



5-1-2006

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Recommended Citation

Amanda Shaffer, Mark Vallianatos, Andrea M. Azuma & Robert Gottlieb, *Changing the Food Environment: Community Engagement Strategies and Place-Based Policy Tools That Address the Influence of Marketing*, 39 Loy. L.A. L. Rev. 647 (2006).

Available at: <https://digitalcommons.lmu.edu/llr/vol39/iss1/16>

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CHANGING THE FOOD ENVIRONMENT: COMMUNITY ENGAGEMENT STRATEGIES AND PLACE-BASED POLICY TOOLS THAT ADDRESS THE INFLUENCE OF MARKETING

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I. INTRODUCTION: THE OBESITY EPIDEMIC, JUNK FOOD, AND THE ROLE OF FOOD MARKETING

Given the growing problem of obesity and diet-related illness in the United States, the marketing of junk food¹ to children has signif-

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1. For the purpose of this Article, the terms “junk food” and “unhealthy food” are used interchangeably. Although neither “junk food” nor “unhealthy

icant impacts that society needs to address. As schools ban soda² and legislators threaten to ban junk-food advertisements during children's television programs,³ marketers have adopted new place-based strategies to target children.⁴ Local organizing in schools and community food assessments have led to effective anti-obesity interventions.⁵ A combination of community engagement strategies and community-driven policy development at the local level can address marketing to children, including place-based advertising.

Last spring, a group of students and community members gathered in front of Belmont High School, near downtown Los Angeles, to take a census of the number and types of food stores and restaurants in their neighborhood.⁶ As the team consulted maps and readied clipboards and cameras for their survey, Domino's Pizza cars pulled up in front of the school.⁷ The delivery persons lugged red,

food" has one standard definition, several useful, albeit imprecise, definitions capture the health implications associated with those foods. For example, the Centers for Disease Control and Prevention (CDC) defines "junk food" as "food[] that provide[s] calories primarily through fats or added sugars and [has] minimal amounts of vitamins and minerals." CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., FACT SHEET: FOODS AND BEVERAGES SOLD OUTSIDE OF THE SCHOOL MEAL PROGRAMS 1 (2000), available at http://www.cdc.gov/healthyyouth/shpps/fact_sheets/pdf/outside_food.pdf. Some school districts have also adopted standards to eliminate what are characterized as "unhealthy foods" based on such nutritional factors as fat, saturated fat, and sugar content, as well as serving size. *See id.* The importance of these definitions is their focus on the health impacts of the foods involved.

2. S.B. 677, 2003 Leg., Reg. Sess. (Cal. 2003), available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0651-0700/sb_677_bill_20030221_introduced.pdf (amending California Education Code § 49,431 to limit sales of beverages at elementary schools to specified fruit-based drinks, water, 100% fruit juices, and milk).

3. S.J. Res. 29, 2004 Leg., Reg. Sess. (Cal. 2004), available at http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sjr_29_bill_20040414_introduced.pdf (calling on all levels of government to restrict food marketing and advertising directed at children).

4. *See id.*

5. *See, e.g.,* Cara B. Ebbeling et al., *Childhood Obesity: Public-Health Crisis, Common Sense Cure*, 360 LANCET 473, 477 (2002) (indicating that "[s]chool-based efforts have been oriented towards prevention" such as an interdisciplinary curriculum for children).

6. Andrea Azuma et al., Project CAFE, Los Angeles, Promoting Food Access in Schools and Communities Through a Participatory Approach, 2003–2007 (unpublished study, on file with author).

7. *Id.*

insulated cubes, each stacked with several pizzas, into the school to deliver meals to students or faculty.⁸ Indeed, students emerging from Belmont at the end of the school day do not have to travel far to face temptation in the form of mobile food carts offering flavored ice and fried dough.⁹ One enterprising resident of a nearby apartment even sells sodas and candy out of her kitchen window.¹⁰

The food assessment group soon spread out to adjacent streets.¹¹ In addition to documenting an abundance of fast food restaurants and liquor stores, the group noticed billboards for soda and images of packaged snack foods, sodas, and cigarettes painted on the exterior of stores and tacked onto windows.¹² Their first-hand investigations led them to consider what they could do to transform their neighborhood from a junk-food haven to a health-promoting environment.¹³

The increasing public focus on obesity and its relationship to the overwhelming pressure from junk food availability in their neighborhood motivated the Belmont students to act.¹⁴ Obesity and diet-related illnesses are significant public health problems in Los Angeles neighborhoods, the United States, and increasingly in other parts of the world.¹⁵ The World Health Organization (WHO) estimates that obesity affects twenty-two million children under the age of five worldwide.¹⁶ In the United States, data from the 1999–2000 National Health and Nutrition Examination Survey show that 30.3% of children ages six to eleven are overweight or at risk for being overweight.¹⁷ The prevalence of overweight American adolescents

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. See David S. Ludwig, *Dietary Glycemic Index and Obesity*, 130 J. NUTRITION 280S (2000), available at <http://www.nutrition.org/cgi/reprint/130/2/280S>; World Health Org. [WHO], *Obesity and Overweight* (2003), <http://www.who.int/dietphysicalactivity/publications/facts/obesity/en> (discussing the current global epidemic of obesity); Cynthia L. Ogden et al., *Prevalence and Trends in Overweight Among US Children and Adolescents, 1999–2000*, 288 JAMA 1728, 1728 (2002) (stating that prevalence of overweight children in the United States has increased from four percent to eleven percent between the 1960s and 1988–1994).

16. WHO, *supra* note 15.

17. Ogden et al., *supra* note 15, at 1730. The CDC defines “overweight” as

has doubled in the last twenty years.¹⁸ The U.S. Surgeon General attributes this epidemic to unhealthy eating and insufficient physical activity, with genetics also playing a key role.¹⁹ While numerous factors contribute to poor diet and limited physical activity, this paper focuses on the role of food marketing as a negative influence on diet and as an important arena for intervention to address the nation's obesity-related health crisis.

Numerous studies demonstrate that low intake of fruit and vegetables and high intake of fast foods, sweets, and sugar-sweetened beverages, such as soft drinks, contribute to childhood obesity and diet-related illnesses.²⁰ Organizations such as the Center for Consumer Freedom argue that individuals need to take personal responsibility for their food choices.²¹ Nevertheless, while individ-

a body mass index at the ninety-fifth percentile or higher and "at risk" for being overweight as a body mass index at the eighty-fifth percentile or higher. *Id.* at 1729.

18. *See id.* at 1728.

19. U.S. Dep't of Health & Human Servs., The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity: Overweight in Children and Adolescents, http://www.surgeongeneral.gov/topics/obesity/calltoaction/fact_adolescents.htm (last visited Nov. 5, 2005).

20. *See* PUB. HEALTH INST., A SPECIAL REPORT ON POLICY IMPLICATIONS FROM THE 1999 CALIFORNIA CHILDREN'S HEALTHY EATING AND EXERCISE PRACTICES SURVEY (CALCHEEPS) 2 (2002), available at <http://www.calendow.org/reference/publications/pdf/disparities/calcheeps050701.pdf> (indicating that children who were overweight or at-risk ate fewer servings of fruits and vegetables, drank more soda and fruit drinks, were more likely to eat high-fat snacks, and ate more fast food); Ludwig, *supra* note 15, at 282S (suggesting that a diet rich in vegetables, fruits and legumes, moderate in amounts of protein and healthy fats, and lower intake of refined grain products, potato and concentrated sugars may promote weight loss); Manfred James Müller et al., *Physical Activity and Diet in 5 to 7 Years Old Children*, 2 PUB. HEALTH NUTRITION 443, 443-44 (1999) (discussing how being overweight is associated with physical inactivity, unhealthy eating habits, and a low social status in children five to seven years of age); Dianne Neumark-Sztainer et al., *Correlates of Inadequate Fruit and Vegetable Consumption Among Adolescents*, 25 PREVENTATIVE MED. 497, 497 (1996) (finding that inadequate consumption of fruits and vegetables was common among the study population which consisted of 36,284 adolescents in grades seven through twelve).

21. *See generally* Center for Consumer Freedom, Print Ads, http://www.consumerfreedom.com/advertisements_print.cfm (last visited Nov. 5, 2005) (promoting personal responsibility and protecting consumer choice through its extensive printed advertisement campaign); Center for Consumer Freedom, Television Ads, http://www.consumerfreedom.com/advertisements_tv.cfm (last visited Nov. 5, 2005) (promoting personal responsibility and protecting

uals need to assume agency over their actions and decisions, their environment influences their range of food choices. The nature of food access—the ease of access, availability, and affordability of healthy foods—influences diet.²² Consequently, the variety of places where people access food and the types of food messages they encounter comprise their “food environment.” This environment includes fast food restaurants, farmers’ markets, liquor stores, supermarkets, schools, street vendors, and the advertising and media messages about food situated in a community.

While research shows that factors such as cost, accessibility, and availability of foods influence dietary choices,²³ targeted media messages further influence the consumer choices people make.²⁴ Marketers, for example, focus on places such as fast food restaurants in order to influence children between the ages of six and twelve in relation to their future choices, including dietary choices.²⁵ As a consequence, the food environment emerges as a crucial influence on how people make choices and fixes the limited choices they have. When a food environment reinforces poor dietary choices, it can contribute to problems such as the recent rapid increase in obesity and diet-related illnesses.

consumer choice through its extensive television advertisement campaign). *But see* Center for Consumer Freedom, About Us, <http://www.consumerfreedom.com/about.cfm> (last visited Nov. 5, 2005) (suggesting that the Center for Consumer Freedom may also include a group funded by a number of large food companies with interests to run extensive advertisement campaigns).

22. *See* Janet Cade et al., *Costs of a Healthy Diet: Analysis from the UK Women's Cohort Study*, 2 PUB. HEALTH NUTRITION 505 (1999); Karen Glanz et al., *Why Americans Eat What They Do: Taste, Nutrition, Cost, Convenience, and Weight Control Concerns as Influences on Food Consumption*, 98 J. AM. DIETETIC ASS'N 1118, 1118, 1125–26 (1998); Shannon N. Zenk et al., *Fruit and Vegetable Intake in African Americans: Income and Store Characteristics*, 29 AM. J. PREVENTATIVE MED. 1, 1–2 (2005).

23. *See* Zenk, *supra* note 22, at 1.

