GOOD LAWS, GOOD FOOD:

PUTTING LOCAL FOOD POLICY TO WORK FOR OUR COMMUNITIES

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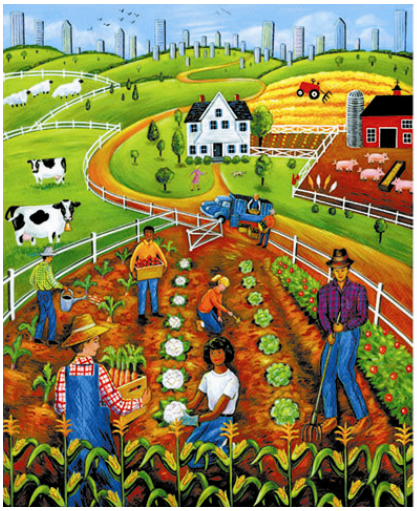

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INTRODUCTION

In recent years, more and more Americans have been sitting down to the dinner table and wondering "What am I eating, and why?" Thinking through these questions quickly leads to a set of questions about our broader food system: the national, state, and local networks and processes that create and transport food to our plates. This look into the national and global food structures, recently undertaken by an increasing number of Americans, often points to some disconcerting conclusions regarding the impacts of the current system on our health, our environment, our national and local economies, and the welfare of our food and farm workers, as well as our animals and livestock. This exploration of what ends up on our plates exposes a set of processes that is likely unsustainable for the long term. Recognizing the environmentally damaging practices, inequitable distribution of healthy foods, and lack of opportunity for civic engagement in the current model of food production and consumption, individuals and communities have begun to search for methods to reverse these trends.

In response to the increasing interest in the production of food in this country, citizens and communities have come together to forge responses aiming to strengthen local and regional food systems. A key element of this new organizing around the topic of food has been the formation of state and local food policy councils. A food policy council provides a unique forum for diverse stakeholders to come together and address common concerns about food policy, including topics such as food security, farm policy, food regulations, environmental impacts, health, and nutrition. Stakeholders generally include a range of people such as farmers, city and state officials, non-profit organizations, chefs, food distributors, food justice advocates, educators, health professionals, and concerned citizens. With the lack of government agencies (at any level of government) devoted to the sole task of regulating and improving food policy, food policy councils have emerged as innovative and much-needed mechanisms to identify and advocate for food system change.

Over the past few years, the number of local and state food policy councils has ballooned. According to the Community Food Security Coalition (CFSC), the number has nearly doubled, increasing from around 111 food policy councils in 2010 to 193 councils in 2012.[1] The proliferation of food policy councils has been incredibly exciting, as they have proven their ability to serve as representative and effective coalitions to advocate for healthy, environmentally sustainable, and economically and socially just food policies. Food policy councils have been quite successful at strengthening connections between various stakeholders, researching and reporting on food policy issues, educating and promoting awareness, and impacting food law and policy change.

However, once created, food policy councils often find themselves overwhelmed when attempting to identify the specific laws and regulations that impact their food policy goals, analyze these laws and policies, and ascertain the legal or policy levers that can be used to improve outcomes. This toolkit was created to provide a starting place for food policy councils to understand the basic legal concepts surrounding local food systems, develop a base of knowledge about the main policy areas, and discover examples and innovations from other cities and states. As described below, this toolkit is the first part of a two-part series, the second of which will focus on state-level food law and policy recommendations. As individuals and organizations seek to inform and influence food law and policy in their city, county, or state, we hope these toolkits will help provide a starting place for their endeavors.

[1] E-mail from Mark Winne, Director of the CFSC Food Policy Council Program (June 25, 2012, 11:26 EST) (on file with author).

ABOUT THIS TOOLKIT

Intended Audience *Good Laws, Good Food: Putting Local Food Policy to Work for Our Communities* was formulated in response to the recent growth in the number of new local food policy councils, with these food policy councils intended as our main audience. However, this toolkit should also be helpful to a wide range of individuals and groups— extending from nonprofits to city planners to local government agencies—interested in enacting change in their local food system. The information and advice provided here are general enough to assist any interested individual or organization, but as our main goal is to serve local food policy councils, specific suggestions and details geared towards these entities are emphasized throughout.

Though many aspects of this guide are applicable to policy change at several levels of government and may reference policy change at various levels of government, it is important to keep in mind that it is a *local* food policy toolkit. It thus assumes a focus on local policy, meaning the laws and policies that are created at the municipal city or county level, and on local systems of production, distribution, and consumption. *Good Laws, Good Food: Putting Local Food Policy to Work for Our Communities* is Part I of a two-part series. This guide will be followed by a state-level food policy toolkit, *Good Laws, Good Food: Putting State Food Policy to Work for Our Communities*, which will provide more specific guidance, opportunities, and examples for state food policy councils and state level policy change.

These food policy council toolkits are intended as part of a greater set of information to help food policy councils with their formation and success. This toolkit was produced in partnership with the Community Food Security Coalition's Food Policy Council Division, which simultaneously published a manual entitled *Getting Started: A Guide to Food Policy Council Development*. *Getting Started* helps to provide guidance to interested stakeholders and groups hoping to form a new food policy council or expand an existing food policy council.

Using this Guide As a toolkit, this document is intended to serve as a reference for food policy councils, food advocates, local policymakers, and non-profit entities. To effectively utilize our toolkit, we recommend following these steps.

- Take a realistic appraisal of how some of the suggestions, examples, and methods contained in this toolkit may fit within your city or locality. Because our toolkit aims to provide an overview that can be useful to food policy councils operating in *most* cities in the United States, it is important to remember that not every component of a local food system or every policy suggestion described within will be appropriate to your city or town. You should make sure to consider the *applicability* and the *feasibility* of these policy recommendations in order to make sure the laws or policies suggested are right for your community.
- Use this toolkit piece-by-piece. Our toolkit is designed to provide overviews of a variety of specific food policy topics, and is not necessarily intended to be read cover-to-cover at one time. Instead, each chapter aims to give as complete a summary as possible of a specific topic. We recommend that you choose the section that fits with the policy area you are trying to investigate and review that section, rather than trying to absorb all of the information in the entire toolkit in one sitting. To that end, there may be some overlap between sections in order to ensure that each section is complete. We have indicated places where you may need to jump between sections in order to get a more complete perspective of a particular policy area.

- Read, digest, and explore. In order to keep this toolkit to a manageable size, we have attempted to include sufficient detail while also acknowledging the need to limit the scope. We hope that it provides a starting place to learn about the governmental, legal, environmental, and land use aspects of local food policy, to name a few examples of topics covered within. The Resources section includes a range of websites, organizations, and reports to provide readers with a wealth of additional food policy council examples and references to help you enact or strengthen a food policy initiative in your city.

What's Inside? This toolkit is composed of eight sections that cover a range of potential topics that a local food policy council may wish to explore. Each section can be treated as an independent entity so that you may easily access it for reference to a particular issue. As mentioned above, where cross-reference to another section would be helpful, we have included a note to that effect.

- **Section I: General Legal Setting** lays out some of the basic information relevant to the local government's authority to makes laws. This section gives an overview of the types of food law and policy regulations that can be implemented at the local level, as well as some local government agencies with which councils should partner.
- **Section II: Food System Infrastructure** describes the important roles of all the entities and processes that make up a local food system. This section details policies that encourage and support local food-related business at every step of the supply chain, including production, processing, distribution, retail sales, marketing, and waste management.
- **Section III: Land Use Regulation** gives a broad overview of zoning and land use concepts in order to offer local food policy councils an understanding of the state and local laws surrounding land use. A familiarity with the laws that govern land use can be beneficial for attempts to transform components of the local food system, from protecting farmland to allowing rooftop gardening, and may be used to influence the accessibility of healthy foods.
- **Section IV: Urban Agriculture** provides a variety of methods through which local food policy councils can work with local governmental or non-governmental partners to support existing or potential urban agriculture initiatives. This section includes information concerning zoning and resource allocation for urban agriculture, as well as addressing environmental concerns such as converting former brownfields to land that is suitable for urban agriculture.
- **Section V: Consumer Access** presents an introduction to the policy changes that can help connect communities with more outlets to purchase healthy foods. This section describes a variety of different solutions to increase food access, including farmers markets, community-supported agriculture (CSAs), mobile vending, retail establishments, healthy corner stores, and community gardens.
- **Section VI: School Food and Nutrition Education** details the ways in which local food policy councils can work with local agencies and school districts to improve the quality of the food served in school meals, as well as create or enhance nutrition education programs. This section also explores programs such as farm to school initiatives and school and community gardens that connect students to the topics of food and agriculture.
- **Section VII: Environmental Sustainability** describes potential measures food policy councils can pursue to create a food system that produces food without exhausting natural resources or contaminating the environment. This section looks at methods to reduce environmental impacts, such as: local purchasing, sustainable agricultural practices (like crop rotation, etc.), food waste disposal (composting), and establishing sustainability plans.
- **Section VIII: Resources** includes a variety of general and specific resources that may be helpful to local food policy councils in order access additional details and information not included in this guide.

About the Authors

This toolkit is the product of hard work by numerous staff, students, partners, and volunteers who have been working with the Harvard Food Law and Policy Clinic and the Food Policy Council division of the Community Food Security Coalition.

The primary author of this toolkit is Emily Broad Leib, Director of the Harvard Food Law and Policy Clinic. The Food Law and Policy Clinic, a division of the Harvard Law School Center for Health Law and Policy Innovation, was established in 2010 to connect Harvard Law students with opportunities to provide pro bono legal assistance to individuals and communities on various food policy issues. The Clinic aims to increase access to healthy foods, prevent diet-related diseases such as obesity and type 2 diabetes, and assist small farmers and producers in participating in local food markets. One of its key initiatives is to assist with the development, promotion, and legal and policy research needs of state and local food policy councils. A dozen Harvard Law School students, interns, and volunteers spent countless hours researching and drafting this toolkit throughout the 2011-2012 academic year. The student and volunteer authors involved in producing this guide were: Vanessa Assae-Bille, Ona Balkus, Kathleen Eutsler, Caitlin Foley, Yasmin Ghassab, Adam Jaffee, Emma Kravet, Jacqueline Pierluisi, Danielle Purifoy, Nathan Rosenberg, Rachel Sánchez, Matthew Woodbury, Lauren Wroblewski.

The Community Food Security Coalition (CFSC) is a national nonprofit organization that works to allocate federal resources to foster community-based alternatives to the global food system. CFSC has successfully advocated for funding to strengthen local food infrastructure, increase low-income food security while supporting local farmers, and develop local food planning and policy organizations through the Community Food Projects grant program. CFSC has also advocated in support of core nutrition programs as well as the WIC and Senior Farmers Market Nutrition Programs and the Farmers Market Promotion Program. CFSC's Food Policy Council Program provides technical and capacity-building assistance to communities around the country that are developing or improving existing local and state food policy councils. The key leadership of the CFSC Food Policy Council Program is Mark Winne, who is a co-founder of CFSC as well as formerly serving as the Executive Director of the Hartford Food System, a position he held from 1979-2003. Winne's extensive background in food and agricultural policy includes his previous honors as a 2001 recipient of the U.S. Department of Agriculture Secretary's Plow Honor Award and more recent placement as a Visiting Scholar at John Hopkins University School of Public Health for the 2010/11 academic year.

SECTION I: GENERAL LEGAL SETTING

Once a local food policy council is formed, one of its first tasks is to identify the main laws and policies impacting its local food system and determine whether these laws and policies were implemented at the federal, state, or local level. The interplay between federal, state, and local laws can be complicated. This section lays out some of the basic information relevant to the structure and legal authority of local governments, the types of food law and policy regulations that can be implemented at the local level, and some local government agencies with which councils should partner in their efforts to improve the local food system.

OVERVIEW One of the first things that local food policy councils will want to understand is how their local government is structured and what kinds of food policy laws and regulations are able to be promulgated at the local level. This section gives an overview the breakdown between federal, state, and local authority; how to determine the authority that your city government has; and some of the local government agencies that will be relevant to your work.

1. Federalism and the Interplay of Federal, State, Local, and Tribal Law This section provides a general overview of the way that the system of federalism impacts the breakdown of authority between federal, state, local, and tribal governance.

2. How Local Government Gets the Power to Act Within the broad outlines of the breakdown of authority between different levels of government, local food policy councils will want to learn what specific authority has been delegated to their local government by their state government. This section provides a starting place for how to figure this out.

3. Other Checks on Local Government: General State Laws and State Preemption This section describes some of the other ways in which state government and state laws can impact food policy goals at the local level.

4. The Role of Local, State, and Federal Law on Specific Food Policies In order to understand some of the specifics of how federal, state, and local government can have shared capacity to regulate certain areas of law, this section includes a chart showing the authority of each level of government over some sample food law and policy issues.

5. Understanding How Your Local Government is Organized Food policy councils should learn how their own local city or county government is structured in order to know what their scope of coverage should be and also what government entities would be useful partners.

6. Partnering with Local Government and Local Agencies In order to achieve their food policy goals, food policy councils will likely want to partner with a range of local government agencies, such as planning commissions and boards of health.

7. Community Food System Assessments One possible first step for a food policy council is to conduct a local food system assessment in order to identify local food system assessments, gaps, and opportunities.

FEDERALISM AND THE INTERPLAY OF FEDERAL, STATE, LOCAL, AND TRIBAL LAW

The United States is governed using a system of federalism. This means that both the federal and state governments have their own spheres of responsibility and authority. The U.S. Constitution limits the areas over which the federal government has authority, leaving certain areas to the states to govern exclusively. The federal government is not allowed to directly govern those areas. In the areas where the federal government does have authority to govern, federal laws generally override state laws.

The interplay between state and local governments works slightly differently. Local governments do not have any express authority under the U.S. Constitution. Instead, local governments have the power given to them by their state under that state's constitution or statutes. Thus, all states have the same amount of constitutionally-derived power and authority vis-à-vis the federal government, but they determine on their own how to apportion this state power between the state and local governments. This means that the amount and type of authority given to local governments varies greatly from state to state and, as described below, can even vary from city to city within one state. Because there is so much variation in local governments' authority, this toolkit cannot lay out all of the specific authorities given to local governments in each state, but will help to provide you with some tools to figure out what powers your local government has.

The interplay between Native American tribal governments and state or federal government is a bit more complicated. In the U.S., Native American tribes are considered to have "tribal sovereignty," a term that describes "the right of federally recognized tribes to govern themselves and the existence of a government-to-government relationship with the United States."[1] This also means that a tribal group has "the right to form its own government, adjudicate legal cases within its borders, levy taxes within its borders, establish its membership, and decide its own future fate."[2] As a result, tribes cannot be preempted by state laws like local governments can; however, they can be preempted by the federal government. State law can only preempt tribal law when Congress has given that state the authority to do so. While this interplay is worth noting, as the focus of this toolkit is on local governments, our analysis of tribal law is limited.

In order to affect food policy in your local area, it is important to understand which level of government has the authority to govern the policy that you wish to change. If a local food policy council wishes to change a certain regulation, for example, it must first ascertain whether the regulation was implemented at the local, state, or federal level.

- If it is a **local law or regulation**, the council will more likely be able to successfully advocate for its revision. Local governments, for example, have taken the lead on banning artificial trans fat from the food supply. According to the Center for Science in the Public Interest, thirteen cities and counties have barred the use of artificial trans fat while only one state, California, has passed similar legislation.[3] Food policy councils in some large metropolitan areas may also be able to influence their state governments. However, in most cases, it will be much easier to make changes at the local level.
- If it is a **state law or regulation**, the council should identify whether the local government has the power to create an ordinance affecting the way that state law is implemented in the local area. This may depend on how much power has been delegated by the state to the local government, described in more detail below. Sometimes local governments have the authority to impose regulations stricter than state rules, but if a state rule is controlling, it may bar or "preempt" local action on that issue. However, even if the regulation at issue was implemented at the state level, it is important to remember that local food policy councils can team up with other councils and stakeholders in the state in order to affect change at the state level.
- If it is a **federal law or regulation**, the council should, as it would with a state-level regulation, identify whether the local government has the power to pass a local law affecting the way in which the federal law is implemented at the local level. Local governments sometimes have the authority to

[1] *Answers to Frequently Asked Questions about Native Peoples,* NATIVE AMERICAN RIGHTS FUND, http://www.narf.org/pubs/misc/faqs.html (last visited June 26, 2012).
[2] *Id.*
[3] *Trans-Fat*, CTR. SCI. PUB. INT., http://www.cspinet.org/transfat/index.html (last visited Dec. 6, 2011).

impose stricter regulations and laws than the ones at the federal level, but not if the federal law is controlling. It is admittedly more difficult to affect change at the federal level, but it is not impossible. In order to better their chances, local food policy councils should work with other state and local food policy councils and stakeholders from around the country.

Essentially, food policy councils must identify the level(s) of government most relevant to the particular issue in order to make an informed decision regarding the likelihood of achieving successful policy changes, and consequently, whether they should devote time and resources to the topic.

HOW LOCAL GOVERNMENT GETS THE POWER TO ACT State laws play a significant role in local government. First, because local governments do not have any power except that given to them by the state, the state constitution or state legislation must authorize local governments to act in certain ways. Second, because state laws can preempt, or bar, local authority to act on certain issues, states almost always have ultimate authority over local governments. Third, because statewide rules and regulations must generally be followed in all local areas, state laws play a significant role in local areas. When recommending policy change, food policy councils need to understand how their locality gets its authority and what types of powers it does or does not have. In order to conserve their energy to push for policy changes that are actually possible for the city or county to enact, food policy councils should be sensitive to the restrictions their municipality faces with regard to the ability to enact certain types of laws or regulations.[4]

General Background: Dillon's Rule & Home Rule In general, local governments have no inherent powers granted to them by the U.S. Constitution. Judge John Dillon of the Iowa Supreme Court recognized this fact over 100 years ago, which is why this lack of local power is now known as *Dillon's Rule*.[5] Dillon's Rule holds that local governments have only those powers that are expressly given to them by the state; according to Dillon's Rule, local governments only have those powers that are:

- "granted in express words;
- necessarily implied or necessarily incident to the powers expressly granted; and
- absolutely essential to the declared objects and purposes of the corporation— not simply convenient, but indispensable."[6]

Therefore if the power in question is not expressly authorized by a state statute or the state constitution, or cannot be implied directly from another authorized power, it is presumed that a municipality does not have that power.[7] States that are considered Dillon's Rule states, or that do not give broad Home Rule powers to local areas, including Arkansas,[8] Connecticut,[9] and New York,[10] generally depend on the state legislature

[4] Note that when the city acts as a business or creates private corporations to provide some of its services, these private entities are not as vulnerable to state oversight of their decisions. *See, e.g.*, Mun. Bldg. Auth. of Iron County v. Lowder, 711 P.2d 273 (Utah 1985).
[5] Diane Lang, *Dillon's Rule … and the Birth of Home Rule*, MUN. REP., (Dec. 1999), *available at* http://nmml.org/wp-content/uploads/Dillon%E2%80%99s-Rule-The-Birth-of-Home-Rule.pdf; City of Clinton v. Cedar Rapids & M.R.R. Co., 24 Iowa 455, 456 (1868).
[6] Diane Lang, *Dillon's Rule … and the Birth of Home Rule*, MUN. REP. 1 (Dec. 1999), *available at* http://nmml.org/wp-content/uploads/Dillon%E2%80%99s-Rule-The-Birth-of-Home-Rule.pdf.
[7] *Id.*
[8] *See* Pfeifer v. City of Little Rock, 346 Ark. 449, 463 (2001) (finding that "a municipality's ability to act is derived only from those powers directly granted by the state legislature or through the state constitution").
[9] *See* Ross v. Zoning Bd. of Appeals of Westport, 983 A.2d 11 (Conn. App. Ct. 2009) (finding that as a creation of the state, a municipality, whether acting itself or through its planning and zoning commission, has no inherent powers of its own and it possesses only such rights and powers that have been granted expressly to it by the state).
[10] *See* N.Y. GEN. MUN. LAW § 96 (1) (2011).

for legislation enabling them to act. In such states, local governments generally get some authority to act from state *enabling statutes*, which limit the authorization of local power to a particular defined area. An enabling statute is a "law that permits what was previously prohibited or that creates new powers."[11] In this context, this means a statute giving local municipalities the authority to enact local ordinances on particular topics. Absent enabling legislation, cities in these states might not have the authority to enact ordinances or take action on certain food policy matters. In **New York**, for example, municipalities were not allowed to permit community gardens on land they held until 1978, when the legislature passed enabling legislation granting them that ability.[12] It is worth noting though that while Dillon's Rule was originally intended to be strictly construed, some courts have more recently interpreted the granted powers broadly.[13]

Home Rule, on the other hand, is a broad grant of power from the state that allows municipalities to independently handle local matters without the need for special legislation by the state, as long as the municipal laws do not conflict with state laws. This power to exercise certain functions is transferred from the state to local governments through the state's constitution or state legislation.[14] Whether the power originates from the former or the latter, Home Rule powers are shaped by the language of the delegation from the state legislature or the interpretation of this delegation by state courts.[15] Thus, even though "all but few states have some form of home rule authority,"[16] the specific details of the power granted varies from state to state.[17]

The majority of the states with Home Rule authorization also give municipalities the permission to enact a *Home Rule Charter*, which is a "local government's organizational plan or framework, analogous to a constitution, drawn [up] by the municipality itself and adopted by popular vote of the citizenry."[18] A typical Home Rule grant allows a local government to "make and enforce local police, sanitary and other regulations as are not in conflict with [the municipality's] charter or with the [state's] general laws,"[19] while others provide authority over any *local matter* that is "not expressly denied by [the state's] general law or [the municipality's] charter."[20] Unlike with enabling statutes, under Home Rule, when authorization is vague, it is assumed that the municipality has the power unless it is explicitly denied.[21] If your state has granted municipalities broad Home Rule authority or allowed Home Rule Charters and your municipality has enacted such a charter, your municipality will likely have greater independence, and its powers may be controlled by this charter, rather than by state enabling statutes.[22]

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[11] *Statute*, BLACK'S LAW DICTIONARY (9th ed. 2009).
[12] *See* N.Y. GEN. MUN. LAW § 96 (1) (2011).
[13] *See* State v. Hutchinson, 624 P.2d 1116 (Utah 1980) (holding that the state's delegation of "general health, safety, morals, and welfare" allows counties to determine their own campaign finance laws).
[14] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 5 (Aen. W. Webster et al. eds., 2d ed. 2004).
[15] Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, POPULAR GOVERNMENT 15, 16 (Fall 2006), *available at* http://www.iog.unc.edu/pubs/electronicversions/pg/pgfal06/article2.pdf.
[16] *Id*.
[17] *See* ADAM COESTER, DILLON'S RULE OR NOT?, NAT'L ASS'N OF CNTIES. (Jan. 2004), *available at* http://www.celdf.org/downloads/Home%20Rule%20State%20or%20Dillons%20Rule%20State.pdf; SAMUEL B. STONE, HOME RULE IN THE MIDWEST, INDIANA UNIV. PUB. POLICY INST. 4 (July 2010), *available at* http://www.policyinstitute.iu.edu/PubsPDFs/PC_HmRules_Web.pdf.
[18] *Charter*, BLACK'S LAW DICTIONARY (9th ed. 2009).
[19] IOWA CONST. art. II, § 38A.
[20] N.M. CONST. art X, § 6D.
[21] Diane Lang, *Dillon's Rule … and the Birth of Home Rule*, MUN. REP., (Dec. 1999), *available at* http://nmml.org/wp-content/uploads/Dillon%E2%80%99s-Rule-The-Birth-of-Home-Rule.pdf.
[22] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 23 (Aen. W. Webster et al. eds., 2d ed. 2004)..

As it is unclear what constitutes a "local matter," interpreting the exact scope of the power granted to local government is usually left to the discretion of the state legislature (if Home Rule was granted through legislation) or state courts (if Home Rule was granted through the state constitution).[23] Either way, it is clear that the scope of Home Rule authority varies greatly depending on each state's authorizing *language* and how that language is *interpreted*. For example, it would seem that a constitutional grant of Home Rule authority would be stronger than a statutory grant; however, though **Idaho** allows certain Home Rule powers in its constitution, including the creation of Home Rule Charters, the scope of Idaho municipalities' governing powers are more limited than in Indiana, where Home Rule was granted through statute.[24] This is because Idaho's constitution only allows for a strict construction of *police powers,* the powers that give cities the capacity to preserve public security, order, health, and justice.[25] By contrast, **Indiana**'s law also allows municipalities some *functional powers*, which includes the city's ability to choose the public goods and services it provides and at what levels.[26]

Not only do states allow varying amounts of power depending on the particular area of the law, but they can also distinguish between the levels of local government. The powers delegated to counties may not be the same as those delegated to cities.[27] Further, states such as Arizona, Missouri, and Delaware require a minimum population size before a municipality can create a Home Rule Charter.[28] Thus, in some states, only certain cities are granted Home Rule authority while others are not.

It is worth noting that, while in tension, Dillon's Rule and Home Rule are not polar opposites; states can be considered a Dillon's Rule State while still allowing some Home Rule authority, and vice versa. Further, while it may appear that Dillon's Rule States have much less power available to them, this is not necessarily true. North Carolina, for example, is considered a Dillon's Rule State, yet local governments there have the same powers, and in some cases, powers that are considered even "greater than those enjoyed by local governments in states [with Home Rule]."[29] Thus, it important to keep in mind when assessing whether your state adheres predominantly to Dillon's Rule or Home Rule, that it is just as significant to understand how that Rule is actually carried out in your state and locality. Further, regardless of whether your state is considered Home Rule or Dillon's Rule, state government can still preempt local government at any time unless the local power is protected by the state's constitution or federal laws.

What should you take away from this?

- Your municipality only has the power that has been given to it by the state, either through the delegation of broad Home Rule authority or through an express grant of power in a state enabling

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

[24] DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (CQ Press 2001), *available at* http://www.cas.sc.edu/poli/civiced/Reference%20Materials/US_home_rule.htm.

[25] *Id.*; *Zoning*, BLACK'S LAW DICTIONARY (9th ed. 2009)

[26] DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (CQ Press 2001), *available at* http://www.cas.sc.edu/poli/civiced/Reference%20Materials/US_home_rule.htm; SAMUEL B. STONE, HOME RULE IN THE MIDWEST, INDIANA UNIV. PUB. POLICY INST. 4 (July 2010), *available at* http://www.policyinstitute.iu.edu/PubsPDFs/PC_HmRules_Web.pdf.

[27] *See* DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (CQ Press 2001), *available at* http://www.cas.sc.edu/poli/civiced/Reference%20Materials/US_home_rule.htm.

[28] *See id.*

[29] Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, POPULAR GOVERNMENT 15, 17 (Fall 2006), *available at* http://www.iog.unc.edu/pubs/electronicversions/pg/pgfal06/article2.pdf.

statute.

- If your state is not considered a Home Rule state, you need to determine the *types* of powers and the *areas* of law that have been delegated to your local government via enabling statutes in order to identify opportunities for legal or policy change at the local level.
- Even if your state is considered a Home Rule state, it is important to remember that there may still be certain areas where Home Rule does not apply. You must first determine (1) if your specific municipality has Home Rule authority, (2) if Home Rule applies to the area of law you are seeking to change, and (3) the scope of the Home Rule power as it relates to that area of law.
- Since the delegation of power to localities differs from state to state and even city to city, and varies depending on the area of law, you should remember that the powers granted to your local government may not mirror the powers of local governments in other states (or even in other cities in your state).
- Remember that the possibility of state preemption always exists, even if your city is governed by Home Rule. Thus, unless there is something in your state's constitution that says otherwise, the state can always pass legislation to preempt local regulations at any time before or after the regulations are passed. Whether or not the state preemption will be upheld may be up to interpretation by the courts.

Clearly, attempting to understand Home Rule throughout the United States can be very difficult; fortunately, attempting to understand Home Rule in your own state is much easier because you only have to understand one set of rules. See Appendices A and B for some resources to help you identify the type of authority delegated to cities in your state.

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

In addition to the need for state-level enabling legislation or the delegation of Home Rule powers, states also have powers over local governments through their ability to pass general laws that impact local areas and through their ultimate ability to preempt local laws.

State Laws of General Impact

State governments will always have an impact on local areas as state laws apply throughout that state. For example, when a state sets the sales tax (including the amount of the tax and the taxable products), everyone in that state must comply with the tax. Local governments cannot amend or eliminate the sales tax as these changes can only be made at the state level. However, local governments can generally implement additional taxes.

State Preemption of Local Laws

Food policy councils should be aware of the local legal context when proposing legislation, even in Home Rule cities. States always retain the power to preempt local governments from imposing regulations on particular issues. Preemption occurs at the local level when the state government passes a law effectively preventing local governments from passing laws in the field regulated by the state law. (Note: federal regulations can also preempt state regulations in areas in which the federal government has authority to act. In these cases, the federal regulation would also preempt local regulations. For purposes of this section, however, we will focus on state preemption of local regulations.) For example, if a state legislature passed a law declaring that only the state could regulate lemonade stands, it would preempt local governments from regulating lemonade stands in their areas.[30]

[30] Note that in the federal government context, sometimes preemption is "express," meaning that the law clearly states that states cannot act but sometimes preemption can be "implied" based on the content of what the federal government is regulating. With regard to state preemption of

Preemption can serve as a major impediment to local food policy initiatives, as reflected in these recent examples.

- In **Cleveland, OH**, after the city passed an ordinance banning restaurants from using trans fat, the Ohio state senate quickly added an amendment to the state budget preempting local municipalities from regulating the ingredients used by fast-food eateries. [31] Note that this preemption was later held unconstitutional by a state court based on the Ohio state constitution. [32]
- In **Arizona**, the state legislature recently passed a bill that took away the authority of local communities to regulate the marketing of fast food using consumer incentives like toys. [33] Such state preemption would bar local rules similar to the **San Francisco, CA**, ban on giving away toys with meals, like fast food happy meals, that do not meet certain nutritional standards. [34]
- In **Iowa**, the state legislature preempted local zoning laws regarding concentrated animal feeding operations ("CAFOs") by prohibiting local governments from regulating activities on land used for the production or raising of animals, including the construction, or operation of an animal feeding operation, "unless the regulation of the production, care, feeding, or housing of animals is expressly authorized by state law."[35]

As an example of the limited power of local government, in **Iowa**, the legislature recently passed a law prohibiting municipalities from enacting legislation, or zoning laws, regarding Confined Animal Feeding Operations ("CAFOs").

Source: IOWA CODE ANN. § 331.304A (2011).

Local food policy councils should confer with state-level advocates when proposing controversial regulations in order to gauge the likelihood of the state passing legislation to preempt the proposed regulations. Food policy councils can also work with state and national allies to organize against counter-productive state preemption laws.

THE ROLE OF LOCAL, STATE AND FEDERAL LAW ON SPECIFIC FOOD POLICIES

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

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local rules, the balance of how readily preemption will be presumed is dependent on what type of Home Rule powers the state gives to localities.

[31] Stephanie Strom, *Local Laws Fighting Fat Under Seige*, N.Y. TIMES, June 30, 2011, at BI, *available at* http://www.nytimes.com/2011/07/01/business/01obese.html?pagewanted=1&_r=1&ref=stephaniestrom.

[32] Stephanie Strom, *Judge Rules Restaurant Law Stifles Ohio Cities*, N.Y. TIMES, June 12, 2012, at B4, *available at* http://www.nytimes.com/2012/06/13/business/judge-rules-restaurant-law-unfair-to-ohio-cities.html.

[33] *Id.*

[34] S.F., CAL., HEALTH CODE 8-471.4 (American Legal Publishing 2012).

[35] IOWA CODE § 331.304A(2) (2011), *available at* http://search.legis.state.ia.us/nxt/gateway.dll/ic?f=templates&fn=default.htm.

TABLE I-1: ROLE OF VARIOUS LEVELS OF GOVERNMENT IN FOOD POLICY			
ISSUE	**FEDERAL LEVEL**	**STATE LEVEL**	**LOCAL LEVEL**
FOOD SAFETY	The Food and Drug Administration (FDA) creates the FDA *Food Code*, which recommends (but does not require) food safety provisions for retail stores and restaurants. It is not mandatory but has been adopted in some form by most states.[36] The federal government also regulates food safety for meat and poultry processing,[37] monitors food safety generally, and has some food recall authority.[38]	State governments implement laws and regulations affecting restaurants and retail stores, based on federal guidance. Most states adopt a modified version of the FDA *Food Code*. States can create their own meat and poultry processing inspection regime, but it must be at least as stringent as the federal regime.[39]	Local public health departments are often tasked with enforcing state food safety requirements. Some local governments also have their own set of food safety ordinances applicable to local restaurants or grocery stores.
LAND USE AND ZONING	Zoning and land use law are primarily state and local issues. However, federal law (particularly individual rights protected by the Constitution) can restrain state and local government land use regulations in some instances.	While it is within the state's power to regulate zoning, most states delegate this power to local governments. Nonetheless, statewide planning can mandate or encourage certain local zoning and land use practices.[40]	Most states delegate zoning and land use powers to local governments. As these are predominantly local issues, zoning and land use powers are important tools for local food policy councils to understand and utilize.
GEOGRAPHIC PREFERENCE IN FOOD PROCUREMENT	Food purchased using federal dollars, such as meals under the National School Lunch Program (NSLP), must follow federal procurement guidelines. Federal law now authorizes schools using NSLP dollars to prefer food grown locally.[41] Programs using state or local dollars do not need to follow federal rules.	State agencies or institutions using state funds must follow state procurement guidelines. An increasing number of states have tailored their procurement regulations to encourage local purchasing by state agencies/institutions.[42] When using federal money, federal rules still apply	Local agencies, schools, and institutions may prefer local food when spending federal funds, as authorized under federal law.[43] When using state funds or local funds, they may give preference to local food if authorized under the relevant state or local authority.

[36] *Real Progress in Food Code Adoptions*, FDA (July 1, 2011), *available at* http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FederalStateCooperativePrograms/ucm108156.htm.
[37] 21 U.S.C.A. §§ 451–72 (2012); 21 U.S.C.A. §§ 601–95 (2012).
[38] Three government agencies share responsibility for federal food safety. The USDA's Food Safety and Inspection Service (FSIS) inspects meat and poultry processing and reviews product labels. *See* §§ 451–471; §§ 601–695. The FDA monitors the safety and labeling of most non-meat and processed foods, and licenses food-use chemicals other than pesticides. *See* 21 U.S.C. §§ 301–99 (2006). The EPA registers pesticides and sets pesticide tolerances that are enforced by the FDA or the FSIS. *See* 7 U.S.C. § 136(a)–(y) (2006); 21 U.S.C. § 342(a)(2)(B) (2006).
[39] §§ 451–72; §§ 601–95.
[40] *See, e.g.*, Or. Dep't of Land Conservation & Dev., *Goals*, OREGON.GOV (Nov. 24, 2010), http://www.oregon.gov/LCD/goals.shtml; Jeffrey D. Kline, *Forest and Farmland Conservation Effects of Oregon's Land-Use Planning Program*, 35 ENVTL. MGMT. 368 (2005).
[41] Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22,603 (Apr. 22, 2011).
[42] As of 2010 at least fifteen states had passed legislation allowing purchasing preferences for in-state agricultural products. *State Farm to School Legislation*, NAT'L FARM TO SCH. NETWORK (2010), www.farmtoschool.org/files/publications_177.pdf.
[43] Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22,603 (Apr. 22, 2011).

