q9H-DNA2>].
- <sup>9</sup> See CASS R. SUNSTEIN & RICHARD H. THALER, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (Yale U. Press 2008).
- <sup>10</sup> *Id.*
- <sup>11</sup> Sara E. Benjamin-Neelon & Y. Tony Yang, *Recent progress in children's meals law in restaurants in Baltimore City and California State: Making a healthy beverage option the default choice*, 123 PREVENTATIVE MED. 160, 160 (Jun. 2019), <https://pubmed.ncbi.nlm.nih.gov/30910520/> [<https://perma.cc/2L3X-86BB>] [hereinafter Benjamin-Neelon & Yang, *Recent progress in children's meals law*].
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*
- <sup>14</sup> CHERYL D. FRYAR ET AL., U.S. DEP'T HEALTH & HUMAN SERVS. (HHS) CTRS. FOR DISEASE CONTROL & PREVENTION (CDC) NAT'L CTR. FOR HEALTH STATS. (NCHS), *FAST FOOD INTAKE AMONG CHILDREN AND ADOLESCENTS IN THE UNITED STATES, 2015–2018: NAT'L HEALTH & NUTRITION EXAMINATION SURVEY, DATA BRIEF NO. 213* (Aug. 2020), <https://www.cdc.gov/nchs/data/databriefs/db375-h.pdf> [<https://perma.cc/MF4X-REZQ>].
- <sup>15</sup> CHANGELAB SOLS., *SUGARY DRINK STRATEGY PLAYBOOK: REDUCING SUGARY DRINKS TO PROMOTE COMMUNITY HEALTH AND EQUITY 40* (2018), [https://www.changelabsolutions.org/sites/default/files/Sugary\\_Drink\\_Playbook\\_FINAL\\_20180906.pdf](https://www.changelabsolutions.org/sites/default/files/Sugary_Drink_Playbook_FINAL_20180906.pdf), [<https://perma.cc/4HAV-TTQX>].
- <sup>16</sup> *Id.* at 41.
- <sup>17</sup> Healthy Eating Rsch., *Assessing the Implementation of Kids' Meals Healthy Default Beverage Policies in the State of California and City of Wilmington, Del.: Research Brief*, ROBERT WOOD JOHNSON FOUND. 1 (Aug. 2020), <https://healthyeatingresearch.org/wp-content/uploads/2020/08/HER-Default-Drinks-Brief-081820.pdf> [<https://perma.cc/GT7W-JC5R>] [hereinafter Healthy Eating Rsch., *Assessing Kids' Meals Healthy Default Beverage Policies*].
- <sup>18</sup> See SUNSTEIN & THALER, *NUDGE*, *supra* note 9.
- <sup>19</sup> Christina A. Roberto & Pasquale E. Rummo et al., *An online randomized trial of healthy default beverages and unhealthy beverage restrictions on children's menu*, 20 PREVENTATIVE MED. REPS. 101279 (Dec. 4, 2020), <https://peachlab.org/wp-content/uploads/2021/04/An-online-randomized-trial-of-healthy-default-beverages-and-unhealthy.pdf> [<https://perma.cc/XZT2-KPM5>].
- <sup>20</sup> CHANGELAB SOLS., *FUNDAMENTALS OF PREEMPTION* (June 2019), [https://www.changelabsolutions.org/sites/default/files/2020-06/Fundamentals\\_of\\_Preemption\\_FINAL\\_Accessible-PDF-for-Screen\\_20200608\\_0.pdf](https://www.changelabsolutions.org/sites/default/files/2020-06/Fundamentals_of_Preemption_FINAL_Accessible-PDF-for-Screen_20200608_0.pdf) [<https://perma.cc/KR3E-QRY6>].
- <sup>21</sup> *Id.* at 2.
- <sup>22</sup> MISS. CODE ANN. § 75-29-901 (2013).
- <sup>23</sup> See, e.g., DAVIS, CAL., MUN. CODE, ch. 17, art. 17.02 (2018); LAFAYETTE, COLO., CODE ORD., ch. 55, art. IX, sections 55-175 to 55-177 (2018); BALT., MD., HEALTH CODE § 6-509 (2018) (enacted by Ordinance 18-126 on Apr. 23, 2018).
- <sup>24</sup> N. Craig Smith, Daniel G. Goldstein, & Eric J. Johnson, *Choice Without Awareness: Ethical and Policy Implications of Defaults*, 32(2) J. PUB. POL'Y & MKTG. 159 (2018), <https://journals.sagepub.com/doi/10.1509/jppm.10.114> (last visited Apr. 16, 2022).
- <sup>25</sup> Healthy Eating Rsch., *Assessing Kids' Meals Healthy Default Beverage Policies*, *supra* note 17.
- <sup>26</sup> Benjamin-Neelon & Yang, *Recent progress in children's meals law*, *supra* note 11.
- <sup>27</sup> See, e.g., Carolyn Schierhorn, *Catering to Kids—and Their Parents*, INST. FOOD TECHNOLOGISTS (IFT) FOOD TECH. MAG. (Feb. 1, 2022), <https://www.ift.org/news-and-publications/food-technology-magazine/issues/2022/>

- february/features/catering-to-kids-and-their-parents [https://perma.cc/Q7HU-Z6JY]; Jeff Fromm, *Snacking Habits Of Millennial Parents Are Shaping The Category For Future Generations*, FORBE CMO NETWORK (Sept. 9, 2015), <https://www.forbes.com/sites/jefffromm/2015/09/09/snacking-habits-of-millennial-parents-are-shaping-the-category-for-future-generations/?sh=45adc3844183> [https://perma.cc/6425-QV25]; Patricia Cobe, *Kids' Menus Get An Upgrade*, REST. BUS. (Sep. 09, 2021), [https://www.restaurantbusinessonline.com/food/kids-menus-get-upgrade?utm\\_source=Marketo&utm\\_medium=email&utm\\_campaign=NL\\_RB\\_Daily\\_09-10-21&LID=7700857&mkt\\_tok=NTYxLVpOUc04OTcAAAF\\_bxPowX209UqtPIBOCG\\_d3\\_1\\_UPrLvUjEXv2DJBQwJYWQT7yJwA6rU9YKoCJGOlcCGcW8SfMzYR-LNLxkpMr1UxVkoEBW8EvA\\_zrflfBGSNpy](https://www.restaurantbusinessonline.com/food/kids-menus-get-upgrade?utm_source=Marketo&utm_medium=email&utm_campaign=NL_RB_Daily_09-10-21&LID=7700857&mkt_tok=NTYxLVpOUc04OTcAAAF_bxPowX209UqtPIBOCG_d3_1_UPrLvUjEXv2DJBQwJYWQT7yJwA6rU9YKoCJGOlcCGcW8SfMzYR-LNLxkpMr1UxVkoEBW8EvA_zrflfBGSNpy) [https://perma.cc/G3HU-QQ35]; *Millennial Parents Influence Changes to Kids Menus*, REST. BUS. (Feb. 27, 2020), <https://www.restaurantbusinessonline.com/food/millennial-parents-influence-changes-kids-menus> [https://perma.cc/Q8J4-53QB]; Hoang Nguyen, *Millennials' food choices are driven by quality and they're willing to pay more for it*, YOUGOVAMERICA (Sept. 9, 2019), <https://today.yougov.com/topics/consumer/articles-reports/2019/09/09/millennials-food-choices-are-driven-quality> [https://perma.cc/2FKW-SWSD].
- <sup>28</sup> Benjamin-Neelon & Yang, *Recent progress in children's meals law*, *supra* note 11.
- <sup>29</sup> *California adopts first state-wide Healthy-by-Default Kids' Meals Drink Law*, PUB. HEALTH ADVOCs. (Oct., 3, 2018), <https://phadvocates.org/california-adopts-first-state-wide-healthy-by-default-kids-meals-drink-law/> [https://perma.cc/QAE5-6JEL].
- <sup>30</sup> CNTY. L.A. PUB. HEALTH ENV'T HEALTH, HEALTHY BY DEFAULT CHILDREN'S MEAL BEVERAGE LAW, [http://www.publichealth.lacounty.gov/eh/docs/misc/SB%201192\\_ChildrenMeal\\_FAQ.pdf](http://www.publichealth.lacounty.gov/eh/docs/misc/SB%201192_ChildrenMeal_FAQ.pdf) (last visited Apr. 16, 2022) [https://perma.cc/9AWC-4BQN].
- <sup>31</sup> S.B. 11922, Cal. Leg. (2018), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1192](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1192)
- <sup>32</sup> Healthy Eating Rsch., *Assessing Kids' Meals Healthy Default Beverage Policies*, *supra* note 17. at 4–5.
- <sup>33</sup> Baltimore City Healthy Beverages for Children's Meals, C.B. 17-0152 (2018); See Mona Rock, *Baltimore City Healthy Kids Meals Bill Becomes Law*, BALT. CTY. HEALTH DEP'T (Jul. 18, 2018), <https://health.baltimorecity.gov/news/press-releases/2018-07-18-baltimore-city-healthy-kids-meals-bill-becomes-law> [https://perma.cc/H8BC-5F8B].
- <sup>34</sup> WILMINGTON CTY. COUNCIL, CODE ORD., ch.5, art. I §5.2 "Beverages Offered in Children's Meals" (2018), <https://www.wilmingtoncitycouncil.com/wp-content/uploads/2018/09/4576-Ordinance-Healthy-Childrens-Meal-3.pdf> [https://perma.cc/VPW6-DYKQ].
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.*
- <sup>37</sup> *Id.*
- <sup>38</sup> Healthy Eating Rsch., *Assessing Kids' Meals Healthy Default Beverage Policies*, *supra* note 17. at 4–5; Lorrene D. Ritchie et al., *Restaurant kids' meal beverage offerings before and after implementation of healthy default beverage policy statewide in California compared with citywide in Wilmington, Delaware*, 25(3) PUB. HEALTH NUTRITION 794 (Apr. 12, 2021), <https://pubmed.ncbi.nlm.nih.gov/33843541/> [https://perma.cc/MMY7-L6WH]; see also CTR. FOR RSCH. IN EDU. & SOC. POL'Y (CRESP), UNDERSTANDING THE LANDSCAPE OF DEFAULT BEVERAGE POLICIES AND PRELIMINARY DATA FROM DELAWARE RESTAURANTS, U. DELAWARE CRESP POL'Y BRIEF SERIES (Oct. 2019, Rev. Apr. 2020), [cresp.udel.edu/wp-content/uploads/2019/10/CRESP-RB19-002\\_final.pdf](https://www.cresp.udel.edu/wp-content/uploads/2019/10/CRESP-RB19-002_final.pdf) [https://perma.cc/3EFJ-F5MH].



# HEALTHY RETAIL POLICY

## What is Healthy Retail Policy?

**H**ealthy retail policies have the potential to reduce consumer access to foods and beverages high in added sugars (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule). Implementing safeguards in retail environments increases consumers' desire to select healthier foods by addressing the fact that unhealthy foods are often promoted in the retail environment (for the purposes of this section, food or foods is understood to mean both food and beverages where applicable).<sup>1</sup> A national study of 8,600 stores—including supermarkets, convenience stores, drug stores, and dollar stores—found that 88% of these stores display candy at checkout and one-third (34%) sell sugar-sweetened beverages (SSBs) at checkout.<sup>2</sup> Even though shoppers are increasingly expressing concern about the nutritional content of their food,<sup>3</sup> this study further found that only 24% of stores sell water and only 13% sell fresh fruits or vegetables at checkout.<sup>4</sup> In addition, most of the candy, soda, and chips in checkout aisles are placed at eye-level and within reach of children.<sup>5</sup> It is therefore unsurprising that three quarters of parents report difficulty shopping at grocery stores because unhealthy food is ubiquitous.<sup>6</sup>

To make matters worse, poor rural and urban areas often lack access to supermarkets, and residents of these areas often must rely primarily on small stores for their food purchases.<sup>7</sup> Small stores can include corner stores, convenience stores, drug stores, pharmacies, general stores, dollar stores, small markets, and gas stations, which often stock items that have long shelf lives, such as prepackaged processed foods, sodas, snacks, and alcohol.<sup>8</sup>

Healthy retail policies either create incentives for or require retail locations to stock nutritious foods and beverages with the objective of providing fruits, vegetables, water, and other nutritious products to communities that lack such healthy options. Healthy retail policies encompass a range of actions, ranging from incentivizing “healthy checkouts,” to imposing restrictions on items sold, or prohibiting food coupons used at grocery stores to purchase unhealthy food options.<sup>9</sup> These can be voluntarily adopted by retail chains or enacted through an ordinance from state or local governments.<sup>10</sup> These policies are designed to improve community health, provide and promote affordable fruits and vegetables, water, and other nutritious products, and aid in making “the healthy choice the easy choice” for consumers.<sup>11</sup>

Healthy retail policies help to dispel the false notion that supermarkets, retail, and grocery stores are nutritionally neutral spaces where buyers have equal opportunities to purchase both healthy and unhealthy foods.<sup>12</sup> In reality, unhealthy products are often placed in the most prominent parts of the stores—checkouts, eye-level shelves, and end caps (which are displays placed at the end of an aisle).<sup>13</sup> By contrast, there are few, if any, opportunities to purchase fresh fruits and vegetables outside of the produce section.<sup>14</sup> For example, the aisles leading up to a register in a store at the point of checkout account for a high degree of impulse buying and rarely offer healthful choices.<sup>15</sup> Strategically located food products that encourage and facilitate impulse buying ultimately undermine consumers' efforts

to purchase healthier foods.<sup>16</sup> Given the epidemic of overweight, obesity, and chronic disease, the healthfulness of products should play a more important role in their prominence in retail spaces.

## How to Design a Healthy Retail Policy

Healthy retail policies can be implemented at varying levels of government. This means that healthy retail policies can impact small neighborhoods, communities, counties, or even be implemented across a state.<sup>17</sup> The programs can be run by state or local health departments or by private organizations. The policy design can offer a variety of services to participating retailers including providing refrigeration equipment or other necessary storage machines or offering technical assistance to employees at these establishments.<sup>18</sup>

When designing healthy retail policies, advocates and policymakers should primarily consider what products to include, where to display these products, and coalition building.

### Incentive versus Requirement

State and local governments can require that retail establishments adhere to healthy retail policies. For instance, since nearly all business owners are required to apply for businesses licenses at the state and/or local level, licensing terms can be established that set specific standards for stocking or display.<sup>19</sup> It is important to note, however, that local governments must have the authority to regulate retail operations in order to establish these requirements. As an example, **Minneapolis, MN**, passed the **Staple Foods Ordinance** in 2008, that requires stores with a grocery license to carry vegetables and fruits, meat, poultry, fish, or vegetable proteins; bread or cereal; and dairy products and substitutes.<sup>20</sup>

Healthy retail policies aimed at reducing consumption of sugar should limit the number of SSBs and other sugar-laden products in particular establishments. One option is to design healthy retail policies as incentive-based. That is, policies can provide permitting incentives to reduce the financial or administrative burdens on a business. Alternatively, incentives can come in the form of free publicity for the business and other financial incentives that will help the business obtain the necessary equipment or make the necessary renovations to accommodate the new food products. For example, the **Mid-Ohio Valley Health Department** in **West Virginia** offers storeowners discounted grocery permit fees for stocking nutritious foods.<sup>21</sup> The permit fee is reduced by 20% for every new fresh produce item that is stocked in its store.

### Display Considerations

Healthy retail policies should specify where to place the healthy and nutritious food. Placing products in particular areas of retail establishments, at checkout, for example, increase the likelihood that such products will be purchased.<sup>22</sup> Policymakers should work collaboratively with community members to develop policies that put healthy and nutritious food items at the point of checkout, at eye-level of most customers, and near the food items that are most commonly purchased in the store to increase the likelihood that a customer can see the healthy food options.<sup>23</sup>

Requiring retailers to develop healthy checkout areas in their establishments is one emerging model. For example, the **Berkeley City Council (CA)**, unanimously adopted what is recognized as the nation's first citywide **"healthy checkout" ordinance**.<sup>24</sup> The healthy checkout ordinance prohibits large retail stores from selling foods and beverages high in added sugars at at checkout, and instead requires these stores to sell more nutritious foods and beverages.<sup>25</sup> In addition, the **Toledo-Lucas County Health Department** in **Ohio** developed the **Eat Fresh, Live Well** program that included implementation of a **healthy checkout aisle**, wherein only produce was put on display by the cash register.<sup>26</sup> Fruits and vegetable sales increased by 50% and resulted in less produce waste for the store following the implementation of the healthy checkout policy.<sup>27</sup>

## Coalition Building

Barriers to healthy retail policies (discussed in detail below), can typically be addressed through partnership and resource leveraging. Therefore, it is imperative that when designing healthy retail policies, government agents, advocates, and businesses consider developing coalitions to address these challenges. A principle consideration in coalition building is identifying regions or communities that would benefit most from implementation of a healthy retail policy.<sup>28</sup> This will increase the likelihood that implementation of a healthy retail policy will prove successful as you will have community buy-in. Next, you should facilitate peer-to-peer networking events to develop or strengthen collaboration with retail networks or associations. By developing these networks, a larger retailer that has successfully implemented a healthy retail policy can provide advice and training guidance to smaller retailers that are considering implementing a similar policy.<sup>29</sup>

### HEALTHY FOOD FINANCING INITIATIVE (HFFI)<sup>47</sup>

HFFI is a multi-agency, public-private partnership administered by Reinvestment Fund as the national fund manager (which was selected by the Secretary of Agriculture) to improve access to healthy food in underserved areas. HFFI was established by the 2014 United States Farm Bill (2014 Farm Bill) (also known as the Agricultural Act of 2014 or the Federal Agriculture Reform and Risk Management Act of 2013) and reauthorized in 2018; although the 2014 Farm Bill authorized appropriations of \$125 million until expended, the United States Congress did not fund the program until 2017, and has only appropriated between \$1-\$5 million each year since then.<sup>48</sup> Although the program has not seen the level of investment it needs to reach its full potential, projects can be incredibly impactful; in 2020, targeted small grants (up to \$200,000) went to support the establishment of grocery retail, alternative retail and local food systems, supply chain infrastructure, and e-commerce/grocery delivery across the country.<sup>49</sup> HFFI provides resources to eligible fresh, healthy food retailers and enterprises to overcome the higher costs and initial barriers to entry in underserved areas. HFFI offers resources such as grants, loans, technical assistance services, programming, and other forms of support to projects that will improve access to fresh, healthy foods in underserved rural and urban areas.<sup>50</sup> In 2019 and 2020, the HFFI supported 20 projects totaling approximately \$4.4 million, which include the following:

#### **The REDCO Food Sovereignty Initiative**

Todd County, SD

The REDCO Food Sovereignty Initiative received financial assistance of \$150,000 and pursued mobile retail marketing opportunities on the Rosebud Reservation, which is home to the Sicangu Lakota Oyate. REDCO used the grant to leverage and expand the successful Keya Wakpala Farmer's Market and explored the economic feasibility and impact of operating a year-round mobile market throughout the region.<sup>51</sup>

#### **MARSH Community Grocery**

St. Louis, MO

The MARSH Food Cooperative received a financial award of \$116,455 to help the cooperative develop a storefront grocery. The MARSH Food Cooperative is a newer nonprofit cooperative organization located in the Carondelet neighborhood of South St. Louis, a former riverfront industrial neighborhood with low access and high percentages of families with low income, that has had significant disinvestment and has few fresh food options. MARSH currently manages and operates a sliding-scale outdoor grocery market and an online grocery ordering system to build visibility and ownership.<sup>52</sup>

#### **Sankofa Fresh Stop Market**

New Orleans, LA

Sankofa CDC is a community development organization based in the Lower Ninth Ward of New Orleans that is led by African American residents of the community in which it works. Sankofa CDC operates a successful weekly open-air produce store that serves as a food hub to work with local farmers, fishers, wholesalers, and producers to bring their products to market in an underserved community of New Orleans. The HFFI grant award of \$200,000, supported the development of the Fresh Stop Market in a new, green, mixed-use development on a commercial corridor.<sup>53</sup>

## What are the Most Common Barriers to Implementing Healthy Retail Policies?

The most pressing issues that healthy retail policies face is overcoming the arguments of, (1) the pressure to sell unhealthy food in their establishments; and (2) the challenge with stocking healthy and nutritious food as a replacement. It is important to first understand issues the retail industry may present to best develop strategies to overcome these challenges.

