



# HEALTHY FOOD IN KANSAS

## Local Government Purchasing Policies



Food and drinks high in sugar, calories, and salt can cause chronic diseases such as heart disease, diabetes, and high blood pressure. A crucial step in reducing these diet-related diseases, and obesity too, is creating food environments that support healthy choices. In Kansas, public agencies offer food and beverages to thousands of employees, community members, clients, and visitors every day, providing them an important opportunity to promote healthy options.

This resource provides information on how to draft, implement, and enforce policies that apply food and beverage service standards (also referred to as nutrition standards) to food served or sold on government and quasi-government



property<sup>1</sup> in Kansas.\* Comprehensive policies address the nutritional quality of the food and beverages, as well as marketing strategies to help healthier items compete with unhealthy, but popular choices as sites transition to incorporate more healthy options.

The policies described in this resource can be adopted through local legislation, regulation, or executive order. In addition, some policies can be implemented through a contract or request for proposal (“RFP”), contingent on: 1) all vendors being subject to the contract, 2) the contract meeting all criteria for support, and 3) the contract being, at minimum, five years long. Further requirements and standards are discussed below.

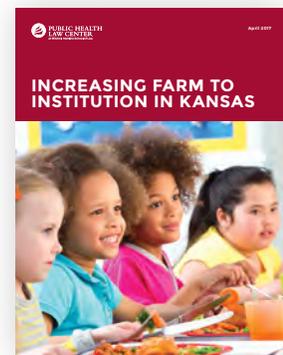
Every locality is unique, so be sure to check with your local government to identify the food services operating on government property in your community and tailor your approach accordingly. Food service operations could include cafeterias, cafés, concession stands or catering at government-sponsored events and meetings. For example, Salina Parks and Recreation Department operates several sites where food is available at concession stands, such as the Kenwood Cove Aquatic Park and its new indoor sports facility, the Salina Fieldhouse. Other city or county government entities host events for various coalitions and provide food during those events.

## Food procurement at the local level in Kansas

Healthy food polices for both state and local governments in Kansas establish requirements and set standards for the types, sources, and cost of items that government agencies buy, including foods and beverages. In Kansas, local governments can make decisions on matters of local-concern that state law does not address, an approach called “home rule.”<sup>2</sup> State-level procurement policies do not typically apply to local governments, meaning that local governments are free to determine and implement their own policies. Local governments may choose to model their procurement procedures after those used at the state level. The Public Health Law Center’s resource on *Increasing Farm to Institution in Kansas* provides more information on state-level procurement procedures in Kansas.<sup>3</sup>

Local governments may differ in the way they implement procurement policies. For example, some communities may have a centralized procurement office that handles purchasing for all government departments or agencies.<sup>4</sup> Other governments may not have a procurement office

\* Food and beverages sold in vending machines and self-serve kiosks are another important source of food services on government property. Please see the Public Health Law Center’s *Kansas Healthy Vending Implementation Guide*, which provides guidance specific to vending operations.





and may instead require each individual department to handle its own purchasing activities. Therefore, you need to understand your community’s procurement processes before adopting and implementing new food service requirements.

**The “Government Control” law**

In 2016, Kansas enacted a law that preempts local authority in favor of state government authority in several areas, including local regulation and oversight of food service operations, retail food establishments, and other matters concerning local food and agricultural practices. This law (the “Government Control” law) also expressly limits local authority to try to reduce food-based health disparities.<sup>5</sup> The law **does not apply** to creating a policy with nutrition standards for foods served or sold by local government at concession stands or other venues. The law expressly allows political subdivisions to set their own policies within their own food service operations, so long as those policies are not laws or ordinances restricting other food service entities.<sup>6</sup> The Public Health Law Center’s resource on [Kansas’s Government Control of Local Food Policies Law](#) provides more information on the law.<sup>7</sup>



Local governments can enact procurement policies in various ways, including through executive orders, resolutions, or ordinances. They also can embed procurement concepts in an RFP or contract.<sup>8</sup> Local procurement policies and contracts can be an effective mechanism for setting nutrition standards in food service operations, and are most impactful when policies and contracts are aligned with strong nutrition standards and marketing strategies.

Most local governments in Kansas do not have policies outlining specific requirements such as nutrition standards or marketing strategies for procurement. However, many local governments use requests for proposals and resulting contracts with vendors who then supply the foods and beverages offered on the government property. Including nutrition standards and other requirements that promote the consumption of healthy food and beverages in the contract language will ensure that vendors are obligated to abide by those requirements.