24. *See* GERARD HASTINGS ET AL., UNIV. OF STRATHCLUDE, REVIEW OF RESEARCH ON THE EFFECTS OF FOOD PROMOTION TO CHILDREN: FINAL REPORT 180–81 (2003), available at <http://www.food.gov.uk/multimedia/pdfs/foodpromotiontochildren1.pdf> (suggesting “[t]here is strong evidence that food promotion influences children’s food purchase-related behaviour”).

25. GENE DEL VECCHIO, CREATING EVER-COOL: A MARKETER’S GUIDE TO A KID’S HEART 20–21 (Pelican Publ’g Co. 1998) (1997).

II. THE JUNK-FOOD MARKETING EXPLOSION: HOW ADVERTISING AFFECTS CONSUMPTION

A. Targeting Children

Over the past two decades, the advertising industry has increasingly targeted children.²⁶

American corporations spend \$15 billion per year on advertising and marketing to children, twice what they spent 10 years ago. As the average child reportedly watches 40 hours of television per week, sees 40,000 TV commercials each year, and influences \$500 billion in annual spending—on toys, fast food, electronics, and more—this investment appears to be paying off.²⁷

Most of the research on the impact of advertising on children's food choices focuses on television advertising.²⁸ An extensive literature review in the United Kingdom found sufficient evidence to conclude that food promotion impacts children's preferences, purchase behavior, and consumption of food products.²⁹ These studies found that advertising affected the food preschoolers said they liked, vending machine displays influenced what teenagers purchased, and advertisements for soft drinks and sugar cereal reduced children's ability to determine which products contained real fruit and which were artificial.³⁰ In the United States, studies regarding the effect of television viewing on food choice have found that television watching is positively associated with obesity among girls,³¹ and that children who watch more television consume fewer fruits and

26. Jennifer Wolcott, *Hey Kid—You Wanna Buy a . . .*, CHRISTIAN SCI. MONITOR, Apr. 28, 2004, at 11, 11, available at <http://www.csmonitor.com/2004/0428/p11s01-lifp.html>.

27. *Id.*

28. HASTINGS ET AL., *supra* note 24, at 180.

29. *Id.* at 181.

30. *Id.* at 2, 118–19, 132–36.

31. Carlos J. Crespo et al., *Television Watching, Energy Intake, and Obesity in US Children: Results from the Third National Health and Nutrition Examination Survey, 1988–1994*, 155 ARCHIVES PEDIATRICS & ADOLESCENT MED. 360, 363 (2001).

vegetables.³² In addition, the food industry (especially the fast-food industry) markets supersize products for their value and the increased portions mean increased calories for consumers.³³ In relation to the question of agency, a recent study by the American Psychological Association found that “children under the age of eight lack the cognitive development to understand the persuasive intent of television advertising and are uniquely susceptible to advertising’s influence.”³⁴ This finding led the Association to recommend that the government step in to restrict advertising directed at children under age eight.³⁵

The food and beverage industries spend twelve billion dollars per year on advertising unhealthy snack foods, or junk food, to children.³⁶ This advertising aims to persuade children to ask their parents for those products—dubbed the “nag factor.”³⁷ Researchers estimate that one in three visits to a fast-food restaurant can be attributed to nagging.³⁸ For example, Heinz has indicated that it aims the majority of its advertising at children in the hopes that they will ask for Heinz purple ketchup.³⁹

32. See generally René Boynton-Jarrett et al., *Impact of Television Viewing Patterns on Fruit and Vegetable Consumption Among Adolescents*, 112 *PEDIATRICS* 1321, 1321–26 (2003) (discussing reasons why television contributes to U.S. children and youth not meeting *Healthy People 2010* objectives for fruit and vegetable intake and are instead consuming highly advertised foods); U.S. DEPT. OF HEALTH AND HUMAN SERVICES, *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH* 18-19 (2000), available at <http://www.healthypeople.gov/Document/pdf/Volume2/19Nutrition.pdf>.

33. Lisa R. Young & Marion Nestle, *Expanding Portion Sizes in the US Marketplace: Implications for Nutrition Counseling*, 103 *J. AM. DIETETIC ASS'N* 231, 231, 233 (2003).

34. Press Release, Am. Psychological Assoc., *Television Advertising Leads to Unhealthy Habits in Children; Says APA Task Force* (Feb. 23, 2004), <http://www.apa.org/releases/childrenads.html>.

35. *Id.*

36. See Andrew Martin, *Food Fight Begins over Children's Ads; Obesity Concerns Spur Workshop on Weighing Stronger Federal Rules*, *CHI. TRIB.*, July 15, 2005, News, at 8, available at http://medialit.med.sc.edu/kids_food_ad_hearings.htm.

37. See Amanda Spake, *Hey, Kids! We've Got Sugar and Toys*, *U.S. NEWS & WORLD REP.*, Nov. 17, 2003, at 62, 62, available at <http://www.usnews.com/usnews/health/articles/031117/17food.htm>.

38. *Id.*

39. David Goldstein, *Congressman Takes Aim at 'Junk Food' Ads*

Promotions and contests such as Pizza Hut's "Book-It" program and Mother's Day essay contest produce similar results.⁴⁰ Since 1985,⁴¹ Pizza Hut has sponsored "Book-It," a program in fifty thousand schools across the country designed to encourage elementary school children to read.⁴² The program rewards students who meet reading goals with a personal pan pizza.⁴³ In another promotion, Pizza Hut sponsors a Mother's Day essay contest for children ages five through eighteen to write about "Why Pizza Hut Should Cook for My Mom" and awards the winner's mother a \$750 gift certificate to Pizza Hut.⁴⁴ This contest is "something for mom that will make her life easier and allow her to spend time with the family."⁴⁵ These loaded messages confuse children by equating unhealthy products with rewards for reading and good parenting.

Targeting Youngsters, KAN. CITY STAR (Mo.), Mar. 17, 2005, at A1 (on file with the Atlanta Journal Constitution), available at <http://www.ajc.com/health/content/health/0305/17junkfoodads.html> (discussing whether sugar-laden snacks and cereals exacerbate the problem of childhood obesity).

40. See Pizza Hut, About Pizza Hut, Book-It! Program, <http://www.pizza-hut.com/about/bookit> (last visited Nov. 5, 2005) (stating that "[m]ore than 22 million students participate in the program every year and Pizza Hut rewards these young readers . . . with free pizza, praise and recognition"); Press Release, Pizza Hut, Shower Her with . . . Pepperoni? "Why Pizza Hut Should Cook for My Mom" Mother's Day Contest (Mar. 29, 2004) (on file with author), http://www.pizzahut.com/about/publicrelations/2004/20040329_01.asp (encouraging children ages five to eighteen to submit an essay to win their mother a gift card for Mother's Day).

41. Press Release, Pizza Hut, In Celebration of Its 20-Year Anniversary Pizza Hut BOOK IT! Program Awards Winning Elementary Classroom with \$20,000, School-Wide Pizza Party and Nickelodeon's Green Slime: Holly Springs Elementary in Pickens, SC Wins "Happy 20th Birthday BOOK IT!" Nation-Wide Contest (Nov. 16, 2004) (on file with author), http://www.pizza-hut.com/about/publicrelations/2004/20041116_01.asp ("BOOK IT!, exclusively sponsored by Pizza Hut, is a six-month program launched in 1985 and has for 20 years been the nation's largest reading incentive program.").

42. *Id.* ("In 2003-04, BOOK IT! reached 900,000 classrooms and 22 million K-6 students in 50,000 schools—or nearly 65 percent of all U.S. elementary schools.").

43. Pizza Hut, Book-It! Program, Teachers, Pizza Award Certificate Rules, <http://www.bookitprogram.com/teachers/awardcertrules.asp> (last visited Nov. 5, 2005) (detailing the rules on awarding a child with a free pizza certificate).

44. Press Release, Pizza Hut, *supra* note 40.

45. *Id.*

B. Targeting Low-Income Populations

The childhood obesity epidemic is even more predominant among low-income African-American and Latino groups.⁴⁶ These groups often lack access to fresh, affordable, and healthy foods.⁴⁷ They also lack safe venues for physical activity.⁴⁸ In addition, junk-food advertisers heavily target these communities.⁴⁹ A University of Massachusetts at Amherst study on Channel One (an “educational” news program that includes regular advertisements for junk food) found that “Channel One is most often found in schools with the largest proportions of low income, underprivileged students, and in schools that have the least amount of money to spend on conventional educational resources.”⁵⁰ University of Chicago Children’s Hospital researchers report that “Black prime time television contains 60 percent more food and beverage commercials, more images of candy and SODA, and more obese characters than general prime time television.”⁵¹ A study published in the *New Zealand Medical Journal* found that food outlets near schools were less likely to advertise salads in neighborhoods of lower socio-economic status.⁵² The proliferation of junk-food marketing in low-income communities, through billboards, store signage, targeted television

46. Ogden et al., *supra* note 15, at 1728, 1732.

47. See Kimberly Morland et al., *Neighborhood Characteristics Associated with the Location of Food Stores and Food Service Places*, 22 AM. J. PREVENTIVE MED. 23, 23, 27–28 (2002).

48. See, e.g., Ross C. Brownson et al., *Environmental and Policy Determinants of Physical Activity in the United States*, 91 AM. J. PUB. HEALTH 1995, 1997–2001 (2001) (discussing how higher crime rates in low-income neighborhoods adversely affect exercise habits).

49. Manasi A. Tirodkar & Anjali Jain, *Food Messages on African American Television Shows*, 93 AM. J. PUB. HEALTH 439, 440–41 (2003); see also MICHAEL MORGAN, UNIV. OF MASS., AMHERST, CHANNEL ONE IN THE PUBLIC SCHOOLS: WIDENING THE GAPS (1993), http://www.umass.edu/communication/resources/special_reports/channel_one/ch_one_report.shtml (“Channel One is disproportionately found in schools located in high poverty areas . . . with larger proportions of African-American students . . .”).

50. MORGAN, *supra* note 49.

51. Press Release, Univ. of Chicago Hosps., Research Suggests Black TV Shows Send Unhealthy Food Messages (Apr. 28, 2001), <http://www.uc.hospitals.edu/news/2001/20010428-bptime.html>.