### Industry Pressures

Given their profit motive, it will likely be difficult to convince food retailers to adopt healthy retail initiatives voluntarily and they may object to government-imposed models. Retailers' stocking and marketing practices focus on maximizing revenue. Food and beverage manufacturers pay retailers billions of dollars each year to market their products in their establishments, including through favorable shelf placement, offering discounts for buying foods in bulk like "buy-one-get-one-free promotions" on SSBs, and other aggressive promotional strategies.<sup>30</sup> Changing stocking and product placement can cause stores to lose income by losing these payments from manufacturers. This creates pressure on stores not to change product placement. This profit motive perpetuates a cycle of promotion, advertisement, and procurement that emphasizes unhealthy food products that are high in sugar but that sell well. These marketing tactics influence what shoppers buy and eat, and can be especially pervasive and pernicious in BIPOC communities and communities with a high percentage of families with low income.<sup>31</sup> For example, SSB marketing increases when Supplemental Nutrition Assistance Program (SNAP) benefits are distributed, particularly in neighborhoods with a high degree of SNAP participation.<sup>32</sup> Healthy retail policies seek to disrupt this cycle that results from pursuit of pure profits—yet, it may be difficult for customers, health advocates, or even health-minded retailers to change this status quo.

### Stocking Challenges

Even if businesses voluntarily implement a healthy retail policy or are required to do so by virtue of a government measure, stocking healthy and nutritious food as a replacement to unhealthy food may be challenging. For instance, to increase the capacity of small stores to sell healthy foods, improvements to the establishment are often necessary such as installing proper display shelving, refrigeration, and freezers.<sup>33</sup> Another important consideration is improving the community perception of a store to raise awareness about any of the improved interior changes to provide healthier food options.<sup>34</sup> This means that stores often also require exterior improvements such as signage, painting, lighting, and graffiti or litter removal, all of which carry associated costs that may be infeasible for smaller retailers.

Another stocking challenge is the lack of training and technical assistance needed to ensure employees are aware of proper food safety standards.<sup>35</sup> Since many unhealthy foods require little-to-no special temperature or display requirements, some retail establishments have minimal exposure to how to properly stock, store, and display healthy products such as fresh produce.<sup>36</sup> As such, often these retailers will not have the proper training on adhering to appropriate food safety measures, which not serves as a disincentive for stocking healthy products, but can also lead to increased food waste.

## IMPROVING NUTRITIONAL IMPACT OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) THROUGH NUTRITION INCENTIVES AND HEALTHY RETAIL POLICY:

The **Supplemental Nutrition Assistance Program (SNAP)** (formerly known as the Food Stamp Program), is the largest anti-hunger program in the United States.<sup>54</sup> It provides nutrition benefits to supplement the food budget of needy families so they can purchase food and improve their nutrition and overall health outcomes.<sup>55</sup> SNAP is a federal program that is administered by the USDA Food and Nutrition Service (FNS) in partnership with states. The United States Congress reauthorizes SNAP every five years in the United States Farm Bill, which is the primary agricultural and food policy tool of the United States government.

Though SNAP recipients face barriers to securing healthy food with their benefits, there are promising pilot programs to promote this access. Eighty-eight percent of SNAP participants recently reported facing some type of barrier to achieving a healthy diet throughout the month.<sup>56</sup> The most common barrier identified was the cost of healthy foods.<sup>57</sup> Within the SNAP program, there are a few nutrition incentive programs that promote access to healthy food for SNAP recipients. For example, the **Gus Schumacher Nutrition Incentive Program (GusNIP)**, first authorized in the 2014 Farm Bill and renamed in the 2018 Farm Bill, provides federal grant funding to support nutrition incentive programs or produce prescription programs,<sup>58</sup> which make additional dollars available to SNAP participants who spend their benefits on fruits and vegetables.<sup>59</sup> Research indicates that these programs have the potential not only to improve fruit and vegetable consumption and related health outcomes, but also to deliver financial benefits to retail partners and the overall community.<sup>60</sup> Though these programs are promising, they are not available everywhere.<sup>61</sup> Jurisdictions that are interested in increasing access to healthy foods for SNAP recipients can apply for GusNIP funding to implement a nutrition incentive.

### Case Studies of Healthy Retail Policies

#### Missouri

The **Missouri Department of Health and Senior Services (MDHSS)** and the **University of Missouri Extension** operate **Stock Healthy, Shop Healthy**, which is a comprehensive, community program that allows communities to improve access to healthy, affordable foods by working with small food retailers.<sup>37</sup> The two primary components of the program include, (1) working with small storeowners to improve the quality and variety of healthy and affordable foods they stock; and (2) providing educational efforts in the community. Results demonstrated an increase of 24% in the amount of space devoted to healthy foods and beverages at eight of the nine stores, one year after the policy was implemented.<sup>38</sup>

#### Berkeley, CA

In September 2020, the **Berkeley City Council** unanimously adopted what is recognized as the nation's first citywide "healthy checkout" ordinance.<sup>39</sup> Enforced as of January 2022, the **Healthy Checkout Ordinance** prohibits large retail stores from selling foods and beverages high in added sugars at the checkout line, and instead requires them to sell more nutritious foods and beverages.<sup>40</sup> The Ordinance states that:

- Each Large Retail Store shall...ensure that all foods and beverages sold in all Checkout Areas... comply with the list of qualifying food and beverage categories:
  - Beverages with no added sugars and no artificial sweeteners.
  - Food items with no more than 5 grams of added sugars, and 200 milligrams of sodium per labeled serving.
  - 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.<sup>41</sup>
- The ordinance limits this restriction to "commercial establishments selling goods to the public

with a total floor area over 2,500 square feet and selling 25 linear feet or more of food,” and offers a comprehensive and clear definition for “added sugars” and “artificial sweetener.”<sup>42</sup>

### **Minneapolis, MN**

In 2008, Minneapolis became the first locality to adopt a healthy food retailer licensing ordinance.<sup>43</sup> Called the **Staple Foods Ordinance**, it required stores with a grocery license to carry food in four staple food groups including bread or cereal; vegetables and fruits; meat, poultry, fish, or vegetable proteins; and dairy products and substitutes.<sup>44</sup> In 2014, the ordinance received an update that required six additional categories of staple foods to adhere to the requirements from Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).<sup>45</sup> This update also was meant to account for storeowner feedback suggesting the available healthy foods be culturally appropriate.<sup>46</sup>



## ENDNOTES

- <sup>1</sup> JESSICA ALMY & MARGO WOOTAN, CTR. FOR SCI. PUB. INTEREST (CSPI), TEMPTATION AT CHECKOUT: THE FOOD INDUSTRY'S SNEAKY STRATEGY FOR SELLING MORE (2015), <https://cspinet.org/sites/default/files/attachment/report.pdf> [<https://perma.cc/WHC7-2VJV>] [hereinafter ALMY & WOOTAN, TEMPTATION AT CHECKOUT] .
- <sup>2</sup> D.C. BARKER ET AL., BRIDGING THE GAP PROG. HEALTH POL'Y CTR. INST. FOR HEALTH RSCH. & POL'Y ROBERT WOOD JOHNSON FOUND., AVAILABILITY OF HEALTHY FOOD PRODUCTS AT CHECK-OUT NATIONWIDE, 2010–2012 1 (2015), [https://www.cspinet.org/sites/default/files/attachment/BTG\\_healthy\\_checkout\\_brief\\_Nov2015.pdf](https://www.cspinet.org/sites/default/files/attachment/BTG_healthy_checkout_brief_Nov2015.pdf) [<https://perma.cc/992Y-5JDX>] [hereinafter BARKER ET AL., AVAILABILITY OF HEALTHY FOOD PRODUCTS AT CHECK-OUT NATIONWIDE]
- <sup>3</sup> See DAVID ORGEL ET AL., FOOD MKTG. INST. (FMI) FOUND., THE POWER OF HEALTH AND WELL-BEING IN FOOD RETAIL: AN IN-DEPTH LOOK THROUGH THE SHOPPERS' EYES (2019), <https://www.fmi.org/forms/uploadFiles/5473B500000049.toc>. Power\_of\_Health\_and\_Well\_Being\_in\_Food\_Retail\_2018.pdf [<https://perma.cc/8UPL-ZCQY>]; see also INT'L FOOD INFO. COUNCIL (IFIC) FOUND., FOOD INSIGHT, 2019 FOOD & HEALTH SURVEY (2019), <https://foodinsight.org/wp-content/uploads/2019/05/IFIC-Foundation-2019-Food-and-Health-Report-FINAL.pdf> [<https://perma.cc/JZ5K-4JY8>].
- <sup>4</sup> BARKER ET AL., AVAILABILITY OF HEALTHY FOOD PRODUCTS AT CHECK-OUT NATIONWIDE, *supra* note 2.
- <sup>5</sup> Jason A. Horsley et al., *The proportion of unhealthy foodstuffs children are exposed to at the checkout of convenience supermarkets*, 17(11) PUB. HEALTH NUTRITION 2453 (Jan. 22, 2014), <https://pubmed.ncbi.nlm.nih.gov/24477033/> [<https://perma.cc/4QRL-JL54>] [hereinafter Horsley et al., *The proportion of unhealthy foodstuffs*].
- <sup>6</sup> See CTR. FOR SCI. IN PUB. INT. (CSPI), HEALTHY CHECKOUT: GOOD FOR BUSINESS, GOOD FOR CUSTOMERS, <https://cspinet.org/sites/default/files/attachment/hco-fact-sheet-final-2.pdf> (last visited Apr. 18, 2022) [<https://perma.cc/C8UC-Y4YY>] (referring to a 2016 online survey of 1,024 adults, conducted by Caravan ORC International).
- <sup>7</sup> NAT'L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION DIV. OF NUTRITION, PHYSICAL ACTIVITY, & OBESITY, CTRS. FOR DISEASE CONTROL & PREVENTION (CDC), CURRENT PRACTICES IN HEALTHY FOOD RETAIL: SMALL STORES, <https://www.cdc.gov/nccdphp/dnpao/state-local-programs/pdf/current-practices-healthy-retail.pdf> [<https://perma.cc/ET2S-HBKZ>] [hereinafter CDC, CURRENT PRACTICES IN HEALTHY FOOD RETAIL: SMALL STORES] (citing J. Bell et al., *Access to Healthy Food and Why It Matters: A Review of the Research*, PolicyLink & Food Trust (2013)); see also P.R. Kaufman, *Rural poor level access to supermarkets, large grocery stores*, 13(3) RURAL DEV. PERSPECT. 19-26 (1999); MICHELE VER PLOEG ET AL., ECON. RSCH. SERV. (ERS), FOOD & NUTRITION SERV. (FNS), & COOP. STAT RSCH, EDU. & EXTENSION SERV. (CSREES) OF U.S. DEP'T AGRIC. (USDA), ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES: REPORT TO CONGRESS (June 2009), [https://www.ers.usda.gov/webdocs/publications/42711/12716\\_ap036\\_1\\_.pdf](https://www.ers.usda.gov/webdocs/publications/42711/12716_ap036_1_.pdf) [<https://perma.cc/2WD4-FZUU>].
- <sup>8</sup> CDC, CURRENT PRACTICES IN HEALTHY FOOD RETAIL: SMALL STORES, *supra* note 7.
- <sup>9</sup> RIO HOLADAY, CHANGELAB SOLUTIONS, HEALTHY RETAIL PLAYBOOK 5 (2016), [http://www.changelabsolutions.org/sites/default/files/Healthy\\_Retail\\_PLAYBOOK\\_FINAL\\_20160622.pdf](http://www.changelabsolutions.org/sites/default/files/Healthy_Retail_PLAYBOOK_FINAL_20160622.pdf) [<https://perma.cc/B66H-49CH>].
- <sup>10</sup> *Id.*
- <sup>11</sup> K. G. Volpp & D. A. Asch, *Make the healthy choice the easy choice: using behavioral economics to advance a culture of health*, 110(5) Q. J. Med. (QJM) 271 (May 1, 2017), <https://pubmed.ncbi.nlm.nih.gov/27803366/> [<https://perma.cc/96LV-UWT4>]; HOLADAY, CHANGELAB SOLS., HEALTHY RETAIL PLAYBOOK, *supra* note 9.
- <sup>12</sup> HOLADAY, CHANGELAB SOLS., HEALTHY RETAIL PLAYBOOK, *supra* note 9.
- <sup>13</sup> Horsley et al., *The proportion of unhealthy foodstuffs*, *supra* note 5.
- <sup>14</sup> Thomas A. Farley et al., *Measuring the food environment: shelf space of fruits, vegetables, and snack foods in stores* 86(5) J. URB. HEALTH 672 (2009), <https://pubmed.ncbi.nlm.nih.gov/19603271/> [<https://perma.cc/X39X-K9DR>].
- <sup>15</sup> David Schardt, *The most valuable real-estate in the grocery store*, CSPI NUTRITION ACTION (Nov. 9, 2016), <https://www.nutritionaction.com/daily/what-to-eat/the-most-valuable-real-estate-in-a-grocery-store/> (last visited Apr. 10, 2022).
- <sup>16</sup> ALMY & WOOTAN, TEMPTATION AT CHECKOUT, *supra* note 1.
- <sup>17</sup> CHRISTINE FRY ET AL., CHANGELAB SOLS., HEALTH ON THE SHELF: A GUIDE TO HEALTHY SMALL FOOD RETAILER CERTIFICATION PROGRAMS 5, [https://www.changelabsolutions.org/sites/default/files/Health\\_on\\_the\\_Shelf\\_FINAL\\_20130322-web.pdf](https://www.changelabsolutions.org/sites/default/files/Health_on_the_Shelf_FINAL_20130322-web.pdf) [<https://perma.cc/GJC7-U8MS>].
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> City of Minneapolis Code of Ordinances, Title 10, Chapter 203, Staple Foods Ordinance (2008).
- <sup>21</sup> See HOLADAY, CHANGELAB SOLS., HEALTHY RETAIL PLAYBOOK, *supra* note 9 at 9 (citing Carrie Brainard, *Mid-Ohio Valley Health Department*, Personal Interview, Jan, 21, 2015).
- <sup>22</sup> HOLADAY, CHANGELAB SOLS., HEALTHY RETAIL PLAYBOOK, *supra* note 9 at 5 (citing ALMY & WOOTAN, TEMPTATION AT CHECKOUT, *supra* note 1).
- <sup>23</sup> Schardt, *The most valuable real-estate in the grocery store*, *supra* note 15.

