

Memo: How two cities are successfully enforcing kids' meal ordinances

The purpose of this memorandum is to provide information on how two cities are successfully enforcing kids' meal ordinances at little cost, but great benefit, to the public as a model for other localities.

California Cities Have Implemented Ordinances to Improve the Nutrition Quality of Restaurant Kids' Meals

Overview of Two California Ordinances

In California, Davis and Stockton have implemented ordinances that require restaurants to offer milk or water as the default beverage with kids' meals.^{1,2} Parents can request a soda, lemonade, or a juice for their child at no extra cost. Therefore, “[i]nstead of getting unwanted soda without asking for one—and being forced to negotiate with their children—parents will be given the opportunity to start the meal off right with a healthy beverage.”³ Restaurants that do not comply with the ordinance will receive a notice or a citation and may incur fines.^{4,5}

Davis passed its ordinance in 2015,⁶ and Stockton followed suit, passing an analogous ordinance on June 7, 2016.⁷ Many community members and leaders in California approve of these health-by-default ordinances and believe they will make picking the healthy choice for kids easier.⁸

Using Self-certification to Enforce Kids' Meal Ordinances is Manageable and Feasible

Davis and Stockton serve as examples to show the ease with which restaurants and community members have adjusted to and complied with the new law. Both cities enforce their beverage requirements through self-certification.⁹ Self-certification enforcement requires restaurants to show the city that they are in compliance with the kids' meal ordinances. Cities can require restaurants to track the sales of certain products, certify the ingredients in kids' meals meet standards, and report how staff members are trained to take orders. The reporting requirements can easily be tailored to best serve specific nutrition standards that cities implement.

In Davis and Stockton, restaurants that sell kids' meals that include a beverage must periodically certify that they are only offering milk or water as the default beverage with those meals.¹⁰ To verify compliance, the restaurants in Davis must fill out a form online. The restaurants must provide the following: business name, business address, name and title of person completing the form, a phone number, and email. The restaurants then indicate whether they offer children's meals that include a beverage. If they do, then the restaurants either select “Yes, the default beverage for our children's meal is milk and/or water” or “No,

the default beverage for our children’s meal is not milk and/or water.”¹¹ Stockton’s ordinance similarly requires self-certification.¹²

While self-certification requires restaurants to track and verify compliance, restaurants do not bear an onerous burden. They need only submit paperwork periodically confirming the business is not offering sugary drinks as the default beverage with kids’ meals. Restaurants subject to self-certification are under pressure. Since the ordinances call for noticeable changes to kids’ meals, consumers will easily be able to identify noncompliance. This accountability will motivate restaurants to comply with the beverage requirement. If a restaurant fails to comply, consumers can report the violation to the city and the city can impose a fine.

Complaints from patrons, watchdog organizations, and others drive enforcement. In Davis, First 5 Yolo, a local organization that championed adoption of the law, stepped forward to have interns visit restaurants to order kids’ meals and monitor which default options establishments provide.¹³ If customers notice a violation, they can file a complaint with the city. When the city responds to a complaint for ordinance violation, a citing officer only needs to confirm that a violation occurred. This means a citing officer would not need to make lengthy visits to restaurants to examine labels and ingredients. Instead, the officer could visit the restaurant to verify that employees are not offering sugary drinks as the default beverage with kids’ meals.

To do this, the officer could first look at the drink options paired with kids’ meals on menu boards or menus. It would not take long to see whether sugary drinks are listed or pictured next to the kids’ meals. If sugary drinks are presented as a default option on the menu, the violation is clear. If the menu does not present evidence of a violation, the officer could observe patrons placing orders for a kids’ meal and assess which drink options an employee offers. Additionally, the officer could ask the manager how the staff is trained to take kids’ meal orders. During these inquiries, the officer would be able to confirm or refute violation complaints.