FOOD LABELING	The federal government regulates ingredient and nutrition labeling for all packaged foods that travel in interstate commerce (i.e., go across state lines),[44] however, state and local governments can choose to require menu labeling or other labeling for items not included in the federal laws. Federal law also regulates nutrition labeling of chain retail food establishments and chain vending machine operators.[45]	States are preempted from enacting labeling laws for packaged foods or chain restaurants/vending machines, as these are regulated by federal law. However, states may: require labeling for non-packaged foods, require labeling for non-chain restaurants, pass labeling rules for foods that do not cross state lines, and require other label information (e.g. Alaska requires the labeling of farm-raised salmon products).[46]	If allowed under state law, local governments can pass some food labeling rules for foods not covered under federal law. For example, local governments can require labeling for non-chain restaurants.
FOOD ASSISTANCE BENEFITS	Most food assistance programs, like SNAP, WIC, etc., are authorized and funded at the federal level, though states may contribute funds for program administration or to increase the amount of benefits available to participants.	State governments are responsible for administering food assistance programs in terms of authorizing participants and, in some cases, vendors. States sometimes contribute additional funds to the programs.	Local governments generally do not play a role in administering food assistance programs, but they can encourage their residents to participate in the programs, which are often underutilized, or provide incentives to those who purchase healthy options with their benefits.

UNDERSTANDING HOW YOUR LOCAL GOVERNMENT IS ORGANIZED

It is important to consider the structure of your local government when organizing a food policy council. Most Americans either live in an area that is incorporated as a city, town, or village, though those in more rural areas generally live in an unincorporated area of a county. Cities are usually are governed by a city council, while the county government normally serves as the local government body for those living in unincorporated areas of a county.[47] Note that city and county governments have different names in different places, including "city council," "county council," "board of directors," "board of supervisors," "board of aldermen," etc. Cities, and possibly counties, will also have an elected or appointed executive, like a mayor. Of the 3,033 counties and 19,492 municipal governments in the United States, there are also 40 joint city-county governments, in which cities and their surrounding counties have consolidated government functions.[48] The city of **Jacksonville, FL**, for example, consolidated with its surrounding county in 1968, creating a governing body for the whole county with the exception of a few small communities that remain independent.[49] On the other hand, the city of **Charlotte, NC**, and surrounding **Mecklenburg County, NC**, remain distinct governing entities, despite working closely together and sharing a common website.[50]

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[44] Nutrition Labeling and Education Act of 1990, 21 U.S.C. § 341 (2006).
[45] 21 U.S.C.A. § 343(q)(5)(H)(ii) (2012).
[46] Alaska Food, Drug, and Cosmetic Act, ALASKA STAT. § 17.20.040(a)(12) (2011).
[47] County-level governments are standard outside of New England. *See Local Governments and Public School Systems by Type and State: 2007*, U.S. CENSUS BUREAU (Oct. 24, 2011), http://www.census.gov/govs/cog/GovOrgTab03ss.html; *Massachusetts Government: County Government*, LEAGUE WOMEN VOTERS, http://lwvma.org/govcounty.shtml (last visited December 6, 2011).
[48] *Overview of County Government*, NAT'L ASS'N OF COUNTIES, http://www.naco.org/Counties/Pages/Overview.aspx (last visited Dec. 6, 2011); *Local Governments*, BLACK'S LAW DICTIONARY (9th ed. 2009).
[49] *Government*, CITY OF JACKSONVILLE, FLA., http://www.coj.net/About-Jacksonville/Government.aspx (last visited Dec. 6, 2011).
[50] *See Government Services and Information*, CITY CHARLOTTE & MECKLENBURG COUNTY, http://charmeck.org/Pages/default.aspx (last visited Dec. 6, 2011).

Your council should start its work by discovering whether the relevant local governmental body is a city council, county government, or some sort of consolidated city/county government. The structure of the government may play a role in determining the type of food policy council that makes sense, that is, whether the council is a city-level or county-level food policy council. In addition to looking at the local governmental structure and the relevant governmental authorities, a council should also determine its coverage age by considering the scope of the local food system. In a large city that has its own unique food system problems, a city-level food policy council may make the most sense. However, if a council is organizing in a rural area with lush farmland supplying a specific city, it might make the most sense to create a county food policy council or a joint city-county food policy council. If the council is in a rural area where the food system spans several counties, the council might even consider becoming a multi-county, or regional, food policy council.

PARTNERING WITH LOCAL GOVERNMENT AND LOCAL AGENCIES City, county, and regional food policy councils must work closely with local governments in order to impact food policy in their areas. Food policy councils across the country have found that developing long-term relationships with local government agencies can be extremely productive and often result in deeper commitments to food-related issues by local governments.

Like federal and state governments, local governments have elected legislative bodies that create law. These legislative bodies are typically called "city councils" or "boards of aldermen" at the municipal level and "boards of commissioners" or "boards of supervisors" at the county level. In addition to this local legislative body, there are also local agencies that administer local laws and also create their own regulations and policies. Cities will also usually have an elected official, like a mayor. Local agencies, officials, and boards shape the local food system through carrying out these regulations, and through a wide array of policies and programs. In order to successfully implement food policy priorities, food policy councils must develop relationships with these local government agencies. Some of the local government agencies that impact food policy, and with which food policy councils should strive to partner are: Local Food Policy Directors, Boards of Health and Health Departments, Planning Commissions and Planning Departments, and Transportation Authorities. These are each described in more detail below.

Food Policy Directors Many government agencies impact food policy, but there is no single "food agency" at the federal, state, or local level. Thus, even if many agencies were to have the same goal—say, to improve healthy food access and create a more robust local food system—the lack of coordination often slows progress. To combat this lack of coordination, several cities have created a new city government position of "food policy director" which is housed in either a local agency or in the mayor's office. Food policy directors are responsible for coordinating and implementing comprehensive food policies for their cities. Food policy directors can be effective allies for food policy councils because they can react quickly to emerging issues and are uniquely positioned to cut through red tape due to their status as government employees.[51]

[51] Peter Smith, *Baltimore Gets One of the Country's First Food Czars,* GOOD, July 1, 2010, http://www.good.is/post/baltimore-gets-one-of-the-country-s-first-food-czars; *see also*, Julia Marsh, *Cities Create 'Food Czars': Can They Get Residents to Eat Their Sprouts?,* CHRISTIAN SCI. MONITOR, Feb. 9, 2011, http://www.csmonitor.com/USA/Society/2011/0209/Cities-create-food-czars-Can-they-get-residents-to-eat-their-sprouts.

Baltimore, MD, was one of the first cities to appoint a food policy director, who has a position within the planning department.[52] While the concept of a "food policy director" is relatively new, several other cities, including New York, Boston, Los Angeles, and San Francisco, have followed suit.[53] The creation of such positions within local government supports a more strategic, comprehensive, and long-term approach to food system planning and sends a message about the local government's commitment to the food system. Thus, food policy councils should not only strive to work with their local food policy directors when they exist, but should encourage their local governments to create food policy directors if the position does not yet exist.

Example: Baltimore Food Policy Director

In **Baltimore, MD**, the local Food Policy Task Force was struggling to achieve its goal of increasing food access because different city agencies had different agendas. As a result, the city's strategic planner created a food policy director position as a role in the city government. Since then, Baltimore's food policy director has accomplished several advances, including the creation of virtual supermarkets that use an online grocery ordering system to bring food to neighborhoods with little access to healthy foods. The food policy director also proposed a new zoning code that will allow more urban farming.

Source: Peter Smith, *Baltimore Gets One of the Country's First Food Czars,* GOOD, July 1, 2010, http://www.good.is/post/baltimore-gets-one-of-the-country-s-first-food-czars.

Boards of Health and Health Departments

Boards of health are comprised of elected or appointed officials who are responsible for ensuring the provision of adequate public health services in their communities.[54] The board's role is to assess the community's health needs and concerns and to develop policies, procedures, and programs to meet those needs.[55] Then, health departments typically implement these policies and programs.[56] The specific breakdown of the different roles assigned to boards of health versus those assigned to health departments vary from place to place, so it is important to research how they operate in your region.[57]

As rates of obesity and associated diet-related diseases increase, the role of local boards of health in improving access to healthy foods and physical activity is becoming more important. Since proper nutrition and regular physical activity are essential to good health, boards of health direct much of their resources toward identifying policy and environmental changes that can lead to increased physical activity and better nutrition.[58] In **King County, WA**, the board of health passed an obesity prevention resolution focused on improving physical and nutritional health among community members.[59] The resolution included a ten-point plan that was used to guide the work of the King County Overweight Prevention Initiative and led to a series of community forums on obesity prevention.[60]

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[52] Peter Smith, *Baltimore Gets One of the Country's First Food Czars,* GOOD, July 1, 2010, http://www.good.is/post/baltimore-gets-one-of-the-country-s-first-food-czars.
[53] *See* Julia Marsh, *Cities Create 'Food Czars': Can They Get Residents to Eat Their Sprouts?,* CHRISTIAN SCI. MONITOR, Feb. 9, 2011, http://www.csmonitor.com/USA/Society/2011/0209/Cities-create-food-czars-Can-they-get-residents-to-eat-their-sprouts.
[54] *See Health Boards*, MASS. ASS'N HEALTH BOARDS, http://www.mahb.org/boh.htm (last visited Dec. 6, 2011).
[55] *Nutrition Physical Activity & Obesity*, NAT'L ASS'N LOCAL BOARDS HEALTH, http://www.nalboh.org/Nutrition.htm (last visited Dec. 6, 2011).
[56] *See generally* ESSENTIALS OF PUBLIC HEALTH MANAGEMENT 30 (L. Fleming Fallon, Jr. & Eric J. Zgodzinski eds., 3d ed. 2012).
[57] *Id.*
[58] *Id.*
[59] *King County Overweight Prevention Initiative*, KING CNTY., WASH. (Sept. 1, 2011), http://www.kingcounty.gov/healthservices/health/chronic/overweight.aspx (last visited Dec. 6, 2011).
[60] *Id.*

Health departments have also taken the lead in promoting healthy eating habits. For example, in **New York City, NY**, the New York City Department of Health and Mental Hygiene has been particularly proactive, leading a well-publicized campaign to reduce sugar-sweetened beverage consumption and partnering with nonprofits and other government agencies to reduce childhood obesity in New York's most impoverished neighborhoods, among other initiatives.[61] Boards of health have also worked to enact menu-labeling laws requiring restaurants to display calorie information and have gathered information supporting local bans on trans fat.[62]

Boards of health may also be responsible for the development and maintenance of food safety regulations within a community. For instance, in **Walpole, MA**, the local board of health establishes rules and regulations that restrict the types of foods which can be sold in outdoor temporary food service operations, such as fairs, bake sales, and picnics.[63] While local food safety regulations are necessary to protect public health, outdated or poorly designed ones may negatively impact local businesses and farmers. As a result, it is important for food policy councils to remain abreast of local food safety regulations and partner with local boards of health and health departments to ensure that they both protect the public health and allow for food system development.

Planning Commissions and Planning Departments Most states delegate municipal planning and land use controls to local legislative bodies. These local legislative bodies typically create planning commissions (official names may vary from town to town), which hold hearings and make recommendations to the local government for zoning and land use ordinances.[64] Once these zoning and land use regulations are created, planning departments generally oversee their implementation.[65] Land use regulations deeply impact the way food is produced, distributed, and consumed. As described further in Section III: Land Use Regulations, such regulations can have a range of effects, from contributing to the loss of farmland on the urban edges, to making it more difficult for grocery stores to locate in low-income areas, to allowing fast food restaurants to cluster in certain neighborhoods.[66] In addition, as discussed in Section IV: Urban Agriculture, local land use regulations can have a negative impact on the types of agricultural activities that can be conducted in certain zones in a city.[67] These problems are normally accidental by-products of land-use planning and can be avoided through conscientious planning that takes the food system into account. The plan for **Marin County, CA**, for example, contains an agricultural element that protects and preserves agricultural land through a variety of policies, including very low density zoning in rural areas and agricultural easements that preserve land for continued agricultural use.[68]

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[61] *See* Press Release, N.Y. City Dep't of Health and Mental Hygiene, New Campaign Asks New Yorkers If They're "Pouring on the Pounds" (Aug. 31, 2009), *available at* http://www.nyc.gov/html/doh/html/pr2009/pr057-09.shtml; *New York City Childhood Obesity Initiative*, CMTY. HEALTH CARE ASS'N OF N.Y. STATE, http://www.chcanys.org/index.php?src=gendocs&ref=NYC-Childhood-Obesity-Initiative&category=Clinical%20Quality%20Initiatives (last visited Dec. 6, 2011).

[62] *Nutrition Physical Activity & Obesity*, NAT'L ASS'N LOCAL BOARDS HEALTH, http://www.nalboh.org/Nutrition.htm (last visited Dec. 6, 2011.

[63] *Library of Board of Health Regulations*, MASS. ASS'N HEALTH BOARDS, http://www.mahb.org/bohregs/bohregsframe.htm (last visited Dec. 6, 2011).

[64] Val Slack, *What Is a Plan Commission and How Does It Work?,* PURDUE UNIV. COOP. EXTENSION SERV., http://www.ces.purdue.edu/extmedia/ID/ID-235.html (last visited Dec. 6, 2011).

[65] *Id.*

[66] RAQUEL BOURNHONESQUE ET AL., CMTY. FOOD SEC. NEWS, AN INTRODUCTION TO LAND USE PLANNING FOR FOOD SYSTEM ADVOCATES 6 (Spring 2007), *available at* http://www.phlpnet.org/sites/phlpnet.org/files/CFSCNEWSSP07_FNL.pdf.

[67] *See* LAND STEWARDSHIP PROJECT, HOW U.S. CITIES ARE USING ZONING TO SUPPORT URBAN AGRICULTURE (2010), *available at* http://www.landstewardshipproject.org/pdf/factsheets/21-Urban-Ag-Zoning.pdf.

[68] Cmty. Dev. Agency, *Marin Countywide Plan: Agricultural Element—Executive Summary*, CNTY. MARIN (Jan. 26, 2012) http://www.co.marin.ca.us/depts/cd/main/comdev/advance/cwp/ag.cfm (last visited Dec. 6, 2011).

An effective way for food policy councils to foster change in the food system is to build coalitions with local planning commissions and planning departments. By working with these agencies, food policy councils can ensure that their priorities, which often include goals like increasing healthy food access, preserving agricultural land, accommodating urban farms, and connecting public transit to grocery retailers, are incorporated into the planning commission's routine planning activities.[69] For example, the Food Policy Council in **Cleveland, OH**, worked closely with the Cleveland Planning Commission and City Council to create opportunities in urban farming through modifying zoning classifications and creating an urban garden overlay district.[70]

Transportation Authorities Transportation authorities such as the Metropolitan Transportation Authority in **New York City, NY**, or the Pikes Peak Rural Transportation Authority in **El Paso County, CO**, administer public transit in municipalities, counties, and regions. Public transit routes, which are normally set by transportation authorities, are often a major factor in determining whether low-income communities have access to healthy food. Food policy councils have worked with local transportation authorities to ensure that public transit routes help increase access to grocery stores, farmers markets, and other sources of healthy food. In **Knoxville, TN**, the local food policy council cooperates with the regional transportation authority, Knoxville Area Transit (KAT), to review how proposed alterations to bus routes affect food access.[71] KAT also installed racks in buses commonly used by riders who rely on the bus for grocery shopping in response to the food policy council's concerns that shoppers had nowhere to place their groceries.[72]

Other Potential Partners In addition to these local agencies, there are many state agencies that also have a significant impact in food policy at the local level. Local food policy councils should cultivate relationships with these state agencies, as well. In particular, councils should seek healthy relationships with the state's department of agriculture, department of education, and department of health. Finally, there are various government-affiliated or private local institutions that also set rules and policies. Such institutions, like prisons, hospitals, schools, and universities, can also have a considerable effect on the local food system since they often impact the local economy and play a significant role in the community. Food policy councils should identify and form relationships with these local institutions because they can become active players in the local food system, say through changing their procurement practices to purchase more local foods.

COMMUNITY FOOD SYSTEM ASSESSMENTS

As a first step in the process of identifying potential local food policy changes, food policy councils can work with local governments and local agencies to conduct a community food system assessment (CFSA). A CFSA is a tool for analyzing the elements of the local food supply chain, which includes food production, processing, distribution, consumption, waste management, and all associated regulatory institutions and activities. The data collected through a CFSA can provide a local food policy council with the information it needs to identify specific gaps or weaknesses in the current food system, make informed decisions for developing successful food system programs,

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[69] *See* DAVID ZODROW, S. SUSTAINABLE AGRIC. WORKING GRP., FOOD SECURITY BEGINS AT HOME: CREATING COMMUNITY FOOD COALITIONS IN THE SOUTH (2005).

[70] *Land Use & Planning*, CLEVELAND-CUYAHOGA CNTY. FOOD POL'Y COALITION, http://cccfoodpolicy.org/working-group/land-use-planning (last visited Dec. 6, 2011).

[71] DAVID ZODROW, S. SUSTAINABLE AGRIC. WORKING GRP., FOOD SECURITY BEGINS AT HOME: CREATING COMMUNITY FOOD COALITIONS IN THE SOUTH (2005).

[72] *See id.*

strengthen local community networks, increase awareness and understanding of food-related issues, promote health, and preserve local wealth through the economic activity of the local food system.[73]

Though CFSAs can be a great way to get organized and identify targeted needs for the local food system, they can require a significant amount of time and effort to undertake. Partnerships with local governments and agencies can provide support for food policy councils as they undertake a CFSA. There are also a number of resources available to help food policy councils get started in performing a CFSA, such as *What's Cooking in Your Food System? A Guide to Community Food Assessment*, a comprehensive guidebook published by the Community Food Security Coalition (CFSC).[74] Further, the Community Food Security Assessment Toolkit, published by the Economic Research Service of the U.S. Department of Agriculture, is also a comprehensive report that contains information on how to conduct a CFSA. Finally, another resource is Ken Meter, president of Crossroads Resource Center (CRC), a non-profit organization that works with communities and their allies to foster democracy and local self-determination.[75] Meter is one of the most experienced food system analysts in the United States, and specializes in devising new tools communities can use to assess their food system and create a more sustainable future.[76] Meter's work can provide a guide for a community to conduct its own assessment, or the community can contact Meter to assist in conducting their local assessment.

[73] *See id.*; KEN METER, CROSSROADS RESEARCH CTR., REGIONAL "FINDING FOOD IN FARM COUNTRY" ("FFFC") STUDIES: POTENTIAL GENERIC SCOPE OF WORK (2009), *available at* http://www.crcworks.org/leascope.pdf.

[74] KAMESHWARI POTHUKUCHI ET AL., CMTY. FOOD SEC. COALITION, WHAT'S COOKING IN YOUR FOOD SYSTEM? A GUIDE TO COMMUNITY FOOD ASSESSMENT (2002), *available at* http://foodsecurity.org/pub/whats_cooking.pdf.

[75] *See About Crossroads Resource Center*, CROSSROADS RESEARCH CTR. (2009), http://www.crcworks.org/?submit=about (last visited Jan. 1, 2012).

[76] *Id.*

SECTION II: FOOD SYSTEM INFRASTRUCTURE

A food system's infrastructure encompasses the entire food supply chain: production, processing, distribution, retail sales, marketing, and food waste management. Without reliable facilities and services, local food markets cannot reach their full potential. Food policy councils should promote policies that encourage local businesses to develop at each level of the supply chain, in order to bolster the local food system and the local economy.

OVERVIEW Many small, local farms, including urban farms and gardens, can grow enough food to supply farmers markets, restaurants, food banks, and community-supported agriculture share boxes. However, these farms often have trouble scaling up their sales without processing the food items, at least minimally, or without distribution systems in place that can help get their foods to larger markets. To enable the local food system to reach its full potential, it is important to have the infrastructure to process food and distribute it throughout the community and surrounding areas. Investing in the local food system infrastructure leads to economic benefits, increased access to healthy, local food, and the creation of a robust food system that will benefit future generations. One key role for local food policy councils is to identify gaps in the local food system infrastructure in order to advocate for policies directed toward filling these gaps. Councils may also help identify sources of capital to fund these food system infrastructure needs, including pressuring local and state governmental agencies to make targeted investments once gaps are identified. This section will go through the different components of the local food system infrastructure and recommend policies that food policy councils can use to improve outcomes, as well as discuss ways to use the local food industry to foster economic development. The elements of local food system infrastructure include:

1. Production Production describes the factors related to the growing of healthy foods, including access to land and inputs such as seed, feed, water, and harvesting services and equipment.

2. Processing This step includes activities such as washing, packaging, chopping, drying, freezing, or otherwise preparing food.

3. Aggregation and Distribution Resources such as marketing cooperatives, storage facilities, brokerage services, logistics management, and delivery mechanisms like refrigerated trucks are a part of this food infrastructure step.

4. Retail This subsection describes the entities that sell or serve food to consumers, such as restaurants, grocery stores, governmental agencies, hospitals, schools, prisons, and farmers markets.

5. Food Waste This subsection explores the strategies that integrate food waste management into the food system through composting or recycling, as well as programs to bring surplus food to those need, in order to ensure that resources are not wasted.

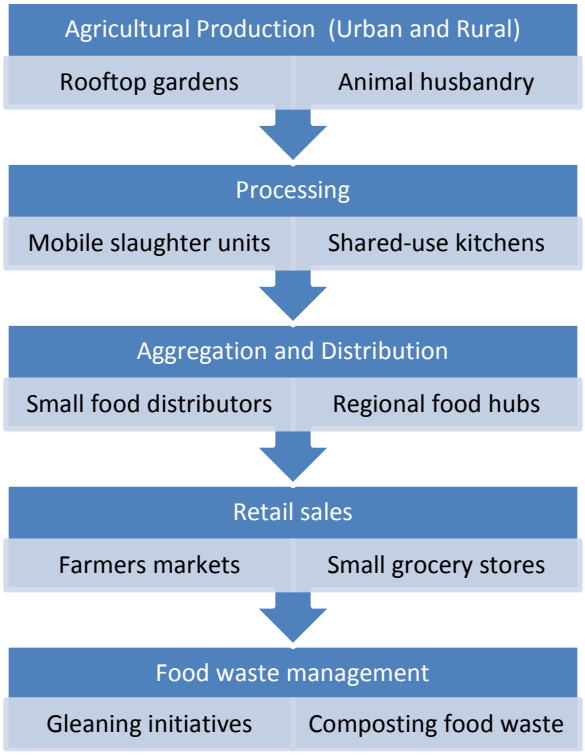
6. Using the Food System to Foster Economic Development Incorporating the ideas from this section can help cities see food system investment as a way to foster job creation and revenue, while working toward local environmental and sustainability goals.

PRODUCTION As discussed throughout this toolkit, food policy councils can promote various strategies and policies that improve the ability of small farmers to grow and produce food. This includes allowing food production through urban, rural, and suburban agriculture. Increased production in all of these locations should be encouraged to help feed our communities.

Urban agriculture is the production of food within a city, with techniques ranging from growing a pot of herbs on a balcony to maintaining large-scale greenhouses. Urban agriculture can help to further entrepreneurial food production, foster community building; increase food access, improve air quality, and reduce energy costs associated with the transportation of food over long distances.[1] The goal of urban agriculture is to create a short, sustainable food chain by producing, processing, and selling, food within a neighborhood or city.[2]

There are many challenges to urban food production, including access to land for urban agriculture and zoning restrictions on the production of certain food products. To this end, as discussed in Section III: Land Use Regulation, councils should make sure that their local zoning codes both allow and encourage agriculture production in urban areas. Section IV: Urban Agriculture also lists various strategies councils can employ to make it easier for urban farms to exist, including helping to get inputs such as water to these farms. More detailed information on policies to promote food production is presented elsewhere in this toolkit.

FIGURE II-1: FOOD SUPPLY CHAIN EXAMPLES OF EACH LEVEL



Though this toolkit focuses on urban agriculture and community gardening, it is important to keep in mind that local food policy councils can also play a role in helping to encourage and increase food production in suburban and rural areas. There are currently less barriers to food production outside of urban areas, but there may still be some things that local governments can do to improve access to land and to incentivize the production of food in rural and suburban areas. As the challenges faced in different areas are likely to be unique, we recommend that local food policy councils convene focus groups or conduct interviews with key stakeholders in order to learn what barriers may exist for local food production. For example, one area of need may be the protection of agricultural land from development. Section III: Land Use Regulation discusses ways to preserve farmland for future generations. With this knowledge, food policy councils will be better prepared to push for effective policy solutions to these barriers.

PROCESSING Access to food processing infrastructure is essential to building a sustainable local food system. Processing facilities allow food producers to provide a wider array of products, extend the shelf life of locally produced foods, and increase their income because they can sell value-added or processed foods at a higher price than raw products. Even minimal processing of foods, such as chopping and washing leafy greens, can help to add value and thus increase the take-home pay for growers and producers. Increased pay not only encourages more individuals to grow and produce food, but it also has an economic multiplier

[1] MAYOR'S OFFICE OF SUSTAINABILITY, *Chapter 2. Food Production: Regional and Urban Agriculture*, *in* OAKLAND FOOD SYSTEM ASSESSMENT 19 (2006), *available at* http://oaklandfoodsystem.pbworks.com/f/OFSA_Production.pdf.
[2] *Id.*

effect on the community, meaning that it benefits the community because more money is available to be spent locally. In addition, processing allows for increased utilization of raw commodities and livestock, which means the community experiences less waste, improves profitability and job creation, and decreases reliance on infrastructure outside of the region.

Examples of food processing infrastructure include cold storage facilities; shared-use food processing centers and agricultural facilities (for grading, storing, and packaging foods); grain milling facilities; dairy processing facilities (for milk bottling and cheese-making); and meat and poultry slaughter and processing facilities (including mobile processing facilities); and even certified community kitchens and kitchen incubators. Shared-use processing or cooking facilities may provide a more affordable option that can be utilized by many food producers. **North Carolina** has done extensive research in the area of shared-use processing facilities, and a summary of its findings is shown in the box below.[3]

Summit on Processing and Food System Infrastructure in North Carolina

The Center for Environmental Farming Systems held a summit in **North Carolina** to discuss ways to expand independent farmers' access to affordable, value-added processing and agricultural facilities while ensuring profitability and food safety. Summit participants came to the following conclusions:

1) The success of new shared-use facilities is highly dependent on a variety of factors, including:
   - location (proximity to food entrepreneurs and consumer markets),
   - client access to technical assistance and training in business management , and
   - availability of capital;
2) the improvement of supply chain management is necessary to enable sufficient aggregation and entry of farmers' products into local markets;
3) the confluence of federal, state, county, and local regulatory requirements, taken together, can impede development of and investment in small-scale facilities at the local level; and
4) there is a need for a "one-stop" shopping source of regulatory, educational, and technical assistance at the state level for farmers, food entrepreneurs, and food system businesses.

Source: *Processing & Food Systems Infrastructure*, CTR. FOR ENVTL. FARMING SYS., http://ncsustainablefood.wordpress.com/working-issue-groups/processing-food-systems-infrastructure (last visited Dec. 16, 2011).

Often, food processing capacity is one of the weakest links in the local food system, so this is an area where food policy councils can play a big role. Some tasks that food policy councils can undertake include:

- Ensuring that the zoning code allows for food processing to occur in or near urban areas, or creates designated food-processing districts, in order to decrease shipping time and costs for processing;
- pushing for legislation and regulations that allow for in-state meat and poultry slaughter inspections, as allowed under federal law,[4] and for legislation that allows for mobile poultry and meat slaughtering;

[3] *Processing & Food Systems Infrastructure*, CTR. FOR ENVTL. FARMING SYS., http://ncsustainablefood.wordpress.com/working-issue-groups/processing-food-systems-infrastructure (last visited Dec. 16, 2011).
[4] Poultry Products Inspection Act, 21 U.S.C.A. §§ 451-72 (2012); Meat Inspection Act, 21 U.S.C.A. §§ 601-95 (2012).

- encouraging local and state governments to provide funds that help to support food processing facilities, for example by footing the bill for needed processing (the **Vermont** legislature, for example, appropriated money to the State Department of Agriculture to purchase two mobile-processing facilities, one for poultry slaughtering and one for flash-freezing fruits and berries, in order to provide the infrastructure needed for their growers to get their foods to market);[5] and
- asking local governments to help support, through full funding or matching funds, the creation of community kitchens, shared processing facilities, and kitchen incubators.

AGGREGATION AND DISTRIBUTION Whether or not food items are processed, getting these products to market remains an issue. To meet this challenge, it is important to establish a strong food aggregation and distribution sector. As the demand for local food increases and small and mid-sized farmers respond by scaling up production, these farmers will need to move beyond direct sales of small quantities to larger transactions with restaurants, supermarkets, and other institutions. A local distribution sector that fosters these larger transactions and buys farmers' products in bulk and at competitive prices can help farmers continue to provide food for low-income communities and price-sensitive institutions.[6] In order for small producers to expand in an economically and logistically competitive way, their food must be transported in an effective and cost efficient manner. Since many food systems currently lack these needed regional aggregation and distribution systems, it is important for municipalities to think about implementing such systems.[7]

Aggregation and distribution services create a network that links small and mid-sized farmers and brings their food to wider markets. Aggregators source products from multiple farms in order to achieve volumes suitable for larger buyers. Various actors may fill the role of aggregator, including nonprofits, entrepreneurs, producer- or consumer-led cooperatives, or "food hubs." By collectively accessing such a middleman, small producers may be able to sell to customers they might not otherwise reach, while continuing to prioritize the interests of environmental, economic, and social sustainability.[8]

Many nonprofit organizations are working to address the lack of small-scale aggregation and distribution. For example, in **Boston, MA**, the Organic Renaissance Food Exchange (FoodEx) has created an online food exchange which provides aggregating, warehousing, and regional distribution for local foods and other goods including dry, refrigerated, or frozen products to get them from small, local farmers to large buyers, like colleges and universities.[9] Operating on the principle that no producer is too small, FoodEx works to strengthen and support the food system throughout the Northeast.[10]

Regional Food Hubs (RFHs) are also playing a role in streamlining local food system infrastructures. RFHs are centralized operations designed to bring together various actors from the supply chain, from processors to retailers, in order to strengthen the supply side of locally-produced food products. Through common management, technology, and shared facilities, RFHs are able to form networks of supply chain

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[5] VT. STAT. ANN. TIT. 6 § 3305(18) (West 2012).
[6] MAYOR'S OFFICE OF SUSTAINABILITY, *Chapter 2. Food Production: Regional and Urban Agriculture*, *in* OAKLAND FOOD SYSTEM ASSESSMENT 19 (2006), *available at* http://oaklandfoodsystem.pbworks.com/f/OFSA_Production.pdf.
[7] *Scaling Up: Meeting the Demand for Local Food*, CTR. FOR INTEGRATED AGRIC. SYS., http://www.cias.wisc.edu/farm-to-fork/scaling-up-meeting-the-demand-for-local-food (last visited May 2, 2012).
[8] *Id.*
[9] ORGANIC RENAISSANCE FOOD EXCHANGE, http://www.orfoodex.com/index.html (last visited Apr. 19, 2012).
[10] *Id.*

participants, creating economic efficiencies that would not be possible under a highly dispersed chain of actors.[11]

RFHs also facilitate the conversion of raw farm produce into a broad range of consumer products by providing farmers with storage space and equipment for light processing and packaging. Although fresh fruits and vegetables often make up the majority of RFH sales, value-added products such as jams, dried fruits, and meat and dairy products are also common. RFHs may sell products wholesale to local institutions, such as schools, universities, hospitals, and food service companies, as well as directly to consumers at farmers markets or other retail venues. Thus, RFHs make small-scale growers more viable and enhance the local economy through the creation of new agricultural businesses and jobs.[12] For example, the Local Food Hub, in **Charlottesville, VA**, helps small farmers connect their food products to local markets and provides educational programs to promote stewardship of the land and train the next generation of farmers. The Local Food Hub purchases fresh produce from more than 70 family farms within 100 miles of Charlottesville and distributes the food to more than 150 regional locations including public schools, institutions, restaurants, and markets.[13]

For more information regarding RFHs, visit the National Good Food Network's "Food Hub Center," which includes an extensive collection of resources and research related to food hubs.[14] Food policy councils can work in cooperation with these kinds of organizations RFHs to help ensure that aggregation and distribution services are available by:

Other Examples of Regional Food Hubs

GROWN Locally is a community farming cooperative in northeast **Iowa** that sells meats, poultry, eggs, fruits, vegetables, honey, and baked goods wholesale to distributors, restaurants, schools, hospitals, and retail stores. It is the first cooperative of local producers to become a qualified vendor for Sodexo and the first group to work with Sysco of Iowa.

Grasshoppers Distribution is a year-round, online local grocery service that provides a wide variety of fresh foods via delivery from over 60 **Kentucky** and southern **Indiana** family farms. Grasshoppers offers consumers a convenient, flexible, one-stop subscription service for local foods, and a trusted brand for sourcing healthy, sustainably produced foods. It also offers family farmers and food entrepreneurs a reliable market with guaranteed pricing.

Source: *Financing Food Hubs,* NAT'L GOOD FOOD NETWORK (2011), *available at* http://ngfn.org/resources/ngfn-cluster-calls/financing-food-hubs/Financing%20Food%20Hubs.pdf.

- Promoting food wholesalers who distribute local farm products to retail, commercial, manufacturing, and other establishments;
- helping to connect small and mid-size farmers with aggregation and distribution services; and

[11] *Regional Food Hub and Regional Food Hub Network*, OCCIDENTAL COLL. URBAN & ENVTL. POLICY INST., http://departments.oxy.edu/uepi/cfj/rfh.htm (last visited December 7, 2011).
[12] Cyndie Sirekis, *Food Hubs Build Jobs and Communities*, RURAL COMMUNITY BUILDING (June 2011), http://ruralcommunitybuilding.fb.org/2011/06/13/food-hubs-build-jobs-and-communities.
[13] *About Us,* LOCAL FOOD HUB, http://localfoodhub.org (last visited Apr. 19, 2012).
[14] *Food Hub Center*, NAT'L GOOD FOOD NETWORK, http://ngfn.org/resources/food-hubs (last visited December 7, 2011).

- endorsing laws that provide funding or otherwise make aggregation and distribution more affordable for small, regional networks.

Mobile Vending in Urban Communities

National grocery chains often have difficulty finding large parcels of affordable urban land, and independent groceries generally cannot afford to gamble on unproven locations. In response to the unmet need for fresh produce in **Chicago, IL**, Food Desert Action secured a bus donated from the Chicago Transit Authority and, with the help of Architecture for Humanity, transformed it into a mobile produce market called "Fresh Moves." Goodness Greeness, an organic food supplier, offers Fresh Moves a discount, enabling them to keep prices low across the board. The Fresh Moves bus began by running routes in Lawndale and Austin. Due to high demand, they have expanded into other areas as well.

Source: *Fresh Moves Mobile Grocery Store: An Innovative Solution To Food Deserts*, HUFFINGTON POST, Aug. 16, 2011, http://www.huffingtonpost.com/2011/06/16/fresh-moves-mobile-grocer_n_878414.html.

RETAIL Fresh and local foods are growing in popularity, and direct marketing of these items brings food producers a high rate of return. There are many types of alternative retail outlets that are great hubs of local food sales, including farmers markets, mobile markets, community-supported agriculture (CSA) programs, and small, local grocery stores. Independent retailers with flexible food procurement protocols and restaurants interested in local sourcing, particularly those with seasonal menus, are also possible retail outlets.[15] Finally, government agencies, schools, universities, hospitals and other institutions are purchasing local food more than ever before. Food policy councils should encourage the growth of these local retail outlets in order to increase access to healthy foods and improve market entry for local food producers.