52. Anthony Maher et al., *Advertising and Availability of ‘Obesogenic’ Foods Around New Zealand Secondary Schools: A Pilot Study*, 118 J. N.Z. MED. ASS’N, July 15, 2005, at 1, 8.

and radio advertisements, and other venues further underscores the problem in low-income communities—a food environment with limited access to fresh, affordable, and healthy foods.⁵³

*C. Regulatory Challenges Posed by
the Shift to More Subtle Marketing Strategies*

While much discussion of junk-food advertising focuses on the tens of thousands of television advertisements that children view each year, marketers increasingly target children in other, more subtle ways. Companies employ a technique called “viral marketing” in which they identify children as “trendsetters” and give them free product samples.⁵⁴ When their friends see them using the product, they immediately brand it as “cool,”⁵⁵ giving the company more “street cred” than any television advertisement could hope to achieve. These marketers target parents as well.⁵⁶ The Cartoon Network distributed Kenneth Cole gift bags to mothers who agreed to promote “Tickle U,” a new block of television geared towards preschoolers, by telling other mothers about it and by posting favorable reviews on parent blog sites.⁵⁷ Advertisements on billboards, buses, in store displays, painted on storefronts, and printed on free

53. See Morland et al., *supra* note 47, at 23.

54. SUSAN LINN, CONSUMING KIDS: THE HOSTILE TAKEOVER OF CHILDHOOD 6 (2004).

55. See *id.*

56. See Press Release, Campaign for a Commercial-Free Childhood, Cartoon Network’s “Tickle U” Is No Laughing Matter: CCFC Urges Families to Stay Away from New Preschool Programming (Aug. 15, 2005), <http://www.commercialfreechildhood.org/pressreleases/tickleu.htm> (stating that the Cartoon Network has been promoting its new preschool programming through marketing techniques that include partnerships with hospitals and mom-based viral marketing); Cartoon Network, Tickle U, <https://momselect.com> (last visited Nov. 5, 2005) (creating a Web site directed specifically to mothers); Cartoon Network, Tickle U, <http://www.tickleu.com> (follow “parent’s place” hyperlink; then follow “Meet Our Parents Advisory Board” hyperlink) (last visited Nov. 5, 2005) (listing an extensive number of parents “who make up the Tickle U Parents Advisory Board” and help shape Tickle U’s programming to “best serve” preschool children).

57. *E.g.*, Posting of Anita DeFrank to A Tale of 2 WAHMS blog, <http://2wahms.blogspot.com/2005/07/interested-in-teaming-up-w-cartoon.html> (July 22, 2005; 17:04 PST) (posting an e-mail received from a mother on Cartoon Network’s Tickle U’s Mom Advisory Team requesting support to spread the word about the program).

giveaway items all attempt to sell junk food to children.⁵⁸ “Place-based” or “ambient” marketing, as it is referred to in the ad industry, is gaining popularity.

Place-based, or ambient, advertising reaches prospects wherever they happen to be—preferably in the right environment to be receptive to your message. You can now reach consumers the way search engine Ask Jeeves did—by sticking its name on 15 million grocery store apples. You can make blanket-sized impressions on public beach sand like Skippy peanut butter or Snapple, or purchase wrap-around banners on gas station and convenience store light poles like Gatorade and McDonald’s. Advertisers are putting their product names and logos on athletic stadium snack packs and on posters in nightclub bathrooms. It seems if there’s an empty surface of any kind anywhere, there’s a company selling ad space there.⁵⁹

Much place-based advertising of junk food targets children. The *New Zealand Medical Journal* study, for example, found that 61.5% of outdoor advertisements near high schools were for food, and of those, 70.2% promoted foods the New Zealand Health Minister classified as unhealthy.⁶⁰

Schools themselves have become prime targets for advertisers. A 2000 U.S. General Accounting Office report calls advertising in schools a growth industry.⁶¹ Sponsored educational materials include a junior high math curriculum that involves deciding how many Domino’s Pizzas to order and a program called “Read-A-Logo” aimed at teaching kindergarteners how to read corporate logos instead of basic words.⁶² McDonald’s provides job training presen-

58. See LINN, *supra* note 54, at 5; Steve Manning, *Students for Sale: How Corporations Are Buying Their Way into America’s Classrooms*, NATION, Sept. 27, 1999, at 11, 11, available at <http://www.thenation.com/doc/19990927/manning>.

59. Kim T. Gordon, *Partnership & Place-Based Marketing Techniques*, ENTREPRENEUR.COM, Aug. 5, 2002, <http://www.entrepreneur.com/article/0,4621,302159,00.html>.

60. Maher et al., *supra* note 52, at 3–4.

61. U.S. GEN. ACCOUNTING OFFICE, No. B-284290, PUBLIC EDUCATION: COMMERCIAL ACTIVITIES IN SCHOOLS 5 (2000), available at <http://www.gao.gov/archive/2000/he00156.pdf> (reporting commercial activities in U.S. elementary and secondary public schools).

62. Steve Manning, *The Corporate Curriculum*, NATION, Sept. 27, 1999, at

tations at mandatory high school assemblies where it passes out free coupons to teens that fill out applications to work at McDonalds.⁶³ Every month, a Papa John's Pizza employee dresses up as a piece of pizza, Mr. Slice.⁶⁴ Mr. Slice reminds elementary school students to ask their parents to take them to dinner at Papa John's for Pizza Night, a fundraising event that gives 20% of profits to the school.⁶⁵

Other nontraditional forms of advertising gaining popularity among advertisers include online "advergames,"⁶⁶ product placement,⁶⁷ Internet advertising,⁶⁸ text messaging,⁶⁹ sponsorship,⁷⁰ and viral marketing.⁷¹ For example, Wendy's "Good to be Square"⁷² Web site features an animated short, games, and downloadable "beadicons" that allow instant message users to replace the ordinary "smiley" emoticon with one of the characters from the *Good to Be Square Movie*.⁷³ Sunkist Soda's "Rollin' with Sunkist Tour" is

17, 17 (discussing large corporations' sponsorships of in-school marketing programs).

63. Hank Hoffman, *Want Fries with that Humiliation? A Stonington Student Gets Disciplined for Dissing the McCorporation*, NEW HAVEN ADVOC. (Conn.), June 14, 2001, http://www.newmassmedia.com/nac.phtml?code=new&db=nac_fea&ref=16434.

64. Kevin Bersett, *Movement Builds to Block Corporate Marketing in Public Schools*, NEW STANDARD, Mar. 28, 2005, http://newstandardnews.net/content/?action=show_item&itemid=1585.

65. *Id.*

66. See Samuel Greengard, *Let the Games Begin*, PROFIT MAG., Nov. 2002, at 59, 59, available at http://www.oracle.com/oramag/profit/02-nov/p42_apps_market.html.

67. See Liz Harper, *Internet and Cellphones Provide New Advertising Venues*, NEWS HOUR EXTRA (PBS), July 12, 2004, http://www.pbs.org/news/hour/extra/features/july-dec04/newads_7-12.html.

68. See Mary Story & Simone French, *Food Advertising and Marketing Directed at Children and Adolescents in the US*, 1 INT'L J. BEHAV. NUTRITION & PHYSICAL ACTIVITY, Feb. 10, 2004, at 3, 6-9, <http://www.ijbnpa.org/content/1/1/3>.

69. See Sue Norris, *Make the Mobile Connection*, REVOLUTION, June 11, 2003, <http://www.revolutionmagazine.com/news/index.cfm?fuseaction=ViewNewsArticle&newsID=182912>.

70. See Mark Falco, *Competition Freebies and Sponsorship For Free Advertising and Link Popularity*, SMARTADS, <http://web-marketing.smartads.info/2005/free-advertising-and-link-popularity.html> (last visited Nov. 8, 2005).

71. See LINN, *supra* note 54, at 6.

72. "Square," in "Good to be Square" refers to Wendy's square hamburgers. See Wendy's, Good to Be Square Campaign, <http://www.goodtobesquare.com> (last visited Nov. 5, 2005).

73. *Id.*

traveling through neighborhoods across the United States, “rollin’ up in smooth orange Sunkist rides and giving out hot Sunkist gear.”⁷⁴ The Sunkist Soda Web site posts photos from the tour featuring the recipients of the Sunkist “gear” and free soda, most of whom are children and teens.⁷⁵ Visitors to the Web site can add quotes and borders to the photos and then e-mail them to their friends.⁷⁶

These interactive promotions also include follow-up components that further engage the child, something a traditional commercial cannot accomplish.⁷⁷ In fact, traditional television advertising directed at kids, long regulated throughout much of Europe⁷⁸ and increasingly under attack in the United States,⁷⁹ may not be the favorite approach of marketers in the future. Micky O’Brien, director of brand strategy and innovation at Kids Industries, a United Kingdom-based marketing firm, states that the proposed ban on advertising to children in England “should be embraced as an opportunity to create involving, interactive and differentiated marketing campaigns that may well prove more effective in establishing long-term relationships with brands and children.”⁸⁰ O’Brien also states, “By moving away from a TV-based marketing campaign, a brand owner will evade criticism.”⁸¹ While a WHO report detailing the policies of seventy-three countries around the world found that

74. Sunkist, *Feelin’ Orange?*, <http://www.sunkistsoda.com> (last visited Nov. 5, 2005) (follow “Rollin’ Tour” hyperlink or “Rollin’ with Sunkist Tour” hyperlink). In August of 2005, co-author, Andrea Misako Azuma, personally observed the Sunkist Soda truck distribute free sodas in the parking lot of a strip mall in Eagle Rock, CA.

75. *Id.* (follow “Rollin’ Pics” hyperlink).

76. *Id.* (follow “Rollin’ Pics” hyperlink; then follow “Pick a City” hyperlink; then follow “Pick a Date” hyperlink; then follow “Customize” hyperlink).

77. See Dan M. Grigorovici & Corina D. Constantin, *Experiencing Interactive Advertising Beyond Rich Media: Impacts of Ad Type and Presence on Brand Effectiveness in 3D Gaming Immersive Virtual Environments*, 5 J. INTERACTIVE ADVERTISING 31, 31, 47–48 (2004), <http://www.jiad.org/v05/n01/grigorovici>.

78. See CORINNA HAWKES, *MARKETING FOOD TO CHILDREN: THE GLOBAL REGULATORY ENVIRONMENT* 14 (2004), available at <http://whqlibdoc.who.int/publications/2004/9241591579.pdf>.

79. See Story & French, *supra* note 68, at 12–14 (giving a chronology of U.S. regulation that shows increasingly strict rules on advertising to children).