- <sup>24</sup> See Council of the City of Berkeley, Ordinance No. 7, 734-N.S., “Adding Chapter 9.82 to the Berkeley Municipal Code ‘Healthy Checkout’” (2020).
- <sup>25</sup> Marissa Sheldon, *Berkeley Reduces Impulse Buying with Healthy Checkout Ordinance*, HUNTER COLL. N.Y.C. FOOD POL’Y CTR. (Oct. 6, 2020), <https://www.nycfoodpolicy.org/food-policy-snapshot-berkeley-healthy-checkout-ordinance/> [https://perma.cc/KU4G-9FVS].
- <sup>26</sup> *Healthy Corner Store Program: Eat Fresh Live Well*, TOLEDO-LUCAS CNTY. HEALTH DEP’T, <https://lucascountyhealth.com/community-outreach/creating-healthy-communities-2/healthy-corner-store-program/#:~:text=Eat%20Fresh%20Live%20Well%20is,vegetables%20at%20a%20reasonable%20price> (last visited Apr. 11, 2022) [https://perma.cc/X74Y-E49W].
- <sup>27</sup> ALMY & WOOTAN, *TEMPTATION AT CHECKOUT*, *supra* note 1.
- <sup>28</sup> CARLA LINKOUS ET AL., NAT’L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION DIV. OF NUTRITION, PHYSICAL ACTIVITY, & OBESITY, CDC, *HEALTHIER FOOD RETAIL: AN ACTION GUIDE FOR PUBLIC HEALTH PRACTITIONERS* 51 (2014), <https://www.cdc.gov/nccdphp/dnpao/state-local-programs/pdf/Healthier-Food-Retail-guide-full.pdf> [https://perma.cc/8W23-AQHB] [hereinafter CDC, *HEALTHIER FOOD RETAIL: AN ACTION GUIDE*].
- <sup>29</sup> *Id.*
- <sup>30</sup> JOHNS HOPKINS U. CTR. FOR LIVABLE FUTURE ET AL., ROBERT WOOD JOHNSON FOUND, *HEALTHY EATING RESEARCH: A NATIONAL RESEARCH AGENDA TO SUPPORT HEALTHY EATING THROUGH RETAIL STRATEGIES* 1 (2020), <https://healthyeatingresearch.org/wordpress/wp-content/uploads/2020/11/her-food-retail-final-report.pdf> [https://perma.cc/F3CU-ZH9S] [hereinafter CTR. FOR LIVABLE FUTURE ET AL., *HEALTHY EATING RESEARCH*] (citing L. Mancino et al., *Nutritional Quality of Foods Acquired by Americans: Findings From USDA’s National Household Food Acquisition and Purchase Survey*, USDA ECON. RSCH. SERV. (2018)).
- <sup>31</sup> CTR. FOR LIVABLE FUTURE ET AL., *HEALTHY EATING RESEARCH*, *supra* note 37 (citing R. Bennett et al., *Prevalence of healthy and unhealthy food and beverage price promotions and their potential influence on shopper purchasing behavior: A systematic review of the literature*, *OBESITY REV. ONLINE* (Oct 21, 2019), <https://onlinelibrary.wiley.com/doi/abs/10.1111/obr.12948> (last visited Apr. 18, 2022)); *see also* K. Glanz et al., *Retail grocery store marketing strategies and obesity: an integrative review*, 42(5) *AM. J. PREVENTATIVE MED.* 503-512 (2012), <https://pubmed.ncbi.nlm.nih.gov/22516491/> [https://perma.cc/48D6-PYQN]; *see* Phil Edwards, *The Hidden War Over the Grocery Shelf Space*, *VOX* (Nov. 22, 2016), <https://www.vox.com/2016/11/22/13707022/grocery-store-slotting-fees-slotting-allowances> (last visited Apr. 18, 2022).
- <sup>32</sup> CTR. FOR LIVABLE FUTURE ET AL., *HEALTHY EATING RESEARCH*, *supra* note 37 (citing S.A. Grier et al., *The Context for Choice: Health Implications of Targeted Food and Beverage Marketing to African Americans*, 98(9) *AM. J. PUB. HEALTH* 1616 (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2509618/> [https://perma.cc/A66X-6AX6]; *see also* A. J. Moran et al., *Increases in Sugary Drink Marketing During Supplemental Nutrition Assistance Program Benefit Issuance in New York*, 55(1) *AM. J. PREVENTATIVE MED.* 55 55-62 (2018), <https://pubmed.ncbi.nlm.nih.gov/29776786/> [https://perma.cc/C4QV-U8GG] [hereinafter Moran et al., *Increases in Sugary Drink Marketing During SNAP*].
- <sup>33</sup> CDC, *HEALTHIER FOOD RETAIL: AN ACTION GUIDE*, *supra* note 28.
- <sup>34</sup> *Id.*; *see also* Elizabeth Gerndt, *Strategies to Create Healthier Food Retail Environments*, *COUNTER TOOLS* (Nov. 23, 2020), <https://countertools.org/blog/strategies-to-create-healthier-food-retail-environments/> [https://perma.cc/PJB5-BAXY].
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.*
- <sup>37</sup> *Stock Healthy, Shop Healthy: Improving access to healthy foods*, U. OF MO. EXTENSION, <https://extension.missouri.edu/programs/stock-healthy-shop-healthy> (last visited Apr. 11, 2022) [https://perma.cc/KJ6H-9X4V]; CDC, *CURRENT PRACTICES IN HEALTHY FOOD RETAIL: SMALL STORES*, *supra* note 7 at 4.
- <sup>38</sup> Kara Lubischer, *Stock Healthy, Shop Healthy: If Customers Demand It, Healthy Options Will Come*, 49(7S1) *J. NUTRITION EDU. & BEHAV.* S131 (2017), [https://www.jneb.org/article/S1499-4046\(17\)30334-2/pdf](https://www.jneb.org/article/S1499-4046(17)30334-2/pdf) (last visited Apr. 18, 2022); CDC, *CURRENT PRACTICES IN HEALTHY FOOD RETAIL: SMALL STORES*, *supra* note 7 at 4.
- <sup>39</sup> See Council of the City of Berkeley, Ordinance No. 7, 734-N.S., “Adding Chapter 9.82 to the Berkeley Municipal Code ‘Healthy Checkout’” (2020) [hereinafter Berkeley, Ordinance No.7].
- <sup>40</sup> Sheldon, *Berkeley Reduces Impulse Buying with Healthy Checkout Ordinance*, *supra* note 25.
- <sup>41</sup> See Berkeley, Ordinance No. 7, *supra* note 54.
- <sup>42</sup> *Id.*
- <sup>43</sup> City of Minneapolis Code of Ordinances, Title 10, Chapter 203, Staple Foods Ordinance (2008).
- <sup>44</sup> *Id.*
- <sup>45</sup> *Id.*; *see also* KRISTEN KLINGER ET AL., *HEALTHY FOOD POL’Y PROJECT, ADOPTION OF THE MINNEAPOLIS STAPLE FOOD ORDINANCE: A NOVEL POLICY TO IMPROVE HEALTHY FOOD AVAILABILITY IN SMALL FOOD STORES*, *AM. PUB. HEALTH ASS’N* (Nov. 2, 2015), [https://healthyfoodpolicyproject.org/wp-content/uploads/minneapolis-mn\\_2020.pdf](https://healthyfoodpolicyproject.org/wp-content/uploads/minneapolis-mn_2020.pdf) [https://perma.cc/7NC7-DE7N].
- <sup>46</sup> *Id.*
- <sup>47</sup> *America’s Healthy Food Financing Initiative*, Reinvestment Fund, <https://www.investinginfood.com/> (last visited Apr. 8,

- 2022) [<https://perma.cc/5SZV-UX27>].
- <sup>48</sup> See CONG. RSCH. SERV., R46538, LOCAL & URBAN FOOD SYSTEMS: SELECTED FARM BILL & OTHER FEDERAL PROGRAMS 32–33 (2020), <https://crsreports.congress.gov/product/pdf/R/R46538> (last visited Apr. 18, 2022); see also NAT’L SUSTAINABLE AGRIC. COAL. (NSAC), AGRICULTURE APPROPRIATIONS CHART FISCAL YEAR 2022: FY22 HOUSE APPROPRIATIONS FULL COMMITTEE JUNE 2021 (2021), <https://sustainableagriculture.net/wp-content/uploads/2021/07/FY2022-Appropriations-House-full-committee.pdf> [<https://perma.cc/8XE9-3VMF>].
- <sup>49</sup> REINVESTMENT FUND, HEALTHY FOOD FINANCING INITIATIVE: 2020 TARGETED SMALL GRANT AWARDS (2020), <https://www.investinginfood.com/wp-content/uploads/2020/12/2020-HFFI-Award-Book.pdf> [<https://perma.cc/5CQB-QTQV>].
- <sup>50</sup> *What We Do*, REINVESTMENT FUND, <https://www.investinginfood.com/what-we-do/> (last visited Apr. 8, 2022) [<https://perma.cc/V93Y-8W5P>].
- <sup>51</sup> *Impact*, REINVESTMENT FUND, <https://www.investinginfood.com/impact/> (last visited Apr. 8, 2022) [<https://perma.cc/7BA9-4883>]; see *Dakota Rural Action Grassroots Organizing for the Future*, REDCO FOOD SOVEREIGNTY INITIATIVE, <https://www.dakotarural.org/localfood/redco-food-sovereignty-initiative/> [<https://perma.cc/6L8T-ANEM>].
- <sup>52</sup> *Impact*, REINVESTMENT FUND, *supra* note 34; see *About*, MARSH MATERIALIZING & ACTIVATING RADICAL SOCIAL HABITUS, <https://marshlife-art.org/about-us/> [<https://perma.cc/66E5-NMEE>].
- <sup>53</sup> *Impact*, REINVESTMENT FUND, *supra* note 34; see *We believe that everyone should have access to fresh food.*, SANKOFA CDC, <https://sankofanola.org/food-access/> [<https://perma.cc/9K5C-UQEC>]; see also *Fresh Stop Market*, SANKOFA CDC, <http://sankofa.thiscreativelab.com/fresh-stop-market/> [<https://perma.cc/G9UR-XCHD>].
- <sup>54</sup> *Supplemental Nutrition Assistance Program (SNAP)*, USDA FNS, <https://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program> (last visited Apr. 11, 2022) [<https://perma.cc/T29K-5AAL>].
- <sup>55</sup> *Id.*
- <sup>56</sup> MAEVE GEARING ET AL., USDA FNS OFFICE OF POL’Y SUPPORT, BARRIERS THAT CONSTRAIN THE ADEQUACY OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) ALLOTMENTS: SURVEY FINDINGS-NUTRITION ASSISTANCE PROGRAM REPORT (2021), <https://fns-prod.azureedge.us/sites/default/files/resource-files/SNAP-Barriers-SurveyFindings.pdf> [<https://perma.cc/B9UK-NHKU>].
- <sup>57</sup> *Id.*
- <sup>58</sup> KATIE GARFIELD ET AL., CTR. FOR HEALTH LAW & POL’Y INNOVATION (CHLPI), MAINSTREAMING PRODUCE PRESCRIPTIONS: A POLICY STRATEGY REPORT 5–6 (2021), <https://www.chlpi.org/wp-content/uploads/2013/12/Produce-RX-March-2021.pdf> [<https://perma.cc/QSS7-3ZNY>].
- <sup>59</sup> See, e.g., *GusNIP Grantee Projects*, GUSNIP NTAE CTR., NUTRITION INCENTIVE HUB, <https://www.nutritionincentivehub.org/grantee-projects> (last visited Apr. 18, 2022) [<https://perma.cc/EQ44-4ZU9>].
- <sup>60</sup> See Allison D. Yoder, Gabriela V. Proaño, & Deepa Handu, *Retail Nutrition Programs & Outcomes: An Evidence Analysis Center Scoping Review*, 121(9) J. ACAD. OF NUTR. & DIETETICS 1866 (2020), <https://doi.org/10.1016/j.jand.2020.08.080> [<https://perma.cc/7AUS-Q7GF>]; DAWN THILMANY ET AL., THE ECONOMIC CONTRIBUTIONS OF HEALTHY FOOD INCENTIVES (2021), [https://www.spur.org/sites/default/files/publications\\_pdfs/economic\\_contributions\\_incentives\\_2\\_2\\_21.pdf](https://www.spur.org/sites/default/files/publications_pdfs/economic_contributions_incentives_2_2_21.pdf) [<https://perma.cc/JYC7-XEW3>].
- <sup>61</sup> See, e.g., *GusNIP Grantee Projects*, *supra* note 49.



# HEALTHY PROCUREMENT POLICY

## What is Healthy Procurement?

**G**overnment agencies and organizations with whom these agencies contract procure goods and services for their foodservice operations.<sup>1</sup> These agencies purchase food to provide meals to people in various facilities—airports, parks, correctional facilities, homeless shelters, juvenile facilities, public hospitals, public museums, child care centers, schools, sports arenas, and senior centers<sup>2</sup>—and to sell via retail outlets like vending machines and cafeterias (for the purposes of this section, food is understood to mean food and beverage were relevant).<sup>3</sup> Government agencies generally have discretion over the type of foods they procure. Accordingly, government agencies can improve the nutrition content of the food they serve—and the health of the people who eat it—through healthy procurement policies.

Healthy procurement policies use procurement to mandate or prioritize the purchasing of healthier foods, using requirements for food—for example, established nutritional standards—that are then incorporated into contractual terms in agreements with food suppliers (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule). When government purchases goods or services, it typically must engage in a competitive process, called procurement, to select vendors, and governments can use this procurement process to mandate or incentivize the purchasing of healthier foods. During the procurement process, potential suppliers submit bids or proposals in response to procurement documents, often called invitations for bids (IFBs) or requests for proposals (RFPs) (an IFB is typically used for specific goods which can be supplied by many vendors whereas RFPs are broader). As part of the procurement process, government can mandate that the vendor follow certain requirements, it can incentivize adherence to the policy, or it can request bidders offer their own suggestions on how to accomplish a goal. These requirements or policies are then incorporated into the resulting contract. Some contracts do not directly purchase foodstuffs, but rather establish partnerships with food service management companies (FSMCs) who then handle some or all aspects of procurement.<sup>4</sup>

Healthy procurement policies generally leverage the large purchasing power of the government to promote public health. They aim to align a government’s purchasing practices with its goals, policy preferences, and public health messaging. For example, a government that is focused on reducing childhood obesity can choose to contract with only companies that agree to ban the sale of sugar-sweetened beverages (SSBs) at community centers in addition to increasing nutrition education and promoting physical activity.

Beyond their practical impact in promoting health, healthy procurement policies have independent political value, allowing government to “put its money where its mouth is” and elected officials to take action on issues otherwise outside of their jurisdictions. Healthy procurement policies may also encourage producers to reformulate their products to meet standards.

## The Good Food Purchasing Program (GFPP)

The Good Food Purchasing Program (GFPP) is a metrics-based, flexible framework that can be adopted by governments and help them direct their buying power toward local economies, environmental sustainability, valued workforce, animal welfare, and nutrition.<sup>5</sup> This program is broader in scope than traditional healthy procurement policies that are focused almost exclusively on healthier nutrition options, as it focuses on developing a procurement model that improves food system functioning on many levels.<sup>6</sup> Through the program, the **Center for Good Food Purchasing (the Center)**, works with institutions or governments to establish supply chain transparency from farm to fork, conduct a baseline analysis of current purchasing practices and their alignment with the Good Food Purchasing Standards, assist with goal setting, measure progress, and shift towards a values-based purchasing model.<sup>7</sup> The Center works with local lead partner organizations to implement the program that meets requirements across five value categories. Once the participating institutions meet these requirements, the Center issues a verification seal.<sup>8</sup> This program has been adopted by large cities and school districts across the country including **Los Angeles (CA)**, **Chicago (IL)**, **Boston (MA)**, and **school districts** like **Oakland (CA)**, **San Francisco (CA)**, and **Cincinnati (OH)**.<sup>9</sup> Most recently, as part of **New York City, NY**'s commitment to the GFPP, the **New York City Mayor's Office of Food Policy** in partnership with the **Department of Health and Mental Hygiene** announced the release of the updated **New York City Food Standards for Meals and Snacks Purchased and Served** and the **New York City Food Standards for Beverage Vending Machines**.<sup>10</sup>

**Los Angeles, CA**, serves as an example of a successful adoption of the GFPP at the city level.<sup>11</sup> In 2012, the **City of Los Angeles** and **Los Angeles Unified School District (LAUSD)** adopted a procurement policy in-line with the GFPP values.<sup>12</sup> Since then, the city has begun sourcing foods that are healthier, local, and more sustainable.<sup>13</sup> For example, LAUSD now sources 50 to 72% of its produce from within 200 miles of the school.<sup>14</sup> Additionally, one of the district's main vendors has made significant changes to meet the new procurement standards, including sourcing wheat from California farms and changing its recipe for bread.<sup>15</sup> The adoption of the GFPP has also supported workers in the food industry through the development of unions at supplier sites.<sup>16</sup> Since its implementation in 2012, LAUSD's commitment to the GFPP has shown that its over 600,000 students ate healthier, reformulated products, including lower-sodium bread products made without high fructose corn syrup.<sup>17</sup>

Healthy procurement policies can be designed to meet a jurisdiction's goals, needs, ambitions and political realities. They can aim big and broadly prohibit the purchase and sale of non-nutritious food at all covered locations. Alternatively, they can make targeted strategic interventions at high impact points, for example, mandating inclusion of healthy foods in vending machines that would otherwise be filled with SSBs and candy, as in the **Power Vending program** in **Portland, ME**, discussed below.<sup>18</sup> While a more broadly and less defined program may seem less effective, in actuality, it might avoid some of the political pitfalls associated with narrower and stricter policies.

Research shows that healthy procurement policies work. An analysis of 34 healthy procurement policies found that these policies were "nearly always effective" at increasing access to healthy food and contributing to more purchases of healthy foods and less purchases of foods high in fat or sodium.<sup>19</sup> After **Philadelphia, PA**, implemented a **healthy vending machine policy**, sales of healthy snacks increased from 8% to 40% of all snack sales and sales of healthy drinks increased from 36% to 46% of all beverage sales.<sup>20</sup> Similarly the **"Fresh Program"** in **California**, incentivized use of local foods and sourcing from small- and mid-sized farms and resulted in a 58% increase in fruit and vegetable sales in schools.<sup>21</sup> In designing a healthy procurement strategy, agencies should weigh their overall goals, political feasibility, and other considerations to create a policy that best fits their institutional abilities and priorities. For example, provisions regarding nutritious food might be paired with "buy local" provisions—or other provisions—to achieve several institutional goals through one policy.<sup>22</sup> Each jurisdictions' political and practical calculus will be different and so their healthy procurement policies will necessarily look different both on paper and in reality.

When these considerations are properly balanced, healthy procurement policies can leverage the large purchasing power of the government to promote public health, to advance other policy goals, to attract political champions, and to minimize public pushback against the ultimate changes.