1. Farmers Markets and Direct Marketing

Farmers markets provide farmers with a direct market outlet for their products and are an excellent way to link local farms with community members. Selling at farmers markets continues to be an important retail outlet for agricultural producers nationwide. The direct economic benefits of farmers markets include higher profits to the farmers/vendors, local job creation, and increased sales revenue.[16] According to a recent study, in **Iowa,** farmers markets generated 576 jobs and added roughly $38.4 million in sales to the state's economy in 2009.[17] Farmers markets also provide indirect economic benefits to the community, such as stimulating economic activity in business districts due to the influx of shoppers coming to the downtown area on market days. A 2002 survey of over 800 customers from a variety of indoor and open-air markets concluded that 60% of shoppers also visited nearby stores on the same day they came to the market.[18]

Food policy councils should work to ensure that local policies encourage the development and expansion of farmers markets, including:

- Ensuring that zoning codes allow for farmers markets in all residential and commercial areas; and

[15] JOSEPH NASR ET AL., METCALF FOOD SOLUTIONS, SCALING UP URBAN AGRICULTURE IN TORONTO: BUILDING THE INFRASTRUCTURE (2010), *available at* http://metcalffoundation.com/wp-content/uploads/2011/05/scaling-urban-agriculture.pdf.
[16] Agriculture Marketing Services, *Farmers' Markets and Local Food Marketing*, USDA., http://www.ams.usda.gov (last visited Dec. 16, 2011).
[17] IOWA DEP'T OF AGRIC. & LAND STEWARDSHIP, CONSUMERS, VENDORS, AND THE ECONOMIC IMPORTANCE OF IOWA FARMERS MARKETS: AN ECONOMIC IMPACT SURVEY ANALYSIS (Jan. 2010), *available at* http://www.agriculture.state.ia.us/Horticulture_and_FarmersMarkets/pdfs/FarmersMarketEIS2009.pdf.
[18] PROJECT FOR PUBLIC SPACES, MEASURING THE IMPACT OF PUBLIC MARKETS AND FARMERS MARKETS ON LOCAL ECONOMIES, http://www.pps.org/articles/measuring-the-impact-of-public-markets-and-farmers-markets-on-local-economies (last visited Jan. 5, 2012).

- verifying that farmers markets are allowed to operate without local permits; or, if permits are needed, that they are of an appropriate cost and level of sophistication for farmers markets (as opposed to grocery stores or large businesses).

2. Mobile Vending Mobile food vending encompasses everything from mobile farmers markets and mobile grocery stores to food trucks and produce carts. Mobile markets or groceries are trucks that bring food (e.g. fresh produce, household staples, and prepared foods) into underserved communities. Mobile vending not only makes fresh food accessible to people with few other options, but it can also increase revenue by providing an outlet for sales of locally-produced foods outside of the immediate community. More importantly, mobile markets and food trucks are often less costly to create than stationary restaurants or grocery stores, so they offer an avenue to business development for new entrepreneurs.

The terms *food truck* and *food cart* refer to mobile businesses resembling restaurants-on-wheels. Recently, these have become very popular in cities from Boston to New York to Los Angeles, and have proven to be an inexpensive way to start up a restaurant business. Successful food truck businesses have the potential to become full-fledged restaurants after having accumulated enough capital and name recognition. For general knowledge on how to start a mobile food business read *Entrepreneur* magazine's "Food Trucks 101: How to Start a Mobile Food Business."[19] However, most cities and states have their own rules for starting a mobile food business, so venturing on your local government's website for specific instructions is most helpful.

There are various ways for food policy councils to encourage mobile vending, including:

- Advocating for zoning rules that allow mobile vendors to sell fruits and vegetables (as well as other foods) in the city, particularly in areas where there is limited access to healthy foods;
- promoting the creation of permits that include different types of mobile vending so that these vendors are authorized to operate;
- connecting potential mobile market vendors with grant-giving organizations whose grants will help cover start up costs or operating costs that exceed their proceeds; and
- encouraging partnerships with private consulting groups who may provide vendors with technical assistance, entrepreneurship training, and strategic advice regarding location and hours.

3. Community-Supported Agriculture Community-supported agriculture programs (CSAs) connect consumers and growers in a mutually beneficial relationship. Members, also called shareholders, pay a farmer in advance for portions of the harvest, which often come as periodic deliveries of fruits or vegetables, but can also include meat, eggs, milk, baked goods, flowers, or other farm products. Consumers benefit by receiving fresh, high-quality food products, and learning about new foods and sustainable agriculture. Farmers benefit from having a secure market for their crops and receiving advance payments. The advance payments allow farmers to cover the steep initial costs incurred early in the growing season and also provide some insurance against risks that are involved in agriculture (e.g., a bad season).[20]

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[19] ENTREPRENEUR PRESS & RICH MINTZER, *Food Trucks 101: How to Start a Mobile Food Business*, *in* START YOUR OWN FOOD TRUCK BUSINESS: CART, TRAILER, KIOSK, STANDARD AND GOURMET TRUCKS, MOBILE CATERING AND BUSTAURANT (2011) *available at* http://www.entrepreneur.com/article/220060.

[20] CMTY. FOOD SEC. COALITION, COMMUNITY FOOD SECURITY PROGRAMS: WHAT DO THEY LOOK LIKE?, *available at* http://www.foodsecurity.org/CFS_projects.pdf (last visited June 7, 2012).

Often, CSA farmers can support themselves entirely through the program, though some supplement their income by selling to local restaurants or at farmers markets.[21]

Grub Box is a modified CSA operating under the partnership of non-profit organization People's Grocery and Dig Deep Farms & Produce. Grub Box specifically aims to provide for low-income residents by offering four sizes of affordable boxes from Extra Small ($10/box) to Large ($25/box). Organizations can sponsor their own weekly pick-up location, and the CSA also offers some home deliveries to the disabled or elderly. Payments can be made with cash, money order, check, credit, or EBT, and customers can choose from various payment plans.

Source: *Frequently Asked Questions*, PEOPLE'S GROCERY, http://www.peoplesgrocery.org/article.php?story=ProgramInfo (last visited June 22, 2012).

4. Small Grocery Stores Many communities do not have an appropriate site or lack the market strength to support a large supermarket. In these areas, citizens often make the majority of their food purchases at small neighborhood stores, convenience stores, gas stations, and bodegas. Local farms can contract with these smaller stores, either independently or through RFHs, to provide raw and/or processed food products for retail. Because smaller stores require less inventory and selection than full-scale grocery stores, small farms are often able to produce enough food to supply these stores. Many urban neighborhoods also have small independent ethnic markets that specialize in the sale of fresh produce and target certain ethnic groups' needs. Local farms may want to identify the specific produce requested by those markets, as they may be able to grow and supply the specific specialty items sought by these markets.

5. Local Food Procurement by Institutions In addition to the aforementioned retail outlets, local farmers may also sell their products to governmental agencies, schools, and other institutions. Many such agencies and institutions have started to implement local food preferences in their procurement policies, meaning that they try to purchase more local foods, even if they are slightly more expensive than foods sold by larger national or global distributors. Food policy councils should encourage local government agencies and institutions, such as hospitals, to update their procurement processes in order to require and/or encourage local food procurement. Local food preferences support local farmers, producers, and processors, and sustain the local economy by keeping institutional food purchasing dollars within the community.[22]

FOOD WASTE

In a well-constructed food system, every element of the food supply chain contributes to the improvement of the food system. Despite high rates of hunger and food insecurity, recent years have seen huge growth in the amount of food that goes to waste. Food policy councils can play a role in creating better local policies around food waste, including promoting both policies that allow for the gleaning, donation, and re-sale of unused food products and policies that support composting as a way to utilize food waste to help produce new food products.

[21] LYDIA OBERHOLTZER, COMMUNITY SUPPORTED AGRICULTURE IN THE MID-ATLANTIC REGION: RESULTS OF A SHAREHOLDER SURVEY AND FARMER INTERVIEWS (July 2004), *available at* http://www.winrock.org/wallace/wallacecenter/documents/wc-CSAReport.pdf.

[22] FOOD SYS. INFRASTRUCTURE WORK GRP., INSTITUTIONAL FOOD PURCHASING: MICHIGAN GOOD FOOD WORK GROUP REPORT SERIES REPORT NO. 3 OF 5 (Nov. 2010), *available at* http://mlui.org/downloads/InstFoodPurchasingReport.pdf.

First, food policy councils can support enterprising solutions to utilize surplus food by making it available to those in need. Many cities now have nonprofits or networks involved in gleaning, which means taking produce or crops that are left over after fields have been harvested or from food service programs and donating those food items to nonprofits, food pantries, and shelters. Other organizations have identified and piloted other innovative ways to use unused food. For example, rather than dispose of unused food, The Campus Kitchens Project, one of the DC Central Kitchen's satellite programs in **Washington, DC**, has partnered with 31 high schools, colleges, and universities around the country to help turn leftover food from cafeterias and food service businesses into complete meals for the hungry and homeless.[23] Similarly, in **Boston, MA**, Food for Free rescues food from wholesale distributors, grocery stores, farms, farmers markets, CSA distribution sites, bakeries, and other retailers, and distributes it to isolated seniors and people with disabilities.[24]

New York Local Food Procurement Regulations

Over the past 30 years, **New York** has passed several laws authorizing and encouraging governmental procurement that preferences NY products. The legislation was first directed at schools, then was expanded to include state agencies (as well as the State University system), and now encompasses local municipal governments as well. Federal rules were recently changed to make it easier to encourage local purchasing at K-12 schools as well, by saying that schools may exercise a preference for local foods when they are using federal dollars provided through the National School Lunch Program.

Source: N.Y. State Council on Food Policy, Annual Summer Meeting Minutes (June 28, 2010), *available at* http://www.nyscfp.org/docs/activities/NYSCFP_PanelMins_6_28_10.pdf.

Federal tax credits are available for those who make charitable donations of food, and food policy councils can help to educate organizations and to ensure that they take advantage of these credits.[25] In addition, state and local governments should be encouraged to create additional tax credits to encourage these beneficial uses of food that would otherwise go to waste. For example, **Oregon** has created a crop donation tax credit that gives a credit to a corporation or individual who donates crops to a gleaning cooperative, food bank, or other nonprofit organization.[26] Other states have recently passed or considered passing additional incentives for those who donate excess crops or food products to nonprofit organizations. Food policy councils can work with government agencies to encourage the passage of such policies.

Further, food policy councils should help educate those who are interested in donating food products about the legal protections in place for food donors. At the federal level, the *Bill Emerson Good Samaritan Food Donation Act* protects citizens, businesses, and nonprofit organizations that donate, recover, and distribute excess food.[27] The Act provides refuge from civil and criminal liability for those who donate or distribute such food, absent gross negligence and/or intentional misconduct, so long as the food is wholesome and meets all federal, state, and local laws regarding quality and labeling standards.[28] Some states have also gone further to increase the protections available or the classes of food donors protected. For example, **Massachusetts** provides additional protection from civil or criminal liability for a food donor or a

[23] THE CAMPUS KITCHENS PROJECT, http://www.campuskitchens.org/ (last visited April 19, 2012).
[24] FOOD FOR FREE, http://www.foodforfree.org/ (last visited April 19, 2012).
[25] 26 U.S.C.A. § 170 (e)(3)(C) (2011).
[26] OR. REV. STAT. § 315.156 (2012). North Carolina, Colorado, and Arizona have similar tax incentive programs.
[27] 42 U.S.C.A. § 1791 (2011).
[28] *Id.*

nonprofit organization that distributes food either for no charge or "at cost," so long as the food complies with state health department regulations.[29] Food policy councils should help to educate local organizations about these rules and work with local and state governments to expand protections for food donors.

In sum, food policy councils can seek to decrease the amount of food that goes to waste in their communities and help those in need by:

- Raising awareness among potential food donors and potential distributing organizations that the federal *Bill Emerson Good Samaritan Food Donation Act* (as well as various state "Good Samaritan" acts) protect against civil and criminal liability;
- pushing for the passage of additional local and state tax credits for these organizations and disseminating information about existing tax credits or incentives for organizations that donate their unused foods; and
- developing policies that encourage potential donors to connect with organizations that are actively repurposing food waste.

In addition to unused food that can be collected and distributed, food waste that is no longer safe to eat can be used as compost. For more information on composting, see Section VII: Environmental Sustainability.

USING THE FOOD SYSTEM TO FOSTER ECONOMIC DEVELOPMENT

Improvements to the local food system can have a huge impact on economic development. By transitioning to a locally-focused, self-sustaining food system, communities can create desirable jobs via new opportunities in food production, processing, distribution, marketing, and retail. These potential economic development outcomes could also serve as some of the strongest talking points to garner support for food system investment by local government actors. To create opportunities for improvements to the local food system, food policy councils can initiate economic development programs that encourage development in the local food system, offer assistance to individual food and processing businesses, and provide skills training around food system areas of need.

In general, economic development programs consist of a variety of initiatives aimed at helping communities support businesses development or expansion.[30] When targeted towards the food system, these programs also have great potential to create new wealth and achieve a range of goals, including increasing food access and reducing environmental impacts. Generally, economic development initiatives fall into the following categories:

- **Business Attraction** strategies include tax abatements, infrastructure improvements, and marketing schemes designed to reinforce a positive image for an area, making the area more appealing to new businesses.[31]
- **Business Assistance** programs support existing businesses in their growth and expansion, for example by connecting small businesses with resources to aid in financial planning, marketing, product development, and accounting, and by coordinating business financing.[32]

[29] MASS. GEN. LAWS ch. 94, § 328 (2011).
[30] LISA M. FELDSTEIN ET AL., *Types of Community Economic Development Programs*, *in* ECONOMIC DEVELOPMENT AND REDEVELOPMENT: A TOOLKIT FOR BUILDING HEALTHY, VIBRANT COMMUNITIES (2007), *available at* www.phlpnet.org/system/files/EcDevToolkit.pdf.
[31] *Id.*
[32] *Id.*

- **Business Development** initiatives work to ease the entry of new businesses into a community by offering assistance in developing business and marketing plans or acquiring start-up financing.[33]
- **Employment and Job Training Programs** aim to give workers the skills they need in order to receive high-quality employment opportunities and can help to prepare a workforce for new businesses in the community.[34]

Improving every step of the supply chain, including production, processing, distribution, retail sales, and the utilization of food waste creates a sustainable, robust, and healthy food system. As noted above, these improvements can stimulate economic growth and bring new wealth to the community. Marrying the concepts of food system development and economic development can help ensure that economic development tools are used to improve the food system and that food system investments are viewed as economic development investments by the local government. Viewing food system issues as economic development issues helps to guarantee that local government will prioritize these issues and devote resources to the food system.

The New Markets Tax Credit (NMTC)

Run by the Treasury Department's Community Development Financial Institutions (CDFIs) Fund, the NMTC program provides credits (totaling 39 percent of the original investment over a period of seven years) against federal income taxes for qualified investment in low-income community development.

Under the Obama Administration's Healthy Food Financing Initiative, the NMTC program has received $250 million, $25 million of which will be used to provide financial assistance to CDFIs devoted to helping finance the creation of new healthy food options.

Source: *Community Development Financial Institution Fund*, NEW MKT. TAX CREDIT PROGRAM, http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited May 3, 2011).

[33] *Id.*
[34] *Id.*

SECTION III: LAND USE REGULATION

Land use regulation can have a significant impact on local food systems by determining things like what land may be used for agricultural purposes, the location of fast food restaurants, and whether farmers markets are allowed to operate in certain parts of the municipality. Local governments set land use policy by using their authority to enact regulations, codes, or ordinances, but they are also constrained by the requirements of zoning-enabling legislation at the state level, as well as local comprehensive plans, zoning codes, zoning ordinances, subdivision regulations, environmental land use regulations, and other forms of regulations that control the use of land.[*]

OVERVIEW Land use regulation can significantly impact local food systems. This section presents an overview of basic zoning and land use law concepts, and discusses ways that food policy councils can advocate to improve the existing legal scheme governing land use in order to advance their local food policy council's goals.

1. Basic Concepts of Land Use Regulation This subsection introduces the background concepts of land use regulation - for example, how municipalities get the power to regulate land use.

2. Comprehensive Plans Comprehensive plans, which dictate how land is to be used in a given area, can include food-related goals.

3. Zoning Primer Zoning is the central way that governments regulate land use and can be utilized by food policy councils in order to improve the local food system.

4. Improving Local Food Systems Food policy councils may want to work with city officials to implement land use policies that create walkable neighborhoods, increase the availability of fresh foods, reduce the density of fast food, and control the food that is available near schools.

5. Protecting Agricultural Land Food policy councils should be aware of other land use tools that can be used to preserve farmland in urban, suburban, and rural areas.

BASIC CONCEPTS OF LAND USE REGULATION

Government bodies enact land use regulations to control permissible uses of land in order to achieve a range of goals.[1] State governments have the authority to enact these kinds of regulations through what is known as their general *police power*.[2] State governments, in turn, generally give local governments the authority to enact land use regulations. In other words, when a local government regulates land use, it is because the state government has delegated, or committed, this power and function to the local government, so it may act in place of the state. For a more detailed explanation on the delegation of laws please refer to the Section I: General Legal Setting.

Public land use regulation focuses on the following four aspects of land use:

1. **Type of use**, including agricultural, commercial, industrial, or residential;
2. **density of use**, including regulations regarding the height, width, bulk, or environmental impact of the physical structures on the land;
3. **aesthetic impact of use**, including the design and placement of structures on the land; and
4. **effect of use on the community's cultural and social values**, including identifying where the community values lie with respect to things like community conflicts over the development of

[*] Thank you to Ming-Qi Chu and Shanai Watson at DLA Piper New York for assistance with verifying sources in this section.

[1] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 8 (Aen. W. Webster et al. eds., 2d ed. 2004).

[2] *Id.* at 3.

land for urban farms.[3]

Zoning The core component of modern land use regulation is known as *comprehensive zoning* (*zoning*). Historically, this term has two main uses; (1) zoning is a particular kind of land use regulation, which involves breaking up a city or town into different zones and declaring only certain land uses to be permissible in certain of these zones, and (2) because of zoning's central place in land use regulation, the term is sometimes used as a title to include all land use regulation.[4] In this toolkit, however, zoning will be used in its limited sense to refer to the particular kind of land use regulation involving zones. The terms *land use regulation* or *land use planning* will refer to the more expansive idea of rational, public control of land.

Police Power The authority to regulate the use and development of land is derived from the police power of the state.[5] *Police power* is the inherent and complete power of a sovereign, such as a state government, "to make all laws necessary and proper to preserve the public security, order, health, morality, and justice."[6] In the United States, the police power is a power of the states, *not* of the municipalities found within these states. Before a municipality may use this power, the state must delegate, or give, this power to municipalities in that state.

The police power is broad, yet limited by the Fifth and Fourteenth Amendments of the United States Constitution, which protect the rights of individuals.[7] In particular, land use regulations made through the police power are legal only "(1) for valid public purposes, (2) through means reasonably tailored to those purposes, and (3) in a manner that does not impose excessive costs on individuals."[8] Courts generally will not step in to prohibit uses of the police power that are not clearly illegal.[9] Essentially, if there is a logical argument to be made for why a particular land use regulation is permissible, even if there are very persuasive opposing arguments, then the governing body generally has power to pass the regulation.

How Local Governments Get the Power to Regulate Land As described in more detail in Section XX: General Legal Setting, local governments do not have any inherent authority, instead, they only have the authority that is given to them by the state government. State constitutional provisions or enabling statutes are needed in order for local governments to get the power to act in certain areas, including land use regulation and zoning. There is wide variation between states regarding the amount of authority given to local governments. However, states generally delegate a significant amount of power, particularly with regard to land use regulation, to local governments.

In accordance with Dillon's Rule (based on case law decided nearly a century ago), the *police power*–which includes the power to regulate land use–belongs to the state government.[10] But all states, with the exception

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[3] *Id.* at 1.
[4] *Id.* at 149.
[5] *Id.* at 3.
[6] *Zoning*, BLACK'S LAW DICTIONARY (9th ed. 2009). Normally, if the government wants to take private property for public use, it must provide compensation, as required by the Fifth Amendment to the Constitution. However, when the government restrains use of private property with the police power, it is *not* obliged to compensate the owner for the loss of a beneficial use.
[7] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 3 (Aen. W. Webster et al. eds., 2d ed. 2004). The Fifth Amendment prohibits the taking of private property without just compensation, and the Fourteenth Amendment prohibits deprivation of life, liberty, or property without due process of law. It also guarantees all persons equal protection of the laws.
[8] *Id.* at 4.
[9] *Id.*
[10] Diane Lang, *Dillon's Rule … and the Birth of Home Rule*, MUN. REP., 1 Dec. 1999, *available at* http://nmml.org/wp-content/uploads/Dillon%E2%80%99s-Rule-The-Birth-of-Home-Rule.pdf.

of Hawaii, have delegated the majority of this land use power to local governments in some way.[11] Essentially, local governments get the police power needed to regulate land use in one of two ways:

1. State enabling statutes, which are limited in that they authorize localities to have power only over land use regulation,[12] or
2. General delegation of the police power to local governments through constitutional or legislative acts of the state government, which expands municipalities' power beyond land use regulation by giving them broad grants of power known as Home Rule.

While the two rules normally lead to different outcomes in assessing a locality's scope of power, because localities are generally given so much power regarding to land use, this is one area where the impact of the two ways of authorizing local power do not diverge as much as they usually would. In states that delegate this power through enabling statutes, in accordance with Dillon's Rule (described more fully in Section I: General Legal Setting), localities only have the powers explicitly granted to them by the state, with the presumption that a locality does not have a specific power unless it is explicitly granted to them. Most zoning enabling statutes are based on a model zoning enabling act that was published by the federal government (*A Standard State Zoning Enabling Act*), though there may be some variations.[13] These enabling acts are important because they permit local governments to enact laws regarding land use, but only "in a certain way and through certain mechanisms."[14] State enabling legislation "will include definitions, a grant of authority, an organizational framework, a set of procedures, and, often, a set of duties that accompanies the delegation."[15] In other words, states generally give land use powers to local governments, but local governments do not consequently have absolute power.

On the other hand, if your city's land use power comes from a general grant of Home Rule authority from the state government, then it is presumed that the local government has the authority to act without any additional explicit state authorization. In this case, the local government may have created a Home Rule Charter, which is like a constitution for the city. The Home Rule Charter "may have different procedures and institutional structures than state legislation and will generally govern in lieu of state legislation."[16] However, it is important to keep in mind that even if your state grants power to local governments for land use regulation via Home Rule authority, this does not mean that the local government has general Home Rule authority for all types of regulations (e.g., health regulations might not have Home Rule authority), so check with your local or state governments regarding each area of law. It is also important to remember that even if your city has a Home Rule Charter, your charter may simply require your municipality to follow state statutes.[17]

It is important to know how your municipality derives its land use power because any recommendations for changes to local zoning and planning rules will have to conform to the requirements of the grant of Home Rule authority, the local Home Rule Charter, or the state enabling statute. Understanding Dillon's Rule and

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[11] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 5 (Aen. W. Webster et al. eds., 2d ed. 2004). Hawaii has retained most of its zoning power at the state level. *Id.*

[12] *Id.* at 5-6.

[13] *Id.* at 5.

[14] Stuart Meck, *Model Planning and Zoning Enabling Legislation: A Short History*, *in* MODERNIZING STATE PLANNING STATUTES 1, 1 (Stuart Meck ed., 1996), *available at* http://www.planning.org/growingsmart/pdf/PAS462.pdf.

[15] *Id.*

[16] *Id.*

[17] *Id.*

the role of enabling statutes and grants of Home Rule authority will help you to optimize the time you spend in working to forge changes to local land use regulations that will impact your food policy goals. However your municipality or county gets the authority to use the police power to implement land use regulations, it must next enact codes or ordinances to utilize this power, but it will always be constrained by the requirements of its zoning enabling legislation or Home Rule Charter. These regulations can take the form of comprehensive plans, zoning codes, zoning ordinances, subdivision regulations, environmental land use regulations, and other forms of land use rules.[18] The next sections will introduce some of the major types of land use regulations.

COMPREHENSIVE PLANS Land use planning is a fundamental concept in land use regulation. It is the process by which a state or municipality regulates the physical environment of the community and is a prerequisite to land use regulation.[19] Through land use planning, government guides the development of the community in pursuit of common goals and values.[20] Generally, local governments must only engage in formal planning (e.g., creating a formal comprehensive plan) if required by state statute.[21] Formal planning requirements are the exception, not the rule. Most courts have held that the planning requirement can instead be met through comprehensive zoning, described below.[22]

For many localities, comprehensive planning is also a goal, involving much more than the regulation of land use through laws. Planning, in this sense, "works to improve the welfare of people and their communities by creating more convenient, equitable, healthful, efficient, and attractive places for present and future generations."[23] From the planner's perspective, land use regulation can be a tool used in service of these goals, meaning that planning is the focus and not simply a statutory condition to protect against abusive laws.

Remember that whether or not your state requires formal planning, the requirement of planning is nevertheless always a prerequisite to zoning and other land use regulation. It is a broader process than the techniques we will discuss below, such as zoning.

If your locality is required to engage in formal land use planning, the requirement will generally be found in the state enabling legislation. As a result of the formal planning requirement, your municipality will necessarily have a *comprehensive plan*, sometimes called a *master plan*.[24] Generally, a comprehensive plan "makes predictions of needs and resources for an estimated future period, proposes goals for orderly growth and development, and suggests methods

Seattle, WA's 2005 Comprehensive Plan requires at least one community garden for every 2,500 households in an urban village or neighborhood.

Source: DEP'T OF PLAN. & DEV., URBAN VILLAGE, *in* SEATTLE'S COMPREHENSIVE PLAN, app. B (JAN. 2005), *available at* http://www.seattle.gov/dpd/cms/groups/pan/@pan/@plan/@proj/documents/Web_Informational/cos_004510.pdf.

[18] *See, generally,* PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW (Aen. W. Webster et al. eds., 2d ed. 2004).
[19] *Id.* at 25.
[20] *Id.*
[21] *Id.*
[22] *Id.* at 25-26.
[23] *What is Planning?,* AM. PLAN. ASS'N, *available at* http://www.planning.org/aboutplanning/whatisplanning.htm (last visited Dec. 8, 2011).
[24] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 25 (Aen. W. Webster et al. eds., 2d ed. 2004).

for implementation and achievement of those goals."[25] You should start your work by taking a look at your comprehensive plan.

If your locality does not require formal land use planning, then planning must be evident in your land use laws themselves. Officials exercising the power to zone must have "a 'generalized conception' of how the power shall be used, which may be 'exhibited in the (comprehensive) zoning ordinance itself,' rather than in a separate written plan."[26] Therefore, your zoning ordinances must themselves be comprehensive, and must show that they were informed by, and will put into effect, a comprehensive plan. This is necessary because if the zoning code was done in a piecemeal fashion and there were no formal plan, then the zoning code could be vulnerable to legal challenges.

In addition, it is important to note that even though a formal comprehensive plan is not required, your local government may still have one, and it may be considered legally binding. To determine if your locality has a formal plan, or to read it if it exists, you should check your planning commission's website or your city's code of ordinances. Also, zoning ordinances may be found on the website of your city's development authority, zoning code commission, the office of zoning, or similar office. There are a few ways in which a food policy council could get involved with the local land use plan:

- If you live in a municipality where a formal plan is required or where one has been adopted and has legal status, consider starting a campaign to amend the formal comprehensive plan to include food-related goals; and
- if you live in a locality without a formal plan, but your municipality has the power to enact one (e.g., you have a permissive planning enabling law or Home Rule powers), you might want to start a campaign to get one enacted and work to ensure that it includes the food system goals that are important to your food policy council.

In states that require cities to have a comprehensive plan, adoption of the plan is a prerequisite to the enactment of zoning ordinances. Generally, once a plan is adopted (whether required or not) it serves as a "constitution for all future development."[27] Zoning ordinances, subdivision regulations, and other land use regulations may be tested for their consistency with the plan and may even be invalidated if they do not comply with the plan. In addition, the construction of streets, public utilities, and other public facilities must usually be approved by the planning agency for consistency with the plan, although a legislative body, like a city council, may be able to overrule a planning agency's disapproval by a super majority vote.[28] In states where a plan is not required, adoption of a plan will affect all subsequent land use law, but it may not affect laws that were already in effect at the time of creation of the plan.

Role of the Local Planning Commission States generally require that local land use planning be carried out by an independent public commission, a majority of whose members are private citizens.[29] These commissions are generally called *local planning commissions*. The primary function of a local planning commission is to give advice to the governing body (e.g., the city council) concerning land use development in the community. This advice usually takes two forms: (1) adopting formal plans that serve as

[25] *Id.* (internal citations omitted).
[26] *Id.* at 26 (quoting Bell v. City of Elkhorn, 364 N.W.2d 144, 147 (Wis. 1985)).
[27] *Id.* at 42 (quoting O'Loane v. O'Rourke, 42 Cal. Rptr. 283, 288 (Cal Dist. Ct. App. 1965)).
[28] *Id.*
[29] *Id.* at 35.

recommendations for the development and use of land, and (2) reviewing requests for modifications to existing land use regulations through the enactment of amendments to the zoning ordinance.[30]

Most states do not give planning commissions the authority to directly enact or modify land use regulations, as this power is generally reserved for the local city council or local legislative body.[31] Instead, planning commissions provide detailed guidance and advice for local governments. *If your food policy council wants to change your city's comprehensive plan or to update local zoning ordinances, you will likely have to deal with your planning commission. You may want to find out who is on it and get some information about local planning politics.*

How to Use Comprehensive Plans for Food System Goals Efforts to include food system goals in comprehensive planning can be important because, as noted above, formal comprehensive plans have the force of law. Less formal plans may not have the force of law, but they may still be an important means through which cities can show their support for food-related goals. It is important that the food system goals be attainable and fiscally realistic, so that there will be real political will to make land use decisions with those goals in mind.

One way in which cities have promoted better food system outcomes is by including food-related goals in their formal comprehensive plans and planning processes. For example, the comprehensive plan for **Seattle, WA**, requires at least one community garden for every 2,500 households in an urban village or neighborhood.[32] **Milwaukee, WI**, includes urban agriculture advocates on almost every committee for its comprehensive plan revision process. The city published its plan in 2010. One of its listed policies is to: "Support temporary or permanent reuse of the city's vacant, abandoned, underutilized, and open space lands for functional, environmental, and productive uses such as community gardens, urban orchards, stormwater management, energy generation, and neighborhood parks and open space," through tasks such as inventorying available properties to find ways to promote these beneficial uses.[33]

Another avenue to including food system issues in comprehensive plans is to work with your city to put together a *sustainability plan*, which helps the city identify and target goals regarding environmental sustainability. Food-related goals are often included in such plans since promoting local foods can improve sustainability. The Office of Environmental Quality in **Kansas City, MO**, included a detailed set of recommendations to promote urban agriculture in its Climate Protection Plan: "The City should work with Kansas City Community Gardens (KCCG) and Kansas City Center for Urban Agriculture (KCCUA) to: locate demonstration garden sites; assist in site preparation; offer incentives for urban agriculture activities; and provide funding for gardening workshops in 2007-2008 budget."[34] The Sustainability Plan published in 2009 by the **Baltimore, MD** Commission on Sustainability addresses both production and distribution of local food, and one of its stated goals is to make Baltimore a leader in sustainable, local food systems. Specifically, it makes recommendations to increase the percentage of land under cultivation for agricultural purposes and to formulate an urban agriculture plan.[35]

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[30] *Id.* at 36.
[31] *Id.*
[32] DEP'T OF PLAN. & DEV., URBAN VILLAGE, *in* SEATTLE'S COMPREHENSIVE PLAN, app. B UV-A4 (JAN. 2005), *available at* http://www.seattle.gov/dpd/cms/groups/pan/@pan/@plan/@proj/documents/Web_Informational/cos_004510.pdf.
[33] DEP'T OF CITY DEV., MILWAUKEE CITYWIDE POLICY PLAN 123 (Mar. 2010), *available at* http://city.milwaukee.gov/ImageLibrary/Groups/cityDCD/planning/plans/Citywide/plan/Natural.pdf.
[34] KAN. CITY OFFICE OF ENVTL. PROT., CLIMATE PROTECTION PLAN, PHASE 1 RECOMMENDATIONS FOR GREENHOUSE GAS REDUCTION MEASURES, Nov. 2007, *available at* http://www.marc.org/environment/airq/pdf/kcmostatus11-07.pdf.
[35] BALT. COMM. ON SUSTAINABILITY, BALTIMORE SUSTAINABILITY PLAN 74-75 (2009), *available at* http://www.baltimorecity.gov/Portals/0/agencies/planning/sustainability/public%20downloads/051509_BCS-001SustainabilityReport.pdf.

Comprehensive plans help shape the long-term goals of a municipality. Food policy councils should work with local government to ensure that long-term food system goals are included in the comprehensive plan, helping to build a stronger food system and a healthier community.

ZONING PRIMER

Zoning Basics Zoning is one of the main ways that governments regulate land use. A *zoning code* divides land into physical districts, or zones, according to the present and potential use of the properties in each zone, and then allows certain types of land uses uniformly within certain districts. Regulations and allowed uses vary from district to district.[36] The general idea is that certain land uses are incompatible with each other and should therefore be separated into different districts.[37] These are some common zoning districts:

TABLE III-1: EXAMPLE ZONING DISTRICTS & USES

ZONING DISTRICT	ALLOWED USES
Residential	Predominately housing
Industrial	Industry, factories
Commercial	Retail, wholesale, financial businesses
Agricultural	Usually outside cities; allows large-scale crops & animals/livestock
Open Space	Areas protected from development
Special	E.g., power plants, stadiums
Mixed residential/ commercial	Housing with retail
Mixed use	Allows uses that would usually be confined to separate zones

After dividing the land into zones, the zoning code declares what you can do and how you can do it in each zone. Each zone has a set of rules the zoning code regulates, for instance, the construction, alteration, repair, or use of buildings, structures, or land within each district.[38] In addition, bulk, density, setbacks, and dimensions are regulated.[39] Most ordinances use a system called *permissive zoning*, in which the zoning ordinance identifies the permitted uses for each district. Any uses that are not expressly permitted are prohibited.[40]

Zoning rules can have a variety of impacts on your local food system. For example, some zoning codes might prohibit commercial agriculture in residential zones, making it impossible to have community gardens or urban farms in those areas. Zoning rules might also impact the food system by not listing activities such as food sales as a legal commercial activity, which would make the selling of produce grown in a local garden illegal in that zone. Zoning rules might also say what kinds of structures are allowed on plots, which could prohibit the construction of greenhouses or hoophouses. Zoning rules may control your ability to keep hens for eggs. Section IV: Urban Agriculture discusses some of these impediments to urban agricultural activities in more detail, but it is important to remember that most of these impediments result from the general operation of land use regulations.

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[36] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 149 (Aen. W. Webster et al. eds., 2d ed. 2004).
[37] *Id.* This idea is not wholly accepted today, and the idea that multiple-use districts might be desirable is quite popular.
[38] *Id.*
[39] DWIGHT H. MERRIAM, THE COMPLETE GUIDE TO ZONING: HOW TO NAVIGATE THE COMPLEX AND EXPENSIVE MAZE OF ZONING, PLANNING, ENVIRONMENTAL, AND LAND-USE LAWS 3, 5 (McGraw-Hill, 1st ed. 2004).
[40] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 149 (Aen. W. Webster et al. eds., 2d ed. 2004).