80. Micky O’Brien, *Brand Papers: Switching Off TV*, BRAND STRATEGY, Dec. 6, 2004, at 36.

81. *Id.*

85% of those countries have some form of regulation on television advertising to children,⁸² it describes regulations on nontraditional forms of advertising as “patchy.”⁸³

III. EXPLORING POLICY SOLUTIONS

A. *International Efforts at Regulation*

The pervasive impact of both traditional and new food marketing strategies has led to some initial discussions in the United States about potential policy options that could help reduce the amount of junk-food advertising to children.⁸⁴ A number of other countries have already established regulations for advertising to children.⁸⁵ For example, Sweden banned advertising to children under age twelve more than a decade ago.⁸⁶ Norway banned television advertising ten minutes before and after children’s programs.⁸⁷ Greece banned toy advertising on television between 7:00 a.m. and 10:00 p.m., and Italy does not allow advertising of children’s products during programs aimed at children.⁸⁸

The Brazilian province of Rio de Janeiro has enacted some of the most far-reaching legislation dealing with junk-food advertising.⁸⁹ In March of 2001, the mayor of Rio De Janeiro issued a decree that restricted all outdoor advertising of food, beverages, alcohol, and tobacco in public locations fewer than 200 meters from schools, hospitals, public health and social service facilities.⁹⁰ The decree also restricted indoor advertising within 100 meters of those locations.⁹¹ Moreover, the decree follows a ban imposed in 2002 on sales of soda and fast food in all of Rio De Janeiro’s municipal

82. HAWKES, *supra* note 78, at iii.

83. *Id.* at iv.

84. *See* Martin, *supra* note 36.

85. *See* O’Brien, *supra* note 80, at 36 ¶ 3.

86. *Id.*

87. *Id.*

88. *Id.*

89. *See Brazil—Anti-Obesity Decree Restricts Food, Drink, and Tobacco Advertising in Public Areas in Rio*, EACA MONTHLY NEWSL. (European Ass’n of Comm’ns Agencies [EACA], Brussels, Belg.), Mar.–Apr. 2004, http://www.eaca.be/news/xml_newsletter.asp?print=1&url=2004/20040416.xml.

90. *Id.*

91. *Id.*

schools.⁹²

B. The Beginnings of Junk-Food Regulation in the United States

In the United States, initial efforts to regulate advertising focused on children's television as a key battleground.⁹³ During the 1960s and 1970s, groups such as Action for Children's Television waged spirited campaigns to bring attention to the heavy volume and nature of television advertising aimed at children.⁹⁴ Action for Children's Television also sought to place restrictions on, or potentially ban,⁹⁵ those messages.⁹⁶ While those efforts failed to shift the policy framework for television regulation,⁹⁷ they did create an important public debate that has continued into the present.⁹⁸

Today, the United States has started to explore similar types of initiatives to those implemented in foreign countries, thanks in part to the growing public attention to obesity issues.⁹⁹ For example, Senator Tom Harkin, an Iowa Democrat, has announced that he will introduce two bills targeted at childhood obesity, one giving the Federal Trade Commission (FTC) power to regulate marketing to

92. *Id.*

93. See WILLIAM RICHTER, MUSEUM OF BROAD. COMM'NS, ACTION FOR CHILDREN'S TELEVISION: U.S. CITIZENS' ACTIVIST GROUP, <http://www.museum.tv/archives/etv/A/htmlA/actionforch/actionforch.htm> (last visited Nov. 5, 2005) (stating that Action for Children's Television became concerned with issues of advertising within children's programming after finding one-third of all commercials aimed at children were for vitamins).

94. *See id.*

95. *See Story & French, supra* note 68, at 12.

96. *See id.*

97. MILTON MUELLER ET AL., REINVENTING MEDIA ACTIVISM: PUBLIC INTEREST ADVOCACY IN THE MAKING OF U.S. COMMUNICATION-INFORMATION POLICY, 1960-2002, at 47 (2004), available at <http://dcc.syr.edu/ford/rma/reinventing.pdf> ("The overall impact of the ACT effort was ameliorative rather than structural . . .").

98. *See generally* Goldstein, *supra* note 39 (discussing how sugar-laden snacks and cereals has been a hot topic in "nutritional and scientific circles since researchers found that 16 percent of American children and adolescents are overweight—a 45 percent increase since 1994"); Martin, *supra* note 36 (describing how obesity spurred a workshop on weighing stronger federal rules).

99. *See* Mark Vallianatos, *Healthy School Food Policies: A Checklist* ¶ 1 (Oct. 2002) (unpublished manuscript, available at <http://departments.oxy.edu/uepi/schoolfoodschecklist.htm>) (cataloguing newly adopted healthy school food policies).

children, and another giving the U.S. Secretary of Agriculture power to prevent all marketing of branded food items in schools where parents are not present.¹⁰⁰

Schools have also emerged as the central battleground for the introduction of new policy instruments regarding junk-food advertising.¹⁰¹ Recent school board decisions banning soda and junk food in schools across the country and successful campaigns to remove Channel One demonstrate the potential to eliminate junk-food advertising and promotions in schools.¹⁰² In a 2004 follow up to its 2000 report on commercial encroachment in schools, the U.S. Government Accountability Office found that "13 states ha[d] established laws addressing commercial activities in public schools, and at least 25 states [were] considering such legislation. . . . Almost all of the proposed bills target[ed] the sale of food and beverages."¹⁰³ Also, a working paper by the Center for Food & Justice at Occidental College's Urban & Environmental Policy Institute noted a dozen instances of policies that prevent exclusive vendor contracts and advertising of unhealthy products in schools across the country.¹⁰⁴

C. Modeling Junk-Food Regulations on Tobacco and Alcohol Advertisement Regulations

Some nutrition advocates suggest that junk-food advertising should be regulated in the same manner as tobacco and alcohol advertising.¹⁰⁵ Many state and local governments have restricted

100. Press Release, Senator Tom Harkin, Iowa, Harkin Calls on Food Industry to Limit Junk Food Advertising Aimed at Kids (Mar. 16, 2005) <http://harkin.senate.gov/press/print-release.cfm?id=233655> (challenging the food industry to clean up its act and limit the amount of junk-food advertising aimed at America's kids).

101. See Vallianatos, *supra* note 99, ¶ 1.

102. Keith Ervin, *Schools Expel Channel One; New Policy also Limits Ads, Logos*, SEATTLE TIMES, Nov. 22, 2001, at B5, available at <http://www.asu.edu/educ/eps/CERU/Articles/schools.expel.channelone.htm>.

103. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-810, COMMERCIAL ACTIVITIES IN SCHOOLS: USE OF STUDENT DATA IS LIMITED AND ADDITIONAL DISSEMINATION OF GUIDANCE COULD HELP DISTRICTS DEVELOP POLICIES 2 (2004), available at <http://www.gao.gov/new.items/d04810.pdf> (reporting commercial activities in U.S. public schools).

104. Vallianatos, *supra* note 99.

105. Tom Farley & Deborah Cohen, *Fixing a Fat Nation: Why Diets and Gyms Won't Save Us from the Obesity Epidemic*, WASH. MONTHLY, Dec. 2001, at 23, 27-28, available at <http://www.washingtonmonthly.com/>

advertising of these two substances in a number of media, including physical signs, to limit exposure to children.¹⁰⁶ The tobacco and alcohol regulatory model opens up several policy options at the municipal level.¹⁰⁷

Communities will need to define which food and beverage items are unhealthy for the purpose of advertising controls, since junk food or unhealthy food is not as precise a category as tobacco or alcohol. Regulators and advocates should work with nutritionists to craft a definition, using current definitions by health agencies and other institutions such as the CDC as a basis.¹⁰⁸ Regulators may also look to their local school districts for ideas, since some school districts have adopted standards for which foods and beverages may be served or sold on campus.¹⁰⁹ By matching, or at least referencing,

features/2001/0112.farley.cohen.html; Edward Bolen et al., Applying Tobacco Control Tools to the Problems of Hunger and Obesity, Presentation at the 131st Annual Meeting of the American Public Health Association (Nov. 17, 2003), available at http://apha.confex.com/apha/131am/techprogram/paper_65021.htm.

106. See, e.g., Julie A. Fishman et al., *State Laws on Tobacco Control—United States, 1998*, MORBIDITY & MORTALITY WKLY. REP., June 25, 1999, at 21, 60, available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss4803a2.htm#tab10> (listing the states with laws on tobacco advertising as of Dec. 31, 1998).

107. See, e.g., BETH BRAINARD, ROBERT WOOD JOHNSON FOUND., MODEL ORDINANCE “MINI-BRIEF” GUIDES CITIES IN BANNING ALCOHOL AND TOBACCO BILLBOARDS (2000), <http://www.rwjf.org/portfolios/resources/grants/report.jsp?filename=022934.htm&iid=143> (study showing that city of Baltimore prohibits billboards from displaying alcohol and tobacco advertisements).

108. U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 1, at 1.

109. See Child Nutrition and WIC Reauthorization Act of 2004, Pub. L. No. 108-265, § 204, 118 Stat. 729, 780–81 (codified as amended at 42 U.S.C. § 1751 (2004)), available at http://www.fns.usda.gov/cnd/Governance/legislation/PL_108-265.pdf (requiring all school districts participating in school meal programs to establish a local wellness policy by the 2006 school year and requiring all local wellness policies to include “nutrition guidelines selected by the local educational agency for all foods available on each school campus under the local educational agency during the school day with the objectives of promoting student health and reducing childhood obesity”); S.B. 493, 23d Leg. (Haw. 2005), available at http://www.capitol.hawaii.gov/sessioncurrent/bills/sb493_.htm (“§302A- Nutrition standards; department of education policy. (a) . . . applies to all food and beverages sold on elementary, middle, or intermediate school grounds[,] . . . whether the food or beverage is sold over-the-counter or from vending machines. (b) . . . [F]ruit, nonfried vegetables, legumes, beverages, dairy products, or grain products sold

these rules, regulators will promote consistency between municipal and school nutrition guidelines.

Once regulators define unhealthy food or junk food items, they can pick an approach to limit advertising of these items in public spaces. Strategies used to reduce advertising of tobacco and alcohol, such as city and statewide ordinances banning billboard advertising may be analogous.¹¹⁰

Since Baltimore's 1994 decision to ban all tobacco and alcohol billboards,¹¹¹ towns, cities, and counties across the country have passed legislation that prohibits tobacco advertising at children's eye level, near schools and playgrounds, on public facilities such as bus stops and buses, and near windows in stores.¹¹² In some cases, restrictions prohibit all outdoor tobacco advertising.¹¹³ For example, the city of San Rafael, California restricts tobacco retailers and their advertisements to certain commercial districts and prohibits them within 1,000 feet of any youth-oriented facilities, including schools,

as individual food items may be sold during times of a break in the school schedule if they meet the following standards: (1) Not more than thirty per cent of the total calories shall be from fat, with the exception of nuts or seeds; (2) Not more than ten per cent of the total calories shall be from saturated fat; and (3) Not more than twenty-five per cent of the total weight shall be composed of sugar, with the exception of fruits or vegetables. (c) The sale of beverages to elementary, middle, and intermediate school students on school grounds shall be limited to drinking water, milk (including chocolate milk) or approved nondairy beverages, beverages that contain one hundred per cent fruit juices, or fruit-based drinks composed of not less than fifty per cent fruit juice that have no added sweeteners."); Los Angeles Unified School District, Business Services Division, Approved Snack Foods, <http://cafe-la.lausd.k12.ca.us/asnacks.htm> (last visited Nov. 5, 2001) (translating nutrition standard requirements into lists of approved snack foods); Los Angeles Unified School District, Business Services Division, Unapproved Snack Foods, <http://cafe-la.lausd.k12.ca.us/usnacks.htm> (last visited Nov. 5, 2005) (translating nutrition standard requirements into lists of unapproved snack foods).