## Using Resolutions



Cities and counties can use local government resolutions as a tool to promote a broad array of public health initiatives, including healthy food policies. Resolutions often have a specific directive to review and update existing planning documents and ordinances to accomplish these goals. A resolution declares an action, policy, or goal set by a government body, such as the city council or county commission, and can be as short as 1 to 2 pages. Some examples of Kansas communities using local resolutions for healthy food policies include:



**The city of Liberal passed a Healthy Initiatives Policy by resolution** in October 2014.<sup>9</sup> The resolution set nutrition standards for concessions and vending machines at parks and recreation facilities. At least 50 percent of the food and beverages must meet those standards. In addition to nutrition standards, the policy requires vending machine pricing, placement, and promotion strategies.



**In December 2016, Board of County Commissioners of Thomas County passed a resolution to implement beverage standards for 100 percent of all beverages in vending machines, coolers, and other retail equipment on all Thomas County property.** The resolution has strict beverage standards. It also requires that future contracts include nutrition standards with specific breach of contract and enforcement provisions.<sup>10</sup>

## Using Contracts



Some local governments contract with vendors to provide food and beverages on government property or at government-sponsored events. These transactions are often governed by a bidding process through a RFP and subsequent contracts. Local governments can include nutrition standards, local purchasing requirements, pricing, marketing, and other point-of-sale standards in these RFPs and contracts. Some examples of Kansas communities using RFPs or contracts for healthy food policies include:



**The Riley County Fair Board included nutrition standards as part of its RFP for County Fair food stand managers during its 2014 County Fair. The RFP requires that products meeting the nutritional standards included in the RFP be sold at prices equal to or less than comparable products that do not meet the nutritional standards.<sup>11</sup>**



**The Lawrence Parks and Recreation Department adopted nutrition standards that have since been incorporated in its RFP for vending and concession services at city recreational facilities. The RFP requires that 50 percent of the foods and beverages offered meet specific nutritional standards. These nutritional standards include limits on sugar and sodium content and a requirement that concessionaires offer at least one fresh fruit or vegetable. In addition, products provided in vending machines and concessions stands at city recreation facilities, golf courses, swimming pools, and parks must follow specific product placement requirements shown to promote consumption of healthier items over less healthy options.<sup>12</sup>**



## What to include in healthy food service procurement policies and requests for proposals

There are numerous ways to develop healthy food policies. Below is sample language that local governments in Kansas may find useful. The language is for a resolution, ordinance, or contract at the township, city, or county level that establishes nutrition standards for food and beverages served on government property or through public programs. This policy language is tailored specifically to American Heart Association standards, but U.S. Department of Health and Human Services standards could be used instead.<sup>13</sup> When language appears in brackets below, it provides additional options or explains the type of information that can be used to customize the policy.

If your local government has a contract with a vendor in place, the existing agreement may allow for changing the product mix and supplying newer, healthier foods and beverages. If the agreement does not allow for changes to the items offered, you may have to wait for the contract to expire. The government may then go through a process of soliciting bids from vendors. The nutrition standards identified in the procurement policy should be included in the RFP, so bidding vendors know of the new requirements.

### Definitions

The first step to an effective procurement policy is to define what is meant by government property, food service, and nutrition standards. Check the local government code to make sure that “town/city/county property” is not already defined elsewhere. Schools are not covered by this policy but other facilities may be covered depending on the town/city/county. Check with the American Heart Association to see which facilities, if any, may be excluded in your community’s definition of government property.

### Sample language

- “[ Town/City/County ] Property” as used in this section means all real property, or part thereof, used for [ Town/City/County ] purposes and either owned, leased, rented, or otherwise controlled by, operated by, or occupied by, any [ Town/City/County ] department. [ Town/City/County ] Property does not include property owned or managed by the [ Name of the public school system ]. [The policy should cover all government facilities over which the town/city/county council or board has authority; if the town/city/county does not have authority over other public facilities (for example, parks and recreation facilities might have their own policymaking body), those facilities could also be identified here].