Nonconforming Uses and Variances It is important to keep in mind that zoning is prospective in nature and thus is best suited for the regulation of new uses of previously undeveloped land. But what do you do if, say, there is a factory in an area that is being zoned for residential use? Under the general constitutional protections mentioned briefly above, you cannot require the factory to shut down or relocate without paying compensation to the owner because you would be taking his or her property. Thus, when comprehensive zoning is imposed on already developed areas, allowances need to be made for nonconforming uses, in order to take account of the development that is already in place.[41]

The idea of nonconforming use is an important one to keep in mind. It limits the power of zoning. If, for instance, you created a zoning ordinance that would prohibit fast food restaurants near schools, an existing fast food restaurant would not be forced to shut down, instead it would be grandfathered in as a nonconforming use. No new fast food restaurants could be built in the prohibited zone, and existing ones probably would not be able to expand or substantially renovate their buildings, but existing nonconforming uses must be allowed to remain for a reasonable amount of time.

A *variance* is similar to a nonconforming use. It allows someone to do something the zoning code would otherwise not allow, because to prevent him or her from using the property in this way would cause a hardship. Variances help ensure that specific applications of the zoning code that would cause a hardship in particular cases are not unduly harsh. However, since variances allow people to use property in a way that is not allowed in the zoning code, the process of obtaining such permission can be lengthy and difficult, and generally involves a separate application and hearing process.

Exactions Exactions impose some public costs associated with a particular use of land on the person who is putting the land to use. This might mean, for instance, that a developer bears the costs of adding users to the municipal water system. Exactions are usually based on the authority of a municipality to deny a permit based on a certain land use law.[42] However, since exactions have the potential to be unfair to the property owner, there are many limits on exactions. The exaction must be directly related to the reason for which the local government could reject the development permit.[43] Also, the exaction must be roughly proportional to the impact of the proposed development on the problem the restriction addresses.[44]

One type of exaction that impacts the food system is an *open space set-aside*. In open space set-asides, the municipality requires that a property developer dedicate or deed some portion of the developable land for open space and recreational purposes. Set-asides could be used to create space for community gardens or a farmers market. In order to require set-asides in a legal way, the municipality should be sure to tie the open-space requirement to legitimate concerns related to the development.[45]

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[41] *Id.* at 2.

[42] *Exactions and Impact Fees*, WATERWAYS AND WATERFRONTS CLINIC, UNIV. OF FLA., 1-2 (last visited July 2, 2012), http://www.law.ufl.edu/_pdf/academics/centers-clinics/clinics/conservation/resources/exactions.pdf. Exactions come in two basic forms: (1) required dedications of land use or property interests in land, and (2) required payment of money through impact fees, in-lieu fees, linkage fees, and the like. PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 2 (Aen. W. Webster et al. eds., 2d ed. 2004).

[43] Nollan v. Cal. Coastal Comm'n, 483 U.S. 825, 852 (1987).

[44] Dolan v. City of Tigard, 512 U.S. 374, 391 (1994).

[45] Collings v. Planning Bd., 79 Mass. App. Ct. 447 (2011) (holding that zoning board had exceeded its authority in requiring a developer to set aside open space to the public). *See also* Rona Fischman, *Exaction, Extortion or Illegal? Mandatory Dedication of Open Space Parcel Held Unlawful*, Boston Real Estate Now Blog (June 1, 2011, 2:11 PM), http://www.boston.com/realestate/news/blogs/renow/2011/06/exaction_extort.html.

Wait-and-See Regulations In the 1950s, a new generation of regulatory forms for zoning, often called *wait-and-see regulations*, was adopted with the goal of achieving greater flexibility than was possible in traditional zoning. Since wait-and-see regulations are less common than the traditional zoning forms discussed above, this section will not be useful to all food policy councils. Instead, this section is included only to help you understand these terms if and when you come across them. Food policy councils have not used all of these tools, but that does not mean that you might not find a creative, new way to use them. These more recent approaches are exciting because they are active. They are meant to create incentives for growth and development of the community, rather than just restrict certain uses.[46]

- **Planned Unit Development (PUD)**, which is also known as *cluster zoning*, permits the developer of a minimum-sized tract of land (usually relatively large) to mix uses within the tract and to deviate from normal density requirements.[47] For example, traditional zoning limits the number of residential units to the number of lots in a residential district. A PUD provision might, on the other hand, permit units to be clustered on a portion of a tract, as long as the rest is left undeveloped such that the overall density remains the same.[48] This could allow a developer to create a cluster of denser residential housing, with open space on the rest of the tract for parks, gardens, and recreation.
- **Floating Zones** are zoning districts that permit certain kinds of uses, but which are not fixed to particular areas of the city at the time of the authorization of the zone. These uses "float" above the community until they become fixed at a certain location.[49] The attachment of the floating zone is achieved through another zoning decision, usually called a rezoning, in which the parcel owner petitions to have the use attached to the land. You could use floating zones to attach commercial agricultural uses to suitable zones in your city.
- **Incentive Zoning** is a zoning technique that uses economic incentives to persuade developers to use land in certain desirable ways.[50] The basic technique is to allow higher densities than the general zoning code permits in return for the addition of certain amenities to a project, rehabilitation of slums, construction of public facilities, or construction of affordable housing. This technique can be used through special district zoning, where incentives are offered to landowners in the special district, or can be offered to the community at large.[51] Incentive zoning could be used to encourage the formation of farmers markets. For example, if the city allowed more units in a development this could be in exchange for a covered, outdoor common area where farmers could set up tables.
- **Performance Zoning** is characterized by determining the regulation of land use by the performance of the use, measured by established criteria, as opposed to specification standards.[52] For example, one issue with regard to urban agriculture is run-off from the property during storms. A specification standard might require a ditch at the edge of all urban farms to keep water and soil from running off the property during storms, but a performance zoning standard would specify that run-off during storms is unacceptable, leaving it up to the farmer to employ a ditch, a vegetative buffer, or any other technique that can prevent run-off. Specification standards are simpler to enforce but performance zoning may encourage more innovation.

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[46] PETER W. SALSICH & TIMOTHY J. TRYNIECKI, LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW 2 (Aen. W. Webster et al. eds., 2d ed. 2004) (citation omitted).
[47] *Id.* at 178.
[48] *Id.* at 178–89.
[49] *Id.* at 179.
[50] *Id.* at 180.
[51] *Id.*
[52] *Id.* at 180–81.

- **Overlay Zones and Historic Districts** Overlay zoning may be a way to create more restrictive or less restrictive rules for a range of zones at one time. For restrictive goals, a more restrictive zoning rule is laid over an existing zone or zones, further regulating or restricting some permitted uses.[53] For example, the **Cincinnati, OH**, code authorizes the city to create environmental quality districts that overlay existing zones when there is concern that existing regulations might damage the quality of the urban environment,[54] including everything from natural features to scenic views to manmade features. Under this law, Cincinnati denied a permit to open a Wendy's franchise in an old movie theater. The Ohio Supreme Court upheld the regulation as a "reasonable exercise of the police power" to preserve the character of important neighborhoods.[55] For less restrictive goals, an overlay district adds permitted uses as discussed in Section IV: Urban Agriculture. For example, this approach could create a new urban agriculture use and then permit this use category within as many zoning districts as possible in order to encourage more urban growing. For example, **Cleveland, OH**, created an Urban Agriculture Overlay District that allows specific areas of land throughout Cleveland to be devoted to urban agriculture, including community gardens, livestock, and bees.[56]

Rooftop Gardening

Rooftop gardening is an urban agriculture practice that provides a host of benefits to urban communities. Rooftop gardening and landscaping improve air and water quality by trapping pollutants and dust particles, lower air and building temperatures by absorbing heat, and add beauty and green space to the area. Rooftop gardening falls into one of two categories - enclosed rooftop agriculture, which occurs in greenhouses; or open-air agriculture, which takes place in raised beds, planters, or other open-air growing structures.

Though many cities have yet to tackle zoning for rooftop agriculture, Chicago, IL, Seattle, WA, and Portland, OR, have all amended their zoning codes to support this type of production. One way to amend the zoning code in order to support rooftop agriculture is by altering restrictions on building height to allow for structures necessary to support rooftop agriculture (such as a greenhouse). However, this raises important issues to consider, such as the visual impact in historical districts or the safety of building roofs with additional weight added as a result of agricultural activities.

Source: *Urban Agriculture: Rooftop Gardening*, BOSTON REDEVELOPMENT AUTHORITY (April 11, 2012), *available at: http://www.bostonredevelopmentauthority.org/pdf/PlanningPublications/Urban%20Agriculture%20MEMO_Rooftop%20Agriculture,%20Module%203_4.11.12.pdf.*

IMPROVING LOCAL FOOD SYSTEMS

With knowledge on comprehensive planning and zoning, food policy councils can advocate for policies that actively improve their local food system. These land use laws may affect everything from creating walkable neighborhoods to stemming fast food restaurants in a municipality.

Creating More Walkable Neighborhoods

Many municipalities have enacted policies to encourage or maintain walkable neighborhoods with easily accessible commercial options, such as grocery stores. This is one approach to promoting or maintaining food access that your food policy council might consider. The success of such a project might depend on particular characteristics of your local city, such as the density of habitation, the amount of disposable income to use at stores, and the availability of viable commercial spaces

[53] *Id.* at 182.
[54] *Id.* at 182–83 (citing to Cin. Mun. Code § 3400.2).
[55] *Id.* at 183 (citing to Franchise Developers, Inc. v. City of Cin., 505 N.E.2d 966, 968 (Ohio 1987)).
[56] CITY OF CLEVELAND CITY PLAN. COMM., CLEVELAND'S ZONING FOR URB. AGRIC. & GREEN SPACE, *available at* http://planning.city.cleveland.oh.us/zoning/pdf/AgricultureOpenSpaceSummary.pdf.

for retailers. Some examples of land use tools that can be used to improve walkability are:

- **Incorporate walkable cities as a priority in the comprehensive plan.** The city of **Berkeley, CA**, has a land use policy that includes measures meant to encourage and maintain walkable neighborhoods with commercial options for residents. The policy's stated goal is to: "maintain and improve Neighborhood Commercial Areas as pedestrian-friendly and visually attractive areas that fully serve neighborhood needs."[57] **Arlington County, VA**, has stated Development and Growth Goals that include preserving and enhancing neighborhood retail areas that serve everyday shopping and service needs.[58]
- **Use mixed-use zoning.** *Mixed-use zoning* is a zoning technique that allows within one zoning district uses that would have been confined to separate zones under traditional zoning concepts. With mixed-used zoning, you might find residential housing, light industry, and some commercial enterprises, such as grocery stores, in the same district. This technique may put people closer to supermarkets and restaurants, making it easier for them to access healthy foods.[59] Your food policy council should consider possible applications of mixed-use zoning to address problems attributed to traditional, exclusive use zoning techniques, such as lack of food access or reduced walkability.
- **Facilitate "traditional neighborhood-development patterns."** One idea for facilitating access to commercial options and increasing walkability is to return to the "traditional neighborhood" of the past. This entails a particular application of mixed-used zoning discussed above. A traditional neighborhood development is defined as: "*A compact, mixed use neighborhood where residential, commercial and civic buildings are within close proximity to each other.*"[60] It is a planning concept that is based on traditional small town and city neighborhood development principles.

Traditional Neighborhood Development

The University of Wisconsin Extension Program has provided a model Traditional Neighborhood Development Ordinance, which calls for a mix of residential, commercial, civic, and open-space areas, allowing residents to live within one-quarter mile or a five-minute walk from these uses. Commercial uses allowed in the Traditional Neighborhood Development area include: neighborhood grocery stores, butcher shops, bakeries, restaurants (but no drive-thrus), cafes, coffee shops, and neighborhood bars and pubs.

Source: *Planning Information Sheet: Promoting Food Access with Comprehensive Planning and Ordinances*, DESIGN FOR HEALTH, UNIV. OF MINN., 6 (Aug. 2007), *available at* http://208.106.193.160/pdfs/Information_Sheet/BCBS_ISFood_090107.pdf.

Increasing Availability of Fresh Foods

Promoting access to healthy foods can be done by (1) *allowing* different types of healthy food vendors to operate in food deserts or areas with limited food access, (2) *encouraging and incentivizing* grocery stores to open in those areas, and (3) *controlling* what grocery stores must offer to ensure that healthy foods are available in all locations.

1. ***Allow* different types of healthy food vendors to operate in food deserts.** Allowing a variety of food sales options in districts can help to increase access to healthy foods.
   - Farmers markets are an excellent way to

[57] *Planning Information Sheet: Promoting Food Access with Comprehensive Planning and Ordinances,* DESIGN FOR HEALTH, UNIV. OF MINN., 6 (Aug. 2007), *available at* http://208.106.193.160/pdfs/Information_Sheet/BCBS_ISFood_090107.pdf.
[58] *Id.*
[59] *Id.* at 7.
[60] Brian Ohm et al., *A Model Ordinance for a Traditional Neighborhood Development,* UNIV. OF WIS. EXTENSION PROGRAM 1 (2001), *available at* http://urpl.wisc.edu/people/ohm/tndord.pdf.

increase food access quickly, as they require much less infrastructure than typical retail establishments. However, farmers markets may initially face a variety of problems, including a perceived lack of permanence, difficulty finding a location in crowded cities, and the need to constantly re-apply for street closure permits if they operate in a public street.[61] To combat these problems, food policy councils can encourage cities to facilitate the development of farmers markets by making the operation of such markets a permitted use within as many zoning districts as possible. This would entail amending the zoning ordinance.[62]

- Food policy councils should also be aware of the benefits of food trucks. Food trucks are another great way to increase food access, while requiring less infrastructure and start-up costs for entrepreneurs. They can also provide access to healthy food that is ready-to-eat. **Boston, MA**, began to allow food trucks in 2011, but the rules require that when they operate on public land they must offer at least one healthy option that does not contain fried foods, trans fats, or high fructose corn syrup and that contains "at least three of the following: fruits, vegetables, whole grains, low-fat dairy, reduce fat or lean meats that are grilled, broiled or baked."[63] Food trucks are also asked to pledge to support environmental sustainability, community engagement, and the "Rethink Your Drink" campaign, which aims to reduce the consumption of sugar-sweetened beverages.[64] Food policy councils can educate entrepreneurs on the their municipality's licensing and permitting requirements and ordinances, along with encouraging city councils and local zoning boards to make food trucks a permitted use in as many areas as possible.
- Similarly, mobile food vendors (e.g., mobile grocery stores) can sell food anywhere that has paved roads. This means that mobile food vendors can go to their customers; they do not face the risk of being stuck in a neighborhood where they cannot survive economically. In **New York City, NY**, the Green Carts Program creates mobile food carts that sell only fresh fruits and vegetables in neighborhoods with limited access. The city provides a subtle financial incentive to Green Cart vendors by giving them priority over other mobile food vendors. It caps the total number of mobile vending permits and allocates a certain number of these to Green Carts.[65] Similarly, **Washington, DC**, has partnered with On the Fly in support of a healthy street vendor program, SmartKarts. SmartKarts are electronic mobile food carts that provide hot entrees, snacks, and drinks that

OTHER RELEVANT LAWS: HEALTH CODES

It is important to keep in mind that your state and/or local health codes may also impact the permissible uses of land. For instance, health codes may determine whether and how animals can be kept in your municipality or what rules apply to ensure that safe food is being sold by a mobile food vendor. Health codes may also regulate how food can be sold at open air markets or farm stands, including any permits or licenses that are needed to sell certain food items. Make sure that you look beyond your zoning code to see what other restrictions are in place so that you can work comprehensively to break down these barriers to the local food system.

[61] *Using Zoning to Create Healthy Food Environments in Baltimore City,* HARRISON INSTITUTE FOR PUBLIC LAW, GEORGETOWN UNIV. LAW CTR., 13 (Dec. 2009), *available at* http://141.161.16.100/Clinics/hi/documents/HarrisonInstitute_UsingZoningtoCreateHealthyFoodEnvironmentsinBaltimoreCity.pdf.
[62] *Id.*
[63] *Mayor Menino Announces New Food Trucks Set to Serve Up Tasty Treats on Boston's Streets*, CITY OF BOS., http://www.cityofboston.gov/news/default.aspx?id=5182 (last visited June 18, 2012).
[64] *Id.*
[65] *Using Zoning to Create Healthy Food Environments in Baltimore City,* HARRISON INSTITUTE FOR PUBLIC LAW, GEORGETOWN UNIV. LAW CTR., 18 (Dec. 2009), *available at* http://141.161.16.100/Clinics/hi/documents/HarrisonInstitute_UsingZoningtoCreateHealthyFoodEnvironmentsinBaltimoreCity.pdf.

are mostly natural, organic, and chemical-free.[66]

In addition to potential land use and zoning barriers to mobile food vending, a lack of appropriate business permits can also be a barrier to allowing these entities. All businesses need a permit in order to operate, but in some cities that did not allow mobile vending or food trucks in the past, the appropriate permit may not yet exist. Cities across the country have been updating their ordinances to include new permits for mobile vending entities. Make sure that your local ordinances include permits appropriate for mobile vending in addition to allow such vending in various zones throughout the city.

2. ***Encourage and incentivize* grocery stores to open in food deserts.** In addition to ensuring that different types of food vendors are allowed to operate in as many areas as possible, food policy councils can push for incentives that encourage vendors to open operations in food desert areas.

   - Cities and states have successfully used *financial incentives* to encourage the development of grocery stores in food deserts. Common financial incentives include: real estate tax reductions, sales tax exemptions, and mortgage recording tax deferrals. If your council is concerned with increasing access in food deserts, you might consider pushing for these types of incentives. Some goals may require action at the state level or funds from state appropriations. The city of **Philadelphia, PA**, for example, partnered with The Food Trust, a nonprofit organization, to found the Pennsylvania Fresh Food Financing Initiative, which assists with the financing needs of retail food operators. See Section V: Consumer Access for more information on this specific program.
   - Cities can also utilize *zoning incentives* to encourage the development of more healthy food retail. The **New York City, NY**, "FRESH" (Food Retail Expansion to Support Health) Program was inspired by the Pennsylvania Fresh Food Financing Initiative. This program promotes grocery store development in under-served areas by combining both financial and zoning incentives.[67] To qualify for FRESH, a store must be certified FRESH by: (1) dedicating 30% of its selling area to perishable goods, including dairy; fresh produce; frozen foods; and fresh meats, poultry, and fish; and (2) making a continuing commitment to the program's goals.[68] In exchange, the store may be eligible for certain zoning or financial incentives. Zoning incentives include giving additional floor area to developments that incorporate grocery stores in mixed-use buildings; reducing the number of required parking spaces required in pedestrian-oriented neighborhoods; and making larger stores permissible as of right in light manufacturing areas (eliminating the need for special permits and costly, lengthy review of proposals).[69]
   - *Incentive zoning* may be used to convince developers to build in certain areas. In essence, a city would use incentives to encourage inclusion of space that strengthens the community food system, such as areas for farmers markets in residential developments. As described in the Zoning Primer section above, with incentive zoning, the local zoning board comes up with two lists: (1) a list of promises it would like a real estate developer to make and (2) a list of zoning concessions that the board is willing to make in return. Developers then can pick an option from each list. Examples of what a city could offer include streamlined licensing process; selection of prime residential locations from the city's land bank; and extra square footage for residential units in the development, beyond what is laid out as the limit in the zoning code. In exchange, a developer would create space for a farmers market in the development plans.[70]

[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.* at 13.

3. ***Control* what grocery stores must offer.** Another way to increase healthy food access is to require stores to stock a certain amount of healthy foods.
   - The **Minneapolis, MN**, Food Code requires that all grocery stores stock certain amounts of "staple food", such as vegetables, fruits, meat, poultry, fish, bread, and dairy.[71] This ordinance is helpful because it ensures that if a grocery store is occupying an area and preventing new business from coming into that area, the grocery store will at least be required to carry a minimum of amount of healthy, nutritious food items, thus leading to improved food access. See Section V: Consumer Access for more information.

Stemming the Inundation of Fast Food The question of food access has its flip-side: *over*-access to unhealthy food options. The association between fast food, unhealthy diets, and obesity suggests that by reducing access to fast food restaurants and replacing them with healthier alternatives, local governments could encourage healthier eating patterns in their communities. Zoning can be a key way to reduce unhealthy food options and ensure that there are affordable, healthy food options instead. Governments can use zoning to influence where and how fast food restaurants are allowed to operate.[72] Some ideas that have been proposed to discourage fast food include:

- Creating a zone whose uses include supermarkets but exclude fast food restaurants;[73]
- using *conditional zoning* to rezone a particular residential site to allow the development of all types of restaurants except fast food establishments, or to allow only supermarkets;[74]
- offering *incentive zoning* to create a healthier retail food market by providing incentives for developers to build retail food stores with healthful options, such as supermarkets;[75] and
- employing *performance zoning* to promote a greater number of healthful foods to choose from, for instance, by requiring all restaurants to provide a minimum number of healthful alternatives.

Another way to stem the inundation of fast food is to create *healthy zones* near schools. Many schools and children's recreation centers are surrounded by fast food restaurants and convenience stores, which may undermine schools' efforts to offer nutritious meals. Unlike efforts to use zoning to reduce fast food restaurants in the city generally, there should be very few legal roadblocks to creating health-oriented zoning regulations around schools, since the protection of children generally gets special treatment in the law. Most cities already have similar restrictions of alcohol and tobacco sales and advertising near schools. In particular, cities may be interested in establishing zoning policies that restrict the development of fast food establishments near school grounds and public playgrounds.[76] This could also take the form of local

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[71] MINNEAPOLIS, MINN. CODE OF ORDINANCES ch. 203.20(c) (2012) *available at:* http://www.ci.minneapolis.mn.us/government/ord/index.htm. A grocery store is defined as "[a] retail establishment that sells such products as staple foods, accessory food items, and household goods." *Id.* Specialty food stores, filling stations, and grocery stores located in the central commercial district and in shopping center are exempt from the requirement. *Id.* at § 203.30. The ordinance requires that all grocery stores offer at least three varieties of food in each of the four staple food groups, with at least five varieties of food in the first category and at least two varieties of food in all subsequent categories: (1) vegetables and/or fruits; (2) meat, poultry, fish and/or vegetable proteins; (3) bread and/or cereal; and (4) dairy products and/or substitutes. *Id.* at § 203.20.

[72] Julie Samia Mair et al., *The Use of Zoning to Restrict Fast Food Outlets: A Potential Strategy to Combat Obesity*, CENTER FOR LAW & THE PUBLIC'S HEALTH AT JOHNS HOPKINS & GEORGETOWN UNIVS., 20 (Oct. 2005), *available at* http://www.publichealthlaw.net/Zoning%20Fast%20Food%20Outlets.pdf.

[73] *Id.* at 21.

[74] *Id.* at 22.

[75] *Id.* at 24.

[76] *Using Zoning to Create Healthy Food Environments in Baltimore City,* HARRISON INSTITUTE FOR PUBLIC LAW, GEORGETOWN UNIV. LAW CTR., 15 (Dec. 2009), *available at* http://141.161.16.100/Clinics/hi/documents/HarrisonInstitute_UsingZoningtoCreateHealthyFoodEnvironmentsinBaltimoreCity.pdf.

ordinances that restrict mobile vending of calorie-dense, nutrient-poor foods near school and public playgrounds.[77] The zoning ordinance in **Detroit, MI**, requires a minimum distance of 500 feet between certain carry-out, fast food, and drive-through restaurants and the nearest school.[78]

Another option is to use zoning rules to prohibit more fast food restaurants from opening. In 2008, **Los Angeles, CA**, put a one-year freeze on the development of new fast food restaurants in certain low-income areas of the city, and this ban was made permanent in January 2011.[79] This is an interesting contrast to the Detroit law. Whereas the Detroit law stands on firm legal ground, as it principally affects children, the Los Angeles law affects the general public and could be vulnerable to legal attack. The city's reasons for passing this law include the fact that the affected area has by far the highest concentration of fast food restaurants in the city. It is intended to give the area time to attract restaurants and stores offering more healthful food options. Since the ban went into effect, "no new stand-alone fast-food establishments have opened in the area."[80] Instead, a city councilwoman who represents the affected area says that the area got its first new supermarket in about a decade.[81] The act grandfathers in existing restaurants, and exceptions are made for those opening inside a shopping center. In addition, "[m]any mom-and-pop businesses or casual restaurants that serve equally unhealthy food can also get permits to open."[82] Nevertheless, the law does reduce the ability for fast food venues to open, and thus is controversial and could face legal opposition. If your municipality were to consider such a law, it should pay close attention to its legal justifications for this use of the police power.

It is important to remember that because of the way the zoning rules operate, existing nonconforming uses are allowed to continue. Thus, existing fast food restaurants will not be forced to close. Instead, these ordinances would prevent new fast food restaurants from locating near schools and keep existing fast food restaurants from expanding or from ceasing and then resuming operations.[83]

PROTECTING AGRICULTURAL LAND Although comprehensive plans and zoning are the most common forms of land use regulation, food policy councils should be aware of other legal mechanisms that can be used to shape the use of land as part of the local food system. Specifically, it is important to understand the ways to protect land for food production either within or surrounding your municipality so that you can continue to have access to healthy, fresh foods. Agricultural land may be protected through *land trusts* and *conservation easements*.

A land trust is a nonprofit organization that works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements. Land trusts implement their missions of conserving land by accepting donations of land; purchasing land; negotiating private, voluntary conservation agreements on land; and stewarding conserved land.[84] Conservation easements allow a landowner to donate or sell development rights to his or her property to a land trust (or a nonprofit

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[77] *Id.* Model statutory language is available online at http://www.nplanonline.org/nplan/products/model-healthy-food-zone-ordinance.
[78] DETROIT, MICH., ORDINANCES no. 9-98, § 1, 4-1-98, 92.0379B(j) (1978).
[79] Los Angeles, Cal., Council File No. 10-1843 (Dec. 8, 2010).
[80] Jennifer Medina, *In South Los Angeles, New Fast-Food Spots Get a 'No, Thanks'*, N.Y. TIMES, Jan. 15, 2011, *available at* http://www.nytimes.com/2011/01/16/us/16fastfood.html?_r=1.
[81] *Id.*
[82] *Id.*
[83] *Model Healthy Food Zone Ordinance: Creating a Healthy Food Zone Around Schools by Regulating the Location of Fast Food Restaurants (and Mobile Food Vendors),* NAT'L POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY, 6-7 (2005), *available at* http://changelabsolutions.org/sites/phlpnet.org/files/nplan/HealthyFoodZone_Ordinance_FINAL_091008.pdf.
[84] *Land Trusts*, LAND TRUST ALLIANCE, http://www.landtrustalliance.org/land-trusts (last visited Dec. 8, 2011).

organization or municipality) in order to protect conservation values on that land.[85] When the conservation easement is conveyed to a land trust, the development rights are extinguished, meaning the land trust or other recipient cannot use or sell the development rights, and the land trust will look after the protected values in perpetuity. The landowner still owns the land, except for the development rights, and can sell or otherwise transfer ownership of the land.[86] Generally, a conservation easement is used to protect significant agricultural, scenic, ecological, or historical resources. When a conservation easement is donated or sold for less than market value, the landowner is entitled to federal income and estate tax deductions.[87] Conservation easements can also be called scenic easements, agricultural conservation easements, open space easements, historic preservation easements, and conservation restrictions.[88]

Food policy councils can research easements in their area, educate local farmers on the process for and benefits of obtaining agricultural conservation easements and push for additional state resources to support and incentivize conservation easements. In **Maine,** approximately 30,000 acres of farmland are protected from development via agricultural conservation easements.[89] This type of easement may also help ensure the preservation of community gardens. The development rights of the land that the community garden is on (or intends to be built on) may be transferred to a land trust. If a community garden is currently located on city-owned land, the land tenure is generally unstable because the city could decide to sell the land to a developer at a future point. But if the food policy council could persuade the city to commit to leaving the land as a garden, the city could maintain the land as a garden in perpetuity by holding the development rights or transferring them to a third party land trust.

SUMMARY Mastering the ideas and concepts discussed in this section is by no means a prerequisite for reforming land use laws in your municipality in order to advance your food policy goals. In the long run, however, it may be advantageous to understand the legal mechanisms that might help or hinder the realization of these goals. In addition, exhibiting knowledge of the legal and policy constraints under which elected officials and other agents of the government must work may help the food policy council tailor its suggestions in a way that proves more appealing to governmental actors.

[85] *Cultivating Maine's Agricultural Future,* MAINE FARMLAND TRUST, AMERICAN FARMLAND TRUST, AND MAINEWATCH INSTITUTE, 57 (Sept. 2011), *available at* http://www.farmland.org/documents/CultivatingMainesAgriculturalFuture.pdf.
[86] *Id.* at 54.
[87] *Id.* at 55.
[88] ANTHONY ANELLA & JOHN B. WRIGHT, SAVING THE RANCH: CONSERVATION EASEMENT DESIGN IN THE AMERICAN WEST 15 (Island Press, 1st ed. 2004).
[89] *Cultivating Maine's Agricultural Future,* MAINE FARMLAND TRUST, AMERICAN FARMLAND TRUST, AND MAINEWATCH INSTITUTE, 57 (Sept. 2011), *available at* http://www.farmland.org/documents/CultivatingMainesAgriculturalFuture.pdf.

SECTION IV: URBAN AGRICULTURE

Cities throughout the United States are embracing urban agriculture not only as a means to combat urban challenges such as air pollution, abandoned lots and food insecurity, but as a tool for growing healthier, more sustainable communities. Urban agriculture encompasses a range of production activities, from backyard or rooftop gardens, to large scale farming operations, and can be as diverse in scope as the cities that engage in these practices.

OVERVIEW Generally regarded as a cost-effective means of increasing the volume of and access to fresh food and promoting economic opportunity in city environments, urban agriculture is associated with a host of public benefits, including: combating hunger and food insecurity; bolstering local economic development; building stronger communities; reducing blight and supporting neighborhood revitalization; creating green space; and improving public safety. Examples abound of successful urban agricultural initiatives and their impacts on the overall health and wellbeing of communities. **Detroit, MI**, for example, lost about half of its population between 1950 and 2004, leaving behind numerous vacant lots across the city. As crime and blight increased in its sparsely populated areas,[1] Detroit looked for a way to redefine itself. Urban growers have since converted hundreds of vacant lots into gardens, thus creating green space and reducing both criminal activity and the amount of city funding needed to clean up blighted properties.[2] In **Milwaukee, WI**, where urban gardens have been producing food since the 1970s, a total of $8.9 million worth of produce was grown from 1978–1989.[3] In 1998, 75% of Milwaukee residents surveyed claimed that they saved between $50–200 on produce every year by purchasing produce from local urban farms.[4]

Over time, agricultural practices were pushed away from city limits with prohibitive zoning codes developed with the intention of protecting the health, safety, and welfare of urban dwellers. But many urban residents now wish to bring these opportunities back into their communities. Food policy councils can promote various strategies and policies that improve the ability of small farmers to grow and produce food, including allowing food production through all types of urban, rural, and suburban agriculture. Increased production in all of these locations should be encouraged to help feed the city. In this section, we describe specific strategies that food policy councils can implement to support agricultural activities in urban environments. This section describes in further detail the following key categories in which food policy councils can focus their work.

1. **Zoning for Urban Agriculture** Food policy councils should work to remove zoning barriers to urban farming and animal husbandry.
   - **Urban Farming** Many communities have restrictive zoning ordinances that serve as barriers to urban farming operations. By helping to amend land use policies and zoning codes to clearly allow land in residential and commercial zones to be used for agricultural activities, food policy councils can foster permanency for urban farms and encourage further cultivation within urban areas.

[1] *See* JONATHAN D. LACHANCE, UNIV. OF MICH., SUPPORTING URBAN AGRICULTURE: A PROPOSED SUPPLEMENT TO THE CITY OF DETROIT MASTER PLAN OF POLICIES 8 (2004), *available at* http://sitemaker.umich.edu/urpoutreachreports/housing___community_development__h_/da.data/00000000000000000000000000000000000000000000088429/ReportFile/supportingurbanag.pdf.

[2] *Id.*

[3] ANDREW BREMER ET AL., DEP'T OF URB. PLAN., UNIV. OF WIS., COMMUNITY GARDENS IN MILWAUKEE: PROCEDURES FOR THEIR LONG-TERM STABILITY & THEIR IMPORTANCE TO THE CITY 22 (2003), *available at* http://www.neighbor-space.org/documents/UrbanGardens_Milwauke_May03.pdf.

[4] *Id.*

- **Residential Animal Husbandry** Food policy councils can work with local government to ensure the legality of activities such as raising animals, like chickens and goats, within city limits. These activities are often excluded from allowable uses in certain zones, especially residential ones.

2. **Allocating Resources for Urban Agriculture** To help promote urban agriculture, food policy councils should advocate for a range of policies that bring information and resources to urban farmers, including:
   - **Tracking Land Inventory & Supporting Farm Tenure** Coordinate with city officials to inventory and make available public land that is suitable for urban farming and help farmers strengthen the permanency of establishing long-term leases.
   - **Securing Fiscal & In-Kind Support** Food policy councils can be instrumental in identifying available sources of funding for crucial needs like water, labor, and training, and providing technical assistance to growers in grant application processes.
   - **Training & Education** Foster the development of new urban growers and secure the future of urban farming through sponsorship and promotion of trainings on a range of farming skills.
   - **Public Outreach** Serve as a forum for the discussion, negotiation, and evaluation of urban agriculture issues develop community consensus around supporting urban agriculture.
3. **Urban Agriculture & Ecological Health** Food policy councils should work to remediate former brownfields to both reduce potential health impacts and convert them into gardens that increase access to fresh, healthy food.

Zoning for Urban Agriculture

Municipal zoning ordinances were originally created to protect the health, safety, and welfare of residents by regulating land use through dividing cities into various districts (e.g. residential, commercial, or industrial) and controlling the physical aspects of property (such as building height). Because these zoning codes often present barriers to agricultural activities, food policy councils can play a major role in working with municipalities to review and redesign codes in order permit various types of agricultural activities that may have previously been prohibited by the zoning code.

There are multiple ways in which food policy councils and other stakeholders can work to amend local zoning policies in order to help support urban agriculture. Your council might choose to focus on residential zones, which tend to have the most restrictive rules. But no matter what approach you take, the successful adoption of more permissive zoning policies will make it easier to produce foods in urban areas, thus increasing access to healthy foods and bolstering local economies. For a general background on zoning and land use, you should review Section III: Land Use Regulation.

Urban Farming

Many cities, including Chicago, Kansas City, Madison, Milwaukee, San Francisco, and Seattle, have updated their zoning codes within the last two years to eliminate barriers to urban agriculture, particularly in residential districts. These changes have generally been in response to demands from consumers, who want increased access to affordable, healthy food, and growers who, because of zoning restrictions, take major risks by investing in farming operations that could be shut down if restrictive regulations are enforced. Amending the zoning code to encourage urban agriculture not only helps to increase consumer access to healthy food, it also incentivizes growers to expand their operations and pursue even more innovative agricultural projects in their communities. There are a few general approaches to shaping a community's zoning code to promote urban agricultural activities.