110. See, e.g., Ill. Coal. Against Tobacco, Safe Streets for Children, Anti-Tobacco Advertising Act, <http://www.ilcat.org/legbbd.htm> (last visited Oct. 29, 2005) (model municipal ordinance prohibiting outdoor cigarette billboards).

111. Donald W. Garner, *Banning Tobacco Billboards: The Case for Municipal Action*, 275 JAMA 1263, 1263 (1996).

112. See BRAINARD, *supra* note 107 (indicating that states and municipalities command broad authority to protect children).

113. See Daniel E. Troy, *Court Rulings Mixed as Local Restrictions on Outdoor Advertising Multiply*, FIRST AMENDMENT & MEDIA, 2001, http://www.mediainstitute.org/ONLINE/FAM2001/Comspeech_1.html (discussing legislative action throughout different regions).

arcades, churches with youth groups, public parks, and public libraries.¹¹⁴ Enacting similar bans on outdoor advertising of unhealthy food and beverages could be a successful strategy at the municipal level.

The examples below are modeled after or replicate existing and proposed tobacco-related regulations:¹¹⁵

- *Ban all unhealthy food advertising in public spaces.*
“No person may place or display any sign, poster, plaque, device, or item, graphic rendering or other form of promotion that advertises [unhealthy food or beverages] in a location visible from a public street. Examples of such locations include outdoor billboards, sides of buildings, freestanding sideboards, sidewalk umbrellas, buses, automobiles and any other mode of transportation.”¹¹⁶ “This ordinance shall not apply to the following: any sign placed on the inside or outside of premises [sic] used by licensed sellers of [food or beverages]; any sign on [food or beverage] packaging or commercial vehicles used for transporting [food or beverages]; any sign that contains general information concerning [food or beverages], such as [their] availability for sale, but does not make any reference to a particular brand; any sign contained on any personal item of clothing or apparel; and any sign on any book, magazine, newspaper or similar publication.”¹¹⁷

114. San Rafael, Cal., Ordinance 1797 (2003) (codified at SAN RAFAEL, CAL., ORDINANCE ch. 14, § 05.020 (2003)).

115. K. DALMENY ET AL., INT’L ASS’N OF CONSUMER FOOD ORGS., BROADCASTING BAD HEALTH: WHY FOOD MARKETING TO CHILDREN NEEDS TO BE CONTROLLED 27 (2003), http://www.foodcomm.org.uk/Broadcasting_bad_health.pdf (recommending a global strategy for diet and health interventions to WHO, based in part on lessons learned from efforts to reduce cigarette smoking); Story & French, *supra* note 68, at 14 (“The strong similarities between the marketing and promotional activities used by food companies to advertise unhealthy foods to children and those used by the tobacco industry to market cigarettes to children are striking.”).

116. This example is adapted from language in Ill. Coal. Against Tobacco, *supra* note 110.

117. This example is adapted from language in Ill. Coal. Against Tobacco, *supra* note 110.

- *Ban billboard and other outdoor advertisements for unhealthy foods near certain locations frequented by children.* Billboards and outdoor advertisements are not allowed within 1000 feet of schools, private residences, day care centers, churches, parks, schools, playfields, and any city-owned youth recreation center.¹¹⁸
- *Place size limit on unhealthy food advertisements at point of sale.* The total space dedicated to all advertisement for unhealthy food items inside stores and restaurants may not exceed 6 by 8 inches.¹¹⁹ Menus and posted price lists are not considered advertisements for this purpose.¹²⁰
- *Require equal space for healthy food advertisements.*

118. This example is adapted from language in the SAN RAFAEL, CAL., ORDINANCE 1797 (2003); *see also* L.A. CAL., CODE ch. IV, art. 5.2.5, § 45.22(a) (2005), *available at* http://www.amlegal.com/los_angeles_ca (follow “Municipal Code” hyperlink; search “Quick Search” for “45.22”; then follow “Chapter IV Public Welfare” hyperlink; then follow “45.22 Prohibitions” hyperlink) (“No person shall place, permit, or maintain on any on-site or off-site sign, a poster, placard, device, graphic display, or any other form of advertising that advertises tobacco products in publicly visible locations within 1,000 feet of any residential zone, residential use, school, religious institution, entertainment park, youth center, or public park or playground.”); *cf.* L.A., CAL., MUNICIPAL CODE ch. IV, art. 5.2.6, § 45.32 (1998) (repealed 2002) (restricting advertisement of alcoholic beverages on certain sites within 1,000 feet of areas where minors may frequent and implying that a greater percentage of land will be off limits to these billboards and signs in the city with more types of locations included in the strategy).

119. This example is adapted from language in Press Release, U.K. Dep’t of Health, Clampdown on Tobacco Advertising at Point of Sale (Dec. 20, 2004) (on file with author), *available at* http://www.dh.gov.uk/PublicationsAndStatistics/PressReleases/PressReleasesNotices/fs/en?CONTENT_ID=4099049&chk=gLdhG8 (“Strict limits . . . to restrict the advertising of cigarettes and tobacco products in shops, pubs and clubs. . . will ensure that the total advertising for all tobacco companies is no more than the size of a paperback book . . .”).

120. *Cf.* COMM. OF ADVER. PRACTICE, BRITISH CODE OF ADVERTISING, SALES PROMOTION AND DIRECT MARKETING 5 (11th ed. 2005), *available at* http://www.asa.org.uk/NR/rdonlyres/A44808F1-1573-482A-A0E5-D8045943DA57/0/The_CAP_Code_Ed11_1Oct2005.pdf (“The Code does not apply to . . . packages, wrappers, labels, tickets, timetables and price lists unless they advertise another product, a sales promotion or are visible in a marketing communication . . .”).

Billboard companies accepting advertisements for unhealthy foods must simultaneously place advertisements for healthy food and/or public health messages on healthy eating at a one for one ratio.¹²¹ The billboards with healthy messages or products must be at least as large and favorably placed as those advertising unhealthy foods.¹²²

- *Tax unhealthy food billboards to fund public health programs.* The owners of billboards and other outdoor advertising spaces shall pay a defined amount of revenues accrued from advertisements for unhealthy foods into a special fund that will be used to pay for public health programs related to obesity prevention, including public health campaigns on healthy eating.¹²³
- *Require health warnings and/or pictorial warnings on unhealthy food advertisements.* At least 40% of billboard space or other outdoor advertising for unhealthy foods must be dedicated to either: (1) health warnings on the risks of obesity and diet-related illnesses; or (2) pictures illustrating diet-related illnesses, such as a heart damaged by a heart attack or gangrene caused by diabetes.¹²⁴

121. Cf. Letter from Gary Ruskin, Executive Dir., Commercial Alert, to Derek Yach, Executive Dir., WHO (May 16, 2002), available at http://www.commercialalert.org/issues-article.php?article_id=152&subcategory_id=66&category=5 (suggesting the implementation of the FCC's "fairness doctrine," which requires equal time on network broadcasting for counter-advertising against unhealthy products such as junk food).

122. See, e.g., *Call for Junk Food Ad "Balance,"* BBC NEWS, June 2, 2005, <http://news.bbc.co.uk/1/hi/health/4603865.stm> (explaining the British Medical Association's position that "health messages should have the same advertising space as unhealthy foods" and should also be funded by the unhealthy foods advertisers).

123. This example is adapted from language in Ronald Bayer et al., *Tobacco Advertising in the United States: A Proposal for a Constitutionally Acceptable Form of Regulation*, 287 JAMA 2990, 2994 (2002), available at <http://jama.ama-assn.org> (search "Search This Journal" for "Ronald Bayer") (suggesting a federal excise tax, for example, on advertising, to create a fund underwriting the cost of a national anti-tobacco campaign).

124. This example is adapted from language in Bayer et al., *supra* note 123, at 2994–95 (proposing that "all print advertising be required to carry public

*D. First Amendment Concerns Regarding
Junk-Food Advertisement Regulation*

Restrictions on the advertising of a specific type of product, such as junk food, raise significant legal issues.¹²⁵ Advertising is commercial speech protected by the First Amendment to the U.S. Constitution.¹²⁶ The U.S. Supreme Court has sent mixed messages on the constitutionality of limiting advertising for specific products. In *44 Liquormart, Inc. v. Rhode Island*,¹²⁷ the Court struck down a Rhode Island law that prevented stores from advertising liquor prices.¹²⁸ The Court stated that governments cannot place a complete ban on "truthful, nonmisleading commercial speech."¹²⁹ However, in 1997, the Supreme Court let stand a Fourth Circuit Court of Appeals decision upholding Baltimore's ban on alcohol advertisements visible to minors.¹³⁰ This suggests that the Supreme Court would allow narrowly tailored advertising restrictions that focus on harm to children. This does not mean, however, that a court would uphold unhealthy food advertising limits, especially since governments have not banned children from buying these food items, while governments have banned children from buying tobacco and alcohol.¹³¹

health warnings equivalent to 50% of the advertising space" and that "public health authorities should be able to forcefully depict the hazards of smoking").

125. See Troy, *supra* note 113.

126. See *Anheuser-Busch, Inc. v. Mayor of Baltimore*, 855 F. Supp. 811, 813 (D. Md. 1994). *But cf.* Bayer et al., *supra* note 123, at 2991-92 (explaining that the Supreme Court has expressed differing opinions over whether and to what extent the First Amendment protects commercial expression).

127. 517 U.S. 484 (1996).

128. *Id.* at 516. Justice Stevens, joined by Justices Kennedy, Souter, and Ginsburg in Part V of the opinion, concluded that the price advertising ban was unconstitutional because it lacked a "reasonable fit" between the "abridgement of speech and [the ban's] temperance goal." *Id.* at 507. While Chief Justice Rehnquist and Justices O'Connor, Scalia, Thomas, and Breyer did not join Part V of the opinion, they all concurred in the Court's judgment. *Id.* at 488.