- “Food service(s)” includes but is not limited to, food and beverages sold in cafeterias, cafés, concessions, and catering by off-site vendors for government sponsored meetings and events. [Your community may have different interpretations for food service on government property.]
- “Nutrition standards” means the nutrition standards in the *Healthy Workplace Food and Beverage Toolkit* (2015) developed by American Heart Association and described in [ insert section number for Nutrition Standards ]. [If you are not using the *Healthy Workplace Food and Beverage Toolkit* as your default standards, change this definition to reflect your choice of standards.]
  - The following criteria apply to meals offered in covered food services:
    - No more than 700 calories.
    - No more than 800 milligrams of sodium [*preferably no more than 525 milligrams*].
    - No more than 5 grams of saturated fat.
    - No more than 105 milligrams of cholesterol.
    - Less than 0.5 grams trans fat and no products containing partially hydrogenated oils.
    - At least 2 servings (1.5 cups) of vegetables and/or fruits.
  - The following criteria apply to snacks offered in covered food services, except for plain nuts and nut/fruit mixes:
    - No more than 200 calories per label serving.
    - No more than 240 milligrams of sodium per label serving [*preferably no more than 140 milligrams*].
    - Zero grams trans fat per label serving and no products containing partially hydrogenated oils.
    - No more than 1 gram of saturated fat per label serving.
    - No candy except for sugar-free gum or mints
  - The following criteria apply to plain nuts and nut and fruit mixes offered in covered food services:
    - The serving size shall not exceed 1.5 ounces.

- Sodium content shall not exceed 140 milligrams per label serving.
- o The following criteria apply to beverages offered in covered food services:
  - Water, including, plain, sparkling and flavored varieties shall not exceed 10 calories per serving.
  - Milk shall be fat-free (skim) or low-fat (1% milk fat) or milk alternatives (soy, almond, etc.) and shall not exceed 130 calories per 8 fluid ounces.
  - Juices must contain 100% fruit or vegetable juice (or juice and water), shall not include added sugars/sweeteners (except non-nutritive sweeteners), and shall not exceed 120 calories per 8 fluid ounces; (preferred serving size); 150 calories per 10 fluid ounces; or 180 calories per 12 fluid ounces.
  - All other beverages shall not exceed 10 calories per serving.

## Implementation requirements

In implementation, you will want to consider two key questions: (1) what percentage of items will be covered by the standards at first, and (2) what percentage of the items will be covered when the standards take effect. To determine the best approach for your community, you need to know how many foods and beverages currently meet the nutrition standards, or could meet the nutrition standards with ease. You may decide to use a 100 percent approach where all covered food services must meet the nutrition standards by a certain date in the near future. Or, you may use a phased-in approach, which allows the vendor to gradually meet the nutrition requirements over a specified time, but achieving 100 percent coverage within three years of the policy being adopted.

When considering the date for full implementation, consult staff, such as procurement or contract managers, as well as vendors and other stakeholders. If you are using a phased-in approach, determine the percentage(s) to use based on an assessment of the types of items already offered, and in consultation with local government staff and vendors. For example, because bottled water is a popular product, it is often easier to meet a higher initial percentage with beverages. Use separate benchmarks for snacks, meals, and beverages, rather than combining them. If more than one contract is in place with different end dates, consider using the various end dates as your phase-in periods. The Public Health Law Center's resource on *Promoting Healthy Food & Beverage Choices in Parks & Recreation Facilities* offers information on how to choose between a 100 percent and a phased-in approach.<sup>14</sup>



## Sample language

- 100% From the Start Approach:
  - 100% of the food and beverage items offered in covered food services must meet the nutrition standards listed [ in section \_\_ upon the effective date/within three/six months of the effective date of this section ].
- Nutrition Standards to be Phased in Over Time:
  - [ Upon the effective date/Within three months of the effective date of this section ] at least [ 50% ] of the items and meals and [ 75% ] of the beverage items offered in each covered food service must meet the nutrition standards listed [ in section \_\_ ], except that 100% of the food items must meet the sodium and trans fat requirements.
  - [ Within two years of the effective date, OR by DATE ], at least [ 75% ] of the food and [ 100% ] beverage items offered in each covered food service must meet the nutrition standards listed [ in section \_\_ ], except that 100% of the food items must meet the sodium and trans fat requirements.
  - [ Within three years of the effective date, OR by DATE ], [ 100% ] of the food and beverage items offered in covered food services must meet the nutrition standards listed [ in section \_\_ ].

## Placement and pricing

How products are presented and where they are placed in a retail environment affects sales. For example, research shows that placing healthy products at eye level or near the checkout area improves their visibility, making them more likely to be purchased.<sup>15</sup> Offering healthy food and beverage items at the same or lower price than unhealthy items is an effective way to promote sales of healthy items. Research also shows that lowering the prices of healthy snacks can increase sales by up to 80 percent.<sup>16</sup> In a policy where 100 percent of food and beverage items meet the nutrition standards, placement and pricing standards are not needed. However, when a policy uses a phased-in approach, placement and pricing requirements are essential.