- First, food policy councils can work to enable agricultural uses in as many zoning districts as possible; that is, authorize urban farming activities as an acceptable use category within a variety of existing districts. Agricultural uses may have been intentionally excluded from certain zones in the past, or they may not have been considered because agricultural uses were not traditionally included in urban zoning ordinances, since in the past many cities envisioned agricultural activities taking place outside the city. The benefit of specifically permitting agricultural uses in certain zones is that urban farmers will know that they are allowed to operate in those areas and will receive greater regulatory certainty that their investments in labor and materials will not be wasted.[5]
- Second, food policy councils may create exclusive urban agriculture districts in the zoning code. This approach would apply a zoning designation of "urban farm" or "community garden" to a specific plot of land, and would protect this land from future development. Such a zoning designation would permit a wide range of agricultural activities, including raising crops and animals, as are allowed rural agricultural zones.[6]
- Finally, food policy councils may create urban agriculture overlay districts. *Overlay zoning* is a regulatory tool that creates a zoning district that is superimposed over a group of underlying zoning districts in order to allow for a certain new type of use, restrict against a certain type of use, or protect a specific natural resource, such as groundwater or agriculture. An agricultural overlay district could allow for a wide range of agricultural activities, including vegetable production and animal husbandry, on multiple existing zones in the city.

Although their amendments vary widely, all of the aforementioned cities now allow small-scale farming and limited produce sales in residential zones, subject to varied restrictions on garden visibility, use of heavy mechanical equipment, compost operations, and produce-sales hours. In considering which district or mix of districts to advocate for in your community, it is important to consider the intensity of urban agricultural use that the food policy council is advocating for and the possible nuisances that such agricultural activities could cause to surrounding property owners. The most intensive urban agriculture uses are large urban farming initiatives, nonindustrial food processing, and large urban farmers markets. Municipalities may want to encourage these uses because they can create jobs, ameliorate food access problems, and provide green space. However, less-intensive agriculture may bring as many benefits to your city, with less controversy than intensive agriculture.[7] Such uses include small backyard and rooftop gardens, community gardens, school and church gardens, street vendors, small markets, farm stands, community supported agriculture (CSAs) programs, and limited keeping of animals. Thus, you may want to push for more intense agricultural uses in some non-residential areas but keep uses more limited in residential areas. For more information, see Table IV-1, below.

By evaluating the achievements of other cities, as well as conducting assessments of your own cities' needs and learning about the barriers facing urban farms in your area, your food policy council can take a proactive approach to improving zoning laws. For example, in 2010, **Chicago, IL**, changed its zoning code to define urban agriculture as a legitimate use of land in the city. However, this Urban Agriculture Amendment proved to be overly restrictive. It prohibited commercial urban agriculture in residential districts, restricted lot sizes and sales from community gardens, and prohibited the use of off-site compost materials. In response, the Chicago Food Policy Advisory Council (CFPAC), urban growers, and other food

[5] Nina Mukherji & Alfonso Morales, *Zoning for Urban Agriculture*, 4 ZONING PRACTICE 3 (Mar. 2010).
[6] *Id.*
[7] *Id.*

advocacy organizations launched a campaign to improve the amendment in order to encourage viable (and legal) urban agriculture. The CFPAC recommended four key amendments:

1. Commercial urban farms smaller than 21,780 square feet should be permitted by right in residential areas;
2. commercial urban farms larger than 21,780 square feet should be permitted in residential areas by special-use permit;
3. community gardens larger than 21,780 square should be permitted by special-use permit; and
4. the permitting process should be streamlined, practical and affordable.

As a result, in September 2011, the Chicago City Council, under Mayor Rahm Emanuel, passed a new amendment to the zoning ordinance that allows "community gardens" of up to 25,000 square feet in residential areas without a permit. Contrary to CFPAC's proposal, however, it does not allow "urban farms" greater than 25,000 square feet in residential areas, but it does allow urban farms of all sizes to operate in non-residential zoning districts. In addition, the ordinance allows for limited on-site produce sales in residential districts, relaxed parking and fencing rules, and the use of aquaponics systems.[8] The following table has examples of other cities that have changed their land use laws to better enable farming in urban areas.

Residential Animal Husbandry Raising livestock is often a natural next step for well-established urban agriculture operations, as diversifying their offerings of food products can bolster food sales and take-home pay. Locally-raised livestock also tends to be more sustainably produced. Despite these benefits, many cities impose numerous restrictions and bans on animal husbandry in order to prevent nuisances associated with animal waste and noise pollution, as well as possible harms to public health and safety.

Like zoning laws regulating urban farms, zoning laws governing animal husbandry have shifted tremendously in recent years. More city-dwellers have demanded permission to raise animals for their own consumption within city limits. They also desire to purchase a more diverse array of locally-raised food products, such as eggs, cheese, meat, and milk. Food policy councils can advocate for laws that change the rules around raising a variety of different types of animals, as described below.

[8] *Urban Agriculture FAQ,* CITY OF CHICAGO, http://www.cityofchicago.org/dam/city/depts/doe/general/NaturalResourcesAndWaterConservation_PDFs/Sustainable%20Backyards/UrbanAgFAQ.pdf (last visited June 14, 2012); *Chicago Urban Farming: City Council Approves New Ordinance*, HUFFINGTON POST, Sept. 9, 2011, http://www.huffingtonpost.com/2011/09/09/chicago-urban-farming-cit_n_956032.html; Natalie Moore, *Urban Agriculture Recognized in Chicago*, WBEZ91.5 , Sept. 8, 2011, http://www.wbez.org/story/urban-agriculture-recognized-chicago-91720.

TABLE IV-1: EXAMPLES OF CHANGING LAND USE LAW TO ENABLE URBAN FARMING	
IN KANSAS CITY, MO,[9] *urban agriculture is now allowed in certain residential zones, without size restrictions, so long as the activity falls within four categories.*	
HOME GARDEN	Growers live on-site and food is grown for home consumption, sale, or donation.
COMMUNITY GARDEN	Growers are part of a community group, and food is grown for consumption by the group and/or for sale and donation. Only whole, uncut, and unprocessed produce can be sold on-site if the property is an empty lot.
CSAS	Growers produce food for shareholder consumption and/or sale and donation, so long as a portion of the harvest is sold or exchanged for labor. Produce sales on-site may require a "special-use permit"[10] depending on the zone.
CROP AGRICULTURE	Growers produce food for off-site retail sale. Produce sold on-site by special-use permit.
IN SAN FRANCISCO, CA,[11] *the 2011 zoning ordinance divides urban agriculture activities into two categories.*	
NEIGHBORHOOD AGRICULTURE	Gardens less than one acre are allowed in all zoning districts of the city. Zoning permits are only required if the garden is the primary use of the site. Thus, gardens located on the property of a family home or other types of residence are exempt.
LARGE-SCALE AGRICULTURE	Gardens larger than one acre are only allowed in the Commercial, Industrial, Production, Distribution, and Repair districts of the city, although they may be allowed in other zoning districts with a "conditional-use permit."[12]
IN SEATTLE, WA,[13] *the 2010 zoning amendments outline the agricultural activities allowed by zone.*	
COMMERCIAL DISTRICTS	Urban farms are allowed as a principal or accessory use in neighborhood commercial zones, subject to sizing restrictions for some zones. Produce can be grown on a lot and sold either on-site or off-site. Other than value-added products made from produce grown on-site (e.g. jams, jellies, cut produce), no other items can be sold on-site.
INDUSTRIAL DISTRICTS	Urban farms are allowed on land outside of designated Manufacturing Industrial Centers (MICs), and on rooftops and sides of buildings in all industrial zones.
RESIDENTIAL DISTRICTS	Urban farms are allowed only as an accessory use without a permit for up to 4,000 square feet of planting area. Conditional-use permits are required for farms larger than 4,000 square feet. Other agricultural activities are strictly prohibited.
OTHER	Rooftop greenhouses are allowed in most districts except MICs and residential districts, but cannot exceed 15 feet in height, and must be used for food production.
IN CHATTANOOGA, TN,[14] *the zoning ordinances allow intensive agricultural uses in urban agriculture districts.*	
URBAN AGRICULTURE DISTRICT	The district can take form of a planned unit development that includes residential uses. Dairies, stables, crops, and a range of livestock are allowed. Further, the minimum area requirement is 20 acres, which makes this zone more suitable for areas on the periphery of the city.

[9] *See How U.S. Cities are Using Zoning to Support Urban Agriculture*, LAND STEWARDSHIP PROJECT (Dec. 2010), *available at* http://www.landstewardshipproject.org/pdf/factsheets/21-Urban-Ag-Zoning.pdf.

[10] "Special-Use Permits" are issued by local government to allow for land-use projects in a specified zone that would not otherwise be permissible.

[11] *See Overview of San Francisco's Urban Agriculture Zoning Ordinance*, S.F. URBAN AGRIC. ALLIANCE, http://www.sfuaa.org/urban-ag-zoning-proposal.html (last visited Jan. 8, 2012).

[12] "Conditional-use permits" are permits that allow land-use activities that are not generally permissible in a specified zone, but fulfill a special purpose that will be beneficial to a community. *See The Planner's Training Series: The Conditional Use Permit*, GOVERNOR'S OFF. OF PLAN. & RES. (Aug. 1997), *available at* http://ceres.ca.gov/planning/cup/condition.htm.

[13] *See* SEATTLE DEP'T OF PLAN. & DEV., URBAN AGRICULTURE IN SEATTLE (May 10, 2010) http://www.seattle.gov/DPD/Planning/UrbanAgriculture/Overview/default.asp.

[14] CHATTANOOGA, TENN., ZONING ORDINANCE art. V, § 1600; Nina Mukherji & Alfonso Morales, *Zoning for Urban Agriculture*, 4 ZONING PRACTICE 5 (Mar. 2010).

Chickens One of the most common amendments to urban livestock restrictions is the liberalization of chicken-keeping requirements. Such amendments are particularly popular for urban food producers because of the small size of chickens and the potential to use their products in a range of goods, such as eggs, meat, and fertilizer.[15] Numerous cities have instituted so-called "backyard-chicken laws" to allow a limited number of chickens to be raised in residential areas, subject to varied restrictions on exactly where and how they may be kept.[16] For instance, **Madison, WI**, allows up to four chickens on a lot with up to four dwelling units. It requires that the chickens be kept in a coop and forbids both roosters and slaughtering.[17]

A 2008 University of New Mexico study on backyard chicken laws in 25 cities revealed a range of approaches to balancing the interests of urban growers with those of neighbors concerned about nuisances associated with chicken-keeping. The study reveals:[18]

- Most cities evaluated allow 3-4 chickens per household;
- permits are required for backyard chicken-keeping in many cities, though several require permits only if households want to keep more than a certain number of chickens;
- other nuisance rules related to chicken-keeping target rodents, smells, public health considerations, and the overall cleanliness of chicken coops;
- most cities require chickens to be enclosed in coops, though some cities allow chickens to roam freely on the owner's property;
- several nuisance regulations prohibit the keeping of roosters because of noise pollution, though some cities allow limited numbers subject to neighborhood consensus; and
- regulations addressing the permissibility of chicken slaughtering have been passed in several cities, and some cities allow it subject to several restrictions on the process.

Other Farm Animals Several other farm animals are also becoming more common in urban areas, including goats, pigs, rabbits, turkeys, and ducks. These larger animals have become a source of highly contentious debates at city council meetings across the country, with many cities making limited allowances for such animals in residential areas. **Seattle, WA**, for example, allows up to three small goats on standard residential lots, and up to four goats or other animals on larger-size lots, depending upon the size of the animals.[19] **Charlottesville, VA**, passed an ordinance allowing residents to keep up to three goats under 100 pounds on their lots.[20] Residents of **Cleveland, OH**, may keep up to six chickens or rabbits on a

[15] For a more detailed treatment of the law affecting chickens in urban agriculture, including applicable nuisance law; restrictive covenants; zoning; and other land-use controls, including permits, neighbor consent, personal-use restrictions, accessory uses, minimum lot sizes, setback requirements, chicken coop design requirements, special use permits, and slaughtering regulations, see Patricia Salkin, *Feeding the Locavores, One Chicken at a Time: Regulating Backyard Chickens*, 34 ZONING AND PLAN. LAW REP., no. 1, Mar. 2011, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1774023.

[16] For example, the Durham, NC, urban agriculture ordinance limits chickens to 10 per household. No roosters are allowed, and chickens must be kept in a coop with a minimum floor area of 3 square feet per chicken. There must also be one square foot of window area per 15 feet of floor area. Coops must be 15 feet from any property line or right of way. *See* DURHAM, N.C., DURHAM CITY-CNTY. UNIFIED DEV. ORDINANCE art. 5, §5.4.12(B) (2011), *available at* http://www.durhamnc.gov/departments/planning/udo.

[17] *See* MADISON, WIS., ZONING CODE sec. 28.08(9)(b)7c (1998), *available at* http://www.cityofmadison.com/bi/documents/Chapter28.pdf.

[18] *See* KT LABADIE, HIGH COUNTRY CONSERVATION CTR., RESIDENTIAL URBAN CHICKEN KEEPING: AN EXAMINATION OF 25 CITIES (May 7, 2008), *available at* http://www.highcountryconservation.org/pdf/Steamboat%20Ordinance%20research%20paper.pdf.

[19] *See* Arin Greenwood, *New Zoning Laws Allow for New Neighbors—Meet the Goats Next Door*, A.B.A. J., Jun. 1, 2011, *available at* http://www.abajournal.com/magazine/article/got_your_goat.

[20] *See Charlottesville Council Passes Ordinances*, NBC29 WVIR-TV, Sept. 21, 2010, *available at* http://www.nbc29.com/story/13115076/charlottesville-council-passes-ordinances?redirected=true.

standard urban lot, and may also keep goats, pigs, sheep, and "similar animals" subject to lot size restrictions in residential areas.[21]

Bee Keeping is another popular agricultural activity among city dwellers. Besides honey production, bee enthusiasm is also fostered by residents' desires to have bees support urban gardens through pollination. As many cities, like New York, Chicago, Minneapolis, and Los Angeles, did with chicken keeping, they have also lifted bans on apiaries within city limits, even as they maintain prohibitions on larger farm animals.[22] **Denver, CO**, recently revised its zoning regulations to permit beekeeping on residential lots.[23] Public health and safety concerns often result in numerous restrictions on the activity, including permitting fees, distance requirements between hives and other residential structures, and even mandating neighborhood consensus.

Food policy councils can advocate for appropriate and equitable animal husbandry rules in numerous ways. As is done with land use laws, councils can become an integral part of the policymaking process, particularly by working with specialized advocacy groups (e.g. the Goat Justice League)[24] to better understand and communicate to government the benefits of urban animal husbandry, as well as to assist in crafting rules that are fair and appropriate for their locality.

Perhaps the most important role food policy councils can play, however, is in public outreach and education.[25] While many communities enjoy full support for urban gardening, urban animal husbandry can be contentious, and can strain relationships between neighbors. As advocates for equitable food access and sustainable local food economies, councils should work in their communities to build consensus and viable compromises on difficult food policy issues.

The following table provides zoning challenges to urban agriculture as well as possible policy solutions that food policy councils may want to pursue.

[21] *See* CLEVELAND, OH, CITY OF CLEVELAND ZONING CODE UPDATE §347.02(b)(1)A; §347.02(c)(1), *available at* http://planning.city.cleveland.oh.us/zoning/cpc.php.
[22] *See* Kristina Shevory, *The Beekeeper Next Doo*r, N.Y. TIMES, Dec. 8, 2010, *available at* http://www.nytimes.com/2010/12/09/garden/09Bees.html?pagewanted=all.
[23]Denver Council Bill No. 548 (2008), *available at* http://www.denvergov.org/web/ccbills/Bill_2008_0548.pdf.
[24] *See* THE GOAT JUST. LEAGUE, http://www.goatjusticeleague.org/Site/Introduction.html (last visited January 8, 2012).
[25] *See* CLEVELAND, OHIO, CITY OF CLEVELAND ZONING CODE UPDATE §347.02(b)(1)A; § 347.02(c)(1), at 21 *available at* http://planning.city.cleveland.oh.us/zoning/cpc.php.

TABLE IV-2: ZONING CHALLENGES & POSSIBLE SOLUTIONS		
CHALLENGE	**EFFECTS**	**POSSIBLE SOLUTIONS**
PROHIBITION OF COMMUNITY FARMS AND LARGE-SCALE AGRICULTURE IN RESIDENTIAL ZONES	➢ *Decreases viable alternatives to grocery stores, farmers markets, and other venues to access healthy food, particularly in "food deserts"* ➢ *Limits opportunities for rehabilitating vacant residential lots and reducing blight* ➢ *Stifles local economic activity* ➢ *Limits opportunities for building social capital in neighborhoods*	➢ Eliminate categorical restrictions on agriculture in residential areas and consider listing community gardens as a permitted use in almost all industrial, residential, and commercial districts. ➢ Recognize community gardens as a permissible use of public land owned by the state and localities.[26] ➢ Where urban agriculture is not explicitly recognized, encourage local government to interpret general provisions (in state or local law) regarding parks and recreation to allow community garden activities.[27] ➢ Include school gardens as a permissible use of land by explicitly allowing for gardening and related buildings on school property.[28]
UNNECESSARY RESTRICTIONS ON THE SIZES OF URBAN FARMS	➢ *Decreases local food production, thus requiring reliance on food produced at long distances* ➢ *Stifles local economic activity*	➢ Eliminate size restrictions for farms in non-residential districts and increase size allowances for residential farms to at least one acre[29] to (1) substantially increase food production to meet critical food needs, and (2) contribute to blight reduction and land productivity. ➢ Consider revising the code so that landscaping could include edible annuals, perennials, and other design elements "when integrated as part of the landscape," as **Sacramento, CA**, recently did.[30]
EXPENSIVE ZONING PERMITS	➢ *Imposes unnecessary barriers to small-scale growers, who may not be able to afford permitting costs in addition to their other costs* ➢ *Reduces incentives to rehabilitate land* ➢ *Reduces access to healthy, local produce*	➢ Implement a reduced-cost zoning permit for urban farms meeting all zoning requirements, particularly in high-need communities because of the fresh, local food urban farms can provide to these communities.
RESTRICTIONS ON COMMERCIAL FARM SALES IN URBAN AREAS	➢ *Creates financial barriers for growers needing the revenue to sustain or expand their farming operations* ➢ *Limits community access to fresh foods* ➢ *Stifles growth of local food economy*	➢ Advocate for exceptions to be made for local produce growers, by allowing limited sales hours during weekdays, and increased hours during weekends ➢ Permit small farm stands in community gardens and ensure that regulations outlining permitted home businesses in residential areas do not preclude selling homegrown produce. ➢ Remove restrictions on sale during normal business hours and weekends.

[26] Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 LEGIS. & PUB. POL'Y 351, 372 (2000), *available at* http://communitygarden.org/docs/learn/schukoske.pdf.
[27] *Id.*
[28] HARRISON INST. FOR PUB. LAW, GEORGETOWN UNIV. LAW CTR., USING ZONING TO CREATE HEALTHY FOOD ENVIRONMENTS IN BALTIMORE CITY 16 (Dec. 2009), *available at* http://141.161.16.100/Clinics/hi/documents/HarrisonInstitute_UsingZoningtoCreateHealthyFoodEnvironmentsinBaltimoreCity.pdf.
[29] One acre is 43,560 square feet, though many cities limit urban agriculture to 25,000 square feet or less. In Chicago, for example, the 2011 zoning ordinance allows "community gardens" in residential districts up to 25,000 square feet. *See Urban Agriculture FAQ*, CITY OF CHI. (2011), http://www.cityofchicago.org/content/dam/city/depts/doe/general/NaturalResourcesAndWaterConservation_PDFs/Sustainable%20Backyards/UrbanAgFAQ.pdf.
[30] SACRAMENTO, CAL., ORDINANCE NO. 2007-025, amending SACRAMENTO CITY CODE § 17.68.010, *available at* http://qcode.us/codes/sacramento/view.php?topic=17-iii-17_68-17_68_010&frames=off. Note that this ordinance does not specifically enable edible landscaping, but does so implicitly by removing restrictive provisions.

LIMITS PLACED ON ACCESSORY BUILDINGS ON URBAN FARMS	➢ *Limits functionality of farming site* ➢ *Requires growers to seek alternative locations to store needed supplies or abandon innovative uses of their farms* ➢ *Ultimately restricts feasible farming activities, which limits the range of produce offered to communities*	➢ Place minimum restrictions on accessory buildings as they are often essential to a farm's functionality, growth, and innovation.[31] ➢ Remove restrictions on structures that extend the growing season (e.g. hoop houses, greenhouses, and aquaculture structures). ➢ Encourage the city to support the development of structures that improve upon old agricultural methods and utilize sustainable technologies, such as solar power. ➢ In the absence of support for unusual accessory buildings, food policy councils should petition local governments to adopt a "wait and see" approach to approving accessory buildings.
PROHIBITIVE URBAN LIVESTOCK AND BEEKEEPING LAWS	➢ *Places unnecessary limitations on residents' right to produce their own food* ➢ *Stifles growth of local food system* ➢ *Limits access to local, healthy foods*	➢ Advocate for minimum restrictions on urban livestock/beekeeping. ➢ Encourage local government to make general allowances for various kinds of livestock and apiaries, subject only to restrictions on the number per household or lot, and on the structures used to maintain them.
RESTRICTIONS ON USE OF OFF-SITE COMPOSTING MATERIALS[32]	➢ *Prioritizes minor concerns over sanitation and health issues resulting from mismanagement of compost over benefits of a resource that can reduce or eliminate the need for harmful pesticides and fertilizers* ➢ *Creates a disincentive for public or private entities to redirect food waste* ➢ *Reduces potential for development of a new "green" business opportunity*	➢ Petition your city to allow urban farms to use off-site composting materials. ➢ Help your city council obtain funding to start or expand composting programs, including streamlining the collection process and building or improving processing facilities. ➢ Suggest nuisance control provisions to ensure that composting does not become a public health risk.[33]

ALLOCATING RESOURCES FOR URBAN AGRICULTURE Urban growers often face difficulties identifying land suitable for urban agriculture and achieving ownership of, or at least long-term tenure rights to such land. Therefore, to ensure some permanence for urban farms, a city may need to go beyond amending zoning laws. Food policy councils can assist by advocating for completion of local land inventories and policies that facilitate long-term land tenure. Yet even after land is identified and procured, many growers still face challenges to securing both the finances and information necessary to support their farms and gardens. To help meet these challenges, food policy councils should consider identifying funding sources and sponsoring training and technical assistance programs.

[31] CHICAGO, ILL., ZONING CODE § 17-2-0207

[32] Off-site composting materials are compostable items from various sources given to urban farms for the purpose of enhancing the soil on-site. Some cities, like Chicago, prohibit urban farmers from accepting certain compostable materials, particularly food scraps and food waste (i.e. compostable cups, cutlery, etc) as donations for building their soil. *See id*.

[33] *See, e.g.*, CHICAGO, ILL., MUNICIPAL CODE §§ 7-28-710, 7-28-715.

Tracking Land Inventory & Supporting Farm Tenure Tracking land inventory and supporting farm tenure are means to secure permanency for urban agriculture. Though many cities have vacant parcels of land, it is often difficult for potential urban gardeners to identify available lots and determine whether they are suitable for producing food. Food policy councils can help by advocating for local government to compile and make available a land inventory, or a list of potential lots that are available on public or city-owned land. The council can also work with other stakeholders to identify and inventory private land that may be suitable for urban agriculture.

Sometimes, even after identifying property, certain plots of land are not available for sale or certain growers cannot afford to purchase the land outright. Because they do not own the land, these growers often have trouble maintaining long-term land tenure. Many cities and private landowners may be willing to offer land to these growers for urban agriculture during periods of economic duress or while other developments are pursued, but as plans change or property values rise, many growers see their hard-labored investments pulled from under them to be replaced by new developments. While "guerilla gardening" is certainly done, land insecurity generally discourages growers from making new investments. What follows are some ways in which food policy councils can help local government relieve uncertainty for urban growers.

In **Oakland, CA**, farmers selling produce must acquire a business license from the Oakland Finance and Management Agency, a seller's permit from the California Board of Equalization, a health permit from Alameda County Department of Environmental Health, and farmers using pesticides must obtain a license from the California Department of Pesticides.

Source: *CalGOLD: Business Permits Made Simple*, GOVERNOR'S OFF. OF ECON. DEV., http://www.calgold.ca.gov/Results1.asp?TYPE=445230&CNTY=01&CITY=278 (last visited Jan. 8, 2012).

Local Land Inventories Food policy councils can pursue numerous strategies to assist growers with finding suitable land, protecting their investments in growing on that land, and preserving more land for agriculture. As a first step, they might consider collaborating with city planning departments to conduct an inventory of public land with potential for future urban agricultural development. For example, in 2002, the Portland/Multnomah County Food Policy Council of **Portland, OR**, coordinated with the city to create a land inventory project called The Diggable City Project.[34] The council, along with the City Commissioner, enlisted urban planning students to complete the inventory, which focused on four areas of the city, and utilized GIS technology to identify sites in those areas.[35] Food policy councils may also look to determine if an inventory of suitable land has been conducted at the state level, or push for state legislation similar to the **New York** statute that created the Office of Community Gardens.[36] Among other responsibilities, the Office of Community Gardens assists with the identification of vacant public land, agency jurisdiction of that land, and the suitability of the parcels for community gardening projects. [37]

[34] *See* Wendy Mendes, et al., *Using Land Inventories to Plan for Urban Agriculture: Experiences from Portland and Vancouver*, 74 J. AMER. PLAN. ASS'N 435, 439 (Sept. 2008), *available at* http://www.tandfonline.com/doi/abs/10.1080/01944360802354923.
[35] *Id.* at 9, 10.
[36] N.Y. GEN. MUN. LAW § 96 (McKinney 2012)
[37] *Id.*

Similar strategies can be used for identifying and inventorying private land suitable for urban agriculture. Some councils have developed inventories by partnering with cities and local community members to identify abandoned or underused parcels of private land that could potentially be acquired or leased from owners for urban agriculture.[38] For instance, the Sustainable Food Center in **Austin, TX**, collaborated with local government to identify parcels of public and private vacant land and to arrange lease agreements between the city and community members wishing to use the land for urban gardening.[39] Playing a role of coordinating information about vacant public and private land suitable for urban agriculture can also help food policy councils to facilitate strategic urban planning such that urban farms are more evenly distributed throughout a city, thereby providing more equitable access to healthy food for all members of the community.

Preserving Farmland and Facilitating Land Tenure After identifying appropriate land, food policy councils can take several steps to facilitate negotiations for the acquisition, transfer, or long-term lease of this land. The following list gives ideas for ways to preserve more farmland, help urban growers access suitable land, and enhance the security of urban growers' investments in the land. Utilizing conservation easements, long-term leases, and land-swap programs give landowners and growers the legal assurance that their investment in urban agriculture will be fruitful.

1. **Collaborate with cities and community organizations to preserve inventoried land for urban agriculture.** Once cities identify public or private land appropriate for urban agriculture, they can partner with land trusts or other community gardening organizations to arrange for acquisition, lease, or stewardship of conservation easements that will protect the land for agricultural purposes. For more information on land trusts and conservation easements, see Section III: Land Use Regulations.
    - **New York** explicitly empowers state agencies to make state lands available for community gardens.[40] New York law provides that state agencies that have title to vacant public land can permit the use of that land for community gardening and requires agencies to respond to requests to use public land for community gardens within thirty days and to make a final determination within one hundred eighty-days. New York law also: designates the use of municipal lands for community gardens "a valid exercise of municipal powers"; allows municipalities to identify suitable lands by establishing programs in conjunction with cooperative extension associations; and permits assisting with development of gardens by providing, free or at cost, site preparation, water systems, fencing, sheds, equipment, fertilizer, compost, seeds, and tools. The state has also created an Office of Community Gardens, whose duties include: assisting with the identification of vacant public land; facilitating the use of such land as community gardens by receiving and forwarding to the appropriate state or local agencies completed applications from community members interested in putting particular plots to such use; supporting and encouraging contact between community garden programs already in existence and those programs in the initial stages of development; and providing financial assistance to help fulfill these statutory goals.

[38] *See* "Urban Agriculture and Community Gardens," *Equitable Development Toolkit*, POLICYLINK, *available at* http://www.policylink.org/site/c.lkIXLbMNJrE/b.5136575/k.39A1/Equitable_Development_Toolkit.htm (last visited Jan. 8, 2012).
[39] *Id*.
[40] N.Y. AGRIC. & MKTS. art. 2-c, § 31-h (2004), *available at* http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=$$AGM31-H$$@TXAGM031-H+&LIST=SEA8+&BROWSER=BROWSER+&TOKEN=32126801+&TARGET=VIEW; N.Y. GEN. MUNIC. § 96 (2007), *available at* http://public.leginfo.state.ny.us/LAWSSEAF.cgi? QUERYTYPE=LAWS+&QUERYDATA=$$GMU96$$@TXGMU096+&LIST=SEA14+&BROWSER=BROWSER+&TOKEN=32126801+&TARGET=VIEW.

2. **Work to secure vacant or underused private land for urban agriculture.** Private land suitable for urban agriculture can be acquired or leased by private land trusts, which would preserve the land exclusively for urban agriculture. Alternatively, councils can attempt to negotiate conservation agreements between private landowners and local governments to ensure that the land is only used for agriculture. Although individuals and organizations often make agreements with private landowners to use land for urban agriculture, these two options are commonly used for conserving large amounts of private land.
   - In **Baltimore, MD**, an organization called Baltimore Green Space operates a private land trust specifically for community management, and welcomes flower gardens, open spaces, and food production.[41] The organization typically considers properties that are already being used for urban agriculture or community gardens, and determines whether to purchase them from landowners based on their longevity, environmental quality, and, of course, the landowners' willingness to sell the properties.[42]
   - In **Seattle, WA**, the Department of Neighborhoods works with a non-profit community gardening organization, the P-Patch Trust, to secure vacant land (*mostly* public) for the purposes of community gardening and urban agriculture. Community members apply for a yearly lease of individual "P-Patches," which they can farm individually or with other community members. Although the P-Patch Trust acknowledges that most of the P-Patches are not secured for permanent use, the organization is nonetheless able to keep vacant lands productive for several years and to continuously develop new P-Patches from the Seattle public land inventory and private lands.[43]
3. **Facilitate negotiations for long-term leases with public or private landowners to conserve land for urban agriculture.** Individual growers or community groups may want to obtain land independent of land trusts or other intermediary organizations. If they are unable to purchase land outright, then an alternative option is to negotiate a long-term lease with the public/private landowner. Often, it is possible to negotiate longer leases for public lands than for private parcels. A classic type of long-term lease is the 99-year lease, which in many states is the longest lease term one can obtain.[44] Aside from conserving land for agriculture, the major challenge is ensuring that growers do not end up with unfavorable terms that may require them to vacate their gardens in spite of these leases. Food policy councils can be critical players in advocating for policies that protect leases for urban agriculture from harmful provisions that discourage growers from investing in urban agriculture.

[41] *See* BALTIMORE GREEN SPACE, http://www.baltimoregreenspace.org/index.html (last visited Jan. 8, 2012).
[42] *See How to Preserve an Open Space*, BALTIMORE GREEN SPACE, *available at* http://www.baltimoregreenspace.org/pages/how-to-preserve-an-open-space.html (last visited Jan. 8, 2012).
[43] *P-Patch Community Gardens-Growing Communities,* SEATTLE DEP'T OF NEIGHBORHOODS, http://www.seattle.gov/neighborhoods/ppatch (last visited Jan. 8, 2012).
[44] *See 99 Year Lease Law & Legal Definition*, USLEGAL, http://definitions.uslegal.com/9/99-year-lease (last visited Mar. 22, 2012).

4. **Advocate for cities to create "land-swap" programs in which they must replace urban gardens taken for development purposes with a substantially similar space for urban agricultural use.** Food policy councils can induce cities to commit to maintaining a certain amount of public land for urban agriculture at all times through "land swap" programs. Thus, when cities terminate existing urban farms on public land for redevelopment reasons, they have to identify other parcels of land—similar in size, location, and productivity—to replace them. Such a mandate would create a disincentive to disrupting existing farms and would strengthen the security of urban farming enterprises while ensuring them a back-up location if something were to happen to their existing farm.
5. **Where feasible, help create competitive grant programs for growers to have long-term access to land in inventory, or to individual parcels most suitable to their activities.** Competitive grant programs can provide growers with both access to public land for agriculture and seed funding to assist with necessary start-up expenses, such as water infrastructure, soil, and tools. One of the challenges identified by the Portland/Multnomah Food Policy Council in **Portland, OR**, for instance, was that much of the public land inventoried through The Diggable City Project would require between $20-30,000 in infrastructure costs in order to support a viable farm.[45] Such expenses create a significant barrier to moving land out of inventory and into productive use. Coupling land leases with at least partial funding to cover start-up expenses would both increase the amount of vacant lots being farmed and reinforce the financial stability of gardening groups, particularly those operating in underserved communities. Food policy councils can advocate for local government to provide funding for such seed grants and also encourage local government to apply for federal government and private foundation grants to support urban agriculture, (see Securing Fiscal and In-Kind Support, below). Food policy councils can also work with local government to build urban agriculture grant programs that help ensure urban farm development in all areas of the city.

Securing Fiscal and In-Kind Support After land is identified and secured, many growers still face substantial financial challenges to supporting their farms and gardens. Building an urban garden or farm can be an expensive process, particularly given the challenge of untangling the potential zoning and permitting barriers and the costs of land, soil, seeds, animals, and infrastructure. In addition to zoning regulations, urban agriculture is subject to a range of public health, business, and agricultural regulations, which may require additional permits for growers, especially those wanting to sell their produce. To alleviate these burdensome costs, food policy councils should encourage local governments to implement economic development initiatives that are targeted to help urban agriculture operations flourish, including:

- Setting up loan or grant programs for urban growers and/or rural farmers providing access to start-up capital, credit, financial advice, soil testing, tools, and inputs such as seeds and soil amendments;[46]
- providing support to new or existing businesses that provide farm-related services and materials;[47]
- providing support for entrepreneurial infrastructure development for urban food production, processing, and marketing;[48] and

[45] Wendy Mendes, et al., *Using Land Inventories to Plan for Urban Agriculture: Experiences from Portland and Vancouver*, 74 J. AMER. PLAN. ASS'N 441 (Sept. 2008), *available at* http://www.tandfonline.com/doi/abs/10.1080/01944360802354923.
[46] ANNE CARTER & PETER MANN, N. AM. URBAN AGRIC. COMM. OF THE CMTY. FOOD SEC. COAL., FARMING FROM THE CITY CENTER TO THE URBAN FRINGE–URBAN PLANNING AND FOOD SECURITY (2002), http://www.foodsecurity.org/FarmingCitytoFringe.pdf.
[47] *Id.*
[48] *Id.*

- offering training and education programs for new farmers.

Several technical and financial resources now exist to encourage urban agriculture, including government grants and private foundation funding. Food policy councils can be instrumental in identifying available sources of funding and providing technical assistance to growers in the application process. As many public funding sources are administered at the federal and state level, councils should also push their local government to apply for grants that they can use to provide funding for local agricultural projects. Agencies that currently administer grants supporting urban agriculture include the United States Department of Agriculture, the Environmental Protection Agency, and the Department of Housing and Urban Development.[49] Private organizations, such as the Mott Foundation and the Captain Planet Foundation, also offer financial support for urban agriculture.[50]

Food policy councils can also support urban agriculture directly by providing seed funding or providing in-kind resources to new growers such as seedlings, soil, gardening tools, building materials, and even volunteer manpower. Such resources can be used for any number of critical agricultural needs and projects. The following is a short list of common resource needs of urban agriculture initiatives. Food policy councils can keep these needs in mind when working to advocate for local government to provide resources that support these programs.