## How Can a Healthy Procurement Policy Be Implemented?

Healthy procurement policies can be implemented at both the state and local levels.<sup>23</sup>

### State-Level Procurement Policies

At the state level, states can create healthy procurement policies via legislation or executive order. Legislatures can pass laws directly requiring healthy procurement policies for government purchasing. For instance, these laws could establish nutritional standards for food purchased or sold by government, or limit or even ban the purchase or sale of certain foods or beverages like SSBs.<sup>24</sup> Legislatures can also delegate the creation of healthy procurement policies to state agencies.<sup>25</sup> Alternatively, state governors can issue executive orders requiring agencies to follow particular nutrition standards or to ban the sale of a particular food product.<sup>26</sup> The reach of these policies will depend on the state government's control over local governments.

For example, Governor Deval Patrick of **Massachusetts** issued **Executive Order 509**, which establishes nutrition standards for food purchased and served by state agencies.<sup>27</sup> This executive order applies to all state agencies in the Massachusetts Executive Department, including offices, boards, commissions, agencies, departments, divisions, councils, and bureaus that have been or will be established.<sup>28</sup> It requires that each agency ensure that it purchases and provides food that meets defined nutrition standards as set forth by guidelines established by the Massachusetts Department of Health.<sup>29</sup>

### Local-Level Procurement Policies

At the local level, there are many actors who can implement healthy procurement policies, such as legislative bodies, school boards and executive officers of schools, and sometimes by executive order. At the city or county level, the council can pass an ordinance, resolution, or motion, requiring the city or county departments to purchase healthier foods.<sup>30</sup> Councils can also require city or county health department to purchase particular foods or pass a healthy procurement policy that requires the health department to set particular standards.<sup>31</sup> For example, the **City Council of the City of Portland, ME**, approved the **Power Vending program**, which calls for at least 60% of foods in all onsite vending machines to consist of healthier options.<sup>32</sup> Similarly, **Suffolk County, NY**, passed a law, which establishes nutrition guidelines for foods and beverages sold through vending machines, concession stands, and cafeterias on county property.<sup>33</sup> For school districts, school boards can also create healthy procurement policies.<sup>34</sup>

Alternatively, like governors at the state level, mayors can issue executive orders requiring healthier food purchases in city-level executive departments.<sup>35</sup> However, these executive orders may not always be binding and may sometimes be overridden by the city council.<sup>36</sup>

## How to Design a Healthy Procurement Policy

Healthy procurement policies can be adapted to fit the particular institution, implementing body, and nutrition needs of the target population. They can vary in terms of scope and impact. They can use existing nutrition standards, require a certain number of servings of a given food category, or ban

certain foods altogether. They can cover all food purchased or sold by government or only cover select actors or locations. At their most impactful, healthy procurement policies can be used to support the health of individuals who get almost all, if not all, of their food and beverages from government institutions. For example, people staying in hospitals or living in prisons that are owned and operated by the government. At their least intensive, healthy procurement policies can be as simple as changing what food or beverages can be sold in vending machines in schools or government buildings.

Healthy procurement policies aimed at creating healthier meals should detail exact nutrition standards that an agency or institution must follow. Federal nutrition standards such as the **Dietary Guidelines for Americans (DGA)**,<sup>37</sup> or tools such as **USDA's MyPlate**,<sup>38</sup> can be used as a foundation for devising the policy's nutritional standards because these guidelines generally are otherwise non-binding.<sup>39</sup> When considering sugar consumption recommendations, it is important to note that policymakers and advocates should follow more health-conscious recommendations, which may differ from standards such as those suggested in the DGA. Guides such as the **American Heart Association's (AHA) Healthy Workplace Food and Beverage Toolkit**,<sup>40</sup> and the **National Alliance for Nutrition and Activity's Model Nutrition Standards**,<sup>41</sup> can also be instructive.<sup>42</sup> Important considerations to make in an effort to reduce sugar consumption are the nutrition standards surrounding both naturally occurring and added sugars. If policymakers want to ensure that the government institutions adhere to lower sugar consumption, both naturally occurring and added sugar content should be taken into account to ensure that the total nutrition standards reflect a lower quantity of permissible sugar content.

To help with this process, healthy procurement policies should also set nutritional standards for individual food items. For example, a policy could specify that all juice served must be 100% fruit juice with no added sugar, or that cereals served cannot contain more than 10 grams of sugar, as seen in **New York City, NY's Standards for Meals and Snacks Purchased and Served** by city agencies and their contractors.<sup>43</sup>

Policies should also focus on food groups rather than referencing nutrition standards. Policies should specify that a dining service must provide a certain number of servings of different food groups—e.g. protein, dairy, or grains—and define what constitutes a “serving” under each group. For example, in **Minnesota**, jails are required to offer at least two servings of protein a day. The regulation details what portion of foods is considered a serving: one-half cup of cooked beans, two eggs, or two tablespoons of peanut butter, among other options.<sup>44</sup>

Lastly, policies can ban certain products or ingredients like high fructose corn syrup altogether, as the **New York City (NY) Department of Education** does in their **Prohibited Ingredients list**.<sup>45</sup> These restrictions pertain specifically to the New York City public school system.

In addition to setting procurement policies, policymakers should create implementation guides that help staff and contractors charged with making, buying, or serving the foods know how to comply with the standards.<sup>46</sup> In the case of meals or snacks, an implementation guide should provide sample recipes or meal plans. For procurement policies focused on vending machines, an implementation guide should suggest snacks that meet standards or provide tips on what to look for on nutrition labels when purchasing snacks for the vending machine.<sup>47</sup> Implementation guides help ensure the effectiveness of any healthy procurement policy created. As a previously mentioned example, the **New York City, NY, Department of Health and Mental Hygiene** issued the **New York City Food Standards Implementation Guide for Meals and Snacks Purchased and Served**, which provides examples and tools to implement the **New York City Food Standards** in programs serving adults and children.<sup>48</sup>

## What are the Advantages of Healthy Procurement Policies?

Healthy procurement policies have the potential to increase overall demand for healthier products, influence reformulation of foods by food manufacturers, and increase the availability of healthier foods to the public.<sup>49</sup> Healthy procurement policies are particularly useful because they touch populations that can most benefit from nutritional support including preschool and school-aged children, teenagers, hospital patients, the elderly, those living in public institutions, and the incarcerated.<sup>50</sup> For many of these populations, government-run food programs provide a substantial proportion of their daily caloric intake, presenting a unique opportunity for governments to support healthier populations. As previously mentioned, across an analysis of the results of a variety of healthy procurement policies, 34 studies were identified and found to be effective at increasing the availability and purchases of healthy food and decreasing purchases of unhealthy food, including foods with excess sugar content.

Healthy procurement policies also afford governments the opportunity to leverage their market power to influence the availability of quality food options and to advance other food-related policy goals, like reducing sub-therapeutic antibiotic use in farm animals. For instance, by setting standards for specific institutions, such as requesting antibiotic-free chicken in schools, a larger national market for antibiotic-free chicken is created, with demand changing the practices of chicken producers.<sup>51,52</sup> Healthy procurement policies create a positive feedback loop: by increased demand for and availability of healthier food, the food will likely become less costly, reducing government's food costs and increasing consumer access.<sup>53</sup> In addition to the influence on the food and beverage industry, healthy procurement has the potential to unite advocates in the promotion of healthy food.<sup>54</sup> Educators, public officials, food producers, community organizations, and local businesses may all benefit from effective food procurement programs, as they can be designed to meet multiple parties' goals.<sup>55</sup> As a result, these policies have the potential to garner further support than other more controversial policies, such as SSB taxes.<sup>56</sup>

## What are Common Barriers to Implementing a Healthy Procurement Policy?

Despite these advantages, healthy procurement policies still face barriers to implementation, such as cost or community resistance. Resource strain can be a significant barrier to the creation or continuance of healthy procurement policies. Not only can the cost of food increase with the adoption of a procurement policy, but also the cost of labor and equipment: some school cafeterias or other government kitchens lack the appliances or human effort necessary to actually prepare foods that meet the proposed nutrition standards and thus, funding is needed for new equipment.<sup>57</sup> Additionally, the government implementing the policy may have to reallocate time or hire new staff to monitor the procurement program if significant changes are adopted.<sup>58</sup> Institutions can also lose revenue when they adopt healthy procurement policies.<sup>59</sup> For example, a school may lose income from a vending machine that used to sell SSBs.<sup>60</sup>

Community pushback can also make it difficult for local governments to adopt healthy procurement policies. Community members may feel that they should have ultimate control over their diets, or that the procurement policy standards differ from what they would consider to be healthy.<sup>61</sup> For example, in **New York City, NY, schools**, some parents were against a **"Meatless Mondays"** policy because they did not believe meat to be an unhealthy component of their children's diets, and felt that they, as parents, should determine their children's diets.<sup>62</sup> If procurement programs are politically unpopular and costly, they may be vulnerable to budget cuts, repeal, or state preemption laws.<sup>63</sup>

To overcome some of these obstacles, health researchers, advocates, and officials should work to build widespread buy-in for the policies.<sup>64</sup> Advocates of policies should be able to explain to all stakeholders why the healthy procurement policy is valuable for reducing the consumption of sugar.<sup>65</sup> Additionally, advocates should be prepared to have a response to any concerns raised regarding the policies.<sup>66</sup> To address some of these concerns, policymakers and advocates should involve community leaders in the process of designing these policies from the beginning. For example, drafters of a healthy procurement policy in schools may reassure parents that they will provide foods that are part of a child's culture or may set aside money to upgrade school kitchens.<sup>67</sup>

## Case Studies of Healthy Procurement Policies

**Alameda County, CA**, established nutrition standards for vending, meetings and events, catering, and cafeterias with the adoption of the **Alameda County Board of Supervisors healthy procurement policy** in 2009.<sup>68</sup> This policy required that 50% of food and beverage items available at county-funded meetings and events be healthier options, including items available in vending machines on county-owned or leased property.<sup>69</sup> It further required that these healthy options be placed in easily visible locations.<sup>70</sup>

**Philadelphia, PA**, established a healthy vending policy for vending machines on property owned or leased by the city.<sup>71</sup> The policy required that two-thirds of items meet healthy snack criteria and that these items be prominently placed and competitively priced.<sup>72</sup> SSBs had to be 12 ounces or less and did not count as healthy choices.<sup>73</sup> Additionally, water had to be less expensive than the SSB options.<sup>74</sup> After the implementation of the policy, sales in healthy snacks increased from 8% to 40% of all snack sales and sales in healthy drinks increased from 36% to 46% of all beverage sales.<sup>75</sup>

The state of **Minnesota** specifies nutrition requirements for meals served to people who are incarcerated, based on a 2,400-calorie diet consistent with the DGA and Dietary Reference Intakes.<sup>76</sup> A state statute specifies that daily meals must include a least two servings of protein foods equal to 14 grams of protein each, including meat, eggs, fish, legumes, and meat alternatives; two servings of dairy foods; at least five servings of fruits and vegetables, at least one of which must be vitamin C-rich and vitamin-A-rich; and at least six servings of whole grain or enriched cereal and bread products.<sup>77</sup> Prison facilities are also encouraged to limit servings of fats and added sugars.<sup>78</sup> Additional food from any food group may be provided to meet the daily calorie requirements, as long as all other minimum serving requirements have been met.<sup>79</sup>

In **Riley County, KS**, the **Riley County Fair Board** established a healthy procurement policy for the Riley County Fair Food Stand at the 2014 Riley County Fair.<sup>80</sup> The policy required at least 50% of foods sold at the stand to meet minimum nutrition standards.<sup>81</sup> Additionally, the chosen vendor to run the food stand was required to sell the foods meeting the nutrition standards at prices that were equal to or less than that of the other food offerings that did not meet these standards.<sup>82</sup>

## ENDNOTES

- 1 CHANGELAB SOLS. & NAT'L POL'Y & LEGAL ANALYSIS NETWORK (NPLAN), UNDERSTANDING HEALTHY PROCUREMENT: USING GOVERNMENT'S PURCHASING POWER TO INCREASE ACCESS TO HEALTHY FOOD 3, [https://www.changelabsolutions.org/sites/default/files/Understanding%20Healthy%20Procurement%202011\\_20120717.pdf](https://www.changelabsolutions.org/sites/default/files/Understanding%20Healthy%20Procurement%202011_20120717.pdf) [<https://perma.cc/3V9F-XV3>] [hereinafter CHANGELAB SOLS., UNDERSTANDING HEALTHY PROCUREMENT].
- 2 *Id.*
- 3 *Id.*
- 4 See KIM WILLIAMS ET AL., 2M RSCH., STUDY OF SCHOOL FOOD AUTHORITY (SFA) PROCUREMENT PRACTICES (Sept. 22, 2021), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SFA-Procurement.pdf> [<https://perma.cc/C7TA-5N2E>] [hereinafter WILLIAMS, STUDY OF SFA PROCUREMENT PRACTICES].
- 5 *The Good Food Purchasing Program Overview*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org/program-overview/> (last visited Apr. 18, 2022) [<https://perma.cc/C5LY-R2JG>].
- 6 *Id.*
- 7 *Id.*
- 8 *Id.*
- 9 *The Good Food Purchasing Program Policy Adoptions*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org/stories/> (last visited Apr. 18, 2022) [<https://perma.cc/NA3E-CDDY>].
- 10 N.Y.C. HEALTH, NEW YORK CITY FOOD STANDARDS: MEALS/SNACKS PURCHASED AND SERVED: IMPLEMENTATION GUIDE 6, <https://www1.nyc.gov/assets/doh/downloads/pdf/cardio/meals-snacks-purchased-guide.pdf> (last visited Apr. 6, 2022) [<https://perma.cc/HWZ9-ZD88>]; N.Y.C. HEALTH, NEW YORK CITY FOOD STANDARDS: BEVERAGE VENDING MACHINES, <http://nyc.gov/assets/doh/downloads/pdf/cardio/cardio-vending-machines-bev-standards.pdf> (last visited Apr. 18, 2022) [<https://perma.cc/NCC2-3PWA>]; N.Y.C. HEALTH, NEW YORK CITY FOOD STANDARDS: FOOD VENDING MACHINES, <http://nyc.gov/assets/doh/downloads/pdf/cardio/cardio-vending-machines-standards.pdf> (last visited Apr. 18, 2022) [<https://perma.cc/55WG-ZBC9>]; N.Y.C. HEALTH, NEW YORK CITY FOOD STANDARDS: FOOD VENDING MACHINES IMPLEMENTATION GUIDE, <https://www1.nyc.gov/assets/doh/downloads/pdf/cardio/food-standards-guide.pdf> [<https://perma.cc/PQA4-TMCT>] Commitment to Health and Nutrition: Food Standards and Good Food Purchasing, Exec. Order No. 8, (Feb. 10, 2022). The standards are updated based on the latest research and with feedback from agencies and expert stakeholders with key updates including: elevating sustainability recommendations with a more holistic approach throughout the standards that aligns with the Good Food Purchasing Framework; New protein requirements that limit beef and processed meat and introduce a plant-based protein minimum; Strengthening the whole grain standards; A new added sugar limit on meals served; A new requirement to solicit and consider client feedback regarding cultural preferences, taste, and food quality; and eliminating sugary drinks in vending machines.
- 11 *Los Angeles*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodcities.org/portfolio/los-angeles/?portfolioCats=32> (last visited Apr. 18, 2022) [<https://perma.cc/S44K-86U8>].
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 *Id.*
- 16 *Id.*
- 17 *Id.*
- 18 City of Portland, Me., Food Vending Machine Policy (Sept. 4, 2013), <http://www.portlandmaine.gov/DocumentCenter/View/5675/Food-Vending-Machine-Policy?bidId=> [<https://perma.cc/9RVP-KZLE>]
- 19 Mark L. Niebylski et al., *Healthy Procurement Policies and Their Impact*, 11(3) INTL J. ENV'T RSCH. AND PUB. HEALTH 2608 (Mar. 3, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3986994/#B33-ijerph-11-02608> [<https://perma.cc/N7Q9-TBR3>].
- 20 Meagan L. Pharis et al., *Sales of healthy snacks and beverages following the implementation of healthy vending standards in City of Philadelphia vending machines*, 21(2) PUB. HEALTH NUTRITION 339, 342 (Oct. 24, 2017), [https://pubmed.ncbi.nlm.nih.gov/29061207/#:~:text=Results%3A%20At%20post%2Dconversion%2C,sold%20per%20machine%20per%20month\).](https://pubmed.ncbi.nlm.nih.gov/29061207/#:~:text=Results%3A%20At%20post%2Dconversion%2C,sold%20per%20machine%20per%20month).) [<https://perma.cc/T28W-DLC4>] [hereinafter Pharis et al., *Sales of healthy snacks and beverages following the implementation of healthy vending standards*].
- 21 Niebylski et al., *Healthy Procurement Policies and Their Impact*, *supra* note 19.
- 22 See WILLIAMS, STUDY OF SFA PROCUREMENT PRACTICES, *supra* note 4.
- 23 CHANGELAB SOLS., UNDERSTANDING HEALTHY PROCUREMENT, *supra* note 1 at 4.
- 24 *Id.*
- 25 *Id.*