## Sample language

- Placement Standards:
  - All food and beverage items in covered food services that meet the nutrition standards must be displayed and/or labeled in ways that are easily visible and distinguishes them from items that do not meet the nutrition standards.

- Food and beverage items that meet the nutrition standards will be placed in the prime selling positions, including but not limited to the top one-third (33%) of the shelving or at eye level so that items are readily visible and identified.
- Pricing Standards:
  - All foods and beverages in covered food services that meet the nutrition standards must be priced less than or equal to products that do not meet the nutrition standards.

## Federal calorie labeling requirements

As of 2010, Congress requires that chain restaurants and similar retail food establishments with 20 or more locations nationwide provide calorie information on menus and provide other nutritional information upon request. Food procurement policies for food service operations should include the calorie labeling requirement. For more information on the types of establishments and requirements included in the federal law, see the Public Health Law Center's [Federal Calorie Labeling Regulations](#) resource.<sup>17</sup>



## Sample language

- For each item of food sold that does not provide visible nutrition information at the point of purchase, a vendor shall provide a sign in close proximity to each food item or the selection button that includes a clear and conspicuous statement disclosing the number of calories contained in the product.

## Randolph-Sheppard Act

The Randolph-Sheppard Act gives preferences to eligible legally blind vendors on federal property. In Kansas, the law extends these preferences to food services on state and local property.<sup>18</sup> For more information on this law, see the Public Health Law Center's document on [Healthy Vending in Kansas and the Randolph-Sheppard Act](#).<sup>19</sup>





## Enforcement and reporting

The government staff or departments responsible for contracting with vendors, and implementing and enforcing policy standards and requirements, will differ by community. You need to tailor the policy language based on the processes and expertise in your community. For example, an amended version of the sample language below could be submitted to the appropriate government oversight body, if available. The contract could also include enforcement language that links failure to follow the nutrition standards with the breach of the contract; this language should be consistent with other breach of contract or termination provisions.

### Sample language

- This section shall become effective [ choose appropriate date based on the policymaking process in your jurisdiction — the town/city/county code may have a general provision addressing effective dates ].
- **Recommended language:** Within [ insert number of years ] years after enactment of this section and every [ insert number of years ] years thereafter, the [ City Procurement Manager or other appropriate person ] shall review the nutritional standards and if necessary, recommend amendments to the nutrition standards to reflect advancements in nutrition science, dietary data, and new product availability.

- The [ City Procurement Manager or other appropriate person ] shall prepare a [ annual/biennial ] report on the status of implementation. The report shall include:
  - An assessment of compliance with the nutrition standards and stocking requirements;
  - A list of successes, challenges, and barriers experienced in implementation; and
  - Recommendations for improvement of the nutrition standards and compliance.
- The contractor is responsible for maintaining satisfactory performance throughout the term of the contract. Continuing or unresolved problems or general unsatisfactory ratings for an unacceptable length of time may result in termination for cause.
- [ Vendor's/Contractor's ] failure to comply with these healthy food guidelines shall be deemed a material breach of the Agreement, which may subject the Agreement to immediate termination at [ government entity ]'s sole discretion or to such other remedies as determined appropriate by [ government entity ].

## Conclusion

Local governments across the United States and Kansas recognize the impact food has on public well-being and the local economy. Local governments play a pivotal role in ensuring that community members have access to healthy food through local policies. Under Kansas law, local governments have the authority to implement a variety of policies to increase access to healthy food and improve health within their communities. Local governments serve and sell food to large numbers of people through different means, such as cafeterias, vending machines, and government events. Local governments can use bids, contracts, and wellness policies to set nutrition standards, local purchasing requirements, pricing, marketing, and other point-of-sale standards to require the purchase, sale, or service of healthy local food and beverages on government property and at government-sponsored events and meetings.