Water is among the most critical resources for urban agriculture. In order to be viable, all farming and gardening initiatives must have reliable water access. This can be a challenge, particularly on lots where water inputs are neither established nor connected to a meter. Food policy councils can petition city councils and water or sanitation departments to reduce the costs of installing water inputs for urban agriculture projects. They should emphasize the benefits of increased healthy food access in communities and the environmental benefits of growing local produce. Another way to help secure water access for urban farms is to petition local utilities departments to provide water grants that cover the costs of water input installations. At the neighborhood level, farms located adjacent to viable water sources can work with their neighbors to craft agreements on water usage and shared costs. Food policy councils can help educate urban farmers and other organizations about the potential to utilize such cooperative arrangements.

Labor needs are another major challenge for urban growers, particularly those operating non-profit community gardens or co-ops. Many such organizations are thinly staffed and rely heavily on volunteer work throughout the growing season. Food policy councils can network with local youth and volunteer organizations, like AmeriCorps, to organize service days in urban farms and gardens. Additionally, councils can forge partnerships between prison reentry programs or job training programs and urban farming organizations to establish initiatives designed to give disenfranchised individuals an opportunity to develop skills that will contribute to the public good while reducing recidivism and strengthening the local economy.

Training & Education Food policy councils can foster the development of new urban growers and secure the future of urban farming through sponsorship of "farmyard trainings" for local residents. Training is especially important to make urban agriculture a viable source of food because necessary knowledge has been lost over the past few generations. Community gardens can host workshops for novice growers to

[49] *See Urban Horticulture: Funding Opportunities and Awards*, UNIV. OF ARIZ. COOP. EXTENSION, http://ag.arizona.edu/maricopa/garden/html/funding/fund.htm (last visited Jan. 8, 2012). Programs listed include Common Ground Garden Program (USDA), Community Development Block Grants (HUD), and Environmental Education Grants (EPA).

[50] *See Fundraising*, REBELTOMATO (2007), http://communitygarden.org/rebeltomato/roots/fundraising.php.

learn basic skills, like crop rotation, irrigation, and harvesting, and for long-term growers to learn new and innovative techniques, such as bioremediation, verma-composting, and storm water harvesting. Such initiatives require little time and resources, but serve three important functions: (1) introducing residents to their local food culture; (2) building community support for urban agriculture, local food systems, and local food economies; and (3) training new farmers that can increase the number of viable urban farms.

Schools, churches, city councils, parks departments, anti-hunger groups, healthcare providers, and non-profits across the country have come together to host programs that foster urban agriculture.[51] Food policy councils can publicize these resources, connect budding urban farmers to existing programs, and advocate for funding to ensure the existence of these crucial knowledge reserves. Agriculture educational and training programs typically fall into one of the following four categories.

1. **Apprenticeships** provide intensive urban agriculture training in areas such as various aspects of farming, farm-stand sales, community outreach, small-scale gardening, administrative work, and record-keeping. These programs are usually unpaid; in exchange for his/her work, the apprentice is provided with room, board, and, in some lengthier programs, a monthly living stipend.
2. **Internships** generally provide urban agriculture skills training over a shorter time frame than an apprenticeship (usually three months) for all levels of experience.
3. **Mentorships** offer opportunities for ongoing education in the form of technical, planning, and marketing support from experienced farmers to new farmers.[52] Agricultural mentorship programs sometimes have also been used to link retiring farmers to new farmers who can take over their farms and keep them operating to support the local food system.
4. **Volunteer Opportunities** provide volunteers with information and experiences they could not have otherwise obtained. Many local farms host volunteers of all ages interested in learning about and supporting local food production.
5. **School- and Community-Based Workshops** allow school and community groups to learn about farming techniques and other relevant topics around nutrition, environmental, and social issues related to a healthy food supply.[53] Local farms or farm-training organizations provide these tours and training workshops.

Growing Home, an organization in **Chicago, IL**, offers life and job skills training on three organic farms across the city to formerly incarcerated, homeless, and low-income individuals. At the completion of its job-readiness program, over 65% of participants find full-time work. Such training programs can provide essential labor for growers, build awareness of food security issues, teach basic farming skills, and foster stronger community ties.

Source: *Urban Farmers in Chicago*, GREEN FOR ALL, http://www.greenforall.org/ resources/people-programs/urban-farmers-in-chicago (last visited Jan. 8, 2012).

[51] *Urban and Community Agriculture*, NAT'L CENTER FOR APPROPRIATE TECH. (NCAT) SUSTAINABLE AGRIC. PROJECT (Apr. 19, 2011), https://attra.ncat.org/attra-pub/local_food/urban_ag.html.
[52] *Growing Sustainable Growers*, GA. ORGANICS, http://www.georgiaorganics.org/aboutus/programs.aspx (last visited Mar. 22, 2011).
[53] *See Urban Farming Education Program*, CITY SLICKER FARMS, http://www.cityslickerfarms.org/urban-farming-education-program (last visited January 1, 2012); *Educating Our Youth*, GROWING POWER, http://www.growingpower.org/youth_education.htm) (last visited January 1, 2012).

There are several established farm training programs that provide good models of how to integrate these apprenticeship, mentorship, volunteer, and educational opportunities.

- **Beginning Urban Farming Apprenticeship** is a partnership between Oregon State University Extension Service and Multnomah County that provides in-depth and comprehensive training in sustainable urban farming methods. The program offers formal classes, hands-on training, field-trips, online learning, and supervised apprenticeships. Participants also learn how to design, install, and manage farm and community infrastructure in urban settings. For hands-on training, participants must commit to 550 hours over the course of 8 months.[54]
- **City Slickers Farms** enables community members to meet the immediate and basic need for healthy organic food for themselves and their families by creating high-yield urban farms and backyard gardens. Its urban agriculture educational and training programs consist of yearlong apprenticeships, paid three-month internships, tours and service learning for schools and communities, community-based workshops, and volunteer opportunities.[55]
- **World Wide Opportunities on Organic Farms (WWOOF)** offers members access to a "Host Farm Directory," which lists more than thirteen hundred organic farms and gardens around the world. Members provide one-half day of volunteer help in exchange for food and one night's accommodation. WWOOF farms offer various educational opportunities, including growing vegetables, keeping bees, building straw bale houses, working with animals, and making wine. The program is open to anyone 18 or older, regardless of experience.[56]

Public Outreach Public outreach is also critical for the advancement of urban agriculture, as it can build the social capital and community consensus necessary to make major changes in food policy that are needed to allow more types of urban agriculture. Food policy councils can serve as forums for the discussion, negotiation, and evaluation of urban agriculture issues. Contentious debates over issues such as bee keeping or goat raising can be aired in a central space with the goal of reaching a viable middle ground that can be proposed to local government. If successful, councils can become fertile ground for the growth of broad-based and highly influential food movements. Councils can serve this function in many ways, including:

- Creating an "urban agriculture campaign" that combines open community meetings with widespread publicity and site visits to urban farms in order to increase awareness of the purpose and benefits of urban agriculture and give residents the opportunity to engage directly with growers;
- organizing local farming festivals where growers from the area set up farm stands with information about their operations and samples of their produce;
- partnering with local government to host workshops on pertinent legal issues/processes for urban agriculture, such as land permitting and rules on animal husbandry.

URBAN AGRICULTURE & ECOLOGICAL HEALTH

A large amount of city land can go unused as a result of its historical usage for industrial purposes, which often leaves behind high levels of soil contamination with elements like lead. If not properly addressed, such sites can be dangerous for urban

[54] *BUFA Program Description*, MULTNOMAH COUNTY, OR, http://web.multco.us/sustainability/bufa-program-description (last visited January 1, 2012).
[55] *See Urban Farming Education Program*, CITY SLICKER FARMS, http://www.cityslickerfarms.org/urban-farming-education-program (last visited January 1, 2012); *Educating Our Youth*, GROWING POWER, http://www.growingpower.org/youth_education.htm) (last visited January 1, 2012).
[56] *About WWOOF-USA*, WWOOF-USA, available at http://www.wwoofusa.org/About_WWOOFUSA (last visited Jan. 1, 2012).

growers due to the tainted soil. The conversion of under-utilized or abandoned vacant spaces into bountiful gardens can be an important tool in increasing community access to fresh, healthy food.

The process of cleaning up land previously used for industrial or commercial purposes that may pose environmental hazards for new uses is referred to as *brownfield remediation*. Unlike most urban development projects, which easily seal contaminants with concrete and buildings, urban farms require clean land on which to plant. To encourage brownfield remediation, food policy councils can support various programs and policies like those below.

- **Petition local government** to undertake comprehensive site cleanups prior to their conversion into farms in response to increased demand for urban agriculture.
- **Seek opportunities** to partner with local environmental and agricultural organizations to educate growers about measures needed to protect their produce and themselves. Co-sponsor urban "farmyard trainings" on proper soil testing, remediation techniques, and other environmentally sustainable agricultural practices.
- **Encourage local governments** to apply for brownfield remediation grants and advocate for the allocation of budget funds towards remediation of unused urban land in preparation for agriculture.
- **Identify local partners**, such as agricultural extension programs at local universities or laboratories, to negotiate for reduced-cost soil testing for urban growers and help inform urban growers about the need to test their soil.

Although there is no official regulatory scheme to support efforts to remediate brownfields, a set of safe gardening practices developed by the federal government can guide the process of preparing land for urban agriculture. Region 5 of the EPA along with experts from state and local governments and academia, produced a set of interim guidelines for converting urban brownfields to safe gardens.[57] Food policy councils can play a major role in implementing these guidelines and formalizing them into local and state policy.[58] The guidelines address a number of specific environmental considerations that growers should be prepared to address as they select their sites, as well as a protocol for soil testing and remediation processes, including:

- Identifying the previous use of the land to determine the risk of soil contamination;
- collecting soil samples for chemical analysis at a local lab or by agricultural extension agents; and
- managing risks by having the land cleaned up using bioremediation methods (suitable in cases of low levels of contamination) or more invasive methods (e.g. replacing soil) where necessary.[59]

For more ideas on how food policy councils can encourage environmentally sustainable food production, see Section VII: Environmental Sustainability.

[57] The EPA is developing more formal cleanup standards. *See Brownfields and Urban Agriculture: Interim Guidelines for Safe Gardening Practices*, EPA (Summer 2011), http://www.epa.gov/swerosps/bf/urbanag/pdf/bf_urban_ag.pdf.
[58] *See id.* at 1.
[59] *See id.* at 7–12.

SECTION V: CONSUMER ACCESS

For a variety of economic reasons, low-income communities often find it difficult to convince food retailers to develop permanent grocery outlets within close proximity to residents. As a result, residents often rely on convenience stores and fast food outlets, meaning that they do not have regular access to affordable healthy foods. Food policy councils can play a significant role in improving consumer access to healthy choices through institutions like temporary, mobile, and permanent food establishments, as well as entities like farmers markets, CSAs, and community gardens. Food Policy councils can work on policy changes both within these institutions and at the local government level in order to take advantage of these opportunities.

OVERVIEW Local food policy councils can increase consumer access to healthy food by promoting programs that encourage the sale of these foods in underserved areas and by implementing policy changes that help consumers travel to the venues that sell these healthy foods. In this section, we describe strategies that a food policy council can implement to improve its community's ability to acquire and consume healthy foods by fostering policy change both at the governmental and the institutional level.

1. Bringing Healthy Food to the Community Food policy councils should work to incentivize and facilitate the growth of farmers markets, retail markets, and other distributors to make fresh produce available in low-income areas. They can work to increase the availability of healthy foods in underserved communities by increasing access to the following types of entities.

- **Farmers Markets and Community-Supported Agriculture (CSAs)** Food policy councils should influence the creation of new and the expansion of existing farmers markets and CSAs in low-income communities. With programs that incentivize the use of the Supplemental Nutrition Assistance Program ("SNAP," formerly known as food stamps) and other food assistance programs at farmers markets and CSAs, food policy councils can help make healthy and locally grown products more affordable and available.
- **Mobile Delivery** Food policy councils should promote policies that encourage food pantries and grocery stores to open mobile units, which are lower cost and thus can increase access to healthy foods more quickly than opening a permanent retail outlet.
- **Permanent Retail Establishments and Healthy Corner Store Initiatives** Food policy councils can work with local government to attract private retail grocery developers and help those developers locate federal and state grants and/or loans to establish grocery stores in underserved areas. In addition, food policy councils can work with corner store owners to increase shelf space dedicated to fruits, vegetables, low-fat dairy, and whole grain products.
- **Community Gardens** Food policy councils can work with city agencies and community groups to establish community gardens, which provide fresh, local produce for the benefit of low-income neighborhoods.

2. Bringing the Community to Healthy Food Food policy councils can work with planning commissions and transportation authorities to increase public transportation options between low-income neighborhoods and grocery stores and to facilitate pedestrian and bicycle commuting on city streets.

BRINGING HEALTHY FOOD TO THE COMMUNITY Food policy councils can play a significant role in improving consumer access to healthy foods by finding ways to increase the number of stationary and mobile food vendors in underserved areas. Food policy councils can work on policy changes within these institutions and with their local government to enable communities to take advantage of these opportunities.

Farmers Markets The process of establishing a farmers market is far less complicated, time-consuming, and expensive than developing traditional grocery store outlets, meaning that farmers markets can more quickly serve the immediate food access needs of underserved neighborhoods. Local food policy councils can advocate for policy change at the governmental level to increase the amount of farmers markets in their city and at the institutional level within established farmers markets to encourage them to accept food benefit programs and/or offer financial incentives to low-income consumers who purchase produce at their markets.

At the government level, food policy councils can push for their cities to adopt policies that would allow farmers markets to grow in number and capacity. Councils might want to organize meetings with farmers market managers and vendors to gain a better understanding of the challenges that they faced when opening up their markets. When meeting with these stakeholders, food policy councils can learn about any barriers to conducting and expanding these markets; councils can then work with local government in an effort to reduce these challenges. As an example, local zoning ordinances may impede the formation of farmers markets. Cities can encourage the growth of farmers markets by amending local zoning ordinances to ensure that markets are permitted uses in as many zoning districts as possible.[1] Another way to use the zoning code to increase farmers markets is to use *incentive zoning* to encourage land developers to create space for markets in their developments. To accomplish incentive zoning, the local zoning board comes up with two lists, a list of promises it would like a real estate developer to make, such as including a farmers market in its development plans, and a list of zoning concessions that the board is willing to make, such as a streamlined licensing process or allowing extra square footage for residential units in the development beyond what is laid out as the limit in the zoning code. Then developers choose an option from each list.[2] See Section III: Land Use Regulation for more information on zoning and land use.

No single approach is recommended for the expansion and improvement of farmers markets because each municipality faces a unique set of circumstances. Food policy councils should identify the unique barriers to farmers markets in their areas and work with local government to encourage changes in burdensome local zoning rules or permitting regulations that impede farmers market operations.

Advocate for Government & Institutional Policy Changes to Increase Access at Farmers Markets

Assess Your City's Needs: Meet with farmers market managers and vendors to learn about legal and policy barriers they face.

Advocate for Policy Change: Work with local government to amend regulations in order to make it easier for farmers markets to operate.

Create SNAP-Friendly Markets: Encourage all the local farmers markets to invest in EBT machines capable of processing SNAP, either by pushing your local government to distribute free EBT machines or by encouraging markets to purchase wireless EBT machines.

Make your Markets Accessible to Other Food Assistance Programs: Work with local government to ensure that WIC, WIC FMNP and Seniors FMNP can be accepted as widely as possible and encourage all local markets to apply to be part of these programs.

Create "Double the Dollars" Incentive Programs: Encourage local government to appropriate money or apply for grant funding to start or expand a "double the dollars" program to incentivize purchases at farmers markets.

[1] Harrison Inst. for Pub. Law, Georgetown Univ. Law Ctr., Using Zoning to Create Healthy Food Environments in Baltimore City 13 (Dec. 2009), *available at* http://141.161.16.100/Clinics/hi/documents/HarrisonInstitute_UsingZoningtoCreateHealthyFoodEnvironmentsinBaltimoreCity.pdf.
[2] *Id*.

At the institutional level, food policy councils can educate farmers market managers and vendors on how food assistance programs can increase their consumer base, specifically through offering access to participants in the Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) (which in some states allows the use of the fruit and vegetable portion of the WIC monthly allotment to be spent at farmers markets), and programs like WIC Farmers Market Nutrition Program (WIC FMNP) and Senior Farmers Market Nutrition Program (S-FMNP), which offer funding specifically for use at farmers markets.

The opportunity to utilize food assistance benefits at farmers markets is a great avenue to increase healthy food access. Most food assistance dollars spent at farmers markets currently come from SNAP. SNAP recipients are able to access their benefits using a card that is similar to a debit card and that vendors run through an Electronic Benefit Transfer (EBT) machine. In recent years, farmers markets have been able to obtain wireless EBT machines (needed for farmers markets because they often do not have access to electrical outlets or phone outlets) that they can use on-site to accept SNAP benefits. In order to encourage SNAP recipients to spend their benefits at farmers markets, local governments and private foundations like the Wholesome Wave Foundation have gone a step further to incentivize such expenditures though "double up" programs that provide customers who use their SNAP benefits at farmers markets with vouchers that double the amount of money they can spend at the market.[3] Local food policy councils should take advantage of these innovative programs and get farmers markets involved in accepting these benefits, while pushing for their local government to appropriate money or apply for grant funding to provide such incentives.

In **California**, the California Department of Social Services provides a free wireless EBT device to farmers markets and handles all fees associated with using the machine. The device accepts only EBT transactions and does not accept credit or debit card charges.

Source: *A Simple Guide for Market Managers: EBT access at Farmers' Markets,* ECOLOGY CENTER, *available at:* http://www.ecologycenter.org/ebt/pdf/SimpleGuide201107.pdf.

In addition to SNAP, in some states, the fruit and vegetable portion of the WIC monthly allotment can be spent at farmers markets. Policy advocacy is needed in order to expand the authorization for accepting WIC fruit and vegetable allotments (called "Cash Value Vouchers," or "CVV") at markets in more states. WIC FMNP and Senior-FMNP are both small programs, so they are not available in all states, and, where available, may only be available in a few cities or counties within the state.[4] Food policy councils should educate farmers market managers and customers about these programs, while encouraging local or state governments to allocate money in order to expand the scope, amount, and availability of WIC FMNP and S-FMNP vouchers. The table below illustrates the current use of these programs and the opportunities that are available for expansion that local food policy councils may wish to explore.

[3] *See, e.g.*, *Double Up Food Bucks, Bridge Card Bonus at Farmers Market this Summer,* FAIR FOOD NETWORK, http://www.doubleupfoodbucks.org/news/bridge-card-bonus-farmers-markets-summer (last visited Dec. 1, 2011); *EBT/Food Assistance Programs*, ADAMS COUNTY FARMERS MARKETS, http://www.acfarmersmarkets.org/ebt.html (last visited Dec. 1, 2011).

[4] To apply to accept SNAP benefits at farmers markets, see *Apply Online to Become Authorized to Accept SNAP at your Retail Food Store*, USDA FOOD & NUTRITION SERV. (Nov. 30, 2011), http://www.fns.usda.gov/snap/retailers/application-process.htm.

TABLE V-1: RECOMMENDATIONS EXPAND FOOD BENEFIT USE AT FARMERS MARKETS			
	SNAP	**WIC**	**WIC/SENIORS-FMNP**
CURRENT USE AT FARMERS MARKETS	No limit on funds used at farmers market. Can be used at any markets that are authorized SNAP vendors and have EBT machines.	$6-10/month for fruits and vegetables *allowed* if state approves Cash Value Voucher (CVV)* checks at market. **CVV checks are for fruit and vegetable purchases (in WIC monthly package).*	$10-30/recipient/year to spend at registered farmers markets. S-FMNP generally has higher voucher rates. Both programs have limited availability in terms of voucher amounts and locations available.
STEPS TO INCREASE FARMERS MARKET PARTICIPATION	Work with government to support the free distribution of wireless EBT machines or push for those markets that do not have free machines to purchase machines. Advocate for a requirement that all local farmers markets accept SNAP. Push existing markets to transition by a certain date. Coordinate with farmers markets to implement a discount scheme for SNAP recipients, funded through local government or partners. Push local agencies to utilize governmental funds or apply for private funding, like that offered by the Wholesome Wave Foundation, for "double up" programs.	Advocate for state or local regulations that allow WIC CVV checks to be spent at farmers markets in addition to grocery stores or other authorized WIC vendors. Where allowed, educate markets about WIC CVV and encourage them to take steps to become authorized WIC CVV vendors. Push local agencies to utilize governmental funds or apply for private funding, like that offered by the Wholesome Wave Foundation, for "double up" programs.	Advocate for expansion or implementation of these programs by asking elected officials to push for expanded federal FMNP funding. Push for state or local government to put up funds to supplement these programs and bring them to more areas or increase the voucher amounts. Push local agencies to utilize governmental funds or apply for private funding, like that offered by the Wholesome Wave Foundation, for "double up" programs.

Community-Supported Agriculture Community-supported agriculture or CSA programs allow customers to purchase shares at a local farm at the beginning of the growing season and then receive fresh farm products, such as produce, eggs, cheese, and meat, throughout the year. Depending on the organization, the food is either delivered to the clients' doorstep on a weekly or biweekly basis, or made available for pickup at set locations throughout the city. CSA programs are a great way to increase access to fresh foods while supporting the local food system, since they ensure that farmers receive a certain amount of revenue and they encourage them to increase their growing operations.

Though CSAs may be convenient in terms of providing access at various locations (including home delivery), membership often requires a lump sum payment early in the growing season, which may prove difficult for low-income consumers. In addition, SNAP payments are not allowed to be used for CSAs that require a lump sum payment, so CSAs may need to be modified in order for SNAP recipients to participate. Food policy councils can motivate change at the institutional level by encouraging CSAs to adapt so that

they are available to low-income customers and SNAP recipients. There are a number of things food policy councils can encourage CSAs to do in order to accommodate these customers, such as those listed below.

- **Weekly and Bi-Weekly Payments** Encourage local CSAs to take payments on a more frequent basis instead of in one lump sum, perhaps online. The farmers of Uprising Farm in **Bellingham, WA**, changed their payment options so that customers using SNAP benefits could participate in the CSA.[5] Since the USDA does not allow SNAP recipients to use their benefits to pay for traditional upfront-fee CSAs, the farm decided to accept weekly and bi-weekly purchases. In addition, Uprising Farm describes its CSA program as a "farm stand" in its USDA application, in order to be licensed to accept EBT.[6]
- **Sliding Scale Payments** Push CSAs to institute more progressive fee systems, as some farms in **New York** have done by establishing a sliding scale according to a customer's income and ability to pay. The higher participation fees charged to higher-income customers subsidize low-income customers' CSA packages.[7] The Bed-Stuy CSA program in **Brooklyn, NY** also delivers boxes at reduced rates to low-income public housing projects.[8]

In **Brooklyn, NY**, the Bed-Stuy CSA delivers boxes at reduced rates to low-income housing projects. The CSA also organizes community dinners in the housing developments and holds cooking demos.

Source: *Strategies to Increase Mixed-Income CSA Participation*, JUST FOOD, http://www.justfood.org/csa/strategies-increase-mixed-income-csa-participation (last visited Dec. 1, 2011).

- **Revolving Loan Fund** Advocate for CSAs to make available a revolving loan fund, as some farms in **New York** have done.[9] A revolving loan fund allows low-income customers to pay for their CSA shares in monthly installments rather than one lump sum. Under this system, if a customer fails to make a payment, the farm transfers that month's CSA package to another low-income customer who is able to make the payment.[10]

Food policy councils can play a role in raising awareness about the existence of CSAs and the different price packages available, which is essential to increasing low-income consumers' participation in local CSAs. Food policy councils can use their diverse connections within the community, including local food banks and tenant associations, to promote CSAs and explain their benefits. The Bed-Stuy CSA in **Brooklyn, NY**, for example, organizes community dinners and holds weekly cooking demonstrations in the neighborhood's housing developments as an outreach strategy for the program (see text box above).[11]

Mobile Food Vending and Delivery Services Mobile food delivery services can supplement farmers markets and CSAs because they increase the distribution and sale of healthy foods to populations geographically isolated from food sources and to individuals for whom mobility poses a challenge. While retail establishments might worry about the economic viability of opening a stationary store in a community

[5] *A CSA Option for the Poor*, LOCAL HARVEST, http://www.localharvest.org/newsletter/20080130/csa-for-the-poor.html (last visited Dec. 1, 2011).
[6] *Id.*
[7] *See* HUNGER ACTION NETWORK OF N.Y. STATE, COMMUNITY SUPPORTED AGRICULTURE IN NEW YORK STATE, *available at* http://www.hungeractionnys.org/CSAProfiles.pdf (last visited Feb. 19, 2011).
[8] *Strategies to Increase Mixed-Income CSA Participation*, JUST FOOD, http://www.justfood.org/csa/strategies-increase-mixed-income-csa-participation (last visited Dec. 1, 2011).
[9] *See* HUNGER ACTION NETWORK OF N.Y. STATE, COMMUNITY SUPPORTED AGRICULTURE IN NEW YORK STATE, *available at* http://www.hungeractionnys.org/CSAProfiles.pdf (last visited Feb. 19, 2011).
[10] *Id.*
[11] *Strategies to Increase Mixed-Income CSA Participation*, JUST FOOD, http://www.justfood.org/csa/strategies-increase-mixed-income-csa-participation (last visited Dec. 1, 2011).

that is low-income or where homes are spread out, mobile food vendors can serve a larger geographic area with fewer property and maintenance costs than those of stationary food retailers. Food policy councils should simultaneously advocate at the governmental level and at the institutional level for policy changes to increase mobile food vending. Councils can work with local government to ensure that permitting, licensing, and zoning provisions make the operation of mobile grocery stores, mobile farmers markets, and mobile food banks possible. At the institutional level, they can work with local partners to encourage the growth of mobile delivery mechanisms. The following are some examples of these initiatives.

- **Food Bank Home Delivery** Food policy councils can partner with food banks to establish programs that provide food delivery service to the homes of senior citizens and handicapped individuals, such as the **Cambridge, MA**, Food for All Program, which brings fresh produce and other groceries to 50 to 60 residents each month.[12]
- **Mobile Food Banks** Food policy councils can encourage local food banks to bring food directly to communities by setting up weekly deliveries in a central location. In **Quincy, MA**, the Greater Boston Food Bank sets up a 26-foot truck at a neighborhood center once a week to deliver fresh produce and other foods to a primarily low-income community considered a food desert.[13]
- **Mobile Farmers Markets** As mentioned above, one of the easiest ways to increase food access quickly is to open a farmers market, in part because less equipment is needed. In order to further increase access to farmers markets, some farmers markets have been taking their show on the road and creating mobile farmers markets. For example, Rural Resources in **Greeneville, TN**, operates a mobile farmers market that delivers right to people's homes and to the local hospital.[14] In **Camden, NJ**, the Greensgrow Farms Mobile Market makes regularly scheduled stops at four inner-city locations on Thursdays and Fridays during the summer and fall months.[15] Food policy councils should work with farmers markets to encourage them to start operating mobile services and also work with local government to make sure that these mobile markets are able to be permitted and zoned to operate in underserved neighborhoods.
- **Mobile Grocery Stores** Communities with very low food access can also benefit from mobile grocery stores. In **Chicago, IL**, a group of activists established a "Fresh Moves" bus, which makes three stops a day, two days a week, in underserved areas around Chicago. The bus sells fresh organic groceries in addition to shelf-stable foods, and in its first week served over 600 customers.[16] A similar option is to work with local grocery stores to help underserved communities order groceries online and then pick them up from set locations. The Baltimarket program in **Baltimore, MD**, is a partnership between local grocery stores and the Baltimore City Health Department through which customers can place grocery orders online (at home or at their local library) and then pick up the groceries at their local library on certain days.[17] Food policy councils can advocate for change at the governmental level by forging some of the same kinds of policies needed to operate mobile farmers markets, in terms of ensuring that permitting and zoning laws allow for mobile food vending. As is clear in the Baltimore example, the local government can also play a role in mobile grocery services

[12] *Home Delivery Program*, FOOD FOR FREE, http://www.foodforfree.org/home-delivery-program (last visited Dec. 1, 2011).
[13] John Hanc, *A Mobile Oasis in a Food Desert*, N.Y. TIMES (Nov. 1, 2011), http://www.nytimes.com/2011/11/02/giving/a-mobile-food-pantry-in-a-food-desert.html?r=3&src=recg.
[14] *Mobile Farmers Market*, RURAL RESOURCES, http://www.ruralresources.net/index.php/dig-in/mobile-farmers-market-blog (last visited Feb. 20, 2012).
[15] Tara Nurin, *Farmers Market on Wheels*, PHILA. INQUIRER, July 7, 2011, *available at* http://articles.philly.com/2011-07-07/news/29747222_1_mobile-market-food-stamps-north-camden.
[16] Will Guzzardi, *Fresh Moves Mobile Grocery Store: An Innovative Solution To Food Deserts*, HUFFINGTON POST, June 16, 2011, http://www.huffingtonpost.com/2011/06/16/fresh-moves-mobile-grocer_n_878414.html.
[17] *Got A Question?,* BALTIMARKET, http://baltimarket.org/?page_id=150 (last visited Feb. 20, 2012).

by facilitating the points of sale. Food policy councils should encourage their local government to engage in creative solutions to increase food access like Baltimore has done. Food policy councils can also work at the institutional policy level to encourage existing stationary grocery stores to develop mobile stores that operate in needy communities.

Permanent Food Retail Establishments

Making sure that every community has access to a full-service grocery continues to be of great importance in increasing access to healthy foods for all members of the community. Beyond the convenience of longer operating hours, greater selection, and sometimes more affordability, permanent grocery store development can also play an important role in increasing property values in the community and attracting additional business.

POLICY CHANGE TO INCREASE THE OPERATION OF FOOD RETAIL ESTABLISHMENTS

Development Incentives: Work with local government to provide financial and zoning incentives to attract private retail grocery developers.

Funding: Help food retail developers locate federal and state grants and loans to facilitate the establishment of grocery stores in underserved communities.

Food policy councils can work at the institutional level with private retail developers, food banks and pantries, and neighborhood associations, as well as with local government in order to encourage the establishment of permanent grocery stores in low-income neighborhoods. In **Gary, IN**, for example, city policy makers designed tax abatements and a variety of other incentives to attract supermarkets into low-income neighborhoods.[18]

Food policy councils can also help retail developers locate federal and state funding that would make opening a store in a low-income community more feasible, such as the federal Healthy Food Financing Initiative or state-operated fresh food financing initiatives. These programs help to fund projects that bring new sources of healthy, fresh foods into low-income communities currently lacking such options.[19] After identifying a significant lack of food access in its lower income neighborhoods, the city of **Philadelphia, PA**, partnered with The Food Trust, a nonprofit, to found the Pennsylvania Fresh Food Financing Initiative. The program assists with the financing needs of retail food vendors in underserved communities by providing grants and loans to help them open new locations or expand existing operations in order to provide more fresh fruits and vegetables. As of 2012, this public-private partnership manages funds of $85 million and has provided funding for 88 fresh-food retail projects in 34 Pennsylvania counties.[20] The Initiative estimates that this funding has created or preserved more than 5,000 jobs, while improving access to healthy food for more than 500,000 people.[21] Several other states have followed suit and created their own state-level Fresh Food Financing Initiatives, including Louisiana, New York, New Jersey, and Illinois. To see additional examples of other approaches food policy councils can take in providing zoning and financial incentives, see Section III: Land Use Regulation.

[18] Leadership for Healthy Communities, *Action Strategies for Healthy Communities: Supermarkets & Healthy Food Vendors* Examples, ROBERT WOOD JOHNSON FOUND., http://www.leadershipforhealthycommunities.org/content/view/318/187 (last visited Dec. 9, 2011).
[19] Office of Cmty. Servs., *Healthy Food Financing Initiative*, U.S. DEP'T HEALTH & HUM. SERVICES ADMIN. CHILD. & FAMILIES (Jan. 18, 2011), http://www.acf.hhs.gov/programs/ocs/ocs_food.html.
[20] *Pennsylvania Fresh Food Financing Initiative*, THE FOOD TRUST, http://www.thefoodtrust.org/php/programs/fffi.php (last visited Feb. 9, 2012).
[21] *Id.*

Ensuring that Local Groceries Provide Healthy Options

The Food Code for **Minneapolis, MN,** requires that all grocery stores stock certain amounts of staple foods. This ensures that if a grocery store is occupying an area and preventing new businesses from coming into that area, the grocery store will at least be required to carry a minimum amount of healthy, nutritious food items, thus leading to improved food access for the area.

The ordinance requires that all grocery stores offer at least three varieties of food in each of the four staple food groups, with at least five varieties of food in the first category and at least two varieties of food in all subsequent categories:

(1) Vegetables and/or fruits
(2) Meat, poultry, fish and/or vegetable proteins
(3) Bread and/or cereal
(4) Dairy products and/or substitutes

Source: MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203.10 (2012).

Healthy Corner Store Initiatives Healthy corner store initiatives improve access to healthy foods by increasing the shelf space dedicated to fruits, vegetables, low-fat dairy, and whole grain products in small, local stores. Corner stores are often the nearest retail food outlet in underserved neighborhoods; however, for a variety of reasons including demand, many corner stores do not stock much fresh produce.

Food policy councils can help corner stores turn healthy by persuading them to stock additional healthy items, such as fruits and vegetables, in exchange for providing them resources, such as display cases and health information handouts that are designed to increase sales of these items. In **Cleveland, OH**, the Health and Nutrition Working Group successfully started the Cleveland Corner Store Project to deal with food insecurity, and many corner stores continue to sell healthy items as demand rises.[22] The initiative also had the effect of reducing tobacco and alcohol signage in corner stores. Similarly, some municipalities have also used city ordinances to require grocery stores to improve the content of their healthy food selection. For example, an ordinance in **Minneapolis, MN**, requires that grocery stores stock a certain amount of healthy so-called "staple" foods at any given time (see text box).[23]

Community Gardens Community gardens come in various shapes and sizes, can be planted in both urban and rural settings, and can be run by various groups, whether private or public, for profit or non-profit. The common thread among these gardens, however, is that they are cultivated by multiple members of the community, rather than a single individual. The produce, herbs, and plants from the garden are then harvested by garden members for their own use or sold to community members or at local farmers markets, as well as to other local entities such as restaurants.

Community gardens not only increase food access by bringing healthy, fresh foods closer to disadvantaged populations, but also present an opportunity to build stronger community bonds among neighborhood residents, serve as education tools, decrease crime and violence by bringing community members together and getting more eyes out on the streets, and increase property values through neighborhood beautification. Food policy councils can play an important role in increasing the number and capacity of community gardens in their municipalities through the following government and institutional strategies:

[22] *Cleveland Corner Store Project*, PREVENTION RESEARCH CTR. FOR HEALTHY NEIGHBORHOODS OF CASE W. RES. UNIV., http://prchn.org/cleveland-corner-store-project/ (last visited Mar. 29, 2012).
[23] MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203.10 (2012).

- **Zoning** Work with city authorities to make sure zoning rules are favorable to community gardens, both in terms of allowing for all types of foods to be produced in the garden and in terms of allowing for sales from the garden even if the area was not traditionally zoned for commercial enterprise.
- **Space** Help preserve land for gardens by working with the city to identify unused public space, connecting gardeners with the space, and testing the soil quality to make sure the space is safe.
- **Education** Coordinate with non-profit organizations, that can provide gardening education and instruction to community members who have never grown their own food.
- **Fundraising** Help raise funds for purchasing gardening supplies, seeds and starter plants, or for building a water distribution system.

