

Reducing Predatory Marketing of Unhealthy Foods & Beverages in New York City

Policy Options for Governments and Communities

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Executive Summary

Targeted marketing describes the common practice of advertising products to specific groups of individuals or communities based on their social or psychological characteristics. By itself, targeted marketing is neither good nor bad. However, when corporations consistently target certain populations for marketing of unhealthy products associated with premature death and preventable illness targeted marketing becomes a public health and an ethical problem. This policy brief analyzes predatory marketing of food, the targeted marketing of unhealthy food and beverages to populations already at higher risk of diet-related diseases such as children, teen-agers, African Americans, or Latinxs.¹

The goal of this brief is to provide policy makers, community organizers and residents, health professionals, and advocates with the ideas and tools that can help them to understand predatory marketing and take action to limit its practice and reduce exposure to it. We define *predatory marketing* as the practice of aiming misleading, aggressive, emotional, and pervasive advertising of unhealthy products to vulnerable populations.



Predatory marketing of food and beverages uses these methods to persuade people, often those at higher risk of diet-related diseases, including children and adolescents, low income families, and Black, Latinx, and other communities of color, to consume products associated with preventable illnesses and premature deaths from diet-related diseases such as diabetes, cardiovascular disease and hypertension, major causes of ill health in the United States. Predatory marketing seeks to

influence people to purchase unhealthy products by overwhelming rational decision-making, therefore reducing autonomy and informed choice.

Both terms, predatory marketing and targeted marketing, are commonly used. Here, predatory marketing is used to emphasize the threats it poses to well-being and the importance of collective action to reduce it. In discussions with business leaders, the more neutral term targeted marketing may be more conducive to initiating conversations.

Health professionals are concerned about predatory marketing of unhealthy food because, like tobacco and alcohol marketing, it contributes to the unfair distribution of ill health and the higher burden of disease among vulnerable populations. Stronger and more effective policies, regulations, and legislation are needed to protect consumers from unscrupulous marketing that seeks to persuade

¹ Latinx is a gender-neutral term, sometimes used instead of Latino or Latina, to refer to people of Latin American cultural or racial identity in the United States.

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people to consume food and beverage products that contribute to premature death and preventable illnesses. More education and consciousness raising is also needed to strengthen people's ability to resist predatory marketing. Mobilized communities can play a role in promoting such policy changes, illustrated by past successes in limiting predatory marketing of tobacco and alcohol, two other products that contribute to higher disease rates among vulnerable populations.

This policy brief seeks to spark a public conversation in New York City that can help policy makers, New York City residents and businesses to find the proper balance between the rights of corporations to advertise legal products and the rights of parents and public institutions to protect our children, families and communities from exposure to marketing that promotes consumption of unhealthy products.

To reduce predatory marketing of unhealthy foods and beverages, New York City and State can:

- *Further restrict advertising of unhealthy products in and around certain public places such as schools, hospitals, government offices and parks.*
- *Sponsor provocative and factual municipal education campaigns that warn people about the dangers of unhealthy foods, beverages, and predatory marketing*
- *Require community organizations and social service agencies to disclose contributions from corporations that promote unhealthy foods*
- *Extend social media privacy policy for children and youth to also protect minors between 13 and 18 years from data collection of health-related information to be used for marketing of unhealthy products*

Other recommendations spell out what the federal government, institutions and communities can do to limit predatory marketing. Together, New Yorkers can take action to protect the health of our children and families from unscrupulous predatory marketing of unhealthy foods and beverages.

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The CUNY Urban Food Policy Institute is an academic research and action center based at the CUNY Graduate School of Public Health & Health Policy located in Harlem, New York City. The Institute provides evidence to inform municipal policies that promote equitable access to healthy, affordable food.

1. Background

A growing body of evidence documents that food and beverages high in calories, unhealthy fats, salt and sugar are a major cause of premature death and preventable illnesses from diet-related diseases.^{1,2,3} In New York City, the nation and globally, consumption of highly processed food is rapidly replacing tobacco as the leading preventable cause of illness and deaths and a key driver of the wide gaps in health between white and better off populations on the one hand and people of color and low income people on the other.^{4,5}

Moreover, evidence shows that pervasive marketing of unhealthy foods contributes to increased consumption, especially among children and young people, adding to the growing disease burden and increasing inequities.^{6,7,8,9} While one goal of public policy is to make it easier for people to eat healthier foods such as fruits, vegetables, whole grain and lower-fat dairy products, a parallel goal should be to reduce the consumption of unhealthy food and beverages. For a city, state or nation faced with skyrocketing human, economic and social costs of diet-related diseases, to allow corporations to market these pathogenic products without restrictions makes no sense. That's why considering how New York City can limit predatory marketing of unhealthy food and beverages, now the city's leading cause of premature death and preventable illness, is an urgent and timely question.