Self-certification does not place a heavy burden on cities. This method requires little time and few resources. One county supervisor stated that the Davis ordinance is “a low-cost alternative to dealing with childhood obesity.”¹⁴ These ordinances are a “little nudge” to improve children’s health that “will have little or no effect on restaurants’ bottom lines.”¹⁵

Administrative Enforcement is Another Potential Option to Ensure Restaurants Remove Sugary Drinks from Kids Menus

The other enforcement mechanism that cities may employ to monitor compliance with nutrition standard ordinances is administrative enforcement. Inspectors would check to see if restaurants are complying with the kids’ meal law during their routine inspections. New York has used this strategy to enforce calorie labeling on menus since 2008.^{16,17,18} Since New York implemented its local menu labeling requirements, inspectors have confirmed that menus and menu boards provide calorie information. The same approach could be used to enforce a kids’

menu ordinance. This would likely mean that the health inspector would need to look at menus, check on staff training procedures, or check on other details depending on the specifics of the ordinance even if there is no indication of a violation.

One distinct advantage to using self-certification is that it does not place any extra responsibility on health inspectors. When the restaurants self-certify, inspectors do not have to read kids' menus or the kids' section of menu boards in all inspected restaurants. The burden is on the restaurants, not the city.

¹ Davis Municipal Code Chapter 17, Article 17.02 (2015), <http://qcode.us/codes/davis/>.

² Stockton Municipal Code Chapter 5.70 (2016), <http://qcode.us/codes/stockton/>.

³ Voices for Healthy Kids Action Center, "Stockton, CA Passes 'Healthy-by-Default' Kids' Meal Beverage Ordinance," June 16, 2016 (quoting Stockton Vice Mayor Christina Fugazi). Accessed at <<https://www.voicesactioncenter.org/Inside-Track-June-17-16-c>>.

⁴ Veronica Rocha, "City of Davis Sours on Sweet Drinks for Kids' Meals in Restaurants," *Los Angeles Times* November 14, 2015. Accessed at <<http://www.latimes.com/local/lanow/la-me-ln-davis-sweet-drinks-kids-meals-20150528-story.html>>.

⁵ Davis Municipal Code, *supra* note 1.

⁶ *Id.*

⁷ Stockton Municipal Code, *supra* note 2.

⁸ Public Health Advocates, *City of Stockton Passes Second in Nation 'Healthy-by-Default' Kids' Beverage Ordinance* June 8, 2016, <http://www.publichealthadvocacy.org/2016/06/press-release-city-stockton-passes-second-nation-healthy-default-kids-beverage-ordinance/>.

⁹ Davis Municipal Code, *supra* note 1.

¹⁰ Rocha, *supra* note 3.

¹¹ City of Davis California, Children's Meal Default Beverages Ordinance Certification, <http://cityofdavis.org/city-hall/city-manager-s-office/children-s-meal-default-beverages-ordinance-certification>.

¹² Stockton Municipal Code, *supra* note 2.

¹³ Comment from Julie Gallelo at Food Marketing Workgroup Meeting (July 8, 2015).

¹⁴ Rocha, *supra* note 3.

¹⁵ Roger Phillips, "Stockton Only Second City in US to Adopt Restaurant Policy Targeting Children's Soda Consumption," *Recordnet.com* June 19, 2016, <http://www.recordnet.com/news/20160619/stockton-only-second-city-in-us-to-adopt-restaurant-policy-targeting-childrens-soda-consumption>.

¹⁶ New York City Department of Health & Mental Hygiene, Board of Health, Notice of Adoption of an Amendment (§81.50) to Article 81 of the New York City Health Code, <https://www1.nyc.gov/assets/doh/downloads/pdf/public/notice-adoption-hc-art81-50.pdf>.

¹⁷ New York City Department of Health & Mental Hygiene, *What to Expect When You're Inspected: A Guide for Food Service Operators*, June 2016, <https://www1.nyc.gov/assets/doh/downloads/pdf/rii/blue-book.pdf> (explaining that inspectors look for both scored and unscored violations).

¹⁸ New York City Department of Health & Mental Hygiene, *Food Establishment and Non Retail Food Service Establishment Penalty Schedule*, <https://www1.nyc.gov/assets/doh/downloads/pdf/rii/ri-violation-penalty.pdf> (providing fines for scored and unscored violations, including calorie labeling on menus).