For a more detailed explanation of some of the benefits and challenges to growing food in urban areas, see Section IV: Urban Agriculture.

The Atlanta Community Food Bank runs a program called Plant a Row for the Hungry where gardeners around **Atlanta, GA**, are encouraged to plant an extra row of vegetables and donate the surplus to a local food pantry. The program links gardeners with drop-off sites in their communities. In 2011, the program brought in over 106,000 pounds of locally grown produce to help feed hungry people in the city and its surroundings.

Source: *Plant a Row for the Hungry*, ATLANTA COMMUNITY FOOD BANK, http://www.acfb.org/projects/community_garden/plant_a_row/ (last visited Dec. 9, 2011).

BRINGING THE COMMUNITY TO HEALTHY FOOD In order to increase healthy food access, food policy councils can also work to ensure public transportation options are available and improve the ability for residents to walk and bicycle to retail food outlets. Improving options to walk and bike not only expands food access but also promotes healthy lifestyles and increases community connections and safety.

Whether decisions concerning the development of roads, traffic signals, and street lighting are taken at the local or state level depends on how much authority has been delegated to the local government. For more information about such delegation of authority, specifically via Home Rule or enabling statutes, see Section I: General Legal Setting. Similarly, in some areas, public transit associations are part of city government, but in others they are controlled by the state. It is therefore important that food policy councils identify the relevant agencies or governmental bodies with the ability to implement some of the transportation system improvements the council hopes to make.

Food policy councils can work with local public transportation authorities, where applicable, to:

- **Ensure that Public Transit Service Works for Underserved Communities** Identify areas underserved by public transportation and isolated from healthy food sources and push for the development of bus and subway lines capable of connecting these neighborhoods with food sources. In **Austin, TX**, the Austin/Travis County Food Policy Council worked with Austin Capital Metro Transit to start operating a "grocery bus" line with the goal of improving access to grocery stores for

low-income neighborhoods. This bus line now links these low-income neighborhoods with two supermarkets.[24]

- **Encourage Cycling** To promote bicycle commuting to buy groceries, the food policy council can advocate for the connection of bicycle racks to buses, installation of more bicycle racks outside grocery stores, and the creation of more bicycle lanes. The Council could propose a policy where every time a road is repaved, bicycle lanes are painted on the street to make cycling a safer option. In **Washington, DC**, the Bicyclist Association ("WABA") has been successful in expanding bike-parking requirements in DC commercial buildings, getting the Washington Metro authority to install bike racks on Metrobuses, and increasing the number of hours that bikes are allowed on Metro trains. It also helped to develop Capital Bikeshare—the largest regional bike-sharing program in the United States.[25]
- **Improve Safety** Work with city agencies to make streets safer for both walkers and bikers by ensuring that city streets are well lit, clear traffic signals are maintained, and wide sidewalks are developed to encourage safe bike and pedestrian routes to grocery stores and other food providers.
- **Develop Beneficial Partnerships** Work with partners in local government, the community, and faith-based organizations that are active in underserved communities to identify opportunities for possible collaboration. Churches, schools, sports organizations, and private industry often provide transportation services such as shuttles for their members. By partnering with these groups in neighborhoods isolated from healthy food retail options, it may be possible to provide free or reduced-cost bus or shuttle service for community residents on a weekly or biweekly basis. Local government can encourage such initiatives by offering tax incentives to organizations that provide such a service or a local food policy council can collaborate with a local group to identify funding sources. Similarly, local food policy councils may want to explore existing routes that are provided by private industry to bring employees and/or customers to and from the work location. Local food policy councils may be able to work with these companies to utilize the shuttle when it is not in service during the day, or arrange for shuttle routes that can simultaneously provide free transportation to underserved residents while bringing employees to their drop-off site. Look for existing opportunities to identify potential means to bring the community to healthy food.

The **Bellevue, WA**, City Council passed an ordinance that specifies strategies and priorities for meeting the city's changing transportation needs. The Plan includes 435 projects that, when finished, will yield 90 miles of sidewalk, 144 miles of bikeway, and 20 miles of trail facility improvements. Other cities and localities around the country have enacted similar transportation plans with largely varying scopes and resource requirements.

Sources: CITY OF BELLEVUE, WASH., 2009 PEDESTRIAN AND BICYCLE TRANSPORTATION PLAN REPORT (2009), *available at* http://www.bellevuewa.gov/pdf/Transportation/ped_bike_plan_2009.pdf; Pedestrian and Bicycle Information Center, *Sample Bicycle Plans,* http://www.bicyclinginfo.org/develop/sample-plans.cfm.

[24] *See Access to Healthy Food: Food Transport and Public Transit* (Jan. 2007), NAT'L CONF. OF ST. LEGISLATURES, http://www.ncsl.org/IssuesResearch/Health/AccesstoHealthyFoodFoodTransportPublicT/tabid/14318/Default.aspx.

[25] *Washington, DC Advocacy*, WASH. AREA BICYCLIST ASS'N, http://www.waba.org/advocacy/index.php (last visited Feb. 10, 2011).

SECTION VI: SCHOOL FOOD & NUTRITION EDUCATION

The rates of obesity and type 2 diabetes are growing rapidly among young people in the United States. As institutions where children and adolescents spend large amounts of time, schools are in a unique position to ensure that kids get healthy, appropriate meals. Food policy councils can provide significant assistance to schools by advocating for local policy changes or working with individual schools to reform institutional practices in an effort to bring more fresh and nutritious food to students and shape the way that students learn about nutrition, food, and health.

OVERVIEW Many decisions concerning the foods served in schools and educational programs regarding nutrition and food are made at the local level. Food policy councils should work with local agencies as well as the local school district to improve the nutritional quality of the food served and the health and nutrition education programs provided.

There are numerous ways to improve the quality of food served in school lunches. In January 2012, the U.S. Department of Agriculture (USDA) changed the school nutrition guidelines for the first time in fifteen years.[1] These school nutrition guidelines apply to foods served by schools as part of the National School Lunch Program (NSLP), a program by which the federal government reimburses schools for the costs of meals served to children from families that fall under certain income guidelines.[2] Over the next few years, schools will be required to make various changes to the types of foods served, including increasing the amount of servings of fresh fruits and vegetables, increasing the amount of whole grains, replacing all milk with low fat options, and reducing the amount of calories, trans fat, and sodium allowed in school meals.[3] As these changes take place, food policy councils can play an important role in helping schools to create healthier menus and healthier students through a range of policy changes at the local government and institutional level.

1. School Procurement Policies

Schools have policies in place that determine how they procure the foods that they serve to kids. Schools that purchase more of their foods from local farmers or producers help to ensure that the foods served to students are fresher and healthier while also supporting local farmers and the local food system.

- **Geographic Preference** Food policy councils can advocate for geographic preference policies, which give preference to foods that are grown or produced locally.
- **Purchasing Outside the Formal Bid Process** Food policy councils can assist schools in purchasing from local farmers by encouraging them to purchase outside the formal bid process, or by advocating for the state to increase its small purchase threshold (if lower than the federal threshold).
- **Helping Schools that Use Different Bid Methods Purchase Locally** Food policy councils should understand the various bidding methods schools use to procure food products so they can advocate for increased local purchases no matter the bidding process.

2. School Breakfast

Food policy councils can advocate for schools to create universal free breakfast programs and for local government to provide funding to assist such programs.

3. Food Education Initiatives

Food education initiatives such as nutrition education or farm to school programs are great ways to help students learn more about nutrition, health, the environment, and the food system.

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[1] 7 C.F.R. § 210, 220 (2012).
[2] *National School Lunch Program Fact Sheet,* USDA FOOD & NUTRITION SERV. (Oct. 2011), http://www.fns.usda.gov/cnd/lunch/AboutLunch/NSLPFactSheet.pdf.
[3] 7 C.F.R. § 210, 220 (2012).

4. Improving the School Lunch Period Food policy councils may also work to advocate for broader changes in schools, such as changing the school day so students have more time for lunch and ensuring that schools have recess periods, that can improve the health of students.

5. School Wellness Policies The *Healthy Hunger-Free Kids Act of 2010* requires all schools receiving federal funding for school meals to create and utilize school wellness policies.[4] Food policy councils can assist schools in creating these policies and ensuring that they are successful.

School Procurement Policies

School procurement policies, or the procedures schools follow to order food and other products, should be a primary target for food policy councils interested in increasing the amount of fresh, healthy foods served in schools while helping to create a new market for local farmers and producers. School districts have the option to amend their procurement policies to increase the purchase of local foods. One of the best ways for schools to purchase fresher foods while supporting the local food system is to put in place a *geographic preference policy*.

Geographic Preference Geographic preference policies give preference to foods that are grown or produced locally. These types of policies make it easier for local farmers to compete with larger distributors in the school food bidding process. Locally sourced foods, particularly from smaller farms, might cost more if the farm is new to providing for schools, resulting in increased labor and/ or infrastructure costs. In order to encourage schools and institutions to create geographic preference policies, the USDA issued a new rule in 2011 outlining the ways in which schools and institutions can include a geographic preference for unprocessed, locally grown and locally raised agricultural products.[5]

This rule makes it clear that schools can specify on their bid forms that they are seeking local food.[6] Alternatively, schools can award a *percent price preference* to local farmers or producers by equating geographic proximity to a decrease in price on the bid, thus making local foods less expensive comparatively.[7] For example, imagine a school offers a 10-cent price preference to bidders within a certain geographic proximity and receives three bids. As seen in the chart below, the 10-cent preference could make a difference in the price such that the local producer (Bidder 2) would be able to win as the lowest cost contract.

Geographic Preference

Geographic preference refers to any policy or initiative in which a school or other institution seeks to purchase food from farms and producers within a certain geographic proximity by making it easier for such local producers to meet its bids. Geographic preference policies ensure that fresher foods are available to the students while helping local, often small-scale farmers, find a stable market for their goods.

Schools and institutions can implement a geographic preference by taking into account the origin of foods in the bidding process or by giving a percent price preference to locally grown foods, making their bids comparatively cheaper than those of non-local foods.

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[4] Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, § 204, 124 Stat. 3183, 3216 (2010).

[5] Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22,603 (Apr. 22, 2011). This new rule defines "unprocessed foods" as foods whose "inherent character" as agricultural products has not been altered. This definition still allows *de minimus* handling and preparation, such as "washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton." *Id.* at 22,604. Purchasing institutions will be given the authority to define the geographic area considered local. *Id.* Ground beef will be considered unprocessed as long as no additives or preservatives are added to it. *Id.* at 22, 605. This was done in response to a mandate from Congress in the Food, Conservation and Energy Act of 2008, the periodic reauthorization of the federal Farm Bill Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, § 11002, 122 Stat. 923, 1125–26 (2008).

[6] Cynthia Long, *Procurement Geographic Preference Q&As*, USDA Food & Nutrition Serv. (Feb. 1, 2011), http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP18-2011_os.pdf.

[7] Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22,603 (Apr. 22, 2011).

TABLE VI-1: GEOGRAPHIC PREFERENCE IN SAMPLE BIDDING SITUATION[8]			
	BIDDER 1	BIDDER 2	BIDDER 3
PRICE	1.97	2.03	2.10
MEETS GEOGRAPHIC PREFERENCE	No	Yes (-10 points)	No
PRICE WITH PREFERENCE POINTS	1.97	**1.93**	2.10

It is important to note that the geographic preference rule passed by the USDA was created to let schools know that they can implement a geographic preference when making purchases through the NSLP. This program utilizes federal money; however, if state money is being spent, different rules may apply. Some states have passed legislation regarding procurement using state dollars that creates a preference for foods produced in the state any time state dollars are spent. For example, **Alaska** grants a 7% price preference for state-grown agricultural products purchased using state funds.[9] This means that in a competitive bidding process, foods that are grown within the state will appear to be 7% less expensive than their bid price, thus allowing them to be competitive with prices offered by larger national food distributors. Food policy councils should communicate with schools to learn when dollars being spent are federal, state, or local and what rules apply. When state money is available for food procurement, food policy councils should try to encourage schools to purchase local products to support local farmers and businesses. However, school meal programs rely primarily on federal funding, so the impact of state funding for the procurement of local foods is generally quite small in the K-12 school arena, though encouraging other institutions using state money, such as state agencies or state colleges and universities, to increase local procurement might have a more significant impact.

Purchasing Outside the Formal Bid Process Aside from geographic preference policies, another way for schools to increase their purchases of local foods is to purchase foods from local farmers outside of the formal bid process. The first step in this process is often to assist schools in connecting to local farmers. If a school then decides to conduct a commercial transaction that is small enough to be considered a "small purchase", the school does not have to go through a formal bid process.[10] This enables small farms to sell produce without going through the formal process, thus lowering administrative costs for both the farmers and the schools and making it more likely that small, local farms will be able to sell to schools. Currently, the federal small purchase threshold is $100,000 per purchase, but states have set their own small purchase thresholds anywhere from $5,000 to the full $100,000 federal maximum.[11] Food policy councils can work with schools to utilize the flexibility of making purchases outside the formal procurement process up to the small purchase threshold amount. Food policy councils should also find out what the small purchase threshold is in their state. If the state threshold is so low that it hinders schools from purchasing from local producers, councils can advocate for the state to increase the small purchase threshold.

[8] Adapted from chart in Cynthia Long, *Procurement Geographic Preference Q&As*, USDA FOOD & NUTRITION SERV. (Feb. 1, 2011), http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP18-2011_os.pdf.
[9] ALASKA STAT. ANN. § 36.15.050 (2011).
[10] *Farm to School FAQs: Procurement* (2012), USDA FOOD & NUTRITION SERV., http://www.fns.usda.gov/cnd/f2s/faqs_procurement.htm#2.
[11] *Id.*

In **Oklahoma**, the Oklahoma Food Policy Council created a survey of school nutrition directors in the state to gauge the level of interest in local food purchasing. Two-thirds of schools said they would purchase from local producers if it were a comparable price to alternatives, and would most likely purchase tomatoes, cucumbers, onions, lettuce, eggs, potatoes, melons, strawberries, ground beef, cheese, and dairy products.

A Parent Teacher Association in **Davis, CA**, initiated a school lunch salad bar program with produce sourced directly from local farmers. To celebrate the opening of the bar, the PTA created a parent handout with a monthly menu, presented to staff and students, and treated each teacher to their first salad bar lunch to model behavior for the students.

Source: TONYA ADAIR ET AL., PORTLAND MULTNOMAH FOOD POLICY COUNCIL, THE SPORK REPORT: INCREASING THE SUPPLY AND CONSUMPTION OF LOCAL FOODS IN PORTLAND PUBLIC SCHOOLS 28 (2005), *available at* http://www.portlandonline.com/bps/index.cfm?c=42794&a=116850.

Source: *Farm-to-School Salad Bar Program Celebrates Grand Opening*, UC Davis News and Information (Apr. 9, 2001), available at news.ucdavis.edu/search/news_detail.lasso?id=5673

Helping Schools that Use Different Bid Methods Purchase Locally To summarize, there are a few ways that food policy councils can help schools utilize their procurement policies to get more fresh, local foods to students while at the same time increasing economic opportunities for local farmers and producers. Local food policy councils can increase local procurement by:

- Connecting schools interested in purchasing local foods with local farmers and producers;
- helping the school to implement a geographic preference policy, such as a percent price preference;
- working with schools to utilize the flexibility of the small purchase threshold to purchase local foods without going through the formal bidding process; and
- advocating for the state to increase its small purchase threshold if the state threshold is lower than the federal minimum of $100,000.

As described above in Purchasing Outside the Formal Bid Process, small farmers respond best to purchases that are outside the formal bidding process because they are below the small purchase threshold. When schools use formal bidding processes, they generally utilize one of two methods: *Invitation for a Bid* and *Request for Proposals*. Table VI-2 lays out the approaches that a food policy council can take to help local schools districts using any of these bid methods procure more locally-produced food products.[12]

[12] Information taken from Kirk Farquharson, *School Lunch Procurement and Using Geographic Preference,* USDA FOOD & NUTRITION SERV. (Oct. 20, 2011), *available at* http://childnutrition.ncpublicschools.gov/training/conference/2011-annual-conference-for-child-nutrition-administrators/procurement.pdf. Note that a fourth type of procurement, "noncompetitive bidding," is not discussed here.

TABLE VI-2 : HELPING SCHOOLS WITH ANY BID METHOD PROCURE MORE LOCAL FOOD		
PROCUREMENT METHOD	**SELECTION PROCESS**	**RECOMMENDATIONS**
SIMPLIFIED ACQUISITION **[SMALL PURCHASE PROCEDURES OR INFORMAL PROCUREMENT]**	If making small purchases, the school district does not need to use the formal procurement process in which price is the determinative factor. Though the federal "small purchase" threshold is $100,000, states can set their own threshold, without exceeding the maximum federal limit.[13] Some districts have set theirs as low as $5,000.[14]	➢ To give schools more flexibility in making small purchases from local farms, advocate for the state to increase the small purchase threshold. ➢ Advocate for individual schools to utilize the simplified acquisition process, as it makes it easier for local farmers to sell to schools.
INVITATION FOR BID (IFB) **[SEALED BIDS OR FORMAL ADVERTISING]**	The school district is limited to choosing the bidder that presents the lowest cost proposal.	➢ To incorporate geographic preference into ordering, encourage schools to include specifications in the IFB that prefer local foods, such as "picked within one day of delivery," "harvested within a certain time period," or "traveled less than XX miles or hours" and then choose the lowest price option from bidders that meet this requirement.[15] ➢ Advocate for a percent price benefit to local farms by making geographic proximity count as a discount, thereby decreasing the bid total for local products.[16] This would lower the bids from local farms in comparison to non-local farms, enabling local farms to win more contracts.[17]
REQUESTS FOR PROPOSALS (RFPS) **[COMPETITIVE PROPOSALS]**	RFPs consider additional factors besides price when deciding which bid is most advantageous to the program.	➢ Help the school amend its RFP to include questions about the geographic origin of food products and make geographic proximity count as a positive factor in choosing the most beneficial bid.[18]

SCHOOL BREAKFAST The School Breakfast Program is another critical factor influencing student health and nutrition. Although much attention has been devoted to the quality of school lunches, it is important to recognize that a healthy breakfast can significantly improve a child's school day. Many low-income children do not receive breakfast at home, and without a healthy meal to start the day it is difficult for children to concentrate and learn productively. Federal law provides for the federal government to

[13] *Id.*
[14] *Id.*
[15] *How to Apply a Geographic Preference*, NATIONAL FARM TO SCHOOL NETWORK, http://www.farmtoschool.org/files/publications_372.pdf (last visited Dec. 1, 2011).
[16] Memorandum on Procurement Geographic Preference Q&As from Cynthia Long, Dir., Child Nutrition Div., USDA Food & Nutrition Serv. 4–5 (Feb. 1, 2011), http://www.fns.usda.gov/cnd/Governance/PolicyMemos/2011/SP18-2011_os.pdf.
[17] *Id.*
[18] Kirk Farquharson, *School Lunch Procurement and Using Geographic Preference,* USDA FOOD & NUTRITION SERV. (Oct. 20, 2011), *available at* http://childnutrition.ncpublicschools.gov/training/conference/2011-annual-conference-for-child-nutrition-administrators/procurement.pdf.

reimburse school breakfasts,[19] similar to the NSLP; however, thus far, the National School Breakfast Program (NSBP) has been underutilized. As of 2009, at least 16,000 schools that participated in the NSLP did not participate in the NSBP.[20] Of every 100 students who receive free or reduced-price lunch nationwide, only 48.2 receive free or reduced-price breakfast.[21] These statistics suggest that a large group of children begin their school day without a nutritious breakfast or without breakfast at all. Food policy councils should encourage local schools to participate in the NSBP to ensure that all children receive a nutritious breakfast every school day. The NSBP dramatically increases breakfast consumption, and evidence demonstrates that starting the day with a nutritious breakfast decreases absences, tardiness, and disciplinary problems, and fosters a stronger learning environment and concentration levels among students.[22]

At lunchtime, all students are either in or near the cafeteria whether or not they receive the reimbursable school meal; however, this is not the case during breakfast, as children arrive at the school at different times, often go straight to class, or engage in activities before school. Thus, if students eligible for the NSBP go to the cafeteria for breakfast other students are more likely to know that those students are receiving a free meal, which can raise issues of stigma and embarrassment for those students. Food policy councils can advocate for schools to distribute breakfast in a way that circumvents this problem. For example, schools may distribute food as students exit their bus or enter their classroom through "Grab n' Go" programs. Alternatively, schools can make breakfast part of the school day through programs such as Breakfast in the Classroom, or use other options, such as Second Chance Breakfast or Breakfast Vending.[23] Incorporating breakfast into the classroom may also give schools the opportunity to incorporate nutrition education into the beginning of the school day, and, in the process, develop more alert, focused and healthy students.

It is important to note that serving breakfast in the classroom would require the school to serve universal free breakfast to all students, not just those who meet the economic criteria. Federal laws allow for schools to create universal free breakfast programs that accommodate breakfast in the classroom.[24] These programs will create additional costs, but the costs may be offset by reducing the administrative burdens of determining and tracking program eligibility, and, in low-income areas, the costs may be worth the benefit of ensuring that all students eat a healthy breakfast. In **Washington, DC**, public schools started offering universal free breakfast in 2005 and recent legislation required that all DC elementary schools in which 40% or more of students qualify for free or reduced-price meals serve breakfast in the classroom.[25] As a result of this policy, participation in school breakfast increased 32% in the following school year among low-income children, giving DC the highest school breakfast participation rate in the nation.[26] Food policy councils can advocate for schools to create universal free breakfast programs and also advocate for local government to provide funding to assist such programs.

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[19] 42 U.S.C.A. § 1773 (2012).

[20] *School Breakfast Program Resolution,* USDA FOOD & NUTRITION SERV. (Mar. 9, 2009), http://www.fns.usda.gov/cnd/Breakfast/resolution.htm.

[21] *School Breakfast Program 2010-2011 Participation,* FOOD RESEARCH & ACTION CNTR., http://frac.org/federal-foodnutritionprograms/school-breakfast-and-lunch/school-breakfast-program/ (last visited Apr. 12, 2012).

[22] *About School Breakfast*, SHARE OUR STRENGTH, http://bestpractices.nokidhungry.org/school-breakfast/program-details (last visited Apr. 12, 2012).

[23] *Id.*

[24] 7 C.F.R. § 220.1 (2011).

[25] *D.C. Healthy Schools Act: Breakfast/Lunch Access*, D.C. HUNGER SOLUTIONS, http://dchealthyschools.org/whats-in-the-act/breakfastlunch-access (last visited April 12, 2012).

[26] *"Breakfast in the Council" Celebrates D.C. for its #1 Ranking for School Breakfast Participation Under Secretary Kevin Concannon, FRAC President Jim Weill Join D.C. Hunger Solutions to Commemorate Achievement,* D.C. HUNGER SOLUTIONS (Feb. 21, 2012), http://www.dchunger.org/press/dc_first_school_breakfast_2012_dc.htm.

It is important to note that schools are also allowed to opt for a universal free lunch program through the NSLP.[27] Similar to universal free breakfast, the school would incur additional costs by implementing universal free lunch, but these costs may be offset by decreased administrative costs in identifying the students who are eligible for the program, counting children to see if they have taken reimbursable meals, and the effects of poor nutrition on students who would be eligible for the program but whose parents do not file the paperwork.[28] Universal free meals make sense in low-income areas where many of the children are eligible for reimbursable meals, as they significantly streamline the lunch process and ensure that all students are accessing meals.

FOOD EDUCATION INITIATIVES While changes to procurement policies and school meal programs are instrumental to school food reform, educating students about making healthy choices at meal times is an equally critical factor in improving the health of young people. Procuring and preparing healthy foods alone will not improve student health and nutrition if students are unable to make healthy choices. This section details ways in which food policy councils can help implement and/or support food education initiatives. Food education initiatives are designed to introduce youth to principles of nutrition, agriculture, and food production processes, and are essential for increasing students' knowledge and awareness of the importance of growing and eating fresh, healthy food. Educated students will grow to be adults who are more conscious of their food environment and food choices. Below are some examples of programs that food policy councils can help implement by collaborating with school districts, local governments, food producers, and other members of the community.

Nutrition Education Though schools must teach traditional subjects such as math, science, and language arts, nutrition or health courses are usually not mandatory and thus frequently not well developed. There are many opportunities to incorporate nutrition and health education into the curriculum. While states set education standards, there is room to create and modify curricula at the local level while meeting the state standards. Food policy councils can encourage schools to:

- Incorporate nutrition education into the existing health or physical education courses;
- propose ways to incorporate food and nutrition education into traditional academic courses, such as math or science;[29] for example, one day of math class could be spent calculating the amount of growth of the plants in a garden, the size of the garden, or the costs spent on the garden; and
- initiate nutrition education programs before and after school by encouraging schools to partner with non-profit organizations and local extension services that provide classes to students and parents.

In gathering nutrition education resources, schools and food policy councils should utilize existing materials, for example, the National Association of State Boards of Education offers a model policy for incorporating nutrition education into school health curricula,[30] the California Department of Education provides useful

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[27] For example, some but not all Boston Public Schools have chosen to offer universal free lunch. *School Meals,* BOS. PUB. SCH., http://www.bostonpublicschools.org/meals (last visited April 12, 2012).

[28] *See* JANET POPPENDIECK, FREE FOR ALL: FIXING SCHOOL FOOD IN AMERICA (Darra Goldstein ed., Univ. of Cal. Press 2010).

[29] *See* JAMES BOGDEN & CARLOS VEGA-MATOS, *Part 1: Physical Activity, Healthy Eating, and Tobacco-Use Prevention*, *in* FIT, HEALTHY AND READY TO LEARN: A SCHOOL HEALTH POLICY GUIDE, E1, E1-E41 (2000). Additionally, the California Department of Education provides useful implementation strategies on introducing nutrition education into the existing curriculum. *See* ADVISORY COMM. ON NUTRITION IMPLEMENTATION STRATEGIES, SCHOOL NUTRITION . . . BY DESIGN! 14 (2006), http://www.cde.ca.gov/ls/nu/he/documents/schnutrtn071206.pdf.

[30] *Id.*

implementation strategies for introducing nutrition education into existing curricula,[31] and *Garden ABCs* includes links to various curricula on school gardens for all age groups.[32]

Farm to School Programs In addition to advocating for procurement policies that increase the purchasing of local foods, food policy councils can help break down barriers to farm to school initiatives—programs that focus on both the procurement of local foods and on creating long-lasting and mutually beneficial relationships between local farms and schools. Farms sell fresh foods to schools, thus offering farmers opportunities for economic development, and providing students with fresh, local food during school meals. Farm to school programs may also allow for students to visit the farm where their food is grown in order to learn about local agriculture and food production. Food policy councils can:

- Evaluate local farm to school programs to learn which have been most effective and why, using measures such as (1) how much local purchasing has increased, (2) how many more servings of fruits and vegetables the students are eating, and (3) how long the program can stay fiscally viable;[33]
- develop surveys to gauge interest and learn about reasons why schools are not participating in farm to school programs, such as limited capacity of school kitchens to cook raw, unprocessed foods from scratch or a lack of knowledge about opportunities to purchase local foods; and
- encourage schools to integrate educational components into farm to school programs, such as field trips to local farms, farmer visits to the school, or education about the health and environmental benefits of local foods served in the school lunch.

School and Community Gardens School and community gardens are another valuable resource for nutrition education, curriculum development, and increasing low-cost, fresh produce for school meals. Food policy councils can:

- Assist schools in locating and applying for grants to cover startup and maintenance costs associated with a garden;
- help schools identify and meet any food safety regulations applicable to using the fresh garden produce in school meals;[34] and
- encourage schools to integrate lessons from the garden into existing curricula like math and science.

IMPROVING THE SCHOOL LUNCH PERIOD Food education initiatives and better school food programs and procurement policies can also be paired with strategies such as improving the school lunch period to ensure that students are receiving and making healthier food choices. For example, many children currently have to rush through lunch because, in an attempt to raise students' test scores, schools have reduced lunch periods to increase class time. The Iowa City Community School District recently reduced lunchtime to 15 minutes,[35] leaving students scrambling to buy a lunch that they can actually consume during that short time period rather than focusing on healthy choices. Shortened lunches can lead students to

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[31] *Id.*

[32] *Lesson Plans and Curricula*, GARDEN ABCS, http://www.gardenabcs.com/Lessons.html (last visited Dec. 14, 2011).

[33] TONYA ADAIR ET AL., PORTLAND MULTNOMAH FOOD POLICY COUNCIL, THE SPORK REPORT: INCREASING THE SUPPLY AND CONSUMPTION OF LOCAL FOODS IN PORTLAND PUBLIC SCHOOLS 28 (2005), *available at* http://www.portlandonline.com/bps/index.cfm?c=42794&a=116850.

[34] NAT'L FOOD SERV. MGMT. INST., UNIV. OF MISS., FOOD SAFETY TIPS FOR SCHOOL GARDENS, *available at* http://nfsmi.org/documentlibraryfiles/PDF/20110822025700.pdf (last visited Dec. 1, 2011).

[35] *Iowa City Schools Superintendent Talks Lunch Time with Parents*, E. IOWA SCHS. (Dec. 10, 2010), http://easterniowaschools.com/2010/12/13/iowa-city-schools-superintendent-talks-lunch-time-with-parents.

choose unhealthy, quicker-to-eat food products, or to skip lunch altogether.[36] Local food policy councils can advocate for several different types of improvements to the school lunch line:

- Encourage the school to set lunch periods for a minimum of 30 minutes so that students have time to order and eat a balanced, healthy meal, noting that school meal times should be tailored to student age groups, based on available research literature, curriculum needs, and parent input;
- make sure the school includes daily recess for all students, and perhaps advocate for the school to move the recess to be before lunch, as studies have shown that children eat healthier food items if recess is held prior to lunch;[37]
- advocate for the school to set nutrition standards regarding competitive foods, including vending machines or à la carte meals (à la carte meals are those meals that are sold separately from the NSLP reimbursable meals); and
- convene student focus groups to determine what healthy alternatives would be successful for à la carte and snack options.

It is important to note that food policy councils can work with both individual schools and local policymakers to encourage healthy eating initiatives and positive changes to the school day. Below in Table VI-3 are two examples – one of policy change at an individual school and the other at the local government level.

TABLE VI-3: POLICY CHANGE AT THE INSTITUTIONAL & GOVERNMENTAL LEVEL

SCHOOL-BASED INITIATIVES	In **Thornton, CO**, West Lake Middle School replaced unhealthy à la carte items with healthy alternatives, promoted "Eat Smart" messages on posters around the cafeteria, and required children to purchase an entrée before purchasing a snack or drink.[38] During implementation of the program, the school used student focus groups to decide what types of healthy alternatives to the school meals the students would prefer to eat.[39] In the first year, à la carte sales increased by 13.7% and reimbursable meals increased by 8%.[40] The improvements continued in the second year, with à la carte sales increasing again by 10.2%, and reimbursable meals increasing by 13.9%.[41]
LOCAL POLICY CHANGE	In **Washington, DC**, local food policy advocates established a working group with staff members from the office of DC Councilmember Mary Cheh to draft the *D.C. Healthy Schools Act*,[42] which required: ➢ higher nutrition standards for all foods sold in schools, ➢ all schools to serve a universal free breakfast, ➢ all schools to incorporate nutrition education into the curriculum, and ➢ minimum levels of physical education for all students each week.[43] The working group's feedback played a significant role in the creation and modification of the provisions. The DC City Council passed the bill unanimously in May 2010.[44]

[36] *Position Statement: Mealtime Management,* CAL. SCH. NUTRITION ASS'N (2007), http://www.calsna.org/documents/PositionPapers/PositionPaperMealtimeManagement.pdf.
[37] *Benefits of Recess Before Lunch: Fact Sheet*, HAMILTON CNTY. COORDINATED SCH. HEALTH COMM. (2009), http://www.peacefulplaygrounds.com/pdf/benefits-recess-before-lunch-facts.pdf.
[38] *Making It Happen: School Nutrition Success Stories (Approach 4)*, CDC (2011) 141-143, http://www.cdc.gov/healthyyouth/mih/pdf/approach4-success.pdf.
[39] *Id.* at 143.
[40] *Id.* at 142.
[41] *Id.*
[42] Healthy Schools Act of 2010, D.C. CODE § 38-821.01 (LexisNexis 2011).
[43] *What's in The Act: D.C. Healthy Schools Act*, D.C. HUNGER SOLUTIONS, http://dchealthyschools.org/whats-in-the-act (last visited Feb. 19, 2012).

SCHOOL WELLNESS POLICIES School wellness policies are required by the federal government for all schools receiving federal funding for school meals.[45] According to the *Healthy Hunger-Free Kids Act of 2010*, the most recent reauthorization of the NSLP, each school must develop a school wellness policy that includes opportunities for public input, transparency, and an implementation plan.[46] Although school wellness policies have been required under federal law since 2004, lack of specific guidelines on their content and lack of enforcement of the requirement prior to 2010 led to wide variation in their comprehensiveness and effectiveness.[47] Food policy councils can work with schools to strengthen their wellness policies, for example, by working to increase the nutritional quality of the foods served in the school, increasing the use of local foods in the school, and setting goals for nutrition education, physical activity, and other school-based activities that promote student wellness.[48]

Drafting an Effective Wellness Policy

In helping develop recommendations for public schools to improve the quality of foods they serve, the Portland Multnomah Food Policy Council in **Portland, OR**, found that including provisions on local, healthy foods in school wellness policies was one of the most effective ways to encourage increased procurement and consumption of these foods. The Council's report recommended avoiding broad goals such as "improve student health." It suggested that schools should instead utilize specific language such as "integration of food and nutrition into the curriculum" and specific strategies for the schools to undertake, such as developing "purchasing standards for all food served by the district, including RFP requirements."

Source: TONYA ADAIR ET AL., PORTLAND MULTNOMAH FOOD POLICY COUNCIL, THE SPORK REPORT: INCREASING THE SUPPLY AND CONSUMPTION OF LOCAL FOODS IN PORTLAND PUBLIC SCHOOLS 28 (2005), *available at* http://www.portlandonline.com/bps/index.cfm?c=42794&a=116850.

Many states have laws that go beyond the federal legislation (which only requires a wellness policy) and require schools to create school wellness councils or health advisory councils that meet regularly and are comprised of school staff, students, parents, and community members. These councils are tasked with creating, reviewing, implementing, and updating the school's federally-mandated school wellness policy.[49] Food policy councils should seek to participate in these councils where they exist; where they do not, food policy councils can encourage schools to create them, even if they are located in a state in which these councils are not required.

Many schools have been adopting wellness policies around the nutritional quality of foods served in the à la carte line, in vending machines, or at school events. These foods that are available in schools but are not part of the NSLP are called "competitive foods." In the 2010 *Healthy, Hunger-Free Kids Act*, Congress required USDA to develop nutrition guidelines for competitive foods for the first time ever.[50] However, such regulations will likely take several years to be drafted and implemented, and it is difficult to predict how strict they will be. Thus, food policy councils can work with schools to add

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[44] Healthy Schools Act of 2010, D.C. CODE § 38-821.01 (LexisNexis 2011).
[45] Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, § 204, 124 Stat. 3183, 3216 (2010).
[46] *Id.*
[47] *Local School Wellness Policies: How are Schools Implementing the Congressional Mandate?*, ROBERT WOOD JOHNSON FOUND., 5 (2009), thttp://www.rwjf.org/files/research/20090708localwellness.pdf.
[48] USDA FOOD & NUTRITION SERV., MEMO: CHILD NUTRITION REAUTHORIZATION 2010: LOCAL SCHOOL WELLNESS POLICIES (July 8, 2011), http://www.fns.usda.gov/cnd/Governance/Policy-Memos/2011/SP42-2011_os.pdf (last visited Apr. 12, 2012).
[49] *What is a School Wellness Council*, ALLIANCE FOR A HEALTHIER GENERATION, http://www.healthiergeneration.org/schools.aspx?id=3283 (last visited Apr. 12, 2012).
[50] Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, § 203, 208, 124 Stat. 3183, 3216 (2010).

provisions to their wellness policies around "competitive foods."[51] Possible guidelines targeted at competitive foods might include:[52]

- Strong nutrition standards for foods sold in vending machines;
- Limitations on the times of day that vending machines are open for service;
- nutritional guidelines for à la carte foods sold during lunch period that are not part of NSLP;
- nutrition standards for foods that can be sold at bakesales or other school fundraisers or events; and
- nutrition standards for foods served at school celebrations.