Marketing increases the likelihood of buying and using a product. That's why companies advertise. It is also true that public policies can change how and where products are advertised and who buys how much. In the last two decades, New York City, New York State and the federal government, spurred by activists, public health lawyers and health professionals, passed dozens of laws limiting advertising and selling of tobacco. As a result of these many policy changes, smoking rates in New York City declined from 21.5 percent in 2002 to 13.4% percent in 2017. By 2010, there were about 450,000 fewer smokers in New York City than in 2002, a decrease that the New York City Department of Health estimates could prevent up to 149,000 premature deaths in the future.¹⁰ As diseases related to unhealthy food replace tobacco as the leading cause of preventable illnesses and deaths, New York City policy makers have an opportunity to take action now to save lives in the future.

But isn't food fundamentally different from tobacco and alcohol? In some ways yes. We all need food to live and no one needs tobacco and alcohol to survive. But in many ways, sugary beverages and other unhealthy food products are more like tobacco than food. Both sugary drinks and tobacco products have no known health benefits. Both contribute to global epidemics and both the sugary beverage and tobacco industries have used deceptive advertising, falsified or covered up scientific evidence, lobbied to undermine public health protections, and used philanthropy to win over supporters and silence critics.

The public and governments can develop new ideas for innovative ways to protect public health – in this case strategies to reduce exposure to predatory marketing of unhealthy foods and beverages – by extracting lessons from the many successful efforts to limit predatory marketing of tobacco and alcohol and from the emerging experience of limiting marketing of unhealthy food in other jurisdictions in the United States and other countries around the world. This policy brief summarizes

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relevant ideas on this topic with the goal of assisting policy makers and advocates to take informed action at the city, state and federal levels to reduce the risks that predatory marketing poses. This guide is based on:

1. *A literature review of recent scientific articles on predatory marketing and the strategies to control it and*
2. *A scan of existing city, state, federal and international policies that have been passed in the last 50 years.*

These documents, prepared by the staff at the CUNY Urban Food Policy Institute as part of its study of Predatory Marketing of Unhealthy Food in New York City, are available to readers on request.

2. Current predatory marketing policies

Over the past fifty years, many national, state, and local governments have passed laws regulating the advertisements of food and beverages to minors or in specified settings. This review identified 56 separate policies or laws from which we extracted eleven distinct policy approaches, varying in their adoption, rigor and impact. These are listed in Box 1. In addition, legislators have passed a few laws that serve to limit government action to reduce predatory marketing, thus potentially worsening the problem.

Box 1. Policy Approaches to Reduce Predatory Marketing of Unhealthy Food and Beverages

1. Creating rules for service providers to limit collection of online information from minors
2. Limiting advertising in specific places (e.g., school buses, schools, transit systems, parks)
3. Prohibiting the inclusion of incentives (e.g., sweepstakes and contests) in children's meals
4. Prohibiting promotional messages for minors (e.g., toys, cartoon characters, celebrities)
5. Restricting advertising times on television and/or movie theatres
6. Banning advertising of inaccurate or misleading information
7. Limiting types of foods and beverages to be sold in settings (such as parks, schools, etc.)
8. Requiring inclusion of nutritional information with food and beverage advertisements
9. Banning all commercial advertisements targeting children on television or in other media
10. Forming public/private partnerships to encourage voluntary reforms of marketing practices (i.e., self-regulation)
11. Removing tax deductions for advertising of unhealthy products or giving tax breaks to companies that advertise healthy foods

Our review of the 56 laws and policies that we identified that were implemented to reduce predatory marketing illustrate several key themes, as shown in Box 2.