129. *Id.* at 508 (citing *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 n.9 (1980)).

130. *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325, 327 (4th Cir. 1996), *cert. denied*, 520 U.S. 1204 (1997). In light of *44 Liquormart, Inc.*, the Supreme Court originally vacated and remanded the decision for reconsideration. *Anheuser-Busch, Inc. v. Schmoke*, 517 U.S. 1206 (1996). Upon remand, the Fourth Circuit Court of Appeals held that *44 Liquormart, Inc.* did not require a change in the decision. *Anheuser-Busch, Inc.*, 101 F.3d at 327.

131. Michele Simon, *Government Abandons Children to Big Food*,

Community groups and elected officials working to control junk-food advertisements should assess the legal implications of their proposed policies and consult with lawyers where necessary. However, healthy food advocates should not be deterred by possible legal challenges. Innovation in new regulatory areas often carries legal uncertainty, and there are numerous benefits to pressing for unhealthy food limits, including raising awareness and winning concessions from advertisers.

1. Restrict Outdoor Advertising in a Content-Neutral Manner

Regulators may increase the probability of surviving challenges to the constitutionality of restrictions on unhealthy food advertisements by placing general limits on all billboards and other outdoor advertising space.¹³² This content-neutral approach would reduce the amount of space available for food advertisements, and, as an added bonus, improve the aesthetics and quality of life in neighborhoods with numerous billboards.¹³³ A policy to restrict billboards could include both a ban on new billboards¹³⁴ and a requirement to remove all existing billboards.¹³⁵

ALTERNET, July 22, 2005, <http://altnet.org/story/23648> (stating at a Washington workshop co-hosted by the FTC and the Department of Health and Human Services that “nearly every government official who had the chance made clear that regulation of junk food ads aimed at children was not on the table.”).

132. See *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (stating that content-based exclusions require the highest standard of review of “compelling state interest,” or strict scrutiny, whereas content-neutral regulations limiting “time, place, and manner of expression” require the lower standard of review of “significant government interest,” or intermediate scrutiny).

133. Cf. EDWARD T. MCMAHON & PATRICIA A. TAYLOR, *CITIZENS’ ACTION HANDBOOK ON ALCOHOL AND TOBACCO BILLBOARD ADVERTISING* 6 (1990) (“[Alcohol and cigarette] [b]illboards lower property values, blight inner-city neighborhoods, and degrade our landscape.”).

134. *Id.* at 9.

135. *Id.* at 10.

However, if eliminating all billboards is not feasible, regulators can place restrictions on billboard size, location, and distance from roads.¹³⁶ They can also modify zoning laws to subject all billboards to conditional use subject to approval following public hearings and notification to nearby residents and businesses.¹³⁷

E. An Alternative to Regulation of Advertisements: Restrict the Number or Location of Restaurants that Feature Unhealthy Food

Along with billboards, the signs, advertisements, and banners that cover fast-food restaurants constitute a primary source of advertising space for unhealthy food.¹³⁸ In many neighborhoods, one can find fast-food establishments on almost every block, if not multiple locations within each block.¹³⁹ Some smaller towns have banned fast-food, formula, and drive-through restaurants, primarily to preserve historic and aesthetic qualities of their cities.¹⁴⁰ Health advocates have begun to explore limiting the number of fast-food restaurants in neighborhoods that are saturated with these stores.¹⁴¹ This could be achieved by prohibiting new fast-food stores in zones that already contain a certain density of fast-food locations or by banning all new drive-through locations.¹⁴²

F. Regulations to Create Public-Space Safe Havens

Regulators can complement citywide restrictions by transforming certain publicly owned and operated spaces into healthy-

136. *See id.* at 12–13.

137. *Id.* at 11.

138. *See, e.g.,* Donna Eberwine, *Globesity: The Crisis of Growing Proportions*, 7 PERSPECTIVES IN HEALTH 6, 7 (2002), available at <http://www.paho.org/English/DPI/persp15eng.pdf> (“Every three blocks you see restaurants advertising large portions at low prices . . .”).

139. *See, e.g.,* Farley & Cohen, *supra* note 105, at 26 (“Next to the Burger King is a McDonald’s. And around the corner stands Rally’s, another low-cost burger chain.”).

140. *See, e.g.,* New Rules Project, *Formula Business Restrictions*, <http://www.newrules.org/retail/formula.html> (last visited Nov. 5, 2005) (discussing restrictions placed on formula businesses in California, Washington, Rhode Island, New York, Florida, and Maine).

141. *See* Farley & Cohen, *supra* note 105, at 28 (“There is no reason we can’t, through zoning and planning, regulate the location, density, or hours of junk-food outlets . . .”).

142. *Id.*

food zones where children will not be surrounded and overwhelmed by advertisements for junk food. While regulations already limit commercial advertisements on some public property,¹⁴³ a closer look at food advertisements is warranted at sites frequented by children.¹⁴⁴ Regulators could apply a combination of food advertising regulations and general advertising restrictions at the following sites:

- *Schools.* A number of school districts restrict food advertising on school campuses and limit the types of contracts signed with food and beverage vendors.¹⁴⁵ These policies include limits on advertisements on vending machines,¹⁴⁶ bans on exclusive food vending contracts,¹⁴⁷ bans on incentives to increase sales,¹⁴⁸ and the right of students and parents to comment on proposed contracts and see

143. *See, e.g.,* CAL. GOV'T CODE § 19994.35 (West 2003) ("No tobacco product advertising shall be allowed in any state-owned and state-occupied building excepting advertising contained in a program, leaflet, newspaper, magazine, or other written material lawfully sold, brought, or distributed within a state building."); Tobacco Use Prevention Program, Tobacco Laws that Affect O.C., http://www.ochealthinfo.com/tupp/advertising_laws.htm (last visited Nov. 5, 2005) (citing STATE ADMINISTRATIVE MANUAL, Chapter 1397, which stipulates that "[s]tate property may not be used for commercial advertising signs," excepting state fairgrounds).

144. *See, e.g.,* Jon Bonné, *A Call for Limits on Children's Food Ads: Group Wants Nutritional Content to Govern Marketing*, MSNBC, Jan. 10, 2005, <http://www.msnbc.msn.com/id/6795715>.

145. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 103, at 10.

146. *See, e.g.,* SEATTLE PUBLIC SCHOOLS, ADVERTISING AND COMMERCIAL ACTIVITIES, E02.01 (2004), available at <http://www.seattleschools.org/area/policies/e/E02.01.pdf> ("Vending machine facades shall not be used for advertising. The name and logo of product manufacturers, such as the soft drink makers, can appear if they are for identification purposes only.").

147. *See, e.g.,* S.F., Cal., Res. No. 253-00 (2000) (enacted), available at <http://www.sfgov.org/site/uploadedfiles/bdsupvrs/resolutions00/r0253-00.pdf> ("SFUSD will enter no agreements with vendors to purchase exclusive district-wide access to student customers for soft drinks or snack foods purchased by students in school as such arrangements may imply that the school endorses those products . . .").

148. *See, e.g.,* SEATTLE PUBLIC SCHOOLS, DISTRIBUTION AND SALES OF COMPETITIVE FOODS PROCEDURE, H66.01 (2004), available at <http://www.seattleschools.org/area/policies/h/H66.01.pdf> ("Vendor contracts for sales of competitive foods shall not include incentives for increasing students' consumption of foods or drinks . . . [and] shall not include distribution of free products.").

- the financial impact of vending contracts.¹⁴⁹
- *Hospitals.* Advertisements for unhealthy foods in the dining or vending areas of hospitals compromise the hospitals' health missions.¹⁵⁰ Hospitals, children's hospitals and wards in particular, should follow the schools' lead in limiting advertisements on vending machines and the sale of branded items in food kiosks and on-site restaurants.¹⁵¹
 - *Parks and recreation facilities.* Like schools and hospitals, parks and recreation centers should not allow advertising for unhealthy items on vending machines or at snack bars.¹⁵² Parks should also prevent food and soda companies from sponsoring activities or sports teams, or from gaining naming

149. See, e.g., H.R. 2544, 47th Leg., 1st Reg. Sess. (Ariz. 2005), available at <http://www.azleg.state.az.us/legtext/47leg/1r/bills/hb2544p.pdf> ("Parents, pupils and community members may review food and beverage contracts to ensure that food and beverages sold on school campuses provide nutritious sustenance to pupils, promote good health, help students learn, provide energy and model fit living for life."); H.R. 1583, 84th Gen. Assem., Reg. Sess. (Ark. 2003), available at <http://www.arkleg.state.ar.us/ftproot/acts/2003/public/act1220.pdf> ("[E]very school district shall . . . [r]equire schools to include as part of the annual report to parents and the community the amounts and specific sources of funds received and expenditures made from competitive food and beverage contracts . . .").

150. See, e.g., Cal. Hosp. Med. Ctr., Our Community, Community Benefit Plan, http://www.chmcla.org/index.asp?catID=oc&pg=oc_comm_ben (last visited Nov. 5, 2005) ("CHMC is committed to improving the health status and increasing access to care for the multi-ethnic population of Central and South Central Los Angeles, while maintaining its presence in the communities it has traditionally served.").