As an additional resource, the National Alliance for Nutrition and Activity has developed a model wellness policy that can provide examples of language to promote healthier foods, such as the initiatives highlighted above.[53] By advocating for the adoption of these guidelines in school wellness policies, food policy councils can help to significantly improve access to healthy food and the eating habits of children.

[51] *Model School Wellness Policies*, NAT'L ALLIANCE FOR NUTRITION & ACTIVITY, http://www.schoolwellnesspolicies.org/WellnessPolicies.html (last visited Feb. 10, 2012).
[52] *Id.*
[53] *Id.*

SECTION VII: ENVIRONMENTAL SUSTAINABILITY

A small number of industrial farms and processing facilities grow, process, and distribute the majority of our food.[1] These producers mostly engage in conventional agricultural practices that rely on environmentally harmful products to promote crop growth and pest resistance and to prevent the spread of disease among closely confined animals. They also require large amounts of natural resources, including groundwater, topsoil, and feed crops, to produce food at the lowest possible cost. Often, the food is then transported via long-distance shipping, which heavily consumes yet another resource—fossil fuel. Food policy councils can address the issues this food system poses by promoting policies that advance the production of local, healthy food with environmentally conscious methods.

OVERVIEW Many food policy councils include the development of an environmentally sustainable food system as part of their mission. An environmentally sustainable food system aims to produce food without exhausting natural resources or contaminating the environment.[2] Food policy councils striving for such a food system should focus on replacing conventional practices with the many policies and best practices that address the environmental and social concerns tied to food production. These include encouraging local food production and distribution; incentivizing organic food production and the reduction of pesticides, herbicides, and antibiotics; and remediating urban brownfields (e.g., lands previously used for industrial/commercial purposes that may be contaminated) for use as urban farms and community gardens; and advocating for municipal compost facilities. Food policy councils can advocate for these practices and educate producers, policy makers, and the community about their beneficial effects.

Environmental sustainability, more so than other food policy goals, is particularly dependent on cross-sector collaboration. The process of defining and monitoring sustainable practices can become highly technical and require the expertise of those outside the council. Food policy councils should reach out to environmental groups and local government to partner on addressing these important issues. Keeping in mind the importance of collaboration, there are a number of policy goals that food policy councils can undertake to help develop food systems that more responsibly utilize environmental and human resources:

1. Local Purchasing One way to reduce harmful environmental impacts is to increase the purchase of local foods so that foods do not have to travel long distances.

2. Sustainable Agricultural Practices Food policy councils interested in environmental sustainability may want to work to educate local stakeholders about the importance of utilizing sustainable growing methods to improving environmental impacts.

3. Food Waste Disposal One issue in food system sustainability is reducing the amount of food waste and utilizing excess food supplies in beneficial ways, such as through composting programs and gleaning or food donation initiatives.

North Carolina encourages businesses and individuals to commit 10% of their food dollars to purchasing local foods. It gives them a system to track how many dollars they spend locally, as well as how many dollars are kept in-state overall.

Source: *The 10% Campaign: Building North Carolina's Local Food Economy*, CTR. FOR ENVTL. FARMING SYS., http://www.ncsu.edu/project/nc10percent/index.php (last visited Feb. 22, 2012).

4. Sustainability Plans Including sustainability goals in local land use plans is a way for food policy councils to help ensure their cities pay attention to these goals and implement them throughout the area.

[1] *See* Bryan Walsh, *Getting Real About the High Price of Cheap Food*, TIME, Aug. 21, 2009, *available at* http://www.time.com/time/magazine/article/0,9171,1917726,00.html.
[2] *See* Richard Earles, *Sustainable Agriculture: An Introduction*, NCAT SUSTAINABLE AGRIC. PROJECT (July 8, 2011), https://attra.ncat.org/attra-pub/viewhtml.php?id=294.

LOCAL PURCHASING Food policy councils can make a positive impact on both the local economy and the environment by advocating for policies that increase the consumption of fresh and healthy foods produced locally. These policies can increase healthy food access for *all* members of the community, increase the economic value that remains in the local food economy, and decrease fuel emissions by reducing the amount of miles that food travels. Various ways to increase the production and purchase of local food products include:

- Lead by example and make it a practice to purchase food for food policy council meetings and events from local sources, as well as promote local food producers whenever feasible;
- urge local governments to start campaigns encouraging businesses and individuals to commit 10% of their food dollars to purchasing local foods;[3]
- urge local governments and large local institutions such as universities, prisons, and hospitals to allocate a percentage of their food procurement expenditures to local food sources and to increase this percentage over time;
- petition state and local governments to remove barriers to and increase support for local food processing and distribution, including advocating for the basic tools and infrastructure needed to process and distribute locally grown food within the community's boundaries by, for example, securing space for farmers markets; and
- advocate for farm-to-school programs that encourage schools to purchase locally-grown food.

Building a Local Food Economy

In 2007, the **Illinois** legislature passed the *Illinois Food, Farms, and Jobs Act,* designed to provide the state with the proper mechanisms for a more localized food economy. The Task Force charged with creating the bill consisted of members from various sectors of the food industry and regions of the state. The Act emphasized five central components of a local food system:
affordable farmland;
new farmers;
increased variety of food crops;
infrastructure (processing plants, storage, and distribution networks); and
convenient retail access in all Illinois communities, urban and rural.

Supporting such a comprehensive food system can reduce dependence on food that must travel long distances and increase reliance on seasonal foods, which require fewer chemicals to grow.

Source: CHICAGO FOOD POLICY ADVISORY COUNCIL, BUILDING CHICAGO'S COMMUNITY FOOD SYSTEMS 18 (2008), *available at* http://www.chicagofoodpolicy.org/2008%20CFPAC%20Report.pdf.

SUSTAINABLE AGRICULTURAL PRACTICES Farmers who use sustainable growing methods are able to minimize pesticide and fertilizer use, thereby saving money and protecting future productivity, while reducing their environmental impacts.[4] Some of the most common sustainable agriculture techniques employed to minimize weeds, pests, disease, and erosion are: crop rotation, planting of cover crops, soil enrichment, and natural pest predators.[5]

To develop agricultural practices better adapted to the community's unique ecosystem, food policy councils can cooperate with environmental science organizations or research groups to monitor the environmental impacts of the local food system over time. Food policy councils may choose to support some combination

[3] *See The 10% Campaign: Building North Carolina's Local Food Economy*, CTR. FOR ENVTL. FARMING SYS., http://www.ncsu.edu/project/nc10percent/index.php (last visited Feb. 22, 2012).
[4] *Sustainable Agriculture Techniques*, UNION OF CONCERNED SCIENTISTS, http://www.ucsusa.org/food_and_agriculture/science_and_impacts/science/sustainable-agriculture.html (last updated Aug. 24, 2008)
[5] *Id.*

of conventional agricultural practices and organic agricultural practices in order to mediate environmental impacts while supporting the full capacity of the local food system and the local economy.

To encourage sustainable agriculture in your community, partner with local business and the chamber of commerce to publicly recognize and promote food producers (local and non-local) who boast the most environmentally friendly practices and methods. Also consider a creating a "Local Food Guide" that lists businesses, such as grocery stores, markets, and restaurants, that sell or use local products. Finally, see Section IV: Urban Agriculture for a more detailed discussion of the benefits and challenges related to sustainable agriculture in urban areas, including a discussion of cleaning up brownfields to allow more agriculture can safely be conducted in urban areas.

FOOD WASTE DISPOSAL To improve overall impacts on the environment, food policy councils should keep in mind every phase of the food life cycle. As described in Section II: Food System Infrastructure, one productive use of excess food is gleaning and donation programs. Another possible productive use is composting. Composting is a process often used in organic farming and involves using decomposed organic matter, such as plants and food waste, as fertilizer for crop growth. It is vastly preferable to other common methods of waste disposal because it not only improves environmental impacts by reducing waste, but also provides on-farm benefits by enriching the soil. It can prevent further pollution, remedy polluted soil, prevent erosion, and generally reduce the amount of water, pesticides, and fertilizers needed.[6] It can also regenerate poor soil by suppressing plant diseases and pests, reducing or even eliminating the need for chemical fertilizers, and increasing overall food production.[7]

There are many examples of successful models of composting, from the residential to the municipal level. At the municipal level, food policy councils can work with city councils and municipal waste departments to develop three-tiered plans for waste management, which would include regular landfill waste, recycling, and composting (food and yard waste). In **San Francisco, CA**, the city created the "Fantastic 3" Collection Program, which collects landfill waste, recyclables, and compost throughout the city. This diverts 50-75% of waste from landfills,[8] and thus extends municipal landfill life[9] while also ensuring that more waste is reused through recycling or composting. The resulting compost is sold to local organic farms. This approach has the potential for significant economic benefits for both city governments and growers. Food policy councils can also advocate for sliding-scale fees for small-scale urban farming operations so as to defray the costs of compost normally required of large-scale commercial farms.

Compost can also be collected and effectively utilized at the neighborhood level. In **Miami, FL**, for example, a new non-profit organization called Compost Mobile received a $1,000 microgrant from the Awesome Food Foundation to collect residential compost for delivery to local urban farms, particularly those in low-income communities.[10] At least four residents in a neighborhood must agree to collect compost in order to qualify for pick-up from the organization.[11] Food policy councils could sponsor grants for such projects, and/or partner with local non-profits or government agencies to create small seed grants

[6] *Environmental Benefits*, EPA, http://www.epa.gov/osw/conserve/rrr/composting/benefits.htm (last updated Nov. 3, 2011).
[7] *Id.*
[8] Alexa Kielty, *San Francisco's Food Composting Program*, CITY AND CNTY. OF S.F. (Nov. 30, 2006), *available at* http://www.epa.gov/reg3wcmd/composting/AlexaKielty.pdf.
[9] *Environmental Benefits*, EPA, http://www.epa.gov/osw/conserve/rrr/composting/benefits.htm (last updated Nov. 3, 2011).
[10] *See 1st Awesome Food Grant! Compost Mobile of Miami*, THE AWESOME FOUND. (Oct. 4, 2011), *available at* http://www.awesomefood.net/2011/10/first-awesome-food-grant-compostmobile-of-miami-florida%E2%80%94collecting-food-scraps-from-home-kitchens/.
[11] *Id.*

for innovative composting projects. Food policy councils can increase community and government support for collecting compost materials by:

- Emphasizing the noted economic and environmental benefits to farmers and municipalities by referencing successful composting programs in other cities;
- working to reduce restrictions on what foods can be included in compost, such as proteins, fats, and oils, as well as other agricultural byproducts;
- improving local composting efforts by sponsoring small-scale composting initiatives that collect residential compost for small urban farms, particularly in food deserts;
- petitioning for a municipal compost facility to reduce food waste in landfills and redistribute compost for agricultural use, as it improves soil fertility and decreases the need for harmful chemicals in food production; and
- assisting the city in locating and applying for grants to expand composting practices.

See Section VIII: Resources for some examples of funds available for this purpose.

Eliminating Legal Barriers to Environmental Sustainability

Helped by effective advocacy from various food organizations like the Chicago Food Policy Advisory Council, **Chicago, IL,** has eliminated its ban on composting and replaced it with an ordinance that actively encourages personal and commercial composting within city limits. As a result, an organization called The Resource Center developed a municipal composting facility, which works with local businesses and government to collect food and yard waste for its operations. The compost is then sold to the public for use in gardens and to support sustainable urban agriculture.

Additionally, the city now operates The Center for Green Technology, which "provides composting bins, rain barrels, free advice, and numerous resources on the environment and environmentally friendly practices."

Source: CHI. FOOD POLICY ADVISORY COUNCIL, BUILDING CHICAGO'S COMMUNITY FOOD SYSTEMS 18 (2008), *available at* http://www.chicagofoodpolicy.org/2008%20CFPAC%20Report.pdf

SUSTAINABILITY PLANS As discussed in Section III: Land Use Regulation, sustainability plans help cities define goals regarding environmental sustainability. Even though they do not necessarily carry the force of law, such plans do signal the municipality's support for and prioritization of such goals. The plans communicate these priorities to the community, while also potentially making it easier for supporters of its goals to gain political support and implement the desired policy changes.

In **San Francisco, CA**, for instance, Mayor Gavin Newson declared food system planning the responsibility of city government. In 2009, he articulated a vision of a food system with nutritious food for all, shorter distances between consumers and producers, protections for worker health and welfare, reduced environmental impacts, and strengthened connections between urban and rural communities.[12] Food policy councils should consider adopting similarly comprehensive sustainability plans that include food-related goals, like developing a more efficient local food system, supporting sustainable agricultural practices, and encouraging environmentally responsible practices to dispose of food waste.

[12] S.F. Exec. Directive 09-03 (July 9, 2009), *available at* http://civileats.com/wp-content/uploads/2009/07/Mayor-Newsom-Executive-Directive-on-Healthy-Sustainable-Food.pdf.

RESOURCES

&

APPENDICES

SECTION VIII: RESOURCES

GENERAL

Policy Brief No. 19 Cutting Through the Red Tape

About: *Policy Brief No. 19 Cutting through the Red Tape: A Resources Guide for Local Food Policy Practitioners & Organizers* provides a wide range of local and national case studies and toolkits to help local policy makers and food advocates improve their regional food system in five separate areas of food production: production, processing, distribution, consumption, and food waste recovery. The Policy Brief outlines the numerous components and considerations of local food systems while providing references to various projects that cities and organizations have undertaken to change their local food systems.

Find at: http://www.foodfirst.org/en/tools+for+organizing+food+policy+councils

Published by: The Institute for Food and Development Policy/Food First/Food First Books

From Farm to Fork: A Guide to Building North Carolina's Sustainable Food System

About: *From Farm to Fork* explores the processes of strengthening systems of local food procurement and of developing statewide food system infrastructure that took place in North Carolina in 2008 through the Farm to Fork Initiative. Targeted at the state level, though applicable to local food systems as well, the guide describes the processes and strategies that were enforced to affect North Carolina's food system and offers examples for external policy makers and consumers to adapt for the transformation of their own food system.

Find at: The 10% Campaign, Building North Carolina's Local Food Economy, *at*

http://www.ncsu.edu/project/nc10percent/index.php

Published by: The Center for Environmental Farming Systems

ENVIRONMENT

Brownfields and Urban Agriculture: Interim Guidelines for Safe Gardening Practices

About: A step-by-step guide to practicing urban agriculture while mitigating the risk of contaminants. The report identifies the gaps in current farming and gardening practices in urban settings, specifically the inherent risk involved in developing brownfields or reusing sites with an environmental history, and presents proposals on safe practices.

Find at: http://epa.gov/brownfields/urbanag/pdf/bf_urban_ag.pdf

Published by: The Environmental Protection Agency

FOOD POLICY COUNCILS

Building Chicago's Community Food Systems: A Report by the Chicago Food Policy Advisory Council

About: Issued by Chicago's Food Policy Advisory Board, this report utilizes Chicago's history of collaboration between eight different city government branches and numerous community organizations in their exploration of Chicago's food system as a jumping off point to discuss strengthening community food security efforts throughout the country. The report includes local case studies and an in-depth look into the various city structures whose powers can be harnessed to build a healthier city food system.

Find at: http://www.chicagofoodpolicy.org/2008%20CFPAC%20Report.pdf

Published by: The Chicago Food Policy Advisory Council

Food Policy Councils: Lessons Learned

About: *Food Policy Councils: Lessons Learned* describes the structure of, and methods used by, successful food policy councils as well as the barriers they commonly face. The report contains a wealth of information for councils, including an overview of relevant food policy issues, a discussion on the importance of local and state food policy, and examples of policy initiatives that councils have engaged in.

Find at: http://www.foodsecurity.org/pubs.html-fpc

Published by: Food First and the Community Food Security Coalition

LAND USE

Land Use Planning for Public Health: The Role of Local Boards of Health in Community Design and Development

About: This guide is designed to assist board of health members and other public health professionals in helping to protect local environmental health and improve the health of their communities through land use planning. While it does not focus solely on food-related issues, it can help food policy council members understand the role boards of health and public health considerations play in land use planning.

Find at: http://www.activeliving.org/files/NALBOH_land_use_report.pdf

Published by: The National Association of Local Boards of Health

Planning for Healthy Places Publications

About: *Healthy Planning Policies: A Compendium from California General Plans* works to engage public health advocates in the planning decision-making process. The initiative's "Creating Healthier Food Environments" webpage contains a variety of publications explaining how local ordinances and land use policies affect access to fresh, healthy food, while providing tools for local advocates seeking to induce change. Among the publications are guides to establishing land use protections for farmers markets and community gardens, and model ordinances for produce carts and healthy food zones. Designed for use within California, these materials nonetheless contain practical information for local communities throughout the country.

Find at: http://changelabsolutions.org/sites/changelabsolutions.org/files/Healthy_Planning_Policies_Compendium_FINAL_%28CLS-20120530%29_090925.pdf

Growing Healthy, Sustainable Places

About: As the popularity of urban agriculture rises in the United States, especially in the form of community gardens, cities across the nation are being transformed. This report details the land use planning measures implicated in urban agricultural projects such as community gardens, and provides guidance for these activities which are regulated by municipal governments and local planning agencies.

Find at: http://www.planning.org/apastore/Search/Default.aspx?p=4146 (available for purchase only)

Published by: The American Planning Association

LEGAL RESOURCES

The National Agricultural Law Center

About: Funded through federal appropriations and based at the University of Arkansas School of Law, the National Agricultural Law Center conducts legal research into issues facing food and agriculture. Its online

"reading rooms" are comprehensive compilations of articles, notes, case summaries, and other resources on dozens of topics. The Center's "Local Food Systems" reading room contains federal statutes and regulations, case law, Congressional Service Research reports, and a wide range of other publications and resources on legal and regulatory issues affecting local food systems.

Find at: http://www.nationalaglawcenter.org/readingrooms/localfood/

LOCAL FOOD POLICY: CASE STUDIES

Community Health and Food Access: The Local Government Role

About: This is a guide on how local governments can encourage healthy eating. In addition to offering strategies and approaches to improving access to healthy foods, it provides useful case studies of successful initiatives, including ones focused on community gardens, farmers markets, food policy councils, and programs for children.

Find at: http://bookstore.icma.org/freedocs/E43398.pdf

Published by: The International City/County Management Association

Developing a Sustainable Food System

About: This practice brief profiles what cities across the country have done to encourage residents to grow, sell, buy and eat more sustainably produced and locally grown foods, particularly in food deserts. The cities discussed range in size from Philadelphia, Pennsylvania to Millbrae, California, population 21, 532.

Find at: http://www.nlc.org/File Library/Find City Solutions/ResearchInnovation/Sustainability/developing-a-sustainable-food-system-cpb-mar11.pdf

Published by: The National League of Cities

Planning to Eat?

About: *Planning to Eat? Innovative Local Government Plans and Policies to Build Healthy Food Systems in the United States* serves as a "synthesis of recent best practices of local government policy and planning designed to strengthen community food systems." The report details and dissects the plans of several government and community structures, from a neighborhood scale to county-led efforts, which have incorporated food-system related goals into their environmental and sustainability plans or have implemented independently standing food system plans. Issues from regulatory controls to funding are explored through the lens of specific city and county measures to illustrate various components that can be included in a working food system plan.

Find at: http://cccfoodpolicy.org/sites/default/files/resources/planning_to_eat_sunybuffalo.pdf

Published by: The University of Buffalo, SUNY New York

PUBLIC HEALTH

Local Government Actions to Prevent Childhood Obesity

About: Noting that childhood obesity "may well be the most important public health issue of our time," this comprehensive report details local government actions that have the potential to improve the food and physical activity environments in which children live, study and play. In its section on creating a healthier food environment, it provides strategies and action steps for local governments to (1) improve access to and consumption of healthy, safe, and affordable foods; (2) reduce access to and consumption of calorie-dense, nutrient poor foods; and (3) raise awareness about the importance of healthy eating to prevent childhood obesity.

Find at: http://iom.edu/Reports/2009/Local-Government-Actions-to-Prevent-Childhood-Obesity.aspx

Published by: The Institute of Medicine

Public Health Law Center

About: Based at the William Mitchell College of Law, the Public Health Law Center is a national non-profit organization that works to help health leaders, officials, and advocates use law to advance public health. Their website contains information on eight different "Healthy Eating" topics, including school food policies, transfat bans, and the WIC program. Each topic has a devoted webpage with an overview of the issue, relevant resources and research, links, and select legislation and policies.

Find at: http://publichealthlawcenter.org/topics/healthy-eating

School Procurement Policies and Resources

Washington Procurement Policies and Food Safety

About: Two separate school districts in Washington State serve as models of institutions that have created food procurement policies that strengthen the use of local, healthy meals for their students.

Find at: http://www.wafarmtoschool.org/Page/57/Policies--Procedures-for-Purchasing-Local-Food

Michigan Farm to School Purchasing Guide

About: *The Michigan Farm to School Purchasing Guide* outlines the steps required for a Michigan school to procure local farm ingredients, including processes such as sorting through vendor identification and creating the language and content of school wellness policies. The guide includes example forms for school use for every step of the procurement process as well as resources for assessing a school's interest in undergoing a Farm to School program.

Find at: http://www.mifarmtoschool.msu.edu/assets/farmToSchool/docs/MIFTS_Purchasing_Guide.pdf

Published by: Michigan State University

Strategic Alliance: School Food Environment

About: This web resource compiles a wealth of school food policies across the United States and UK. Several organizations and programs are included that provide tools related to school food procurement and the regulation of competitive school food products such as vending machines.

Find at: http://eatbettermovemore.org/sa/enact/school/school_snacks_2b.php

Model School Wellness Policies

About: The *Model School Wellness Policies* guide offers a framework for schools, school districts, and others to create their own set of wellness policies. Included are policies relating to 'School Health Councils', 'Nutritional Quality of Foods and Beverages Sold and Served on Campus', 'Nutrition and Physical Activity Promotion and Food Marketing', 'Physical Activity Opportunities and Physical Education', and 'Monitoring and Policy Review'.

Find at: http://www.schoolwellnesspolicies.org/WellnessPolicies.html

Published by: The National Alliance for Nutrition and Activity

Local School Wellness Policies: How are Schools Implementing the Congressional Mandate?

About: This brief conducted by the Robert Wood Johnson Foundation evaluates the implementation successes and challenges of several local school wellness policies. The report includes compiled data on the 'quality, evaluation and funding of the policies; nutrition standards and nutrition education requirements; and physical activity requirements' of local wellness policies. The brief provides statistics from various schools throughout the United States in each of these areas and concludes with recommendations for change and improvement.

Find at: http://www.rwjf.org/files/research/20090708localwellness.pdf

Published by: The Robert Wood Johnson Foundation

Tools for Evaluating School Wellness Policies

About: The School Wellness evaluation tools from the Yale Rudd Center for Food Policy and Obesity provide two questionnaires that may be used by schools and school districts within the state of Connecticut and across the country to determine the effectiveness of their school's wellness policy.

Find at: http://www.yaleruddcenter.org/what_we_do.aspx?id=160

Procurement Geographic Preference Q&As

About: A Question-and-Answer based memo that addresses some of the uncertainties and subtleties of School Food Authorities (SFA) and their procurement of local and/or farm-sourced food, particularly in reference to geographic preference in procuring locally unprocessed food.

Find at: http://www.fns.usda.gov/cnd/governance/Policy-Memos/2011/SP18-2011_os.pdf

Published by: USDA Food and Nutrition Service (Feb. 1, 2011)

Fit, Healthy, and Ready to Learn: A School Health Policy Guide, Part 1: Physical Activity, Healthy Eating, and Tobacco-Use Prevention

About: Designed for implementation by state and local decision makers to encourage, improve, and instill healthy habits in students, this book aims 'to develop an overarching school health policy as well as specific policies to promote physical activity and healthy eating and to discourage the use of tobacco'. The guide is applicable to school health advocates, educators, and entire school districts in its inclusion of professional development opportunities, curriculum design guidance, and program implementation aid.

Find at:
http://www.nsba.org/SHHC/SearchSchoolHealth/FitHealthyandReadytoLearnPartIASchoolHealthPolicyGuide.aspx (available for purchase only)

Published by: The National Association of State Boards of Education

School Nutrition . . . by Design!

About: The report of the Advisory Committee on Nutrition Implementation Strategies, *School Nutrition…by Design!*, recommends specific strategies which school districts can adopt to 'model healthy eating habits for their students'. The report is structured around the creation of 'standards' that assure each student receives equal access to 'quality food and drink'. It does so by following nine Design Principles (values) and their corresponding Quality Indicators (best practices), all of which model an exemplary system of standards that are replicable and applicable as pieces of an improved school nutrition program.

Find at: http://www.cde.ca.gov/ls/nu/he/documents/schnutrtn071206.pdf

Published by: The California Department of Education

URBAN AGRICULTURE AND COMMUNITY GARDENING

Community Garden Toolkit

About: A detailed guide to navigating the practice aspects of establishing a community garden, including facts about zoning measures and soil toxicity.

Find at: http://www.ci.knoxville.tn.us/boards/food.asp

Published by: The Knoxville-Knox County Food Policy Council

Food Safety Tips for School Gardens

About: The *Food Safety Tips for School Gardens* guide provides instruction on safely growing, handling, preparing, and consuming garden-grown food. The report covers a wide-range of topics succinctly, from the safe handling of compost and manure to providing guidance on the process of incorporating garden produce into school meals.

Find at: http://nfsmi.org/documentlibraryfiles/PDF/20110822025700.pdf

Published by: The University of Mississippi National Food Service Management Institute

Lesson Plans and Curricula

About: A comprehensive list of garden-based educational curriculum resources.

Find at: http://www.gardenabcs.com/Lessons.html

Published by: Garden ABCs

Seeding the City, Land Use Policies to Promote Urban Agriculture

About: A guide to establishing a community garden or practice urban agriculture with respect to navigating land use policies and laws. This publication includes extensive resources on factors concerning growing in urban areas, including the topics of contaminated land use, animal rearing, accessible design, and basic steps to starting a community garden.

Find at:
http://changelabsolutions.org/sites/changelabsolutions.org/files/Urban_Ag_SeedingTheCity_FINAL_%28CLS_20120530%29_20111021.pdf

Published by: The National Policy and Legal Analysis Network to Prevent Childhood Obesity

Appendices

Appendix A: Municipal Government Home Rule			
State	**Type of Home Rule**	**Cities Eligible**	**Enabling Authority**
Alabama	None/ Dillon's Rule state		
Alaska	Broad "liberal construction"	1st class cities	State constitution
Arizona	Structural + limited fiscal	3500+ population	1910 const. Provision
Arkansas	Structural + functional	2500+ population	1926 const. amendment
California	Broad structural + functional	All	1879 const. Provision and state law
Colorado	Broad structural + functional	All	1912 const. amendment
Connecticut	Structural/ Dillon's Rule	All	1969 const. provision + 1981 law
Delaware	Functional/ legislative grant	1000+ population	1953 law
Florida	Structural + functional	All	1968 const. Provision
Georgia	Functional	All	1954 const. amendment + 1962 & 1965 laws
Hawaii	*This state only has county governments*		
Idaho	Only home rule "police powers"/ Dillon's Rule state	All	State constitution
Illinois	Structural + functional/ broad "liberal construction"	25000+ population	1970 const. provision
Indiana	Limited functional/ devolution of powers	All	1980 law
Iowa	Structural + limited functional	All	1968 const. amendment +1971 law
Kansas	Structural + functional + fiscal devolution of powers/ "liberally construed"	All	1960 const. amendment
Kentucky	Structural + functional / legislative grant (almost devolution of powers)	All	1980 law + 1994 const. amendment
Louisiana	Structural + functional + fiscal/ devolution of powers + broad "residual" powers	All	1974 const. provision
Maine	Structural +functional/ "liberally construed"	All	1974 const. provision
Maryland	Structural + functional	All	1954 const. amendment
Massachusetts	Structural + functional + limited fiscal/ devolution of powers	All	1966 const. amendment + Home Rule Procedures Act

MICHIGAN	Structural + functional + fiscal/ "liberally construed" devolution of powers	All	1908 & 1963 const. provisions + 1909 law
MINNESOTA	Limited structural + functional	All	1896 const. amendment + 1896 law
MISSISSIPPI	Limited structural + functional	All	1985 law
MISSOURI	Structural + functional + fiscal	5000+ population	1945 const. provision + 1971 const. amendment
MONTANA	Structural + functional/ "not home rule, but self- government powers"	All	1972 const. provision
NEBRASKA	Charter writing authority only/ Dillon's Rule state/ "illusory home rule"	5000+ population	1912 const. amendment
NEVADA	None/ Dillon's Rule state		
NEW HAMPSHIRE	None		
NEW JERSEY	Limited structural + functional + limited fiscal/ "liberally construed"	All	1947 const. provision + 1950 law
NEW MEXICO	Structural + functional/ "liberal construction"/ "maximum local self-government"	300+ population	1970 const. provision
NEW YORK	Structural + functional + limited fiscal/"bill of rights for local government"	All	1938 const. provision
NORTH CAROLINA	Structural/ modified Dillon's Rule state		
NORTH DAKOTA	Structural + functional + fiscal/ "maximum local self-government"	100+ population	1889 const. provision + 1993 law
OHIO	Structural + functional + fiscal/ 'exercise all powers of local government"	All	1912 const. provision
OKLAHOMA	Structural		State constitution
OREGON	Structural	All	1906 const. provision
PENNSYLVANIA	Structural	All	1968 const. provision + 1972 law
RHODE ISLAND	Structural	All	1952 const. provision
SOUTH CAROLINA	Structural + functional + fiscal/ "liberally construed"	All	1973 const. amendment
SOUTH DAKOTA	Fordham approach with few limits/ devolution of powers	All	1962 const. amendment
TENNESSEE	Structural	All	1953 const. amendment
TEXAS	Structural + functional	All	1912 const. amendment
UTAH	Structural + functional + limited fiscal	All	1932 const. amendment
VERMONT	Legislative permission to adopt form of government	All	State law

VIRGINIA	Functional/ Dillon's Rule state	All	State law
WASHINGTON	Limited structural	All	1889 const. provision + Amendment 40 + 1967 law
WEST VIRGINIA	Very limited structural/ Dillon's Rule state	2000+ population	1936 const. amendment
WISCONSIN	Limited structural + functional	All	1933 const. amendment
WYOMING	Structural + functional	All	1972 const. amendment

Source: DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (CQ Press 2001), *available at* http://www.cas.sc.edu/poli/civiced/Reference%20Materials/US_home_rule.htm.

Appendix B:
County Government Home Rule

State	Type of Home Rule	Cities Eligible	Enabling Authority
Alabama	"Limited"	3 most populous counties	Special law
Alaska	Broad/ "liberal construction"	All boroughs	Const. provision
Arizona	Structural + limited fiscal	500,000+ population	1992 const. amendment
Arkansas	Structural + functional	All	1974 const. amendment
California	Broad structural + functional	All	1911 const. amendment
Colorado	Structural/ legislative grant	All	1981 const. amendment
Connecticut	Counties abolished in 1960		
Delaware	None		
Florida	Structural + limited functional	All	1968 const. provision
Georgia	Functional	All	1966 const. amendment
Hawaii	Structural + limited fiscal	All	1968 const. provision
Idaho	Only "police powers" home rule/ Dillon's Rule state	All	Const. provision
Illinois	Broad structural + functional/ "liberal construction"	All	1971 const. provision
Indiana	Limited functional/ devolution of powers	All	1980 law
Iowa	Structural + functional	All	1978 const. amendment + 1988 law
Kansas	Structural + functional + fiscal/ devolution of powers/ "liberally construed?	All	1974 law
Kentucky	Structural + functional	All	1990 law
Louisiana	Structural + functional/ devolution of powers/ broad "residual powers"	All	1974 const. provision
Maine	Limited fiscal		1985 and 1996 law
Maryland	Structural + functional	All	1915 and 1996 const. amendments; "Express Powers Act"
Massachusetts	None (7 of 14 counties abolished)		
Michigan	Limited structural (only Wayne County has a charter)	All	State law
Minnesota	Limited structural	Ramsay County	1987 law
Mississippi	Limited structural	All	1988 law

MISSOURI	Structural + functional + fiscal	85000+ population	1945 and 1971 const. amendments
MONTANA	Structural + functional/ "residual powers"	All	1972 const. provision
NEBRASKA	None		
NEVADA	None		
NEW HAMPSHIRE	None/ Counties have very limited functions		
NEW JERSEY	Structural + limited fiscal		
NEW MEXICO	None		
NEW YORK	Structural + functional + limited fiscal	All	1959 const. amendment
NORTH CAROLINA	Modified Dillon's Rule/ may choose manager form	All	
NORTH DAKOTA	Structural + functional (only 3 counties have charters)	All	1985 law
OHIO	Structural	All	1933 const. amendment
OKLAHOMA	None		
OREGON	Structural	All	1958 const. amendment
PENNSYLVANIA	Structural	All	1968 const. + 1972 law
RHODE ISLAND	None (no counties exist in Rhode Island)		
SOUTH CAROLINA	Structural + functional + limited revenue		
SOUTH DAKOTA	Broad/ Fordham plan		
TENNESSEE	Not mentioned		
TEXAS	None		
UTAH	Structural + functional + limited fiscal		
VERMONT	None (counties have minimal governing role)		
VIRGINIA	Charter (only 3 of 95 counties)		
WASHINGTON	Limited structural		
WEST VIRGINIA	None		
WISCONSIN	"Administrative" home rule	All	1985
WYOMING	None		

Source: DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (CQ Press 2001), *available at* http://www.cas.sc.edu/poli/civiced/Reference%20Materials/US_home_rule.htm.

The Harvard Law School Food Law and Policy Clinic

was established in 2010 to connect Harvard Law students with opportunities to provide pro bono legal assistance to individuals and communities on various food policy issues. The Clinic aims to increase access to healthy foods, prevent diet-related diseases such as obesity and type 2 diabetes, and assist small farmers and producers in participating in local food markets.

The primary author of this toolkit

is Emily Broad Leib, Director of the Harvard Food Law and Policy Clinic.

The Community Food Security Coalition

("CFSC") is a national nonprofit organization that works to allocate federal resources to foster community-based alternatives to the global food system. CFSC's Food Policy Council Program provides technical and capacity building assistance to communities around the country that are developing or improving existing local and state food policy councils.

The key leadership of the CFSC Food Policy Council Program

is Mark Winne, co-founder of the CFSC.

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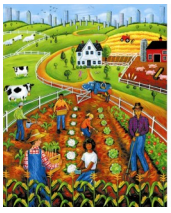
Harvard
Food Law and Policy Clinic
A Division of the Center for Health Law and Policy Innovation



Community
Food
Security
Coalition