- <sup>26</sup> *Id.*
- <sup>27</sup> Mass. Exec. Order No. 509 (Jan. 7, 2009), <https://www.mass.gov/doc/executive-order-509-mass-register-1122/download> [<https://perma.cc/T362-RAEL>]; *see also* Mass in Motion, *Executive Order 509: Nutrition Standards for State Agencies*, MASS. DEP'T PUB. HEALTH WELLNESS UNIT (2014), <https://www.mass.gov/doc/eo509-fact-sheet-for-buying-and-preparing-healthy-foods-0/download> [<https://perma.cc/3AFP-JTQL>]; *see also* MASS. CONST. art. 1, pt. 2, c. 2, §1 (granting the Governor of the Commonwealth of Massachusetts the authority to issue executive orders that apply to stage agencies); As another example, in 2010, then-governor Phil Bredesen issued an executive order requiring state agencies set minimum nutritional standards for food and beverages sold on specified state properties and required these agencies make recommendations for the food provided to state employees at breaks, meetings, conferences, and other work-related events on state property. Tenn. Exec. Order No. 69 (Aug. 6, 2010), <https://publications.tnsosfiles.com/pub/execorders/exec-orders-bred69.pdf> [<https://perma.cc/3V9F-XYV3>].
- <sup>28</sup> Mass. Exec. Order No. 509, *supra* note 27.
- <sup>29</sup> *Id.*
- <sup>30</sup> *See* CHANGLAB SOLS., UNDERSTANDING HEALTHY PROCUREMENT, *supra* note 1 at 4.
- <sup>31</sup> *See id.*
- <sup>32</sup> City of Portland, Me., Food Vending Machine Policy, *supra* note 18; *see* CSPI, EXAMPLES OF POLICIES TO INCREASE ACCESS TO HEALTHIER FOOD CHOICES FOR PUBLIC PLACES: NATIONAL, STATE, AND LOCAL FOOD AND NUTRITION GUIDELINES (Oct. 19, 2017), [https://cspinet.org/sites/default/files/attachment/examples2\\_0.pdf](https://cspinet.org/sites/default/files/attachment/examples2_0.pdf) [<https://perma.cc/8GC3-29T6>] (providing multiple examples of national, state, and local healthy procurement policies) [hereinafter CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES].
- <sup>33</sup> Suffolk County, NY, Local Law No. 24-2014 (Nov. 11, 2014), [https://media.nyam.org/filer\\_public/ad/2d/ad2db268-2ded-4465-a396-413b80e17e01/suffolk-co-healthy-vending-law-resolution-580-2014.pdf](https://media.nyam.org/filer_public/ad/2d/ad2db268-2ded-4465-a396-413b80e17e01/suffolk-co-healthy-vending-law-resolution-580-2014.pdf) [<https://perma.cc/PEA3-Y3N5>]; *see* CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES, *supra* note 32.
- <sup>34</sup> *See* CHANGLAB SOLS., UNDERSTANDING HEALTHY PROCUREMENT, *supra* note 1 at 4.
- <sup>35</sup> *Id.*
- <sup>36</sup> *Id.*
- <sup>37</sup> The DGA provides comprehensive health guidelines for people at different stages of life. USDA & U.S. DEP'T OF HEALTH & HUMAN SERV. (HHS), DIETARY GUIDELINES FOR AMERICANS 2020–2025: MAKE EVERY BITE COUNT WITH THE *DIETARY GUIDELINES* (9th Ed. Dec. 2020), [https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary\\_Guidelines\\_for\\_Americans\\_2020-2025.pdf](https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf) [<https://perma.cc/2GJY-5K63>].
- <sup>38</sup> MyPlate provides a basic structure for balancing fruit, vegetables, protein, dairy and grains in diets. *MyPlate*, USDA, <https://www.myplate.gov/resources/tools> (last visited Apr. 18, 2022) [<https://perma.cc/96FH-VAJ3>].
- <sup>39</sup> MINN. R. 2911.3900 (2013).
- <sup>40</sup> AMERICAN HEART ASS'N (AHA), HEALTHY WORKPLACE FOOD AND BEVERAGE TOOLKIT (2019), <https://www.heart.org/-/media/Healthy-Living-Files/Foodscape/Healthy-Workplace-Food-and-Beverage-Toolkit-PDF.pdf> [<https://perma.cc/A5EH-Z5UM>].
- <sup>41</sup> CSPI, NATIONAL ALLIANCE FOR NUTRITION AND ACTIVITY (NANA) MODEL NUTRITION STANDARDS FOR “GRAB-AND-Go” FOODS AND BEVERAGES (June 16, 2020), [https://www.cspinet.org/sites/default/files/NANA\\_Model\\_Nutrition\\_Standards\\_Grab\\_and\\_Go\\_6-15-20\\_0.pdf](https://www.cspinet.org/sites/default/files/NANA_Model_Nutrition_Standards_Grab_and_Go_6-15-20_0.pdf) [<https://perma.cc/ZXY8-RGA3>] (adopting the NANA Model Beverage and Food Vending Machine Standards and the NANA Model Nutrition Standards for Checkout, with input from members of the NANA Steering Committee). For more model standards from the NANA, *see Healthier Food Choices for Public Places*, CSPI, <https://www.cspinet.org/protecting-our-health/nutrition/healthier-public-places> (last visited Apr. 18, 2022) [<https://perma.cc/6MXN-CLNC>].
- <sup>42</sup> CITYHEALTH, HEALTHY FOOD PROCUREMENT IN AMERICAN CITIES: LEVERAGING LOCAL PURCHASING POWER TO FIGHT OBESITY 8, [https://www.cityhealth.org/wp-content/uploads/1970/01/CityHealth\\_HealthyFoodProcurement.pdf](https://www.cityhealth.org/wp-content/uploads/1970/01/CityHealth_HealthyFoodProcurement.pdf) (last visited Apr. 18, 2022) [<https://perma.cc/BWP5-6SR6>].
- <sup>43</sup> NEW YORK CITY FOOD STANDARDS: MEALS/SNACKS PURCHASED AND SERVED, *supra* note 10.
- <sup>44</sup> MINN. R. 2011.3900, *supra* note 39.
- <sup>45</sup> N.Y.C. DEP'T EDUC. OFF. FOOD & NUTRITION SERVS. (O.F.N.S.), PROHIBITED INGREDIENTS, <https://cdn-blob-prd.azureedge.net/prd-pws/docs/default-source/default-document-library/prohibited-ingredients-list.pdf> (last visited Apr. 18, 2022) [<https://perma.cc/G5J8-BCNQ>].
- <sup>46</sup> NEW YORK CITY FOOD STANDARDS: FOOD VENDING MACHINES IMPLEMENTATION GUIDE, *supra* note 10.
- <sup>47</sup> NEW YORK CITY FOOD STANDARDS: FOOD VENDING MACHINES IMPLEMENTATION GUIDE, *supra* note 10 at 2–3.
- <sup>48</sup> NEW YORK CITY FOOD STANDARDS: MEALS/SNACKS PURCHASED AND SERVED, *supra* note 10.
- <sup>49</sup> Niebylski et al., *Healthy Procurement Policies and Their Impact*, *supra* note 19 (citing Mary R. L'Abbé, et al., *Environmental Scan of Public Food Procurement Policies Related to Sodium*, PUB. HEALTH AGENCY CAN. (Mar. 2011)).
- <sup>50</sup> Nicholas Freudenberg, *Healthy-food procurement: using the public plate to reduce food insecurity and diet-related diseases*, 4(5) LANCET DIABETES & ENDOCRINOLOGY 383 (Apr. 4, 2016), [https://doi.org/10.1016/S2213-8587\(16\)00078-4](https://doi.org/10.1016/S2213-8587(16)00078-4)

[<https://perma.cc/FA5L-BELH>] [hereinafter Freudenberg, *Healthy-food procurement*].

- 51 *Id.* (citing Tom Polansek, *Big U.S. school districts plan switch to antibiotic-free chicken*, REUTERS (Dec. 9, 2014), <https://www.reuters.com/article/antibiotics-chicken-education-idUSL1NOTT1P620141210> [<https://perma.cc/X58A-WWUU>]).
- 52 Niebyski et al., *Healthy Procurement Policies and Their Impact*, *supra* note 19.
- 53 WORLD HEALTH ORG. (WHO), ACTION FRAMEWORK FOR DEVELOPING AND IMPLEMENTING PUBLIC FOOD PROCUREMENT AND SERVICE POLICIES FOR A HEALTHY DIET v (2021), <https://apps.who.int/iris/bitstream/handle/10665/338525/9789240018341-eng.pdf> [<https://perma.cc/MF7J-YT9B>] [hereinafter WHO, ACTION FRAMEWORK FOR FOOD PROCUREMENT].
- 54 Freudenberg, *Healthy-food procurement*, *supra* note 50 (citing Corinna Hawkes, *Five reasons why healthy food procurement is a promising strategy to address obesity*, WORLD OBESITY (2015), <https://www.worldobesity.org/news/blog-five-reasons-why-healthy-food-procurement-is-a-promising-strategy-to-a> [<https://perma.cc/V2XD-E6WP>]).
- 55 *Id.*
- 56 *Id.*
- 57 Kim D. Raine et al., *Healthy food procurement and nutrition standards in public facilities: evidence synthesis and consensus policy recommendations*, 28(1) HEALTH PROMOTION CHRONIC DISEASE PREVENTION CAN. 6, 7 (Jan. 2018), <https://pubmed.ncbi.nlm.nih.gov/29323862/> [<https://perma.cc/9W9D-UH9V>].
- 58 WHO, ACTION FRAMEWORK FOR FOOD PROCUREMENT, *supra* note 53 at 38–42; Freudenberg, *Healthy-food procurement*, *supra* note 50 at 384.
- 59 Pharis et al., *Sales of healthy snacks and beverages following the implementation of healthy vending standards*, *supra* note 20 at 343–44.
- 60 WHO, ACTION FRAMEWORK FOR FOOD PROCUREMENT, *supra* note 53 at 16.
- 61 Morgan Greene, *Mitigating the Adverse Effects of Food Insecurity in New York City through the School Lunch Program*, 47 FORDHAM URB. L. J. 1081, 1109 (2020), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2811&context=ulj> [<https://perma.cc/RNY9-N9PE>]; Freudenberg, *Healthy-food procurement*, *supra* note 50 at 383.
- 62 Greene, *Mitigating the Adverse Effects of Food Insecurity in New York City through the School Lunch Program*, *supra* note 61 at 1109.
- 63 Freudenberg, *Healthy-food procurement*, *supra* note 50 at 383; OLIVIER DE SCHUTTER, THE POWER OF PROCUREMENT: PUBLIC PURCHASING IN THE SERVICE OF REALIZING THE RIGHT TO FOOD, U.N. BRIEFING NOTE 08, 15 (Apr. 2014), [http://www.srfood.org/images/stories/pdf/otherdocuments/20140514\\_procurement\\_en.pdf](http://www.srfood.org/images/stories/pdf/otherdocuments/20140514_procurement_en.pdf) [<https://perma.cc/384W-WR4F>].
- 64 WHO, ACTION FRAMEWORK FOR FOOD PROCUREMENT, *supra* note 53 at 16.
- 65 *Id.*
- 66 *Id.*
- 67 Greene, *Mitigating the Adverse Effects of Food Insecurity in New York City through the School Lunch Program*, *supra* note 61 at 1111–12.
- 68 WELLNESS WORKS ALAMEDA CNTY., NUTRITION & PHYSICAL ACTIVITY POLICY IMPLEMENTATION RESOURCE: MAKING HEALTHY OPTIONS AVAILABLE FOR ALL (2009), [https://www.acgov.org/sustain/documents/Nutr\\_Policy\\_Fact\\_Sheet.pdf](https://www.acgov.org/sustain/documents/Nutr_Policy_Fact_Sheet.pdf) [<https://perma.cc/58EF-LF2Q>] [hereinafter ALAMEDA CNTY., NUTRITION & PHYSICAL ACTIVITY POLICY RESOURCE].
- 69 *Id.*; see CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES, *supra* note 32 at 5.
- 70 ALAMEDA CNTY., NUTRITION & PHYSICAL ACTIVITY POLICY RESOURCE, *supra* note 68; see CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES, *supra* note 32 at 5.
- 71 Pharis et al., *Sales of healthy snacks and beverages following the implementation of healthy vending standards*, *supra* note 20 at 240.
- 72 *Id.*
- 73 *Id.* at 341.
- 74 *Id.*
- 75 *Id.* at 342.
- 76 MINN. STAT. § 241.021; MINN. R. 2011.3900, *supra* note 39; see CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES, *supra* note 32 at 25.
- 77 MINN. STAT. § 241.021; MINN. R. 2011.3900, *supra* note 39; see CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES, *supra* note 32 at 25.
- 78 MINN. STAT. § 241.021; MINN. R. 2011.3900, *supra* note 39; see CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES, *supra* note 32 at 25.
- 79 MINN. STAT. § 241.021; MINN. R. 2011.3900, *supra* note 39; see CSPI, EXAMPLES OF HEALTHY PROCUREMENT POLICIES, *supra* note 32 at 25.
- 80 RILEY COUNTY FAIR, KAN., REQUEST FOR PROPOSALS FOR RILEY COUNTY FAIR FOOD STAND MANAGER (2014), <http://www.rileycountyfair.com/files/library/2014%20Food%20Stand%20Manager%20RFP.pdf> [<https://perma.cc/T48Y-7YLZ>].
- 81 *Id.*
- 82 *Id.*



# PUBLIC AWARENESS CAMPAIGNS

## What are Public Awareness Campaigns?

**P**ublic awareness campaigns are multifaceted, comprehensive efforts that utilize messaging, public education, and public relations to help reach a specific goal.<sup>1</sup> Public awareness campaigns can educate communities about the risks of particular foods or beverages—such as those high in added sugar—and therefore discourage the sale and consumption of these products.<sup>2</sup> This is particularly useful, as many consumers lack awareness of the serious health effects resulting from the excess consumption of sugar.<sup>3</sup> Public awareness campaigns are at their best when they are collaborative with community members, health professionals, and other advocates and can serve as strong educational tools that impact a variety of stakeholders. These campaigns may be launched as a standalone policy initiative, or in conjunction with a government or industry-led intervention to change the status quo of food sales, distribution, purchasing, and consumption habits.

## What are the Advantages of Public Awareness Campaigns?

In general, evaluation of awareness campaigns for community health show promising results because public awareness campaigns can successfully change consumer attitudes about the risks of sugar consumption, in turn leading to behavioral changes.<sup>4</sup> Anti-smoking campaigns helped pave the way in the space of utilizing public awareness to reduce harmful behavior and have shown to be particularly effective when paired with related policies.<sup>5</sup> From a policy perspective, public awareness campaigns are a relatively straightforward strategy for engaging partners towards a common goal, and are often cited as the most feasible sugar reduction strategy, especially related to sugar-sweetened beverage (SSB) reduction, because they typically face less opposition.<sup>6</sup> Some campaigns even encourage specific actions, such as making a pledge to reduce SSB consumption by a particular amount.<sup>7</sup> Launching a campaign helps generate momentum, create sustained awareness of the issue, and engage community members focused on changing consumer attitudes.<sup>8</sup>

Some campaigns utilize countermarketing to combat deceptive marketing practices in the food and beverage industry. Countermarketing is a mass-media communication strategy used by public health organizations in recent years to counter industry advertising, promotion, and other media influences, such as targeted imagery in movies.<sup>9</sup> The **truth<sup>®</sup> Campaign** for tobacco, illustrates the effectiveness of countermarketing campaigns.<sup>10</sup> The truth<sup>®</sup> Campaign is a branded, national smoking prevention campaign designed to reach at-risk youth, ages 12 to 17 years, primarily through edgy television advertisements with an antitobacco industry theme.<sup>11</sup> The campaign features fast-paced, hard-edged advertisements that present facts about the addictiveness of smoking, the number of deaths and amount of disease attributed to smoking, the ingredients found in cigarettes, and the deceptive marketing practices of the tobacco industry.<sup>12</sup> This campaign differs from other campaigns, such as a “just say no” approach, in that it does not preach or tell viewers not to smoke, but merely conveys valuable information and encourages viewers to make up their own minds about the tobacco

industry.<sup>13</sup> Ample evidence suggests that this countermarketing approach to discouraging tobacco use is successful, so much so that the **Centers for Disease Control and Prevention (CDC)**, have authored a guide for tobacco control program staff in health departments and national organizations that describes the best methods by which to design and implement a counter-marketing campaign like truth.<sup>14</sup>

## What are the Most Common Barriers to Implementing Public Awareness Campaigns?

### Translating Messaging into Action

While data suggests that public awareness campaigns are effective at increasing consumers' awareness about the dangers and presence of sugar in foods and beverages, this awareness is not necessarily matched by sustainable, responsive action.<sup>15</sup> One study found that, following exposure to a media campaign aimed at sugar reduction, approximately 80% of people intended to reduce the amount of SSBs they offered to their children, yet there was no significant change in self-reported consumption.<sup>16</sup> A further complication in translating knowledge to behavior change is lack of understanding. Recent research indicates societal barriers and confusion over what products contain sugars often prohibit long-term progress in changing consumer behaviors.<sup>17</sup> For example, surveyed individuals have reported confusion over 'good' and 'bad' sugars, difficulty swapping unhealthy foods for healthier versions, time constraints due to busy lifestyles, and peer pressure from others who allow their children or those in their care to consume sugary foods and beverages.<sup>18</sup>

However, as previously mentioned, the success rate of countermarketing campaigns influencing tobacco usage as well as the overwhelming evidence in favor of antismoking public awareness campaign, suggest that such campaigns can reduce harmful health behaviors.<sup>19</sup> More detailed examples of successful public awareness campaigns can be found in the Case Studies on Public Awareness Campaigns subsection.

### Cost of Public Awareness Campaigns

A major barrier to this policy approach is that it can be costly. A study that analyzed two multiplatform media campaigns discouraging SSB consumption called, "**Live Sugarfreed**" (NJ), and "**Howard County Unsweetened**" (MD), concluded that while public health counter-advertising can help consumers make healthier choices, the campaigns required substantial funding.<sup>20</sup> Live Sugarfreed cost \$206,950 per year in advertisement placements to make 27 million "impressions"—impressions refer to the number of times a campaign advertisement was displayed on a web page or viewed on television—and Howard County Unsweetened, required approximately \$800,000 per year, accomplishing 17 million impressions.<sup>21</sup> Cost is an important consideration given the limits of government health budgets towards public health activities, including public awareness campaigns.

An alternative solution to adopting a mass-media campaign for SSBs or sugary foods would be to adopt a cost-effective social media campaign. Social media is considered an inexpensive and quick tool to disseminate health messages and health communication.<sup>22</sup> While data is limited in terms of social media utilization in SSB and other sugar reduction health campaigns, these platforms afford public health officials and government agencies an opportunity to efficiently reach a large population.