Box 2. Key Themes of Current Policies

- Two policy approaches (1 and 2 in Box 1), restricting internet companies from collecting data about minors in order to target advertising, and limiting marketing of unhealthy food in specific public settings such as schools, parks or mass transit systems, accounted for more than half of the 56 policies identified.
- Three other types of policies (3, 4 and 5) were used less frequently but together accounted for another one-third of the 56 identified policies. These were policies to restrict incentives or giveaways in children's meals (14%); bans on the use of cartoon characters, toys, or celebrities to market unhealthy food to young children (12%); and ads to restrict the days or times that unhealthy products can be advertised to children or shown in movie theaters (10%).
- The remaining six policy approaches (6-11) were each represented by fewer than 10% of the 56 examples we identified, together accounting for 39% of the policies identified. These included: 1) rules on what foods and beverages can be sold in certain locations; 2) advertising of inaccurate or misleading information; 3) self-regulation by corporations; 4) mandates for inclusion of nutritional information with food and beverage advertisements; 5) banning all commercial food advertisements targeting children; and 6) the use of taxes or tax breaks for advertising unhealthy
- The United States federal government has passed a limited number of recent rules or regulations to restrict predatory marketing. In the last few years, most laws related to predatory marketing originate from state, county, or municipal governments.
- The United States has not been as strict as other nations such as Chile, Ireland, France, and the UK in deterring predatory marketing on television, public transit, and online. The likely explanation is current interpretations of the First Amendment of the U.S. Constitution, which protects freedom of speech. Although the Founding Fathers probably did not intend to offer free speech protection to marketers, in the last 50 years, a more business-friendly federal court system has made decisions that expanded the ability of corporations to make claims under the guise of protected commercial speech. In the wake of these changes lawyers, lobbyist, and others on the side of industry have used the First Amendment as a tool for challenging a wide variety of government regulations to restrict marketing.

In contrast to laws restricting predatory marketing, several states acted to make it more difficult to limit predatory marketing. They have passed measures to curtail local government from imposing nutritional standards or banning incentives. These preemptive laws, such as the bans on local soda taxes passed in Washington State ([Initiative 1634](#)), Arizona ([House Bill 2484](#)), and California ([Assembly Bill 1838](#)) in 2018, pose a serious threat to reducing predatory marketing.¹¹

Despite the efforts to reduce predatory marketing, our review found the 11 current policy approaches had a number of weaknesses that need to be corrected in order to more effectively reduce predatory marketing.

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These limitations included:

- Most regulations, policies, and laws do not tackle inequitable exposure to predatory marketing based on socio-demographic characteristics or neighborhood composition. More policies are needed to protect disenfranchised populations.
- Evaluations of the impact and enforcement of policies is lacking.
- Using revenues from the sale of advertising space in schools to marketers of unhealthy food could exacerbate health disparities among the children in that school
- Decisions on which ads to include may not fully incorporate community input.
- Food and beverage companies may use partnership agreements with schools or other public agencies to increase the perception that they adhere to higher standards of corporate social responsibility despite the ongoing targeted marketing of sugary drinks
- While the federal agreement protects all minors less than 13 years of age from being tracked online by service providers, older students are left unprotected
- The expansion of online protections to students in school (grades K-12) in various states does not extend to universities and other government agencies
- Online protection or limits on predatory marketing in other media (e.g., television) are nearly non-existent for adults
- Corporations are circumventing the guidelines of collaborative workgroups set up to address issues related to food advertising by renaming the size of drinks, using point-of-sale tactics, or completely flouting the policies

3. Predatory marketing policies approved in New York City and New York State

Until recently, most of the laws that limit predatory marketing, whatever their strengths and weaknesses, were passed by the federal government. These included national laws to prevent host selling, the practice of having the host of a children's television show endorse products or services; mandatory nutritional labeling on packaged foods and drinks; limits on the type of personal data that Internet companies can collect from minors; and laws to restrict misleading or inappropriate advertisements of tobacco, alcohol or other products to minors through all media outlets.

To date, limited legislation has been passed in New York City or State to prevent predatory marketing of unhealthy foods and drinks. However, city and state elected officials have made several attempts including efforts to restrict the placement of certain foods and beverages in stores; increase direct marketing of fresh fruits and vegetables in areas with a high incidence of adult and child obesity; and require sugary drinks to have a warning label.

Currently, legislators and advocates are pursuing several other options that could either increase or decrease predatory marketing. Proposals that could increase exposure to such marketing include

permitting bus advertisements and authorizing school districts to enter into contracts for the sale of advertising space on school athletic fields. Policies that could limit predatory marketing are a sweetened beverage tax and the establishment of children's health promotion to fund statewide childhood obesity prevention activities and programs.¹² In Berkeley California, for example, the sugary beverage tax now funds school water fountains, health education and other health promotion services. In Philadelphia the tax has helped to expand early child care programs. A bill approved by the New York City Council earlier this year, the "Healthy Happy Meal" law, requires all 24,000 restaurants in New York City to make a healthy beverage option the default for kids meals and will hold non-compliant restaurants accountable. Any restaurant that violates any of the provisions shall be liable for a civil penalty up to \$200. This law shows the willingness of elected officials to pass modest laws that can begin to change what the city's children eat.

4. Lessons from Other Places

Before turning to recommendations, it is worth looking at a few examples of how other countries have tackled predatory marketing of unhealthy foods and beverages for insights that could set inform a more ambitious agenda in New York. A few examples show the bold steps other cities and countries have been able to take to protect children, families and communities from predatory marketing of unhealthy food.