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## Endnotes

- 1 “Service” applies to all foods or beverages served and sold in a cafeteria or foods brought onto state or local government property by off-site vendors for meetings and events paid for by the government.
- 2 The Kansas Constitution states that “cities are empowered to determine their local affairs and government.” Kan. Const. Art. 12 §5. Therefore, city agencies can regulate their own purchasing activities. In 1974, the Kansas legislature granted home rule powers to counties. Kan. Stat. Ann. § 19-101a (2012); Michael R. Heim, League Of Kansas Municipalities, *Kansas Local Government Law* §3.19 (4th ed. 2009).
- 3 Pub. Health Law Ctr., *Increasing Farm to Institution in Kansas* (April 2017), <http://www.publichealthlawcenter.org/sites/default/files/resources/Kansas-Farm-to-Institution-2017.pdf>.
- 4 City of Olathe, Kan., *Bids and Proposal Process*, <http://www.olatheks.org/government/procurement/bids-and-proposals/bids-and-proposal-process>.
- 5 S. 366 86th Gen. Assemb., Reg. Sess. (Kan. 2016). The law also restricts local authority in regards to residential property inspections, price control of real estate, and labor work schedules.
- 6 S. 366 § 2(d), 86th Gen. Assemb., Reg. Sess. (Kan. 2016).
- 7 Pub. Health Law Ctr., *Kansas’s Government Control of Local Food Policies Law* (June 2016), <http://www.publichealthlawcenter.org/sites/default/files/resources/phlc-fs-KS-pre-emption-resources-WEB-2016.pdf>.
- 8 Local governments may also have other written administrative procedures for procurement policies, but that type of policy is outside the scope of this resource.
- 9 City of Liberal, Kan., *City Commission Agenda* (Oct. 28, 2014), [https://www.cityofliberal.org/AgendaCenter/ViewFile/Agenda/\\_10282014-108](https://www.cityofliberal.org/AgendaCenter/ViewFile/Agenda/_10282014-108) (signed resolution on file with Public Health Law Center).
- 10 Thomas County, Kan. Resolution 2016-23 (Dec. 12, 2016) (establishing healthy beverage vending guidelines for vending machines on county property) (copy on file with the Public Health Law Center; available on online in the County’s online document library, organized by year, and accessed at <http://www.thomascountyks.com/Departments/Commissioners/tabid/7853/Default.aspx>).
- 11 Riley County, Kan., *Request for Proposals for Riley County Fair Food Stand Manager* (2014), <http://www.rileycountyfair.com/files/library/2014%20Food%20Stand%20Manager%20RFP.pdf>.
- 12 City of Lawrence, Kan. Parks and Recreation, *Request for Proposals (RFP) No. R1321 — Amended*, [http://gallery.mailchimp.com/d8f1d62c09b5db34590f34b0a/files/Exclusive\\_Beverage\\_Supplier.PDF?utm\\_source=LiveWell+Lawrence&utm\\_campaign=2fac45638bLiveWell+Coalition+News+%7C+2013-11+November&utm\\_medium=email&utm\\_term=0\\_bd955e4da5-2fac45638b-66887361](http://gallery.mailchimp.com/d8f1d62c09b5db34590f34b0a/files/Exclusive_Beverage_Supplier.PDF?utm_source=LiveWell+Lawrence&utm_campaign=2fac45638bLiveWell+Coalition+News+%7C+2013-11+November&utm_medium=email&utm_term=0_bd955e4da5-2fac45638b-66887361).
- 13 Ctrs. for Disease Control and Prevention, *Food Service Guidelines for Federal Facilities* (Jan. 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).
- 14 Pub. Health Law Ctr., *From Small Steps to Big Leaps: Promoting Healthy Food & Beverage Choices in Parks & Recreation Facilities* (Oct. 2015), <http://www.publichealthlawcenter.org/sites/default/files/resources/fs-healthy-food-bev-parksrec-WEB.pdf.pdf>.
- 15 U.S. Dep’t of Agric., *Approach 4: Adopt Marketing Techniques to Promote Healthful Choices*, <https://www.cdc.gov/healthyyouth/mih/pdf/approach4.pdf>.
- 16 Simone A. French et al., *A Pricing Strategy to Promote Low-fat Snack Choices Through Vending Machines.*, 87 AM. J. PUB. HEALTH 849 (1997), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1381063>.
- 17 Pub. Health Law Ctr., *Federal Calorie Labeling Regulations for Restaurants and Vending Machines in Kansas*, (August 2016), <http://www.publichealthlawcenter.org/sites/default/files/resources/phlc-fs-kansas-Menu-Vending-Labeling-web-2016.pdf>.
- 18 KAN. STAT. ANN. §§75-3337 through §75-3343.
- 19 Pub. Health Law Ctr., *Healthy Vending and the Randolph-Sheppard Act* (Jan. 2015), [http://www.publichealthlawcenter.org/sites/default/files/resources/PHLC\\_fs.healthy\\_vending\\_RSAct Jan 2015.pdf](http://www.publichealthlawcenter.org/sites/default/files/resources/PHLC_fs.healthy_vending_RSAct Jan 2015.pdf).