Another consideration in overcoming the cost of public awareness campaigns may be found through "Social Marketing" utilizing **Supplemental Nutrition Assistance Program Education (SNAP-Ed)** funds.<sup>23</sup> SNAP-Ed is an evidenced-based program that helps people lead healthy, active lives,

teaches people how to make affordable and healthy choices with their SNAP dollars, and how to stay physically active.<sup>24</sup> SNAP-Ed partners with state and local organizations and its initiatives include nutrition education classes, social marketing campaigns, and efforts to improve policies, systems, and the environment of communities.<sup>25</sup> SNAP-Ed is funded through the **Nutrition Education and Obesity Prevention Grant Program** in the **Healthy, Hunger-Free Kids Act of 2010**.<sup>26</sup> Social Marketing is the process of combining commercial marketing methods and public health approaches in order to achieve significant, large-scale public benefits.<sup>27</sup> These methods can include formative research and pilot testing, paid or public service advertising, and other forms of mass communications such as interactive websites, social media public relations, or earned media and promotions.<sup>28</sup> The concept being to deliver nutrition messages to the SNAP-Ed audience.<sup>29</sup>

## Issues in Design

Public awareness campaigns may suffer from poor messaging in their design. Some campaigns may be perceived as shifting the blame to the individual consumer for making the “wrong” choices, rather than raising awareness around the diet-related diseases attributable to excess consumption.<sup>30</sup> For instance, campaigns have previously promoted reducing body fat as a way to counteract the impacts of SSBs.<sup>31</sup> These campaigns do not address other forces that play into consumer behavior, such as industry marketing, which is designed to increase consumption of sugar among targeted groups, or the general inequities in access and systemic barriers mentioned earlier in this Toolkit.<sup>32</sup>

To avoid issues in the design of public awareness campaigns, it is best to take the approach of promoting “weight neutral messaging,” that focuses on environmental, social, and marketing influences relevant to the intended audience.<sup>33</sup>

## Case Studies on Public Awareness Campaigns

### Rethink Your Drink California

**rethink YOUR DRINK**

# Beverages: Make Every Sip Count

**When Choosing Drinks, Ask:**

- How can I make every sip count?** Drink natural, nutrient-packed beverages like milk, 100% juices and water to boost your nutrition.
- Did I drink 2-3 cups of milk today?** If not, drink low-fat or fat-free milk to build strong teeth and bones.
- Am I thirsty?** Choose water to stay hydrated without adding extra calories. Use tap water and add ice cubes to save money. Add flavor with sliced fruit or cucumber.
- What if I don't like the taste of tap water?** Leave water overnight in an open container. Chlorine evaporates so water tastes better.
- What should I do with the large drink from a meal combo at fast food restaurants?** Substitute low-fat or fat-free milk, water or split a drink with family.

**What Size Is Your Drink?**

This glass is the actual size of one cup, or 8 ounces. Compare your cup here. Then check your label to see how much you are drinking.

**What's in Your Drink? Read the Label**

- Find the serving size.** One container isn't always one serving. This container has 3 servings. Drinking the whole container is 510 calories!
- Limit added sugars.**
- Read ingredients.** Milk or 100% juice should be listed first.

**Nutrition Facts**  
Serving Size 8 fl oz (240 mL)  
Servings Per Container 3  
Amount Per Serving  
Calories 170  
Total Fat 2.5g  
Saturated Fat 1.5g  
Trans Fat 0g  
Cholesterol 5mg  
Sodium 130mg  
Total Carbohydrate 25g  
Dietary Fiber 1g  
Sugars 21g  
Protein 8g  
Vitamin A 10% • Vitamin C 4%  
Calcium 30% • Iron 4%  
Percent Daily Values are based on a diet of other people's secretaries.

Choose Most Often	Drink Less Often
Water	Soda
Milk: Low-fat or fat-free	Sports drinks, energy drinks
100% juice	Fruit-drinks
Unsweetened beverages	Sweetened teas, coffees and other beverages

**I Will Drink More:** **I Will Drink Less:**

© 2010 Dairy Council of California, Inc. 2013, with the Orange County Nutrition and Physical Activity Collaborative (N/PAC).  
Registered with funds from the USDA Supplemental Nutrition Assistance Program. • California Department of Public Health. Reprints permitted for educational use, not for resale. 1-800-451-508 (7/12/13)

The **California Department of Public Health (CDPH) Nutrition Education and Obesity Prevention (NEOPB)** launched the **Rethink Your Drink Campaign**, which is designed to inform users about the relationships between SSB consumption and increases in rates of overweight and obesity.<sup>34</sup> The campaign aims to educate children and adults in households with low income about healthy drink

options by encouraging consumption of water. The program specifically provides nutrition education and recommendations on ways to improve overall health, particularly by reducing consumption of soda, energy drinks, and sports drinks.<sup>35</sup> The program established social marketing and direct education materials including curricula and lesson plans, posters, fact sheets, and other handouts for dissemination in school and community-based settings, like after-school programs.<sup>36</sup> A study analyzed the effectiveness of the Rethink Your Drink Campaign, and determined that the overall intervention resulted in a 3% decrease in consumption of soda, 4% decrease in consumption of fruit and sports drinks, and 6% overall decrease in SSB consumption among adults.<sup>37</sup>

## Shape Up SF San Francisco, CA



The **San Francisco Department of Public Health** established **Shape Up SF**, which is a coalition of health-focused organizations that launched **Open Truth**, a countermarketing campaign that focused on countering the targeted marketing of SSBs to Black and Latino youths.<sup>38</sup> This campaign formed a partnership with **Youth Speaks**, a youth-centered arts education program to engage in the creation of the messaging for the campaign and even some of its dissemination.<sup>39</sup> The campaign featured testimonial videos of youths of color sharing their thoughts on targeted marketing from the food and beverage industries.<sup>40</sup>

## Youth Sugar Sweetened Beverage Countermarketing Project New York City, NY



The **City University of New York (CUNY) Urban Food Policy Institute (Institute)** in New York City led a **Youth Sugar Sweetened Beverage Countermarketing Project** with students from **A. Philip**

**Randolph High School.**<sup>41</sup> This project had students develop countermarketing posters against SSBs, which focused on exposing the motives of SSB manufacturers.<sup>42</sup> These posters were displayed in areas of the city with high rates of diabetes, such as East Harlem.<sup>43</sup> Building on this campaign, the Institute published an article assessing the connection between anti-tobacco campaigns and sugar campaigns and concluded that it is likely that lessons drawn from the tobacco campaigns could lead to successes in these sugar reduction campaigns.<sup>44</sup>

## Don't Mute My Health Washington, D.C.



In 2019, the **#DontMuteMyHealth** grassroots movement began in **Washington, D.C.**, to “reclaim community health from outside influences and interests.”<sup>45</sup> The campaign primarily focuses on engaging with community members in the 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Wards of Washington, D.C., to promote equitable access to healthier lives.<sup>46</sup> The movement has launched multiple campaigns, including a campaign that discusses the impact of sugar on D.C. communities, particularly the effects of the food and beverage industry’s marketing tactics on Black communities.<sup>47</sup> Due in part to the widespread and community-oriented nature of this campaign, members of the D.C. Council have proposed an SSB tax.<sup>48</sup>

## ENDNOTES

- <sup>1</sup> ADVOC. & COMM’N SOLS., LLC, CRITICAL COMPONENTS OF A PUBLIC AWARENESS CAMPAIGN (2015), [https://www.advocacyandcommunication.org/wp-content/uploads/2018/04/Critical\\_Components\\_of\\_a\\_Public\\_Awareness\\_Campaign.pdf](https://www.advocacyandcommunication.org/wp-content/uploads/2018/04/Critical_Components_of_a_Public_Awareness_Campaign.pdf) [<https://perma.cc/L75U-XSVY>].
- <sup>2</sup> CHANGELAB SOLS., SUGARY DRINK STRATEGY PLAYBOOK: REDUCING SUGARY DRINKS TO PROMOTE COMMUNITY HEALTH AND EQUITY 16 (2018), [https://www.changelabsolutions.org/sites/default/files/Sugary\\_Drink\\_Playbook\\_FINAL\\_20180906.pdf](https://www.changelabsolutions.org/sites/default/files/Sugary_Drink_Playbook_FINAL_20180906.pdf), [<https://perma.cc/4HAV-TTQX>] [hereinafter CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK].
- <sup>3</sup> See, e.g., Julia M. Hess et al., *Perceptions of water and sugar-sweetened beverage consumption habits among teens, parents and teachers in the rural south-western USA*, 22:8 PUB. HEALTH NUTRITION 1376 (June 2019), <https://doi.org/10.1017/S1368980019000272> [<https://perma.cc/DES6-TB74>] (showing that youths and adults were aware of the health risks of soda, but they did not transform this information to other SSBs such as sports drinks and sweetened tea); Jennifer Bradley et al., *Impact of health marketing campaign on sugars intake by children aged 5-11 years and parental views on reducing children’s consumption*, 20 BMC PUB. HEALTH 331 (2020), <https://doi.org/10.1186/s12889-020-8422-5> [<https://perma.cc/S785-FJQR>] (finding that health marketing campaigns have a positive impact in reducing sugar intake but that societal barriers and confusion over which sources of sugars to avoid hamper efforts to change sugar intake habits) [hereinafter Bradley et al., *Impact of health marketing campaign on sugars intake by children*]; See also Thomas A. Farley et al., *Mass Media Campaign to Reduce Consumption of Sugar-Sweetened Beverages in a Rural Area of the United States*, 107(6) AM. J. PUB. HEALTH 989 (June 2017), <https://dx.doi.org/10.2105%2FAJPH.2017.303750> [<https://perma.cc/GDR7-HDER>] (demonstrating that a brief media campaign on SSBs was followed by intended changes in beliefs on SSBs and consumption); see Myde Boles et al., *Ability of a mass media campaign to influence knowledge, attitudes, and behaviors about sugary drinks and obesity*, 67(Supp. 1) PREVENTIVE MED. S40 (Oct. 2014), <https://doi.org/10.1016/j.ypmed.2014.07.023> [<https://perma.cc/S9EK-6EXU>] (concluding that media campaigns about sugary drinks may be effective for raising awareness about added sugars in beverages, may be associated with knowledge about health problems associated with excessive sugar consumption, and may prompt behavioral intentions towards reducing soda and sugary drink consumption) [hereinafter Boles et al., *Ability of a mass media campaign to influence*].
- <sup>4</sup> CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2.
- <sup>5</sup> *Id.* (citing David T. Levy et al., *The Effects of Tobacco Control Policies on Smoking Rates: A Tobacco Control Scorecard*, 10(5) J. PUB. HEALTH MGMT. & PRAC. 388 (July 2004), <https://doi.org/10.1097/00124784-200407000-00011> (last visited (Apr. 18, 2022))).
- <sup>6</sup> *Id.* at 16.
- <sup>7</sup> *Id.*
- <sup>8</sup> *Id.*
- <sup>9</sup> Jane A. Allen et al., *The truth® Campaign: Using Countermarketing to Reduce Youth Smoking, in THE NEW WORLD OF HEALTH PROMOTION: NEW PROGRAM DEVELOPMENT, IMPLEMENTATION AND EVALUATION* 195, 196 (Jones & Bartlett, 2009), [https://samples.jbpub.com/9780763753771/53771\\_CH10\\_FINAL.pdf](https://samples.jbpub.com/9780763753771/53771_CH10_FINAL.pdf) [<https://perma.cc/5UCC-J46U>].
- <sup>10</sup> *Id.* at 195.
- <sup>11</sup> *Id.* at 196 (citing Matthew C. Farrelly et al., *Evidence of a Dose-Response Relationship Between “truth” antismoking Ads and Youth Smoking Prevalence*, 95(3) AM. J. PUB. HEALTH 425 (Mar. 2005), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2004.049692> [<https://perma.cc/7TFW-6JUC>]).
- <sup>12</sup> *Id.* at 196.
- <sup>13</sup> *Id.*
- <sup>14</sup> U.S. DEP’T HEALTH & HUMAN SERVS. (HHS) CTRS. FOR DISEASE CONTROL & PREVENTION (CDC), DESIGNING AND IMPLEMENTING AN EFFECTIVE TOBACCO COUNTER-MARKETING CAMPAIGN (Sept. 14, 2021), [https://www.cdc.gov/tobacco/stateandcommunity/counter-marketing/pdfs/tobacco\\_cm\\_manual.pdf](https://www.cdc.gov/tobacco/stateandcommunity/counter-marketing/pdfs/tobacco_cm_manual.pdf) [<https://perma.cc/87Q4-5K9S>].
- <sup>15</sup> Boles et al., *Ability of a mass media campaign to influence*, *supra* note 3.
- <sup>16</sup> *Id.*
- <sup>17</sup> Bradley et al., *Impact of health marketing campaign on sugars intake by children*, *supra* note 3.
- <sup>18</sup> Boles et al., *Ability of a mass media campaign to influence*, *supra* note 3.
- <sup>19</sup> CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2 at 16 (citing Levy et al., *The Effects of Tobacco Control Policies on Smoking Rates: A Tobacco Control Scorecard*, *supra* note 5); see, e.g., W. Douglas Evans et al., *Social Marketing as a Childhood Obesity Prevention Strategy*, 18(Supp. 1) OBESITY S23 (Feb. 2010), <https://doi.org/10.1038/oby.2009.428> [<https://perma.cc/GHZ5-BLAV>]; Reena Wadia, *Effectiveness of health marketing campaigns*, 228 BRIT. DENTAL J. 595 (Apr. 24, 2020), <https://doi.org/10.1038/s41415-020-1549-z> [<https://perma.cc/9YHR-5JB6>]; Jennifer Falbe & Kristine Madsen, *Growing Momentum for Sugar-Sweetened Beverage Campaigns and Policies: Costs and Considerations*, 107(6) AM. J. PUB. HEALTH 835 (June 2017), <https://dx.doi.org/10.2105%2FAJPH.2017.303805> [<https://perma.cc/87Q4-5K9S>].

perma.cc/5EGN-YTE5] [hereinafter Falbe & Madsen, *Growing Momentum for SSB Campaigns and Policies*].

20 Falbe & Madsen, *Growing Momentum for SSB Campaigns and Policies*, *supra* note 19.

21 *Id.*

22 Vannarath Te et al., *Exploring social media campaigns against sugar-sweetened beverage consumption: A systematic search*, 6(1) COGENT MED. (Apr. 30, 2019), <https://doi.org/10.1080/2331205X.2019.1607432> (last visited Apr. 18, 2022).

23 *SNAP-Ed Connection: Social Marketing*, U.S. DEP'T AGRIC. (USDA) FOOD & NUTRITION SERVS. (FNS), <https://snaped.fns.usda.gov/snap-ed-works/social-marketing> (last visited Apr. 20, 2022) [<https://perma.cc/ZZ3M-P5G9>].

24 *Supplemental Nutrition Assistance Program (SNAP): Supplemental Nutrition Assistance Program Education (SNAP-Ed)*, USDA FNS (June 23, 2021), <https://www.fns.usda.gov/snap/snap-ed> [<https://perma.cc/2JEH-U4K2>].

25 *Id.*

26 See *Healthy, Hunger-Free Kids Act of 2010*, 124 Stat. 3182 (2010).

27 *SNAP-Ed Connection: Social Marketing*, *supra* note 23.

28 *Id.*

29 *Id.*

30 CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2 at 19.

31 See, e.g., Sewell Chan, *New Targets in the Fat Fight: Soda and Juice*, N.Y. TIMES (Aug. 31, 2009), <https://www.nytimes.com/2009/09/01/nyregion/01fat.html?mcubz=1> [<https://perma.cc/VY2C-T8SN>].

32 See, e.g., WORLD HEALTH ORG. (WHO), *MARKETING OF FOODS HIGH IN FAT, SALT AND SUGAR TO CHILDREN: UPDATE 2012–2013* (2013), [https://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/191125/e96859.pdf](https://www.euro.who.int/__data/assets/pdf_file/0019/191125/e96859.pdf) [<https://perma.cc/5EKY-F2VH>].

33 CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2 at 19.

34 *Rethink Your Drink*, CAL. DEP'T PUB. HEALTH [CDPH] NUTRITION EDUC. & OBESITY PREVENTION BRANCH [NEOPB], <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/NEOPB/Pages/RethinkYourDrink.aspx> (last visited Oct. 18, 2021) [hereinafter *Rethink Your Drink*, CDPH]; see *SNAP-Ed Toolkit: Obesity Prevention Interventions and Evaluation Framework*, U. N.C. AT CHAPEL HILL CTR. FOR HEALTH PROMOTION & DISEASE PREVENTION (2016), <https://snapedtoolkit.org/about/team/> [<https://perma.cc/K7GR-788C>].

35 *Rethink Your Drink*, CDPH, *supra* note 34.

36 *Id.*

37 *Id.*

38 CHANGELAB SOLS. SUGARY DRINK STRATEGY PLAYBOOK, *supra* note 2 at 19; *Open Truth Campaign*, SHAPE UP S.F. (2021), <http://shapeupscoalition.org/projects/ryd/open-truth-campaign/> [<https://perma.cc/LCK8-VHLT>].

39 *Open Truth Campaign*, SHAPE UP S.F., *supra* note 38.

40 *Id.*

41 *Youth Sugar Sweetened Beverage Countermarketing Displays Spark Dialogue Uptown*, CUNY URB. FOOD POL'Y INST. (July 7, 2017), <https://www.cunyurbanfoodpolicy.org/news/2017/7/7/youth-sugar-sweetened-beverage-countermarketing-displays-spark-dialogue-uptown> [<https://perma.cc/HUB7-VWGS>].

42 *Id.*

43 *Id.*

44 P. Christopher Palmedo et al., *Countermarketing Alcohol and Unhealthy Food: An Effective Strategy for Preventing Noncommunicable Diseases? Lessons from Tobacco*, 38 ANN. REV. PUB. HEALTH 119 (Mar. 2017), <https://pubmed.ncbi.nlm.nih.gov/28384081/#:~:text=Countermarketing%20campaigns%20use%20health%20communications,%2C%20alcohol%2C%20and%20unhealthy%20food.> [<https://perma.cc/93CZ-W62L>].

45 *About Us*, #DontMuteMyHealth, <https://www.dontmutemyhealth.org/about-us> (last visited Feb. 21, 2022) [<https://perma.cc/SS4B-HVWN>].