In November 2018, London Mayor Sadiq Khan announced the London transport network will [ban junk food advertising](#) on all modes of transport operated by Transport for London, that city's equivalent of New York's Metropolitan Transportation Authority (MTA). The ban that went into effect in February 2019 will ban ads for foods high in sugar, salt and/or sugar and considered "less healthy" under Public Health England guidelines. Food companies and fast food chains will only be able to promote healthier options, rather than publicizing brands.

"Child obesity is putting the lives of young Londoners at risk," said Mayor Khan, "and placing huge pressures on our already strained health service. It is absolutely imperative that we take tough action against this ticking time bomb now, and reducing exposure to junk food advertising has a role to play in this—not just for children, but parents, families and caregivers who buy food and prepare meals." In a public consultation process before the ban was announced, 82% of the 1500 Londoners who participated supported the ban.

In 2017, Amsterdam also [banned](#) all ads about unhealthy food aimed at children in the city's subway system, part of a larger initiative to reduce child obesity. "Children have the right to grow up in a healthy environment. We as a municipality want to contribute to that in all possible ways," explained Eric van der Burg, the Amsterdam alderman for Health and Sports. "In the past we used to see advertisements for cigarettes everywhere. Now we find it normal that we no longer expose children to it. Unhealthy food has to go the same way."

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In 2012, Chile passed a food labelling and advertising law, known as Law 20.606, on the nutritional composition of foods and their advertising. It went into effect in 2016 and established a regulatory framework on food security and healthy food with the intention of guiding consumers towards consumption that promotes public health. [The New York Times](#), has characterized this measure as "the world's most ambitious attempt to remake a country's food culture" and suggests it "could be a model for how to turn the tide on a global [obesity](#) epidemic that researchers say contributes to four million premature deaths a year."¹³

The law requires that:

- The Ministry of Health determine which foods that contain large amounts of calories, fat, sugar or salt must be marked as "high in calories", "high in salt" or another equivalent phrase
- Advertising is defined as "all forms of promotion, communication, recommendation, propaganda, information or action aimed to promote the consumption of a certain product."
 - The promotion of designated foods cannot use inducements not related to the product's own promotion when it is aimed at children under 14 years of age. Incentives such as toys, accessories, stickers, or others cannot be used under any circumstances

As residents and elected officials in New York consider the next steps in our efforts to limit exposure to predatory marketing of unhealthy food and other products, we need to ask what kind of city and state we want to be. Do we want to continue on the present path where the rights of corporations to market the products they choose with the messages they think will sell the most products are more highly valued than the rights of parents and communities to protect their children from exposure to marketing that has been demonstrated to elevate the risk of premature death and preventable illness? Or, like London, Amsterdam and other cities, do New Yorkers want to become a place where public policy puts well-being of children, families and communities first.

5. Policy Recommendations

Based on our review of the experiences in other jurisdictions and the evidence in the public health and medical literature, we recommend New York City and State consider the following measures to limit the practice of predatory marketing of unhealthy food and the exposure of vulnerable populations .

City level

1. Use zoning laws to ban marketing of unhealthy products in public places including schools, parks, hospitals, and the public transit system.
2. Support community and youth organizations to develop educational and advocacy campaigns against predatory marketing of unhealthy food and beverages, using successful models from tobacco control activities.

3. Create additional public education campaigns to warn people about the dangers of consumption of unhealthy foods and beverages, de-normalize predatory marketing, and encourage consumption of healthier options such as tap water.
4. Encourage food and beverage companies to limit marketing of unhealthy products to vulnerable populations and to hire independent groups to monitor compliance with such commitments (also a national level action)
5. Support the Public Health Advocacy Institute demand that the USDA prohibit the sale of copycat foods in school. Copycat foods use brand names, logos, or characters on school product packaging to develop brand loyalty for less healthy options available outside schools.

State level

6. Require food and beverage companies and their foundations to disclose funding of community organizations, arts groups and scientific research so public and policy makers can identify potential conflicts of interest and their campaign and lobbying expenditures so the public can detect their influence on public health policies(also national level)
7. Extend social media privacy policy for students to also protect minors aged between 13 and 18 years from data collection of health-related information for marketing (also national level)
8. Ban marketing and sale of unhealthy food and beverage products in all public places and government agencies
9. Enforce false and misleading advertising laws more aggressively. New York law protects consumers from false advertising, marketing that is misleading in any significant way. Applying these laws to food and beverage companies that present misleading or inappropriate messages to children could help deter such marketing. (also national level)