151. See, e.g., HAWKES, *supra* note 78, at 51–52 (discussing the regulation of food product sales in U.S. schools).

152. This example is adapted generally from language in *Tobacco-Free Sports Promoted Throughout Minnesota*, TOBACCO-FREE YOUTH RECREATION NEWS! (Minn.), July 2005, at 1–3, <http://www.ansrmn.org/PDF%20Files/July%202005.pdf> (listing tobacco-free park policies around Minnesota and some other areas in the United States); see also Parks & Recreation Comm'n, Culver City, Cal., Regular Meeting, Discussion on Vending Machine Sales at Various Park Sites, Item A-1 (Feb. 1, 2005), <http://www.culvercity.org/uploads/minutes/33200531000PMFebruary05.html.doc> (discussing the possible adoption of guidelines for snack vending machines similar to Contra Costa County's policy requiring that half of all promotions relate to healthy snacking).

rights to stadiums or playing fields.¹⁵³ For example, the City of Los Angeles adopted a broad child nutrition policy that “[e]ncourage[s] healthy choices by reducing promotion and availability of junk foods at City facilities that provide organized activities for pre-school and school-aged children.”¹⁵⁴

- *Public Transportation.* Many cities include specifications for the size and display of advertisements in bus shelters.¹⁵⁵ Regulators could amend municipal codes to restrict advertisements for unhealthy food and beverages in bus shelters and the inside and outside of bus and train fleets.¹⁵⁶

153. This example is adapted from language in Michael Hagmann, *WHO Attacks Tobacco Sponsorship of Sports*, 80 BULL. WORLD HEALTH ORG. 80, 80 (2002), available at <http://www.scielosp.org/pdf/bwho/v80n1/v80n1a20.pdf> (“WHO joined forces with the international governing bodies of motor racing, football, and the Olympic Games, as well as with well-known athletes, in a drive to sweep Big Tobacco out of sporting arenas world-wide.”); Pan Am. Health Org., WHO, *World No Tobacco Day 2002 Puts Spotlight on Tobacco-Free Sports*, 11 REVISTA PANAMERICANA DE SALUD PÚBLICA 283, 287 (2002) (Pan.), available at <http://www.scielosp.org/pdf/rpsp/v11n4/10483.pdf> (“In response to the global appeal for action, WHO and its partners are launching a campaign to clean sports of all forms of tobacco consumption as well as exposure to second-hand smoke and tobacco advertising, promotion and marketing.”); see also Bill Pennington, *Reading, Writing and Corporate Sponsorships*, N.Y. TIMES, Oct. 18, 2004, at A1, available at http://www.commercialalert.org/news-archive.php?article_id=595&month=10&year=2004&day=18th (“School districts are simply following the lead of the rapid escalation of commercialism at major college and professional arenas and stadiums [with] [m]ore than \$4 billion . . . currently being invested in naming rights alone at the college and pro level.”).

154. L.A. City Council, Minutes, Journal/Council Proceedings (Feb. 18, 2005), available at http://www.lacity.org/clk/councilactions/clk/councilactions/228847_02182005.pdf.

155. See, e.g., WESTMINSTER, COLO., CODE tit. 9, ch. 5, § 4 (2001), available at <http://www.ci.westminster.co.us/Code/Title09/t09c05.pdf> (“Advertising signage on a shelter shall be limited to no more than two (2) panels. Each panel shall be no greater than twenty four (24) square feet in size. No fluorescent, day-glo or other reflective or brilliant colors are permitted anywhere on the sign.”).

156. Alcohol Epidemiology Program, University of Minnesota, Alcohol Advertising Restrictions, <http://www.epi.umn.edu/alcohol/policy/adrstrct.shtm> (last visited Nov. 5, 2005) (“Restrictions on alcohol advertising . . . can include: [b]anning ads on buses, trains, kiosks, billboards and supermarket

IV. COMMUNITY-ENGAGEMENT SOLUTIONS

A. Raising Community Awareness

Broad-based legislation, like Senator Harkin's proposed bills, may be quite effective, and thus, should be an ultimate goal for communities and policymakers.¹⁵⁷ However, such legislation is unlikely to generate sufficient support without a cultural shift that comes, in part, from raising awareness at the grassroots level.¹⁵⁸ Since junk-food advertisers often target communities with the fewest resources,¹⁵⁹ health advocates need strategies that equip and empower low-income residents to become advocates for change in their neighborhoods. The influences associated with place-based advertising, including its viral forms, have created a need for place-based solutions and related policy instruments supported by informed and engaged communities.¹⁶⁰

Several grassroots organizations have begun to deal with place-based marketing.¹⁶¹ For example, Children NOW has testified at FTC hearings and submitted comments to the Federal Communications Commission advocating for a ban on interactive advertising to children.¹⁶² Also, Commercial Alert advocates for a ban on all junk food and soda sales in schools,¹⁶³ while the Campaign for a

carts, and in bus shelters, schools, and theme parks.”).

157. See Press Release, Senator Tom Harkin *supra* note 100.

158. See JOHN KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES* 146–49 (Longman 2d ed. 1995) (1984) (explaining how shifts in the “national mood” can impact policy agendas).

159. Kimberly Morland et al., *Neighborhood Characteristics Associated with the Location of Food Stores and Food Service Places*, 22 AM. J. PREVENTATIVE MED. 23, 27 (2002).

160. Cf. Farley & Cohen, *supra* note 105, at 27–28 (providing examples of national and local solutions to counter the obesity epidemic).

161. See, e.g., Children NOW, *Interactive Advertising*, http://www.childrennow.org/issues/media/media_advertising.html (last visited Nov. 5, 2005) (analyzing the impact of interactive technology on children).

162. Patti Miller, Vice President & Dir., Children & Media Program, Children Now, testimony to the FTC & Dep't of Health and Human Servs. at *Perspectives on Marketing, Self-Regulation, and Childhood Obesity* 55–59 (July 15, 2005), available at http://www.childrennow.org/assets/pdf/issues_media_FTCTestimony_July_2005.pdf.

163. See Commercial Alert, *Stop the Sale of Junk Food to School Children!*, http://www.demaction.org/dia/organizations/commercialalert/campaign.jsp?campaign_KEY=519 (last visited Nov. 5, 2005).

Commercial-Free Childhood calls upon parents and other concerned citizens to petition the Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF) to pressure Coca-Cola to stop advertising to children.¹⁶⁴

While these initiatives to combat the rise of place-based advertising are important, they do not give advocates community engagement strategies that can provide a framework for place-based interventions. The two case studies described below suggest the direction advocates can take in developing place-based interventions. The first is a participatory action research model utilized for a community food assessment project. The second is a commercialism walk-through initiative.

B. Participatory Action Research and Community Food Assessments

Participatory action research is a form of collaborative research focused on the power inequities of marginalized communities that can be an effective method of engaging community members in research and change.¹⁶⁵ Participatory action research involves a cyclical process of diagnosing, planning, taking action, evaluating outcomes, and identifying the learning that has occurred.¹⁶⁶ Under this approach, researchers work *with* communities to address issues and factors that contribute to health disparities.¹⁶⁷

Participatory action research reflects cultural sensitivity and relevance by including local community and school groups/members, local health providers, social scientists, and educational institutions.¹⁶⁸ This method brings the community into the process of

164. Campaign for a Commercial-Free Childhood, Protect Kids from Coke's Marketing Machine, <http://www.commercialexploitation.com/actions/tiaacrefcoke.htm> (last visited Nov. 5, 2005).

165. Richard L. Baskerville, *Investigating Information Systems with Action Research*, COMMS. ASS'N FOR INFO. SYS., Oct. 1999, at 17–18, available at http://cis.gsu.edu/~rbaskerv/CAIS_2_19/cais_2_19.pdf (defining participatory action research as a type of enhanced action research).

166. *Id.* at 13–14; see also RORY O'BRIEN, AN OVERVIEW OF THE METHODOLOGICAL APPROACH OF ACTION RESEARCH (1998), http://www.web.net/~robrien/papers/arfinal.html#_Toc26184651 (follow "The Action Research Process" hyperlink) (using participatory research as an interchangeable term with action research and providing a model of the research process).

167. Baskerville, *supra* note 165, at 11.

168. See *id.* at 15, 20–22 (explaining that a key aspect of this type of

identifying the issues that affect it and defining appropriate strategies to address those issues.¹⁶⁹ This community-driven framing of issues and solutions creates interventions that are more likely to be effective and sustainable.¹⁷⁰ The approach increases awareness and understanding of the issues among community members and brings the perspectives and experiences of the community members to researchers and health care providers.¹⁷¹

Community-driven food assessments are one form of participatory action research that can lead to community-defined strategies for culturally and locally relevant and acceptable solutions to problems identified through the assessment process.¹⁷² A number of organizations working to improve food environments have employed community food assessments, defined broadly as, “a collaborative and participatory process that systematically examines a broad range of community food issues and assets, so as to inform change actions to make the community more food secure.”¹⁷³ Community food assessments can focus on a wide range of community food issues, such as hunger, food affordability, local food production and sustainability.¹⁷⁴ When the strengths and weaknesses of the local food system become clear, community members can develop strategies for policy changes that will improve the food

research is the collaborative nature of the undertaking).

169. *Id.* at 17.

170. *See, e.g., id.* at 23–24 (describing the benefits of undergoing the research process); *see also* O'BRIEN, *supra* note 166 (“The main role [of the participatory action researcher] . . . is to nurture local leaders to the point where they can take responsibility for the process. This point is reached [when] they understand the methods and are able to carry on when the initiating researcher leaves.”).

171. *See* Baskerville, *supra* note 165, at 11–12.

172. *See also* Susana Hennessey Lavery et al., *The Community Action Model: A Community-Driven Model Designed to Address Disparities in Health*, 95 AM. J. PUB. HEALTH 611, 612 (2005), available at <http://www.ajph.org/cgi/reprint/95/4/611> (“The community action model involves participatory action research approaches and is asset based (i.e., it builds on the strengths of a community to create change from within).”).

173. KAMI POTHUKUCHI ET AL., WHAT'S COOKING IN YOUR FOOD SYSTEM?: A GUIDE TO COMMUNITY FOOD ASSESSMENT 11 (Kai Siedenburg & Kami Pothukuchi eds., 2002), available at <http://www.foodsecurity.org/CFAguide-whatscookin.pdf>.

174. *Id.* at 12.

environment.¹⁷⁵

A wide variety of success stories have resulted from community food assessments in a diverse range of communities across the United States.¹⁷⁶ In Detroit, a community food assessment yielded the formation of the Detroit Food Security Council and new links between university researchers and community members on food-related research and action.¹⁷⁷ In Milwaukee, a food assessment headed by the Hunger Task Force led to an increased number of farmers' markets accepting federal Women, Infants, and Children Program coupons and the formation of a farmers' market association.¹⁷⁸

Advocates can implement community food assessments similar to those described above. Through a participatory action research approach, participants can better understand the effects of advertising in their community and identify strategies to combat the ill effects of advertising at the local level. The two case studies that follow provide examples that utilize community assessment strategies.

C. Conduct and Support Assessment and Mapping of Food Advertising

Community assessments spur greater understanding of the local junk-food advertising situation by initiating or supporting community awareness. Cities can operate their own mapping and assessment projects, fund community groups to conduct neighborhood assessments, or collaborate with local communities on an assessment. Under the first model, a local planning department or public health agency would inventory billboards with food advertising and other food signage citywide or in certain zones.¹⁷⁹

175. *Id.* at 13.

176. *See id.* at 21, 37 (listing the different case studies completed at various locations and determining success as having successfully organized the assessments and obtained tangible results).

177. *Id.* at 25–26.

178. *Id.* at 30–31.