46 *Id.*

47 *The Impact of Sugar*, #DontMuteMyHealth, <https://www.dontmutemyhealth.org/sugar-impact> (last visited Feb. 21, 2022) [<https://perma.cc/4QEH-6CJT>].

48 See, e.g., Sam P.K. Collins, *D.C. Council Members Propose Soda Excise Tax*, WASH. INFORMER (Oct. 16, 2019), <https://www.washingtoninformer.com/d-c-council-members-propose-soda-excise-tax/> [<https://perma.cc/U3R2-JXSG>]; Laura Hayes, *Majority of D.C. Council Supports New Legislation Creating Excise Tax on Soda and Sugary Drinks*, WASH. CITYPAPER (Oct. 7, 2019), <https://washingtoncitypaper.com/article/178190/majority-of-dc-council-supports-new-legislation-creating-excise-tax-on-soda-and-sugary-drinks/> [<https://perma.cc/2FDC-SLDP>].



# **OTHER CONSIDERATIONS AND CONCLUSION**

## Other Considerations

Aside from the above-mentioned policy solutions to reduce sugar consumption, there may be a number of additional opportunities worth considering (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule). While the below list is not all-inclusive, it highlights other policy solutions that may be worth further exploration.

### Portion Size Limits

Portion sizes are defined as “the amount of food that you choose to eat for a meal or snack,” by the National Institutes of Health.<sup>1</sup> People’s chosen portion sizes may differ from serving sizes—the measured amount of food or drink—that are pre-portioned by food and beverage manufacturers and recommended by regulators.<sup>2</sup> The United States is known for its large portion sizes, with research indicating that over the last several decades, adults and children in the United States are increasingly consuming larger portions, notably in fast-food restaurants and at home.<sup>3</sup> As an example, the average portion size of a single SSB was 6.5 ounces over 20 years ago, and now, many consumers consider a 20-ounce container to be one portion.<sup>4</sup>

Research has demonstrated that increasing portion sizes of food items given to participants results in increased consumption by both adults and children.<sup>5</sup> Similarly, when participants consumed larger portions of SSBs alongside food, they did not decrease the amount of food consumed to compensate for the increased energy consumed from the beverage.<sup>6</sup> To make matters worse, since calories from SSBs are poorly regulated by the body, larger portion sizes of SSBs may result in a significant increase in total calorie intake.<sup>7</sup>

As such, policymakers and advocates have considered creating regulations limiting the portion sizes of foods and beverages. For example, in 2012, the **New York City (NY) Board of Health** passed a regulation that banned the sale of SSBs in containers above 16 ounces across the city’s food



service establishments including restaurants, fast-food establishments, delis, movie theaters, sports stadiums, and food carts.<sup>8</sup> The regulation, however, did not apply to drinks sold in grocery stores, as those locations are regulated by the state.<sup>9</sup> The regulation also excluded drinks that were more than 70% fruit juice, diet sodas, drinks with at least 50% milk or milk substitute, and alcoholic beverages.<sup>10</sup>

While the regulation received strong support from then-Mayor Michael Bloomberg and through oral and written comments, it also garnered significant opposition including from the leading beverage manufacturers.<sup>11</sup> The opposing companies claimed the limit would affect families with low income in a negative way was opposed by the New York State Conference of the NAACP and the Hispanic Federation.<sup>12</sup> The amendment was ultimately repealed because the court said that the Board of Health exceeded the scope of its delegated authority using a very unique New York state law test.<sup>13</sup>

While this demonstrates an example of a failed attempt at implementing a portion size limit on SSBs, there are important lessons that can be learned should other communities entertain implementation of a similar policy. The main legal argument under consideration in the lawsuit was the finding that the Board of Health impermissibly acted in a legislative capacity, violating the separation of powers doctrine.<sup>14</sup> The important element that can be gleaned from this ruling is that public health boards and commissions can only work within the specific grant of authority, which occurs through the state constitution, specific legislation, or both (this concept is discussed in greater detail in the Legal Setting section of this Toolkit).<sup>15</sup> It is imperative that policymakers and advocates from other states and localities understand that the New York City decision was specific to a particular New York state law test, so there is a likelihood that the outcome in other states could be different. Therefore, prior to pursuing a policy solution in portion size limits, public health officials or commissions should work with local legal counsel to ensure that their authority is broad enough to allow enactment of such a policy.<sup>16</sup>

Second, leading research has demonstrated that portion sizes can affect how much people consume in an eating occasion.<sup>17</sup> For example, in a study that evaluated demographic groups likely affected by national portion size regulations modeled on policy language and scope from both **New York City, NY**, and the state of **California**, it was found that up to 74.71% of adults would reduce their overall SSB consumption under the California model.<sup>18</sup> Another study found that portion-size caps at an event arena were associated with customers' purchasing and consuming fewer ounces of SSBs.<sup>19</sup> Therefore, while the policy failed in New York City, governments should feel encouraged that the preliminary data surrounding portion size limits suggests it can be an effective policy.

## Food Service Guidelines

Food Service Guidelines (FSGs), are standards for healthier food and beverages and food service operators in worksite and community settings.<sup>20</sup> FSGs are similar to health procurement policies and many of the considerations discussed under the Healthy Procurement section of this Toolkit are relevant to FSG consideration. These guidelines have the opportunity to contribute to the health and wellness of employees, change the social norms to create expectations for healthier food and beverage availability, strengthen local food systems, improve facility management of natural resources, and reduce harmful environmental impacts.<sup>21</sup>

FSGs are typically found in federal, state, and local government facilities.<sup>22</sup> For example, the **Food Service Guidelines for Federal Facilities** is one of the most comprehensive set of guidelines available.<sup>23</sup> It includes standards for food and nutrition, facility efficiency, environmental support, community development, food safety, and behavioral design.<sup>24</sup> Similar standards can be used in a variety of other non-governmentally run facilities.<sup>25</sup> For instance, FSGs can be implemented in both public and private settings within an individual state or community including in hospitals and other healthcare facilities, colleges and universities, private businesses, parks and recreation centers, stadiums, cafeterias and cafés, concession stands, small markets, and vending machines.

Public health officials, policymakers, and advocates can work together with local businesses and other food service establishments to draft FSGs, similar to the Food Service Guidelines for Federal Facilities. Specifically related to sugar reduction, since the FSGs for federal facilities uses the **Dietary Guidelines for Americans (DGA)** as a guide on what to recommend,<sup>26</sup> the FSGs in state or local communities can also make recommendations that are aimed at reducing sugar consumption. Such strategies can have successes as seen through the **Local Action Institute's FSGs**<sup>27</sup> in **Erie County, NY**,<sup>28</sup> **Multnomah County, OR**,<sup>29</sup> and at the **University of Pittsburgh**. The **University of Pittsburgh** improved its on-campus food service by issuing an FSG to prioritize student health, the environment, and the local economy.<sup>30</sup> The university saw a 25% annual increase in healthy, plant-based menu options in on-campus dining facilities and food retail outlets.<sup>31</sup>

### **Joint Efforts in Opposition To or To Repeal State Preemption Laws**

Preemption laws (discussed in the Legal Barriers section of this Toolkit), can serve as considerable roadblocks to implementation of sugar reduction law and policy solutions. One potential avenue to address state preemption laws is to lead joint efforts in opposition to or to repeal these laws.

The success for such action is variable however, a recent ruling regarding the **California state preemption law on SSB taxes** serves as a beacon of hope for such efforts. In 2018, the Californian legislature passed a bill preventing cities from raising taxes on SSBs and other groceries through 2031 (this is discussed in greater detail in the Sugar-Sweetened Beverage (SSB) Tax section of this Toolkit).<sup>32</sup> In a lawsuit filed on behalf of **Cultiva La Salud**, an organization dedicated to creating health equity in the San Joaquin Valley, CA and a **member of the Santa Cruz City Council (CA)**, with the support of **ChangeLab Solutions** and the **American Heart Association (AHA)**, the plaintiffs argued that the 2018 bill violated the rights of cities.<sup>33</sup> They argued that the 2018 bill included a penalty provision specifically designated to prevent charter cities from asserting their constitutional power over municipal affairs.<sup>34</sup> By law, charter cities have more say in their overall governance, as opposed to general law cities, which are granted their authorities through state laws.

On October 12, 2021, the Sacramento County (CA) Superior Court ruled that the penalty provision was unconstitutional as it penalizes a city that lawfully enacts a sugary drink tax by taking away that city's sales tax revenue.<sup>35</sup> As a result, Californian charter cities can no longer lose their sales tax revenue should they choose to move forward with an SSB tax. While this decision does not remove the prohibition of local SSB taxes outright, it does remove the financial threat of removing tax revenue from charter cities that choose to adopt a tax.

It is also important to note that litigation is not the only method by which to challenge preemption bills. Advocates can lobby for and policymakers can pass state legislation that either prevents the passage of preemption laws associated to sugar reduction policies or repeal existing preemption bills. Therefore, advocates should work towards garnering support from multiple stakeholders interested in sugar reduction policies and advocate to their respective state legislatures. Policymakers can also work collaboratively with sugar reduction advocates and coalitions to demonstrate community support for sugar reduction policies or action to repeal preemption laws.

### **Encourage Law and Policy Innovation Through Coalition Building**

There are several other ideas on ways to approach sugar reduction that have potential for success. Therefore, advocates, community leaders, and policymakers should brainstorm targets and think about restrictions or incentives as ways to push these targets. Combining the expertise of various sugar reduction advocates, community leaders, and policymakers, can foster an environment under which exploratory policy considerations can be vetted to improve the likelihood of success.

# CONCLUSION

**S**ugar reduction policy solutions are plentiful, but they also face varying degrees of success and viability. While policy solutions pose opportunities for state and local interventions to reduce sugar consumption, it is necessary that advocates and policymakers work collaboratively to improve their opportunities for success. Working collaboratively can build the most tailored and well-supported policies with the best chance of enactment. It will also lead to the highest degree of long-term success. Through continued efforts towards policy implementation, there is great promise in improving the health of all while also reducing the societal and economic burdens associated with diet-related diseases caused by excess sugar consumption.



## ENDNOTES

- <sup>1</sup> Jennifer L. Pomeranz & Daniel P. Miller, *Policies to promote healthy portion sizes for children*, 88 APPETITE 50 (May 1, 2015) (citing NAT'L HEART, LUNG, & BLOOD INST. (NIH), *Serving Sizes and Portions*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (HHS) (Sept. 30, 2013), <https://www.nhlbi.nih.gov/health/educational/wecan/eat-right/distortion.htm> [<https://perma.cc/27YV-LR45>]).
- <sup>2</sup> *Id.*
- <sup>3</sup> See, P. Rozin et al., *The ecology of eating. Smaller portion sizes in France than in the United States help explain the French paradox*, 14(5) PSYCHOLOGICAL SCI. 450 (2003); S.J. Nielsen & B.M. Popkin et al., *Patterns and trend in food portion sizes, 1977-1998*, 289(4) J. AM. MED. ASS'N 450 (2003).
- <sup>4</sup> Pomeranz, *supra* note 1.
- <sup>5</sup> *Id.* (citing Jennifer O. Fisher et al., *Effects of portion size and energy density on young children's intake at a meal*, 86(1) AM. J. CLINICAL NUTRITION 174 (Jul. 2007), <https://pubmed.ncbi.nlm.nih.gov/17616778/#:~:text=Compared%20with%20the%20reference%20portion,body%20mass%20index%20z%20score.> [<https://perma.cc/54PF-68X6>]); see also Jennifer Orlet Fisher et al., *Children's bite size and intake of an entrée are greater with large portions than with age-appropriate or self-selected portions*, 77(5) AM. J. CLINICAL NUTRITION 1164 (May 2003), <https://pubmed.ncbi.nlm.nih.gov/12716667/#:~:text=Results%3A%20Doubling%20an%20age%2Dappropriate,foods%20served%20at%20the%20meal.> [<https://perma.cc/832P-XKYD>]; BARBARA J. Rolls et al., *Larger portion sizes lead to a sustained increase in energy intake over 2 days*, 106(4) J. AM. DIETETIC ASS'N 543 (Apr. 2006), <https://pubmed.ncbi.nlm.nih.gov/16567150/#:~:text=Conclusions%3A%20Increasing%20the%20portion%20size,contribute%20to%20increased%20body%20weight.> [<https://perma.cc/V5EU-P8WW>].
- <sup>6</sup> Pomeranz, *supra* note 1 (citing Julie E. Flood et al., *The effect of increased beverage portion size energy intake at a meal*, 106(12) J. OF AM. DIETETIC ASS'N 1984 (Dec. 2006)), <https://pubmed.ncbi.nlm.nih.gov/17126628/#:~:text=Conclusions%3A%20Serving%20a%20larger%20portion,total%20energy%20consumed%20at%20lunch.> [<https://perma.cc/82KK-QNQT>]; see also Lenny R. Vartanian, *Effects of soft drink consumption on nutrition and health. A systematic review and meta-analysis*, 97(4) AM. J. PUB. HEALTH 667 (Apr. 2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1829363/> [<https://perma.cc/2TFT-KDRR>].
- <sup>7</sup> Pomeranz, *supra* note 1 (citing Flood et al., *the effect of increased beverage portion size energy intake at a meal*, *supra* note 6); see also R.K. Johnson et al., *Dietary sugars intake and cardiovascular health. A scientific statement from the American Heart Association*, 120(11) AM. HEART ASS'N (AHA) CIRCULATION 1011 (Sept. 15, 2009), <https://pubmed.ncbi.nlm.nih.gov/19704096/> [<https://perma.cc/3E3F-G5BP>].
- <sup>8</sup> 24 Rules of the City of New York § 81.53; see Christina A. Roberto & Jennifer L. Pomeranz, *Public Health and Legal Arguments in Favor of a Policy to Cap the Portion Sizes of Sugar-Sweetened Beverages*, 105(11) AM. J. PUB. HEALTH 2183 (Nov. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4605196/> [<https://perma.cc/ZT74-5KJW>] [hereinafter Roberto & Pomeranz, *Public Health and Legal Arguments in Favor of Portion Sizes*].
- <sup>9</sup> 4 Rules of the City of New York § 81.53; See Joseph Ax, *Judge blocks New York City large-soda ban, Mayor Bloomberg vows fight*, REUTERS (Mar 11, 2013), <https://www.reuters.com/article/us-sodaban-lawsuit-idUSBRE92A0YR20130311> [<https://perma.cc/9N2W-BCHC>].
- <sup>10</sup> 4 Rules of the City of New York § 81.53; see also Jill Colvin, *New York Soda Ban Approved: Board of Health Oks Limiting Sale Of Large-Sized, Sugary Drinks*, HUFFPOST (Sep. 13, 2012), [https://www.huffpost.com/entry/new-york-approves-soda-ban-big-sugary-drinks\\_n\\_1880868](https://www.huffpost.com/entry/new-york-approves-soda-ban-big-sugary-drinks_n_1880868) [<https://perma.cc/ED89-VQ84>].
- <sup>11</sup> See Jason Koebler, *Study: NY Soda Ban Would Be Effective*, U.S. NEW & WORLD REPORT (June 12, 2013), <https://www.usnews.com/news/articles/2013/06/12/study-ny-soda-ban-would-be-effective> (last visited Apr. 18, 2022).
- <sup>12</sup> Donna Shelley et al., *Same Strategy Different Industry: Corporate Influence on Public Policy*, 104(4) AM. J. PUB. HEALTH e9 (2014), <https://pubmed.ncbi.nlm.nih.gov/24524535/> [<https://perma.cc/Q8R6-TJV6>].
- <sup>13</sup> *New York Statewide Coalition of Hispanic Chambers of Commerce et al. v. N.Y.C. Dep't Health & Mental Hygiene*, 23 N.Y.3d 681 (2014).
- <sup>14</sup> *Id.* The other legal argument was that the ordinance was not rational but rather was arbitrary and capricious owing to “loopholes inherent in the rule.” Arbitrary and capricious are defined as willful and unreasonable action without consideration or in disregard of facts or law. “arbitrary and capricious”, BLACK'S LAW DICTIONARY (11th ed. 2021). This is a legal standard of review used by judges to assess the actions of administrative agencies most frequently employed to assess the factual basis of an agency's rulemaking. Therefore, governments that choose to pursue portion size limits should be mindful of this test when determining whether an agency will be found to have abused its discretion in making such a rule.
- <sup>15</sup> *Id.*; see Roberto & Pomeranz, *Public Health and Legal Arguments in Favor of Portion Sizes*, *supra* note 8.
- <sup>16</sup> Roberto & Pomeranz, *Public Health and Legal Arguments in Favor of Portion Sizes*, *supra* note 8.