National Level

10. Implement and enforce penalties for false or misleading advertising of unhealthy products with a focus on marketing practices in communities with a high proportion of youth, socioeconomically disenfranchised populations, Blacks, Latinxs, Asians, and other non-White racial/ethnic groups.(also state level)
11. Raise taxes on sugary beverages and unhealthy foods and redirect the funding towards public health efforts to combat diabetes and obesity or counteract predatory marketing (also state level)

6. Likely Obstacles

While these recommendations could help to reduce predatory marketing of unhealthy food and beverages, many would likely face strong political opposition from the food and beverage industries and their allies and partners. Some of the arguments they will raise include:

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1. *Designing laws to limit advertisements of sugary beverages and unhealthy foods around schools, parks, and other locations of interest could be challenged using the First Amendment Right to Free Speech.*

Counterargument: Laws have passed in other states, such as Virginia in 2015, which allows county jurisdictions to regulate outdoor advertising. In addition, there are regulations around restricting the marketing of tobacco and alcohol in and around certain settings, such as schools.

Moreover, the application of the First Amendment to protect commercial speech rather than political speech is the result of relatively recent Supreme Court decisions from a business-friendly court. As the rapid changes in the law around gay marriage show, court decisions often follow rather than lead changing public opinions, showing the value of making the case that the Founding Fathers probably did not intend to protect marketers of lethal products.

2. *One way that food companies introduce unhealthy food to children is to sell “copycat products” that meet USDA nutritional guidelines but are packaged to look like less healthy products sold outside schools. Their hope is to the look-alike school products will reinforce brand loyalty outside the school. For example, PepsiCo produces and markets to school food service directors a product called Cheetos® Flamin’ Hot Puffs Reduced Fat (see **Figure 1**). This product meets the USDA Smart Snack guidelines, but it is not widely available for retail purchase outside of schools. Instead, PepsiCo offers Cheetos® Flamin’ Hot Puffs to the broader public. When advocates called on USDA to ban copycat products, industry objected, saying such a ban limited their freedom to sell what they wanted.*



Figure 1. Cheetos® Flamin’ Hot Puffs Reduced Fat.

Counterargument: A recent study by Mann¹⁴ demonstrates that copycat food or snack items can confuse students’ perceptions of what is healthy. Also, students of color and students from low-income families are more targeted by companies for unhealthy food and drink marketing.

3. *Food industry groups oppose sugary beverage taxes. Their argument is that working families, minority groups, and small businesses will bear the brunt of an excise tax.*

Counterargument: Examples from other cities that have implemented an excise tax suggests that the benefits outweigh any possible burdens. Though early, Mexico, Philadelphia, and Berkeley have seen positive reductions in the sale and consumption of sugary beverages. Moreover, in Philadelphia the expected \$91 million in revenue generated from the tax is being used to fund educational projects, parks, pre-K, and help low-income individuals and minority communities.

7. Additional approaches to reduce predatory marketing

In addition to the approaches described above that have already been tried by some jurisdictions, other efforts to restrict or limit the impact of predatory marketing have been initiated by community organizations, nonprofit groups or government agencies to influence the marketing practices of the food, alcohol or tobacco industries and the retail outlets that sell these products. Some examples are:

1. Limit density of food, tobacco, or alcohol outlets. This reduces availability but also in store marketing and normalization of buying anywhere
2. Limit sales in certain kinds of outlets (e.g., pharmacies or movie theaters)
3. Create advertisement campaigns to counteract and undermine industry messages, and educate/empower community members (E.g.: “I call the snacks” campaign by the Philadelphia Department of Public Health aimed at inspiring parents and caregivers to take control of the snacks their kids are eating, see **Figure 2**)
4. Advocate for minimum or unit pricing (to diminish predatory pricing strategies) for example, Scotland has minimum unit pricing for alcohol
5. Work with organizations to fully understand the scope and implications of receiving in-kind or financial contributions from Big Soda and Food companies using guidelines such as those developed by the Center for Science in the Public Interest.
6. Following the United Kingdom model, urge food retailers to adopt healthy checkout lanes, thereby eliminating or drastically reducing the display of unhealthy foods and beverages at checkout aisles.¹⁵



Figure 2 Campaign by the Philadelphia Department of Health

Many of the tobacco and alcohol control measures now in place are the culmination of several factors: right place right time, strong advocacy, and political will. In some cases, it took decades of activism to win these victories. In the current political climate, it may take a while to win similar victories, especially at the federal level. But every day public health professionals and advocates delay action is one day more that children, families and communities are exposed to messages that promote premature death, preventable illness, and disparate burdens of disease. The time is right to take action on creating a city where the well-being of all takes precedence over the profits of a few.

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