179. *See, e.g.*, SCENIC AMERICA, MODEL LEGISLATION: STATE PROHIBITION OF BILLBOARDS, <http://www.scenic.org/Default.aspx?tabid=61> (in the "Resources" section, follow "Model Legislation for Statewide Billboard Control" hyperlink) (last visited Nov. 5, 2005) ("The Department of Transportation shall use additional revenues resulting from [increased billboard permit fees] to conduct a thorough statewide inventory of all billboards, including plotting the exact location of each sign, determining

Under the second model, local governments would provide grants to community groups or academics to conduct mapping, surveys, and assessments of the food-advertising environment.¹⁸⁰ Under the third model, a collaborative approach would link municipal staffing and resources with community knowledge and input.¹⁸¹

Because public funding is limited and food advertising issues are closely linked with food access issues,¹⁸² it makes sense for assessments of food advertising to be conducted in concert with mapping of other food locations, such as restaurants and markets. The following case studies of community assessment projects illustrate some of the practical benefits.

1. Case Study: Project CAFE

Project CAFE (Community Action on Food Environments) is a Los Angeles-based community food assessment project launched in 2003.¹⁸³ The Center for Food & Justice at Occidental College's Urban & Environmental Policy Institute serves as the lead on the

whether or not each sign has a valid permit from both the Department and any local government agency charged with regulating billboards, [and] determining the age of the sign and its condition.”)

180. See, e.g., U.S. Dep't of Health & Human Servs., Nat'l Inst. of Health, Request for Applications, Environmental Approaches to the Prevention of Obesity (Oct. 26, 2001), <http://grants.nih.gov/grants/guide/rfa-files/RFA-DK-02-021.html> (providing an example where local governments could apply for grants which together totaled \$4 million in 2002 to conduct systematic studies of environmental approaches to prevent obesity, including research to determine the impact of changes in food advertising, food promotion, or packaging on encouraging more healthy food choices).

181. E.g., POTHUKUCHI ET AL., *supra* note 173, at 33–35 (describing a community assessment program that combined the technical and financial resources of the San Francisco Department of Public Health with the community research provided by youth from the Bayview Hunters Point neighborhood in San Francisco).

182. See World Hunger Year, Nutrition FAQs, http://www.worldhungeryear.org/fslc/faqs2/ria_700.asp?section=12&click=1 (last visited Nov. 5, 2005) (from the right menu, follow “FAQs” hyperlink; then follow “What barriers do low-income communities face to achieving good nutrition?”) (stating both that low-income communities are targeted by marketers for the unhealthiest food choices and that they have limited food access).

183. National Institute of Environmental Health Sciences, Environmental Health Resources for Community Outreach and Education, <http://www-apps.niehs.nih.gov/outreach-education/Search/MatIDisplay.cfm?MatINbr=1188&Src=Subj&SrcValue=Socioeconomic%20factors> (last visited Nov. 5, 2005).

project, collaborating with a community-based organization in each of three participating neighborhoods.¹⁸⁴ The participating organizations represent an array of interests including affordable housing, community health education, after-school programming, and school food policy advocacy groups.¹⁸⁵ Each group shares the belief that food and nutrition are important issues which need collective action.¹⁸⁶ This shared commitment helps build a strong constituency for improving access to healthy and affordable foods.¹⁸⁷

The community undertook a number of activities as part of the Project CAFE food assessment, including food mapping.¹⁸⁸ Food mapping is a process whereby teams of community members, including students, parents, and other stakeholders, take inventory of all the different places to access food in a defined area.¹⁸⁹ The Project CAFE participants classified and mapped the wide variety of both formal (e.g., food stores and restaurants) and informal (e.g., mobile food carts and food vendors) sources in the three neighborhoods.¹⁹⁰ They also documented their neighborhoods using photography.¹⁹¹ These assessments were completed in 2005.¹⁹²

After further analysis of the data, project participants will be in a position to: (1) make claims about the type of food access in their neighborhood; and (2) identify viable solutions and strategies to address the lack of healthy and affordable foods available in their neighborhoods.¹⁹³ Participants have already noted the widespread and sometimes insidious presence of junk-food marketing messages throughout their neighborhoods, even though this observation was not formally incorporated into the food mapping process.¹⁹⁴ Photographs taken by participants during the walks around the

184. See Project CAFE, Urban and Environmental Policy Institute, Community Action on Food Environments, http://departments.oxy.edu/uepi/cfj/cfj_project_cafe.htm (last visited Nov. 5, 2005).

185. Azuma et al., *supra* note 6.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

neighborhood documented this presence.¹⁹⁵

This process of collective inquiry serves as a model that advocates can apply to research, community organizing, and action around advertising and food. Grassroots interest is key to developing a research and action agenda because joint decision making and power sharing are hallmarks of this research approach.¹⁹⁶

2. Case Study: Commercialism Walk-Through

The Center for Commercial Free Public Education developed “commercialism walk-throughs,” which are similar to community food assessments. These walk-throughs aim to raise awareness, to inventory instances of commercialism in schools, and to eliminate Channel One from the classroom.¹⁹⁷ A survey with questions about corporate partnerships, commercial presence, sponsored educational materials, freebies, and Channel One provides students with tools to evaluate the prevalence of advertising in their school.¹⁹⁸ The information gathering process empowers the students and parents involved, creating a clear picture of their environment and issues.¹⁹⁹ This method spurs the development of targeted strategies to rid the school of commercial messages.²⁰⁰

A number of students and organizations have used commercialism walk-throughs to successfully reduce advertising in schools. For example, in 1997, the Citizens’ Campaign for Commercial-Free Schools recruited community representatives to conduct commercialism walk-throughs as part of their grassroots strategy to remove Channel One and other advertising from Seattle schools.²⁰¹ Data gathered by walk-through participants in thirty middle and high schools led to a Citizens’ Campaign for Commercial-Free Schools report detailing violations of existing school district policy

195. *Id.*

196. *Id.*

197. Citizens’ Campaign for Commercial-Free Schools, CCCS Mission and Goals, <http://www.scn.org/cccs/morecccs.html> (last visited Nov. 5, 2005).

198. *See, e.g.*, Citizens’ Campaign for Commercial-Free Schools, A Commercialism Walk-Through, <http://www.scn.org/cccs/walkthru.pdf> (last visited Nov. 5, 2005).

199. *See, e.g.*, Center for Commercial-Free Public Education, How to Do a Commercialism Walkthrough, <http://www.ibiblio.org/commercialfree/action/walk.html> (last visited Nov. 5, 2005).

200. *See, e.g., id.*

201. Manning, *supra* note 58, at 18.

restrictions on advertising.²⁰² The walk-through participants found that students were exposed to advertising in twenty-nine of the thirty schools that they studied; in fourteen of the schools, students were forced to watch commercials every day.²⁰³ They also found more subtle forms of advertising. Many school staff distributed free samples and coupons to students, as well as book covers, posters, and educational materials that advertised products.²⁰⁴ Additionally, many staff members received “gifts” from commercial fund-raising companies for referring them business.²⁰⁵ The walk-through findings and growing community involvement pushed the school board to vote in favor of phasing out Channel One and to remove soda advertising from school vending machines.²⁰⁶ Following this victory in 2001, the Citizens’ Campaign for Commercial-Free Schools took the next logical step—improving school food—and encouraged the school board to pass a comprehensive policy to restrict the sale of junk food and soda, prohibit exclusive “pouring rights” contracts with beverage companies, and improve the overall nutrition and quality of school food.²⁰⁷

D. Turning Awareness into Action: Local Policy Recommendations

Food mapping, commercialism walk-throughs, and other forms of community-based research and assessment can create awareness of the food advertising environment, including those advertisements that target particular constituencies and communities. This place-based knowledge creates an important data set for advocates and

202. See BRITA BUTLER-WALL, REPORT: COMMERCIALISM IN THE SEATTLE PUBLIC SCHOOLS 2002 (2002), <http://www.scn.org/cccs/report02.html>.

203. BRITA BUTLER-WALL, HIGHLIGHTS FROM THE SEATTLE STUDY, <http://www.scn.org/cccs/walkthru-hilites.html> (last visited Nov. 5, 2005) (summarizing LISA BOND ET AL., SEATTLE COUNCIL OF PARENT TEACHER STUDENT ASS’NS, REPORT ON COMMERCIAL ACTIVITIES AND ADVERTISING IN THE SEATTLE PUBLIC SCHOOLS, MAY–JUNE 1997 (1997)).

204. *Id.*

205. *Id.*

206. Ervin, *supra* note 102.

207. Press Release, Seattle Public Schs., Seattle School Board Approves Comprehensive Suite of Nutrition Policies: Sales of Soda and Junk Food Banned on School Campuses (Sept. 3, 2004), *available at* <http://www.seattleschools.org/area/news/x40903nr.xml>; Citizens’ Campaign for Commercial-Free Schools, News and Announcements, <http://www.scn.org/cccs/index.html> (last visited Nov. 5, 2005).

local governments interested in reducing children's exposure to advertisements for unhealthy foods.

The community members who take part in the mapping and surveys can become leaders in devising appropriate regulations and interventions. The specific information about local food advertising uncovered by mapping and surveys—such as how many and what kinds of billboards are visible along an average student's route to and from school, what foods and beverages are advertised in the windows and signage of local restaurants and food stores, what types of ambient marketing techniques are being employed, and which advertisements stick in children's minds when they are surveyed about their neighborhood—help identify particular policy interventions that may vary from community to community. Community engagement activities can reinforce the legislative recommendations proposed in this Article. Decision makers can begin to rein in excessive advertising of unhealthy food and create a counterforce of ideas and messages in the direction of healthy eating and living.

V. CONCLUSION

Communities can address the prevalence of food marketing, including place-based and targeted messages, through a two-pronged approach: (1) community engagement strategies that increase awareness and establish an advocacy framework for intervention; and (2) place-based policy initiatives that target forms of advertising that influence food environments and have contributed to the problems of obesity and related health outcomes. These two approaches are particularly relevant as food marketers shift their emphasis to location and constituency-specific advertising and adopt new strategies that subvert informed decision-making.²⁰⁸ This place-based advertising seeks to capture a new generation of young people and convert them into lifetime consumers of junk food. Healthy food campaigns and policy interventions would be well served to both identify and effectively challenge these messages, while also seeking to change food environments as a whole and increase the availability of healthier foods.

208. See Gordon, *supra* note 59 (“Place-based, or ambient, advertising reaches prospects wherever they happen to be—preferably in the right environment to be receptive to your message.”).