- <sup>17</sup> U.S. DEP'T HEALTH & HUMAN SERVS. (HHS), CTRS. DISEASE CONTROL & PREVENTION (CDC), NAT'L CTR. FOR CHRONIC DISEASE PREVENTION & HEALTH PROMOTION DIV. NUTRITION & PHYSICAL ACTIVITY, DO INCREASED PORTION SIZES AFFECT HOW MUCH WE EAT?, RSCH. TO PRAC. SERIES NO. 2 (May 2006), [https://www.cdc.gov/nccdphp/dnpa/nutrition/pdf/portion\\_size\\_research.pdf](https://www.cdc.gov/nccdphp/dnpa/nutrition/pdf/portion_size_research.pdf) [<https://perma.cc/TA7L-ARQH>].
- <sup>18</sup> Natalie R. Smith et al., *Demographic groups likely affected by regulation sugar-sweetened beverage portion sizes*, 59(3) AM. J. PREVENTATIVE MED. e135 (June 21, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7483901/> [<https://perma.cc/8RQK-LAHQ>].
- <sup>19</sup> Christina A. Roberto et al., *Sugar-sweetened beverage purchases and intake at event arenas with and without a portion size cap*, 25 PREVENTATIVE MED. REPS. 101661 (Feb. 2022), <https://www.sciencedirect.com/science/article/pii/S2211335521003521> (last visited Apr. 20, 2022).
- <sup>20</sup> *Food Service Guidelines*, CDC (Oct. 20, 2021), <https://www.cdc.gov/nutrition/food-service-guidelines/index.html> [<https://perma.cc/SY5M-FDRF>].
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.*
- <sup>23</sup> FOOD SERV. GUIDELINES FED. WORKGROUP, FOOD SERVICE GUIDELINES FOR FEDERAL FACILITIES, CDC (2017), [https://www.cdc.gov/obesity/downloads/guidelines\\_for\\_federal\\_concessions\\_and\\_vending\\_operations.pdf](https://www.cdc.gov/obesity/downloads/guidelines_for_federal_concessions_and_vending_operations.pdf) [<https://perma.cc/SH29-SLJN>].
- <sup>24</sup> *Id.*
- <sup>25</sup> *Id.*
- <sup>26</sup> *Id.*
- <sup>27</sup> *2019 Food Service Guidelines Local Action Institute*, NAT'L ASS'N OF CTY. & CITY HEALTH OFFS. & CDC, <https://www.cdc.gov/obesity/downloads/strategies/FSG-local-action-institute-508.pdf> (last visited Apr. 12, 2022) [<https://perma.cc/5XXF-5NFM>].
- <sup>28</sup> *See 2019 Food Service Guidelines Local Action Institute*, CDC, [https://www.cdc.gov/nutrition/food-service-guidelines/local-action-institute.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fnutrition%2Fhealthy-food-environments%2Flocal-action-institute.html](https://www.cdc.gov/nutrition/food-service-guidelines/local-action-institute.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fnutrition%2Fhealthy-food-environments%2Flocal-action-institute.html) (last visited Apr. 12, 2022) [<https://perma.cc/4LXE-DM8T>].
- <sup>29</sup> *Id.*
- <sup>30</sup> *Id.*
- <sup>31</sup> *Id.*
- <sup>32</sup> *Keep Groceries Affordable Act of 2018*, Assembly Bill No. 1838, Ch. 1.8 § 7284.8 (Cal. 2018).
- <sup>33</sup> *See Cultiva la Salud v. The State of California*, Case No.: 34-2020-80003458 (Cal. Super. Ct. 2021); *see also Ruling in CA Sugary Drink Tax Preemption Lawsuit*, CHANGLAB SOLS. (Oct. 12, 2021), <https://www.changelabsolutions.org/news/ruling-california-sugary-drink-tax-preemption> [<https://perma.cc/L7AG-44RM>].
- <sup>34</sup> *Id.*
- <sup>35</sup> *Id.*



# **ADDITIONAL RESOURCES**

## SUGAR REDUCTION TOOLKITS

### **Sugar Advocacy Toolkit**

Compiled by Healthy Food America, this toolkit provides an overview of the health impacts of sugar, promising policy approaches to reducing sugar, and resources for sugar reduction advocates to get started (for the purposes of this section, policy/policies is understood to mean law, policy, ordinance, regulation, or rule).

### **A Practical Guide to Reduce Sugar Consumption and Curb the Epidemic of Dental Caries**

This toolkit from FDI (Fédération Dentaire Internationale) World Dental Federation, geared towards oral healthcare professionals, healthcare organizations, government and education authorities, and media outlets, offers step-by-step guidance for advocacy strategy development around myriad sugar reduction policies.

### **Sugary Drinks Playbook**

This community-oriented toolkit from ChangeLab Solutions hones in on 10 concrete ways for sugar reduction advocates to limit sugary drink consumption in their own communities. Though most solutions are geared towards a local context, they can be adapted for statewide implementation.

### **Healthy Policies Toolkit: Nutrition and Physical Activity in Child Care**

This guide was created by the University of Washington Center for Public Health Nutrition and is designed for early childhood education professionals to use in designing and implementing healthy child care policies, including recommendations on sugar consumption.

### **Don't Sugarcoat Our Future**

From Voices for Healthy Kids, a partnership between the American Heart Association (AHA) and the Robert Wood Johnson foundation, this resource focuses on the promotion of pricing strategies to reduce children's consumption of sugar-sweetened beverages (SSBs) and provides strategies for community change-makers to get organized and become advocates for policy change.

### **Healthy Beverage Toolkit**

This toolkit is intended to engage various stakeholders, such as parents, teachers, school administrators and community leaders, looking to reduce SSB consumption in schools. This resource compiles successful case studies, step-by-step guidance on coalition building, as well as public and political outreach strategies.

### **Healthy Beverage Policies: Key Definitions and Sample Standards**

Developed by the Public Health Law Center at Mitchell Hamline School of Law (formerly William Mitchell College of Law), this document offers key guidance on the development of definitions and standards for healthy beverage policies.

## SUGAR REDUCTION TOOLKITS (CONTINUED)

### **Healthy Beverage Initiative Toolkit**

Composed of a series of graphics, posters, fact sheets and brochures, this toolkit from the University of California San Francisco is full of community engagement resources to help build support for sugar reduction policies.

### **Healthy Beverage Toolkit**

This toolkit is from the Boston Public Health Commission and is intended to help municipal agencies, healthcare institutions, colleges and universities, community-based organizations, retail establishments and other organizations implement policies and practices that encourage healthy lifestyles for their employees, clients, students and visitors.

### **Sugar-Sweetened Beverage Policy Toolkit**

This resources, developed by the San Diego Childhood Obesity Initiative, highlights key policy approaches to reducing SSB consumption and compiles key resources for community change-makers interested in learning more about each strategy.

### **A Blueprint for Changemakers: Achieving Health Equity Through Law and Policy**

This guide is from ChangeLab Solutions and presents legal strategies and best practices to help policymakers, practitioners, and communities improve health outcomes. It provides a roadmap for working locally and collaboratively to advance laws and policies that will help ensure that everyone has a fair chance to live a healthy life.

### **Dietary Guidelines for Americans 2020-2025**

The Dietary Guidelines for Americans (DGA) provides advice on what to eat and drink to meet nutrient needs, promote health, and prevent disease. It is developed and written for a professional audience, including policymakers, healthcare providers, nutrition educators, and Federal nutrition program operators. The DGA are published every five years by the United States Department of Agriculture (USDA), together with the United States Department of Health and Human Services (HHS).

## COALITION-BUILDING RESOURCES

### **State Nutrition Action Council (SNAC) Toolkit: A Guide for Developing State-Level, Cross-Program Partnerships to Reduce Obesity**

Developed by the Public Health Institute Center for Wellness and Nutrition, this document offers guidance for the creation of inter-organizational partnerships to develop, implement and evaluate interventions aimed to reduce obesity in the United States.

### **Community Toolbox: Coalition Building**

This resources from Community Toolbox offers introductory information for those just getting started on the what, why, when, and how of community coalition building.

## COALITION-BUILDING RESOURCES (CONTINUED)

### **Coalition Building**

From the Alliance to End Hunger, this guide provides step-by-step guidance for both developing and maintaining community coalitions.

### **A Roadmap to Health in All Policies: Collaborating to Win the Policy Marathon**

Developed by ChangeLab Solutions, this roadmap offers strategic guidance for community organizers to engage in cross-sector partnerships for the development and implementation of policies oriented towards community health and mitigating health inequities.

## POLICY-SPECIFIC TOOLKITS, GUIDANCE, RESEARCH

### *Sugar-Sweetened Beverage (SSB) Tax*

#### **Best Practices in Designing Local Taxes on Sugary Drinks**

With a focus on local taxes, this ChangeLab Solutions guide offers community-stakeholders guidance on key decision points for SSB tax design, including the type of tax, which beverages to include under the tax, and the tax rate.

#### **The Pros and Cons of Taxing Sweetened Beverages Based on Sugar Content**

This report from the Urban Institute delves into the case for taxing SSBs on the basis of sugar content rather than by volume, as most existing taxes in the United States are designed, and identifies strengths and weaknesses of this alternative approach.

#### **Taxing Sugar Drinks: A Tool for Obesity Prevention, Cost Savings, and Health Improvement**

This policy brief from the Public Health Law Center at the Mitchell Hamline College of Law (formerly the William Mitchell College of Law) evaluates the use of price interventions, namely taxation, to reduce consumption of SSBs, explores industry opposition, and considers future developments for sugar taxation.

#### **Model Sugary Drink Tax Legislation**

From ChangeLab solutions, this resource offers a model statute for taxation to reduce SSB consumption.

#### **A Legal and Practical Guide for Designing Sugary Drink Taxes**

From ChangeLab solutions, this document outlines key considerations in SSB tax design, tax implementation considerations, and potential challenges to tax efforts.

## POLICY-SPECIFIC TOOLKITS, GUIDANCE, RESEARCH (CONTINUED)

### *Sugar-Sweetened Beverage (SSB) Tax (continued)*

#### **Building momentum: lessons on implementing a robust sugar sweetened beverage tax**

This report from World Cancer Research Fund International provides an overarching background on the global impacts of SSB taxes, considerations for robust tax design, stakeholder engagement and framing, and resources for defending SSB taxes against opponents.

#### **Healthy Food America: Tax Policy Comparison Tool**

This is an interactive tool created by Healthy Food America. It allows for an easy, detailed examination of precedent and variation in SSB tax ordinance language by posing policy questions and linking answers to relevant legal text. The database includes municipal ordinances implemented or pursued in the United States since 2014. It is intended for use by members of the legal, public health, governmental, and advocate communities

### *Healthy Procurement*

#### **Understanding Healthy Procurement**

ChangeLab Solution's guide on using state and local government's purchasing power to increase access to healthy food.

#### **Making Change: A Guide to Healthier Vending for Municipalities**

This practical document from ChangeLab Solutions provides step-by-step guidance for community advocates looking to design and implement a Healthy Vending policy.

#### **Financial Implications of Healthy Vending**

This succinct document created by Voices for Healthy Kids outlines key strategies for maintaining and improving revenues for vending machines transitioning towards Healthy Vending policies, and identifies successful case studies where stakeholders were able to increase the healthiness of vended products while maintaining or even increasing sales volume and/or revenues.

#### **Healthy Vending Implementation Toolkit**

From the Department of Public Health in King County, WA, this toolkit highlights key lessons in Healthy Vending policy planning, implementation and evaluation learned from the adoption of the King County Healthy Vending Guidelines in 2011.

#### **Model Beverage and Food Vending Machine Standards**

This concise report from the National Alliance for Nutrition & Activity provides a model for healthy food and beverage standards for municipal, state, and federal government operated vending machines.

#### **A Blueprint for Healthier Vending**

From the Chicago Department of Public Health, this guide compiles key resources for the development of Healthy Vending policies, including sample tools that can be adapted for different community contexts.

## POLICY-SPECIFIC TOOLKITS, GUIDANCE, AND RESEARCH

### *Healthy Procurement (continued)*

#### **Key Components of Food Procurement & Vending Policies**

This fact sheet outlines the key components of a food vending or procurement policy and identifies resources to help government and private organizations develop and implement these policies for their buildings and campuses.

#### **Action framework for developing and implementing public food procurement and service policies for a healthy diet**

The World Health Organization (WHO) developed this action framework for developing and implementing public food procurement and services designed to maximize healthy diets.

#### **State Policy: Healthy Food Service on Government Property**

A ChangeLab Solutions guide that develops a model healthy food service policy which provides language for a state policy enacting food service guidelines (FSGs) that set standards for the sale or provision of food and beverages in food venues served and sold on state property.

### *Healthy Retail*

#### **Healthier Food Retail: An Action Guide for Public Health Practitioners**

The HHS's, Centers for Disease Control and Prevention (CDC) National Center for Chronic Disease Prevention and Health Promotion Division of Nutrition, Physical Activity, and Obesity National Center for Chronic Disease Prevention and Health Promotion Division of Nutrition, Physical Activity, and Obesity issued this guide to provide examples of strategies which can be used to inform obesity prevention initiatives through Health Retail policies.

#### **Healthy Retail Playbook**

Intended primarily for nutrition staff in local public health departments, this ChangeLab Solutions playbook presents 15 innovative strategies to increase the accessibility of nutritious foods and beverages, and to limit the prevalence or visibility of tobacco products, non-nutritious foods and beverages, and alcohol in the retail environment.

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

From the Center for Science in the Public Interest (CSPI), this report identifies the key benefits of healthy retail policies for retailers and highlights retailer success stories across the United States.

#### **Check Out Healthy Retail**

This infographic from ChangeLab Solutions lays out intervention options for Healthy Retail in a striking visual.

## POLICY-SPECIFIC TOOLKITS, GUIDANCE, RESEARCH (CONTINUED)

### *Healthy Retail (continued)*

#### **Stock Healthy, Shop Healthy**

Geared towards any stakeholder looking to increase access to healthful foods in their local community, this toolkit, issued by the University of Missouri Extension, describes strategies for partnering with small food retailers and promoting healthy eating through nutrition education opportunities and community activities.

#### **Model Healthy Checkout Aisle Ordinance**

ChangeLab Solutions developed this model ordinance to require stores to provide Healthy Checkout aisles for consumers. This versatile resource provides both model policy language and relevant findings. It can be tailored for use by city, county, or state governments or by corporations.

#### **Healthier Food Retail**

A guide issued by the HHS's, CDC National Center for Chronic Disease Prevention and Health Promotion Division of Nutrition, Physical Activity, and Obesity. This guide describes how to approach an assessment process in a state or community to determine the viability of implementing a Healthy Retail policy.

#### **Current Practices in Healthy Food Retail: Small Stores**

Another guide issued by the HHS's, CDC National Center for Chronic Disease Prevention and Health Promotion Division of Nutrition, Physical Activity, and Obesity that focuses on creating healthy retail environments in small stores.

### *Healthy Schools/Kids*

#### **Model School Wellness Policy Language**

Intended for stakeholders at the school district level, this guide offers model school wellness policy language around issues such as food and beverage marketing on school premises.

#### **Addressing Sugary Drinks through the Local School Wellness Policy**

This report from ChangeLab Solutions and CA4Health outlines options for school districts to limit SSB consumption in schools through local school wellness policies.

#### **Healthy School Toolkit**

Drawing lessons from the School Nutrition Policy Initiative in Philadelphia, PA, this report from The Food Trust provides guidance to schools seeking to implement similar policies to improve childhood nutrition in schools.

#### **Healthy Children's Meals Model Policies**

From ChangeLab Solutions, this suite of model ordinances and statutes provides local and state governments with the tools to regulate the nutritional quality of beverages and foods in children's meals.

## NATIONAL AND REGIONAL ORGANIZATIONS INVOLVED IN SUGAR REDUCTION ADVOCACY

### **The Praxis Project**

A national movement support intermediary committed to capacity building for social change. Its emphasis is on developing fields of work in ways that encourage multi-level, trans-disciplinary learning and collaboration across issues, across the country, and across the globe.

### **ChangeLab Solutions**

A national organization dedicated to advancing equitable laws and policies to improve healthy lives for all. Composed of lawyers, planners, policy analysts and other professionals, ChangeLab Solutions works with state and local governments, advocacy organizations and anchor institutions to advance policies related to healthcare and disease prevention.

### **Center for Science in the Public Interest (CSPI)**

A consumer advocacy organization dedicated to improving the national food system and promoting healthy eating. The organization's three main goals are to: (1) provide useful, objective information to the public and policymakers; (2) represent the citizen's interests before regulatory, judicial and legislative bodies; and (3) ensure that science and technology are used for the public good and encourage scientists to engage in public-interest activities.

### **Voices for Healthy Kids**

From the American Heart Association (AHA), the Voices for Healthy Kids initiative works on a national scale to improve or create equitable policies to allow kids to live, learn, eat, and play healthier.

### **Childhood Obesity Intervention Cost-Effectiveness Study (CHOICES) Project**

The Childhood Obesity Intervention Cost-Effectiveness Study (CHOICES), a key research project of the Prevention Research Center on Nutrition and Physical Activity at the Harvard T.H. Chan School of Public Health, identifies which prevention policies and programs will help more kids achieve and maintain a healthy weight and deliver the best results for the dollars invested. CHOICES uses cost-effectiveness analysis to compare the costs and outcomes of different policies and programs promoting improved nutrition or increased physical activity over 10 years.

### **Healthy Food America**

Healthy Food America works to support community leaders around the country who are advocating for policies and strategies, such as SSB taxes and healthy food incentives, to make healthy eating easier for all.

### **Public Health Law Center**

Housed at the Mitchell Hamline School of Law, the Public Health Law Center collaborates with others to reduce and eliminate commercial tobacco, promote healthy food, support physical activity, and address other causes of chronic disease.

## NATIONAL AND REGIONAL ORGANIZATIONS INVOLVED IN SUGAR REDUCTION ADVOCACY (CONTINUED)

### **Peach (Psychology of Eating and Consumer Health) Lab**

Peach Lab identifies and evaluates policies and interventions that prevent nutrition-related chronic diseases and help people live long, healthy lives.

### **Center for Health Incentives & Behavioral Economics (CHIBE)**

Researchers at University of Pennsylvania's CHIBE investigate how principles of behavioral economics can be applied to a wide range of public health concerns. They utilize their findings to inform policy, improve healthcare delivery, and increase healthy behaviors.

### **National Salt and Sugar Reduction Initiative (NSSRI)**

A partnership of organizations and health authorities across the country convened by the New York City, NY, Department of Health and Mental Hygiene. The initiative sets voluntary reduction targets for sugar and salt and asks food and beverage companies to commit to meeting them.

### **Berkeley Food Institute**

The Berkeley Food Institute seeks to transform food systems to expand access to healthy, affordable food and promote sustainable and equitable food production. We empower new leaders and capacities to cultivate diverse, just, resilient, and healthy food systems.

### **[Center for Health Law and Policy Innovation \(CHLPI\)](#)**

CHLPI is a clinical teaching program of Harvard Law School. CHLPI advocates for legal, regulatory, and policy reforms in health and food systems, with a focus on the health, public health, and food needs of systematically marginalized individuals. CHLPI's broad range of initiatives aim to expand access to high-quality health care and nutritious, affordable food; to reduce health- and food-related disparities; to develop community advocacy capacity; and, to promote more equitable, sustainable, and effective health care and food systems.





**FOOD LAW**  
*and* **POLICY CLINIC**  
HARVARD LAW SCHOOL

April 2022